# WHY THE "HAVES" COME OUT AHEAD IN BRAZIL? REVISITING SPECULATIONS CONCERNING REPEAT PLAYERS AND ONE-SHOOTERS IN THE BRAZILIAN LITIGATION SETTING

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## ABSTRACT:

*Galanter's speculations regarding the configuration and advantages of repeat players in the litigation game have been extremely relevant to understand institution, rules and actors in North American litigation, as well as the reflection on the limits and potentialities of a redistributive approach to judicial litigation.*

*This essay attempts to read the Brazilian litigation landscape by also reversing the end of the telescope, as Galanter proposed, and focusing in the players of the litigation game. Such approach seems utterly relevant, considering that recent reforms have purported the urgent need to deal with growing caseloads of individual repeated litigation filed for or against repeat players by one-shooters.*

*The idea is to better understand these reforms considering the role played by the different actors of the system. Though also a speculative essay, it is possible to infer that repeat players enjoy great advantages in the Brazilian setting and are able to influence judicial and procedural reforms in order to maintain and strengthen its capabilities of maneuvering a highly overloaded judicial system.*

*The empowerment of one-shooters, one the other hand, relies on a redistributive approach to access to justice, prioritizing proceedings and structures that provide for an easier access and more adequate responses to individual claims involving such litigants.*

## SUMMARY:



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## 1. INTRODUCTION: Reversing the telescope in a different setting

Numbers concerning litigation in Brazil are always impressive. Lawsuit filings have been growing steadily every year, with about 28 million new lawsuits filed in 2014, adding up to the total of 95 million lawsuits[5] pending in courts all over the country and waiting for a final ruling. The congestion rate, meaning the ratio between pending lawsuits and trials and the percentage of claims that were not trialed and therefore are "carried out" to the following year, varies from 75% to 80%. As a notorious Brazilian saying, courts seem to be "drying ice"[6] every year, and largely unable to effectively respond to the growing demand for jurisdictional adjudication.

Legislative and institutional changes are purported as necessary solutions for this scenario, deemed as a portrait of a litigious society and of an inefficient approach to access to justice. Courts have been going through meaningful reforms in the recent years following the re-democratization and the promulgation of the 1988 Federal Constitution, as well as procedural law. In 2015, a new Code of Civil Procedure[7] has been promulgated with the clear purpose of reducing caseloads, using alternative dispute resolution in courts, promoting the predictability of court decisions and the use of techniques of case management, aiming, at all sorts, to a rational of efficiency[8].

The analysis of the scenario focuses, as it often does, on rules and institutional facilities, to conclude that access is too broad and that procedural rules are inadequate.

[5] Report *Justiça em Números* ("Justice in Numbers") issued by the National Council of Justice in 2014. Available at www.cnj.jus.br.

[6] In Portuguese one would say "enxugar o gelo", meaning to resort endless effort and having meaningless developments.

[7] The current Code of Rules of Civil Procedure was issued in 1973 (Rule n. 5.869 of January 11th 1973). To understand more about the new Code of Procedural Rules, which will become effective on March, 2016, please see Section 5 of this article.

[8] As article 8º of the fundamental rules of the Code of Procedural rules state that the application of rules by judges must attend to social purposes and public interest, assuring and promoting human digninity and observing proportionality, reasonability, legality, publicity and efficiency (Art. 8º Ao aplicar o ordenamento jurídico, o juiz atenderá aos fins sociais e às exigências do bem comum, resguardando e promovendo a dignidade da pessoa humana e observando a proporcionalidade, a razoabilidade, a legalidade, a publicidade e a eficiência").

But there might be other ways of looking at this rather complex setting. This essay attempts at different approach to read the Brazilian scenario of litigation and access to justice by reversing the end of the telescope and focusing in the players to better understand the litigation game itself. That means also having in mind the question under what conditions can litigation be redistributive, considering that the litigation scenario in Brazil is occupied by different kinds of parties (repeat players and one-shooters) and that its configuration and actions may deeply effect the way the system works.

Despite the speculative approach to the matter - as Galanter's "Why the 'haves' come out ahead?" piece also proposed[9] - it seems that by changing the ends of the telescope a lot is revealed about how different kinds of parties are able to use, influence and manipulate the way the system works. Such considerations are necessary to think about recent institutional and legal reforms and their effect. Are we addressing issues properly in Brazil? Are we moving towards a more or less redistributive adjudication framework in our courts?

### 1.1. A few notes on the Brazilian procedural and justice systems

The Brazilian Constitution of 1988 guarantees the access to justice as a fundamental right which must fully be granted and secured by the State. The article 5th, item XXXV states that no case or controversy will be kept away from the Judiciary. This article is a general protection of individual and collective rights. There are other key principles in the Federal Constitution which are aimed to a fair and adequate adjudication process, such as the due process of law and adversarial principles (art. 5th item LIV and LV) and, more recently, after the 45th amendment, the Constitution also sets forth the "reasonable duration of a lawsuit" as a constitutional right.

Furthermore, procedural law is issued by federal legislature and currently codified by the Code of Civil Procedure in effect since 1973. This is the most important body of legislation concerning rules of civil procedure, which is applicable nation-wide.

[9] In his paper, GALANTER tried to put forward some conjectures about the way in which the basic architecture of the legal system creates and limits the possibilities of using the system as a means of redistributive (that is, systemically equalizing) change. His question, specifically, is, under what conditions can litigation be redistributive, taking litigation in the broadest sense of the presentation of claims to be decided by courts (or court-like agencies) and the whole penumbra of threats, feints, and so forth, surrounding such presentation (GALANTER, Marc. "Why the haves come out ahead? Speculations on the limits of legal change", Volume 9:1 Law and Society Review, 1974, pp. 95-96).

Although fundamentally a civil law system, precedents of higher courts are acquiring considerable importance in later years and acquiring binding effects in some circumstances, as item 4 of this essay will better explain.

With respect to collective actions, the procedural model designed in Brazil is a response to the system towards the access of justice doctrine to eliminate the organizational cost of group litigation through the definition of public and private entities that may represent interests of a group of individuals affected by the same event or statute, an interest group or society in matters related to diffuse rights. The key public entities that may bring collective actions are the *Ministério Público* (General Attorney Office), which acts as a public prosecutor and representative of collective rights, and the *Defensoria Pública* (Public Defenders Office), aimed at providing legal aid for the poor and defending human rights in individual and collective actions, while private associations that represent collective interests may also file claims concerning the interests of its members[10]. This system therefore does not recognize the standing of the citizen to file the class action and its main procedural instrument is the "Ação Civil Pública" (Federal Law n. 7.347 of 1985).

Brazil is a unified jurisdiction system, i.e. claims involving Public Administration and its agencies may be taken to courts for judicial review. In very general terms, there are state and federal courts, and among the latter there are courts specialized in military, electoral and labor related issues. The state and federal court systems have lower and higher courts and the *Supremo Tribunal Federal* is the Supreme Court responsible to trial appeals arising from decisions rendered by the higher courts of state, federal and specialized courts and to bring uniformity to the interpretation of constitutional law. In 1988, the *Superior Tribunal de Justiça* also became part of the justice system and became responsible of trialing appeals also arising from the higher courts at state and federal levels aiming to bring uniformity to the interpretation of federal law, among other attributions.

