CHOOSING AND ENFORCING BUSINESS RELATIONSHIPS IN THE ELEVENTH-CENTURY MEDITERRANEAN: REASSESSING THE ‘MAGHRIBI TRADERS’

Around the year 1050, a wet bale of indigo that had arrived from Egypt became the object of dispute among a group of merchants from Palermo. The bale — dumped off a ship onto the beach of Mazara in western Sicily, some 110 kilometres from Palermo — was labelled on the outside with the name of Mašliaḥ b. Ellaḥ, who was both the Jewish judge of Palermo and a merchant, but inside it contained seven discrete packages, three labelled with the name of both the owner and the receiving agent, and four with only the names of the receiving agents. Since Mašliaḥ was in Palermo, the bale became the responsibility of Ḥayyim b. ‘Ammār, who was already on site dealing with another bale dumped from the same unweatherly ship. He took up the task with reluctance after Ahmad (an official whom ‘all the people of Palermo had agreed to leave in charge of their goods’) had enquired about it and Mašliaḥ (who owned none of the packages and was labelled as agent for three) had refused either to come for it or to have it delivered to him. Ḥayyim opened the bale at the funduq¹ in front of a group of witnesses including Ahmad, who recorded its contents, their ownership and agency.

The real trouble started later, when Ḥayyim received a letter from the owner of two of the packages telling him that those labelled to one agent, Isma‘il b. Hārūn, were to be entrusted to

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¹ A public inn and warehouse. On the functions of the funduq in this period, see Olivia Remie Constable, Housing the Stranger in the Mediterranean World: Lodging, Trade, and Travel in Late Antiquity and the Middle Ages (Cambridge, 2003), esp. ch. 3.
a different agent, Nissîm b. Shemariah. Both men arrived from Palermo to claim the same goods, and one was outraged not to receive them. He was so furious that he denounced Ḥayyim to the ‘inspectors’ (דַיְרַנְדִי) — the dreaded agents of the government secret service — saying that Ḥayyim was undermining Muslim institutions by evading customs duties. Insults and accusations were traded in front of the authorities (‘the sultan’) and colleagues who included Ḥayyim’s in-laws, a situation the equally furious Ḥayyim was ‘unable to handle’. The outcome of the dispute remains unknown; and the whole affair is documented only in a letter Ḥayyim wrote to Fustat (near Cairo).

Perhaps the strangest thing about this story is that these three men were quarrelling before authorities, colleagues and relatives over goods that none of them owned. Most of the owners were back in Egypt, which explains why Ḥayyim sent this letter there. Nor was any of these agents going to earn a commission when the goods were sold. To crown it all, selling these goods was going to be an especially onerous task, since wet indigo would require spreading, airing, sorting and careful, selective repacking if some of its value was to be salvaged. So they were fighting for the right to do work that was personally unprofitable, would require more labour than originally envisaged, and would be worth less money than expected. In their battle, they wielded a number of weapons: letters, threats to reputation, and the powers of government — that is, weapons of private and public order.

The dispute reveals many aspects of a complex set of agency relationships among merchants, which were situated in both a formal institutional and an informal interpersonal context. The circumstances of the merchant community within which Ḥayyim fought his battles, and its use of principal–agent relationships that seem to represent a radically different model than those from

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2 The writer used Hebrew rather than Arabic when referring to these men. See the discussion at n. 19 below.

3 Fustat (al-Fustāt) was the commercial sister-city of medieval Cairo. For the letter, see Cambridge University Library (hereafter CUL), Taylor-Schechter Genizah Collection (hereafter TS) 20.122v, passim, 122v, ll. 1–12. The name of the recipient is lost. A note on the documents and translations: the cataloguing of Geniza documents is ongoing; I have used the most recent shelf marks here. See the works cited in nn. 4 and 20 below for further explanation and earlier forms. The vast majority of these documents are the subject of at least one, and in many cases, multiple editions (see n. 20); many have been translated, but the translations here, unless otherwise cited, are my own.
which we trace the origins of the modern economy, have attracted lively scholarly attention. Indeed, their mechanisms for managing commercial relationships have been portrayed as sowing the seeds of the long-term decline of the Islamic economy relative to that of Europe.

Hayyim’s troubles are documented in the eleventh-century commercial records of some Jewish merchants of Fustat and their Mediterranean associates. This group, known in institutional economics as the ‘Maghribi traders’, left extensive documentation of its trading activities in the business records it discarded in the Cairo Geniza. More than 1,500 of these documents — primarily letters, but also contracts, accounts and other ephemera — were left by hundreds of merchants (the Geniza merchants, as I call them for convenience) over several generations. These merchants were connected to one another not only professionally, but also, like Hayyim, by family ties and shared activity in Jewish communal affairs.

Geniza merchant papers span the eleventh and twelfth centuries, and are the only substantial and coherent documentary records of extra-regional trade from the medieval Islamic Mediterranean. This alone would make them of particular interest to economic historians: as unrivalled sources for any

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4 Geniza is a general term for a place in which used religious texts are deposited for future burial. ‘The Geniza’ or ‘the Cairo Geniza’ refer to the documents from one specific Geniza, that of the synagogue of the Palestinian congregation of Fustat. See M. R. Cohen and Y. K. Stillman, ‘Genizat Qahir u-minhagei geniza shel yehudei ha-mizraḥ: ‘iyyun histori ve-ethnograf’ [The Cairo Geniza and the Custom of Geniza among Oriental Jewry: An Historical and Ethnographic Study], Pe’amim, xxiv (1985); Stefan C. Reif, A Jewish Archive from Old Cairo: The History of Cambridge University’s Genizah Collection (Richmond, Surrey, 2000). Although the term ‘Maghribi traders’ now seems fixed in the economics literature, it is a misnomer. The merchants never refer to their group by this term, though it, like other geographic labels, had meaning in a world where place of origin was an important valence of solidarity. The term merchants did often use to describe themselves, asḥabuna, and its special meaning, is discussed in S. D. Goitein, ‘Formal Friendship in the Medieval Near East’, Proc. Amer. Phil. Soc., cxv (1971); A. L. Udovitch, ‘Formalism and Informalism in the Social and Economic Institutions of the Medieval Islamic World’, in Amin Banani and Speros Vryonis (eds.), Individualism and Conformity in Classical Islam (Wiesbaden, 1977); Jessica L. Goldberg, Trade and Institutions in the Medieval Mediterranean: The Geniza Merchants and their Business World (Cambridge, 2012), 38–9, 139–43.

