

# Theft Under Stalin: A Property Rights Analysis

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**THEFT UNDER STALIN:  
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Aside from being a callous tyrant, Stalin has been depicted by some economists as the ‘owner’ of the Soviet Union. Just as the owner of a firm may have an interest in maximizing the value of the firm’s output Joseph Stalin, it has been argued, had an interest in raising the output of ‘his’ domain. Whereas sectoral or cartelistic organizations may have pursued their own special interests, Stalin had an ‘encompassing interest’ in increasing the social output of the Soviet Union as a whole. As with any dictator, a small fraction of the social surplus went to meeting Stalin’s domestic demands (which, with Stalin, were in any case relatively modest). By contrast, the bulk of any growth in social output was directed towards satisfying Stalin’s own preference for enhancing the country’s military might, expanding its international influence and securing the leader’s own personal prestige. With such an exceptionally encompassing and secure interest in the output of his domain ‘Stalin was,’ to quote Mancur Olson, ‘in effect, the owner of the Soviet Union.’<sup>1</sup>

The aim of this paper is to press this analogy further using a concrete example, that of theft of public property from the early 1930s to the early 1950s. Specifically the paper tries to ascertain the extent to which Stalin was able to use the criminal justice system to reinforce an increasingly salient category of property rights—‘public property’—which Stalin had championed. As we shall see, one of the features of public property was that property rights over it were exercised by different sectors of a bureaucracy presided over by a Politburo under Stalin.

The paper begins with a brief introduction to the property rights school. Whereas Mancur Olson uses what is sometimes referred to as a ‘naïve’ version of the model, to which he grafts on interest-group analysis,<sup>2</sup> the paper draws on later versions of the

property rights paradigm which accord a more central role to the state. It then goes on to apply some of the insights of the property rights perspective to a series of campaigns which ranged from the early 1930s to the eve of Stalin's death. The paper concludes with an appraisal of the costs to Soviet economic development of Stalin's mode of property-maintenance and of the varieties which immediately replaced it.

### **Property Rights**

The meaning of the term 'property rights' varies, in large part, in accordance with the intellectual tradition in which it is used. Perhaps the oldest and most venerable approach has viewed property rights as rights assigned to persons or groups by the state.<sup>3</sup> Since the 1960s this legal tradition has been complemented by a new wave of economic analyses of property rights. Assuming that a resource may be put to a number of different uses, the economic approach suggests that a system of property rights will specify which uses may be enjoyed by an individual. These uses may range from immediate consumption of a good to its indirect consumption through exchange. Thus a system of property rights may, among other things, define the feasible set of exchanges within a given economic system. Further, division of property rights may involve the delegation of rights whereby some person other than a legal owner is allowed to exercise a certain set of rights over an asset.<sup>4</sup> In this paper I shall be primarily concerned with this second 'economic' approach to property rights, though, given its subject matter—the judicial enforcement of rights—there will also be references to the first, legal, approach.

A system of property rights may be classified according to a number of different criteria.<sup>5</sup> The first concerns the *object* of ownership. Although types of property may vary

(from items such as machines, and resources, such as land, to information in the form of knowledge of a production process), particular attention is customarily given to one special object of ownership: that over the means of production with which further products and services are made. One of the defining features of the Soviet-type system was that the means of production were ostensibly owned publicly, rather than being in private hands, as under capitalism. As we shall see, this distinction was central to Stalin's attitude towards theft. A second criterion for classification concerns identification of the *owner*. The owner may be an actual person (or group of people) or a legal entity. In the Soviet Union productive property was supposedly owned by the 'people' as represented by the state. One of the premises examined in this paper was that the public weal was in fact 'owned' by the dictator, Joseph Stalin, in the sense that it was he who exercised the most important property rights over productive assets. Finally, a system of property rights may be defined in terms of what the owner *is entitled to do*. This brings us to the property rights themselves, which are normally broken down into three categories. The first refers to the right to earn and to dispose of residual income from an asset. Where rights of disposal of residual income are full and unrestricted these rights may create strong automatic incentives for the owner.<sup>6</sup> The right to transfer permanently to another party ownership rights over an asset—to sell or alienate an asset—is the second type of property right. Here too the property right may create strong incentives. Where an owner buys and then sells a property they have an interest in ensuring that the net value of the property increases as much as possible. Finally, there are rights of control, or user rights. These refer to the permissible uses of a property, up to the right to transform or even physically to destroy it. In economic terms rights of control are often more indirect and

will ordinarily extend to everyday management questions such as which products should be brought out, what prices should be set for them, and so forth. Rather than exercising a single right of control the owner will normally enjoy a large bundle of specific rights; where highly valued rights are excluded, the value of an asset may be considerably lowered.

An important element of the property rights paradigm is that of exclusivity. For one to speak of property at all, there has to be a social mechanism that enforces the assertion of property rights. The resources necessary to ensure the protection of property rights from third parties and to obtain information necessary to exchange property rights (normally through contracts) are referred to as transaction costs. In recent years economists have paid more attention to transaction costs and, in particular, to the role of the state in defining and altering these costs. In this respect there has been an important shift in emphasis since the 1960s. While the first generation of property rights theorists recognized that establishing property rights may be costly, they argued that property rights would nonetheless emerge in response to scarcity, whereby the cost of specifying property rights would be outweighed by the value of the asset in question. Under this theory property rights would emerge in response to exogenous impulses such as new technologies, the opening of new markets, or demographic changes which might affect the relative value of a resource.<sup>7</sup> In this scenario the role of the state was never spelled out; to the extent that the state had any role at all it was assumed to be a positive one in that it would produce the public infrastructure necessary to support property rights.<sup>8</sup> What later came to be known as the 'naïve model' of property rights therefore failed to assign an explicit role to the state or, indeed, to other political or social institutions, in

establishing and enforcing property rights.<sup>9</sup> Later studies have shown that, in the absence of a state, social norms, values and taboos may constrain open access to capital and natural resources;<sup>10</sup> however they have also suggested that the elementary institutional structure of pre-state societies is insufficient to support the complex webs of exchanges among unrelated individuals which characterize advanced economies. By contrast with the 'naïve model' much recent scholarship in the property rights tradition has highlighted the role of the state in defining and enforcing property rights. One of the chief insights of the New Institutional Economics associated with Douglass North is that in order to deal with direct constraints upon them, rulers will not necessarily have the capacity or the desire to reduce transaction costs; indeed in some cases the state may deliberately maintain or even raise transaction costs and, thus, become a source of economic decline.<sup>11</sup> Thus even in relatively advanced economies the relationship between the state, property rights and transaction costs may vary greatly.

The Soviet Union serves as one example of a modern economy with a particular system of property rights and transaction costs. In the absence of price-making markets the transaction costs of valuing productive assets in the Soviet economy were relatively high.<sup>12</sup> At the same time property rights were relatively poorly defined. In the case of the state-owned firm the right of alienation did not exist at all while rights of residual income and of control were exercised by anonymous sectors of the party-state bureaucracy.<sup>13</sup> To the extent that all parts of the bureaucracy were ultimately subordinate to political control by the Politburo and by Stalin we could say loosely that the rights of residual income and control ultimately rested with the leader.<sup>14</sup> Similarly although agricultural cooperatives (i.e. the *kolkhozy*) nominally enjoyed greater rights, Kornai concludes that when one

looks specifically at property rights ‘there is little, real tangible distinction under the classical system between the state owned and the cooperative property forms’<sup>15</sup>; to the extent that property rights over the *kolkhozy* existed they were exercised by different parts of a bureaucracy ultimately directed by Stalin.