[10] The system nevertheless does not predict effective rules about the interaction between individual and group lawsuits. In Brazil, rights may be assigned to individuals, group of individuals or to the society as a whole. The rights that are assigned to group of individuals and/or to society are considered "collective rights" but, in some circumstances, they can also be postulated in individual cases. This is the case for many claims considered to be repeated litigation claims, such as those arguing consumer rights or social security readjustments.

## 2. A TYPOLOGY OF PARTIES IN BRAZIL: Who are the RPs and OSs and how do they play the litigation game?

As recent studies show, a significant portion of the contingent of claims that causes overloading of the justice system derive not from the proliferation of interpersonal conflicts, but from disputes involving certain public and private players, who resort to the courts or are sued by individuals. These cases often deal with similar questions of fact and/or of law and, given the magnitude and scope of the activities of the company or public entity involved. Therefore, thinking of repeat players as claimants who are engaged in many similar litigations over time[11] also means to point out who are some of the key users of the procedural and justice systems.

The National Council of Justice (*Conselho Nacional de Justiça*)[12] has issued two reports in 2011[13] and 2012[14], using different methodologies[15], to identify the top 100 litigants in 2010 and 2011, respectively. The data concerning Federal, State and Labor Courts, as well as Small Claims Courts, on these top litigants, considering their economic sector, was systematized as follows:

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[11] GALANTER, Marc. "Why the haves come out ahead? Speculations on the limits of legal change", pp. 4-6.

[12] The National Council of Justice was created in 2004 through the 45th constitutional amendment of the Federal Constitution of 1988 with the purpose of controlling the administration and budget of the Judiciary, besides other attributions stipulated by federal law. In order to promote the transparency of data concerning the administration and expenditure of courts, the National Council of Justice issues yearly reports and finances different researches in sensitive matters, such as litigation, court congestion, the prison system, among others. Such reports are available at http://www.cnj.jus.br/.

13 BRASIL. Conselho Nacional de Justiça (CNJ), Relatório 100 maiores litigantes, available in http://www.cnj.jus.br/images/pesquisasjudiciarias/pesquisa_100_maiores_litigantes.pdf, 2011, acesso em 8.5.2015.

[14] BRASIL. Conselho Nacional de Justiça (CNJ), Relatório 100 maiores litigantes, available at http://www.cnj.jus.br/images/pesquisas-judiciarias/Publicacoes/100_maiores_litigantes.pdf, 2012, acesso em May 8th 2015.

[15] The 2011 report takes into account the entire amount of case dockets until March 31st 2010, involving the 100 largest litigants in Brazil. The 2012 report considers only cases filed between January 1st 2011 and October 31st 2011. While the first research identifies the 100 largest litigators of all claims in Brazil (until March 2010), without considering any initial timeframe, the second aims to identify which are the main litigants of 2011 (up to October), disregarding lawsuits before that. The National Council of Justice has not issued any further reports concerning the top litigators after 2012.

| Rank | Report 2011 (Litigants considering case dockets until 2010) | Share of cases involving the top 100 litigants | Report 2012 (Litigants considering cases filed in 2011) | Share of the total of cases filed in 2011 |
|---|---|---|---|---|
| 1st | Federal Public Sector (i.e. federal agencies and the Federal Administration) | 38% | Federal Public Sector (i.e. federal agencies and the Federal Administration) | 12,14% |
| 2nd | Financial institutions | 38% | Financial institutions | 10,88% |
| 3rd | States Public Sector | 8% | Municipalities Public Sector | 6,88% |
| 4th | Mobile and telecom | 6% | States Public Sector | 3,75% |
| 5th | Municipalities Public Sector | 5% | Mobile and telecom | 1,84% |
| 6th | | | Commerce | 0,81% |
| 7th | | | Insurance and private pensions | 0,74% |
| 8th | | | Industry | 0,63% |
| 9th | | | Service providers | 0,53% |
| 10th | | | Professional Councils | 0,32% |

**Figure 1:** Data collected by the National Council of Justice – Department of Court related research / CNJ on the 100 top litigants in Brazil (2011 and 2012).

In spite of the different object and applied research methods, in terms of who are the key litigants, the results are strikingly similar. In 2011, the Public Administration (at Federal, State and Municipal levels), financial institutions telephone companies were the top litigants in Brazil. These are legal entities, or artificial persons (APs) [16], are the key users of the justice system, and are frequently involved, both as plaintiff and defendant, in large amounts of claims concerning the legality of their standardized bureaucratic and commercial practices. Some of these litigants are more often involved as plaintiffs (ex. debt collection and tax foreclosures), while others are engaged more frequently as defendants (ex. damages for undue charges or compensation for product liability).

In that sense, data shows that a significant share of case dockets in Brazil correspond to claims involving the public sector in all three levels. In 2011, the top litigants related to Federal, State and Municipal Sectors, along with the top litigants who are financial institutions, were involved in an overall of 31% of the total of lawsuits that were filed. In 18% these players were plaintiffs, while in 13%, they were defendants.

Drawing from one of the charts used in the article to explain the "taxonomy of litigation by strategic configuration of parties", it is possible to point out some examples of very common cases of repeated litigation in Brazil. Such cases would fit in the

[16] GALANTER, Marc. "Planet of the Aps: reflections on the scale of law and its users", 53 Buffalo Law Review, 2006, pp. 1369-1417.

quadrants of Repeat players vs. One-shooters (RP vs. OS) and One-shooters vs. Repeat Players (OS vs. RP):

| **Plaintiff**<br><br>**Defendant** | **Repeat Player (RP)** | **One-shooters (OS)** |
|---|---|---|
| **Repeat player (RP)** | **RP vs RP:**<br>Company vs. Service Provider (Termination of contract and damages)<br>Company vs. Federal Revenue (Exemption of tax debts) | **OS vs RP:**<br>Individual vs. Company (Damages for undue entry in debtors database)<br>Individual vs. Welfare agency (Welfare claims)<br>Individual vs. Service Provider (Damages for undue charges) |
| **One-shooter (OS)** | **RP vs OS:**<br>Bank vs. Individual (Collection of bank debts)<br>Federal Revenue vs. Individual (Tax foreclosure) | **OS vs OS:**<br><br>*Divorce*<br>*Neighborhood disputes* |

**Figure 2**. Examples of repeated litigation in Brazil according to the players involved, based on the taxonomy of litigation by strategic configuration of parties proposed by Marc Galanter in "Why the Haves Come Out Ahead?: Speculations on the Limits of Legal Change" (1974)

The National Council of Justice also issues a yearly report on data concerning litigation, courts congestion and expenditure ("*Justiça em Números*" – Justice in Numbers[17]) and was recently able to identify the share of case dockets related exclusively to tax foreclosure filed by Federal, State and Municipal revenue services. The 2014 report states that 41.4% of all case dockets in Brazil in the year of 2013 are tax foreclosures and that in these lawsuits, the congestion rate reaches 91%. There are more tax foreclosures pending in Brazilian courts (about 27 million) than overall first degree lawsuits pending trial (circa 25 million).