5 Individual documents and small collections other than the Cairo Geniza have been discovered and edited, but they are of modest size and mostly from local and regional traders within Egypt: see Li Guo, Commerce, Culture, and Community in a Red Sea Port in the Thirteenth Century: The Arabic Documents from Quseir (Boston, 2004); Yusuf Ragib, Marchands d’étoffes du Fayyoun au IIIe/IXe siècle d’après leurs archives (cont. on p. 6)
comparison of medieval Islamic and European trade, and as unique sources illuminating the economy of the eleventh-century Mediterranean in particular. This century, after all, saw the emergence of the maritime Italian city states as more substantial and wide-ranging economic and military players in the Mediterranean; but the most important sources for Italian merchant practice, the notarial cartularies, survive in substantial numbers only from the twelfth century. Yet in recent decades, the Geniza merchants have been most prominent in grand narratives ascribing the roots of Islamic economic decline relative to Europe to differences in their contract-enforcement institutions. For the historian, these ideas contain uncomfortable echoes of older literature that viewed institutional ‘formality’ as explaining the modernization and success of European societies relative to Islamic ones, newly clothed in the language of institutional economics.

\[(n. 5 \text{ cont.)} (\textit{actes et lettres}) \text{ (Cairo}, 1982); \text{ Werner Diem, Arabische Geschäftbriefe des 10. bis 14. Jahrhunderts aus der Österreicherischen Nationalbibliothek in Wien} \text{ (Wiesbaden}, 1995).\]
\[6 \text{ For overviews on Italian trade expansion, see Robert S. Lopes,} \textit{The Commercial Revolution of the Middle Ages, 950–1350} \text{ (Englewood Cliffs, 1971); M. M. Postan and Edward Miller with Cynthia Postan,} \textit{Cambridge Economic History of Europe, ii, Trade and Industry in the Middle Ages, 2nd edn} \text{ (Cambridge, 1987), chs. 5–6. Documenti del commercio veneziano nei secoli XI–XIII}, \text{ ed. Raimondo Morozzo della Rocca and Antonino Lombardo} \text{ (Turin, 1940), includes the largest collection of eleventh-century Italian contracts, some sixteen of which involve trade.}\]

\[8 \text{ Especially in Max Weber,} \textit{Economy and Society: An Outline of Interpretive Sociology}, \text{ trans. Günter Roth and Claus Wittich} \text{ (Berkeley, 1978), for example at 818–22. The argument for informality is usually supplemented by a claim for the increased power and importance of social norms as agents of enforcement; see, for example, Lawrence Rosen,} \textit{The Anthropology of Justice: Law as Culture in Islamic Society} \text{ (Cambridge, 1989); Lawrence Rosen,} \textit{The Justice of Islam: Comparative Perspectives on Islamic Law and Society} \text{ (Oxford, 2000). For an overview and critique, see David S. Powers,} \textit{Law, Society, and Culture in the Maghrib, 1300–1500} \text{ (Cambridge, 2002); with reference to the Geniza merchants, see Udovitch,} \textit{Formalism and Informalism in the Social and Economic Institutions of the Medieval Islamic World}, 77.\]
economics has turned to institutional explanations of economic development, the Geniza merchants have also become a cornerstone for arguments about the role of both institutions and cultural beliefs in economic development more generally.9

Although part of the basis for these theories lies in earlier analyses of Geniza merchants by S. D. Goitein and A. L. Udovitch, Avner Greif's work has been most influential in the literature. Using Geniza and Genoese documents, Greif contrasted a medieval Islamic economy characterized by a private-order enforcement regime with an Italian counterpart that came to rely on formal, public mechanisms.10 Greif did not argue that the use of private-order enforcement by the 'Maghribi traders' was inefficient in its own setting, but he did suggest that these contrasting systems set Islamic and European merchants on different paths of economic development for two reasons. Economic theory suggests that private-order systems limit group size — restricting the potential for expanding the pool of agents even when the economic situation would benefit from relationships with new groups.11 Greif also added fuel to pre-existing debates on

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formality and informality when he suggested that the use of private-order enforcement grew out of a cultural difference between 'collectivist' Islamic and 'individualistic' European societies, with the former relying on personalized groups rather than impersonal public institutions to resolve conflicts. Greif suggested that since collectivist values are found in modern less-developed societies, private-order, collectivist contract enforcement may not be as efficient as the formal, impersonal systems found in the West.12

Greif's theories about the 'Maghribi traders' have been widely cited by economists for the past two decades, but have recently been criticized in several ways. Edwards and Ogilvie question the historical accuracy of Greif's account, arguing that empirical evidence is lacking for any private-order enforcement or for any significant difference between European and Islamic contract enforcement mechanisms.13 E. B. de Mesquita and Matthew Stephenson criticize Greif, along with other theorists, for only outlining a private-order enforcement regime, without addressing the theoretical problem of merchants' choices between available formal and informal regimes.14 And Timur Kuran advances an institutional explanation for Islamic economic stagnation that is almost diametrically opposed to that of Greif, though it does not directly challenge him.15 Kuran suggests it was not the use of private-order enforcement and avoidance of the legal system, but rather the early development of a universally accepted but quite restrictive set of contract forms, that eventually caused Islamic economic development to stall. As evidenced by Geniza merchants' successful use of such contract types around the Islamic Mediterranean and Indian Ocean, this early diffusion of a shared legal system meant there was no need to innovate new kinds of

15 Indeed, since the authors agree on a central argument — that European systems of contract are a unique phenomenon, and that such contract forms play the determining role in the eventual dominance of Europeans in the world economy — the underlying logical opposition of their historical arguments on Islamic development has been underplayed.
contract, particularly the permanent corporation whose capital formation abilities lie at the heart of the capitalist economy. These critiques render it the more important to establish precisely how Geniza merchants used private and public mechanisms, since this question has become fundamental to widely held views about historical and modern economic development.

