

THE MAFIA AND PROPERTY RIGHTS: THE ECONOMIC POWER OF WITHHOLDING

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Abstract

Taking as a departure point the infiltration of the mafia within legitimate businesses, this paper questions the link between the identity of owners and the degree of completeness of freedom for individuals. Market exchanges of property rights allow Mafiosi to be part of the process of private enforcement of rights and to accumulate, legally, wealth. Our intent is to show that the identity of owners is not neutral: it makes a difference whether the owner of the legal enterprise is or not a Mafioso. In particular, the infiltration of the mafia in legitimate businesses damages the local economy and society because economic and political freedoms in mafia-ruled territories become restricted in both range and quality. Therefore, the existence of legal mafia-owned enterprises cannot be seen as a step toward a normalization of the mafia, but rather as the expression of an increasingly conditioning criminal power. In order to analyze this power component I will use the tools provided by Commons (1924), especially the definition of economic power as distinct from physical power from the State. In particular, access to property rights over productive entities for Mafiosi is a perfect illustration of how the capacity to hold rights turns into a power to withhold from others. This will allow for a discussion in terms of competing sovereignties, in which the Mafia stands as an institution able to shape rules and to grant opportunities to some, while denying opportunities to others.

Key words

Institution, Mafia, Power, Property rights, Sovereignty

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Very preliminary version

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Legal Mafia-owned enterprises are enterprises that operate in legitimate businesses but are owned by Mafia-members (Arlacchi 1983, Santino and La Fiura 1990, Champeyrache 2004). These legal Mafia-owned enterprises can be considered as a by-product of free enterprise and of the freedom to hold and acquire property rights over productive entities in market economies. As the exchange of property rights is left to the market, the detention of such rights is primarily submitted to a private enforcement of the agreements made by sellers and buyers. The hypothesis, here, is that criminals' access to the legal market of property rights has an impact upon freedom in Mafia-ruled territories: to put it in Commons' terms, the mere holding of property for one's self becomes a power to withhold from others. This process of withholding shapes the opportunities and constraints available for non-Mafiosi. It also shapes the potential for growth and economic development in these territories because it defines new relationships of power between individuals and between the criminal organization and the State, therefore introducing the possibility of competing sovereignties.

As Peacock states it: "the system of economic freedom is silent on the question of the distribution of property rights" (1987, 34). It has also been supported, at least since J. S. Mill, that long-lasting concentrations of wealth can endanger economic as well as political freedom since wealthy individuals concentrate both wealth and power, often detrimentally to the less fortunate. This paper is an attempt to go further in this direction using the institutionalist

method. In particular Commons (1924) defines economic power as distinct from the physical power of the State. For him, the economic power stems from a change in the nature of property that turned from the freedom to use property for personal enjoyment to the possibility to use property with the aim of withholding from others. Using the “extreme” of the Mafia and its infiltration of legitimate businesses, the intent is to show that the level of damages imposed to the economic and political freedom has to do with the identity of those who concentrate wealth in the shape of property rights. It also shows that the supposedly innocuous holding of property rights over legal productive entities by Mafiosi in actual fact is a far more efficient tool than violence for the Mafia to exert power, defy the State, and shape markets and society in its favour.

1- THE SETTING: COMMONS (1924) AND THE ECONOMICS OF WITHHOLDING

In *Legal Foundations of Capitalism* (1924) Commons, among many other points, raised the issue of the “economic power of property” as distinct from the “physical power of sovereignty”. A change in the nature of property in capitalist economies leads to the emergence of economic power. This change in turn impacts the relationship between the State and corporations.

- Evolution of the nature of property

The first pages of Commons (1924, 6-7) describe the change that occurred in the end of the nineteenth century with the capitalist industrialization of the United States of America. The change profoundly affected the nature of property. Previously the concept of property referred to a principle of exclusive holding of physical objects for the owner’s private use. Through the structural transformation of American capitalism and the emergence of corporations, this simple holding turned into the power to withhold from others what they need but do not own. This reflects an evolution from the producing power that increases use-values to the bargaining power that increases exchange-values (Commons, 1924, 21).