Establishing and maintaining this system of property rights however proved to be enormously costly. As in any system the enforcement of property rights involved excluding others from the use of scarce resources, a function that ultimately depended on coercion. In the rest of this paper we shall see how Stalin sought to delineate ‘his’ property rights by means of one of the chief coercive tools available to the state, the criminal justice system. This would entail two steps on Stalin’s part. First he devoted considerable energy to establishing the category of ‘public property’ within criminal law. As opposed personal property, which referred to non-productive assets in private hands, the concept of ‘public property’ provided the foundations through which Stalin could exercise property rights over certain strategic resources. Secondly, Stalin took decisive measures to beef up criminal sanctions. As a ruthless leader this incurred few personal costs on Stalin but, as we shall see, the dramatic ratcheting up of punishments imposed significant transaction costs on the Stalinist state.

### **Theft under Stalin**

Stalin resorted to the criminal justice system as a means of excluding third-parties from the use of scarce resources. In this way criminal justice was deployed as a crude device for protecting Stalin’s and the soviet bureaucracy’s property rights over strategic assets. Soviet leaders however had not always used the justice system in this way. In the



early NEP period most property disputes were subject to the civil codes which, by their nature, resolved disagreements strictly between private parties.<sup>16</sup> It was largely with the advent of compulsory planning and the socialization of the economy in the early 1930s that efforts were made to regulate the economy by means of criminal law.<sup>17</sup> New statutes provided steep sanctions for an array of new crimes such as speculation, the willful or negligent breach of planning discipline, the negligent release of substandard goods by economic managers, and shirking and unauthorized quitting by workers. Similarly, in a typically heavy-handed move the regime tried to lower the transaction costs of trade by imposing severe penalties for deception of purchasers by false weights and measures.<sup>18</sup> However, the most radical innovation in the application of criminal justice to the economy was the introduction of a new category of theft: that of ‘public property.’ In addition to stipulating what, in legal terms, ‘public property’ would mean, the new legislation highlighted the significance attached by Stalin to the protection of such assets. Over the course of Stalin’s tenure, the leader returned to the issue of theft of public property on three occasions. I shall deal with each of these in turn.

#### The Law of 7 August 1932

Stalin’s law on theft of August 1932 can not be viewed independently of the wider process of mass collectivization and the state’s policy of procuring grain from peasants. Grain was viewed as a quintessential public asset, a ‘strategic raw material’ in the words of Moshe Lewin, which was ‘indispensable to the process of running the state.’<sup>19</sup> When Stalin decided to set procurements at rates likely to cause hunger and death the peasants responded with resistance and reappropriation. In what would turn out

to be a turning point in Stalin's struggle with the peasants, however, the leader dug in his heels and remained defiant. Capitalism would not have destroyed feudalism, he argued in a letter to Kaganovich on 26 July 1932, 'if it had not made private property holy and punished in the harshest way violators of its interests...So too socialism cannot finish off and bury capitalist elements and the individual self-seeking habits and traditions that serve as the basis for stealing...if it does not announce that public property (cooperative, kolkhoz, and state) is holy and inviolable...and if it does not protect that property "with all its forces"'.<sup>20</sup> True to his word within two weeks Stalin had concentrated the might of the soviet state in an infamous new edict on theft of public property which he himself would have a hand in drafting.

The law of 7 August 1932 'On Protecting and Strengthening Public (Socialist) Property,' became famous for the extremely high tariffs it set for thefts. Equating collective farm and cooperative property with 'state' property it ruled that in thefts of the former two categories the courts apply sentences of death by shooting, or, in mitigating circumstances, terms of confinement of no less than ten years.<sup>21</sup> Apart from its shocking sanctions, the significance of the decree lies in the fact that for the first time in soviet law it introduced the theoretical distinction between theft of public property and the theft of property of individual citizens. In declaratory terms the decree announced that public property was to be regarded as 'sacred and inviolable' and that 'all persons making attempts on its integrity' be viewed as 'enemies of the people.' Technically the decree hardened the emerging distinction between two general categories of theft, the ancient Russian word for stealing, *pokhischenie*, and *khischenie* a term of more recent origin which was henceforth reserved for the stealing of state or public property.<sup>22</sup> To the extent

that offenders were designated as ‘enemies of the people,’ the new category of theft of public property was now regarded as a political crime—that is, a crime against the state—and was placed in the official text of the Russian criminal code as an annex to the infamous article 58 on counterrevolutionary crimes.<sup>23</sup>

The law of 7 August was primarily designed to crush peasant resistance to the regime. Correspondingly, the bulk of cases prosecuted under the decree related to theft of grain in the countryside. The decree, however, was applied to thefts of all kinds of public property. Further, the term ‘theft’ was extended to include a host of related offenses such as the destruction of state property, the failure to protect state property and, in a supreme court ruling of 1934, even the causing of shortages in the soviet trade system.<sup>24</sup> Following the August decree cases of ‘appropriation’ (*prisvoenie*) and ‘embezzlement’ (*rastrata*) which previously had been treated separately under article 168 of the criminal code were also brought under the larger umbrella category of *khischenie*. Nevertheless, efforts such as these to reinforce the state’s control rights over grain ran into serious difficulties. In the first place it was not entirely clear from the decree itself which cases merited the death penalty and which custodial sentences.<sup>25</sup> A large share of cases prosecuted under the August decree were in fact for petty theft (that is, for small quantities of grain worth less than fifty rubles). When set against the truly draconian terms of the decree the anti-theft campaign contravened the private morality of judges and other state officials who were charged with implementing it. In the Russian Federation judges frequently applied article 51 of the criminal code which entitled them to set terms lower than the minimum prescribed by law; while other officials, including political activists, refused to report thefts, especially minor ones, which had taken place. From the point of view of judges,

matters were not helped by the fact that the quality of evidence and the legal standard of prosecution cases was often abysmally low.<sup>26</sup>

Resistance to the anti-theft campaign was finally broken when Stalin intervened with a speech on the topic to the plenum of the central committee in January 1933. Stalin called the theft of socialist property a 'revolutionary outrage' and announced that the decree of 7 August represented the 'basis of revolutionary legality today. The obligation of implementing it in the strictest fashion is the foremost duty of every communist, every worker, and every collective farmer.' Over the new few months prosecutions under the law increased fourfold (as a whole prosecutions in the RSFSR shot up from 22,347 in 1932 to 103,388 in 1933) with the majority of those sentenced receiving full ten-year terms, irrespective of the amounts stolen.<sup>27</sup>

By the late spring of 1933 the theft decrees appeared to have helped firm up the state's grip on public property. This was, however, achieved at enormous cost. In the heat of the campaign legal procedures had, in many cases, fallen apart. There were also widespread cases of vigilantism and of arbitrary seizures of peasant property which, while they may have intimidated and antagonized the peasants, would have done little to help specify property rights. Aware of the damage to popular morale and to the authority of the central state of such local outbreaks of arbitrary rule, on 8 May 1933 Stalin ordered that limits be placed on coercion and that courts return to observing procedural norms. To central legal officials the new instruction was interpreted as a signal that the law of 7 August should be reserved for the most serious, large-scale thefts. Accordingly a large proportion of new theft cases were brought under the far more moderate article 162 of the criminal code.<sup>28</sup> By mid-1935 Stalin took further measures to reduce arbitrary repression

in the countryside by authorizing a decree condemning unauthorized arrests. With the bulk of grain in the governmental granaries, to paraphrase Moshe Lewin, ‘the leadership [once more] became liberal and interested in legality.’<sup>29</sup>

