

# The American Conservative

## Seizing Russian Assets Is A Bad Idea

*The U.S. Constitution does not allow the government to do as it pleases, even with foreigners' assets.*

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When proposing a budget-busting \$33 billion for Ukraine, President Joe Biden indicated his desire to confiscate Russian assets and send the money to Kiev. It's an extremely bad idea, one which would undermine America's rule of law while impeding peace between Russia and Ukraine.

The administration offered a plan to combat sanctions evasion and “streamline the process for seizure of oligarch assets, expand the assets subject to seizure, and enable the proceeds to flow to Ukraine.” This included creating “a new criminal offense, making it unlawful for any person to knowingly or intentionally possess proceeds directly obtained from corrupt dealings with the Russian government.”

The president requested expanded authority from Congress and is pushing on an open door. Senate Majority Leader Chuck Schumer backed the proposal: “There's no reason that Putin's viciousness and these ill-gotten gains should just stay the way they are when Ukraine desperately needs the money.”

Moreover, the House approved legislation urging the administration to act. H.R. 6930 incorporated “the sense of Congress” that “the President should take all constitutional steps to seize and confiscate assets under the jurisdiction of the United States of foreign persons whose wealth is derived in part through corruption linked to or political support for the regime of Russian President Vladimir Putin and with respect to which the President has imposed sanctions.”

Essentially, the president would be allowed to do whatever he wanted with any property taken. The House indicated that “All rights, title, and interest in any property so confiscated should vest, upon the terms directed by the President, in such agency or person as the President may designate from time to time, and upon such terms and conditions as the President may prescribe.” The money is to be used for Ukraine.

There may be no more unsympathetic target today than any person or organization tied to Russia. Rep. Tom Malinowski, a Democrat from New Jersey, asked his colleagues to imagine “giving all of Russia's wealth—the yachts, the bank accounts, the villas, the planes—back to Putin and his cronies as Ukraine lies in ruin, as the Ukrainians bury their dead? We cannot imagine doing that. We will not do that.” National Security Adviser Jake Sullivan took a similar position, though he

spoke in more measured tones: “As we seize these assets, our goal is not to give them back; our goal is to put them to a better use than that.”

Their anger is understandable. Moscow’s attack on Ukraine was unjustified. Hopefully the invasion will fail and peace will be restored quickly.

However, nothing justifies allowing the president to seize property based on an accusation and transfer it to someone not harmed by the property owner. After all, not every person or organization tied to Russia bears responsibility for the attack on Ukraine or is a friend of Vladimir Putin and the ruling regime.

In fact, in the West, Russians are being fired from jobs for simply voicing support for Moscow, not criticizing the Putin government, and having been born in Russia. Wimbledon plans to bar tennis players because of their nationality. This brings to mind the excesses of red-baiting and McCarthyism in America and the utterly deranged Cultural Revolution in China, in which people were punished for what they were seen to represent rather than what they did or believed.

Western liberal societies engaging in collective punishment are undermining their own principles and values. The policy also is counterproductive, reinforcing Putin’s meme that his government is defending Russians from the West as well as Ukraine. Treating Russian citizens as enemies of America and Europe will encourage them to defend their country and rally around their government.

Yet such concerns have been dismissed because grabbing Russian cash has become a priority. It is supposed to go to a good cause, helping Ukrainians. However, that alone cannot justify seizing and redistributing other people’s assets. Imposing economic sanctions, prohibiting new transactions, is prospective. Doing so affects future behavior. People can adjust their behavior and comply. Prosecutions come after due warning. Penalties are imposed for active violations, not past occurrences.

In contrast, confiscations are almost entirely backward looking. Although Western states froze a significant chunk of Russian government assets, most attention is being directed at tracking down the resources of individuals targeted either for being regime decisionmakers or supporting regime decisionmakers. Or, more accurately, they have been *accused* of being regime decisionmakers or supporting regime decisionmakers.

Most of the money belongs to the latter, the so-called oligarchs. The press has detailed allied governments searching for yachts owned by Russia’s super-wealthy, though they are merely among the most photogenic assets subject to seizure. U.S. authorities have frozen bank accounts and seized aircraft. The Europeans also have grabbed helicopters, real estate, and artwork. Schumer explained he intended to add a provision to Biden’s aid legislation to make it a U.S. crime to possess the proceeds of “corrupt dealings with the Russian government.” Once taken, the money would be passed onto Kiev.

Similarly, European Council President Charles Michel is encouraging European Union members to do likewise. He explained that “Personally, I’m absolutely convinced that this is extremely important not only to freeze assets but also to make possible to confiscate.” It was a matter of fairness, he continued, “to make this money available...especially for the rebuilding of the country. It’s a question of fairness, a question of justice.”

Guilt would be decided beforehand. Observed Bruce Fein, a Justice Department official during the Reagan administration: “The targeted oligarchs receive neither notice nor an opportunity to respond, nor an opportunity to confront accusers, nor an independent or impartial decisionmaker—summary justice at its worst.”

However, the Constitution does not allow the U.S. government to do as it pleases even with foreigners’ assets. Christopher Anders of the American Civil Liberties Union observed: “The problem with the bill as introduced was that the complete absence of any due process protections would likely have resulted in a court handing Russia a propaganda win by having an American court invalidate both the sanctions law and the sanctions themselves.”

Malinowski dismissed this concern, contending that the money should be considered to belong to the Russian state and such people did not deserve the procedural protections available to Americans: “They are allowed to manage these assets on behalf of Putin in exchange for their loyalty to the regime. They earned this money by stealing it in a country where there is no due process, and then they take advantage of our due process to protect it.”

It’s a clever argument, but Malinowski treats as fact claims that require proof. The world is filled with kleptocracies in which well-connected businessmen gain wealth through favors from government. Heck, that happens in America. Some may be de facto state agents, while others run genuinely private, if perhaps corrupt, enterprises. In the latter case in Russia, the victims are other Russians, not Ukrainians. Then the Russian people are entitled to the money.

Giving confiscated funds to Ukraine might feel good, but that doesn’t make it right or just. Should Washington be able to deny constitutional protections to anyone accused of being a terrorist, drug dealer, child molester, or other criminal du jour? Indeed, creative prosecutors have often misused legislation originally approved to deal with special circumstances, most notably organized crime and terrorism, against other criminals. There is no reason to assume government officials would not do the same with new, streamlined procedures for property confiscation.

There is another serious problem with the attempt to willy-nilly steal the property of Russians and treat it as reparation payments. Peace between Russia and Ukraine looks far away. If Moscow figures that the West plans to treat it as a defeated power no matter what happens at the negotiating table, it has less reason to make a deal.

Indeed, the Putin regime likely would see this legislation as signaling the continuation of sanctions even if Russia made peace. As much as Putin and his cronies deserve punishment, the Russian people do not. Nor do the Ukrainian people, who currently are paying the highest price for the war.

It would be far better for Washington to use the status of confiscated property as an inducement for Moscow to make a speedy and reasonable peace deal. To the extent that the War Party is able to turn America’s objectives from supporting Ukraine to defeating Russia, peace will become much more difficult to achieve. Continued military escalation is likely, with serious danger of open conflict between Russia and NATO forces. Given Moscow’s relative conventional weakness, the Putin government might use tactical nuclear weapons to maintain rough military parity. This is a road that no one, including Washington, should want to go down.

The Biden administration should follow the law when sanctioning and confiscating Russian property. Civil liberties and property rights enjoy constitutional protection for a reason. The Russo-Ukrainian war does not justify cutting constitutional corners.

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