The State may take notice of this change in the nature of property. For example it can design laws in order to curb the bargaining power of property where it seems excessive (p.29). This

accounts for the existence of usury laws or labor laws. On the contrary, the State can – consciously or not – choose not to investigate this capacity to withhold and let the economic power of property spread unrestrained. In this latter case, withholding becomes a “customary, legal, quiet way” to pull out something from someone “under the institution of private property” (Commons, 1934, 58-9). The absence of any intervention that would aim at reshaping the pattern of power is theoretically justified by the liberal credo that the institution of private property is part of a supposedly uncontestable “Natural Order”. Obviously, in Commons’ view the State, far from being a neutral umpire, can, thanks to the physical power of sovereignty, identify and restrain economic power (Dawson, 1998).

Individuals do not stand upon an equality in markets due to this change in the nature and meaning of property. In particular, propertyless suffer from a disadvantageous position in bargaining with regard to owners. This inequality in economic power expresses itself in a differential capacity “to hold back until the opposite party consents to the bargain” (Commons, 1924, 54). Indeed, the change from holding to withholding also impacts the meaning of liberty, opportunities and expression of will.

- Liberty, opportunities and will in Commons (1924)

Parallel to the change in the nature of property, structural changes in the American economy also led to a new definition of liberty: it used to refer to “freedom from personal slavery”, it became synonymous with “right of choice”. Property relates to anything that can be bought and sold and, according to Commons (1924, 22), since one’s liberty can be bought and sold, liberty is assets and liberty is property.

Liberty’s content is the freedom to choose. This necessarily introduces the notion of will and free will which is commonly used and advocated in mainstream economics but whose content is often taken for granted and not really investigated. The truth is that if you assume that markets naturally have an egalitarian basis, then wills are supposedly of equal value too. In this framework the focus is on a weak form of will inspired by Locke, namely a “will-in-vacuo” defined as “mere faculty of acting and not acting” (Commons, 1924, 69). The supposedly equality of right among individuals endows them with an equal right to choose between acting and not acting. But, in an institutionalist view, this conception is nothing but a construct unfitted to describe the real content of will and of conflicting interacting wills. In fact, “will-in-

vacuo abstracts from the structure of the interaction of wills” (Commons, 1924, 65). What really matters on markets is “will in action”, that is to say will “continually overcoming resistance and choosing between different degrees of resistance, in actual space and time” (Commons, 1924, 69). Consequently the relative wills of different individuals is deeply connected to the issue of property as an economic power to withhold:

for the will is not an empty choosing between doing and not doing but between different degrees of power in doing one thing instead of another. The will cannot choose nothing – it must choose something in this world of scarcity – and it chooses the next best alternative? The will chooses between opportunities, and opportunities are held and withheld by other wills which are choosing between opportunities, and these opportunities are limited by principles of scarcity (Commons, 1924, 303)

This delineates the pattern of relative withholding capacity, and thus the pattern of liberty and exposure (viz limit of a right) for individuals transacting.

Liberty offers you the possibility to choose between opportunities where opportunity represents a passive aspect of choosing, a “costless enlargement of power by merely choosing between two degrees of power, both of which are accessible at the moment” (Commons, 1924, 30). Combined to property, liberty favors an expansion of power through dealings with other persons. The expansion of power affects the relative bargaining power of individuals. It is all the more the case since there is a confusion between a unit of persons and a unit of property. Legally, corporations are treated as a person and, therefore, are not considered as able to exercise greater coercive power than a single person. And yet, as Commons underlines, a conflict of inequality of power is possible between great corporations and unorganized individuals (Commons, 1950, 269).

