RESOLVING SMALL CLAIMS ON A LARGE SCALE: A PROCEDURAL PREFERENCES STUDY

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I. INTRODUCTION

Small claims are usually ignored. The costs and the time required to handle minor disputes bar rational people from pursuing the rights to which they are entitled. Only when small claims become large scale, which provides sufficient incentives or turns the issue into a critical social problem, are they addressed. Hence, if there is a lack of an effective class action mechanism, unscrupulous enterprises can easily extract benefits from the general public by

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providing unsatisfactory products or services that harm consumers, without worrying about liabilities or responsibilities, which is undoubtedly detrimental to a healthy commercial environment and to society as a whole.

To remedy this situation, most jurisdictions have devised specific types of class actions or group litigations intended to facilitate the prosecution of claims that would be uneconomical to litigate separately, thus strengthening law enforcement. While the literature has indicated that there have been at least twenty-one countries adopting class action mechanisms or group litigations with various designs in the past,[1] currently, such mechanisms are flourishing and even more prevalent. The design of class actions varies considerably with regard to standing to sue, representation, scope, remedies, and joining rules (opt-in or opt-out).[2] Among these

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[1] Deborah Hensler, *The Future of Mass Litigation: Global Class Actions and Third-Party Litigation Funding*, 79 GEO. WASH. L. REV. 306, 307 (2011).
[2] Deborah Hensler, *The Global Landscape of Collective Litigation*, in CLASS ACTIONS IN CONTEXT: HOW ECONOMICS, POLITICS AND CULTURE SHAPE COLLECTIVE LITIGATION (Deborah Hensler, et al., eds., 2016).

variations in class actions, scholars have identified two criteria that directly influence the procedural aspects of class dispute resolution: the joining rules and the standing/representation.[3] From the class dispute resolution systems that can be observed so far, these two variations indeed iconize the types of class action mechanisms in most jurisdictions. Even though literature introducing or comparing different class action mechanisms is available, there has not been a well-developed theory that accounts for procedural preferences based on proposed joining rules and representation influences on small claim class disputes. In addition, because small claims often remain unresolved and unrepresented, the appropriateness of the typical adversarial and passive civil justice system[4] is worth rethinking and discussing.

The major purpose of this study was to propose a framework for evaluating procedural preferences for

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[3] *Id*.
[4] *See* Jessica K. Steinberg, *Adversary Breakdown and Judicial Role Confusion in "Small Case" Civil Justice*, 2016 BYU L. REV. 899 (2016).

small claim class disputes in order to provide a theoretical explanation for how people are influenced by specific features. The study explores questions centering on the two criteria: joining rules and standing/representation, and their interactions, if any. In terms of the joining rule, this work is intended to investigate whether people prefer opt-out to opt-in procedures. As to standing/representation, whether it affects people's preferences toward dispute resolution is examined, which includes two sub-questions: (1) whether people prefer litigating alone, with others similarly-situated, or being represented by a third party professional; and (2) whether people prefer to resolve the disputes through representation by public or private figures/entities.

With the major goal of this research being to identify the preference for class dispute resolution in small claims, this Article is divided into four parts. The first part is the research framework with a literature review of the theoretical debates on class actions criteria. The second is the structure and the procedure used in this research, including the

treatments and the experimental process, and the predicted outcomes. The third part is the results of the research. The fourth part provides a discussion and policy implications. Using an experimental approach, this research is an attempt to evaluate the criteria that influence the preferences of people utilizing different class dispute resolutions in small claims, as well as their impact on the effectiveness of such resolutions. By means of the research results, it is hoped that this study can contribute to the knowledge of people's preferences in small claim class disputes in order to support reforms with better features that conform to people's behavioral preferences.

II. RESEARCH FRAMEWORK

A. Joining Rules

According to the literature, the joining rules appear to directly influence the claim size and the

utilization rate of the class action mechanism.[5] The most significant disparity exists between opt-in and opt-out designs. The opt-in design requires participants to search for the appropriate agents and to engage in specific actions to join the lawsuit. Conversely, opt-out does not require any action from the eligible claimants and automatically includes all of them into the lawsuit under the court's certification, except for those who specifically choose to opt-out. Due to such differences in design, it makes sense that in contrast with opt-out mechanisms, opt-in designs usually result in significantly fewer actions[6] even if they ensure more rigid authorization.[7] Jurisdictions in western or non-western countries, such as the United Kingdom and Taiwan, provide typical examples of the opt-in

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[5] Martin Gramatikov *et al.*, *Measuring the Costs and Quality of Paths to Justice: Contours of Methodology*, 3 HAGUE J. RULE L. 349 (2011).
[6] Rachael Mulheron, *Reform of Collective Redress in England and Wales-A Perspective of Need*, Civil Justice Council of England and Wales 48 (2008), available at https://www.judiciary.uk/wp-content/uploads/JCO/Documents/CJC/Publications/Other%2Bpapers/reform-of-collective-redress.pdf.
[7] Jing-Huey Shao, *Class Action Mechanisms in Chinese and Taiwanese Contexts—A Mixture of Private and Public Law*, 28 EMORY INT'L L. REV. 237, 279 (2014).

design practice. Both of them have introduced class action mechanisms for decades, but there have been very few private actions for damages even when the relevant authorities have imposed numerous penalties for infringing behavior on tortfeasors.[8] The paucity of consumer class actions in the UK and Taiwan is not unique among jurisdictions adopting similar mechanisms. After relevant advocacy for introducing opt-out mechanism for years, in 2015, a great change in English civil procedure occurred. The UK's first opt-out class action regime took effect.[9] While such a change in the practice is worth continuous observation, it should be noted that opt-out actions for damages tend to be rare in European countries due to some features of the U.S.-type class actions, such as where the discovery process and contingency fees are disliked or inapplicable.[10] Instead, several forms of collective actions for damages in European states, including joint actions,