Despite all this interest in the Geniza merchants, most analysis of Geniza materials has been either secondary or partial. Moreover, reconstructing the world of eleventh-century commerce — the nature of trade, business relationships and the institutional context — is tricky work. Geniza evidence consists principally of hundreds of commercial letters, which dwarf, whether in terms of numbers of individual documents or numbers of lines of written material, all other sources; and letters take the structures in which they operated for granted. Additional Geniza material includes a few dozen draft accounts, handfuls of ephemera (IOUs, shipping notes, cheques) and several dozen legal documents. Unfortunately, few contemporary administrative manuals, travel narratives or legal materials survive to provide comparative or contextual evidence. We must infer and deduce the nature of relationships and institutions from passing references, complaints and justifications when things went awry, snippets of legal testimony, rare surviving contracts, and letters of advice from senior merchants to apprentices. It does not help that letters were written in a Judaeo-Arabic that employs different registers of vernacular and classical Arabic, and is peppered with merchant jargon, rendering debatable the meaning of many sentences and phrases. Yet efforts in the past two decades to

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17 Greif’s work was based on less than a third of extant documents: see his ‘Cultural Beliefs and the Organization of Society’, 924–5. All the other theoretical work discussed in nn. 10–16 above relies on secondary sources, principally Greif and also S. D. Goitein, *A Mediterranean Society: The Jewish Communities of the Arab World as Portrayed in the Documents of the Cairo Geniza*, 6 vols. (Berkeley, 1967–93), i.
19 See, for instance, the very different translations and interpretations of CUL, *TS* 13 J 25.12 found in Moshe Gil, *Erets-Yišra‘el ba-tekufah ha-Muslemit ha-rishonah (634–1099)* [Palestine during the First Muslim Period (634–1099)], 3 vols. (Tel Aviv, 1983), doc. 497; Goitein, *Mediterranean Society*, v, 303–4; Edwards and Ogilvie, ‘Contract (cont. on p. 10)
provide greater access to the corpus have opened the door to more comprehensive analysis. 

This article makes use of this opportunity to assess the claims of Greif and his critics more systematically, as well as the arguments advanced by Kuran. The digitization of the corpus of identified mercantile materials has allowed me to analyse patterns in both language use and content distribution. The first part of the article utilizes such analyses to reassess the three main forms of agency relationship used by Geniza merchants. It shows first how merchants understood these relationships, and then the extent to which they were based upon legal norms. The second part uses this fuller understanding of the nature of Geniza merchant relationships to re-examine the enforcement mechanisms that underpinned them. In this section, I show that both the form and enforcement of relationships used by Geniza merchants are unique within what we know of historical economic systems. But the complex choices and arrangements of the Geniza merchants fail to provide any neat opposites to a European example, and do not support narratives of development based on facile Islamic-Christian dichotomies. Instead, they suggest that Geniza merchants relied equally on private- and public-order

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(n. 19 cont.)


20 Moshe Gil’s work — begun in his Erets-Yisra’el, but mostly found in Moshe Gil, Be-malkhut Yishma’el bi-tekufat ha-ge’onim [In the Kingdom of Ishmael], 4 vols. (Tel Aviv, 1997) — resulted in editions of at least 90 per cent of extant material (personal communication with A. L. Udovitch, Apr. 2004). Gil’s work overlaps with that of Ben-Sasson, Zeldes and Frenkel for letters involving Sicily: see Menahem Ben-Sasson, N. Zeldes and M. Frenkel, Yehude Sitsilyah, 825–1068: te'udot u-mekorot [The Jews of Sicily, 825–1068: Documents and Sources] Qerusalem, 1991). In addition, the Princeton Geniza Project, <http://gravitas.princeton.edu/tg/tt/>, puts transcriptions of documentary materials from the Geniza online, based on both published and unpublished editions from a number of scholars, especially S. D. Goitein. It contains a few eleventh-century commercial documents omitted by Gil.

21 Statistics are based on two different analyses of mercantile materials. In order to complete a content analysis of mercantile correspondence, I created a sample subset of letters, using a statistically representative one-fifth of the edited correspondence (I refer to this as the 'sample set') and coded content according to categories I saw recurring in order to look at the percentage of overall letter content that was devoted to particular issues. I also digitized the full corpus of mercantile materials (letters, accounts, notes, legal testimony, etc.), and thus patterns in word use are analysed across the 'corpus', as I refer to it. For a detailed review of the methodology, see Jessica L. Goldberg, ‘The Geographies of Trade and Traders in the Eastern Mediterranean, 1000–1150: A Geniza Study’ (Columbia Univ. Ph.D. thesis, 2005), 7–8, 52–4.
contract enforcement mechanisms. These men did not, moreover, owe their success to the ability to choose between two systems; rather, private and public systems worked effectively for Geniza merchants in that they were inextricably intertwined.

I
RELATIONSHIPS AND THEIR LEGAL UNDERPINNING

An eleventh-century Islamic merchant manual states a truth with which a modern institutional economist and an eleventh-century Geniza merchant would agree: for success in trade, a merchant needs agents.22 Men like Hayyim and Nissim in Palermo, or the merchants in Fustat who had sent them goods, were in great and constant need of merchant services. The structure and integration of the Islamic trading world meant that most Geniza merchants did business in at least half a dozen cities and villages in any year, involving many different goods, so that an active trader might have a stake in fifty separate deals simultaneously. Each deal might in turn require ten or more distinct transactions, many to be handled by different merchants. Because of the great variety of merchant activity in both regional production and international trading, and because this was an economy in which there were few if any firms upon which merchants could rely to provide ancillary services, deals could involve an impressive array of tasks and enormous burdens of time-consuming work.23 Many merchants would toil for months in the countryside, for instance, to secure flax crops from farmers and estates, and to oversee the processing, grading, packing and transport that turned this crop into the most important commodity in merchants’ portfolios.24 But when one such merchant complained that his well-connected correspondent had not joined him and

23 For more details, see Goldberg, Trade and Institutions in the Medieval Mediterranean, 93–114.
he was overburdened, his colleague reminded him that there were services to be done everywhere:

Surely you know, my friend, that the main reason I'm staying here is on behalf of your business. If all of us were to leave the city, our business in Fustat would come to a standstill since there would be no one here to take delivery of a bale of flax, no one to settle accounts and no one to do any selling... this is exactly why one wants associates.\(^2\)

Using a variety of agency relationships,\(^{26}\) Geniza merchants could manage multiple strands of business in international and local markets throughout much of the Islamic Mediterranean (a region that at the time included much of Iberia, all of North Africa, and parts of Sicily and the Levant). Most comparisons of these merchants with the early Italians overlook the substantial difference in diversification through agency relations that distinguished them: middling Geniza merchants in the eleventh century were more diversified in the geography and the nature of their investments than, it appears, even the more important Italians until the late thirteenth century, far into the ‘commercial revolution’.\(^{27}\) Geniza merchants’ choices about how to arrange and

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\(^{25}\) Bodleian Library, Oxford, MS Heb d 66.41r, ll. 8–11.

