Handelingen

Form and function in discrete legal units and in a legal system as a whole

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1 Introduction

Here, I summarize in general terms, with many concrete examples, the central theses of a book I am now completing. The book is entitled: Form and Function in A Legal System. A General Study, and presents a new way of looking at the familiar. In this book I focus on legal form, an important but relatively neglected topic which Rudolf von Jhering once said is too abstract for lawyers and too concrete for philosophers.1 Another reason this topic has been neglected is that at least important aspects of it are too simple and familiar to be noticed.2

In this book, I treat a legal system as consisting of what I call diverse ‘functional legal units’ which are also duly integrated and systematized within the system as a whole. For now, it is sufficient to explain what I mean by the phrase ‘functional legal unit’ simply by giving examples. Functional legal units include: (1) legal institutions such as legislatures, courts, administrative agencies, and corporate and other private entities, (2) preceptual species of law such as rules, principles, maxims, and general orders, (3) non-preceptual species of law such as contracts and property interests, (4) methodologies such as those for interpretation of statutes and for application of case law precedent, (5) sanctions and remedies such as imprisonment and money damages, and (6) still further units.

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1 R. Jhering, Geist des Römischen Rechts, vol. 2 at 472 (Scienta Verlag, Aalen, 1993).
2 Compare L. Wittgenstein, Philosophical Investigations § 129, at 50 (G.E.M. Anscombe trans., MacMillan Co. N.Y., 1953): ‘The aspects of things that are important for us are hidden because of their simplicity and familiarity. One is unable to notice something – because it is always before one’s eyes.’
The foregoing and other discrete functional legal units are, in accord with
a variety of formal devices, duly integrated and systematized within an
operational legal system. These formal systematizing devices include: the
centralization and hierarchical ordering of legislatures, courts, adminis-
trative bodies and other entities operating within their own spheres;
specification of systematic prioritał relations as between the spheres of
such units; codification and consolidation of rules and other functional
units of law into coherently ordered bodies of law within one field after
another; and adoption of uniform interpretive, drafting and other
methodologies.

In a developed legal system, a discrete functional legal unit such as a
court, or a rule, or a sanction, takes what I call an 'overall form.' Here, I use
the words 'overall form of the unit' to mean the purposeful systematic
arrangement of that unit. It is the function of well-designed overall form
of a unit to specify, define and organize the whole of a unit to serve pur-
puses. The overall form of the unit also defines and organizes the con-
stituent features of this overall form. The overall form of a unit and the
constituent features of this form may be very complex. We will see that
this is true of the overall form and constituent features of even a seem-
ingly simple unit such as a six or seven word legal rule. Such a rule can
have constituent formal features of prescriptiveness, completeness, gen-
erality, definiteness, structure, manner of expression, and mode of encap-
sulation. The overall forms and constituent features of units differ great-
ly as between different units. Thus, for example, the overall form and
constituent formal features of a legislature are designed, defined, and
organized very differently from those of a court. The overall form and con-
stituent formal features of a rule are designed, defined, and organized
very differently from a contract.

The overall form of a unit also has complementary material or other com-
ponents, and this form specifies, defines, and organizes these components
too. For example, the components of a court complementary to its overall
form include judicial personnel and special physical facilities. The com-
ponents of a rule complementary to its overall form include the policy or
other content of the rule and also the specified addressees of the rule. The
components of a contract complementary to its overall form include the
subject-matters of the contractual exchange and the parties who are to
perform the exchange. Now, having explained preliminarily what I mean
by the phrase 'functional legal unit,' what I mean by the phrase 'overall
form' of a unit, what I mean by the phrase 'constituent features' of overall
form, and what I mean by the phrase 'material or other components of a
unit complementary to the overall form of the unit,' I will turn to the four
most important theses I seek to develop in my work on the overall forms
of functional legal units. Here I must be brief and can only provide very
general and schematic accounts. In my book I provide extensive detail.
Indeed, I have a chapter on the overall form of a legislature, two chapters
on the form of rules, and a chapter on the form of a contract, for example.