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[8] Mulheron, *supra* note 6; Shao, *supra* note 7.
[9] Rachael Mulheron, *The United Kingdom's New Opt-Out Class Action*, 37 OXFORD J. LEG. STUD. 814 (2017).
[10] Jules Stuyck, *Class Actions in Europe? To Opt-In or to Opt-Out, That Is the Question*, 20 EUR. BUS. L. REV. 493 (2009).

representative actions, and opt-in group actions, are more common.[11]

While examining the downsides of the low utilization rates embedded in the opt-in design, opt-out is not perfect, either. The default rule gives rise to a problem that has been troubling, but not yet resolved. A defendant often colludes with the plaintiff's lawyer to reach a settlement favorable to the colluders that is unfavorable to the class members.[12] While providing the opportunity to make the claims "big" to induce attorneys to chase after small claims on a large scale, it also provides the incentive for attorneys to serve their own interest at the expense of the client.[13] The United States has been the most well-known country that has applied the opt-out mechanism to the fullest possible extent for the longest time. Legislators have attempted to reduce the associated problems by aligning the

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[11] *Id*.
[12] John Bronsteen, *Class Action Settlements: An Opt-in Proposal*, 2005 U. ILL. L. REV. 903, 904-905 (2005).
[13] Jonathan Macey & Geoffrey Miller, *The Plaintiffs' Attorney's Role in Class Action and Derivative Litigation: Economic Analysis and Recommendation for Reform*, 58 U. CHI. L. REV. 1, 3 (1991).

interests of the attorney and the principal and by imposing more judicial supervision.[14] However, problems, such as mandatory classes improperly depriving class plaintiffs of their right to opt out and class settlements allowing defendants to cap their damage liabilities at low levels thwart the punishment and deterrence purposes of punitive damages, remain unresolved.[15]

Since class actions are essentially a type of civil lawsuit, access to justice is the threshold issue that is necessary to resolve from the outset. Access to justice generally refers to how people respond to legal problems, including the steps people take to deal with a legal issue.[16] However, there has not been an all-embracing, systematic way to assess people's

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[14] *Id.*
[15] Richard Frankel, *The Disappearing Opt-out Right in Punitive-damages Class Actions*, 2011 WISCONSIN L. REV. 563 (2011).
[16] HAZEL GENN, PATHS TO JUSTICE: WHAT PEOPLE DO AND THINK ABOUT GOING TO LAW? (1999); PASCOE PLEASENCE, ET AL., CAUSES OF ACTION: CIVIL LAW AND SOCIAL JUSTICE (2004), available at https://www.researchgate.net/publication/271209992_Causes_of_Action_Civil_Law_and_Social_Justic; Ab Currie, *A National Survey of the Civil Justice Problems of Low and Moderate Income Canadians: Incident and Patterns*, Canadian Forum on Civil Justice (CFCJ) (2005), available at http://cfcj-fcjc.org/sites/default/files/docs/2006/currie-en.pdf.

experience when they seek access to justice that measures actual perceptions of the end users of the justice system.[17] To better evaluate the preferences of people, a "demand-oriented" approach and a "user-based" perspective based on the model developed in Gramatikov[18] are adopted in this study for the purpose of measuring the costs of paths to justice as well as the relationships between the costs of paths and barriers to users when seeking access to justice. Categorizing costs by type is the approach most often used because it is more likely to cover all costs people face on various paths and more likely to lead to an understanding of the user experiences in regard to barriers to justice. Different instances related to costs, such as lawyers' fees and other out-of-pocket expenses, opportunity costs, and emotional costs,[19] may dissuade people from taking actions to solve problems, which is especially critical in small claims.

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[17] Maggi Carfield, *Enhancing Poor People's Capabilities Through the Rule of Law: Creating an Access to Justice Index*, 83 Wash. U. L.Q 339 (2005).
[18] Gramatikov *et al, supra* note 5.
[19] *Id*.

In this study, the types of costs are categorized as follows: out-of-pocket expenses (e.g., fees for authorities or fees for legal assistance), time spent (e.g., costs related to searching for an adviser and interaction with the other party), and emotional costs (e.g., stress, fear, sadness, and losses of/changes in relationships).[20] The said costs are incorporated into the scenarios in the experiment, particularly in terms of the different joining rules, in order to observe their influence on procedural preferences. Since the embedded costs are higher in opt-in than in opt-out mechanisms, it is reasonable to posit that people will tend to prefer opt-out rather than opt-in mechanisms.

B. Representation/Standing

Standing and representation is another important feature that distinguishes the class action mechanisms from jurisdiction to jurisdiction.[21] The function of the screening of the standing at the

[20] J.M. Barendrecht, et al., *How to Measure the Price and Quality of Access to Justice?*, TISCO Working Paper Series on Civil Law and Conflict Resolution Systems (2006).
[21] Henlser, *supra* note 2.

beginning of the proceedings is to ensure the justifiable binding effect on the correct parties. Class actions generally involve a large number of claimants with different backgrounds for whom the cause of actions arise from the same occurrence. The typical requirement to sue on behalf of others is to acquire consent from the real interested party, unless otherwise specified. Hence, who or what entity can acquire the consent and represent these claimants' interest, and the range and effect of res judicata become especially important when the judgment will bind other claimants who do not actually participate in the proceedings. For jurisdictions with civil law traditions, as their laws proceed from abstractions and jurisprudence, which formulates general legal principles,[22] there are several types of standing that need to be strictly complied with to initiate a lawsuit.[23] Consequently, specific "standing to sue" for class disputes in most civil law countries gives

[22] Rafael La Porta, *et al*, *The Economic Consequences of Legal Origins*, 46 J. ECON. LITERATURE 285 (2008).
[23] Antonio Gidi, *Class Actions in Brazil–A Model for Civil Law Countries*, 51 AM. J. COMP. L. 311, 334, 348 (2003).

scholars and judges the comfort of a familiar, conceptualized approach.[24]

