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Harmful thoughts : essays on law, self, and morality

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Abstrak

Appropriating and modifying the sociological concept of role distance, the chapter highlights the impersonal way in which legal actors enact their roles and reveals their avowedly strategic forms of communication as weapons deployed within what is sometimes a literally life-and-death agon. In a coercion-saturated environment, speech is the continuation of force by other, and milder, means. Chapter 2 strikes a similar note. It uses a communicative model to distinguish between the inner discourse of law, which I call decision rules, and the messages law conveys to the general public through conduct rules. In light of this distinction the essay questions the viability of the rule of law ideal of full transparency. The volume and complexity of legal communications make such transparency an illusory goal. Better realize that different messages are conveyed to different audiences to serve different purposes. The functional equivalence between force and speech is posited once again, displayed in the law?s own reliance on strategies of selective transmission that can help accomplish various legal goals while reducing reliance on brute force. The third essay considers an even more fundamental conXict in which law?s coerciveness is inescapably embroiled. Obedience to law can be itself a communicative action expressing deference to law?s authority and respect for the government. But the pervasiveness of coercion that backs up law?s authority perforce replaces an appeal to the citizens? good will with intimidation, thus depriving law-abiding behavior of the morally expressive signiWcance it might otherwise have. In this sense, the very fact of law?s coerciveness undercuts law?s normativity