The economic power of withholding in Commons’view is linked to the spreading in the American economy of corporations. Always in Commons’view, taking into account this new power as well as making clear that there is no such thing as natural structures of power show that the State has to make choices, use its sovereignty to solve the conflict of inequality of power between corporations and unorganized individuals.

These preoccupations are reinforced when the economic power of property belongs to criminals. This is the case when Mafiosi infiltrate the legal economy and own legitimate businesses.

2- THE MAFIA AND THE LEGAL ECONOMY

One specificity of a Mafia with regard to other more traditional types of organized crime is the infiltration of the legal economy. This infiltration is not a “by-product” of illegal activities, it stands at the core of what a Mafia truly is. Salient features of Mafia infiltration help understand how Mafias manage to set up a specific tool, artificial scarcity, based on the holding of property rights over productive entities, in order to shape the economy and to have an impact upon the opportunities and constraints for non-Mafiosi. This capacity to exert economic power over non-affiliated individuals clearly depends on Commons’ principle of withholding thanks to property.

- The infiltration of legitimate businesses

A look at how the Italian penal Code defines, since 1982, the offence of Mafia association (article 416 bis) clearly indicates that Mafiosi directly and openly exert activities in the legal sphere of the economy. This presence is illustrated since the beginning of the criminal association in the nineteenth century in Sicily, Naples’ region and Calabria: Mafiosi stand as wardens in farm estates, mediators on wholesale markets, and racketeers in everyday economic life (see for example Gambetta, 1992 or Catanzaro, 1992). As soon as Mafia territories turn from feudalism to capitalist regimes Mafia infiltration of the legal economy takes on a new shape: it takes the form of “legal Mafia-owned enterprise”. This expression means that the enterprises are legal in terms of activities and administratively: they are declared and legally registered. But they belong to Mafiosi, directly or through figureheads.

Mafiosi, therefore, are entrepreneurs in the legal field of activities. Reasons why such criminals should enter legitimate businesses have been a (minor) subject of enquiry for crime economics. For instance, Anderson (1979) lists the following motivations:

- legal activities offer legitimate incomes, which can cover true illegal businesses;
- officially legal activities – in particular small shops, bars, restaurants – provide a basis for loan-sharking and illegal betting;
- legal enterprises can be a way to integrate outputs and inputs that are needed in both legal and illegal activities: it is the case with transportation, warehousing,..

- it can be a way to internalize money-laundering;
- it can also simply be a strategy of portfolio diversification.

If this list is supposed to be exhaustive, it means that criminal infiltration of legitimate businesses is merely functional to criminal activities, secondary for organized crime and, therefore, not really harmful for society, for non-Mafiosi and for the working rules of the legal economy. The last motivation – portfolio diversification – can also be overrated and misleading because it can substantiate the idea that criminals, once enriched and becoming more and more risk averse, can choose to abandon illegal activities and, in the end, turn to exclusively legal activities.

All this does not apply correctly to the Mafia and to the real aims of Mafia-owned legal enterprises. There is one decisive motivation specific to Mafia infiltration: control over a territory, namely the affirmation of a criminal sovereignty over determinate lands. Territorial control has always been associated to Mafias. One expression of this control is the systematic levying (the famous *pizzo* in Sicily) of a so-called “Mafia tax” over shops and enterprises. But territory control can take on other aspects for which the existence of legal Mafia-owned enterprises is of high value. For instance Mafia infiltration focuses on legal activities that are labor intensive such as agriculture and the building industry. In this case, the main motivation of Mafiosi might not be profit, or not primarily so, but rather the control of the population and a capacity to gain social legitimacy thanks to job offers, especially in a context of high unemployment. In the long run, the working of a network of legal Mafia-owned enterprises enable Mafiosi to artificially construct scarcity so as to control the economic activity of non-Mafiosi, by granting or denying opportunities to them. This artificial scarcity, which I will specify and describe below, is a concrete illustration of Commons’ notion of power to withhold.

