

Reasoning with Stalin on Zero Tolerance

Background

A distinctive features of Stalin's criminal justice system was its more severe punishment of theft of state and collective property than of private property. Even the most petty of thefts carried mandatory Gulag sentences. The Law of August 7, 1932, "About the Protection of Social Property," was enacted as the famine of 1932–33 was ravaging Ukraine, Kazakhstan, and parts of Russia, and it punished the theft of small amounts of grain with death sentences or ten years in the Gulag. Collective farmers who took small amounts of grain from the fields or milk from "socialist" cows found themselves toiling in the mines and timber fields of Siberia, or worse.

The "mild" Law of August 10, 1940, punished petty theft from state enterprises with only one year in prison. The harsh anti-theft law, the infamous Decree of June 4, 1947, "About criminal responsibility for theft of state and socialist property," mandated minimum sentences of five to seven years for theft of state or socialist property. Under the June 1947 decree, stealing was punished with long prison terms whether one kilogram or one ton of grain was taken. Repeat offenders, thefts organized by groups, and thefts in large quantities were punished by sentences up to twenty years.

This chapter tells the story of the implementation of the 1947 anti-

theft law by a criminal justice system that eventually concluded that it was, in fact, too harsh. Justice officials tried to ameliorate the law but met with fierce resistance from Stalin. They had to await Stalin's death to get more "reasonable" sentencing laws.

The June 1947 Law: The Text

The June 1947 anti-theft law is a parsimonious decree that allows little or no room for interpretation.¹ It required minimum five- to seven-year sentences for theft of state or socialist property and made failure to report offenses subject to mandatory jail terms:

For the purpose of creating a unified set of laws about criminal responsibility for the theft of state and socialized property and the strengthening of the battle against such crimes, the Presidium of the Supreme Soviet of the USSR decrees:

1. The theft, the appropriation, the squandering or embezzlement or any other theft of state property is to be punished with confinement in a corrective-labor institution for 7 to 10 years with or without confiscation of property.
2. The theft of state property that is committed repeatedly or by an organized group or in large magnitudes is to be punished by confinement in a corrective-labor camp for a term of 10 to 20 years with confiscation of property.

[Articles 3 and 4 apply slightly lower penalties to theft of collective or socialist property.]

5. Failure to report to authorities reliable information that theft of state or socialized property is being planned or has taken place as described in articles 2 and 4 of the decree is to be punished by loss of freedom of two to three years or banishment for a period of 5 to 7 years.

Prosecuting the 1947 Anti-theft Law

The 1937 anti-theft law was draconian, but there are ways for society to modify overzealous laws. Crimes must be reported, but the managers and administrators, the ones most likely to witness thefts, may not want to lose workers to prison for trivial offenses. Sentences had to be issued by local prosecutors and judges who might know the defendants or their relatives and friends. They could look for mitigating circumstances; they could try to find excuses.

Stalin's criminal justice system combated such local pressures for leniency by making the mandatory sentences unequivocal, by monitoring judges and prosecutors (even punishing soft justice officials), and by making non-reporting a crime in itself.

The justice ministry was responsible for the conduct of its judges. The primary message of justice ministry reports was that the citizenry could rest easy because the justice ministry was vigilant: "The Ministry of Justice is undertaking all necessary measures to eliminate defects in the work of judges in applying the Decree of June 4, 1947." Its regular reports brag to Stalin about the forceful "battle against theft."

Such pride was justified. A remarkable half million people were prosecuted in the remaining seven months of 1947 after the June law was enacted. Thereafter, justice ministry reports heralded "successes" as evidenced by the declining but still high number of convictions for theft, which stood at a quarter million convictions in both 1948 and 1949. Despite these achievements, the record was not perfect. Justice ministry statistics show that, of those sentenced under the June 4, 1947, decree, six percent received less than five years and some even received suspended sentences—evoking the following complaint about local judges and prosecutors from the justice ministry:

In the practice of applying the [June 4, 1947] Decree, judges make a large number of mistakes and distortions that weaken the struggle against the theft of state and socialist property: There are unsubstantiated sentences by judges, unfounded deviations from penalties called for by the Decree, the unfounded usage of conditional sentences, and also foot-dragging in investigations. In addition, the prosecutor and police, in many cases, do



Poster of Stalin with a happy group of collective farmers (many of whom were punished for petty thefts from the fields under his anti-theft campaigns).

not “arrest” the property of the accused, giving the thief an opportunity to conceal the stolen property.²

Judges could be too lenient, but they could also make mistakes: “Investigatory agencies often bring unfounded indictments for criminal acts, which mean that citizens are unfairly prosecuted and sentenced.” Thus, the tough judge could be accused of convicting innocent citizens, and the lenient judge accused of deviating from the punishments set by the Great Stalin himself.