2 It is the function of the overall form of a legal unit to
design, define, and organize the unit to serve purposes

My first thesis is that the peoples of a society and their official represen-
tatives conceive and design the overall forms of legal units, and it is the
function of these forms to specify, define and organize these units, includ-
ing not only their overall form and constituent formal features, but also
the complementary material or other components of the units, all to serve
purposes.

To illustrate, let us consider schematically the creation of a simple highway
speed limit rule for major roadways. Assume legislators consider forms of
two possible alternative statutory rules: ‘Drivers on Class A roadways may
not exceed 80 mph,’ or ‘Drivers on Class A roadways shall drive reasonably.’
These schematic versions of the overall forms of two alternative rules have
seven constituent formal features in common: prescriptiveness, complete-
ness, generality, definiteness, internal structure, mode of expression, and
statutory encapsulation. We can readily see how some of the formal fea-
tures in these two alternative rules differ. For example, while both rules
have the same or similar prescriptiveness, mode of expression, and mode
of statutory encapsulation, the 80 mph limit is plainly more definite, and
is less general, than the ‘drive reasonably’ limit. The choices that legislators
make here as between such formal features when creating and designing
a rule are in part choices of form, and these choices define and organize the
resulting functional unit of a highway speed limit rule.3 Plainly, different
choices here would define and organize the form of the rule differently.

Such choices also typically affect the policy or other content of the rule,
that is, complementary material or other components of the rule. For
example, the formal feature of high definiteness in a ‘Drive no faster than
80 mph’ rule leaves an imprint on the policy content of the rule very dif-
f erent from the less definite feature ‘Drive reasonably.’ Many other choices
could be posed here that illustrate interactions between formal features
and the policy or other content of the functional legal unit of a rule. Such
choices also illustrate complex relations between different constituent for-

3 I say ‘in part’ because choice of form also usually involves choice of some complementary con-
tent such as the complementary regulatory content of a speed-limit rule. Still, form retains
independent significance. For example, a choice of highly definite form here does not entail
any particular complementary specified rate.
mal features such as degrees of generality and of definiteness within the overall form of the rule. For example, the more general a rule, the less definite (usually). The general type of analysis professed here applies to many other functional units, too.

3 A legal system consists not merely of functional legal units taking the overall form of rules but includes many other functional legal units taking their own forms as well

My second thesis is that a legal system is not, contrary to the emphasis in the illuminating works of H.L.A. Hart and Hans Kelsen, a system of discrete functional legal units that consist only of units taking the overall form of rules. Rather, a legal system is a system of diverse functional units. The units of a system, besides rules, include, as I have indicated, institutions such as legislatures and courts, other precepts such as principles, maxims and general orders, non-preceptual species of law such as contracts and property interests, methodological units such as those for the interpretation of statutes and for applying case law precedents, enforcive units such as sanctions and remedies, and still more. All of these discrete and varied units take overall forms different from rules, and the forms of these other units differ from each other. For example, the overall form of a legislature differs greatly from that of a court, and even more greatly from that of a rule.

We can begin to see how varied the functional units of a legal system are, if we illustratively consider how differently the overall forms of the foregoing units are designed, defined, and organized and how these differences of design, definition, and organization not only affect overall forms and constituent features thereof, but also affect complementary material or other components of the units. Thus, for example, while the constituent features of the overall form of a rule include its prescriptiveness, its generality, and its definiteness, the constituent features of the overall form of an institution such as a legislature include none of the foregoing features as such. Rather, the constituent features of the overall form of a legislature include specification of its official membership – a formal compositional feature, and also a formal jurisdictional feature, a formal internal structure with a committee system, a formal procedural feature, and specified relations with other institutions – a formal feature of external structure. This point could be elaborated at length.

From study and comparison of the overall forms of different varieties of functional legal units, the constituent features of these forms, the complementary material or other components of such units, and the imprints of form thereon, the distinct and varied identities of the functional legal units within a legal system can be readily seen. As Rudolf von Jhering would have put it, we can see that form is to a functional legal unit as the mark of the mint is to coinage. Thus a frontal focus on form here enables us to see the range and variety of functional legal units in a legal system. Again, contrary to the emphases in the writings of Hart and Kelsen, a legal system includes many other varieties of units besides rules.