As pointed out by Galanter[18], the filing of such claims is part of the regular activities of the repeat players. In Brazil, tax foreclosures and other typical claims are

[17] BRASIL. Conselho Nacional de Justiça (CNJ), Relatório Justiça em Números, avaiable in ftp://ftp.cnj.jus.br/Justica_em_Numeros/relatorio_jn2014.pdf, 2014, pp. 37, acesso em 8.5.2015.

[18] GALANTER, Marc. "Why the haves come out ahead? Speculations on the limits of legal change", Volume 9:1 Law and Society Review, 1974, pp. 108-109.

systematically brought to courts by repeat players using computer technology for reproducing briefs and following case developments. Also for courts, these lawsuits demand very simplistic case management techniques and very often are decided by repeated written rulings. In these cases (RPs versus OSs), the Judiciary often becomes an ultimately great counter collection of state, bank and service debts.

In addition of litigating as plaintiff of tax foreclosures, Public Administration also is very frequently engaged as defendant in lawsuits brought by one-shooters (OSs versus RPs). This is the case of the large amount of claims involving the granting of social security benefits and the implementation of social rights filed by individuals against the National Social Security Institute (INSS), the federal agency responsible for granting social security benefits. According to the National Council of Justice[19], in 2010 the INSS was the defendant in 22.3% of the overall lawsuits involving the 100 largest litigants. In other words, the federal agency was the defendant in about one fifth of the total share of cases involving the top 100 litigants in Brazil.

This scenario demonstrates clearly the dimension that the Public Administration occupies in courts, both and plaintiff and defendant, as well as its institutional and normative influence. Over the years, Brazilian procedural rules have bestowed several regulatory prerogatives to the Public Administration. For instance, the Federal, State and Municipal Administration have considerably longer procedural terms[20], easier access to the superior courts (*Supremo Tribunal Federal* and *Superior Tribunal de Justiça*) and are exempted from paying court fees. These normative advantages have provided a privileged position for the Public Administration in courts.

Although there are still few empirical studies on the topic of repeat players and repeated litigation in Brazil[21], findings arising from very recent researches confirm the speculation that repeat players and specially Public Administration do come ahead in litigation. In a study on the requirement of *repercussão geral*, according to only appeals that deal with issues of economic, political, social or legal relevance that transcends

[19] BRASIL. Conselho Nacional de Justiça (CNJ), Relatório 100 maiores litigantes, available at http://www.cnj.jus.br/images/pesquisasjudiciarias/pesquisa_100_maiores_litigantes.pdf, 2011, p. 16, access on May 8th 2015.

[20] Currently, the term for filing the defense in a civil procedure is four times that of a common defendant and twice the term for appealing, according to rule n. 188 of current Code of Civil Procedure. The New Code of Civil Procedure establishes that all terms will be twice longer for the Public Administration and its agencies and that all subpoenas must be done in person. Commonly, the subpoenas of procedural acts after the defendant is summoned to the lawsuit are directed to lawyers through official press.

[21] On the causes, characteristics and impacts of repeated litigation in Brazil, see CUNHA, Luciana Gross; GABBAY, Daniela Monteiro (Coords.). *Litigiosidade, morosidade e litigância repetitiva*: uma análise empírica. São Paulo: Saraiva, 2013. (Série Direito e Desenvolvimento).

parties' interests are to be trialed by the *Supremo Tribunal Federal,* Damares Medina Coelho argued that the Federal Public Administration had significant advantages in the appeals regarding its interests[22]. Considering the paradigmatic cases chosen to establish precedent to all similar appeals in which the Federal Public Administration was the appellee, 89% of the appeals were not granted, whereas the in other cases, 52% of the appeals were not granted. Thus, there is a significantly higher rate of paradigmatic cases ruled in favor of the Public Administration, leading to the conclusion that such repeat player enjoys significant advantages in higher courts.

In addition to the public player repeat, Brazilian courts are also stage for repeat private players, among which the presence of financial institutions, telephone companies and other service providers is especially striking. These litigants have in common the fact that they develop their activities in areas that are highly regulated by the State and its agencies. When dealing with the final consumer, these players also have to comply with consumer legislation set forth in the Code of Defense of Consumer Rights (*Código de Defesa do Consumidor*[23]), a comprehensive and protective legislation that secures rights for consumers against abusive contracts and practices and the right to plead damages against suppliers and service providers.

Particularly in cases involving banks, issues discussed are in most cases related to debt collection. The percentage of cases filed by banks (RPs vs. OSs) and against them is relatively similar[24]. However, when focusing only in small claims courts, banks are engaged in 12.62% of the cases filed by individuals, who often dispute the legality of contractual clauses and practices adopted by banks. The same is true for cases filed telephone companies, who are usually defendants in both civil courts and small claims courts.

Although private litigants do not enjoy specific procedural prerogatives, as public litigants do, there are studies reporting institutional advantages of these players, especially in small claims courts (according to item 4 of this essay, below). It is not possible to be totally conclusive in this matter, but banks and telephone companies have

[22] COELHO, Damares Medina. "A repercussão geral no Supremo Tribunal Federal", Tese do Doutorado apresentada na Faculdade de Direito da Universidade Mackenzie, 2014, available at http://tede.mackenzie.com.br/tde_arquivos/4/TDE-2014-12-10T205314Z-2124/Retido/Damares%20Medina%20Coelho.pdf, p. 144, access on May 8th 2015.

[23] Federal Rule n. 8.078 of September 11th 1990.

[24] BRASIL. Conselho Nacional de Justiça (CNJ), Relatório 100 maiores litigantes, available at http://www.cnj.jus.br/images/pesquisas-judiciarias/Publicacoes/100_maiores_litigantes.pdf, 2012, p. 10, access on May 8th 2015.

obtained favorable results in key paradigmatic trials in the last decade at the superior courts.

A major example is the ruling in favor of banks in the matter of the inflation effects for saving accounts holders during specific monetary governmental policies during the 1980s and 1990s. Several of thousands of individual claims were filed all throughout the country, alongside with collective actions brought by public and private entities with legal standing[25]. The *Superior Tribunal de Justiça* has decided that the statute of limitations of collective actions is of only five years, and not twenty, as the general applicable rule at the time[26]. With this interpretation of procedural law, many collective claims and individual executions of collective action rulings were extinguished, and many people who relied in such claims to claim for compensation were not able to file individual claims later on, having missed the statute of limitations of twenty years while the collective action was pending.

## 3. LAWYERS: how do they influence the litigation setting?

The Brazilian litigation setting has another key feature that must be taken into consideration while discussing repeat players and their influence in institutional and legal reforms. Brazil has currently about 1,300 law schools, which is more than all countries to which such data is publicly known. While the Brazilian Bar establishes an exam for accreditation of law bachelors (which is necessary for all kinds of legal practice), there are more than 942,000 accredited lawyers in the country[27]. The

[25] To read more about the litigation involving inflation effects, see the qualitative empirical research with key players involved at GUIMARÃES, Amanda de Araújo. Ações Coletivas como Meio de Molecularização de Demandas, presented as the final requirement of obtaining the law degree at the Law School of the University of São Paulo, 2012. More information is also available at report issued by the State Court of the State of Rio Grande do Sul on a notorious case management project to handle such claims: "Tratamento das Demandas de Massa nos Juizados Especiais Cíveis" (Coleção Administração Judiciária, Tribunal de Justiça do Estado do Rio Grande do Sul, Vol. X, maio/2010. Pesquisa coordenada por Ricardo Torres Hermann. Available at http://www.tjrs.jus.br/export/poder_judiciario/tribunal_de_justica/corregedoria_geral_da_justica/colecao_administracao_judiciaria/doc/CAJ10.pdf, access on May 17th 2015.