While the campaign against theft of public property may have faded, Stalin’s preoccupation with the ‘protection of public property’ remained firm. This concern found expression in the new Constitution which was adopted in 1936. While rights over public property could by their nature only be loosely defined, the Constitution was as concrete and specific as possible about the scope and nature of public assets.<sup>30</sup> Both so as to entrench personal incentives and to demarcate the boundary between public and other forms of property the Constitution also for the first time spelled out in detail the various ‘rights of personal property’ as protected by law.<sup>31</sup> Yet throughout the document the centre of gravity remained very much the maintenance and protection of public property. Article 131 stipulated that it was ‘the duty of every citizen of the USSR to safeguard and fortify public, socialist property as the sacred and inviolable foundation of the Soviet System,’ and it went on to identify ‘persons encroaching upon public, socialist property [as] enemies of the people.’<sup>32</sup> Senior legal officials were to make much the same point. ‘The defense of public (socialist) property—the foundation of the whole Soviet order,’ wrote Vyshinskii in his *The Judicial System of the USSR* published in 1936, ‘is the most important task of the entire Soviet state, and of such bodies as the agencies of Soviet Justice....’<sup>33</sup>

The various methods of maintaining the state’s—in effect, Stalin’s—property rights incurred a variety of costs. The policy of procurement may have, in Lewin’s words, entailed ‘more large-scale mass coercion than any other state activity in those years,’ but

it did offer the possibility of being institutionalized: '[N]ow, as a tax,' wrote Lewin of the period after 1933, '[procurements] were supposed to become a regular and predictable norm.' The state of course, went back on its word, and increased the rate of tax whenever it saw fit, but it was in the final analysis able to effect the transfer of property from peasants to state: 'For the peasants, all this meant that the grain was no longer his but the state's.'<sup>34</sup> Procurement thus became a device through which the state regularized its control over grain. Although costly in terms of the initial coercion needed to set it up, it was ultimately effective. By contrast the theft campaign proved to be a clumsy and erratic tool for protecting property rights. Although it helped to cow the peasants, the costs to state and legal authority were judged to be too high to be sustained over the long term.

#### The Edict of 10 August 1940 on Petty Theft

The law of 7 August had served as part of a broader campaign to bring about the submission of the peasantry. It hinged, however, on a key distinction between personal and public property which was consistent with the organizational form of peasant transformation: the bulk of peasants were to work and live on collective farms which were designated as a new type of 'public' or 'socialist' property. Further, whatever their varying costs, the procurement and anti-theft campaigns meant that a substantial proportion of peasant grain could be successfully claimed and used at its discretion by the state.

The edict on petty theft of August 1940 served an entirely different purpose. Along with a raft of other laws and edicts, the main aim of the August decree was to help the regime manage the industrial labour force. In the absence of strong positive incentives

the state hoped to use criminal law to raise the overall performance of the industrial economy on the eve of the war. Earlier efforts, in the mid-1930s, to manipulate industrial production through criminal law had, to be sure, not fared well.<sup>35</sup> The main thrust of pre-war criminal legislation on industry was to have a different slant. The celebrated edict of 26 June 1940 criminalized unauthorized quitting (with a prison term of two to four months) and shirking (with a sanction of one to six months' corrective work and a deduction of earnings of up to 25%) by workers.<sup>36</sup> This criminalization of labour infractions was instituted in response to charges on the eve of the war that planned targets were not being met because of high labour turnover and the concomitant labour shortages. Through a combination of direct means (criminalizing unauthorized quitting) and indirect ones (removing the incentive to commit disciplinary infractions) this extension of criminal law was intended to bind workers to their enterprises. The edict on petty theft which followed six weeks later was entirely in keeping with this logic. The main purpose of the edict was to prevent workers from 'staging' thefts in order to be dismissed from an enterprise. Whereas the vast majority of petty thefts had previously led to non-custodial sentences (if they led to prosecutions at all), the edict of 10 August set a minimum term of one year's imprisonment for petty theft in factories. This was supposed to act as a deterrent to those workers who contemplated theft as a means of getting shot of a factory and thereby regaining their personal mobility.<sup>37</sup>

The edict of 10 August fitted into no ideological framework at all. It was not presented as strengthening the regime's hold of 'public' property.<sup>38</sup> Given the minute sums involved it would have been even harder than normal to construe the campaign in these terms. Indeed the campaign led to a perverse situation whereby defendants charged

with ‘petty’ theft faced stiffer terms than those who had committed ‘ordinary’ (i.e. by their nature, more serious) thefts. The primary goal of the campaign was quite different: to enable the regime to manage the labour force.

In fact, the significance of the August edict lay elsewhere. Until 1940 Stalin had restricted his most severe sanctions to the political sphere. By contrast, ordinary crimes had been treated with relative leniency. It had been an essential feature of the 1932 edict on theft that it had been conceived entirely in ‘political’ terms and, accordingly, inserted as an annex to article 58 of the criminal code. The edict on petty theft (along with a parallel clause on petty hooliganism) represented, in Solomon’s words, ‘a qualitatively new incursion into the realm of severity’ in ordinary criminal law. As such it prepared the ground for the most notorious of Stalin’s anti-theft campaigns, that of 1947, in which the tyrant’s readiness to use severe punishments for ordinary crimes would reach new heights.

#### The Edicts of 4 June 1947

The theft edicts of 1947 were imposed in response to two trends which had become apparent over the preceding years. The first and most immediate concern was the rise in the volume of theft cases, especially theft of social property, which had occurred in the midst of war. Acute wartime shortages had given rise to a profusion of small-scale thefts of grain and other foodstuffs, especially amongst women and children. (See Table 1.) The emergency distribution system also gave rise to various forms of covert misappropriation, such as ‘self-service’ (*samosnabzhenie*) at worker supply departments (ORSy), the forging of ration cards, the counterfeiting of food and industrial vouchers,



and embezzlement, all of which were commonly treated, with a certain amount of license by the regime, as forms of 'theft.'<sup>39</sup> Following a campaign against thefts of grain and farm produce in 1944 theft convictions fell.<sup>40</sup> However the catastrophic harvest and consequent food shortages of autumn 1946 led to another sharp rise in theft cases, which mushroomed from 218,960 in 1945 to 263,085 the following year.<sup>41</sup>

A second factor which prompted the theft decrees was the unraveling of stalinist property forms which had become evident at the close of the war. Particularly in the formerly occupied regions to the west collective and state farms had given way to alternative types of ownership, especially as a result of the expansion of the private plot. According to one source, by the end of 1946 there had been 2,255,000 cases of illegal misappropriation of land involving 4.7 million hectares.<sup>42</sup> Further, in the aftermath of the war, regional and district party committees had taken to requisitioning farm produce and other collective farm property for a host of locally determined ends, ranging from the construction of houses for leading workers to the organization of banquets for local dignitaries. On 3 August 1946 the minister of state control, Mekhlis, sent a long letter to Stalin and Zhdanov 'On the squandering of kolkhoz property by leaders of party organizations' which concluded: '..The illegalities committed with respect to kolhoz property by many party workers is on such a scale that often the party apparatus is not in a fit state to adopt a principled position on those who have squandered kolkhoz output.'<sup>43</sup>