- The tool of artificial scarcity

Artificial scarcity originally refers to a scarcity created socially by an institution or a group of persons. It can be instrumental for the group creating it because it gives rise to new kinds of conflicts of interests, therefore requiring new working rules and even the establishment of a new order. Artificial scarcity is closely linked to power issues in economics. The real functioning of markets – as political rather than “natural” systems – allows such a process. As

Dugger (1989) explains, markets are fundamentally two-faced: one side is collectivized, the other one decollectivized because at least one participant to markets is an organization, not an individual. There is no such thing as an egalitarian market. On the contrary, “the collective participant is far more powerful than the individual participant, which is why collectivization takes place” (Dugger 1989, 610). If no counterweight is created (which is generally the case in free market economies), then the other side becomes decollectivized. This asymmetry can be voluntarily reinforced through the creation of artificial scarcity by the collectivized side of the market. It leads to a segmentation among participants to markets, increasing the imbalance between them. Some will impose scarcity and benefit from surpluses while others, on the decollectivized side of the market, will suffer from scarcity and shortages limiting their opportunities and the expression of their “will-in-action”. Competition, as a consequence, becomes highly based on personal characteristics and the collectivized side of the market is *de facto* granted the power to discriminate among other participants to market-transactions. Champeyrache (2014) explains how the Mafia uses artificial scarcity as a functioning principle in infiltrating the legal economy and the impact it has in generating a Mafia power thanks to legal Mafia-owned enterprises. The use of artificial scarcity by Mafiosi is twofold: it works inside the Mafia and it also regulates relations with non-Mafiosi.

Inside the criminal association, legal Mafia-owned enterprises focus on the civil engineering sector and manage to exclude non-Mafiosi entrepreneurs from auctions while maintaining a large number of small Mafia-owned enterprises representing various clans and families. These enterprises follow a network behavior imposed by the Mafia who coordinates them and establishes a “waiting line” (see Gambetta, 1993, 201-202, 214-217) and a subcontracting rule system based on territory rather than market share. Mafia-owned enterprises take turns to get a contract. When allowed, they make the best offer to the invitation to tender. Once the auction is won, the successful bidder can share the work with other Mafia-owned enterprises in order to mutualize profits and pay respect to the territorial sovereignty of each clan. In doing so, Mafia enterprises manage to deprive non-Mafiosi entrepreneurs of access to the sector.

Infiltrating an entire sector is a hard task for a criminal association that is also constrained by territorial limits and careful recruitment of members. The Mafia can overcome this obstacle by focusing a key sector conditioning an entire chain of production. This is the case of concrete production in the building industry. Investing the concrete sector offers a perfect opportunity

to exert a power to withhold. Not delivering, or not delivering on time concrete to a building site or simply threatening to do so are a perfect illustration of what the economic power of property can achieve: Mafiosi use these behaviors in order to impose their conditions on non-Mafiosi: by so doing, they can obtain subcontracts, exert power over the workforce and suppliers and compel them to transactions and choices they would not have made otherwise. More generally speaking, Mafia infiltration of legitimate businesses is not a hit and run strategy, it is a lasting, organized and cumulative process (Champeyrache, 2004). As a consequence the holding of property rights over determinate resources by Mafiosi leads to a monopolistic control of these resources even though markets still look atomistic with a large number of small enterprises. The capacity to hold things becomes, in the hands of Mafiosi, a choice to turn abundant resources into rarer resources, namely to withhold. The aim is to make it difficult for non-Mafiosi to access certain goods. By creating barriers to access to goods for non-members of the criminal association, Mafiosi are able to constrain non-Mafiosi denying them opportunities, they can also enable compliant non-Mafiosi to have access to a wider range of economic freedoms.

- Impact upon non-Mafiosi

As Anderson puts it, “the discriminatory use of business property stigmatizes members of excluded groups and diminishes the range of significant options open to them” (1993, 142). The holding and the locking of property rights by the mafia do negatively affect the range of freedoms non Mafiosi can enjoy. The holding of property rights by Mafiosi becomes therefore a power to withhold from others. Such restrictions take on the most varied forms as the result of an unstable and unofficial modification of the content of property rights. The bundle of complete property rights is truncated whenever the owner is not a mafia member.