While "standing" is the requirement that a person who brings a suit be a proper party to request adjudication of the particular issue involved and provide a justifiable binding effect on the right parties, "representation" refers to an instance of standing for or acting on behalf of another/others. Even though the two terms are different in meaning and function, such a difference becomes minimal in small claim class disputes, and both terms are sometimes used interchangeably in the literature.[25] This is because representation in class disputes substitutes for the standing function. In the case of jurisdictions where lawyers actually drive the entire class action, the influence of lawyer representation outweighs the lead plaintiff who has standing to sue.[26] Also, for jurisdictions where a contingency fee

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[24] Shao, *supra* note 7, at 274.
[25] CharlesM. Silver, *Class Actions – Representative Proceedings*, 7600 ENCYCLOPEDIA OF L & ECON. 194 (1999), https://reference.findlaw.com/lawandeconomics/7600-classactions.pdf [https:/perma.cc/KE5F-BLWN].
[26] Stephen J. Choi, *The Evidence on Securities Class Actions*, 57 VAND. L. REV. 1465, 1477-98 (2004).

arrangement is prohibited or unpopular and few lawyers will devote themselves to handling class actions, public or non-profit organizations thus become the candidates for representation of numerous claimants in resolving mass disputes.[27] Such distinct outcomes may result from different historical backgrounds. However, whether these types of representation are just a product of history, or they actually imply the preferences of different people is still understudied.

It is believed that representation in general can make contributions to the dispute resolution process in terms of affecting the quality and outcome of a procedure.[28] In particular, because class disputes involve stakes of multiple claimants or the general public, representation is necessary for groups of people to proceed with any procedure from a rational perspective. Representation of weaker parties may

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[27] Wallace Wen-Yeu Wang & Chen Jian-Lin, *Reforming China's Securities Civil Actions: Lessons From U.S. PSLRA Reform and Taiwan's Government-Sanctioned Non-Profit*, 21 COLUM. J. ASIAN L. 115,135 (2008).
[28] Lisa Bingham, et al, *Employment Mediation: Exploring the Role of Representation at the USPS*, 17 OHIO ST. J. DISP. RESOL. 341-378 (2002).

reduce the power imbalance, making them tougher negotiators and less inclined to settle.[29] Professional representation may also reduce the effects of inequality[30] even though it may still have the drawback of the principal-agency problem.[31] The literature on this topic has explored some other areas, such as labor disputes related to the role of different categories of representatives (e.g., lawyers, union representatives, co-workers, other, or no representation) in perceptions of procedural justice, settlement rates, and the duration of procedures. Compared with those studies on actual cases fought to the end, most small claims do not even advance to being cases that of economic sense to be initiated. Therefore, empirical evidence as to whether people have preferences for specific representatives, or

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[29] Oren Gazal-Ayal & Ronen Perry, *Imbalances of Power in ADR: The Impact of Representation and Dispute Resolution Method on Case Outcomes*, 39 L. & SOC. INQUIRY 791 (2014).
[30] Owen Fiss, *Against Settlement*, 93 YALE L. J. 1073 (1983-1984); Craig A. McEwen, et al., *Bring in the Lawyers: Challenging the Dominant Approaches to Ensuring Fairness in Divorce Mediation*, 79 MINN. L. REV. 1317, 1360-61 (1995).
[31] Bingham, et al, *supra* note 28.

whether they want to be represented in small claim class disputes, has remained scant.

Scholars have classified different standings or representations of class actions in most jurisdictions around the world into the following three types: (1) private actors, (2) public officials, and (3) licensed associations.[32] In practice, some jurisdictions (e.g., China and Taiwan) even offer an option of a class dispute resolution, which is essentially a joinder claim that requires the claimants to appoint one of them to represent the rest, typically with an advance feature of public notice to potential claimants approved by the court.[33] Such laws read as follows:

[32] Hensler, *supra* note 1.

[33] Article 54 of Civil Procedure Law of the People's Republic of China (CPL, revised in 2017), available at http://cicc.court.gov.cn/html/1/219/199/200/644.html.

> If the object of the action is of the same category and a party consists of numerous persons, and upon institution of the action the number of persons is not determined yet, the people's court may issue a public notice stating the particulars of the case and the claims and requesting that the claimants register with the people's court within a certain period of time….Claimants who have registered with the people's court may elect a representative to engage in litigation; if no such representative can be elected, the people's court may discuss with the registered claimants in determining on such representative….Judgments or rulings rendered by a people's

Article 54 of Civil Procedure Law of the People's Republic of China:

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> court shall be binding on all the claimants who have registered with the court. *Id*.

Also, Taiwan Code of Civil Procedure, art. 44-2, JUDICIAL YUAN REPUBLIC OF CHINA (Nov. 28, 2018), available at https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=B0010001.

> When multiple parties, whose common interests have arisen from the same public nuisance, traffic accident, product defect, or the same transaction or occurrence of any kind, appoint one or more persons from themselves in accordance with the provision of Art. 41 to sue for the same category of legal claims, the court may, with the consent of the appointed party, or upon the original appointed party's motion which the court considers appropriate, publish a notice to the effect that other persons with the same common interests may join the action by filing a pleading within a designated period of time . . . . Those persons so joining shall be deemed to have made the same appointment in accordance with the provisions of Art. 41. *Id*.

> registered claimants in determining on such representative….Judgments or rulings rendered by a people's court shall be binding on all the claimants who have registered with the court.

Similarly, Article 44-2 of Taiwan Code of Civil Procedure stipulates as follows:

> When multiple parties, whose common interests have arisen from the same public nuisance, traffic accident, product defect, or the same transaction or occurrence of any kind, appoint one or more persons from themselves in accordance with the provision of Article 41 to sue for the same category of legal claims, the court may, with the consent of the appointed party, or upon the original appointed party's motion which the court considers appropriate, publish a notice to the effect that other persons with the same common interests may join the action by filing a pleading within a designated period of time . . . . Those persons so joining shall be deemed to have made the same appointment in accordance with the provisions of Article 41.

For most jurisdictions, there are typically multiple representation choices that are available for potential claimants. However, the reasons why the

claimants opt for a specific type of representation, or why some have been rarely chosen, remain unexplained.