The leadership's responses to these worrying developments took a number of forms. The first was a joint resolution 'On measures to liquidate violations of rules on the agricultural cooperative (*artel*) in collective farms' of 19 September 1946 which condemned the wartime expansion of private farming at the expense of public farming

and formally returned 13 million acres to the collective farms. The resolution also promised to convict as criminals those leaders found guilty of ‘anti-kolkhoz actions.’<sup>44</sup> At the same time the central leadership issued two resolutions—on 27 July and 25 October—on enhancing the protection of grain. The resolutions spoke of the disturbing growth of thefts and, reminding them of the inviolability of state grain, ordered the justice agencies to take extreme measures—including a return to the law of 7 August—in order to protect reserves.<sup>45</sup> At the same time, the significance of the protection of public property was highlighted in the legal press. Thus, for example, the journal *Socialist Legality*, in an editorial in the final issue of 1946 reminded its readers of Stalin’s speech to the central committee of January 1933 where the leader had equated the ‘thief who plunders the social weal’ with ‘a spy and a traitor, if not worse.’ Shortly after, Stalin was quoted, in the same journal, as seeing in the ‘preservation of socialist property’ the hallmark of Soviet ‘revolutionary legality.’<sup>46</sup>

Behind the scenes moves were afoot to introduce new legislation which might help staunch the surge in thefts and to consolidate public property. While keen to tackle the theft epidemic, proposals from the justice agencies on this question tended to be quite constrained and oblivious of the wider property issues which were troubling Stalin. Thus, for example, a memorandum from the heads of the justice agencies in January 1947, apart from proposing quite modest increases in sanctions for theft made no distinction at all between theft of personal and theft of public property. After the orgburo, at a meeting of 5 March 1947, set up a commission to look further into this question a new draft, at the beginning of April, formally distinguished between the two categories of theft, setting terms of six months to four years’ imprisonment for ordinary theft of state property and

three months to three years for ordinary theft of personal property. In May Stalin intervened and, setting aside the existing drafts, drastically altered the terms of the new legislation. In the event, two decrees were issued on 4 June, one for theft of personal property and the other for theft of public property. Stalin ratcheted up the minimum term for theft of personal property from three months to five years and for theft of state property from six months to seven years; maxima for the two crimes were set at six years and ten years respectively. Those who stole state property a second time were to receive a custodial sentence of between ten and 25 years.<sup>47</sup>

The June decrees were accompanied by a barrage of articles and pamphlets in which the public were treated to recycled pre-war quotations from Stalin on the need to defend public property.<sup>48</sup> 'As Lenin had done,' the chairman of the USSR supreme court, Ivan Goliakov, declared shortly after the decrees were passed, 'comrade Stalin equates the thief with the enemy. The growth of public wealth and the strengthening of the socialist state have by no means removed all the threats to our achievements. On the contrary, as comrade Stalin has shown...the present stage in the development of our state requires us not to weaken but to redouble our fight with these plunderers.'<sup>49</sup> Elsewhere Goliakov laid stress on the continuing political significance of these crimes. In the epoch of Stalin's Five-Year Plans, he said, the enemies of Socialism had resorted to 'theft of socialist property as one of the fiercest forms of class resistance.' 'The reference in the new law to the political character of theft of socialist property is of deep theoretical and practical significance. It reminds us that in this kind of criminal activity more than any other we find survivals of capitalism in the consciousness of our people.'<sup>50</sup> The need to crack down on thefts of public property was all the more important in conditions of post-war reconstruction. 'The preservation of public

property acquires special significance now, with the end of the war, as the Soviet state directs every kopek, every kilogram of metal and every ounce of fuel to the rapid reconstruction and development of the economy.<sup>51</sup>

The June decrees had a devastating impact on the lives of those convicted of theft. Not only had Stalin removed the discretion of judges to apply lighter sentences in ordinary cases but, in an unpublicised directive of the council of ministers, it was resolved that the new decrees would also supersede the edict of 10 August on petty theft.<sup>52</sup> As a direct consequence of the decrees, the average sentence for theft of public property more than doubled from 3.2 years to 8.7 years while the increase for theft of personal property was, in relative terms, even more striking, from 1.3 to 6.2 years. (See Table 2.) In fact, in view of the share of theft cases among all cases prosecuted in the courts (never less than a third), the June decrees were to change the whole thrust of sentencing policy (See Table 3).

The relationship between the June decrees and the volume of theft cases is complex.<sup>53</sup> The immediate effect of the decrees was to bring about a sharp increase in the number of cases as justice officials came under intense pressure to hunt down thieves. Thus the number of people convicted for theft of socialist property rose from 263,085 in 1946 to 387,697 in 1947—the year of the decrees—while the corresponding rise for theft of personal property was from 135,282 to 246,512. Although significant in themselves, the new sentencing regime and the steep overall rise in theft cases concealed an important distinction. The June decrees were a central tool for protecting and delineating different forms of property. By focusing so clearly on the distinction between public and personal property—in a far more systematic form than had been the case with the law of 7 August—Stalin made concrete the separation between two different property systems. The protection

of personal property was clearly important as a means of stabilizing the regime and of providing incentives for individuals to work harder and to build careers. The protection of public property was, by contrast, conceived as an instrument for securing the bureaucracy's and, ultimately, Stalin's rights over certain kinds of assets. In delineating the distinction between the two Stalin aimed to specify more clearly—albeit, in comparative terms, still in a rough and ready way—the property rights involved.

Although the upward turn in sentencing and the growth in cases applied in equal measure to personal and public property pride of place throughout the campaign was given to the latter category. Daily newspapers and the legal journals regularly returned to Stalin's pre-war slogans on the centrality of public property to the constitution and to the legal system. Justice leaders, too, highlighted the special 'political' significance of the decree on protecting public property. This outward commitment was matched by the tone of internal communiques. Reports to Stalin from justice leaders on the general state of criminality in the USSR accorded a high priority to theft of public property, while theft of personal property was pushed down the hierarchy of categories.<sup>54</sup> Memorandums exchanged by party officials also made it clear that the theft of public property should assume top priority, and they expressly ruled out the possibility that thefts of personal property should carry heavier sanctions than thefts of socialist property.<sup>55</sup> In addition, the justice agencies were given special responsibility to reclaim losses which had arisen from public property thefts. Thus a ten-page report on the theft campaign to Stalin in summer 1950 from the justice minister, Konstantin Gorshenin, began with the striking fact that in 1948 bailiffs had received court orders for the recovery of 1.495 billion roubles in losses from public property thefts, while the figure for 1949 was 1.202 billion rubles. 'From [these figures] it is apparent,' Gorshenin

went on, 'what vast losses the economy incurs as a result of thefts of state and public property.'<sup>56</sup>

The decree on theft of public property was part of a general campaign to restore the state bureaucracy's control over strategic assets. Although it was prompted in part by the famine of 1946-1947 its remit was far wider, so that by 1948 and 1949 almost half of all convictions for public property thefts were for crimes committed in the cities.<sup>57</sup> At the same time the campaign against thefts should be set against a broader backdrop in which the post-war regime sought to use the criminal justice system not only to restore the bureaucracy's 'control rights' over nominally 'public' assets, but also to restrict rights of 'alienation' and 'residual income' which may have passed to third parties, and to limit agency costs. From 1945 to 1947 the number of convictions for serious crimes (i.e. those involving preliminary investigations) rose from 627,882 to 1,053,708. Apart from the rise in theft cases, the two other types of crime which accounted for the rise in convictions were both sensitive to a change in emphasis in regime policy. The dramatic increase in the incidence of convictions for 'speculation and violations of the rules of trade' reflected an attempt by the regime to crack down on rights of 'residual income' and 'alienation' which had accrued to traders;<sup>58</sup> at the same time, the steep rise in prosecutions for 'service crimes' reflected the regime's determination to reduce agency costs by punishing wayward or unreliable officials who had engaged in 'abuse of office' or 'negligence.' (See Table 4.) In its own typically cruel and clumsy way, the post-war state used criminal justice to prop up the bureaucracy's rights to key assets while restricting the rights of others.