Trying to Soften Up Stalin

Stalin’s top administrators reached their lofty positions by being able to anticipate his wishes and thinking. If they lacked this skill, they quickly disappeared from positions of authority. His top justice officials applied incessant pressure on prosecutors and judges to

strictly follow the mandatory sentencing guidelines, even threatening lenient judges and soft republics (such as Ukraine) with repercussions.

By 1951, Stalin's leading justice officials had seen more than a million people sentenced to more than five years, often for the pettiest of thefts; any sentence in excess of three years meant automatic incarceration in a camp of the Gulag. The three top criminal justice officials—the minister of justice (K. Gorshenin), the USSR Prosecutor (G. Safonov), and the chairman of the Supreme Court (A. Volin)—thought the time was ripe for a “softer” approach to theft. Presumably these were no amateurs with respect to dealing with Stalin.

In a rather remarkable cooperative effort, these three top justice officials decided in April of 1951 to try to budge Stalin from his zero tolerance policy on petty theft of state and socialist property. On or around April 24, 1951, the trio authored a joint “secret” letter to Stalin entitled “About some misuses of the application of the Decree of June 4, 1947,” which contained a draft decree for Stalin to sign: “About criminal responsibility for theft of state and socialized property to persons committing petty, insignificant theft” to reduce sentences for petty first-time thefts.³

Their joint letter shows their strategy to convince the old man (at that time Stalin had less than two years to live) that it was time for moderation. They begin by reaffirming the wisdom of Stalin's June 1947 decree and assuring him that it was being implemented without “deviations”:

To Comrade Stalin, I.V.:

The passage of the Decree of June 4, 1947, “About criminal responsibility for the theft of state and socialized property” along with other measures has significantly strengthened work against theft and embezzlement. Prosecutorial agencies are bringing such thieves of socialized property to their criminal responsibility without deviations and judges are sentencing them according to the Decree of June 4, 1947, to the harshest measures of punishment.

They then build their case for amelioration in the case of petty theft by first-time offenders:

However, in addition to thieves, who cause significant losses to the state through their crimes, there are a substantial number brought to their criminal responsibility by the Decree of June 4, 1947, committing for the first time small, insignificant acts of thievery. These persons are also sentenced for long terms insofar as the Decree of June 4, 1947, calls for minimal terms of punishment for theft of state property with the loss of freedom for 7 years, for socialized property 5 years.

To bring their case home, the troika of justice officials cites extreme cases that show the need for amendment of the law:

Frequently, women with young children, war invalids, and youths are being sentenced to long terms of confinement. For example, Golovenkina, a female worker at Makhachkala port was sentenced to 10 years for the theft of two kilograms of wheat. Invalid of the Patriotic War of Group II Nasushchnyi, awarded state medals, was sentenced to 7 years for the theft from the bakery where he worked of 2 kilograms of bread. Transport worker Iurina, whose husband was killed at the front and who was left with a 12-year-old child, was sentenced to 7 years for the theft of one kilogram of rice. Female worker Martynes was sentenced to 7 years for the theft from her dormitory of bed sheets. Transport worker Grabo, a wounded veteran of the Patriotic War, was sentenced to 7 years confinement for the theft of 7 packages of cigarettes. The 68-year-old Kolkhoz worker Kamalova was sentenced to 7 years for the theft on July 5 of 5 kilograms of rye, which were taken from him when he was held. The student at the FZO school Khorzhevskii was sentenced to 7 years for the theft of 2 kilograms of potatoes from the school's private plot.