The mafia-instrumented artificial scarcity results in a loss of effective control over the owned good. Considering the three rights traditionally constitutive of a complete bundle of property rights, each of them is partially, if not totally, altered in its content. Alienability is a fundamental instrument for concentrating property rights within criminal hands. The criterion of exclusivity is badly harmed as the practice of extortion always accompanies or even precedes the infiltration of the mafia in the legal economy. Lastly, the right to use is restricted

to an always smaller range of options delimited by the activities exerted by the mafia and by the risk to choose a use that could impede in some way the strategies planned by the mafia. Because of artificial scarcity, the structure of the infiltrated markets is also characterised by an identity-based limitation of access to goods, both uphill and downhill. Empirical evidence shows that legal mafia-owned enterprises condition their suppliers as well as their customers. The entrepreneurial mafia network takes the form of a hidden local monopole formed by many small enterprises owned by the members of a same criminal family. The customers are fundamentally captive in front of such an organization. In case of infiltration in a vertical process of production, the mafia generally chooses the position of key supplier. For instance, to provide for the infiltration of the building industry, the first step for the mafia has been to control the production of concrete.

The restrictions upon the range of freedoms caused by the existence of legal mafia-owned enterprises have two major implications for the local economy and for its development. Both are linked by what could be called the “deterrence effect” of the mafia.

- The first point has to do with the sterilization of entrepreneurial potentialities in mafia-ruled territories: this sterilization goes from a standstill to the destruction of the industrial fabric. As shown by a panel-research led by the Italian research center Censis (2003), many owners of still existing “honest” enterprises choose a self-limitation of the economic expansion of their productive capacities so as not to impinge on the mafia’s private ground; self-limitation of activity can also aim at not attracting the attention of the Mafiosi desirous of acquiring or extorting existing enterprises. Other owners finally abandon every entrepreneurial activity.
- The second point refers to the migration of talents (mentioned in Arlacchi [1983]). A migration of the most relevant groups of society toward territories where the enforcement of property rights proves more effective is observed.

On the whole “freedom to perform an act is meaningless unless the subject is in possession of the requisite means of action (...) the practical question is one of power rather than of formal freedom” (Knight 1929, 133): through its holding and locking of property rights, the mafia exerts its local power by restricting/withholding others’ freedom and opportunities. The mafia develops the required capacities to play with the fragile frontier that separates freedom from power.

Apart from the restrictions upon the range of freedom, the presence of legal mafia-owned enterprises also restricts the quality of freedoms enjoyed by “honest” agents.

Freedom is traditionally linked to the concept of motivation as opposed to the idea of cause: freedom entails a dimension of autonomy which excludes any action done out of necessity or under constraint. Under the constraint imposed by the mafia, the range of effective freedoms left to agents not belonging to the mafia has dramatically shrunk. Still, there is some space left for “honest” agents to make choices and make use of their freedoms. As Anderson wrote “call a person free if she has access to a wide range of significant options through which she can express her diverse valuations” (1993, 141). The matter is not anymore one of “wideness of the range of options” but one of “significance” of these options: even the limited options left to non-Mafiosi are influenced by the Mafia. It means that the “will-in-action” is restricted for non-Mafiosi, although it formally is not the case.

