
Legal Cultures and Punishment Repertoires in Japan, Russia, and the United States

Joseph Sanders

V. Lee Hamilton

Several years ago we conducted surveys in one American (Detroit) and two Japanese (Yokohama and Kanazawa) cities exploring the nature of responsibility and sanctioning judgments. Recently we were able to replicate a portion of those surveys in Moscow, and here we compare the results of the Moscow survey with the earlier findings. The fundamental question is whether socialist societies, at least as they have existed in the republics of the former Soviet Union and Eastern Europe, have created a contextual legal culture like that of Japan, or whether their legal culture is more like the individualistic model of the United States. Our data indicate that when presented with situations of wrongdoing, Moscow residents' punishment preferences more nearly resemble the individualistic preferences of Detroit residents than they do the contextual preferences of Japanese residents. However, unlike Japanese and U.S. residents, the Moscow residents also expressed a preference for quasi-criminal educative sanctions.

With the reunification of Germany, the decline of many of the communist governments, and steps toward market economies, the situation in the Commonwealth of Independent States (CIS) and Eastern Europe has changed dramatically during the past three years.¹ Legal changes are also occurring (Hecht 1983; Krygier 1991). New constitutions are being written that seek to alter what some have called the "tragic neglect of constitutional mechanisms," protecting democratic values

This article is based on a paper presented at the Law and Society Association Meetings, Amsterdam, 29 June 1991. We wish to thank Gennady Denisovsky, Polina Kozyreva, and others from the Institute of Sociology for ably directing the Moscow survey. We also wish to thank Misha Matskovsky and James Gibson for their assistance on the Moscow survey. Michael Speckhart, a graduate student at the University of Houston, provided invaluable help with translations throughout the research. Support for the Moscow survey was provided by the National Science Foundation Grant No. SES 90-03868 and the Law School and College of Social Sciences at the University of Houston.

¹ Significant events have occurred since these data were collected, most importantly the failed coup attempt of August 1991, the formal dissolution of the Soviet Union in December 1991, and the formation of the Commonwealth of Independent States (CIS). Throughout we use the terms "Russia" and the "CIS" rather than Soviet Union. It is important to keep in mind, however, that the data reported here were from a sample of individuals living in and around Moscow.

(Beirne & Hunt 1988). These mechanisms include bills of rights defining privileges and immunities of citizenry. New legislative bodies are redefining the duties and responsibilities of the citizenry to the state. Limited powers of judicial review are being introduced (Kuss 1986) and citizens are given limited rights to challenge administrative decisions (Quigley 1988).

These trends suggest that in the future the law may come to play a more important role in these societies. One specific question we might ask is whether law will come to play a more important role in dispute resolution. Traditionally, litigation rates in Eastern Europe and the CIS were very low even in circumstances where litigation was possible (Markovits 1989:427–28). Should we now anticipate a substantial growth in the use of formal law to resolve disputes?

Inga Markovits (1989) has recently argued that at least with respect to disputes between state and citizen, as long as these societies retain socialist values we should not expect to observe an increase in the use of formal courts and formal rules. Interestingly, the arguments she advances to justify her prediction are similar to those advanced to explain the relatively low use of law in Japan. We will briefly examine these arguments here in the context of an investigation of cultural differences in sanctioning decisions. Is there a socialist legal culture that is similar to the legal culture found in Japan and other Asian societies?² We will present some evidence from surveys conducted in the United States, Japan, and Russia which indicates that Russian respondents differ from both Japanese and American respondents in important ways. We conclude with a discussion of the source of these differences and their implications for the future use of law to settle disputes in socialist and formerly socialist societies.

² Following ordinary usage, we use the term “socialist” to describe CIS and Eastern European societies. The variety of socialism that has existed in these states has sometimes been called state socialism (Konrád & Szelényi 1979; Burawoy & Krotov 1992). Obviously, state socialism is not the only possible type of socialist society. As our discussions here will make clear, we believe that our findings relate specifically to this type of socialist society.

Since these data were collected, the failed coup has caused Russia along with a number of other republics formally to abandon the goal of centralized planning that was at the heart of Soviet-style socialism. The government is moving more rapidly to a market economy and has substantially diminished if not destroyed the role of the Communist party in national affairs. When we wrote the early drafts in early 1991, the question we asked was whether the Soviet socialist system generated a society of contextual actors who would oppose the use of litigation to resolve disputes. Perhaps the question should now be rephrased: Did Soviet socialism leave a legacy of contextual relationships that will cause Russian capitalism to follow a model similar to that of Japan? We believe our data are of some relevance to both questions.

I. Determinants of Dispute Settlement Styles

What factors are said to encourage or discourage the use of courts to resolve disputes? The answer to this question comes in two parts: legal organization and the nature of role relationships.

A. Legal Organization and Role Relationships

The legal organization answer posits that law is rarely used when the costs of litigation within the existing court system make it an unattractive alternative to disputants. Markovits notes that the states in Eastern Europe have taken only tentative first steps in opening up the legal system to private citizen litigation. Moreover, a combination of ideological training and administrative oversight maintain a socialist judiciary that is not favorably disposed to individual litigation. Delays imposed by an inadequate supply of courts, unfavorable substantive and procedural rules, and a cadre of hostile legal functionaries combine to make the costs of litigation outweigh its benefits. Confronted with this court structure, the rational disputant chooses not to litigate. Several scholars have argued that differences in Japanese and American litigation rates are to be explained, at least in part, by differences in legal organization (Haley 1978, 1982; Ramseyer 1985, 1988; Tanase 1990).