4 Study of the overall forms of discrete functional legal units and of the overall form of a legal system as a whole can advance understanding of those units

My third general thesis is that the frontal and systematic study of the overall forms of discrete functional legal units and the form of a legal system as a whole not only enables us to see that a legal system includes many units other than rules, but can also advance understanding of rules and of these other units, their overall forms, their complementary material or other components, and the system as a whole. In particular, study of overall forms, constituent features, and the imprints of these forms and these features on complementary material or other components of these units can advance understanding of such leading attributes of these units as their make-up, unity, mode of operation, instrumental and other capacity, overall intelligibility, and distinct identity.

The advances in understanding to which I refer are not of the kind that usually require discovery or marshalling of new facts. Rather, these advances derive from reordering of subject-matter, and from focused attention on familiar yet often unnoticed formal facets and their imprints and other effects. These advances also derive from the use of felicitous concepts and terminology of form and of constituent features to portray these facets.

4.1 The concept of form

Before providing a range of specific examples that illustrate advances in understanding of functional legal units through focused attention on form, I refer to Jhering’s work. He stated that form is the mark of the mint to a coin, and this view has been echoed by many others. However, I believe that a more nuanced approach is necessary to fully understand the role of form in legal systems. This approach involves not only the study of form itself, but also its constituent features and the imprints of these features on other components of the legal system.

5 Jhering, supra n. 1, vol. 2 at 479.
6 Hart might have answered that he adequately takes account of all other functional units through study of the contents of special rules ‘reinforcing’ or ‘constitutive’ of those units. I deny that any such oblique approach to the make-up of a legal system can be adequate.
form, I will briefly elaborate on, and defend, the general concept of form I have introduced here. It is helpful to understand this concept more fully before turning to how a frontal focus on the concept, as applied to the phenomena of law, can advance understanding.

I have so far defined the term ‘overall form’ as applied to a functional legal unit such as a court or a rule or a contract to mean the ‘purposive systematic arrangement’ of such a unit. It is true that the word ‘form’ has many meanings in English and other western languages. Yet it is open to me for my purposes to stipulate a defined meaning, and this is what I do here. The meaning I stipulate is, for my purposes, appropriate, as I will explain. But my stipulated meaning is not something I have made up on my own. It is also a recognized general meaning of form and thus is no way idiosyncratic. First, my stipulated meaning has been long recognized by some jurists and also judges. Indeed, as one 19th century American judge stressed, and I quote, ‘it is through form that all organization is reached. Matter without form is chaos; power without form is anarchy.’

Secondly, the meaning I stipulate here is also closely compatible with one important ordinary meaning of form in English and in certain other languages, namely, the ‘orderly arrangement of parts’ of a phenomenon.

Thirdly, the meaning of form I stipulate here is compatible with a technical philosophical meaning in English and in certain other languages, namely, that which ‘makes anything a determinate species or kind of being.’ Certainly the purposive systematic arrangement of the functional legal unit of a rule goes far to make it a determinate species. The same is true with respect to other functional legal units. Again, as Jhering would have said, form is to a functional legal unit as the mark of the mint is to coinage.

Fourth, the meaning of form I stipulate, namely, the purposive systematic arrangement of a unit, serves my theoretical and practical purposes here. The formal organizational reality of a unit is identifiable and describable apart from its complementary material or other components such as, for example, the personnel and physical facilities of a legislature, or

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9 Ibid.
10 Supra n. 5.
11 See J. Austin, Philosophical Papers 130 (J. Urmson and G. Warnock eds., Clarendon Press, Oxford, 1961). (We see realities through words and their uses.)
the policy content of a statutory rule, or the subject-matter preferences of parties to a contract. The distinct organizational reality of the overall form of a functional legal unit, and the constituent features of this form, are manifest in the overall unit, and can be detailed, dense, and complex. This organizational reality can be extracted not only from the contents of reinforce or constitutive legal rules and other species of positive law, but also from institutional and other ‘blueprints,’ from observations of the practices of relevant personnel, from academic studies, and still other sources.