[26] See Special Appeal n. 1.070.896 for the five year statute of limitations in collective actions and Special Appeal n. 1.273.643 trialed on April 4th 2013 on the statute of limitations of the individual execution of the ruling rendered in the collective action. Both trials were rendered in appeals filed by financial institutions against individuals.

[27] ORDEM DOS ADVOGADOS DO BRASIL, Quadro de Advogados, Quantitativo Total, available at http://www.oab.org.br/institucionalconselhofederal/quadroadvogados, 2015. Accessed in May 8th 2015.

extremely large number of legal professionals generates a corporate pressure to retention of the legal services while also reflecting in high rates of case filings every year.

Although is not characteristic of all law firms that attend repeat players, specialized units that offer standardized and low quality services rendered by an army of lawyers in a Fordist-like assemble are becoming a widespread model. These law firms work with systems that are able to reproduce briefs and following the proceedings of thousands of lawsuits. Routines and practices are modeled considering the client (repeat players) and specific repeated claims, so that the handling such cases is done in the most economical way. Also in court-connected mediation and conciliation programs, or in settlement conferences, these law firms have specific lawyers to handle sessions and hearings, bringing settlement proposals in the cases where the repeat players chooses to settle.

The Public Administration relies in large units of well-trained public lawyers (civil servants) working in different matters with relatively well organized public offices (*Procuradorias de Justiça*) divided by party (the administration or its agencies specifically) and by issues, with groups of public lawyers specialized in tax foreclosure (RPs vs. OS) or claims for damages against the Public Administration, lawsuits requesting health treatments or other social or welfare rights, among others. Although a very prestigious and well-paid public career, public lawyers also have to deal with large-scale litigation and often resort to the reproduction of briefs and to a massive managerial practice of case management.

There are also law firms with such configuration to attend one-shooters, especially in repeated individual litigation against product suppliers and services providers (consumer rights) or related to legal adjustments in social security pensions of retired employees of private and public sectors. In Brazil, the only possibility of pro se litigation is in small claims courts in disputes involving an amount up to 20 minimum wages[28] in state courts, 40 minimum wages in federal courts (in cases related to social security, for instance) and in labor courts. Nonetheless, even in these situations, many one-shooters choose to hire lawyers through success rate legal fee contracts, both for fearing the complexity of the legal and justice systems and for lack of information regarding its pro se rights. There are not trustworthy numbers on the matter, but a

[28] Equivalent in May 1st 2015 to R$ 15,750.00 or U$ 5,255.73.

general sensation that most people do not know that they can resort to courts in such situations without legal representation.

Again drawing from one of the charts construed by Galanter in "Why the 'haves' come out ahead?", it is possible to examine these units of legal services providers considering client-oriented and/or issue-oriented settings:

| **Client / Lawyers** | **Specialized by Party** | **Specialized by Party and Issue** | **Specialized by Issue** |
|---|---|---|---|
| **Repeat player** | ▪ State Attorneys for Federal, State and Municipal Administration and its agencies (*Procuradorias*)<br>▪ In-council for financial institutions, telephone companies, suppliers and service providers. | ▪ State Attorneys specialized in tax foreclosure (RP vs. OS) or social security claims (OS vs. RP) - (*Procuradorias Fiscais e do INSS*)<br>▪ Law firms specialized in large scale mass consumer litigation with lawyers focused in specific claims of particular clients (RP vs. OS).<br>▪ Prosecutor in criminal claims (RP vs. OS) - (*Ministério Público*). | ▪ Boutique law firms specialized in corporate litigation or tax claims involving large amounts (RP vs. RP) |
| **One-shooter** | ▪ Lawyers appointed by the bar (*advogado dativo*)<br>▪ Pro bono lawyers | ▪ Public defender specialized in matters such as family law, housing, criminal claims, land disputes (both as plaintiff and defendant).<br>▪ Law firms specialized in large scale mass consumer litigation for individuals against specific companies (OS vs. RP).<br>▪ Law firms specialized in large scale litigation against the federal social security agency- *INSS* (OS vs. RP) | ▪ NGOs of human rights and other minority causes.<br>▪ Small law firms working with real state or family law. |

**Figure 3**. Examples of categories of legal practice in Brazil, based on the typology of specialists proposed Marc Galanter in "Why the Haves Come Out Ahead?: Speculations on the Limits of Legal Change" (1974)

The considerations and data concerning repeat players and their lawyers reveal that such actors enjoy considerable advantages in the justice system, especially in view of its complexity and large-scale proportions.

With regard to the repeat players of the private sector, they are able to finance the structuring of Fordist-like law firms that specialize in the navigation of this system with large-scale, yet simplistic and low quality, case management practices, all of this for very low prices. When involved as the defendant of a lawsuit filed by an one-shooter, not only it has less to lose in the individual case, but it also calculates that the cost of litigation is so low that it is worth it to push individual cases until the higher levels of the jurisdiction, using all appeals available, in order to postpone the execution of the ruling.

Concerning claims filed by these repeat players – especially to collect debts from one-shooters – a similar reasoning is applicable: using courts as a debt collection counter and lawyers as debt collector agencies may be a simple and low cost system.

In terms of bargaining power, studies indicate that by working in intense scale, Brazilian repeat players adopt what Galanter refers to as the *minimax strategy*, especially for proposing settlements in cases where they know that the chance of success in the courts are low[29]. While doing so, they dispute the rules of litigation because, unlike the one-shooter, who seek individual and tangible results in every claim, repeat players may maneuver these extremely numerous repeated claims with the goal of obtaining favorable case law precedents in certain issues and settling in cases where chances of success are remote.

To obtain favorable case law precedents, repeat players resort to prestigious lawyers and law firms, who enjoy great proximity to the higher court judges and servants. These lawyers are also renowned and respected jurists, who are able to prepare legal opinions in controversial matters in favor of repeat players, both in matters related to procedural law (as the case above mentioned concerning statute of limitations for collective action) and substantive law. Such opinions exert relevant influence in the formation of precedents in the higher courts, as well as in institutional and legal reforms related to the matters involved.

It is clear that repeat players enjoy advantages not only in the litigation game, as they are able to devise discourses that are influential in changes regarding procedural law and the structure of the Judiciary itself. The dominant discourse that the facilitation

[29] GALANTER, Marc. "Why the haves come out ahead? Speculations on the limits of legal change", Volume 9:1 Law and Society Review, 1974, pp.141-144.

of access to justice is the villain of the court system crisis is a widespread one[30], often relating the large and always increasing number of claims to opportunistic behavior on behalf of one-shooters and its lawyers (OSs vs. RPs). Such portrait is widely purported by renowned jurists (who frequently are, as already mentioned, specialized lawyers representing repeat players in important paradigmatic cases) and accepted by public opinion, resulting in a general support to reforms that impose techniques for standardized trials, litigation filters and the search of efficiency at any cost.

