BIDEN

VS.

THE KLEPTOCRATS?

BY TOM MAYNE AND PETER ZALMAYEV

The presidency of Joe Biden comes at a time when there is a growing awareness of "kleptocracies"—countries where a ruling elite embezzles state funds at the expense of the people. The damage caused by this corruption isn't just local; it also has a corrosive effect on democratic countries. Oligarchs from abroad who buy luxury apartments and mansions (which often sit empty) raise property prices past what the average citizen can afford. Corrupt money destabilizes markets when companies are used as cash cows and need to be bailed out—not to mention, democracy itself can be undermined by these forces.

There are several examples of these corrosive effects. To cite just one, for years the Azerbaijani government ran a secret slush fund that funneled millions of dollars to various entities. In turn, these entities would lobby governments across the world in its favor. One recipient of these funds was a mysterious Baku-based organization that hired a Virginia firm to lobby the U.S. government; for more than a decade it orchestrated praise for Azerbaijan and funneled campaign donations to senators and representatives who sat on committees that determine foreign aid budgets. If the problem were just a question of corrupt foreign actors, Western law enforcement agencies could seize assets, refuse visas, or jail these individuals. Yet the problem is more insidious, and key to understanding kleptocracies is the West's role in enabling such theft in the first place.

People tend to think of kleptocracies as geopolitical backwaters—of little importance to the West, save for their oil and gas; however, this fails to take into account the interconnectedness of the political economy of these corrupt nations with the financial economies of so-called liberal democracies. Kleptocrats can only thrive when a team of Western enablers helps them—lawyers, accountants, real estate agents, reputation managers who facilitate the transfer of officials' ill-gotten gains from their home countries to our shores. Harriman director Alexander Cooley and coauthor John Heathershaw make this point in their 2017 book *Dictators without Borders*; "dictators operate *beyond* borders . . . and *across* borders [using] elite and even cosmopolitan networks that have enhanced the international status of these autocrats and safeguarded the privacy of their dealings," they write.

When we examine U.S. anti-corruption efforts related to this region, the overwhelming focus has been on Russia, due to the allegations of state-sponsored election meddling and the introduction in 2012 of the Magnitsky Act, which sanctioned those involved in a specific scandal—the imprisonment and resulting death of a lawyer who had been working on a Russian corruption case.

This was expanded in 2018 with the introduction of the Global Magnitsky Act, which allows the U.S. to sanction any foreign actor involved in corruption and human rights abuses anywhere in the world. Yet, before December 2020, only two individuals from the former Soviet Union had been sanctioned: the daughter of the former president of Uzbekistan and a Latvian oligarch. This is surprising, given that countries such as Azerbaijan, Turkmenistan, and Kazakhstan have consistently poor scores on international corruption rankings. The reasons for this blind spot are debatable, but they are likely to be a combination of a relative lack of geopolitical interest and a preoccupation with countries involved in high-profile human rights abuse cases, such as Yemen and Saudi Arabia.

Above: Opposition supporters hold portrait of Russian lawyer Sergei Magnitsky during a march in memory of murdered Kremlin critic Boris Nemtsov in downtown Moscow (February 29, 2020). Photo by Nikolay Vinokurov/Alamy Stock Photo.

Change may be on the horizon, however: December 2020 saw Raimbek Matraimov, a former customs official of the Kyrgyz Republic, added to the sanctions list for his involvement in a customs scheme in which at least $700 million was laundered. The Biden administration can draw a sharper line by adding Kazakh, Uzbek, Tajik, Turkmen, and Azerbaijani officials who commonly feature in corruption investigations. The first question would be: where to start?

In Azerbaijan, the president's daughters control key telecoms and mining contracts and invest the money in luxury real estate in the UK. In Turkmenistan, the country's eccentric president, Gurbanguly Berdymukhamedov, runs his country like a family business, with dissenters thrown in jail and never heard from again. In Kazakhstan, the country's rich are all political cronies or family members of the country's first president, Nursultan Nazarbayev. His son-in-law, Timur Kulibayev, earned tens of millions of dollars from a secret scheme linked to the construction of a multibillion-dollar gas pipeline between Central Asia and China; and Karim Massimov, who served two terms as prime minister under Nazarbayev, was alleged to have been in line to receive a €12 million bribe in relation to a deal involving the sale of helicopters to Kazakhstan by Airbus.

Above: IAEA Director General Mohamed ElBaradei (*far left*) escorts H. E. Mr. Nursultan A. Nazarbayev, president of Kazakhstan (*center*), during his departure at the IAEA headquarters in Vienna, Austria, alongside Vilmos Cserveny (*far right*), IAEA Director, Office of External Relations and Policy Coordination (September 9, 2004). Photo courtesy of IAEA image bank/ Wikimedia Commons.

Along with sanctioning individuals, the U.S. can do much to improve the oversight of the U.S. banking system to unravel the often-complex offshore structures that corrupt officials use to steal state resources. Last year's Financial Crimes Enforcement Network (FinCEN) file leak—of Suspicious Activity Reports filed by banks when there is a suspicion or risk of illegal financial activity—raised several important issues. First, that though filing a report is an obvious good, banks have little incentive to close the account, as they continue to accrue bank fees while escaping legal liability. Second, for such a system to stop financial crime successfully, you need proper enforcement by a well-funded FinCEN that is equipped to analyze the 2.75 million reports it received in 2019. This is however not the case: FinCEN is estimated to have only around 300 staff to investigate literally millions of documents. So the dubious money keeps flowing.