C. Cultural Influences on Procedural Preferences

In addition to the substantive criteria that shape the forms of dispute resolution mechanisms, intangible factors may also be critical. There have been studies in psychology regarding cultural influences on procedural preferences. A strong preference for adversarial over inquisitorial procedures was well-established in the United States by J. Thibaut, et al.,[34] but different results were found in non-Western cultures. A more favorable reaction to inquisitorial procedures was found among Japanese and Chinese subjects.[35] Kwok Leung

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[34] J. Thibaut & L. Walker, PROCEDURAL JUSTICE: A PSYCHOLOGICAL ANALYSIS (1975).
[35] Roger W. Benjamin, *Images of Conflict Resolution and Social Control: American and Japanese Attitudes to the Adversary System*, 19 J. CONFLICT RESOL. 123 (1975); Kwok Leung & E. Allan Lind. *Procedure and Culture: Effects of Culture, Gender, and Investigator Status on Procedural Preferences*, 50 J. PERSONALITY & SOC. PSYCHO. 1134 (1986).

meanwhile asserted that non-binding procedures are preferred in non-Western cultures, and indicated that Chinese subjects are also relatively indifferent in terms of their preference for either inquisitorial or adversarial procedures.[36] The aforementioned mixed findings to some extent illustrate the complexity of cultural influences on procedural preferences. Nevertheless, no theory has been adequately developed to explain and predict the impact of culture on procedural preferences for small claims. Instead of getting into the debate or attempting to explain the conflicting points of view, this study offers further explanations for such disparities, particularly in the field of small claim class disputes.

Small claims have features that are distinct from general disputes because they are minimal, and the concerns related to resolving such disputes are different. Firstly, the formal procedure comes later or less often.[37] Secondly, the need for a strict

[36] Kwok Leung, *Some Determinants of Reactions to Procedural Models for Conflict Resolution: A Cross-National Study*, 53 J. PERSONALITY & SOC. PSYCHOL. 898 (1987).
[37] Steinberg, *supra* note 4.

adversarial procedure is lessened.[38] Therefore, adjudication systems, such as the court, generally comprise the very last stage encountered by claimants, which is even the case for small claims. Hence, representation, which occurs at an earlier phase of the procedure, reasonably is the more suitable candidate for consideration in terms of cultural influences on procedural preferences.

Previous research has reported the influence of legal tradition in the standing and representation of class action mechanisms.[39] Generally speaking, legal tradition can be categorized into civil law and common law traditions.[40] As aforementioned, in the civil law tradition, the law is applied through legal principles and concepts to the facts being presented. Legislatorial creation of special procedural rights attributed to the groups, licensed associations, or public officials with standing to sue stipulated in the laws provides a familiar and conceptualized

[38] *Id*.
[39] Shao, *supra* note 7.
[40] Porta, *supra* note 22.

approach to compliance.[41] Civil law tradition countries, such as Germany, Japan, and Taiwan, tend to opt for the involvement of such types of representation in the class dispute resolution context.

Another explanation may stem from historical reasons. Chinese cultural influence has been comprehensively studied in many societal and political works.[42] It has been observed that many Asian countries influenced by Chinese culture, after adopting western law systems for decades, still favor "traditional" ways to resolve disputes, which usually include the involvement of public officials or entities.[43] Taiwan precisely reflects this phenomenon. Taiwan was exposed to a western law that was selected by the Japanese colonial government under the mixed legal legacy during the late 19th to the 20th century,[44] which was maintained by the later incoming Republic of China (ROC)

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[41] Gidi, *supra* note 23, at 348.
[42] Harry Hui, *Measurement of Individualism-Collectivism*, 22 J. RES. PERSONALITY 17 (1988).
[43] Tay-Sheng Wang, *Legal Reform in Taiwan under Japanese Colonial Rule*, U. WASH. 232-33, 429 (1992).
[44] *Id*. at 429.

regime after the war and after the Japanese left Taiwan in 1945.[45] However, Taiwanese people have not yet generally experienced the fundamental spirit of modern western law since this legal reform was instituted by the colonial government.[46] They still largely rely on authorities to resolve their problems, such as governmental officials or government licensed organizations. Such cultural differences have been found in procedural preferences for the type of representation. A good example of a government-sanctioned organization in Taiwan is the Investment Protection Center (IPC), which has standing to sue for class disputes related to securities law. The IPC was established by the government with the goal of filing securities-related class actions. It inherited a substantial amount of government influence because it is conferred with the power and funds necessary to systematically process these types of cases.[47] Hence, there are very few securities cases

[45] *Id*.
[46] *Id*.
[47] Securities and Futures Investors Protection Center, Class-Action Litigation or Arbitration, (last visited Feb. 7, 2021)

represented as plaintiffs by non-government related entities or professionals in Taiwan.[48] However, except for the securities law area, class actions are generally rare in other legal areas such as consumer disputes.[49]

Another theory that explains the difference between the preference for private actors or public official/institutions is the influence of collectivistic versus individualist cultures. The concepts of individualism and collectivism have been discussed in various disciplines. In brief, individualism refers to "the tendency to be more concerned about the consequences of one's behavior for one's own needs, interest, and goals," whereas collectivism is defined as "the tendency to be more concerned about the consequences of one's behavior for in-group members and to be more willing to sacrifice personal interests for the attainment of collective interest."[50]

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https://www.sfipc.org.tw/MainWeb/Article.aspx?L=2&SNO=fD0fF/YR5eNG2r7p+fC8aQ==.

[48] Wang Ruu Tseng & Wallace Wen Yeu Wang, *Derivative Actions in Taiwan*, in THE DERIVATIVE ACTION IN ASIA: A COMPARATIVE AND FUNCTIONAL APPROACH (Dan W. Puchniak, et al., eds., 2012).

[49] Shao, *supra* note 7.

[50] Leung, *supra* note 36.