Owing to the laudable moral resistance of some judges and the bureaucratic incentives impinging on procurators, between 1947 and 1951 convictions for both kinds

of theft (as well as for speculation and service crimes) fell to rates well below those that had existed prior to the adoption of the June decrees.<sup>59</sup> As he reached the end of his days, an indignant Stalin responded with one final attempt to deliver, courtesy of the criminal justice system, a fully stalinist system of property rights. The leader, who devoted a considerable share of his theoretical treatise *Economic Problems of Socialism in the USSR* to the question of property forms<sup>60</sup>, resumed earlier efforts to get justice officials to protect public property by means of the criminal law. Although Stalin himself gave only a brief and perfunctory speech to the XIX Congress, two of his right-hand men, Matvei Shkiriakov and Aleksandr Poskrebyshev, gave vent to their concerns on this score. Poskrebyshev's speech, in which he fused some of Stalin's earlier slogans on public property, was particularly combative:

Comrade Stalin teaches us that the safeguarding of socialist property is one of the basic functions of our state. Soviet law strictly punished pilferers of public property. The Stalin Constitution states that persons who infringe on socialist property are enemies of the people...Comrade Stalin has pointed out that a thief who pilfers public property and undermines the interests of the national economy is the same as a spy and a traitor if not worse.<sup>61</sup>

Although Stalin himself did not go public on this question, he did apply pressure behind the scenes on senior justice officials to reactivate their struggle with thefts. Thus on 6 May 1952 the supreme court issued a landmark resolution authorizing a return to harsher interpretations of the June decrees. Towards the end of 1952, the resolution was accompanied by a host of articles in the press on the embezzlement of socialist property, some of which were overtly linked to 'counterrevolutionary wrecking.' Further, rather than moderating the provisions of the June decree on theft of public property, draft

legislation in January 1953 sought to extend liability by adding a sixth article on ‘connivance.’<sup>62</sup> Toward the end of 1952 and in the beginning of 1953 the minister of justice, Gorshenin, and the chairman of the supreme court, A.A. Volin, came out with strongly worded articles calling for an intensification of the struggle with large-scale thefts.<sup>63</sup> In February, the ministry of justice increased its checks and reporting requirements for thefts of socialist property. As late as March 1953, the month of Stalin’s death, the procuracy issued further orders calling for intensification of the struggle with thefts in cooperatives and trade networks.<sup>64</sup>

## **Conclusion**

The management of the economy following Stalin’s death remained, in many respects, hugely inefficient. Serviceable information on economic capacity and the value of assets became even harder to come by as agents found it easier to collude and deceive superiors, while, with the passage of time, prices from the pre-communist period became even less relevant as markers of relative scarcity.<sup>65</sup> By the late 1950s favourable conditions for economic growth had declined as surplus labour was exhausted and the transaction costs of technological progress mounted.<sup>66</sup> Even by the standards of Stalin’s successors, however, the enforcement costs of maintaining the economy in a perpetual state of emergency had been intolerably high. Recognizing that tax rates, especially on the peasantry, had been excessively high—thus distorting incentives—the new leaders relaxed them. Aside from wider efforts to scale down repression by curtailing the powers of the secret police, Stalin’s successors also sought to lessen the role of criminal justice as a tool for managing the economy. Overbearing criminal sanctions had incurred high



transaction costs in the form both of overzealous agents who had engaged in acts of vigilantism and arbitrary seizures, and in the form of moral and courageous judges who had resisted and circumvented the new laws, often at some risk to themselves. Consequently, after Stalin's death criminal penalties were lowered, not least for thefts of socialist property.

Stalin did, however, have one major advantage over his successors. To quote Olson: 'Whereas a dictator like Stalin had an exceptionally encompassing interest in the productivity of the society, each coterie of subordinates engaging in tacit collective action in each industry, office, or locality had only a narrow interest... Thus over time the single most important incentive to increase output under the central plan in a Soviet-type economy—became less potent...'<sup>67</sup> In order to secure this encompassing interest, the dictator embarked on an all out attack on private property. In this respect the criminal justice system was essential to Stalin because it enabled him to harden the distinction between public property and other forms, and to translate the theoretical category 'public property' into concrete and practical everyday terms. Throughout his tenure Stalin constantly returned to the topic of public property, and, each time he did this, his renewed interest was accompanied by a campaign against thefts of socialist property. The criminal justice system was, of course, an incredibly clumsy tool for specifying the dictator's property rights. By contrast, however, property rights in the post-Stalin regime had become so dispersed that it became hard to speak of them existing at all.<sup>68</sup>

Table 1

Number of Persons Convicted for Thefts of Public Property  
and Service Crimes in the USSR, 1939-1944

Year	For Thefts of public Property	Thefts committed by Women	Thefts committed by Children (under 16)	Service Crimes
1939	140,787	9.7%	5.5%	118,536
1940	171,194	12.5%	3.5%	121,292
1941	181,443	14.3%	4.3%	123,138
1942	193,527	30.3%	7.4%	80,866
1943	216,608	41.8%	7.2%	88,778
1944	248,668	43.4%	6.9%	101,048

Table 2

Averages Sentences for Theft of Public and Personal Property in the USSR, 1946-1952

		Average Sentence (Years)	Non-Custodial Sentences (%)
Theft of State Property (1946-1952)	Before June Decrees	3.2	26.1
	After June Decrees	8.7	7.2
Theft of Personal Property (1946-1952)	Before June Decrees	1.3	20.0
	After June Decrees	6.2	5.0

Table 3

Sentences for Ordinary Criminal Cases (Excluding Cases Heard Under the Edicts of 26 June 1940 and 14 April 1942) (in Percentages)

		1940	1946	1949
Custodial Sentences	Over 10 years	--	--	6.2
	5-10 years	5.6	9.4	30.6
	Less than 5 years	43.6	49.3	25.3
	<i>Total</i>	<i>49.2</i>	<i>58.7</i>	<i>62.1</i>
Correctional Labour work		31.6	23.1	17.8
Suspended		7.0	9.5	6.3
Fines		10.1	9.5	9.6
Public surety		1.8	1.3	4.0
Other Punishments		0.3	0.8	0.2

Table 4

Convictions for Four Categories of Crime in the USSR, 1945-1947

	Theft of Public Property	Theft of Personal property	Speculation	Service Crimes	Convictions for all cases involving Preliminary Investigations
1945	218,960	110,390	23,027	113,165	627,882
1946	263,085	135,282	33,389	136,132	810,639
1947	387,697	246,512	48,769	170,039	1,053,708

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<sup>1</sup> Mancur Olson, 'The Hidden Path to a Successful Economy,' in Christopher Clague and Gordon C. Rausser, eds., *The Emergence of Market Economies in Eastern Europe* (Oxford: Blackwell, 1992), 57. Another writer who has portrayed the dictatorial possession of soviet-type economies in such terms is Kazimierz Z. Poznanski: 'These regimes were basically dictatorial, with a single person, the party secretary, controlling the state and thus being the ultimate 'owner' of the national wealth and personally interested in its protection.' See his 'Property Rights Perspective on Evolution of Communist-Type Economies,' in Poznanski, ed., *Constructing Capitalism* (Oxford: Westview, 1992), 79. Although Olson's account can be generalized to other modern autocracies, the Soviet-type system had peculiar surplus-diverting properties. '[T]he "implicit tax-price discrimination" pioneered by Joseph Stalin...enabled Stalinist regimes to obtain a larger proportion of social output for their own purposes than any other regimes had been able to do.' Mancur Olson, 'Dictatorship, Democracy and Development,' *American Political Science Review* vol.87 no.3 (1993): 575 fn.7.