\(^{26}\) A note on terminology: economists use the terms ‘agency relations’ or ‘agency relationship’ to describe any situation in which a holder of capital (the principal) engages someone (the agent) to perform some service on his behalf with that capital, necessarily delegating some authority over the capital to the agent. The activities of the agent are called ‘agency services’. The term can cause confusion, since it does not matter to theory whether the agent contributes capital, whether both parties are each other’s agent, and whether and how agents are compensated. As I retain the economists’ term, all the business relationships used by Geniza merchants, including the partnerships described here, are ‘agency relationships’. The use of the term is made difficult in the context of this article by contrary practice of medieval Jewish and Islamic commercial law, which largely distinguishes business relationships by each party’s ties to the capital: ‘partnership’ defines relationships in which all parties have some stake in the capital; and ‘agency’ denotes relationships in which the principal retains all rights over the capital. For clarity, I have used ‘agency relations’ or ‘agency service’ when referring to the situation the economists describe, and ‘agency’ or ‘partnership’ when talking about forms recognized by the legal systems Geniza merchants used.

\(^{27}\) Diversification of investment and numbers of agents are discussed in Goldberg, *Trade and Institutions in the Medieval Mediterranean*, 93–143, 276–94. Differences in available sources no doubt understate the number of agents used by early Italians, but Abulafia’s examination of early Genoese trade — David Abulafia, *The Two Italies: Economic Relations between the Norman Kingdom of Sicily and the Northern Communes* (Cambridge, 1977) — suggests differences of an order of magnitude on number of agents, confirmed over a longer period by Quentin Van Doosselaere, *Commercial Agreements and Social Dynamics in Medieval Genoa* (Cambridge, 2009), chs. 3–4. For an exceptional Italian, see Roberto Lopez, *Genova marinara nel Duecento: Benedetto Zaccaria, ammiraglio e mercante* (Messina, 1933); and compare Van
manage long-distance agency relationships are thus of dual interest: their business model relied on particularly ramified agency relations; and Geniza papers document the wide array of options among which they might choose.

A letter written from Yusuf b. Farah al-Qabisī to Nahray sometime in the late 1040s is one of the few documents to reveal how merchants thought about choosing between agency relationships:

You had said something to me in Alexandria; I have been mulling it over but it’s done me no good. So, if you prefer it to be dirh[am] for dirh[am] and service for service, I’ll do that. If you don’t prefer it, I’ll serve you in this baqlā [a mid-sized bale]: I’ll sell and buy and send you [the purchased goods]. And if you prefer that I lend you above what is yours, from what I have in Sicily — for the din[ars] are yours — I myself will add 200 to them and half the profit will be yours.28

Although Yusuf leaves the decision to Nahray, who had first proposed that they collaborate, his deliberations demonstrate a central finding and a central problem in the analysis of these relationships. First, the corpus of Geniza letters shows that merchants could use a variety of kinds of agents and an array of forms of relationship. But the vast majority of agency services, some 90 per cent, were in fact carried out by fellow merchants.29 Secondly, it is not clear from this discussion whether or how Yusuf intended to formalize the arrangement once Nahray had decided. But understanding both the form and the formality of these relationships is central to untangling the problems merchants faced in choosing and managing relationships.

If the great majority of agency services were performed by fellow merchants, statistical analysis of the contents of letters further shows that 93 per cent of such services were completed under the auspices of one of the three relationships Yusuf describes: a

28 CUL, Oriental Collection (hereafter Or) 1080 J 13r, ll. 17–20, right margin 1.
29 Less than 1 per cent were carried out by professional brokers, and under 10 per cent can be securely associated with an apprentice: see the full discussion of this system in Goldberg, Trade and Institutions in the Medieval Mediterranean, 123–44. These are statistics across all eleventh-century materials; preferences evolved over time for reasons that seem unrelated to questions of enforcement: see the analysis in Jessica L. Goldberg, ‘Re-Considering Risk and the “Maghribi Traders”: Agency Relations, Contract Enforcement, and the Economy of the Eleventh-Century Islamic Mediterranean’, paper given at the Economic History Workshop, Yale University, 20 Feb. 2012.
khulta, a ṣuhba or qirāḍ/mudāraba. This overwhelming preference is interesting in the light of evidence that merchants could and did use other kinds of agency relationship. There is also great imbalance among the use of these three main relationships, demonstrating preferences that contrast with those of early Italians.

The first and third options Yusuf mentions seem to be the kind of reciprocal deals we might expect merchants to make with their colleagues. Yusuf indeed describes the two most typical forms of partnership used among the merchants. Both were venture partnerships, of limited duration. Although scholars have tended to focus on them, we must note at the outset that merchants used any kind of partnership for only about a quarter of transactions conducted through agency relations. The jargon of merchants in their letters, moreover, shows that they made different distinctions between partnerships than those found in legal treatises or even in their own written contracts. Merchants used the word shirka, for example, in letters whenever they talked about any kind of written partnership agreement, regardless of form,

Qirāḍ and mudāraba were interchangeable.

31 The remainder of agency work was done in long-term family partnership, with a tiny fraction done in commission agency. Merchants did some business entirely on their own behalf; such activity was excluded from statistical analysis of transactions. Employment was a legally acceptable contract form, but not used to acquire merchant services. See Goitein, Mediterranean Society, i, 164–85.