Previous research established that people from individualistic societies show a higher preference for confrontational procedures such as litigation or arbitration, while those from collectivist cultures favor harmony-enhancing procedures like negotiation and mediation, for resolving disputes.[51] Because litigation typically involves strict adversary mechanisms while negotiation usually means a more lax procedure, very often occurring with the support of the government in processing cases, which implies more opportunities for settlement rather than confrontation to the end, it is reasonable to hypothesize that jurisdictions with civil law tradition or with collectivistic cultures will favor representation by public officials or government licensed institutions. Such a proposition may be especially salient because the adversarial ideal under a general civil justice system does not currently meet the needs for small claims. When the mechanisms for small claim class disputes become ineffective, other

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[51] Carole Cangioni & Sandra Spataro, *International Intellectual Property Disputes: The Impact of National Culture on Preferences for Dispute Resolution Method*, 14 J. BUS. DIVERSITY 35, 38 (2014).

possibilities for dispute resolution are in need of exploration.

So far, there is no theory on procedural justice in class disputes for small claim class disputes that includes the effect of culture influence in its formulation. A theory of this kind is very important because it can guide interdisciplinary studies on procedural justice toward the establishment of a more comprehensive theory. Consequently, it is important to explore frameworks that can account for people's preferences in small claim class disputes. Therefore, by proposing that a civil law jurisdiction with an influence from Chinese culture or having a collectivist nature will prefer representation by public officials or government licensed associations, Taiwan is an ideal candidate for this study since it inherited both civil law jurisdiction and the influence of Chinese culture, and is identified as a typical collectivist society.[52]

[52] Leung, *supra* note 36 at 899.

III. THE STRUCTURE OF THE DESIGN

This research is a modified two (opt-in v. opt-out) by three (private actors, licensed associations, and public officials) mixed within-subjects and between-subjects design. The two sets of criteria comprise six scenarios in which participants rate their preferences, including their attitude and their behavior toward such procedures. However, to avoid fatigue and bias from comparing too many scenarios and themes, a split design (between subjects) was utilized in the representation types and a within-subjects design was used for the joining rule variations. In addition, before getting into the two by three (2*3) design, the participants were required to respond to two common scenarios: (1) suing individually (individual claim) or (2) suing by appointing other similarly-situated claimants, in which potential claimants can join (quasi-joinder claim). With the two additional common scenarios, each participant responded to only four scenarios in total, including the two common ones and two scenarios from the two by three (2*3) design. The

two scenarios from the (2*3) design consist of a choice of one of the three representations with the opt-in and opt-out variations for that particular representation. The structure of the experimental design is presented in Table 1.

For example, if participant X is assigned to the lawyer's theme test, he or she is required to rate his or her preferences for the two common scenarios (A & B) and one opt-in (C) and one opt-out (D) scenario both represented by a lawyer. By the same token, if participant Y is allocated to the test with the Consumer Protection Committee (CPC, public official) theme, he or she is required to rate the same two common scenarios (A & B) and one opt-in (G) and one opt-out (H) scenario both represented by a CPC.

Table 1. The Structure of the Experimental Design

	INDIVIDUAL	PRIVATE ACTOR (LAWYER)	LICENSED ASSO. (CFCT)	PUBLIC OFFICIALS (CPC)
NO REP.	[A] Individual Claim (Individual)			
OPT-IN	[B] Quasi-joinder Claim (Quasi-joinder)	[C] Lawyer-opt-in	[E] CFCT-opt-in	[G] CPC-opt-in
OPT-OUT		[D] Lawyer-opt-out	[F] CFCT-opt-out	[H] CPC-opt-out

A. Procedure

Before the major experiment, to ensure validity and externality, a pretest was conducted to identify the factors for the background design in the major experiment, including the monetary threshold at which people are unlikely to complain or to take any action (small enough), the most familiar type of goods/services, and the most familiar type of representation. Based on the findings from the pretest, a scenario of an unsatisfying restaurant dining experience with a dispute valued at new Taiwan dollar (TWD) NT$400 (around USD $13)

became the background fact in the major experiment. Lawyers, Consumer Foundation, Chinese Taipei (CFCT) and the Consumer Protection Commission (CPC) were incorporated into the major experiment since they are the most familiar representations of private actors, licensed associations, and public officials in Taiwan, respectively.

The major experiment was conducted through online questionnaires, in which the participants were randomly assigned to one of three split tests with different representation themes (lawyer, CFCT, or CPC). The questionnaires had a manipulation check at the beginning asking whether the participant had knowledge of the type of representation the test offered. If so, the participants were led to a scenario where the participant was hypothesized to have dined at a restaurant and found the quality of the meal to be poor, causing him/her to lose approximately NT$400. It was assumed that the participant had complained to the restaurant owner but had not received a satisfactory response. The participants were told that subsequently, some other diners also

had the same experience. The participants were then offered several options to resolve the dispute. The options were the scenarios designed under the aforementioned research framework. The participants were asked to rate their preferences on a score ranging from one to seven for each scenario separately, including their feelings about (cognition: whether they recognized and agreed) and behavior (whether they accepted) toward the procedure.

B. Predictions

For better observation of the effects shown from the comparison of the scenarios, the following predictions were devised corresponding to the research questions:

Prediction 1: Both joining other claimants and being represented are preferred over filing individual lawsuits. B to H will be preferable to A.

Prediction 2: Being represented by third-party professionals/institutions is preferable to being represented by similarly-situated others. C to H will be preferable to B.

Both of the first two predictions are intended to evidence the value of representation, not only in the outcome of the case as the literature has indicated, but also from a psychological support perspective. Suing with others who are similarly situated gives claimants a sense of security, especially in a collectivist culture. In addition, representation by a professional individual or entity is even more preferred because the value of professionalism outweighs the interest alignment between principal and agent, particularly in the case of small claims.

Prediction 3: People prefer opt-out procedures more than opt-in procedures. D will be preferable to C; F will be preferable to E; H will be preferable to G.

Taking into consideration the costs of paths to justice, including all types of out-of-pocket expenses, opportunity costs, and emotional costs, the opt-out procedure is predicted to be more preferable to the opt-in procedure in all three types of representation.