For Markovits (1989:403), the more important part of the answer as to why there will be relatively little use of law to settle certain disputes has to do with the nature of role relationships in society. This answer is premised on the fundamental notion that many of law's formal procedures and many of its sanctions are destructive of ongoing social relationships (Lloyd-Bostock 1983; Macaulay 1963; Nader 1969). The nature of role relationships affects the use of law in two ways. First, the potential destruction of relationships, like court delay and unfavorable rules, is a cost of legal remedies that may cause the rational actor to seek less destructive solutions to disputes. Within each society, when relationships exhibit high solidarity—are more enduring, multifaceted, and status-based—people are less likely to pursue legal solutions that will destroy the relationship. When relationships exhibit low solidarity—are more episodic, single stranded, and exchange-based—people are less concerned with the relationship destruction that may accompany the use of law to resolve disputes. People are less likely to sue friends than strangers (Black 1976; Ekland-Olson 1984).

Similar considerations should affect sanctioning decisions. When the nature of the wrongdoing has not irrevocably destroyed a relationship, a concern for the ongoing nature of

highly solidary relationships should evoke less destructive sanctioning choices. Here punishment practices should be most sensitive to rebuilding actor-victim relationships. On the other hand, punishment practices are more likely to isolate wrongdoers where the parties are in low solidarity relationships or are strangers.³ In past research we have found that in both the United States and Japan the nature of the relationship between the actor and victim affects responsibility and sanctioning decisions (Hamilton & Sanders 1981, 1983, 1988, 1992).

The nature of a society's relationships affects the use of law in a second way as well. The presence of a relatively large proportion of highly solidary relationships helps to create and sustain citizens' attitudes, values, and judgments about whether it is appropriate to take disputes to law, how to conceptualize a dispute, and how disputes are to be settled. Such values are part of a society's *legal culture*. Legal culture may be defined broadly to include attitudes, values and opinions about not only the law per se but also the appropriate way to resolve disagreements and process disputes (Friedman 1985; Mather & Yngvesson 1980–81). A legal culture includes attitudes and values about the nature of people, including people who are wrongdoers. An actor may be perceived by self and others as an individual whose identity and sense of self stand apart from the group or community: the person is an *individual* actor. On the other hand an actor may be perceived as a social participant whose identity is, in substantial part, defined by social relationships: the person is a *contextual* actor. Numerous investigators have concluded that in Japan the person tends to be perceived as a contextual actor while in the United States the person is perceived as an individual actor.⁴

Attitudes and values we hold about what it is to be responsible and what sanctions should be administered to those found responsible for wrongdoing are built on these perceptions. The perceptions are at the core of a society's legal culture and they affect the repertoire of proposed punishments. To the degree that a society views the actor as an atomistic individual, a consistent mode of punishment is to isolate rather than reintegrate the offender, and a consistent goal is to seek retribution or incapacitation for what happened. In contrast, to the extent that a society views a person as a contextual actor, then sanctions are likely to be used to reintegrate wrongdoers and restore rela-

³ In terms of a distinction recently introduced by Braithwaite 1989, people with highly solidary ties are more likely to make punishment an occasion for *reintegrative shaming*, whereby the offender is taught to "shape up"; the alternative, *stigmatizing shaming*, with its potential for rejection of the offender, becomes more likely as social ties become weak or nonexistent.

⁴ For discussions of American individualism see Johnson 1985; Sandel 1982. For discussions of Japanese contextualism see Doi 1986; Kawashima 1968; Weis, Rothbaum, & Blackburn 1984.

tionships. Our earlier research in Japan and the United States has found that the Japanese do attend more to role relationships in attributing responsibility and do propose more restorative sanctions than Americans (Hamilton & Sanders 1983, 1988, 1992).

B. Role Relations, Legal Culture, and Socialist Use of Law

Markovits (1989) believes that the relatively greater frequency of ongoing highly solidary relationships in socialist societies causes citizens of these societies to use law less often than do citizens in capitalist societies. This argument loosely parallels similar arguments that have been advanced to explain Japanese-American differences in the use of law (Hsu 1975; Kidder 1983; Smith 1983). It is important to keep in mind that Markovits's prediction about the relatively low use of law to settle disputes in Eastern Europe is limited to disputes between citizen and state (Markovits 1989:429). As she points out, however, in a socialist society these relationships affect a large portion of all potential disputes because the defendants against whom a claim might be made, including one's employer, one's landlord, one's doctor, a company from whom one buys a defective product, and so on, are part of the state. Thus if citizens and the state avoid adjudicating with one another, this will have an impact on the total use of law to resolve disputes.

A critical question for legal culture is whether these enduring individual-state relationships in societies that have been socialist for a substantial period of time have created a Japan-like contextual actor culture and a set of values that seeks to restore the wrongdoer to ongoing relationships. Markovits (*ibid.*, p. 431) appears to offer a partial "yes" answer to this question when she argues that socialist governments "have been successful in imprinting upon their citizenries the image of the familial state." Not only are citizens reluctant to sue the state, the state in turn is less likely to enforce specific rules against citizens. Informality, not legal niceties, should govern relationships both among citizens and between citizens and the state. Disputants should work together in a cooperative fashion for a solution acceptable to both parties (*ibid.*, p. 440). A similar preference for informality and cooperation is said to be a central part of Japanese legal culture, and has been used to explain low litigation rates (Kawashima 1963; Miyazawa 1987; Upham 1987).