32 See the similar earlier analyses in Greif, 'Organization of Long-Distance Trade', 107–10.

33 This statistic comes from content analysis of my sample set. Greif and Udovitch suggest an even smaller percentage; Goitein speculated that perhaps half the relationships were partnerships; while Gil uniquely construes all relationships as partnerships. None of these authors, however, did a statistical analysis. See S. D. Goitein, 'Commercial and Family Partnerships in the Countries of Medieval Islam', Islamic Studies, iii (1964), 316; Udovitch, 'Formalism and Informalism in the Social and Economic Institutions of the Medieval Islamic World', 72–3; Moshe Gil, 'The Jewish Merchants in the Light of the Eleventh-Century Geniza Documents', Jl Econ. and Social Hist. of the Orient, xlvi (2003), 273–86; Greif, 'Organization of Long-Distance Trade', 109, 55–7. On both legal definitions and extant partnership contracts, see Ackerman-Lieberman, 'Partnership Culture'; Gil, 'Jewish Merchants', 274–82; Kuran, Long Divergence, 63–77; John H. Pryor, 'The Origins of the Commenda Contract', Speculum, lli (1977); Abraham L. Udovitch, 'At the Origins of the Western Commenda: Islam, Israel, Byzantium?', Speculum, xxxvii (1962); Abraham L. Udovitch, Partnership and Profit in Medieval Islam (Princeton, 1970); Abraham L. Udovitch, 'Theory and Practice of Islamic Law: Some Evidence from the Geniza', Studia Islamica, xxxii (1970). The focus on partnership arises from the fact that most discussion has been in the legal literature, where partnership gives rise to longer theoretical discussions, and provides a clearer point of comparison with European law.
though in legal papers this term refers only to joint-active partnerships (see below). This word was used in contrast to mu‘āmala, referring to any unwritten partnership. They used the word khulṭa, not a legal term at all, to describe the kind of joint-active partnership most commonly in use. Although they used sleeping-active partnerships (qirāḍ/mudāraba) too, they rarely used the term itself, instead identifying such partnerships by describing the capital and profit distribution, just as Yusuf does.

The first relationship Yusuf proposes was the khulṭa. This was a joint-active partnership in which merchants pooled their capital (the word khulṭa refers to the mixing of moneys), and at the end of the venture each received returns (or losses) in proportion to his share of the initial investment. ‘Joint-active’ meant each partner had full authority to act upon the goods, and shared unlimited financial liability for any losses. As Yusuf expresses his understanding of the partnership, both were expected to do roughly equal amounts of work, Yusuf’s ‘service for service’: the division of profits did not take differential work into account.

Merchants also used a sleeping-active partnership, known as a qirāḍ or a mudāraba in legal documents, a relationship similar to the commenda popular in twelfth-century Italy in that the active partner was compensated for his work and received a larger proportion of the profits than his capital — the active party might indeed contribute no capital at all. The active partner could also be shielded from most or all financial liability for losses, depending on whether the Jewish or Islamic form of this contract was used — Yusuf’s third option describes a Jewish form, in which part of the sleeping investor’s capital is considered a loan for which the active partner is liable. In most cases, the active party had full executive authority to make deals with the capital, though merchants could write contract stipulations to direct or

34 See Bodleian Lib., MS Heb a 3.20, l. 37; CUL, TS 13 J 3.27, l. 11, where the two terms are contrasted: discussed in Ackerman-Lieberman, ‘Partnership Culture’, i, 123–59; ii, 42.

35 Udovitch, Partnership and Profit in Medieval Islam, 40–1.


37 For debates and evidence on Geniza merchants’ use of Jewish versus Muslim forms of qirāḍ, see Phillip I. Ackerman-Lieberman, ‘Commercial Forms and Legal Norms in the Jewish Community of Medieval Egypt’, forthcoming in Law and History Rev.
limit the active partner.\textsuperscript{38} But, whereas different forms of \textit{commenda} dominated Italian overseas commerce in the twelfth century, the same was not true among Geniza merchants. They very much preferred the \textit{khulṭa}: it accounts for at least 80 per cent of partnership activity, and in fact the use of \textit{girāḍ} was complained about in some cases as being a hardship.\textsuperscript{39}

Yūsuf’s second statement, ‘I’ll serve you in this \textit{barqalī}: I’ll sell and buy and send you’ looks odd in economic terms, for it seems to be a simple offer to provide unremunerated services. But, in fact, such service was part of an ongoing relationship, the \textit{suhba}, that has been of great interest to those who have studied the Geniza, but whose exact nature has been widely misunderstood. A \textit{suhba} (literally ‘association’ or ‘companionship’) was an open-ended, strictly one-to-one relationship, formed only after face-to-face meeting, that gave each party the following right: the ability to unilaterally designate the associate an agent through written instructions in a letter in order to request that specified tasks be done on specified goods.\textsuperscript{40} The principal was free to do this as often as he liked, and to be as specific as he wished in outlining tasks: instructions range from a rank ordering of a dozen different goods an agent could purchase with the proceeds of a sale to the simple ‘do whatever your propitious judgement suggests to you’.\textsuperscript{41}

\textsuperscript{38} The majority of extant contracts, quittances and testimonies regarding partnerships do not contain such stipulations: for example documents from both the eleventh and the twelfth century in Ackerman-Lieberman, ‘Partnership Culture’, ii, docs. 2, 4–7, 9–10, 14, 15, 18, 20, 22–5, 28, 33, 35, 36, 39, 41, 43–6, 51, 52 (a draft with a number of stipulations), 54, 56–7, 58 (also containing a number of stipulations on the active partner), 59–60, 63–4, 66, 68, 72, 77, 78, 80, 84, 87, 88, 89 (some stipulations), 90, 92, 94–5, 96, 100, 101, 105. University of Pennsylvania Libraries, Philadelphia, Katz Center for Advanced Judaic Studies, Halper Collection (hereafter Halper) 389v, ll. 6–8, 16–19, outlines clear stipulations on an active partner, and the principal considered but rejected suing the active partner for not fulfilling them.

\textsuperscript{39} The indiscriminate use of the term \textit{shirka} to describe any kind of written partnership complicates the count. Yet the term \textit{khulṭa} is used approximately six times more often than the term \textit{shirka}, and ten times more often than both \textit{girāḍ} and \textit{mudāraba}, yielding the minimum assessment above. On \textit{girāḍ} as a hardship, see Halper 389v, ll. 6–19.