Such reforms are not aimed at understanding the real causes of repeated litigation, its implications nor its social impacts. Institutional and rule changes also do not face the fact that different litigations arise from a same common cause (for instance, a widespread bank contract with an abusive clause, a poorly rendered telecom service, the legality of a certain tax practice) and that the best way to deal with such cases is, very often, the collectivization of individual claims. However, one cannot put aside all the pressure exerted by lawyers and corporative interests, who are not interested in institutional changes that will reduce the caseload of individual lawsuits that they legally represent.

## 4. INSTITUTIONAL AND LEGAL CHANGES: How do they affect (and were influenced by) the different players? What are their limits?

As already mentioned, Executive and Legislative branches in Brazil have been discussing legal and institutional reforms, especially after the 1988 Constitution and the establishment of a democratic regime.

The 1988 Brazilian Constitution marked not only the transition from military dictatorship to democracy but also a historical moment of intense social movements and great hopes to attain social and economic development through the construction of a more representative and pluralist order.[31] Two years of intense debates and negotiations

[30] SADEK, Maria Tereza. "Judiciário: mudanças e reformas". Estudos avançados (online), volume 18, n. 51, 2004, pp. 79-98.

[31] As the preamble of the constitution states: "We the representatives of the Brazilian People, convened in the National Constituent Assembly to institute a democratic state for the purpose of ensuring the exercise of social and individual rights, liberty, security, well-being, development, equality and justice as supreme values of a fraternal, pluralist and unprejudiced society, founded on social harmony and committed, in the internal and international orders, to the peaceful settlement of disputes, promulgate, under the protection of God, this CONSTITUTION OF THE FEDERATIVE REPUBLIC OF

resulted in an extensive text (over 245 articles) establishing not only individual freedoms but also positive obligations for the state to assure social and collective rights. Furthermore, the repudiation to authoritarianism underlined the new institutional judicial arrangement, with an independent judiciary and an enhanced system of judicial review, a strengthened *Ministério Público* (General Attorney Office) and an autonomous *Defensoria Pública* (Public defender's office), while also providing for instruments such as collective action and small claims courts intended to facilitate access to justice[32].

However, the 1990s marked the economic and political opening to globalization and permeability to the parameters and principles that were set forth by international players concerning economic efficiency and the attraction of foreign investment in Brazil[33]. The judicial reform in Brazil established by the Constitutional Amendment n. 45/2004 can be considered a turning point, since its text was discussed for many years and was influenced by two different discourses, one more concerned to access to justice and the other with the searching for efficiency in the Judiciary[34]. Courts ought to seek efficiency in order to the prompt enforcement of contracts and private property rights, which were professed as essential to assure economic growth and prosperity. Again, a discourse clearly aligned with the interests of the top litigants and key repeat players of the Brazilian court system.

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BRAZIL." (Translated version obtained from the World Intellectual Property Organization – WIPO - http://www.wipo.int/wipolex/en/text.jsp?file_id=218270).

[32] CUNHA, Luciana Gross. OLIVEIRA, Fabiana Luci. RAMOS, Luciana. *What Kind Of Judiciary Do We Want?* Paper presented in the 2011 IPSA-ECPR Conference, hosted by the Brazilian Political Science Association at the University of Sao Paulo. Available at http://saopaulo2011.ipsa.org/sites/default/files/papers/paper-1526.pdf.

[33] FREITAS, Graça Maria Borges, "Reforma do Judiciário, o discurso econômico e os desafios da formação do magistrado hoje" In *Rev. Trib. Reg. Trab. 3ª Reg.*, Belo Horizonte, v.42, n.72 p.31-44, jul./dez.2005.

[34] According to the World Bank famous Document # 319 S concerning judicial reform in Latin America and the Caribbean: "A medida que continúa el proceso de desarrollo económico en América Latina y el Caribe, aumenta la importancia de la reforma judicial. El buen funcionamiento del poder judicial es importante para el desarrollo económico. El propósito de todo poder judicial es ordenar las relaciones sociales y resolver conflictos entre los diversos actores sociales. En la actualidad el poder judicial es incapaz de asegurar una resolución predecible y eficiente de los conflictos que respete los derechos individuales y de propiedad. No puede satisfacer las demandas del sector privado ni las del público en general, especialmente las de los pobres. Dado el actual estado de crisis de los sistemas judiciales de Latinoamérica y el Caribe, el objetivo de los esfuerzos de reforma es la promoción del desarrollo económico. La reforma judicial es parte del proceso de redefinición del estado y su relación con la sociedad; el desarrollo económico no puede continuar sin la efectiva definición, interpretación y ejecución de los derechos de propiedad. Específicamente, la reforma judicial está orientada a aumentar la eficiencia y equidad en la resolución de conflictos, mejorando el acceso a la justicia y la promoción del desarrollo del sector privado". (DAKOLIAS, María. El sector judicial en América Latina y el Caribe. Elementos de reforma.Washington, Banco Mundial, Document # 319 S, 1997, p. 4).

In the original version, issues related to the access to justice guided the judicial reform project, but Constitutional Amendment n. 45 final version followed the efficiency driven agenda, with the focus on reducing the dockets and promoting the economy growth through the predictability of court rulings and speediness of the judicial proceedings[35].This second set of institutional and rule reforms was more focused in dealing with repeated litigation by enhancing the importance of precedent system. Courts are to embrace the role of a manager of pending dockets and efficiency is the main goal, even though this discourse is sometimes subliminal.

The leading reform discourse thus sets aside the concern with the obstacles to a broad and facilitated access to justice and focuses in the search of efficiency and reduction of case congestion. Considering the purpose to reduce case dockets, courts team up with repeat players to devise campaigns and projects fight the overload of case dockets and reducing the time between filing and the final ruling (or settlement) of the case (this occurs, for example, when repeat players are involved in the screening cases submitted to mediation in court-connected programs). As Galanter speculated, repeat player enjoy the advantage of the proximity with institutional incumbents and are therefore more able to influence institutional policies and court practices.

Among the second set of reforms above mentioned, it is also possible to identify that one of the major trends is to import the common law precedent system, but with some adaptations, to establish procedural mechanisms that provide for a more standardized court proceeding and allows the reproduction of court rulings in similar cases and appeals. The main idea is to allow the *Supremo Tribunal Federal* and the *Superior Tribunal de Justiça* to suspend all repeated claims appeals and randomly choose one for a the paradigmatic ruling applicable to all pending appeals. This is the mechanism provided for in articles 543-B and 543-C of the Code of Civil Procedure that establish techniques of "sample trialing" for appeals that deal with the interpretation of constitutional and federal law (in cases with few or no factual peculiarities).

However, differently from the common law system, the binding ruling is not based on the facts described in the paradigmatic case. Instead, the interpretation of the law is based only on a normative analysis of the case and legal issues raised by parties.

[35] The changes were so many that the author of the Amendment Project, former Congressman Helio Bicudo (PT) said, days after the approval of the Amendment, that he would not like having his name in a project that became so different from the original version, since the judicial reform had been disfigured. According to CUNHA, Luciana Gross; ALMEIDA, Frederico de. Justiça e desenvolvimento econômico na Reforma do Judiciário brasileiro. In TRUBEK, David; SCHAPIRO, Mario (Orgs). Direito e Desenvolvimento: Um Diálogo Entre os Brics. São Paulo: Saraiva, 2012, p. 365.