Informality alone, however, does not constitute a contextual approach to wrongdoing. By itself, informality can simply be a device used by the more powerful party in a dispute to exploit its advantage (Auerbach 1983; Fiss 1984). Assuming Markovits is correct and that individuals in socialist societies

come to prefer informality, do they also prefer that when acts are sanctioned, the sanctions should be directed at maintaining and restoring social relationships? Does the concept of a familial state incorporate the idea of contextual actors? Or do socialist citizens more nearly follow the individualistic conceptions of Americans? Does a collectivist economic structure encompass and create a contextual legal culture?

The answer is of more than academic interest. If socialist views of the responsible actor are similar to those of the Japanese, this lends further support to Markovits's prediction that socialist societies will remain less litigious than capitalist societies, in part because—as in Japan—people will support legal arrangements that make formal adjudication relatively less attractive to disputants. It also lends support to the hypothesis that as formerly socialist societies move toward market economies, their use of courts to settle disputes will more nearly parallel the way the Japanese use courts.

If, on the other hand, views of the responsible actor are more individualistic, this suggests less support for legal arrangements that thwart adjudication and its destructive effects on relationships. It suggests that as formerly socialist societies move toward market arrangements, we should observe a significant increase in the willingness to use formal adjudication mechanisms to settle disputes. In sum, what views do people in socialist societies have of the responsible actor?

II. Methods

To address this question we conducted a survey in Moscow Oblast⁵ in the winter of 1990 that replicated previous surveys done in Detroit, Michigan, in the United States and in two Japanese cities, Yokohama and Kanazawa.

A. The Surveys

The initial survey was a 1977 probability sample of the Detroit SMSA ($N=678$). These respondents judged four vignettes concerning wrongdoing in everyday life. The vignettes were developed in consultation with Japanese researchers so that their elements would be appropriate in both societies. Two of these stories represented high solidarity and two represented low solidarity ties. At both levels we varied a second dimension: hierarchy. Either the actor and victim were equals or the actor had authority over the victim. The vignettes themselves are described in more detail below. The Detroit survey also featured

⁵ The Moscow Oblast is an area of 47,000 square kilometers and includes 69 cities and 74 urban settlements. The population of the Oblast, nearly 16 million, is 79% urban. The largest city, Moscow, has 9 million residents.

a no solidarity vignette in the form of a street crime between strangers. Vignettes were administered according to a design that controlled for possible effects of the order of presentation.

The first Japanese survey was a 1978 probability sample of Yokohama ($N=600$), selected because of its comparability to Detroit (see Cole 1979). The Japanese researchers carried out their own translation of the relevant Detroit materials, consulting with Americans in the Tokyo area and with Japanese instructors who advised the U.S. researchers.⁶ The Yokohama survey replicated the four core vignettes involving everyday-life wrongdoing and the crime story.⁷

The Japanese researchers also conducted a further probability sample survey in Kanazawa in 1979 ($N=640$). With a population of about a half million in the mid-1980s, Kanazawa is considerably smaller than either Detroit or Yokohama. Located on the Sea of Japan, it has a long history as a feudal provincial capital; our collaborators expected that its residents would exhibit more traditionally Japanese views. This third survey also included the four everyday-life vignettes from the previous two studies but did not include the crime story.

The fourth survey, a sample of individuals in the Moscow Oblast ($N=494$)⁸ was conducted in the winter of 1990.⁹ The interviews were face to face and conducted in the homes of the respondents. The survey was conducted and supervised by the Institute of Sociology at the USSR Academy of Science.¹⁰ Because the survey instrument was shared with several other investigators, the survey included only four vignettes in Moscow:

⁶ The Japanese research team included Yoko Hosoi, Zensuke Ishimura, Nozomu Matsubara, Haruo Nishimura, Kazuhiko Tokoro, and Nobuho Tomita.

⁷ We cannot, of course, know whether Japanese and U.S. respondents have changed their views in the ensuing years. We would hypothesize, however, that responsibility and punishment judgments tap fundamental cultural values about which there is a substantial consensus that changes only slowly over time (see Sanders & Hamilton 1987). Within a year we hope test the hypothesis by replicating at least one of these stories in Japan and the United States.

⁸ The data reported here were part of a larger survey of Muscovite political attitudes ($N=504$). The vignettes were printed separately and inserted into a large instrument. We eliminated ten cases from the total sample either because of incomplete data on some vignettes or because interviewer error made it impossible to match a vignette insert to a specific respondent.

⁹ Sampling in Moscow was a two-stage process. In the first stage 32 regions in Moscow and 54 populated areas of the Moscow Oblast were selected from all areas in the city and oblast. In the second stage individual respondents over the age of 16 were selected from lists of residents maintained by the central address bureau. This sampling method is similar to that used in the Japanese cities, where the investigators were able to sample respondents from governmental lists of residents instead of carrying out their own listings of residents by block as was done in Detroit. The final sample was about 90% ethnic Russian. For a more complete discussion of the Moscow sample see Gibson & Duch (1992).

¹⁰ The English version of the instrument was translated into Russian by English-speaking members of the staff of the Institute. The Russian instrument was then back-translated into English by a Russian speaker in the United States; all remaining translation discrepancies were resolved before the instrument went into the field.

the two everyday-life stories involving authority and the crime story from the earlier surveys plus a new story dealing with environmental damage due to discharge of pollutants from a firm. Each of the latter two stories were asked of only half of the sample, so that each respondent heard three vignettes.¹¹

To summarize, across all four surveys, items asked respondents about responsibility and sanction in two everyday-life situations. In three cities (Detroit, Yokohama, and Moscow) respondents were asked to judge a crime story, and in Moscow they were also asked to judge a new vignette about pollution. We present data on sanctioning from the three stories that were asked in all three countries: the everyday-life and crime vignettes. Results cannot be literally generalized to the three countries as a whole. However, they are representative of the cities in question and are likely to be representative of large urban areas in each country.

