

# The consumer litigation industry: Chasing dragon kings in lawyer–client networks



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## ABSTRACT

The community of lawyers and their clients form a scale-free bipartite network that develops naturally as the outcome of the recommendation process through which lawyers form their client base. This process is an example of preferential attachment where lawyers with more clients are more likely to be recommended to new clients. Consumer litigation is an important market for lawyers. In large consumer societies, there always a significant amount of consumption disputes that escalate to court. In this paper we analyze a dataset of thousands of lawsuits, reconstructing the lawyer–client network embedded in the data. Analyzing the degree distribution of this network we noticed that it follows that of a scale-free network built by preferential attachment, but for a few lawyers with much larger client base than could be expected by preferential attachment. Incidentally, most of these also figured on a list put together by the judiciary of lawyers which openly advertised the benefits of consumer litigation. According to the code of ethics of their profession, lawyers should not stimulate clients into litigation, but it is not strictly illegal. From a network formation point of view, this stimulation can be seen as a separate growth mechanism than preferential attachment alone. In this paper we find that this composite growth can be detected by a simple statistical test, as simulations show that lawyers which use both mechanisms quickly become the “dragon-kings” of the distribution of the number of clients per lawyer.

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## 1. Introduction

The existence of accessible legal mechanisms for settling disputes in consumer relations is key to the maintenance of a “healthy” market. When the consumer relation in focus involves essential services, such as power, health, and communications, the consumer may give an important contribution to the regulation of the system, by demanding the maintenance of minimal standards of quality in the services provided. A key channel for such demands is that of legal litigation.

Legal litigation may have the side-effect of generating great increase in judicial courts caseload, if used in violation of the basic assumptions about the legal practice. According to code of ethics for the legal practice in Brazil, as promulgated by the Brazilian Bar Association (*Ordem dos Advogados do Brasil, 1995*), it is unethical for lawyers to stimulate clients to litigate. Lawyers may advertise their services, but the demand for litigation must arise from clients.

This is also a known phenomenon on other countries (*Luther, 1958*), where legal ethics may not be as restrictive. Even tough in Brazil the violation of this ethical code does not constitute a crime but it is frowned upon by the legal community.

In recent years, the recourse to litigation to settle consumer relations has become very popular in Brazil. The creation of the JEC (Civil Special Courts), in which the assistance of a lawyer is not required and no legal fees are charged, allied to the overall decrease in the times to reach a judicial decision, has led to a marked increase in the number of consumers demanding for legal settlement of their consumer conflicts.

These changes in judiciary, when taken together with the poor quality of services of Brazilian companies, especially in the utilities sector, has spiked the interest of a number of law firms to stimulate litigation, through marketing campaigns or even by fraudulent litigation, in which the parts are not even aware of the lawsuit. This behavior is in blatant violation of the Brazilian Bar Association’s code of ethics, but has largely gone unchecked and has become an important source of business for many law firms.

In the company examines in this study, approximately 1% of its clients litigate every year. Although this number may look small,

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it is responsible for a substantial financial burden to the company, and for a great work overload to the judiciary system as well. It can be estimated from official statistics<sup>1</sup> published by the Rio de Janeiro State Court (TJRJ) that roughly one-fifth of new lawsuits filed each year, are consumer-related and come in through JEC.

A considerable fraction of these lawsuits originates from law firms which stimulate such litigation. Not all stimulated litigations are done in bad-faith, but may be uncalled for and constitute a waste of important resource which is the free access to justice as provided by the JEC.

Since the only way to identify firms which deviate from professional ethics in this matter, is through careful investigation – advertisement identification, fieldwork, interviews – which can be costly and time-consuming, in this paper we show statistical properties of lawyer–client networks can help to discriminate between law firms which recruit their clients ethically from those which unethically stimulate litigation. From now on, those will be referred to as unethical recruiters (UR).

The analysis is based on statistical properties of the lawyer–client networks, namely on the distribution of the number of clients per lawyer/law-firm, which fits nicely to a power-law model. Based on observations that confirmed URs appear to be outliers of this distribution. We apply a statistical test to identify potential URs. In the statistical literature (Sornette, 2009; Sornette and Ouillon, 2012), outliers to power-law distributions are called dragon-kings.

We postulate that unethical recruitment act as an amplifying mechanism turning URs into the dragon-kings of the distribution, in the sense of Sornette (2009). Dragon-kings are defined by this author as “extreme events that do not belong to the same population as the other events, in a precise quantitative and mechanistic sense”.