\textsuperscript{40} See Goitein, \textit{Mediterranean Society}, i, 164–9; Goitein, ‘Formal Friendship in the Medieval Near East’; Udovitch, ‘Formalism and Informalism in the Social and Economic Institutions of the Medieval Islamic World’. The description offered here builds upon this work but differs in many details. Additional analyses can be found in Goldberg, ‘Geographies of Trade and Traders in the Eastern Mediterranean’, 153–70.

\textsuperscript{41} CUL, Or 1080 J 42. For detailed instructions, see CUL, TS 8J 22.8', ll. 7–13.
particular task, though he retained the responsibility not to abandon the goods consigned to his care. The arrangement was reciprocal in that an exchange of services (khidma, pl. khidām) was expected; any work order would create a work obligation for the principal.

A suhba is of interest for both its form and its ubiquity. It, and not partnership, was the dominant form of relationship among Geniza merchants: 67 per cent of all discussions of agency services are about suhba. It had several unique features. First, having a suhba with one merchant did not give automatic access to his associates. The Jewish Geniza merchants were an effectively identifiable group, ashbūna (our associates), a special ‘us’ amongst the merchants of the medieval Islamic Mediterranean; but they were a loose network, and each merchant had to construct his own web of ashāb (associates) if he wanted to extend multiple activities across space. Thus Abūn b. Ṣadaqa, an associate of Nahray b. Nissīm, lamented that he could not call on one of Nahray’s associates to do a job for him: ‘I know that he would not do this, since I have no tie of association with him that would obligate him’. Secondly, the existence of the suhba made it possible to request multiple services on many discrete sets of goods (individual letters often contain more than a dozen requests for work and equally many reports on the work done); but it did not make either merchant the full representative of another merchant in a particular city, responsible for the overall success of his many endeavours.

Furthermore, this work was wholly unremunerated. Although commission agency was well known among the Geniza merchants, associates in a suhba were not paid a fee or percentage commission; they expected only work reciprocity — ‘You pack for me and I pack for you and thus we both succeed’, Nahray b. Nissīm writes, a variation on a common refrain in Geniza merchant letters. This did not mean that merchants with a suhba

42 Again, the statistic comes from content analysis of the sample set. For other ways of counting, and the similar results obtained, see Goldberg, Trade and Institutions in the Medieval Mediterranean, 143.
43 As discussed in Udovitch, ‘Formalism and Informalism in the Social and Economic Institutions of the Medieval Islamic World’, 74–5.
44 CUL, TS 8J 19.23, ll. 10–14.
45 Work in a particular locale was instead spread among many associates: for an example, see CUL, TS 13J 28.9.
46 Bodleian Lib., MS Heb d 66.41, ll. 8–11.
could make unlimited demands on each other’s time; merchants were attentive to the balance of services. Yusuf b. Farah al-Qabisī, for instance, rebuked his nephew Farah for not considering adequate reciprocity in making a request, telling him ‘it is wrong for somebody to travel [to Fustat for us] and for me not to buy him merchandise except dirhams, without any work [on my part]’. ‘As you know’, wrote another merchant in concluding a long series of requests, ‘... you will not do a thing for me that I will not repay sufficiently in kind’. All these features of the șuḥba relationship made it central to Geniza merchants’ ability to extend their activities widely into different economic sectors and geographical regions. Its existence allowed them unilaterally to designate an agent through letters, that is, at a distance. Appointing someone as one’s agent in the absence of a șuḥba was actionable: ‘I wish I knew by what right your friend appointed me as his agent’, wrote an incensed Yusuf b. ‘Alī al-Kohen. ‘I shall return to Fustat and sue him’. Under șuḥba, a merchant could get any kind of service done in any market — he was limited only by the number of his associates and the amount of service he would need to do in return. A șuḥba also gave a merchant more flexibility to respond to change: agency could be reassigned, as with the owner of some of Hayyim’s troublesome indigo, so that if market conditions or a man’s intentions changed, or a bale landed in the wrong port, it could be handled by a different agent. Since each merchant had different expertise and connections, șuḥba relationships potentially gave an investor access to the most skilled service in any situation. Moreover, a merchant could divide up goods and tasks, or transfer them, without worrying about accounting —

47 Cf. Goitein, Mediterranean Society, i, 166; Greif, ‘Organization of Long-Distance Trade’, 872; Udovitch, ‘Formalism and Informalism in the Social and Economic Institutions of the Medieval Islamic World’, 64.
48 Library of the Jewish Theological Seminary, New York, Elkan Nathan Adler Collection (hereafter ENA) 1822 a.67v, ll. 7–8. We might characterize this according to Sahlins’s ideal types of reciprocity as ‘balanced reciprocity’ in which returns of equal value are expected within a finite period: see Marshall Sahlins, Stone Age Economics (Chicago, 1972), 194–5, as amended in Jean Ensminger, ‘Reputation, Trust, and the Principal Agent Problem’, in Karen Cook (ed.), Trust in Society (New York, 2001), 188.
49 CUL, TS 10J 20.16v, right margin.
50 CUL, TS 16.179v, ll. 25–6.
51 See the discussion in the next section.
he would not have to divide up portions of profits or copy records for the five different people who might have helped on a deal.

But perhaps the most surprising part of the *suhba* to economic historians is the fact that both its ongoing nature and its reciprocity claims were not underwritten by any legal contract. Merchants understood a *suhba* as a serious undertaking: it was begun and ended formally, often through the taking of oaths — but there was no contract under law. In fact, a *suhba* could not be underwritten by contract; as an ongoing relationship, it fits the prescriptions of neither Islamic nor Jewish law.

At the same time, most services performed under *suhba* also had an important legal underpinning that has been generally overlooked — indeed, it was in describing *suhba* that Udovitch contrasted formality and informality: ‘The Italian merchant lived and breathed in a world of contract, of partnerships, agencies, commissions, and loans . . . In the world of our eleventh- and twelfth-century Geniza traders this situation was reversed: informal ties were central, and formal ties, while important, were peripheral’. This failure to define *suhba* carefully reflects a broader misunderstanding of the kinds of legal protection available in any of these relationships. In fact, whichever of these three relationships merchants used, they could ensure legal protection of their property rights, and had some legal ability to limit the executive authority of the agent. But in none of them did the law offer much to the principal in the way of a legal demand on his agent’s services, and only in the *qirād* was the agent guaranteed compensation for his work.