B. The Vignettes

The *high solidarity* everyday-life story involved wrongdoing within the family. A mother harms her four-year-old child who is crying and will not sleep when she goes to quiet him. The *low solidarity* story involved the workplace. A foreman concerned with maintaining production speed causes a worker to be injured. The *no solidarity (crime)* story described a robbery in which a store's owner is shot.

Vignettes were experimentally varied so that respondents heard one of a set of possible versions of each hypothetical incident. In the street crime, for example, the shooting was described as either accidental or purposive (manipulation of actor's mental state); the offender was described as either having or not having a prior record (actor's past pattern of behavior); and the consequence was described as either injury or death for the store owner (severity of the act's consequences). The low mental state, past pattern present, high consequence version of the story read as follows in the Detroit survey:

Thomas Wilson was robbing a store and, as he was leaving with the money, the store owner tried to overpower him and take the gun. There was a brief struggle and the gun accidentally fired. The store owner was killed. Thomas had been in jail before for assault with a deadly weapon.

Since this article focuses on distinctions among situations and

¹¹ Given that time constraints made it impossible to ask all the vignettes in the Moscow survey, the choice of which of the earlier stories to ask was determined by relevance of the stories to events in Russian life. Both we and our Russian colleagues thought that the substance of the omitted stories (two boys playing baseball and a questionable transaction by a used-car salesman) would not be relevant to most Moscow respondents.

social ties, we report only briefly on the effects of these variations (see also Hamilton & Sanders 1988, 1992).

C. Coding of Vignette Punishment Responses

Across vignettes and across surveys we asked a slightly varying combination of closed-ended and open-ended punishment questions. In all stories an initial question asked respondents whether or not the actor should be sanctioned. In the crime vignette the question was whether the actor should be sent to prison for what he did. In other stories respondents were asked if something should be “done to” or “happen to” the actor. In Detroit and the two Japanese cities this was simply a yes or no question.¹² The respondents who answered yes to this first question were asked a follow-up, open-ended question about what specifically should happen to the offender. The responses to the open-ended answers were coded into empirically derived categories.¹³ The resulting coding categories are themselves evidence of the differences in the kinds of sanctions that typify different role relationships. Certain types of punishments are associated with certain roles or statuses (e.g., juvenile) or with certain relations between offender and victim. Different social settings are characterized by different repertoires of punishment. Because of these qualitative differences, comparisons of sanctions must be done on a story-by-story basis. In keeping with the order of presentation of the punishment questions, this discussion addresses two general issues in turn. First, is there variation in the willingness to intervene at all by proposing some sanction? Second, are there differences in the proposed sanctions?

¹² In Moscow, based on a short pretest, the Russian team suggested we provide “maybe yes” and “maybe no” categories as well as “certainly yes” and “certainly no” codes. Thus this first variable had four categories in Moscow. To provide comparability with the results in the other three cities, however, all Moscow analyses using this variable are based on a recoded dichotomous yes-no variable that collapsed “maybe” and “certainly” answers back into the “yes” and “no” codes.

¹³ Coding schemes for the open-ended data were originally developed separately by the American and Japanese researchers. We then developed a common set of codes for the three cities. (For details of the coding of the Detroit and Japanese data, see Hamilton & Sanders 1988, 1992.) The Moscow open-ended data were coded by a bilingual graduate student at the University of Houston who remained blind to our hypotheses throughout the coding process. The coding was done in two stages. First, one hundred interviews were coded while the coder remained blind to earlier coding schemes. Based on the codes generated from this exercise and the coding schemes used earlier in the U.S. and Japanese cities, a final set of codes was developed. Where possible, the codes tracked earlier coding categories. However, as we shall discuss below, some additional coding categories were necessary to fully reflect the Russian responses. These categories had no Japanese or U.S. counterpart.

The open-ended coding process originally used in coding the Detroit data did not generate a “restoration” code. Because we knew of the theoretical importance of this punishment preference, when the Moscow data were coded, each vignette contained a code for this response.

III. Results

Punishment presupposes responsibility. First, therefore, we examine the relationship between responsibility and punishment in each city. As indicated in Table 1, in Moscow, as in Detroit, Kanazawa, and Yokohama, for each story there is a strong correlation between a respondent's answer as to whether some sanction is called for and his or her responsibility judgment.¹⁴

A. Everyday-Life Stories¹⁵

1. *Willingness to Intervene*

First, we discuss the willingness of respondents to intervene, to do something to the actor because of his actions. A yes response to the question of whether something should "be done to" the actor indicates a willingness to intervene. Do Moscow respondents differ from those in Japan or the United States in their willingness to intervene? Table 2 presents the percentage of respondents answering that something should happen to the actor (answering yes on the dichotomous yes/no punishment item) for each city and each vignette. "Don't know" responses were excluded from the analysis, but they never represented a large proportion of responses.

Table 2 presents an interesting pattern. In the high solidarity story involving the mother who harmed her child, the percentage of Moscow respondents who want something to be done to the mother is similar to that in Detroit. A significantly larger percentage of respondents in the two Japanese cities call for some type of sanction. In contrast, in the low solidarity story involving the worker on the production line, the percent-

¹⁴ As one can see in Table 2, nearly all respondents recommended some sanction in response to the crime story. Even with very limited variance on this variable, the correlation between responsibility and punishment remains significant.