<sup>2</sup> For a convincing review of Olson's work in these terms see Thrainn Eggertsson, *Economic Behaviour and Institutions* (New York: Cambridge University Press, 1990), 279-280.

<sup>3</sup> The legal tradition is closely connected to a wider philosophical concern with rights. Following W.N. Hohfeld [*Fundamental Legal Conceptions* (Yale: Yale University Press, 1919)], rights are a combination of duties and claims, of which the content is what a right-holder can claim and a duty-bearer can respect. According to this definition, when a right exists, the bearer owes a duty to the holder and the holder has a 'claim' on the bearer to perform the duty owed. However claims enforced only by reputational incentives are at best contingent rights, which may be ignored if duty-bearers perceive an advantage in doing so. Hence follows the importance of 'second-order' relations of enforcement, carried out by a third party, normally the state. For an example of positive analysis which tries to extend Hohfeld's concepts to airport slots by identifying the relevant 'right-holders,' 'duty-bearers' and 'rule makers or right-grantors' see William H. Riker and Itai Sened, 'A Political Theory of the Origin of Property Rights: Airport Slots,' *American Journal of Political Science* vol.35 no.4 (1991): 951-969 at 953-54.

<sup>4</sup> For useful definitions of property rights in the 'economic' tradition, see Armen Alchian, 'Some Economics of Property Rights,' *Il Politico* vol.30 no.4 (1965): 816-829; Harold Demsetz, 'The Exchange and Enforcement of Property Rights,' *Journal of Law and Economics* vol.7 no.3 (1964): 11-26; id. 'Toward a Theory of Property Rights,' *American Economic Review*, vol.57 (1967): 347-359; Armen Alchian and Harold Demsetz, 'The Property Rights Paradigm,' *Journal of Economic History* vol.33 (1973): 16-27; Thrain Eggertsson, 'Economic Behaviour,' 33-34; and Yoram Barzel, *Economic Analysis of Property Rights* 2<sup>nd</sup> ed (New York: Cambridge University Press, 1997), chap.1, esp.at 3-4.

<sup>5</sup> This section draws heavily on Janos Kornai, *The Socialist System: The Political Economy of Socialism* (Oxford: OUP, 1992), 63-66.

<sup>6</sup> Residual income refers to the income accruing to the owner once all the costs associated with utilizing the property have been deducted. Residual income is sometimes equated with 'rent.' This however can be misleading. To illustrate this, Kornai presents the example of a tenant farmer who pays a fixed rent to the landowner for the use of the land: 'In this case the residual income is made up of the income from the produce of the land, less all costs, including the rent. To that extent, it is the tenant who has [the right to residual income from] the produce and not the landowner.' Kornai, *Socialist System*, 64 fn.5.

<sup>7</sup> One of the earliest and most influential articles in this tradition saw property rights as emerging to 'internalize externalities.' 'What converts a harmful or beneficial effect [of an action] into an externality,' wrote Harold Demsetz, 'is that the cost of bringing that effect to bear on the decisions of one or more of the interaction parties is too high to make it worthwhile... 'internalizing' such effects refers to a process, usually a change in property rights, that enables these effects to bear (in greater degree) on all interacting parties.' 'Increased internalization, in the main, results from changes in economic values, changes which stem from the development of new technology and the opening of new markets...' Demsetz, 'Toward a Theory,' 350.

<sup>8</sup> Among the many positive and seemingly automatic functions of the state in lowering transactions costs are its role in maintaining standards of measurement and in introducing a stable currency since variable and unpredictable inflation could increase the cost of transacting.

<sup>9</sup> The term 'naïve model' comes from Eggertsson. See his *Economic Behaviour*, 249-254, 271.

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<sup>10</sup> There is a good discussion of this in Eggertsson, *Economic Behaviour*, 284-296.

<sup>11</sup> See Douglass C North and Robert Paul Thomas, *The Rise of the Western World: A New Economic History* (Cambridge: Cambridge University Press, 1973); and idem, *Structure and Change in Economic History* (New York: Norton, 1981). Useful examples of cases where the state has clearly not acted to minimize transaction costs are given in Eggertsson, *Economic Behaviour*, 271-275, 328-332.

<sup>12</sup> This was especially the case if these assets were to be valued in terms of the preferences of consumers. 'In practice,' writes Eggertsson, 'the allocation of resources in such systems is in part based on planners' preferences.' Eggertsson, *Economic Behaviour*, 37.

<sup>13</sup> As Kornai acknowledges it is relatively hard to define in clear-cut terms in the soviet case what one means by 'residual income.' However one defines it, the magnitude of the residual income is set by the bureaucracy and it is the bureaucracy that possesses right of disposal over it. At the same time no individual member of the bureaucracy has a total right of disposal over the residual income which is restricted by a web of regulations and prohibitions. Similarly, although rights of control—which as suggested earlier usually include a large assortment of rights—are exercised by the bureaucracy as a whole they are unevenly distributed across the bureaucracy. To further complicate matters, the bureaucratic sector exercising direct control over state-owned firms is separated organizationally from the apparatus handling financial affairs and, accordingly, the rights over residual income. Thus in the socialist system '[t]he depersonalizing of property becomes extreme. Whatever state-owned firm one takes as an example, there is no individual, family or small group of partners to whom one can point as owners...State property belongs to all and to none.' See Kornai, *Socialist System*, 73-75.

<sup>14</sup> This clearly is a view that would not be shared by Kornai who argues: 'Since the connection between the 'personal pocket' and the residual income of the state-owned firm is entirely absent, those who have the deciding voice in how the residual income is used are not real owners at all...Since no one can pocket the profits and no one need pay out of his own pocket for the losses, property in this sense is not only depersonalized but eliminated.' Ibid, 74-75. In Olsonian terms however there was a connection between Stalin's 'personal pocket' and residual income write large in that the leader personally benefited from a rise in social output of 'his' domain and stood to lose from any fall. In a sense Kornai allows for this possibility when he acknowledges that 'Only at the very top are the two branches of the bureaucracy [exercising rights of control and of residual income] under the common direction of the party general secretary, the Political Committee, and the government.' See ibid, 74.

<sup>15</sup> Kornai, *Socialist System*, 80. The one exception, which Kornai freely acknowledges, is the existence of individual rights within cooperatives over household plots.

<sup>16</sup> As Berman notes the 1923 civil code dealt in traditional terms with such matters as property, contracts, legal transactions and unjust enrichment. 'Ownership,' he writes, 'was defined in Napoleonic terms as 'the right to possess, to use, and to dispose of' one's property.' See Harold Berman, *Justice in the USSR* rev. ed. (Cambridge, Mass.: Harvard University Press, 1963), 34.

