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Article Title:

WEALTHY THUMBS ON THE SCALES OF JUSTICE: A NORMATIVE ANALYSIS OF THE MARKET OF LEGAL REPRESENTATION IN THE ADVERSARIAL LEGAL SYSTEM

Keywords: Adversarial legal system, Moral limits of markets, Legal representation, Undercutting reasons.

The adversarial legal system is traditionally praised for its normative appeal: it protects individual rights; provides people with a platform to voice their grievances; ensures an equal, impartial, and consistent application of the law; and, most importantly, its competitive structure facilitates the discovery of truth. At the same time, the services provided by lawyers are commodities, bought and sold according to the rationale of the market: the more one pays, the better quality legal representation one gets. In this article, I argue that the market rationale undercuts the system's normative appeal. The adversarial system is justified in a way that assumes the absence of a market for representation, and this justification cannot survive the presence of such a market, at least in its contemporary form. Accordingly, I propose a normative ideal for reform: that legal representation should be allocated according to requirements of equality and sufficiency. I conclude that if this normative ideal cannot be fulfilled in practice - since the existing market of legal representation is necessary for the system's durability - then the system cannot be justified in the traditional way.