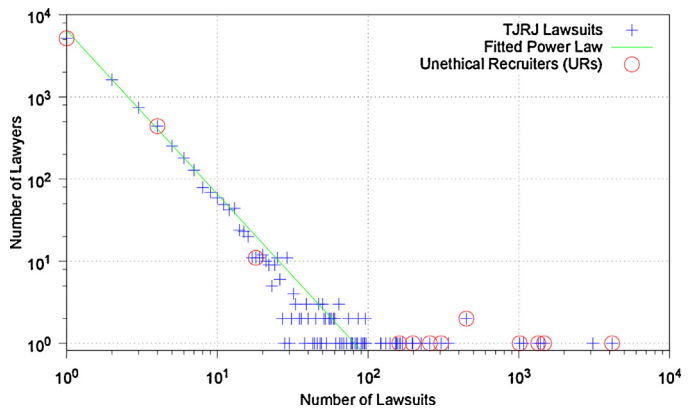
The paper is organized as follows: in Section 2, the data which motivates the analysis is presented and the implications for the judiciary system and the consumer are discussed. Section 3, contains the proposed models for client acquisition and their assumptions. In Section 4, we present the results and discuss their relevance.

## 2. The evidence

The Brazilian judicial system has seen a pronounced growth in consumer-related litigation in recent years. This growth is in part derived from the economical expansion experienced by the country in the recent past. This expansion in the consumer base of public utilities may help to mask other dynamics taking place within the same population, such as unethical stimulation of litigatory behavior on the part of law firms and/or individual lawyers.

The analysis shall focus on the electricity distribution sector in a large Brazilian city, namely, the municipality of Rio de Janeiro and some adjacent regions. This sector alone display considerable volume of lawsuits (Table 1), causing the electricity company and the judiciary system important financial burden and work overload.

Legal disputes concerning electricity distribution services are estimated to cost annually around R\$ 10 million to a utility company with roughly  $4 \times 10^6$  clients<sup>2</sup>, and more than 10 million reais to the judiciary system in operating costs, according to a study commissioned by the National Council of Justice (IPEA, 2011). The fraction of this cost which is related to stimulated litigation is not certain, but may add up to more than 20% of the total cost, according to our estimates, based on statistics from the Rio de Janeiro Court



**Fig. 1.** This log–log plot depicts the distribution of clients per lawyer. The points marked in red are the confirmed URs. It is also evident the power law behavior of the distribution, which has exponent of 2.26. Even though there are some URs along the power law, most of them seem to be outliers. (For interpretation of the references to color in this figure legend, the reader is referred to the web version of the article.)

of Justice (TJRJ). These costs reinforce the importance of having mechanisms to detect potential abuses of the judicial system.

The data used in this study are public in nature and were obtained from the query page on TJRJ’s website. The raw data consists of the full lawsuits records. The actual table with number of clients per lawyer used, obtained from the full records.

## 3. Methods

In order to study the system, we propose a generative model to approximate the observed social network of lawyers and their clients. In such a model we can choose to include unethical recruitment. In this section, we begin by modeling the distribution of clients per lawyer in the actual data and then we present the generative models (with and without unethical recruitment) and the methodology used to parameterize them from the data. Finally, we generated simulated datasets from the proposed model and compare them to actual data.

### 3.1. Distribution of clients per lawyer

After analyzing the available lawsuit dataset, we had to exclude a number of lawsuits where we could not determine accurately the identity of the lawyer or law firm, due to typographical errors. We have also only retained lawsuits against the main electrical utility company in Rio de Janeiro. This reduced dataset contains 43,973 lawsuits, with 9155 unique lawyers, comprising at least 86% of the cases. In the dataset, we knew from advertising materials posted on the Internet and other media, that 12 of the lawyers (marked in red in Fig. 1) were stimulating litigation and therefore fitted the definition of an UR for the purpose of this study.

Upon an first inspection of the data, we noticed that the number of clients (lawsuits) per lawyer or law firm, is distributed according to a power-law (see Fig. 1).

Fig. 1 clearly suggests a power law behavior for the most part of the values. However, there are some points at the distribution’s tail, that do not seem to belong to the same distribution as the majority. Having the number of clients per lawyer follow a power law amounts to say that probability of a lawyer having  $L$  lawsuits (clients) is given by

$$P(L) = CL^{-\alpha} \quad (1)$$

where  $C$  is a normalization constant. According to Clauset et al. (2009) there must be a lower bound to the power law behavior. To

<sup>1</sup> <http://www4.tjrj.jus.br/MaisAccionadas/>

<sup>2</sup> Estimated from settlement values in a sample of lawsuits and the percentage of condemnation.

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