Also, the ruling of the paradigmatic case is often literally reproduced in the repeated cases, and not used to interpret the factual and legal arguments brought by the parties in the particular case.

This systematic is a key feature of the New Code of Civil Procedure, which will become effective on March, 2016, and predicts the possibility of sample trialing not only appeals that are trialed by the higher courts, but also lawsuits at lower level once a paradigmatic case is chosen and trialed by an appellate state or federal court[36]. It is actually an inverted system of case law, by which the precedent is not created from bottom to up, but top down, and afterwards applied to all pending and future claims where the same legal matters are discussed. The party whose case was selected to represent all of others will be listened directly by higher courts, despite his/her conditions to do it properly – quality of his/her allegations, capability of his/her lawyers, affordability to be at lower courts and mainly familiarity to be listen by high court judges, etc. The parties whose cases are suspended at lower courts waiting for the sample ruling will have few or none opportunities to have their allegations analyzed by a judge, even for trying to distinguish their cases from the sample.

The main problem with this procedural rule is that repeat-players are likely to have considerable advantages over one-shooters, given that the result of all lawsuits is determined by one lawsuit chosen randomly by the court. In this paradigmatic case, a repeat player will be able to use all its resources and expertise against a single one-shooter, in a David and Goliath systematic that will most likely benefit the player who is able to influence courts for a favorable ruling that will be reproduced in all repeated cases. As already mentioned, repeat players in Brazil have an easier access to the higher courts and are able to hire very specialized lawyers and jurists to influence the result of the paradigmatic case, especially in a systematic where precedent is established based on a normative analysis.

Another reform trend is to transfer the solution of some disputes to non-official offices. The ADR movement in Brazil is relatively new, but growing significantly fast amidst the mass litigation crises. More recently, courts began to increasingly resort to mechanisms other than adjudication to address their caseload. By the end of 2010, the Brazilian National Council of Justice enacted the "Judicial Policy of Adequate

[36] This mechanism is called *Incidente de Resolução de Demandas Repetitivas* and it is established by Rule n. 976 of the New Code of Civil Procedure. Such procedural mechanism is inspired in a German technique (*Musterverfahren*) recently adopted to trial similar cases concerning matters related to capital markets (for instance, the pilot case regarded information allegedly false in an investment prospect).

Treatment of Conflicts" (Resolution n. 125/2005), which aims promoting conciliation and mediation in state and federal courts.

Furthermore, for the sake of taking lawsuits away from the courts, administrative agencies are becoming previous mandatory pathways for those who want to access courts. Demanding that plaintiffs file claims in administrative courts before resorting to courts can be an overturn on the achievements of Brazilian movement for access to justice, especially considering that such agencies tend to rule in favor of the State.

So, despite its first appearance, the institutional and legal reforms that followed the 1988 Federal Constitutional do not express a consistent movement towards access to justice. In the 1980s, most likely due to the socio-political context of democratization, significant changes were aimed at expanding access to a formal system of dispute resolution, with the expansion of small claims courts and the regulation of collective action. In the 1990s, however, though changes were somewhat justified by the aim of providing access, the main goal was to reduce the length and the delay of proceedings. More recently, the reforms embodied ideas of clearing dockets out of repetitive lawsuits as well as to standardize rulings. It is reasonable to speculate that this latter set of reforms aimed at dealing with repeated litigation will benefit even more the "haves", who already are coming ahead in Brazilian courts. Current Brazilian institutional and legal reforms have been influenced by repeat players and are most likely to accentuate their advantages, especially regarding the possibility to achieve favorable binding rulings in repeated cases.

## 5. EMPOWERMENT OF ONE-SHOOTERS AND REDISTRIBUTIVE IMPACTS OF LITIGATION

As this essay tried to systematize, reforms in the Brazilian justice system of last three decades aimed i) to increase the access to justice, ii) to reduce the length of lawsuits and iii) to provide predictability and legal certainty to judicial decisions. However, these goals are not at all compatible and the overall trend recent reforms points towards an efficiency approach that does not converge with the goal of substantially expanding access to justice. Although generally considered as an offshoot of the original movement (the term *access to justice* has always been mentioned at

formal announcements of reforms), this latest round actually seeks the opposite of expanding access to justice. Even reforms explicitly intended to diminish the effects of asymmetry may have their best efforts neutralized.

As Galanter previewed, different structural, economic and social conditions may deviate the outcomes of legal reforms. Among the options to minimize effects of asymmetry are the arrangements for the *empowerment* of OS's litigation capabilities. Apart from a few minor exceptions, recent reforms barely show any concern the empowerment of the individual and occasional litigation.

A statute created in 1950 granted care-needed people the exemption of legal fees to litigate in Brazilian courts. The rule states that whoever declares that cannot afford judicial such costs is able to litigate without paying filing and appealing fees, as well as expert fees and attorney fees for the wining party. This is a broad and protective access to justice policy that has been broadly used in the last decades also embraced by the 1988 Federal Constitution rise (article 5$^{th}$ item LXXIV) and the statute itself has always been reformed toward increasing the exemptions, not to restrict them (reforms occurred in 1984, 1986, 2001, 2009). Small claims courts are other important measure toward the *empowerment* of litigants since it is based on informality and pro se representation. Plaintiffs (individuals or small companies) are exempted of court fees and may even present their pleadings orally[37].

Recently, however, a reaction against legal aid seems to be in place. The 2010's reform toward reducing judicial dockets brought up another perspective to the debate about legal aid. Reformists argue that the exemption rule was actually stimulating people to litigate, instead of merely facilitating access the system. There is a strong discourse proclaiming opportunistic and abusive party behavior, especially in claims filed by consumers of social security recipients. Recent case law points out to a tendency of conditioning the exemption of court fees to litigants who are able to prove their lack of conditions to pays these costs. Courts are requiring parties to produce evidence on their poverty, presenting tax and bank documents, evidences of monthly

[37] However, recent data about Brazilian small claims courts reveal that lawyers are always assisting parties and pleadings are almost always presented in a written basis. Curiously, there is also a remarkable number of briefs requesting exemption of judicial costs, however they are not charged on these courts anyway, due to a specific legal rule. Also, citizens and small companies are assisted by lawyers when they litigate against other companies more often than when litigating against other citizens. (BRASIL. Perfil do Acesso à Justiça nos Juizados Especiais Cíveis. Paulo Eduardo Alves da Silva (coord.). Brasília: Conselho Nacional de Justiça, 2015 – *not yet published*)

expenditure, among other rather discretionary and authoritarian parameters to define who is poor enough to enjoy the rights provided for in constitutional and federal rule.

It becomes clearer and clearer that accessing courts is a complex and delicate matter that surrounds a political decision concerning who has the priority to use the system and its limited resources.

Studies about small claims courts repeatedly point that notwithstanding its purpose of facilitating access to justice for the individual citizen, is key users (as defendants) are the Public Administration (especially in the Federal Level), large product suppliers and service providers, who are, as already discussed, the top litigants and most important and influential repeat players in Brazil, whose policies affects large number of citizens[38].

