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What is a Bank Robber?

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What is a bank robber?

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In the wake of the financial crisis internet bloggers, newspaper columnists, and many middle and working class Americans have called the financiers responsible for the residential mortgage backed securities are “crooks,” “criminals,” and even “Wall Street gangsters.” While this populist rhetoric is widespread, neither the nation’s academics nor mainstream policy makers have taken this name calling particularly seriously. But perhaps there is more to these claims than initially meets the eye: there are some profound organizational similarities between organized crime and the behavior of many of the most important American bankers in the past ten years.

While there are many different forms organized crime, the prototypical gangsters in the American experience were the so called Italian-American “mafia” families in large north-Eastern U.S. cities. Although sensationalized by Hollywood, these criminal organizations exerted significant influence on the U.S. economy and even, at times, political institutions. Mafia organizational structure relied on insulating leadership positions from government prosecution through the use of expendable soldiers. Soldiers were expected to suffer through periodic arrests, incarceration, and violence associated with the illegal acts upon which these criminal enterprises depended. But because the compensation for soldiers was high relative to their other employment prospects, crime families could maintain adequate staffing in the soldier class.

In residential mortgage backed securitization deals, the management of investment banks, insulated themselves and the bonuses they received through the use less powerful, less capitalized mortgage origination and brokerage companies. Like mafia soldiers, mortgage brokers and originators were expected to commit or abet fraud, violate sound underwriting practices, and ignore or undermine consumer protection statutes. As law enforcement claims and bad debts accumulated, the collective understanding was that mortgage originators and brokers would shed their corporate identity through insolvency—doing their time so to speak—only to reappear in another business form when the opportunity presented itself. Originator and broker insolvency absorbed and deflected government sanctions, preserving the vital link to world capital markets provided by the large investment banks. Both the mafia and structured finance systems featured and relied on high, but manageable, casualty rates and instability in the soldier class.

Similarly, in order to stabilize and protect mafia family leadership, crime families nurtured an organizational norm embodied in the infamous oath of *omerta*. This oath is a vow of silence and loyalty that prevents crime family members from cooperating with law enforcement. More practically, it prevented soldiers from directing law enforcement efforts inward toward the organizational leadership. The long term sustainability of organized crime families was dependent on the *omerta* oath because it prevented (or at least minimized the risk of) accountability for the institution’s many crimes from being visited upon the organization’s command and control centers. In securitization, the “true sale” of residential mortgages served a comparable organizational function. When law enforcement efforts pursue thinly capitalized originators and brokers, the securitized assets churned out by these soldier class financiers are bankruptcy remote. This means that the insolvent originator's creditors, including law enforcement, cannot recapture the assets that were produced through fraudulent underwriting. Although securitization does not involve an oath, true sales are organizationally similar to *omerta* in that the organizational norm erects a barrier between soldiers and leadership that law enforcement has difficulty surmounting.

Surely the profound difference between organized crime families and structured finance participants is the mafia's reliance on deterrence through violence including torture and murder. In the most effective mafia families at the height of their power, the actual use of violence could be limited through deterrence produced by the certainty of swift and harsh physical retribution. The most cost effective mobsters only had to threaten violence. Mafia families' use of homicide and torture is, indeed, profoundly different than structured finance. Nevertheless, structured finance of subprime and exotic mortgages continues to rely on another form of violence that is structurally similar to homicide and disturbing in its own right. Foreclosure on family homes, the "American dream" transformed into a nightmare, relies on the very real threat of state sponsored violence. The entire edifice of residential mortgage backed securitization is based on the state laws that instruct police to expel insolvent families from their homes, by force, if necessary. The strong and admirable respect for law and order in the American middle class insures that police enforcing court ejectment orders only very infrequently are forced to turn to actual violence. Nonetheless, the threat of violence is quite real and casts a shadow across the decision making and well being of American families and their children. The physical and emotional harm suffered by families who have lost their shelter is no less real if produced by threat of force rather than actual force. Indeed, sociologists have long known that there is high morbidity associated with the loss of family homes. People who are expelled from their homes suffer such stress and sense of loss that they become much more susceptible to disease, including depression and suicide. Both organized crime and structured finance of subprime and exotic subprime home mortgages rely on violence and the threat of violence to facilitate unlawful acquisition of great wealth.

Corruption is a chameleon. It creeps and hides with the camouflage of our expectations. Indeed, part of the diminished power of the U.S. mafia lies in the fact that it had become predictable and easily identified. In our country, many organized criminal enterprises have moved on to other forms. Much of the illegal narcotics trade has been captured by criminal organizations with different ethnic and geographic ties. But more surprising is that many of the crimes which had originally ushered the mafia into power became popularized and mainstream: alcohol prohibition is of course long forgotten, legal gambling is now prevalent in many areas and forms around the country; the role and influence of labor unions has been replaced by a relatively efficient labor market; and, usury laws have been functionally repealed. The famous thief, escape artist, and master of disguise, Willie Sutton, is rumored to have said that he robbed banks "because that's where the money is." It is perhaps ironic, but given the nature of corruption not surprising, that one of the first and primary targets of organized criminals—banks—have in some cases taken on the organizational strategies of our country's most successful and feared criminals. If we learn nothing else from the Great Recession it should be this: the definition of "bank robber" needs an update.

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