Consider, for example, the various constituent features of the overall form of a complex institution such as a legislature. From study of such sources, we can learn that the formal compositional feature of a legislature defines and organizes the membership of the body. Its formal jurisdictional feature defines and organizes conferral of law-making and other powers of the institution. Its formal structural feature defines and organizes the management of the body and its internal committee system. Its formal procedural feature defines and organizes the steps by which the body is to consider and adopt legislation, and to conduct other activities. Its formal methodological feature defines and organizes the fact-finding, drafting, interpretive, and other general techniques required for the conduct of institutional activities. Its formal preceptual feature consists of rules and other norms that prescribe some of the foregoing features. In sum, the overall form and the constituent formal features of such an institution exist and are identifiable as the organizational reality of the whole, and can be studied in detail.

The general meaning of form I stipulate not only has recognized and respectable antecedents and not only conceives a social reality that can be studied and described on its own. This general meaning of form can also be felicitously refined to fit all functional units of a legal system and allows for the characterization of each such unit as taking its own overall purposive form with its own constituent formal features, and allows for differentiation of complementary material and other components of the unit – components on which form leaves imprints or otherwise has effects. Ultimately, this makes it possible: (1) to focus on how the frontal and systematic study of a given overall form and of its constituent features can advance understanding of the unit involved, and (2) to demonstrate how such form and formal features are entitled to a share of the credit, along with complementary material or other components, for realization of purposes through deployment of the unit. Because my general definition does not swallow up the material or other components of any particular unit, this also reduces the risk that overall form or a constituent feature will be over-credited.
4.2 Examples of advances in understanding through form and form-oriented analysis

Failures to understand a functional legal unit in some important way are usually failures to understand a general attribute of the unit such as its make-up, its unitary nature, its mode of operation, its instrumental capacity, or its intelligibility as having distinct identity. Such failures may be manifest in erroneous assumptions, misconceptions, or affirmative fallacies of some kind. They may be attributed to various factors, including adoption of a faulty analytical approach such as resort to exclusively rule-oriented analysis, that is, analysis of the contents of those rules of positive law that purport to ‘reinforce’ or ‘constitute’ a functional legal unit.

I will now consider a range of schematic examples, far from exhaustive, that illustrate how a focus on form can advance understanding of an attribute or attributes of a functional legal unit. In regard to these examples, I suggest that the errors, misconceptions, or fallacies with regard to attributes of such units can be cleared up or put right by bringing felicitous concepts of overall form and constituent features thereof to bear. I make no claim that all observers, let alone all legal scholars and theorists, have been guilty of the specific errors, misconceptions, or fallacies I treat here. Nor do I claim that the only way to clear these up, or put things right, is through concentration on form. I do claim that study of form can and often does advance matters.

1. What is it to understand a functional legal unit? What is it to advance such understanding through form? A common fallacy here is that once the contents of a so called ‘reinforcive’ or ‘constitutive’ rule or rules prescribing parts of a functional unit are ‘read-off,’ this will enable us to understand whatever we need to understand about the unit. For example, it may be assumed that once we read off the contents of the usual legal rules purporting to prescribe say, the make up of the personnel of a legislature, we will understand this facet of a legislature. However, study of the contents of such reinforcive or constitutive rules are often not an adequate avenue to understanding here. This is so for many reasons.

First, the contents of such reinforcive or constitutive rules often do not frontally and systematically address, or address at all, important attributes of a functional legal unit such as a legislature, a statutory rule, a methodology of interpretation, or a sanction. Yet the main attributes of such a unit, and how form defines and organizes them, must be understood. Although functional legal units, vary greatly in overall forms, they all have at least the following attributes:
make-up
unity
mode of operation
instrumental capacity
specified inter-relations with other phenomena
intelligibility and distinct identity

Formal features as well as complementary material or other components figure in the foregoing attributes. For example, features of form define and specify the attribute of the compositional make-up of a legislature, including its regular personnel. Reinforce or constitutive rules may in a general way specify some of this make-up, but the contents of such rules typically do not differentiate between what is formal here and what is not. Such rules therefore do not frontally address how an understanding of formal make-up advances understanding of the unit. In a legislature, the make-up of the body – including its membership, is often actually specified and organized in complex ways that may or may not be revealed in the legal rules purportedly reinforce or constitutive of this make-up. For example, these rules may not even provide for the roles of political parties, yet such parties may have major roles in the organized make-up and operation of the body. At the least, what is needed here is form-oriented analysis – analysis oriented to the actual purposive systematic arrangement – the actual operative form of the unit as a whole.