¹⁵ Overall, variations included the actor's *mental state*, the act's *consequences*, the actor's *past pattern* of behavior, and presence or absence of *other's influence*. Effects of these variables were tested, via logistic regression models, for both the issue of whether to intervene and the choice of punishment. Briefly, the Moscow results were as follows. On whether there should be any punishment at all, in the everyday-life stories either only mental state was significant or mental state and past pattern were both significant. Neither consequences nor other's influence was significant in either story. There were no significant effects when the particular choice of punishment was regressed on the experimental variables.

Detroit and Moscow residents differed in that more variation in Detroit residents' answers could be attributed to these variations in the offense and Detroiters were more sensitive to information about the actor's mental state and the severity of consequences. In Japan, Kanazawa residents made greater use of information about other's influence than did Muscovites. These results are most consistent with a hypothesis that the Russians' judgments would lie somewhere between those of the Detroiters and the Japanese. The Russians used mental state information, but less than Detroiters, and they did not use the information most directly related to role relationships (other's influence). Results for the crime vignette are reported below.

Table 1. Correlation Coefficients between Responsibility Judgments and Willingness to Punish Wrongdoers

Incident Type	City			
	Detroit (N=678)	Kanazawa (N=640)	Yokohama (N=600)	Moscow (N=494)
<i>High solidarity</i>				
Mother	.35	.28	.19	.28
<i>Low solidarity</i>				
Foreman	.44	.45	.25	.18
<i>No solidarity</i>				
Street crime	.11	—	.16	.32

NOTE: Items were scored with 1 = no and 2 = yes to the punishment question. Responsibility judgments were scaled 0 = not at all responsible to 10 = fully responsible. All correlations are significant at the .01 level. *N*s range from 489 to 660 within city except for the Moscow street crime story, which has an *N* of 255.

Table 2. Overall Willingness to Advocate Punishment among American, Japanese, and Russian Respondents

Incident Type	% Yes			
	Detroit (N=678)	Kanazawa (N=640)	Yokohama (N=600)	Moscow (N=494)
<i>High solidarity^a</i>				
Mother	26	56	51	21
<i>Low solidarity^b</i>				
Foreman	69	89	91	90
<i>No solidarity^c</i>				
Street crime	96	—	99	99

^a Difference between Moscow and each of the two Japanese stories is highly significant (Moscow-Yokohama $\chi^2=106.7$, *df*=1, *p*<.001; Moscow-Kanazawa $\chi^2=144.0$, *df*=1, *p*<.001). Difference between Moscow and Detroit is significant ($\chi^2=4.54$, *df*=1, *p*<.05).

^b Difference between Moscow and each of the two Japanese stories is not significant (Moscow-Yokohama $\chi^2=1.02$, *df*=1, *p*<.25; Moscow-Kanazawa $\chi^2=0.00$, *df*=1, *p*<.98). Difference between Moscow and Detroit is significant ($\chi^2=67.1$, *df*=1, *p*<.001).

^c In Moscow, because the street crime vignette was experimentally alternated with an environmental pollution story (not reported here), the *N* was approximately half the full sample.

age of Moscow respondents who want something to be done to the foreman is nearly identical to the percentage of Japanese respondents and significantly greater than that in Detroit. Finally, in all four cities there is nearly unanimous agreement that the criminal should be punished. To understand this pattern of responses we must examine the types of sanctions respondents recommend when they believe a sanction is in order.

2. *Type of Punishment*

Tables 3 and 4 present punishment choices in Detroit, Kanazawa, Yokohama, and Moscow for the two everyday-life vignettes. Coding categories are arranged ordinally within story to reflect our a priori assessment of the degree to which the choices isolate the offender: punishing for a misdeed rather

Table 3. Types of Punishments Advocated by American, Japanese, and Russian Respondents for High Solidarity (Family) Vignette

	City				Total (<i>N</i> = 739)
	Detroit (<i>N</i> = 159)	Kanazawa (<i>N</i> = 232)	Yokohama (<i>N</i> = 246)	Moscow (<i>N</i> = 102)	
Restoration	0%	45%	53%	0%	32%
Reprimand (counseling)	86	53	34	70	56
Other	14	3	13	30	12
	100%	100%	100%	100%	100%

Table 4. Types of Punishments Advocated by American, Japanese, and Russian Respondents for Low Solidarity (Work) Vignette

	City				Total (<i>N</i> = 1,687)
	Detroit (<i>N</i> = 414)	Kanazawa (<i>N</i> = 388)	Yokohama (<i>N</i> = 440)	Moscow (<i>N</i> = 445)	
Restoration	0%	55%	47%	7%	27%
Reprimand	31	25	15	17	22
Demote (lower pay)	38	5	18	10	18
Fire	15	3	5	15	10
Fine	0	0	0	6	1
"Brought to responsibility"	0	0	0	17	4
Trial	0	0	0	13	3
Other	16	11	15	17	15
Total	100%	100%	100%	100%	100%

than attempting to achieve reintegration of the offender. As reported in Hamilton and Sanders (1988), the Japanese were more likely than Americans to choose restorative sanctions. Where do the Muscovites fit into this picture? The answer comes in two parts (see Tables 3 and 4). Like the Detroit respondents, the Moscow respondents do not propose sanctions that are aimed at restoring the relationship injured by the act of wrongdoing. In contrast, these restorative sanctions are the single most popular response among the Japanese respondents. Second, unlike both the Japanese and the Americans, the Moscow respondents propose quasi-criminal like sanctions in the low solidarity story. Below we discuss each vignette separately.

