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SYMPOSIUM: FORMALISM REVISITED

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This Symposium aims to take a fresh look at an old topic—the causes, desirability, and consequences of legal formalism. Questions explored include: What is meant by the term “formalism”? How indulgent are we and ought we to be of those who exploit law’s formality to the fullest? Just how formalistic should we be in statutory construction, in the interpretation of contracts, in the enforcement of property rights, or in our toleration of the ingenious contrivances of tax lawyers? And, finally, what are the costs of departing from a formalistic approach to the law?

The questions are addressed from a variety of methodological perspectives. Some authors take a jurisprudential approach, asking, for example, whether it is in the nature of legal rules to be formalistic. Others take an empirical approach, asking, for example, whether the types of commercial customs legal realists thought courts should look to in deciding cases actually exist in merchant communities. In addition, authors draw on formal economic models to explore the effects of formal rules on parties’ incentives to behave in certain ways.² It is our hope that by raising a variety of questions relating to legal formalism, and answering them from quite different perspectives, the interchange will give rise to new ideas.

¹ *The University of Chicago Law Review* would like to thank Karin Kizer for her assistance in coordinating the Symposium.

² Professor Lawrence M. Friedman of Stanford University and Professor Frederick Schauer of Harvard University participated in the Symposium but did not publish their remarks.



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ROOTS OF FORMALISM

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Moderated by Michael Heller