Prediction 4: People in civil law jurisdictions with Chinese and collectivist culture influence prefer being represented by public officials or entities, such as licensed or government-sanctioned associations rather than being represented by private actors. E and G will be preferable to C; F and H will be preferable to D.

The last prediction is a combination of the theories of cultural influence and legal traditions, in which the people in civil law jurisdictions influenced by Chinese and collectivist culture prefer government related representation. In particular, it takes into consideration that the need for an adversarial procedure diminishes when the matter in dispute is minor, and other types of representation may be more preferable.

IV. RESULTS

A. Descriptive Statistics and Distribution

With completion by 68 participants in the lawyer scenario test (private actors), 69 participants in the

licensed association scenario test, and 62 participants in the public official scenario test, a total of 199 valid sample data were in the data pool for analysis. The gender ratio of the participants was about equal (male: 51.26%; female: 48.74%), and comparatively younger (20-40: 71.86%; 40 and above: 28.14%) as compared to the general population of Taiwan, which is commonly seen in web-based tests.[53]

The analysis was performed on the participants' preference scores for each scenario. The data were significantly non-normally distributed (Shapiro tests: cognition: $W = 0.94^{**}$; behavior: $W = 0.93^{**}$; overall preference: $W = 0.94^{**}$. The descriptive statistics of the outcome variables (the preference obtained by averaging the cognition and behavior scores) and the relevant tests are presented in Table 2, and an overview of the preferences for the study as a whole are shown in Figure 1.

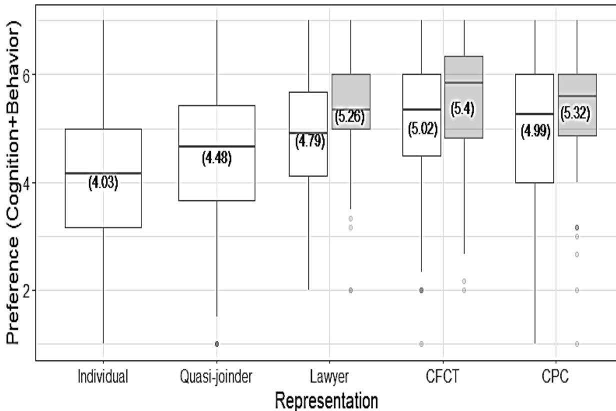
[53] Michael D. Kaplowitz, et al, *A Comparison of Web and Mail Survey Response Rates*, 68 PUB. OPINION Q. 94 (2004).

Table 2. Descriptive Statistics of the Preferences and the Related Tests

Preference(Cognition + Behavior)								
	Median value of participants' preference (s.e)				Cochran-Mantel-Haenszel test		Wilcoxon test	
	Individual	Lawyer	CFCT	CPC	H_0	M^2	H_0	V
No rep	4.17 (1.39)				$J \perp\!\!\!\perp R$	0.12	$A - B \geq 0$	3711.00^{***}
	[A]				$Pre \perp\!\!\!\perp J$	$40.96^{\dagger}$	$B - Median_{C,E,G} \geq 0$	4501.50^{***}
Opt-in	4.67 (1.37)	4.92 (1.07)	5.33 (1.34)	5.25 (1.39)	$Pre \perp\!\!\!\perp R$	70.87	$B - Median_{D,F,G} \geq 0$	2270.50^{***}
	[B]	[C]	[E]	[G]			$C - D \geq 0$	288.50^{***}
Opt-out		5.33 (1.05)	5.83 (1.22)	5.58 (1.32)			$E - F \geq 0$	316.50^{**}
		[D]	[F]	[H]			$G - H \geq 0$	362.00^{*}
							$C - E \geq 0$	$1917.50^{\dagger}$
							$C - G \geq 0$	$1830.00^{\dagger}$
							$G - E \geq 0$	2095.00
							$D - F \geq 0$	2091.00
							$D - H \geq 0$	1955.50
							$H - F \geq 0$	2092.00

Note: Standard errors are in parentheses. †, *, **, and *** represent the significance at the 10%, 5%, 1% and 0.1% nominal levels, respectively. In addition, Pre, J and R are indicated as preference, joining rule and representation, respectively.

Figure 1. Overview of the Overall Participant Preferences



(Mean scores are in parentheses.)

Joining rule: No rep, opt-in, opt-out

B. Joining Rules: Opt-In v. Opt-Out

The median scores in Table 2 and mean scores in Figure 1 clearly show an increasing trend in the preferences, for which the results of median are as follows: individual (4.17), quasi-joinder (4.67), lawyer (in: 4.92; out: 5.33) for the CFCT (in: 5.33; out: 5.83), and CPC (in: 5.25; out: 5:58). For the comparison among individual claims, quasi-joinder, and having representation, the Wilcoxon paired sample tests indicated that the preference for having representation (six scenarios) was higher than that for quasi-joinder (Median $_{CEG}$ > B: 4,501.50*** Median $_{DFH}$ > B: 2,270.50***), and the preference for quasi-joinder was higher than that for individual claims (B > A: 3,711.00***), which conforms to predictions one and two. As for the two by three design covering the treatments including joining rules and types of representation, both the Cochran-Mantel-Haenszel and Wilcoxon tests also demonstrate that joining rules significantly affect people's preferences, where the opt-out scenarios obtained higher scores than the opt-in scenarios

($M^2 = 40.96^{\dagger}$) and the differences are significant among all three types of representation (D > C: 288.50***; F > E: 316.50**; H > G: 362.00*). Prediction three is fully supported.

C. Representation Type: Lawyer v. Government-Related Entities

With regard to the treatment effect of types of representation, while not significant based on the results of the Cochran-Mantel-Haenszel test, the Wilcoxon tests indicated there are indeed differences between lawyer and CFCT representation (E > C:1,917.50^{+}), as well as lawyer and CPC representation (G > C: 1,830.00^{+}), which to some extent supports prediction four in that Taiwanese people prefer government-related entities, such as CFCT and CPC representation to that of lawyers.