Second, the contents of a so called reinforce or constitutive rule that in effect prescribe formal features may not be very explicit. For example, a rule of legislative procedure may merely provide for ‘debate’ of proposed statutes. Debate is a facet of mode of operation, another attribute of a legislative unit. To understand it, we must understand the procedural form of debate. A general rule merely stating that debate is provided for does not itself impart such understanding. Debate is a highly complex feature, procedurally formal in nature, that requires its own frontal form-oriented analysis, if we are to understand it.

Third, most reinforce or constitutive rules say nothing of the rationales for their contents. A truly form-oriented analysis necessarily takes us into the purposive rationales that inform the overall form. For example, a form-oriented analysis takes us into the rationales for the procedurally formal feature of debate. These include improvement of proposed statutory content, and provision of opportunities for democratic participation. A grasp of these rationales can advance understanding of this formal feature and its operation, and thus of the whole legislative unit.
2. I turn to a second example. It may be assumed that the overall form or some constituent formal feature or features of a functional legal unit is, or must be, value-neutral or even value-free. After all, form is often contrasted to 'substance' which is usually assumed to be value-laden. Yet, if the design and organization of the form of a functional legal unit is value-neutral or value-free, the unit simply could not have the essential attribute of instrumental capacity. To have this capacity, the form of the unit, whether it be that of an institution, a rule, a sanction, or some other unit must itself be defined and organized to serve the purposes of the unit. Such purposes are themselves not value-neutral or value-free, if the unit is at all well-designed. If, for example, a legislative institution is to have a procedurally formal feature providing for democratic participation in law-making, this feature must be duly organized to so provide. In this respect, it will be value-laden. Indeed, all attributes of the unit, if it is to be the kind of unit it is to be, must be designed, defined, and organized with reference to the purposes to be served through the unit. All well-designed form must be value-laden and cannot be value-neutral or value-free. Similarly, complementary material or other components of the unit must be duly organized to serve purposes. Thus form and its complementary components will be designed, defined, and organized to serve purposes. As Lon Fuller once suggested, the form of a legal unit is not an empty wheelbarrow that can simply be filled with any content and pushed in any direction. It is an advance in understanding to see this – an advance through focus on form and on the requirements of well-designed, well-defined, and well-organized form.

3. Those who concede that the overall form of a unit such as a legislature or a rule or a sanction must be duly designed to be purpose-serving may nonetheless fail to see that not all purposes to be served through such a unit already themselves exist quite independently of form. Form is required not only to construct rules that can be capable of serving pre-existing purposes. It may also be necessary to construct, along with other elements, the very purpose or purposes to be served through the rules. Thus, for example, the purpose of democratic elections requires, for example, relevant definition and organization of who may vote, how, and with what effect. Here, it may be said that duly designed form plays large roles in defining and in organizing not merely the relevant means but also the end, i.e. purpose. It is true that in many uses of law, such as for example, the recognition of a farmer’s allocation of irrigation water, the forms of relevant rules of law serve merely as a means of serving a pre-existing

12 L. Fuller, The Law In Quest of Itself 114-15 (Beacon Press, Boston, 1940).
end. But, as with democracy, many uses of law require that form also be deployed to define and organize the very end itself, thereby enhancing the general instrumental capacity of the relevant functional units. This truth cannot be understood without reference to form.