In the case of the *suhba*, characterizations of the relationship as ‘informal’ have ignored the legal significance of the actions of opening the bale at the funduq. As each section of the bale emerged, was recorded, was witnessed and was accepted by the agent, it fell under the auspices of agency law. Medieval Islamic law, and Jewish law in its wake, recognized commercial agency (*wikala*) as a basic contract; indeed, in some schools of law it was

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53 See discussion in n. 59 below.

54 Udovitch, ‘Formalism and Informalism in the Social and Economic Institutions of the Medieval Islamic World’, 74. The descriptions of Udovitch and Goitein both emphasize its informality: see n. 40 above.
the cornerstone of all commercial relationships.\footnote{Joseph Schacht, \textit{An Introduction to Islamic Law} (Oxford, 1964), 119–20; Gideon Libson, \textit{Jewish and Islamic Law: A Comparative Study of Custom during the Geonic Period} (Cambridge, Mass., 2003), 92–5.} The agent (\textit{wakil}) could play one of two roles: he was either a messenger who conveyed, or an actor who carried out, the instructions of his principal.\footnote{Imran Ahsan Khan Nyazee, \textit{Islamic Law of Business Organization: Partnerships} (New Delhi, 1999), 59–61; Udovitch, \textit{Partnership and Profit in Medieval Islam}, 68–9, 98–9, and esp. 85.} The agent was presumed to be limited and required to act according to instructions, but someone could be made an unlimited agent through the statement ‘Act at your discretion’.\footnote{Schacht, \textit{Introduction to Islamic Law}, 119–20.} The principal could (and sometimes did) sue his unre-\textit{munerated} agent in a \textit{suhba} relationship for recovery of property or for an agent’s violation of instructions.\footnote{See n. 62 below.} Indeed, merchants took \textit{suhba} so seriously among themselves in part because of these legal consequences of accepting agency.

At the same time, agency was not a labour contract at all — the agent owed the principal no service, nor could the agent claim any compensation for services rendered. Merchants could not write a contract of reciprocity, since both Islamic and Jewish law would only recognize labour contracts with monetary compensation — the very kinds of payments the \textit{suhba} was supposed to avoid.\footnote{Partnerships instead require a sharing of profits. Thus there was no contractual form that would accommodate an exchange of services. On Islamic labour contracts, see Abraham L. Udovitch, \textit{Labor Partnerships in Early Islamic Law} (Princeton, 1968); for the relevant Jewish law, see Ackerman-Lieberman, ‘Partnership Culture’, i, 12–74; Goitein, \textit{Mediterranean Society}, i, 170. On medieval Venetian \textit{rogadia} contracts specifying reciprocal agency arrangements somewhat similar to the \textit{suhba}, see Lopez, \textit{Commercial Revolution of the Middle Ages}, 73–4.} The law regarded each assumption of agency, moreover, as a separate contract. It was thus possible for one merchant to fulfil agency for his associate, and then find his associate refusing to accept agency in return. A merchant in this position could have no legal claim.

It has been much easier, by contrast, for historians to recognize the Geniza merchant partnership as a legal contract, especially given its similarities to European contracts and the existence of written contracts among Geniza papers. But it is important to note that Yusuf’s understanding of \textit{khul\textita}, too, was informal in its interpretation of exchange of services. The underlying written
contract, whether a Muslim ‘inān or a Jewish shutafut, legally assured the share of each partner’s profit or loss, and each partner’s executive authority to transact on the joint capital. It was possible to limit the scope of action of the partners by specifying particular markets or objects of trade, thereby limiting one or both partners’ executive authority. The ‘service for service’ part of this relationship was not subject to contract — one partner had no right to sue the other for inaction or inadequate work, or demand a greater share of the profits if he had done more. Similarly, a qirād could be written with specific instructions to limit the active partner’s scope for transacting, but not to compel his work. The contract was unique among those generally used by the merchants in that it promised the active partner compensation for his work if he did transact profitably (through his larger share of the profits), but it also did not protect the sleeping partner against the active partner’s sluggish or inadequate performance.

As for the question of formalization of relationships, recent research has clarified the convenience as well as the burdens of establishing different kinds of contract. Although scholarship on Islamic formularies has long shown that written documents were widely used for certain forms of contract (despite the legal theorists’ dismissal of written evidence), legal treatises, formularies and evidence of legal proceedings show a mixed regime in Jewish and Islamic law that used written instrument, oral agreement and physical act. Here, too, simple agency was an advantageous form of contract, since it could be established in many convenient ways, even between a distant principal and agent. Formularies and treatises, as well as the actions of Ḥayyīm and the merchants gathered around the bale of indigo, show that a written legal instrument was generally neither required nor used; agency could be and was assigned through physical transfer of the object, through the label on a package, through instructions in a letter or through oral assignment. Establishing partnership was typically more cumbersome: both Islamic and Jewish law expected partnership contracts to be written, and this required both parties to be present. As noted above, merchants could enter into a legally binding partnership, a mu‘āmala, without a written instrument;

60 Ackerman-Lieberman, ‘Partnership Culture’, i, 15–26; Libson, Jewish and Islamic Law, 92–5.
they could be formed even through a letter by physically separated partners. The main difficulty with such partnerships, at least for these merchants who tended to rely on the Jewish courts, was that, while the court would hear cases based on mu‘āmala, it would assume a standard contract, since it only accepted written evidence of any stipulations.61 Letters and court documents reveal the legal recognition of each of these relationships — legal action was contemplated or pursued within each of these forms of relationship: against agents in a suhba, against partners in a khulta or qirād relationship, whether the partnership was written (shirka) or unwritten (mu‘āmala).62 But although court testimony and discussions of legal action in letters show that merchants relied on legal contracts in all these relationships, merchant terminology also reveals that each relationship had norms and expectations that went beyond the law. It remains to be investigated how much merchants depended on the legal guarantees they could secure, and how they enforced the informal aspects of their relationships — the quality and quantity of service provided.