<sup>17</sup> It should be noted, however, that the 1926 criminal code included a chapter (five) on 'economic crimes' (*khoziaisvennye prestupleniia*) which included provisions against 'poor management' (*beskhoziaistvennost'*) resulting from negligence. See *Ugolovnyi kodeks* (Moscow: Sovetskoe zakonodatel'stvo, 1931) arts. 128-135, esp.128

<sup>18</sup> Harold Berman, *Soviet Criminal Law and Procedure: The RSFSR Codes* (Cambridge, Mass.: Harvard University Press, 1966), 36-37, 45. Implementing this decree, however, entailed its own costs. Believing that custodial sentences were too severe to be applied to ordinary salespersons most judges requalified the charges to abuse of power or criminal negligence (articles 109 and 111) which could and normally did entail lighter non-custodial sanctions. See Solomon, *Soviet Criminal Justice*, 148.

<sup>19</sup> Moshe Lewin, "'Taking Grain": Soviet policies of Agricultural Procurements before the War,' reproduced in Moshe Lewin, *The Making of the Soviet System* (London: Methuen, 1985), 142.

<sup>20</sup> Cited in Peter Solomon, *Soviet Criminal Justice Under Stalin* (Cambridge: Cambridge University Press, 1996), 113.

<sup>21</sup> Examples given of collective farm and cooperative property were harvestable crops, common reserves, livestock and cooperative warehouses and stores. For an English translation of parts of the the decree, see Zigurds L. Zile, *Ideas and Forces in Soviet Legal History: A Reader on the Soviet State and Law* (Oxford: OUP, 1992), 265-6

<sup>22</sup> In the 1926 criminal code *pokhishchenie* was still widely used, for example in arts. 78, 162, 164a, 165 and 166, while *khishchenie* was used in the much more limited sense of theft of the public weal, for

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example appropriation of forest timber in violation of established norms (see art.85) (*Ugolovnyi kodeks* 1931). The distinction between the two terms is addressed in Berman, *Soviet Criminal Law*, 137

<sup>23</sup> Chapter one of the special part of the code, on 'State crimes,' included two sections, counterrevolutionary crimes (art.58), and 'Crimes against the administrative order which are especially dangerous to the USSR' (art.59). Note however that although the decree as a whole was appended to article 58, the decree only specifically identified cases in which 'kulak-capitalist elements either resort to or preach violence or utter threats against collective farmers in order to coerce the latter into leaving their collective farms' as 'crimes against the state.' See Zile, *Ideas and Forces*, 266.

<sup>24</sup> The supreme court ruling of 9 June 1934 in effect equated the causing of shortages with 'stealing' by placing the burden of proof on the defense to demonstrate that where shortages had occurred the accused had *not* appropriated the property and used it in his or her interest. See Berman, *Soviet Criminal Law*, 35, 80-81.

<sup>25</sup> This was partly resolved by the board of the ministry of justice and the supreme court which issued directives reserving capital punishment for persons convicted of organized and serious thefts, for kulaks and class-hostile elements, and for kulaks who stole grain from cooperative farms. When kolkhozniki or private peasants stole grain they were to receive ten years' imprisonment. See Solomon, *Soviet Criminal Justice*, 113-114.

<sup>26</sup> Solomon, *Soviet Criminal Justice*, 115-118.

<sup>27</sup> Solomon, *Soviet Criminal Justice*, 119, 126.

<sup>28</sup> In the RSFSR the number of convictions under sections 'g' and 'd' of article 162 rose from 54,903 in the first half of 1933 to 97,236 in the second half, while convictions under the law of 7 August fell from 69,523 to 33,865 over the same period. By 1934 there were 139,200 convictions under article 162 and a mere 33,729 convictions under the law of 7 August. See Solomon, *Soviet Criminal Justice*, 125-26.

<sup>29</sup> Lewin was referring here to an earlier liberal turn, in 1931. See Lewin, 'Taking Grain,' 153.

<sup>30</sup> The terms 'public' and 'socialist' property were used interchangeably. Article 5 of the constitution stated that socialist property consisted of state property (belonging to the people as a whole) and cooperative and collective farm property (property belonging to collective farms or cooperative societies). For the first time article 6 identified in detail the objects of state property while article 7 described the objects of collective-farm property. For an English translation, see Jan F. Triska, *Constitutions of the Communist Party-States* (Stanford: Hoover Institution Publications, 1966), 37-38.

<sup>31</sup> See article 10 in *ibid*, 38.

<sup>32</sup> *Ibid*, 52.

<sup>33</sup> Cited in Zile, *Ideas and Forces*, 266.

<sup>34</sup> Lewin, 'Taking Grain,' 142, 157, 174. The high level and variability of the procurement 'tax' (aside from the other taxes) necessarily meant that the 'zagotovki as 'incentive' did not seem to work.' Thus in a way which seems to have prefigured a New Institutional analysis Lewin recognized the conflict in the system between the high transaction costs and economic growth: 'To base the economic activity of a whole branch, and of a social class, on 'taking' without rewarding would be inconceivable without the application of mass coercion on a permanent basis. But tools and energies needed for such a compulsory process were different from and contradictory to tools and energies which were necessary for promoting kolkhozy as successful producers and a viable socio-economic structure.' *Ibid*, 166, 174.

<sup>35</sup> The primary example of this had been the edict of 8 December 1933 which had made directors and other managers of industrial enterprises liable for the production of substandard goods and subject to a minimum punishment of five years. Despite high level endorsement, however, the edict was subjected to highly restrictive interpretations by judges many of whom insisted on the showing of intent—a difficult thing to prove in court—and to resistance from industrial ministries who petitioned the courts to drop prosecutions against favoured managers. Within nine months prosecutions had, according to Solomon, 'slowed to a mere trickle.' For similar reasons an analogous edict on defective goods of 10 July 1940 led to few convictions and, according to Solomon, 'had largely symbolic meaning.' Solomon, *Soviet Criminal Justice*, 145-147, 326-327.

<sup>36</sup> The criminalization of shirking was designed to prevent workers from using slacking as a pretext for dismissal. To this end the edict forbade managers to fire workers for shirking. Similarly, in order to reduce labour turnover permission to quit was made harder to obtain.

<sup>37</sup> In order to facilitate prosecution of the campaign Stalin ordered that procedural requirements be relaxed. However, in the face of stern resistance from disgruntled judges and from factory managers reluctant to

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surrender their workers to court a typically vigorous two-month campaign was followed by a sharp fall in the volume of prosecutions. There is a discussion of the edict in Solomon, *Soviet Criminal Justice*, 327-330.

<sup>38</sup> The edict was not presented in terms of public property at all. In this it would be useful to compare it with an edict passed six months later, on 10 February 1941, which made it a punishable offense, as a 'disguised stealing of socialist property' for the director of a state economic enterprise to sell, exchange or release surplus equipment or materials, with punishment of two to five years' confinement in prison. See Berman, *Soviet Criminal Law*, 45.