The relevant point, then, with identity not being neutral is that the decisions made by economic agents will no more be based on the same calculus and motivations whether the decision-maker is a Mafioso or not. The decisional process leading to the final choice to do something includes a supplementary parameter for the “honest” agents: coping with the mafia. Whereas the decisions made by the members of the mafia can be totally egoistic, the others’ decisions are paradoxically subordinated to the respect of the criminals’ freedom. In the meantime, the insulation of the legal mafia-owned enterprises from many of the external constraints of the market also lessens the degree of uncertainty to which Mafiosi agents are subjected. As a side effect, uncertainty increases for the other agents. The mafia, then, instruments this uncertainty in order to turn it into a completely random process that makes forecasting an arduous task as even probabilities cease to be calculable. The “will-in-action” of non-Mafiosi is seriously hampered by the pattern of relative withholding capacity set forth by legal Mafia-owned enterprises.

3- THE MAFIA AND THE STATE, COMPETING SOVEREIGNTIES

Thanks to a network of legal enterprises, the Mafia exercises an unprecedented economic power for a criminal association. Furthermore this economic power, uncontradicted – or

inadequately so – by the State, tends to infringe upon the physical power of the State. The Mafia and the State therefore appear as competing sovereignties in Mafia territories.

- The no-redemption thesis and institutional isomorphism

Legal Mafia-enterprises do not follow hit and run strategies; their presence is meant to be lasting and pervasive (Champeyrache, 2004). It means that the hypothesis that criminals may infiltrate legal activities in order to transform their illegal profits into legitimate wealth and, in the end, to abandon definitely illegality does not make sense as far as Mafiosi are concerned. The infiltration of legitimate businesses is a strategy chosen not by individuals (Mafiosi developing a private business) but by the Mafia itself. This way, the enterprises actually belong to the Mafia, and Mafiosi are mainly highly substitutable representatives (Champeyrache, 2004). Giovanni Falcone already stressed this no-redemption thesis mentioning that Mafiosi would never cease to be Mafiosi even by becoming entrepreneurs with legal activities (Falcone, Padovani, 135-137). It also means that the working rules elaborated within the criminal association still apply when dealing with legal activities. As such, legal Mafia-owned enterprises are part of a wider system both in economic terms (with a criminal sphere englobing interacting and interrelated legal and illegal activities) and social terms (being a Mafioso determines your behavior in everyday life, your affiliation determining the persons you will be in social relationships with, your relation to the law, public officers and so on). As a consequence, the infiltration of the legal economy must not be misunderstood. It is not a novelty for Mafias, it is not a by-product of excessive profits in, for instance, drugs traffics. Proximity with the legal sphere in general as always been looked for by Mafiosi. Initially they are considered as mediators on markets but also in social life where they settle ordinary disputes among the local population (see Gribaudo, 1980, Gambetta, 1992 or Catanzaro, 1992, among others).

Thanks to the economic power conferred by owning legal productive entities in various fields of the legal economy, the Mafia achieve goals that could not be achieved through the mere use of violence. This is a key point in understanding what Mafias aims at and the real threat they represent to society, to the economy and even to democracy. As Commons (1924) observes, the power of withholding can pass unnoticed in the best case, it can even be justified in the name of the “natural” law of supply and demand. It is similar to Knight’s fear that the

working of free markets could lead to the predominance of dubious individuals in terms of ethics (Knight, 1935). Violence, on the contrary, is highly visible and requires the retaliation from a State exerting its sovereignty and reminding that it has the monopoly of violence. Although violence is necessary for the initial establishment of a Mafia, it is a profoundly impracticable device to use in the long run if you want to settle durably.

Thanks to its economic power, the Mafia, as dealt with in part 2 manages to have a negative impact upon the quality of non-Mafiosi's will-in-action. In particular, it gains liberty expanding the relative exposure of non-Mafiosi and, through the artificial scarcity it creates, it is able to qualify who, not only among Mafiosi but even more among non-Mafiosi, is to be denied or offered opportunities. Furthermore, on a higher level, although it is deeply connected, the Mafia contributes to a process of "institutional isomorphism" through which Mafia norms of behavior tend to be (more or less) freely adopted by non-Mafiosi entrepreneurs. One way to cope with the presence of Mafiosi in the legal field is indeed to abide by Mafia rules. Some entrepreneurs therefore choose to comply with some requests (such as hiring determinate persons, lending for free warehouses or machine-tools, subcontracting, choosing indicated suppliers instead of the preferred ones,...) in order to maintain their economic activity. This behavior can take on various degrees of compliancy ranging from complicity to subjection. A continuum which is highly relevant for justice but also extremely hard to delineate.

