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## Theories of Taking the Constitution Seriously Outside the Courts

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**SYMPOSIUM**

**THEORIES OF TAKING THE CONSTITUTION  
SERIOUSLY OUTSIDE THE COURTS**

*Editors' Foreword*

We are pleased to present this Symposium in Constitutional Studies: *Theories of Taking the Constitution Seriously Outside the Courts*. The symposium centers on two important recent books in constitutional theory: Larry D. Kramer's *The People Themselves: Popular Constitutionalism and Judicial Review* (Oxford University Press 2004) and Lawrence G. Sager's *Justice in Plainclothes: A Theory of American Constitutional Practice* (Yale University Press 2004). It is the second in a series of symposia on significant recent books in constitutional studies. The first in the series was on *Theories of Constitutional Self-Government*,<sup>1</sup> focusing on Christopher L. Eisgruber's *Constitutional Self-Government*<sup>2</sup> and Jed Rubenfeld's *Freedom and Time: A Theory of Constitutional Self-Government*.<sup>3</sup>

This symposium is structured as follows. Dean Kramer and Professor Sager wrote essays critiquing one another's books. Professors James E. Fleming, Abner S. Greene, Robert J. Kaczorowski, Aaron Saiger, and Benjamin C. Zipursky wrote essays about those books and, more generally, taking the Constitution seriously outside the courts. To further this discussion, we held a live seminar focusing on the books and the essays.

We owe thanks to Professor James E. Fleming, who conceived the idea for a series of symposia in constitutional studies with this format and organized both this symposium as well as the first one.

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1. Symposium, *Theories of Constitutional Self-Government*, 71 Fordham L. Rev. 1721 (2003).

2. Christopher L. Eisgruber, *Constitutional Self-Government* (2001).

3. Jed Rubenfeld, *Freedom and Time: A Theory of Constitutional Self-Government* (2001).

*Notes & Observations*