Having set up their argument, the troika submits its compromise proposal: to use the earlier law of 1940—also zero tolerance but only one-year sentences for petty theft and first-time offenders—in place of the harsh June 1947 law:

The Supreme Court in its capacity as overseer makes corrections in specific cases of excessively harsh punishment, but this does not solve the problem. Before the Decree of June 4, 1947, the Decree of August 10, 1940, was in effect, which required a minimum sentence of confinement of one year for petty theft, at the place of work, irrespective of its magni-

tude. When the Decree of June 4, 1947, was published, the Plenum of the Supreme Court of the USSR on August 22, 1947, issued instructions to courts to use the exact measures of punishment called for in the Decree. Despite the necessity to strengthen the battle against theft of socialist property, we propose that the June 4, 1947, measures of punishment not be applied to first-time offenders committing petty, insignificant thefts. We consider it correct to apply in such cases the Decree of August 10, 1940, which calls for a prison term of one year. We present herewith for approval a draft of a decree of the Plenum of the Supreme Court of the USSR. Signed: Minister of Justice USSR, K. GORSHENIN, General Prosecutor USSR, G. SAFONOV, Chairman of Supreme Court USSR, A. VOLIN

Stalin Stands Firm and Why

Stalin's three highest justice officials recommended that petty thieves be sentenced to one year in jail for first-time offenses—a seemingly reasonable position. Their draft decree entitled “About mistakes in the implementation of the Decree of June 4, 1947” was submitted to the administrative department of the Central Committee in the hope (expectation) that Stalin would sign off.

There is no further record of this decree in the Central Committee archives. It disappears from view, which was Stalin's way of rejecting proposals he did not like. Sentencing statistics confirm that Stalin held firm to the long jail sentences. Stalin was not prepared to show mercy to petty offenders, no matter how overwhelming the advice.

Why was Stalin not willing to bend? It may be that Stalin understood the consequences of unchallenged petty theft at the place of work or in agricultural fields. With property belonging to the state or to the collective farm, the products produced there belonged “to everyone and hence to no one.” If a few people stole a few kilograms of grain from the fields or radios from the factory, there would be no great harm. But if everyone stole, even small amounts, the harm to the state could be considerable. Moreover, with everyone either stealing or thinking about stealing, the only way to frighten off the millions of potential thieves would be by exacting excessive punishments even for small crimes.

Stalin's successors wasted little time in softening the June 1947 law. In a 1955 proposal to the Supreme Court, the director of the de-

partment for examining pardons proposed to set a maximum sentence for theft at ten years, citing cases where persons were sentenced to more than ten years for relatively minor thefts:

Sentencing to long periods of confinement (15–25 years) complicates the fulfillment of the most basic task of criminal justice—the reeducation of criminals. In many cases, the criminal loses sight of the perspective of being freed and falls under the influence of organized criminal gangs and, instead of correcting himself, carries out new crimes. Long prison terms, as a rule, destroy the family because according to existing laws a sentence of more than three years is a formal grounds for divorce.⁴

The post-Stalin leadership, therefore, considered law enforcement as a correctional system designed to rehabilitate the criminal, versus Stalin’s view of it as a system to protect the state. In effect, Stalin’s successors entered a new social compact with their citizenry. The new leadership overlooked minor infractions like petty theft and poor work performance that, under Stalin, were punished by prison. This new social compact was pithily captured by the motto: “We pretend to work and you pretend to pay us”; that is, we’ll ignore the faults and mistakes of the leaders if they ignore our own.



Chapter Eleven

Bolshevik Discourse

Before and After

Background

Until Lenin's death in January of 1924, the highest ruling body, the Politburo, operated on the principle of "democratic centralism." The key economic, political, and military decisions were to be made by the Politburo, but, within the Politburo, members could freely express their opinion. Once a Politburo majority or consensus was formed, however, Politburo members had to fall in line and support the decision.

Lenin's death without a designated successor set off a fierce power struggle from which an unlikely Politburo member, Joseph Stalin, emerged victorious. Stalin, who others underestimated as a dull party bureaucrat, used his position as party general secretary to set Politburo agendas and to control administrative appointments. Stalin's use of these bureaucratic levers allowed him to place his people in key party positions for working majorities in the Politburo and Central Committee. After removal of visible political opponents, the Politburo was left with Stalin loyalists, who had few independent thoughts of their own. At this point (around December of 1930), Stalin pretty much had his way within the Politburo, and by the mid-1930s no one dared to challenge him.

This chapter tells the tale of the demise of democratic centralism as Stalin consolidated his power. Once Stalin was, as his colleagues