As shown in Table 3, in the high solidarity story the overwhelming choice of sanction among both Detroit and Moscow respondents was some type of reprimand or counseling. Each involves a sanction aimed at changing the mother herself. The Japanese responses were nearly evenly divided between reprimand (counseling) and relationship restoration. In this context restoration primarily consisted of the mother apologizing to her child. The differences between Moscow and the two Japanese cities are highly significant.¹⁶ The difference between De-

¹⁶ Moscow-Kanazawa, $\chi^2=98.7$, $df=2$, $p < .001$. Moscow-Yokohama, $\chi^2=86.3$, $df=2$, $p < .001$.

troit and Moscow is marginally significant, but only because of the greater number of “other” responses in Moscow.¹⁷

These results help to explain the greater willingness of the Japanese respondents to recommend some sanction for the mother (shown in Table 2). Culturally, the Japanese have available to them a repertoire of sanctions designed to restore the relationship. Deprived of these sanctions, the best that Detroit and Moscow respondents can do when they feel any reprimand is too strong is to do nothing at all.

We have no evidence regarding how heartfelt the Japanese respondents thought the apology would or should be. As noted in Hamilton and Sanders (1988), this type of apology may be *kuchisaki*, tip-of-the-tongue remarks designed to soothe children rather than what an American, and perhaps a Russian, would interpret as “sincere.” However, the role of apology in Japan is itself related to the contextual actor culture. In Japan an apology is an acknowledgment that one has acted incorrectly in a given role, and sincerity is measured not by whether the apology reflects one’s inner feelings but rather by whether one submits to group hierarchy and harmony (Wagatsuma & Rosett 1986; Haley 1986). What is true at a minimum is that in this context there is a cultural form, apology to one’s child, that may contribute in the Japanese case to the restoration of the relationship between parent and child, but which has no Russian or American counterpart. As Bayley (1991:131) notes, “an apology is more than an acceptance of personal guilt; it is an undertaking not to offend again.”

Turning to the factory foreman vignette in Table 4, respondents in all cities are much more willing to impose isolative sanctions (demotion, loss of pay, discharge) in the context of a work-related injury than in the high solidarity context of an injury to one’s child. As we have suggested, in all societies the nature of the role relationship affects the range of acceptable sanctions.

Again, as in the family story, substantial cultural differences exist as well. The Moscow results are significantly different from those in Detroit and in the two Japanese cities.¹⁸ Table 4 shows that even in this low solidarity situation, restoration dominates the Kanazawa and Yokohama sanctions. In this context restoration includes acts of emotional restoration, such as apologies, as well as such acts of instrumental restoration as

¹⁷ Moscow-Detroit, $\chi^2=9.61$, $df=2$, $p<.01$. In both this story and the low solidarity story a substantial number of Moscow respondents answered “yes” to the question of whether something should happen to the actor, but either failed to say what should happen or in fact said they did not know what should happen. We have coded these “don’t know” responses as “other” rather than omitting them from the tables entirely.

¹⁸ Moscow-Detroit, $\chi^2=261.5$, $df=7$, $p<.001$. Moscow-Kanazawa, $\chi^2=332.7$, $df=7$, $p<.001$. Moscow-Yokohama, $\chi^2=323.1$, $df=7$, $p<.001$.

payment of the injured worker's medical expenses. These restorative responses are absent among Detroiters and nearly absent among Muscovites.¹⁹

If, however, the Moscow responses differ from the Japanese responses because of a relative lack of restorative sanctions, they also differ from the Detroit responses because they propose a number of quasi-criminal sanctions for the foreman's wrongdoing. The Detroit responses are dominated by demotion/lower pay and discharge solutions to wrongdoing in the workplace. Together, these two isolative sanctions make up more than 50% of the American answers. Firing, especially, is a response which is worse than indifferent to role relationships; it actively destroys them. Many Moscow respondents recommend these sanctions, but even more recommend one of three additional responses: that the actor should be fined, that he should be brought to trial, or that he should be "brought to responsibility."²⁰ This latter sanction involves an administrative proceeding conducted inside the workplace—a form of workplace discipline.²¹

Each of these three sanctions involves a determination of responsibility by a third party other than the actor's employer. These responses reflect a type of group sanctioning, a collective response to wrongdoing that is usually associated with criminal law violations in the United States. They remind us of other examples, such as Cuban Popular Tribunals (Salas 1983), where socialist societies employ public, criminal law-like sanctions for everyday wrongdoing.

The availability of these sanctions helps to explain why, in this story, Russian and Japanese willingness to sanction is substantially greater than that of Detroiters. Muscovites, Kanazawans, and Yokohamans culturally have available to them a set of sanctions unavailable to the U.S. respondents. However, the additional sanctions they possess are not the same. For the Japanese they are apology and restitution, whereas for Muscovites they are quasi-criminal, collective sanctions imposed by representatives of the society at large.

¹⁹ In a socialist economy, of course, economic restitution may be thought to be less necessary because medical expenses will be paid by the state. Therefore, it is not surprising that the Moscow respondents do not propose this sanction. At another level, however, this is an example of a sense in which socialism may, in some contexts, discourage individual-level restorative acts.

²⁰ The Detroit coding scheme did not include any of these codes, and thus it may be that some of the Detroit responses coded "other" were in fact proposed fines or trials. In Kanazawa the coding scheme did include "fine" and "trial" categories. However, no Kanazawa respondent recommended these sanctions.

²¹ Historically, People's Courts have provided a forum for quasi-legal adjudication of wrongdoing within the workplace and residence (see Berman & Spindler 1963; Feifer 1964; Gorlé 1982; Sypnowich 1990).