While most results were in line with the predictions, the representation treatment in the two by three design was not significant enough based on the results of the Cochran-Mantel-Haenszel test, even though the predicted direction and the

difference could still be inferred from Wilcoxon tests. This outcome may have been due to neutrality effect on the part of the participants,[54] which caused the preference score to tend to be neutral. To better illustrate and present the data for the purpose of the study, the data obtained from the two by three design were converted into a dichotomy to overcome the neutrality effect, where the preferences were divided into "prefer" and "reject" categories based on the scores being equal or above the median or below the median of the total scores (5.33), and were re-termed as "preference level" (PL). The frequencies and tests among the preference level, joining rules (J), and representation (R) after the conversion are provided in Table 3.

[54] Karen Gasper, et al., *Does Neutral Affect Exist? How Challenging Three Beliefs About Neutral Affect Can Advance Affective Research*, 10 FRONT. PSYCHOL. 2476 (2019).

Table 3. The Frequencies and the Test for the Preferences

Preference level (Cognition+Behavior)						
		Frequency amomg group			Cochran–Mantel–Haenszel test	
Joining rule	Preference level	Lawyer	CFCT	CPC	H_0	M^2
Opt-in	Prefer	22	35	31	J⫫R	0.09
	Reject	46	34	31	PL⫫J	7.36**
Opt-out	Prefer	38	42	36	PL⫫R	4.36†
	Reject	30	27	26		

Note: †, *, **, and *** represent the significance at the 10%, 5%, 1% and 0.1% nominal levels, respectively. In addition, PL, J and R are indicated as preference level, joining rule and representation, respectively.

After converting the data into a dichotomy, the results were intensified for both the joining rule and representation treatments. Using the Cochran-Mantel-Haenszel test, both the joining rule ($M^2 = 7.36^{**}$) and representation type ($M^2 = 4.36^{+}$) treatments exhibit stronger effects. This shows that joining rules and representation types indeed affect procedural preferences. The odds ratio computed using the multinomial logit model (see Appendix) shown in Table 4 corresponds to the previous

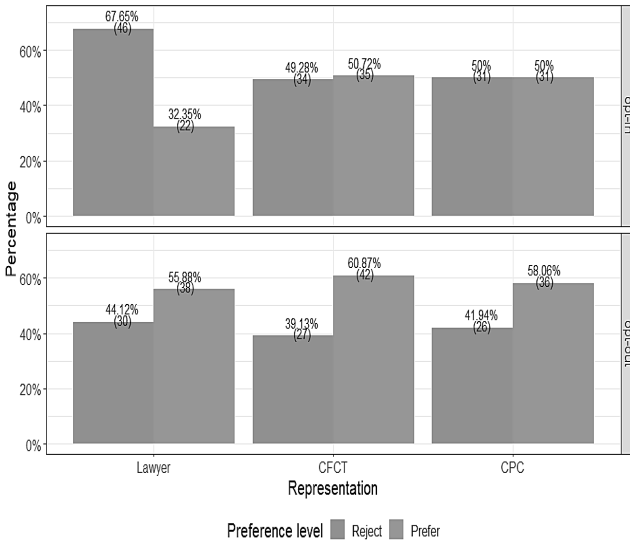
findings obtained using the Wilcoxon tests and further supported the premise that the opt-out procedure is preferred more than the opt-in procedure throughout all types of representation (lawyer: *OR*=2.65, 95% CI [2.40, 2.90]; CFCT: *OR*=1.28, 95% CI [1.51, 1.74]; CPC: *OR*=1.13, 95% CI [1.38, 1.64]). The odds ratio further indicates that, in opt-in designs, there is a preference among the types of representation, where CFCT and CPC representatives are both more favored than lawyers (Lawyer/CFCT: *OR*=0.46, 95% CI [0.22, 0.71]; Lawyer/CPC: *OR*=0.48, 95% CI [0.22, 0.74]), and no significant difference is found between CFCT and CPC (CPC/CFCT: *OR*=0.73, 95% CI [0.97, 1.21]). Conversely, in opt-out designs, no clear preference was found among the types of representation. Although the Cochran-Mantel-Haenszel test did not provide direct evidence of the interaction between the two sets of treatments (joining rules v. representation types), the odds ratio still implied a relationship between the two traits from the said change in the preference for representation from opt-

in to opt-out situations. In addition, from the bar plot of the preference level of the different representations in the opt-in and opt-out procedures, respectively, shown in Figure 2, it can be observed that the preference for CPC and CFCT representation over lawyers in opt-in procedure is diminished in the opt-out procedure, which made the preference for the three types of representation become similar in the opt-out situation. In other words, the different preference levels for representation in opt-in situations became insignificant in opt-out situations, which means that the effect of representation types was offset by the opt-out design of the joining rules.

Table 4 Odds Ratio and 95% Confidence Interval

Preference (Cognition+Behavior)				
Variable effect under specific condition				
Response	Variable	Given condition	OR	95% CI
Favor/Disfavor	Opt-out/Opt-in	Lawyer	2.65	[2.40, 2.90]
	Opt-out/Opt-in	CFCT	1.28	[1.51, 1.74]
	Opt-out/Opt-in	CPC	1.13	[1.38, 1.64]
	Lawyer/CFCT	Opt-in	0.46	[0.22, 0.71]
	Lawyer/CPC	Opt-in	0.48	[0.22, 0.74]
	CPC/CFCT	Opt-in	0.73	[0.97, 1.21]
	Lawyer/CFCT	Opt-out	0.81	[0.58, 1.05]
	Lawyer/CPC	Opt-out	0.91	[0.67, 1.16]
	CPC/CFCT	Opt-out	0.89	[0.64, 1.14]

Figure 2. Bar Plot of the Preference Levels Obtained Using the Two by Three Design



V. IMPLICATIONS AND DISCUSSION

The most insightful finding of this study is that it proves that joining rules and representation types did affect people's procedural preferences in small claim class disputes. Firstly, the joining rules significantly influence preferences for utilizing different designs of resolution mechanisms. The opt-out design has much lower transaction costs, which is more favorable to potential claimants, while the opt-in design has more obstacles that prohibit access to dispute resolution when considering the relevant substantive and intangible costs. These results correspond to what can be observed in actual practice among jurisdictions and offers further theoretical reasons for this phenomenon. Opt-out designs indeed are more effective with respect to providing better chances of access to justice in small claims processes. In particular, these results are valid for all three major types of representation in class actions, which means the finding can be externalized broadly to more jurisdictions.