One likely destination for these dubious funds is real estate. The problem is especially acute in the United States where, unlike in the UK and EU, real estate agents are not bound by the same money laundering regulations as bankers. This means that professionals involved in a real estate transaction in the U.S. do not have to perform due diligence on their client, or even establish whether these clients are foreign officials or "politically exposed persons," in anti-money laundering lingo. When Radio Free Europe revealed last year that the now former President Nazarbayev's relatives had invested $785 million in real estate in six countries, it came as no surprise that the United States was one of them, with Nazarbayev's brother and his brother's ex-wife owning a beachfront apartment in Florida, an eight-bedroom mansion in New Jersey, and three luxury apartments in Manhattan.[1]

On the plus side, the U.S. government has had some recent success in clamping down on dubious real estate investments: in January 2016 FinCEN introduced Geographic Targeting Orders, requiring the identification of the actual owners of companies used in all-cash purchases of residential real estate over a certain value in key metropolitan areas. After initially being introduced in just two regions, Targeting Orders were extended to cover 12 metropolitan

Above: U.S. Secretary of State Rex Tillerson (*right*) meets with Kazakh Chairman of the State Security Service Karim Masimov at the U.S. Department of State in Washington, DC (October 10, 2017); photo from Alamy Stock Photo.

areas, including New York, Chicago, and Los Angles—high-end markets which attract potentially corrupt buyers.[2] According to research by the Federal Reserve Bank of New York and the University of Miami, clients buying homes with cash via shell companies in Miami-Dade decreased by an astonishing 95 percent in the first year after Targeting Orders were introduced.[3] It is clear that the U.S. government should make this legislation the norm across the country to prevent criminals and corrupt foreign officials from simply moving to a region not currently covered by it.

The United States could also follow the UK's lead and introduce Unexplained Wealth Orders, which reverse the burden of proof. Instead of law enforcement officials having to prove criminality—an extremely time-consuming, resource-draining, and often impossible task—foreign officials or those suspected of serious crimes have to prove that their sources of wealth are legitimate. If they are unable to do so, then their properties can be seized through civil recovery proceedings.

There are, however, some limitations to this approach. Recently, UK law enforcement suffered a major setback when a wealth order related to the family of Kazakhstan's former president Nazarbayev was rejected by the High Court. The case collapsed in part because UK law enforcement focused on trying to tie the properties to Nazarbayev's dead son-in-law instead of on the sources of his daughter's wealth. At the time, she chaired the Kazakh Senate. It is unclear why the UK did this, but one can well imagine the sort of political and diplomatic pressure that may have been in play. This raises an important point: political will is needed to go after kleptocrats, even if it causes some geopolitical tension. Historically, the United States has been one of the only countries not afraid to go after the networks of those in political office, even our so-called allies. In 2003, despite American companies vying for oil and gas contracts in Kazakhstan, the U.S. Department of Justice indicted a Californian businessman, James Giffen, on Foreign Corrupt Practices Act charges.[4] This caused considerable embarrassment for one of the bribe recipients, President Nazarbayev, who, along with the country's oil minister, was alleged to have received $84 million in Swiss bank accounts. Focusing enforcement efforts on former incumbents or low-ranking political figures will not bring change—those in power will continue to move money with impunity. In order for any enforcement action to have teeth, it needs to target people with political power.

Yet, if the U.S. or other governments do ultimately end up freezing the money of corrupt officials, they will face another dilemma: How to best repatriate this corrupt money to the kleptocracy without it ending up in the pockets of another—or even the same—corrupt network or official? On two occasions, Switzerland repatriated money to Kazakhstan: first in the James Giffen case mentioned above, and second in another case relating to an unnamed Kazakh official. The first case was more successful—Switzerland and the U.S. set up a foundation managed by international NGOs that benefited impoverished Kazakh families. It had strict provisions governing fund disbursement. The second case did not work out so well: the money was sent back with fewer safeguards and mainly benefited GONGOs, pro-government NGOs with close ties to Nazarbayev's political party.

There will be no easy solutions in this global fight against kleptocracies—we often see money launderers adapt to new legislation and to the closing of loopholes. But it is a battle that needs to be fought, and President Biden seems to understand this. In 2020, he announced that he would issue a presidential policy directive that "establishes combating corruption as a core national security interest and democratic responsibility." As Senator Sheldon Whitehouse and General David Petraeus observed in 2019: "the fight against corruption is more than a legal and moral issue; it has become a strategic one—and a battleground in a great power competition." Yet many a law has been introduced only to be rarely enforced. With a pandemic-induced economic downturn ahead, one can envisage not only how government spending might be diverted elsewhere but also how, despite good intentions, the U.S. could end up backsliding on anti-corruption reforms. A floundering economy will leave the country desperate for capital inflows, whatever their provenance. But growing evidence indicates that succumbing to such temptations would be a grave mistake: the threat presented by foreign kleptocrats is well-concealed but poses a danger to the foundations of democracy as we know it. ■

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[1] https://www.rferl.org/a/kazakhstan-nazarbayev-family-wealth/31013097.html.

[2] https://www.fincen.gov/news/news-releases/fincen-reissues-real-estate-geographic-targeting-orders-12-metropolitan-areas-1.

[3] https://www.miamiherald.com/news/business/real-estate-news/article213797269.html.

[4] The Harriman Institute conducted an interview with Giffen for its Oral History Project. The interview will be available soon on oralhistory.columbia.edu.

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Editor's note:
Mayne participated in the Harriman Institute's 2019 "New Directions in Anti-Kleptocracy Forum." You can watch the video on our website. In recent years, the Harriman Institute has become a leading institution for post-Soviet kleptocracy-related research, events, courses, and resources.