4. I have so far said nothing explicit about the relations between the overall form of a functional legal unit and the material or other components of the unit. It is false to assume that this relation is one of opposites or the like. In a well-designed unit, the form and the material or other components of the unit are complementaries rather than opposites. For example, it enhances understanding of the make-up, unity, and instrumental capacity of the functional legal unit of a rule to grasp how its formal features harness the content of a rule in a specified prescriptive modality, at one level of generality rather than another, with a given degree of definiteness rather than another, with each such formal feature penetrating, and definitively shaping, components of the policy or other content of the rule. For example, a rule that says 'Retire from the job at age 65' incorporates a formal feature of high definiteness. Though this feature retains its distinct identity as formal, it nonetheless leaves a deep imprint on the complementary component of policy content in the rule, an imprint very different from what would be left by a rule with low definiteness that says 'Retire when no longer fit.' To design a rule optimally, and to understand the important imprints and other harnessing effects of organizational form on the content of a rule, it is necessary to formulate and compare alternative versions of the same feature of a rule as manifest in complementary content.

5. It is also possible to advance understanding of a functional legal unit through form by concentrating on how it is a unitary whole and thus more than the sum of its parts. A unit cannot be reduced, without remainder, to its parts. It is a fallacy to think that a unit is a mere aggregation of parts. It is more. Its parts are organized through form into a unified whole. Here Kant would have insisted on a holistic analysis – on how the formal features constitutive of the overall form of a unit are interrelated, and how these formal features 'regiment' each other and also complementary material or other components so that the whole is more than the sum of its parts.13

The unified whole of a unit is itself purposively and systematically arranged. This unity – its inner order, is best understood by way of con-

Contrast with ways in which the whole could lack such unity. It might lack unity because the purposes that purport to inform the arrangement as a whole are conflicting and unprioritized. For example, in a given legislative phenomenon, the purposes of democracy and of operational efficiency might be in conflict. Institutional architects, to serve what they think to be the purpose of ‘representative democracy,’ might compose the body with a large and unwieldy membership that would be fatal to operational efficiency.

Further, the whole might not be sufficiently complete in its parts to be a functional whole. For example, a legislature might lack a jurisdictional feature, or a procedural feature, or a methodological feature, (along with complementary non-formal elements). Without such part or parts, the unit would simply be incompletely formed and thus could not be an adequately functional whole.

Finally, although existing parts could be ‘unifyable’ into a working whole, the designers of the institution might still fail to specify the integration. For example, they might create a two chamber legislature, with both chambers to participate in the making of laws, yet without providing adequately for how the two chambers are to reconcile differences over proposed new statutes.

The foregoing sources of institutional disunity (and still others) have been manifest at different times and places. Merely to contemplate them is to see the importance of securing coherent operational inner order through well-designed form.

In a unified institutional arrangement, the purposes of the arrangement will be duly formulated, and where conflicting, duly prioritized. Also, the whole will be sufficiently complete in its parts to constitute a functional whole, with each part duly designed and integrated. Choices of well-designed form, with complementary material or other components thus unify the whole. This general type of effect of form has also been explicitly recognized as such in technical usage, and in English lexicons as what ‘holds together the several elements of a thing.’

Many more examples could be cited of ways in which a focus on form can advance understanding of functional legal units. Numerous further examples appear in my forthcoming book. I now turn to some generalizable examples of credit due form.

14 Supra n. 8, vol. 6 at ‘form’.
Study of successful uses of law reveals that much credit can be due well-designed form for values realized

My fourth general thesis is that well-designed form deserves significant credit for values realized through uses of law. Complementary material or other components of functional legal units should not get all of the credit here. Nor should those legal rules reinforcing or constitutive of functional legal units get all the credit. Empirical studies are not necessary to demonstrate in general terms that form should share credit here for values realized through deployment of functional legal units. We already know of many respects in which Western legal systems are effective to serve ends and values. What has not been systematically studied is how form plays various roles in this, even though the truth is often right before our eyes. The fact that the credit due form has not been seen or has been neglected can be readily explained. Much of this, as Wittgenstein and others taught, is simple and familiar and thus often goes unnoticed, however important it may be.15

1. The realization of value through functional legal units is dependent partly on form. Without sufficiently well-designed form, there simply could not be any functional legal units. Without some such units, no values could be served through law. There could be no legislatures, no statutory rules, no sanctions, and no functional legal units at all, and thus no ends served through such law. The credit to form for the very existence of legal units is profound.

