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## CONSTITUTIONAL DIALOGUE

The metaphor of ‘dialogue’ has been used to describe and evaluate institutional interactions and constitutional arrangements involving many of the most fundamental questions concerning democracy and rights. It has been put to a variety of descriptive and evaluative uses by constitutional and political theorists concerned with understanding interactions between democratic institutions, particularly interactions concerning rights. But it has also featured prominently in the opinions of courts, and even the rhetoric and deliberations of legislators. This volume brings together many of the world’s leading constitutional and political theorists – both proponents and critics of dialogue theory. Together, they debate the nature and merits of constitutional dialogues between the judicial, legislative, and executive branches, explore dialogue’s democratic and republican significance, examine its relevance to the functioning and design of different constitutional institutions, examine rights dialogues in specific constitutional contexts and cases of dialogue concerning certain rights, and explore constitutional dialogues from both international and transnational perspectives.

GEOFFREY SIGALET is a postdoctoral fellow in the Faculty of Law at Queen’s University and a fellow at Stanford Law School’s Constitutional Law Center. He completed his PhD in political theory and public law at Princeton University, where his dissertation developed a neo-republican political theory of ‘dialogical’ judicial review and constitutional interpretation. Dr Sigalet earned an MA in political theory and public law from Princeton in 2014 and completed an MA in political theory at McGill University, where he was a member of the McGill Research Group on Constitutional Studies. He earned his BA (Hons.) in political science and philosophy at the University of Alberta.

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ROSALIND DIXON is a professor of law at UNSW Sydney, and co-president of the International Society of Public Law. Her work focuses on comparative constitutional law and constitutional design, constitutional democracy, theories of constitutional dialogue and amendment, and socio-economic rights and constitutional law and gender, and has been published in leading journals in the United States, Canada, the United Kingdom, and Australia. She previously served as an assistant professor at the University of Chicago Law School, and has been a visiting professor at the University of Chicago, Columbia Law School, Harvard Law School, and the National University of Singapore.

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# CONSTITUTIONAL DIALOGUE

Rights, Democracy, Institutions

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## PREFACE AND ACKNOWLEDGEMENTS

This volume originates from a conference on ‘constitutional dialogue’ held at Princeton University in April 2016. The conference was sponsored by the Princeton’s University Center for Human Values, the James Madison Program, the Law and Public Affairs Program, and the Bouton Law Lecture Fund, as well as by the Canada Research Chair in Public Law and Philosophy of Law. The scholars who participated in the conference were drawn from different legal jurisdictions in order to reflect the international influence and importance of theorising interactions between constitutional institutions as a matter of ‘dialogue’.

We are grateful to the variety of centres and programs that sponsored the conference, to all conference participants, and to all of the contributors, some of whom joined the volume after the conference. We also thank the faculty and staff of Princeton’s Department of Politics for providing academic support and logistical assistance for the conference. Thanks for research support in developing the volume are due to the University of New South Wales Faculty of Law and the University’s HSF Law and Economics Initiative. University of New South Wales Law School student Nathan Leivesley provided excellent research and editorial assistance in completing the volume. We also thank Melissa Voigt and Queen’s Law student Daniel Broadus for editorial assistance.

The note accompanying the cover image’s *Serment du Jeu de Paume* (‘Tennis Court Oath’) by Jacques-Louis David was expertly drafted by Christopher T. Green of The Graduate Center, The City University of New York.

This is the first edited volume to be included in the *Cambridge Studies in Constitutional Law* series and we thank the series’ founding editor, David Dyzenhaus, for this welcome opportunity.

## NOTE ON THE COVER IMAGE

*Serment du Jeu de Paume* ("Tennis Court Oath"); oil on canvas by  
 Jacques-Louis David (1792)

The painting illustrating the cover of this volume is a reproduction of the unfinished *Le Serment du Jeu de Paume* by Jacques-Louis David, begun in 1790 and abandoned four years later. The revolutionary government commissioned the famed neoclassical painter to capture in the grandeur of history painting the Tennis Court Oath at Versailles, where representatives of the Third Estate signed an oath dedicating themselves to a government of the people and set into motion the French Revolution. In the painting, David – whose work typically drew on classical subjects of ancient Greece and Rome to represent themes of civic virtue – represents the moment that Jean-Sylvain Bailly, president of the Third Estate, read the oath aloud to the gathered deputies, whose uproarious accord is depicted in a thrust of hands reaching toward Bailly, standing at the peak of a pyramid of outstretched arms and gazes. David inserted a cast of recognizable characters amidst the crowd, including political theorist Abbé Emmanuel Joseph Sieyès, seated at centre, and Maximilien Robespierre, who rises from the crowd to the left of Bailly. In the middle foreground, Catholic and Protestant clergymen clasp hands with a patriot to symbolize the solidarity of the church and the people, personified by the families and commoners cheering on the proceedings from the upper corners.

Winds blowing through the curtained windows of the Tennis Court portend revolutionary change. But the lightning and clouds seen outside also suggest the incoming storm of political turbulence; many of the depicted figures – including Bailly – would later be imprisoned and executed as counter-revolutionaries and enemies of the republic during Robespierre's Reign of Terror. Likewise, Honoré-Gabriel Riqueti, comte de Mirabeau, a principal constitutional figure whom David prominently featured in the right foreground looking heavenward, was discovered to

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have been a secret advisor to the monarchy and posthumously deemed a traitor. David, himself savvy to the political tidings, and deeply tied to reactionary movements, left the monumental work unfinished, unable to finance it and unwilling to complete the painting, given the unstable status of many of the revolutionary heroes in the eyes of the rotating regimes of Revolutionary France. He would go on to paint some of the best-known portraits of Napoléon Bonaparte, demonstrating the flexibility of the neoclassical style to accommodate both revolutionary ideals and imperial power.

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