B. Offenses among Strangers

The crime story provides an opportunity to compare responses when there is no ongoing relationship between the offender and victim and when the offense is a serious one. As reported in Hamilton and Sanders (1988), both Japanese and Americans nearly unanimously agreed that prison was an appropriate punishment. Moreover, measured in terms of the length of proposed sentence, the Japanese were slightly more isolative than the Detroiters. Using the coding scheme described in note 22, the mean sentence in Yokohama was 26 years; in Detroit it was 23 years.²² When there are no ongoing ties to restore, the Japanese can be quite isolative in their sanctioning choices.

As Table 2 showed, Moscow respondents are as likely as residents of Detroit or Yokohama to say that the actor should be punished for what he has done and that some prison term is appropriate. They, like the Japanese and U.S. respondents, recommend an isolative sanction for those who commit serious offenses when there is no role relationship to maintain.

Table 5 presents means for length of sentence by experimental variations in the crime story. Citizens of all three cities made similar use of mental state information about the incident. The actor's intentionality made a substantial difference in the sentence in each city, as did information about the crime's consequences. The actor's past pattern of wrongdoing made a significant difference in Yokohama and Detroit sentences but did not quite rise to significance in Moscow, in part because of the reduced sample size. Yokohama respondents were more

Table 5. Sentences for a Street Criminal as Influenced by Experimental Variations in Detroit, Yokohama, and Moscow Surveys

Variations	Sentences (Years)		
	Detroit	Yokohama	Moscow
A. Mental state			
Low (accident)	19.8	22.2	11.4
High (purposeful)	26.1	30.9	17.3
B. Consequences			
Low (injury)	17.9	15.9	10.6
High (death)	28.8	35.8	18.8
C. Past pattern			
Low (no prior record)	20.5	24.7	13.0
High (prior record)	25.8	28.4	16.2

²² For all surveys any number of months or years was converted into a common scale beginning with 1 = less than one year (thereby inflating year values reported here by 1). Answers such as "5–10 years" were assigned the average of the range. Answers such as "whatever the law says" were assigned the overall mean, effectively causing them to have no effect on the mean. Life sentences and the death penalty were assigned the value of 55 and 56. These last two values are obviously arbitrary but stand in an ordinal relationship to the other choices.

sensitive to consequence information than either Detroit or Moscow respondents. Overall, Moscow and Detroit respondents made very similar use of mental state, consequence, and past pattern information when judging the criminal. Both groups focused on what the actor did in determining what should happen to him.

As is obvious from an inspection of Table 5, however, Moscow sentences are significantly shorter than those in Japan and the United States, averaging a little less than 15 years. Among those that recommended a fixed number of years in prison, very few called for a sentence longer than 15 years. These results are useful in countering any tendency to interpret the Muscovite's "fine" and "trial" responses to the foreman story as examples of Russian harshness.²³ We have no reason to believe that our respondents think the foreman's fine should be punitively large or that the result of a trial should be a substantial prison term. If the sentencing means are any indication, this is not the case.

IV. Discussion

As these survey results indicate, norms about sanctions reflect both situational differences in how individual actors are viewed and cultural variation in conceptions of the social actor. The relative solidarity of relationships underlies different repertoires of punishment used across incidents within each society. With respect to the most serious sanctions, there is a fundamental difference between the low and high solidarity vignettes: between work and family. For work incidents the most severe sanctions destroy or seriously damage the actor's relationship with his employer. But none of the respondents from any of these four cities proposed relationship-destructive sanctions when family ties were at stake. Nor did they propose legal remedies or criminal sanctions.²⁴ From our perspective this outcome reflects the fact that some social bonds are expected to survive more severe untoward behavior than are others. Across cultures as diverse as Japan, the United States and Russia, the repertoires of punitive solutions show compa-

²³ It is impossible, of course, to make direct comparisons of sanctioning severity across societies by comparing mean prison sentence recommendations. If Russian prison conditions are particularly harsh when compared to Russian life outside prison, a 5-year Russian sentence might be "more severe" than a 23.5-year sentence in Japan or the United States. We have no data on the relative harshness of prison conditions. At minimum, however, the substantially lower mean prison sentences in Russia suggest that the Moscow respondents do not support more severe sanctions than their Japanese and U.S. counterparts.

²⁴ Perhaps Americans might be changing their view on this matter as the problem of child abuse becomes more and more visible.

rable situational differences. Family relationships, especially, are to be maintained if possible.

Cross-cultural differences reflect the extent to which the individual is treated as an isolated person or as a member of a community. Respondents in each society were willing to advocate that something should happen to wrongdoers, but they systematically disagreed about what it should be. Across everyday-life situations the modal response of the Japanese was a form of relationship restoration. The sanctions chosen by the Russian and U.S. respondents were rarely directed at the restoration of bonds and often served to isolate the wrongdoer. However, in the crime story where there was no relationship to be restored, the respondents from all three cities proposed isolative sanctions. Except for the fact that Japanese respondents were more influenced by consequence information, respondents from all cities also made similar use of the experimental information when choosing sentences.

Because our focus here is on the Moscow data, we conclude with some thoughts about the relevance of these findings for our understanding of Russian legal culture in general and Markovits's predictions about future use of the courts in particular. Historically, socialist law often has been defined by the ways in which it is thought to be different from capitalist law. Ideally, socialist law is not autonomous, and both the capitalist idea of legal autonomy and the rule of law have been thought to be ideological mystification. Nor is socialist law formalistic in the sense that specialized legal institutions are to use a set of rules to declare winners and losers based on a set of narrow legal principles. The ideas of flexible outcomes and wide ranging dispute resolutions that take into consideration the entire relationship of the disputants, not simply their "legal rights"—ideas that we often associate with the African tribal legal systems studies by Gluckman (1967), Fallers (1969), and others—are part of the socialist ideal as well (Sharlet 1978; Lempert & Sanders 1986). Finally, the central capitalist legal concern with the protection of individual political and civil rights is, in socialist legal ideology, secondary to the protection of rights thought to be even more basic, such as rights to employment, food, and shelter (Sypnowich 1990).