Secondly, the types of representation also have impact on procedural preferences related to resolving class disputes. The findings show that there are indeed cultural and legal tradition influences that alter people's attitudes and behavior toward the type of dispute resolution. In the case of jurisdictions influenced by Chinese culture, but transplanted into a western style judicial system, people may still largely rely on public officials or government licensed entities to solve their problems, especially when it involves groups of people and may involve a certain degree of public good. Also, in jurisdictions with a more collective nature, because people have a higher need for harmonious relationships, the need for adversarial procedure diminishes and non-formal or non-confrontational procedures are preferred to solve problems. This implies that they would prefer being assisted by the government to handle the matter with the hope that such a matter would not go to the courts, which is the typical kind of adversarial procedure. Hence, public officials or government-sanctioned organizations become more preferable

candidates for representation than lawyers in jurisdictions of this type.

The aforementioned two major findings interestingly led to an extra discovery. While there are influences on both the joining rule and representation, the influence of the representation is cancelled out by the opt-out design for the joining rule. This is especially obvious in the private actor type of representation, which was originally mostly disfavored among the opt-in types and was not significantly different from other types with representation by public officials and licensed associations in opt-out types. In other words, the preference for representation is outweighed by the preference for joining rules in small claims situations. This finding has a further implication. In small claims, the disadvantages of the less favored representation type can be made up for by adopting the opt-out mechanism. Hence, preferences revealed in this study were especially strong for the private actor type of representation, which implies that people in jurisdictions who do not prefer lawyers as

their representatives may correct this unfavorable situation via changing the joining rule to an opt-out design. This also indicates that the cultural influences on the preferences related to dispute resolution become insignificant when the transaction costs are low enough.

Another finding related to the representation treatment within the scope of this study was as follows: While aggregations such as joinder claims do encourage people to pursue their rights, this type of mechanism is not preferred as much as having representation from a professional third party. However, aggregated procedures such as joinder claims or representation are both preferred over pursuing rights individually in small claim class disputes. This finding demonstrates the value of representation and the way people prefer to be represented, which is by a professional or an institution and not by those who are similarly-situated. The result may be a balance between considering conflicts of interest and the benefits of professionalism. Especially when the dispute amount

is small, conflicts of interest are less of a concern compared to the advantages garnered from professional services. Lastly, the aggregated dispute resolution being preferred over an individual claim is an intuitive result when considering transaction costs and may also imply that people feel more secure and confident when attempting to resolve disputes as a group, especially in a collectivist society. Hence, in the case of small claims on a large scale, it is necessary to devise a mechanism for representation or at least to make it possible for claimants to join with others, rather than the claimant having to file as an individual.

VI. CONCLUSION

This study demonstrates overall that dealing with small claims on a large scale requires another way of thinking. The typical framework for formal dispute resolution procedures may not be desirable in small claim class disputes. This proposition is supported not only from a transaction cost perspective, but also from a cultural and psychological perspective. The

contribution of this study is that it proposed a valid framework within which to categorize types of resolution procedures for small claim class disputes and provides explanations of the preferred characteristics and their relationships. This is especially critical when most jurisdictions have problems with numerous unclaimed losses in small disputes. The findings of this research also prompt thoughts about whether the judicial system should be improved to accommodate the special pre-trial needs of cases with mass claimants that have a possible public impact. While such changes have already taken effect in some areas, the resolution of small claim class disputes deserves more attention and research. This study contributes to this area by proving with evidence that, for small claim class disputes, when adversarial requirements are less of a concern, the joining rules and the types of representation substantially influence the preference for dispute resolution, which are the keys for improving the effectiveness of such resolution mechanism.

APPENDIX

The odds are defined as follows:

$$odds = \frac{P(Prefer\ given\ conditions)}{P(Reject\ given\ conditions)}$$

The formula of the multinomial logit model can be expressed as

$$log\left(\frac{P(Prefer|\ J = j, R_1 = r_1, R_2 = r_2)}{P(Reject\ |\ J = j, R_1 = r_1, R_2 = r_2)}\right)$$
$$= \alpha + \beta_1 \times j + \beta_2 \times r_1 + \beta_3\ \times r_2$$

with the parameters $j = \begin{cases} 1, & opt\ out \\ 0, & opt\ \ in \end{cases}$, $r_1 = \begin{cases} 1, & Lawyer \\ 0, & CFCT \\ 0, & CPC \end{cases}$

, $r_1 = \begin{cases} 1, & CPC \\ 0, & CFCT \\ 0, & Lawyer \end{cases}$.

The benefit of using multinomial logit model is to compute the odds ratio (OR) via simple linear regression. The OR value of opt-out and opt-in (given under one of three representations) can be shown as

$$\frac{P(Prefer \mid J = 1, R_1 = r_1, R_2 = r_2) / P(Reject \mid J = 1, R_1 = r_1, R_2 = r_2)}{P(Prefer \mid J = 0, R_1 = r_1, R_2 = r_2) / P(Reject \mid J = 0, R_1 = r_1, R_2 = r_2)}$$
$$= exp[(\alpha + \beta_1 + \beta_2 \times r_1 + \beta_3 \times r_2) - (\alpha + \beta_2 \times r_1 + \beta_3 \times r_2)] = exp(\beta_1)$$

with the estimated OR of opt-out and opt-in (given one of the three representations) being denoted as $exp(\widehat{\beta_1})$. By the confidence interval (CI) under specific significant level, a conclusion of a significant difference can be shown from the situation where the upper bound of CI lower than one, or the lower bound of CI higher than one. Conversely, no significant difference can be drawn if one falls within the CI.