The Brazilian court system is at least in theory equally opened to all, but the reality shows just the opposite, for its institutional structure and rules are being construed in favor of a few and yet very frequent litigants, who benefit from the complexity of the system and the large-scale amount of pending lawsuits and claims. Ironically, these litigants do not need the system to resolve their disputes, since they can devise other mechanisms (ex.: better debt collection practices in banks or more effective and adequate services in the administrative social security agencies) to solve conflicts with the individuals with whom they relate. Not for other reason that repeat players often resort to arbitration to solve disputes with other repeat players concerning sensitive matters and important commercial contracts.

On the other hand, if repeat players do not make other venues effective and accessible, one-shooters need to resort to the official system when litigating against repeat players and to plead their consumer and social rights against suppliers, service providers and the public administration. This fact ought to be taken into consideration when facing the political question of who should have the priority to access Brazilian courts.

As this essay tried to attest, few litigants are using the system while others are competing more and more with them and with each other for access to justice. Repeat players purport and promote the discourse of court efficiency and legal and institutional

[38] Additionally, studies also unveiled the existence of several other disputes competing for the space and resources of the small claims courts, generally too busy with mass litigation involving those large litigants. Under the majority of consumer's rights lawsuits, usually against banks and mass services corporations, there are minor disputes between both citizens and small businesses (BRASIL. Perfil do Acesso à Justiça nos Juizados Especiais Cíveis. Paulo Eduardo Alves da Silva (coord.). Brasília: Conselho Nacional de Justiça, 2015 – *not yet published*).

reforms that redefine individual access and undermine the possibility of bringing about social changes through court adjudication. Procedural techniques of sample trialing not only benefit the repeat player, but also stress out the understanding that accessing courts does not have to mean having an individual answer to your claim. If the mere application of a standardized ruling rendered in a sample case becomes the general rule of individual access to justice, it will become increasingly harder to reach social transformations through court adjudication, for the impacts of the individual case will be neutralized in behalf of a massive mechanism of decision rendering.

## 6. CONCLUSION: how can the analysis of the Brazilian context contribute to the speculations on repeat players and one-shooters?

The Brazilian case raises important questions concerning the litigation game and its players, access to justice and the redistributive impacts of adjudication.

Repeat players are involved in a very significant share of an overwhelming case docket, which seems to grow steadily year by year. Public Administration, product suppliers and services providers are the top litigants in Brazil and therefore the key users of this congested court system. Claims involving such litigants are often filed by or against one-shooters and frequently deal with similar matters arising from statutes and standardized agreements and practices adopted by repeat players when dealing with one-shooters. The extremely large number of lawyers in Brazil also influences this setting, making legal services cheap and abundant while also creating corporative incentives for maintaining large-scale units of legal services aimed at representing repeat players in repeated claims. The question that arises is who is actually using the scarce resources of the justice system?

This litigation setting has a clear impact in legal and institutional reforms. If the re-democratization was followed by reforms that aimed at attending a social demand for access to justice, an efficiency discourse is taking place in more recent years, supported by repeat players who are interested in the predictability of court rulings and the possibility of converging efforts to precedent formation in repeated litigation. This discourse has becoming more widespread in the past 20 years and it is clearly underscoring the promulgation of the New Code of Civil Procedure. Such statute

provides for rules of "sample trialing" which clearly attend the interests of repeat players while denying one-shooters to a real access to official and individual adjudication of their cases, relativizing, thus, their right *day in court*.

It seems that Brazil is enacting its own version of the phenomenon portrayed by Galanter as the "Vanishing Trials"[39], where the leading discourses and ideology against litigation and judicial activism promote the search for litigation filters and mechanisms to promote alternative dispute resolution and settlement. The mere reproduction of court rulings issued in different (despite similar) cases and the promotion of settlement are, without a doubt, means of reducing the cases that are actually and individually trialed by judges and appellate courts. Thus the second question raised is if aiming for vanishing trials is the only response to the congestion of the justice system. Furthermore, is this a legitimate and adequate measure?

Empowering one-shooters could be an alternative to mitigate the advantages of repeat players in the litigation game, however in Brazil this possibility is not satisfactorily achieved. The exemption of court fees which has been regulated ever since the 1950s is being disputed as a cause of abusive and opportunistic use of the justice system, bringing about more strict requirements to accessing adjudication. In terms of procedural mechanisms for bringing social rights to courts, collective action techniques are not able to provide for adequate representation of such rights, while also providing for an inefficient coexistence of individual and collective claims disputing the same matters. While the Brazilian model of collective action has somewhat empowered the one-shooter, it has not established a strong and sufficiently well-construed mechanism in which such litigants are able to overcome the advantages enjoyed by repeat players.

The Brazilian experience also seems to attest that access to justice, as any other social right, faces the challenges of universalization and distributiveness. Resources are scarce and the *judicial plant* is unable to respond adequately and timely to all social claims. Citing Galanter[40] once more, if it is impossible to give access to all, certain choices are to be made. It is necessary to define which disputes are more sensitive in a remarkably unequal society. It is a political choice which is able to enhance or

[39] GALANTER, Marc. "The hundred year decline of trials and the thirty years war". 57 Stan. L. Rev. 1255, 2005 and GALANTER, Marc. "The Vanishing Trial: an examination of trials and related matters in federal and state courts".1 J. Empirical Legal Stud. 459, 2004.

[40] GALANTER Marc. "Access to justice in a world of expanding social capability" 37 Fordham Urban Law Journal, 2010, p. 126.

undermine access to justice to one-shooters, to whom the official justice system may be the only venue to dispute widespread practices adopted by repeat players.

Recent reformist movements are based in an efficiency and managerial ideology which privileges access to the system's already top users and most experienced players. The final questions arising from this analysis are, therefore, if Brazilian courts, so heavily drained by repeat players, are able to act as qualified institutions to promote social change and the interests of the excluded minorities. Or will such courts be condemned to act merely symbolically as agents of the status quo?

It seems that the answers to questions regarding the redistributive potential of Brazilian courts lie heavily a redistributive equating of access to these same courts.

## 7. References

BRASIL. Perfil do Acesso à Justiça nos Juizados Especiais Cíveis. Paulo Eduardo Alves da Silva (coord.). Brasília: Conselho Nacional de Justiça, 2015 – *not yet published*

_____. Conselho Nacional de Justiça (CNJ), Relatório Justiça em Números, disponível em http://www.cnj.jus.br e os 100 maiores litigantes, avaiable in http://www.cnj.jus.br/images/pesquisasjudiciarias/pesquisa_100_maiores_litigantes.pdf, 2011.

_____. Relatório Justiça em Números, avaiable in http://www.cnj.jus.br. 2012.
BRASIL. Instituto de Pesquisa Econômica Aplicada (IPEA), Acesso à Justiça Federal: dez anos de juizados especiais. Brasília: Conselho da Justiça Federal, Centro de Estudos Judiciários, 2012.