The informalist and nonindividualistic strains in socialist legal culture are attributes shared with Japanese contextualism. Nevertheless, it is clear from our findings that Japanese and Russian respondents do not propose similar sanctions. The Moscow respondents do not propose restorative solutions. In this regard their responses parallel those of Detroiters. Moreover, Moscow respondents support public sanctions in some everyday-life situations. Why do the informalist and non-individualistic aspects of socialist law fail to translate into re-

storative sanctioning, and why do the Moscow respondents recommend public sanctions? A complete answer to these questions will require considerably more research. Here we offer some tentative thoughts.

The socialism that has existed in the CIS and many Eastern European states has sometimes been called state socialism in order to distinguish it from other possible types of socialism (Konrad & Szelenyi 1979; Burawoy & Krotov 1992). As the name implies, the state plays a central role in this type of society (Holmes 1981).²⁵ Underlying the informalist and nonindividualist tendencies in this type of socialist legal culture has been the fundamental vision of the law as an institution for defining and maintaining the ties between the individual and the state (see Markovits 1982:528). This view of legal sanctions is congruent with a larger cultural perspective that places importance on the relationship between the individual and the state as the representative of the collectivity. Maintaining this relationship does not entail the maintenance and restoration of each individual relationship. Indeed, to achieve other goals the legal system sometimes has been prepared to harm individual relationships as, for example, by disallowing doctor-patient, priest-penitent, and familial immunities (Damaska 1986:194). Within this legal culture the actor is more nearly defined as an individual relating to the state than as a person embedded in a network of relationships and defined by those relationships.

If the relationship of the individual to the collectivity is most important, how is this relationship defined? Socialism finds part of its moral justification in opposition to market capitalism's tendency to define every relationship in economic terms. Nevertheless, socialism, at least in its Marxist version, shares with market capitalism a belief that at bottom the most basic part of a relationship is its economic component, the relationship to the means of production. The actor is defined by this fundamental economic fact. Japan is a communal, contextual society in part because every relationship, even economic ones, is thought of as a familial tie. In contrast, it could be said that in both socialist and in market capitalist societies, every relationship, even family relationships, is thought of as economic. Collectivism does not necessarily create a contextual view of actors.²⁶

The centrality of the state-individual relationship also helps to explain the belief of many Moscow respondents that public,

²⁵ Whether a more communal legal culture would exist in other types of socialist societies remains an open question. Certainly, many writers believe that one of the benefits of a socialist order is the potential for higher levels of communalism than typically exist in liberal capitalist societies (Buchanan 1982).

²⁶ Hamaguchi 1985 argues that Western assumptions about the unit of analysis are embedded in the individualism-collectivism distinction: a collectivity is a collection of individuals.

quasi-criminal sanctions—a trial, a fine, or an administrative hearing—are appropriate responses to wrongdoing in the workplace. It is important to emphasize that the use of these sanctions does not necessarily mean a preference for harsh outcomes. Recall that Moscow respondents proposed the most lenient sentences in the crime story. Nevertheless, most Americans and presumably most Japanese would feel that quasi-criminal procedures are misplaced in the workplace context. In part this is because, as Damaska (1986) observes, an important component of Western legal culture is the image of the criminal process as a dispute between the state and the individual (see also Packer 1968).²⁷ This perception of the criminal law contradicts the socialist conception of the state as an embodiment of society's values. According to Berman (1963:283), "The educational role of law has from the beginning been made central to the concept of justice itself." In the socialist view, the criminal process and the workplace administrative processes are important instruments of moral instruction with respect to those values (Damaska 1986:194; Markovits 1986). As Skapska comments (1990:704) with reference to the socialist legal ideal, "The law has, then, . . . an educational function, helping every citizen internalize the content of the law in the process of cooperating with the authorities."

If, for the above reason or others, socialism has not created contextual actors, what does this imply for Markovits's thesis that socialist societies will continue to enjoy relatively low use of law to resolve disputes and, by implication, the thesis that as formerly socialist societies move from command economies to market economies, their litigation patterns will more nearly resemble those of Japan than of the United States? As the Japanese experience teaches us (Haley 1978; Tanase 1990), a strong state can arrange incentives so that litigation is a relatively unattractive alternative. Perhaps Russia will follow Japan's lead and limit the availability of formal adjudication mechanisms. Thus the legal organizational reasons for low litigation rates may continue to exist.

However, if our findings are confirmed in later studies, it would appear that the socialist experience has not created a set of core cultural values supporting restricted access to adjudication. In Japan, such values support and legitimate governmental efforts to limit courts and compel settlement or alternative dispute resolution; at the same time, they deter the individual from taking his or her dispute to law. Without this support Russian efforts to thwart litigation may enjoy less legitimacy and

²⁷ Griffiths 1970 reacts to this central component of U.S. beliefs in calling for a "family model" of the criminal sanction. Griffiths's family model, however, has more in common with the restorative goals of Japanese contextualism than with the educative goals of socialist criminal law.

individuals may be more willing to take disputes to court. Ultimately, if the movement toward market economy in the CIS maintains its present course, we should anticipate that the Russian use of courts will grow more rapidly than it has in Japan. A contextual view of the responsible actor is a prerequisite for widespread cultural opposition to relationship-destroying adjudications of disputes. On the evidence presented here, Muscovites do not hold this view.

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