- Economic power, uncontested power

The evolution of Mafias who choose to resort less and less to overt violence in favor of the constraining power of artificial scarcity implies a change in the nature of power exerted by Mafiosi on their territory. The power of the Mafia does not rely anymore on sanctions, it has become more secure and unnoticed, relying more on more on voluntary submission. This new power relies mainly on two social mechanisms pointed out by Dugger (1980) following Veblen, namely: emulation and mystification. Emulation is of particular interest when dealing with legal Mafia-owned enterprises because these latter drain goods, resources and wealth to the Mafiosi, becoming a source of status (Champeyrache, 2014). And this status is not an individual one, it is the affiliation to the Mafia that becomes valuable on a large scale. The legitimization process that ensues turns to a substitution process: the Mafia, as we saw, takes

on some State prerogatives; it also manages to contribute to an inversion in the hierarchy of going concerns, even though it is a criminal association.

The State is one of many going concerns but it is supposed to be the higher on the hierarchy:

The general status law, the common law, the decisions of courts, in short, the working rules of the general government, are read into the articles of incorporation and into the transactions of principal and agent, employer and employee, stockholders, bondholders, patrons, clients, customers, so that the will of the state, or rather its working rules, perpetuate the rights, duties, liberties and exposures, within which the working rules of a subordinate concern are made up and its collective behavior goes along. (Commons, 1924, 147)

Mafiosi using the power to withhold change the pattern of opportunities, liberties, rights and exposures. Because there is a tendency to believe in the natural order of markets, this power is passively accepted or even justified. Gaining legitimacy because they offer jobs and revenues, Mafiosi impose their working rules detrimentally to the State. This leads to the “mystification” process that consists in distorting symbol: negative values are turned into positive ones; becoming part of the Mafia or abiding by its rules appear as a vector of opportunities. As Hodgson (2006, 5) recalls: “people (...) obey laws not simply because of the sanctions involved but also because legal systems can acquire the force of moral legitimacy and the moral support of others”. In front of a discredited State, the Mafia could manage to revert the hierarchy of going concerns and make its rules prevail over the State ones opening the way to paradoxical “illegal legal order” (Villegas, 2016).

If the economic power of the Mafia remains unconstrained by the physical power of the State, the Mafia appears as a competing sovereignty because it tends to define de facto rules and duties and, through artificial scarcity and the capacity to withhold, to determine who is to be kept off what, a prerogative usually in the hands of the State. Conversely, the State can and must restore the hierarchy of going concerns by putting an end to the confusion between economic power and sovereignty and by making clear that Mafiosi are to be kept off from property over productive entities. The Italian penal code (thanks to the Rognoni-La Torre law) allows for the seizure of Mafia patrimonies, including legal enterprises.

From these non-exhaustive presentation of the economic power of withholding thanks to property emerge some salient points for an analysis of the expansion of a Mafia order through the infiltration of legitimate businesses:

- the evolution of the nature of property affects the bargaining power of respectively owners and propertyless;
- power is not only of a physical nature (as is the case with sovereignty) but also takes on an economic dimension;
- owners are endowed with a capacity to determine rights, duties, liberties and exposures;
- the Mafia because it owns “legal Mafia-owned enterprises” has acquired an economic power that it would not have if it limited its activities to the illegal economic sphere;
- this power affects the non-Mafiosi increasing their exposure to Mafiosi and affecting the true meaning of their “will in action”;
- this economic power in criminal hands could remain unobserved because of its legal façade;
- this, in turn, raises the question of what the State can do, of the use of its sovereignty when confronted to the rise of a competing criminal power.

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