<sup>39</sup> Strictly speaking many of these offenses should have been viewed—and many were—as 'service crimes' or 'violations of the rules of trade.' One of the features of the war and immediate post-war period, however, was that these offenses were submerged under the broader umbrella category of 'theft.' See N. Rychkov, 'Okhrana obschestvennoi, sotsialisticheskoi sobstvennosti--sviaschennyi dolg trudiashchikhsia,' *Sotsialisticheskaiia zakonnost'* nos.1-2 (1945): 7-8; G. Aleksandrov, 'Zadachi sledstviia v bor'bu s khischeniiami sotsialisticheskoi sobstvennosti,' *Sotsialisticheskaiia zakonnost'* no. 9 (1945): 39-40; S. Bakshiev and S. Shemelivich, 'Usilit' bor'bu s raskhishcheniiami i razbazarivaniiami prodovol'stvennykh i promtovariskikh kartochek,' *Sotsialisticheskaiia zakonnost'* nos. 11-12 (1946): 24

<sup>40</sup> See the joint resolution 'On gathering the harvest and on grain products' of 1944 which treated the misappropriation of state and collective farm products as a most serious crime to be dealt with under the August 1932 theft decree. See N. Rychkov, 'Okhrana obschestvennoi, sotsialisticheskoi sobstvennosti--sviaschennyi dolg trudiashchikhsia,' *Sotsialisticheskaiia zakonnost'* nos.1-2 (1945): 8

<sup>41</sup> There is a good treatment of the relationship between the famine (as it became) and the rise in crime, especially thefts, in V.F. Zima, *Golod v SSSR 1946-1947 godov: Proiskhozhdenie i posledstviia* (Moscow: RAN, 1996), chap.4.

<sup>42</sup> N.D.Kazantsev et al. cited in Robert Conquest, *Power and Policy in the USSR* (London: Macmillan, 1961), 113.

<sup>43</sup> V.F. Zima, *Golod v SSSR*, 97-98.

<sup>44</sup> I. Zikov, 'V bor'be s narusheniiami Ustava sel'skokhoztvennoi arteli,' *Sotsialisticheskaiia zakonnost'* no.2 (1947): 31-2; Zima, *Golod v SSSR*, 98; Hough, 179

<sup>45</sup> V.F. Zima, *Golod v SSSR*, 99.

<sup>46</sup> Stalin had also declared that 'With the victory of socialism the theft of social property presents a special social danger.' See 'Desiat' let stalinskoi konstitutsii pobedivshogo sotsialisma,' *Sotsialisticheskaiia zakonnost'* nos. 11-12 (1946): 12; and 'I.V. Stalin o sotsialisticheskoi zakonnosti,' *Sotsialisticheskaiia zakonnost'* no. 5 (1947): 3-4.

<sup>47</sup> The difference between sentences for personal and public theft were greater for 'qualified' cases, where the provisions laid down a comparatively mild range of six to ten years for stealing personal property. See Solomon, *Soviet Criminal Justice*, 409-413; Zima, *Golod v SSSR*, 100-101.

<sup>48</sup> The most widely cited quotation recycled in summer 1947 was from Stalin's speech of 7 January 1933 on the results of the First Five-Year Plan: 'The main task of revolutionary legality in our time,' Stalin had said, 'consists in preserving public property and in nothing else.' See the editorial 'Usilit' bor'bu s khischeniiami gosudarstvennoi, obschestvennoi i lichnoi sobstvennosti,' *Sotsialisticheskaiia zakonnost'* no. 8 (1947): 1; I. Goliakov, 'Usilenie okhrany gosudarstvennoi, obschestvennoi i lichnoi sobstvennosti,' *SZ* no.9 (1947): 4. Another favourite was Stalin's quotation from 1926: 'The thief who plunders the social weal and undermines the interest of the economy is the same as the spy and the traitor if not worse.' See 'Usilit' bor'bu,' *SZ* no. 8 (1947): 1. Editorials also made the most of the constitutional significance of public property as 'The holy and inalienable basis of the Soviet system.' See *ibid*: 1.

<sup>49</sup> I. Goliakov, 'Protiv izvrashchenii smysla ukazov ot 4 iunia 1947 g.' *SZ* no. 11 (1947): 20.

<sup>50</sup> I. Goliakov, 'Usilenie okhrany,' *SZ* no.9 (1947): 4-5.

<sup>51</sup> 'Usilit' bor'bu,' *SZ* no.8 (1947): 1.

<sup>52</sup> Zima makes the point that the public were not formally informed of this critical move, as a consequence of which defendants who believed they might receive a sentence of one-year imprisonment faced terms of seven years or more. 'The government did not intend to enlighten the people on the 'details' of criminal legislations. Secret supplements to the decrees allowed it to manipulate the law and to hold the people in fear of [its] 'justice'.' Zima, *Golod v SSSR*, 101.

<sup>53</sup> For more on this, see Yoram Goriizki, 'Rules, Incentives and Soviet Campaign Justice After World War II,' *Europe-Asia Studies* 51 no.7 (1999): 1259-1261

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<sup>54</sup> A report to Stalin from the minister of justice, Gorshenin, on 5 June 1950 placed theft of public property second only to counterrevolutionary crimes in its order of priorities. 'Crimes against personal property' came lower down the list, falling behind 'crimes against the life, health and dignity of the person.' GARF f.5446 op.86a d.8079 ll.28-30, 33-34. Another ten-page report from Gorshenin to Stalin, also in the early summer of 1950, was devoted entirely to theft of public property. No similar reports on theft of personal property were located in the archives. GARF f.5446 op.86a d.8079 ll.3-12.

<sup>55</sup> An interesting example of this can be found in a letter from the deputy head of the administrative agencies department of the central committee, A.S. Bakakin, to the central committee Secretary, G.M. Malenkov in November 1948 in which Bakakin ruled out the restoration of the edict on petty theft of 10 August 1940, as proposed by the head of state, N.M. Shvernik, which 'would lead to a violation of the principles of Soviet criminal legislation...since it would mean in practice that criminal accountability for petty thefts in the socialist sector would be considerably lower than for such thefts of the personal property of citizens.' GARF f.9474 op.16c d.368 l.86.

<sup>56</sup> Gorshenin also pointed out that of the losses identified only 12-13% were actually recovered by the courts. GARF f.5446 op.86a d.8079 ll. 5, 11-12.

<sup>57</sup> GARF f.9492 op.6s d.14 l.20.

<sup>58</sup> Note also that the main growth in theft cases took place in the state trade and consumer cooperative sectors. See GARF f.9492 op.6s d.14 l.27.

<sup>59</sup> See Gorlizki, 'Rules, Incentives'; and Solomon, *Soviet Criminal Justice*, chap.12.

<sup>60</sup> See especially the 'Letter to Venzher,' in Stalin, *Selected Works*, vol.3, 291, 294.

<sup>61</sup> Cited in Conquest, *Power and Policy*, 156.

<sup>62</sup> GARF f.9492 op.1 d.273 l.112

<sup>63</sup> For a reference to the impact of these articles, see GARF f.9474 op.10 d.126 l.10.

<sup>64</sup> GARF f.9492 op.1 d.296 l.38; and see 'O merakh po usileniu bor'by s khishcheniiami i rastratami,' *Gosudarsvennyi Arkhiv Rostovskoi Oblasti* f.4353 op.107 d.1 ll.39-41.

<sup>65</sup> Olson, 'Hidden Path,' 57-58.

<sup>66</sup> There is a useful discussion of this in Eggertsson, *Economic Behaviour*, 334-337.

<sup>67</sup> Olson, 'Hidden Path,' 58.

<sup>68</sup> Olson, 'Hidden Path,' 72; Comisso, 'Property Rights, Liberalism,' 168-173; Berman, *Justice in the USSR*, 158-161