_____. Conselho Nacional de Justiça (CNJ). Custo Unitário do Processo de Execução Fiscal na Justiça Federal. CUNHA, Alexandre dos Santos (coord.) Brasília.
BRASIL. Ministério da Justiça. Secretaria de Reforma do Judiciário. Análise da gestão e funcionamento dos cartórios judiciais. coord. Paulo Eduardo Alves da Silva. Brasília, 2007, avaiable in <www.mj.gov.br>.

_____. Tutela Judicial dos Interesses Metaindividuais – ações coletivas. Brasília: Ministério da Justiça, 2007, avaiable in http://www.cebepej.org.br/pdf/acoes_coletivas.pdf.

BRAZIL, Wayne D. Continuing the conversation about the current status and the future of ADR: a view from the courts. *Journal of Dispute Resolution*, n. 1, p. 11-39, 2000.

CAPPELLETTI, Mauro; GARTH, Bryant. *Access to Justice*: the world-wide movement to make right effective – a general report. Milano: Dott A. Giuffre, 1978.

CENTRO BRASILEIRO DE ESTUDOS E PESQUISAS JUDICIAIS (CEBEPEJ). Juizados Especiais cíveis: estudo. Brasília: Ministério da Justiça, 2006, avaiable in http://www.cebepej.org.br/pdf/DJEC.pdf.

CETELEM, Observador, available at http://www.cetelem.com.br/portal/Sobre_Cetelem/Observador.shtml.

CUNHA, Luciana Gross; GABBAY, Daniela Monteiro (Coords.). *Litigiosidade, morosidade e litigância repetitiva*: uma análise empírica. São Paulo: Saraiva, 2013. (Série Direito e Desenvolvimento).

CUNHA, Luciana Gross. OLIVEIRA, Fabiana Luci. RAMOS, Luciana. *What Kind Of Judiciary Do We Want?* Paper presented in the 2011 IPSA-ECPR Conference, hosted by the Brazilian Political Science Association at the University of Sao Paulo. Available at http://saopaulo2011.ipsa.org/sites/default/files/papers/paper-1526.pdf

CUNHA, Luciana Gross; ALMEIDA, Frederico de. Justiça e desenvolvimento econômico na Reforma do Judiciário brasileiro. In TRUBEK, David; SCHAPIRO, Mario (Orgs). Direito e Desenvolvimento: Um Diálogo Entre os Brics. São Paulo: Saraiva, 2012

DAKOLIAS, María. El sector judicial en América Latina y el Caribe. Elementos de reforma.Washington, Banco Mundial, Document # 319 S, 1997

COELHO, Damares Medina. "A repercussão geral no Supremo Tribunal Federal", Tese do Doutorado apresentada na Faculdade de Direito da Universidade Mackenzie, 2014, available at http://tede.mackenzie.com.br/tde_arquivos/4/TDE-2014-12-10T205314Z-2124/Retido/Damares%20Medina%20Coelho.pdf, p. 144, access on May 8th 2015

DURIGAN, P.L. *SFH: a prática jurídica*. E-book. Disponível em http://www.apriori.com.br/artigos/sfh.pdf. Access in May 1st, 2014.

FISS, Owen. Against Settlement. 93 Yale Law Journal, 1073-1090.

FREITAS, Graça Maria Borges, "Reforma do Judiciário, o discurso econômico e os desafios da formação do magistrado hoje" In *Rev. Trib. Reg. Trab. 3ª Reg.*, Belo Horizonte, v.42, n.72 p.31-44, jul./dez.2005

GABBAY, Daniela Monteiro. *Mediação & Judiciário no Brasil e nos EUA: condições, desáfios e limites para a institucionalização da mediação no Judiciário*. Brasília: Gazeta Jurídica, 2013.

GALANTER, Marc. Case congregations and their careers. *Law & Society Review*, v. 24, n. 2, p. 371-395, 1990.

GALANTER, Marc. The hundred year decline of trials and The Thirty Years War.*Stanford Law Review*, v. 57, n. 1255, p. 1115-1123, 2005.

GALANTER, Marc. Why the haves come out ahead? Speculations on the limits of legal change. *Law and Society Review*, v. 9, n. 1, p. 95-160, 1974.

GALANTER, Marc. Access to justice in a world of expanding social capability, *37 Fordham Urban Law Journal*, 2010, p. 115-128.
GIDI, Antonio Gidi. A Class Action como instrumento de tutela coletiva dos direitos – as ações coletivas em uma perspectiva comparada, São Paulo: Saraiva, 2007.

GUIMARÃES, Amanda de Araújo. Ações Coletivas como Meio de Molecuralização de Demandas, presented as the final requirement of obtaining the law degree at the Law School of the University of São Paulo, 2012.

KRITZER, Humbert M.; SILBEY, Susan (Eds.). *In litigation*: do the "haves" still come out ahead? Stanford: Stanford University Press, 2004.

MENKEL-MEADOW, Carrie J. Do the 'Haves' come out ahead in alternative judicial systems?: repeat players in ADR. *Ohio State Journal on Dispute Resolution*, v. 15, p. 19-61, 1999-2000.

MINISTÉRIO DA FAZENDA. Secretaria de Política Econômica. *Reformas microeconômicas e crescimento de longo prazo*. Brasília, 2004. Disponível em: <http://www.fazenda.gov.br/spe/publicacoes/reformasinstitucionais/estudos/Texto_VersaoFinal5.pdf>. Acesso em: 16 dez. 2012.

MINISTÉRIO DA JUSTIÇA. Secretaria da Reforma do Judiciário. *Judiciário e economia*. Brasília, 2005b. Disponível em: <http://portal.mj.gov.br/main.asp?View={597BC4FE-7844-402D-BC4B-06C93AF009F0}>. Acesso em: 9 jan. 2013.

MORISHITA WADA, R. ; OLIVEIRA, F. L. . O Comportamento da nova classe média brasileira nas relações de consumo. In: LUCI, F. O.; WADA, Ricardo M.. (Org.). Direito do Consumidor: os 22 anos de vigência do CDC.. 1ed.São Paulo: Campus Elsevier, 2012, v. 1, p. 31-49.

PINHEIRO, Armando Castelar. "O Judiciário e a Economia no Brasil". IDESP. Mimeo: 2000.

SADEK, Maria Tereza. Judiciário: mudanças e reformas. *Estudos Avançados*, São Paulo, v. 18, n. 51, p. 79-101, 2004.

SADEK, Maria Tereza. O Judiciário em questão. *Revista São Paulo em Perspectiva,* São Paulo, v. 10, n. 4, out./dez 1996.

SANTOS, Boaventura de Sousa, MARQUES, Maria Manuel Leitão e PEDROSO, João. Os Tribunais nas sociedades contemporâneas, nov. 1995, available at http://www.ces.uc.pt/publicacoes/oficina/ficheiros/65.pdf.

SILVA, Paulo Eduardo Alves da. *Gerenciamento de processos judiciais.* São Paulo: Saraiva, 2010.

SONGER, Donald R.; SHEEHAN, Reginald S.; HAIRE, Susan Brodie. *Do the "Haves" come out ahead over time?*: applying Galanter's framework to decisions of the U.S. Court of Appeals In: KRITZER, Humbert M.; SILBEY, Susan (Eds.). *In litigation*: do the "haves" still come out ahead? Stanford: Stanford University Press, 2004, p. 1925-1988.