2. Without forms of functional legal units that are tolerably well-designed, values could not be served as effectively through law as they could be with well-designed forms. For example, a legislative procedure without provision for formal committee structures and for committee study of bills could not bring rational scrutiny sufficiently to bear on proposed statutes. To cite another example, the feature of definiteness is one constituent feature of the overall form of the functional legal unit of a rule. A duly definite rule on eligibility to vote, for example, ‘age 21,’ rather than a vague rule, e.g., ‘age of mature judgment’ better serves the policy that the young voter not be too young, and also better serves the policy of minimizing costs of administration, given that administering a ‘mature judgment’ standard case by case would be highly costly.

15 Supra n. 2.
3. Without well-designed formal features in the functional legal unit of a rule, rule of law values could not trump policies even when they should. A ‘drive no faster than 70 mph’ rule would both over-include and under-include as to safety and traffic flow, and thus sacrifice these policies to some extent, yet it could still be a justified choice over a mere ‘drive reasonably’ rule. This choice of the 70 mph rule might be justified, under the circumstances, on the ground that this more definite rule does not unduly sacrifice policies of safe and efficient flow, yet at the same serves rule of law values much better than a drive reasonably rule. The rule of law values that could be better served by this more definite rule would be fairer notice to drivers, and more equal treatment of similar cases at the hands of officials.

Here a feature of the form of a rule – due definiteness, may be said to fix fluid substance. It may, however, be objected that this formal feature of definiteness is so ethereal and fleeting that once incorporated into the policy content of a rule, it loses its identity as formal altogether. But it is false that it loses its identity as a formal feature. We can still identify the feature of definiteness in the 70 mph rule. Moreover, if we were to say that this feature of definiteness were to so lose its identity as formal, then all other features of the form of a rule would likewise lose their identity when so incorporated in the content of the rule, and this would mean that the rule would become all content and no form, which would be absurd.

4. I now turn very briefly to form and freedom. The recognition and exercise of many free choices would not be possible without the required functional legal units, and these could not exist without the sufficiently well-designed forms that they must take. Consider, for example:
   a The choice to buy a car.
   b The choice to enter an employment agreement.
   c The choice to own a residence.
   d The choice to borrow money.
   e The choice to form a political party.
   f The choice to become married.
   g The choice to publish a book.
   h The choice to leave property by will.
   i The choice to sue someone.

All the foregoing choices presuppose the existence of the relevant functional legal units which, in turn presuppose the required forms sufficiently well-designed, such as the form for a valid contract, or the form for a valid will, or the form for a court of law. Without these forms, these units
could not exist, these choices could not exist, persons could not even entertain the relevant intentions to make such choices, and freedom would be vastly diminished.

5. Democratic election of governments through majority vote would not be possible without the phenomena of elections in duly designed form. Among other things, what counts as a valid vote cannot be defined without due definiteness, a feature of the overall form of a rule.

6. Modern legal systems under the rule of law would not be possible without due form. Consider, for example, mode of expression of a law. This is a formal feature, and may be oral, or written, i.e. in print. Without writing – without print, there could be but relatively little of what we know today as law. We could not rely on individual memories of legislators and other officials as to the laws they adopted in the past. Printed records are essential. Without printed law, modern legal systems could not function. Yet as I have said, the mode of expression of a law is formal.

7. All law is heavily dependent on effective voluntary addressee self-application. The conditions for this require sufficiently well designed form. For example, relevant legal rules must be intelligible, determinate, and accessible. For many rules, this is not possible unless the rules are, among other things, duly prescriptive, complete, general, definite, sufficiently well structured, authoritatively and clearly encapsulated, and set forth in writing or in print. These are all formal features of rules.

8. Much more could be said here about the credit due form. In my book I treat many further examples.

6 Conclusion

Form, then, is important if we are to understand law. Form is even vital to the existence of law, and to valuable uses of law. But form is not all rosy. I will explain, if need be.