II

ENFORCING CONTRACTS

According to economists, the principal–agent problem is the defining issue of long-distance trade. In theory, a principal is always at risk when he entrusts his goods to a distant agent, for

61 Ackerman-Lieberman, ‘Partnership Culture’, i, 43–6; ii, passim; Goitein, Mediterranean Society, i, 163, 69. The best evidence on this problem comes from legal opinions (responsa) issued by legal scholars and the ‘heads’ (geonim) of the Jewish Academy (yeshivā). Some examples include Mi-sifrut ha-Geonim: teshuvot ha-Geonim u-seridim mi-sifre ha-halakhah mi-toh kibeyad shel ha-genizah u-mekorot aherim [Gaonica: Gaonic Responsa and Fragments of Halachic Literature from the Geniza and Other Sources], ed. Simha Assaf (Jerusalem, 1933), 149; Moses Maimonides, Responsa, ed. Joshua Blau, 3 vols. (Jerusalem, 1957–61), i, nos. 191, 193; for a relevant Gaonic responsum on stipulations, see Teshuvot ha-geonim sha‘arei ṣedeq [Responsa of the Geonim ‘Sha‘are Sedeq’] (1792; Jerusalem, 1966), pt 4, ch. 8, no. 10.

62 A few examples: against the agent in a suhba: Jacques Mosseri Collection (now at CUL, hereafter Mosseri) VII, 101 (L 101); the sessions of the court on a single case (Bodleian Lib., MS Heb d 66.64; MS Heb d 66.65; MS Heb d 66.66; CUL, TS 10J 27.4; CUL, Add. 3414.1–2; Add. 3418; Add. 3420.1–2; Add. 3421), renumbered, translated and discussed in India Traders of the Middle Ages: Documents from the Cairo Geniza. ‘India Book’, Part One, ed. S. D. Goitein and Mordechai A. Friedman (Leiden, 2007), 167–210; against a partner in a mu‘āmala: CUL, Or 1080 J 290 (see also n. 61 above); against a partner in a written qirād: Halper 389v, ll. 6–8, 16–19; against a partner in a khulta: CUL, TS 16.163v.
the agent can use the distance to cheat (moral hazard): from shirking work to misreporting trades to embezzling goods, the agent can make use of, and so profit from, delays or deficiencies in information — ‘information asymmetries’.

Among Geniza merchants, these risks seem to loom large. Information was often slow, uncertain and magnified by rumour, while transactions could be delayed, and goods frequently diverted, damaged or lost, through the poor quality of commercial shipping, lending plausibility to misinformation.63 Perhaps nothing is more surprising in such a situation than merchants’ preferences for agency relationships that seem to open them up to some cheating: Geniza merchants seem to have preferred contracts in opposite proportion to the agent’s natural incentive to provide good service. After all, in the šuhba, the most popular form of agency relationship, the agent had no natural incentive to get the best deal on any individual transaction he did for his principal, since he would get no commission. In a joint-active partnership, the agent had a natural stake in each deal, for he would get a percentage of the profits; but equally, he would be making a better deal for himself any time he could get his partner to perform more service, given that neither was compensated for the work they put in. It was only in a sleeping-active partnership, a qirād, that the agent had an uncomplicated and strong incentive to put forth his best efforts; yet this was by a huge margin the least popular of the main forms of relationship among active merchants.

Greif’s model of the Geniza merchants’ contract enforcement, which has long provided an indication of how long-distance trade might be conducted relying solely on private-order enforcement, appears to be supported by these preferences. Greif argues that despite any legal system that might have existed, legal guarantees provided by contracts among Geniza merchants were effectively unusable and unused.64 Unable or unwilling to rely on public institutions, he holds, the Geniza merchants instead developed

64 Greif, ‘Contract Enforceability and Economic Institutions in Early Trade’, esp. 529; Greif, Institutions and the Path to the Modern Economy, 63–4.
and enforced contracts through a private-order ‘reputation mechanism’. ‘Maghribī traders’, a distinct sub-community defined by descent, were able to develop and maintain a set of shared norms and beliefs. A reputation mechanism was in force among this group, which acted as a ‘coalition’, providing the possibility of multilateral punishment for violating shared norms. The information shared by the movement of letters allowed merchants to monitor their agents and agents to signal their honesty. In such a situation, Greif suggests, the system was self-enforcing:

members of this network share the beliefs that coalition merchants will employ only member agents and that each of them will reward his agent enough to keep him honest. All coalition merchants, however, are expected never to employ an agent who cheated while operating on behalf of any coalition member.

That is, the closure of the group and its shared belief provided a credible threat that cheaters would be excluded.

This model fits certain aspects of the preferences and practices of Geniza merchants. Merchants did use agency relationships some of whose norms were not laid down by law; and these norms were communicated to new members through apprentice training. The merchants were to some extent an identifiable and self-identified group (ażḥābūnā, ‘our associates’) that shared information through letters. In their letters, the Geniza

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65 Greif, Institutions and the Path to the Modern Economy, 64–6.
66 Ibid., 66. As this essay addresses the empirical evidence for Greif’s model, rather than its mathematical proofs, I have omitted many technical details. In general, a theory of self-enforcing games grows out of a variation on the prisoner’s dilemma: the principal–agent relationship faces the problem that it is more profitable in a single transaction for the agent to cheat; moreover, even though it is more profitable over time for both parties to engage in the principal–agent relationship, if the endpoint of the relationship is known, it will still be worth cheating at the final transaction. These limitations are overcome in a self-enforcing game if several elements can be assured: an indeterminate and theoretically infinite time horizon for the relationship (if the endpoint is not known, the gains of continuing will always be greater than those of cheating), that knowledge of the rules is shared, and a credible threat that cheating in the system will be discovered and cause termination of the relationship. For a brief and accessible discussion of the idea of a self-enforcing game, see Lester G. Telser, ‘A Theory of Self-Enforcing Agreements’, Jl Business, lii (1980). See Oliver E. Williamson, The Economic Institutions of Capitalism: Firms, Markets, Relational Contracting (New York, 1985), chs. 7–10, for a discussion of how to fit such problems into broader theories of long-term contracting and organization of work.
67 See the discussion in Goldberg, Trade and Institutions in the Medieval Mediterranean, 135–8.
REASSESSING THE ‘MAGHRIBI TRADERS’

merchants spilled much ink discussing the behaviour of fellow merchants; indeed, such discussions make up nearly 20 per cent of the non-formal content of letters.69 Moreover, though Greif did not initially address the preference of the Geniza merchants for *suhba*, he has since noted that this preference too would seem to support his model: since they did not need to acquire the protections of the legal system, an informal relationship, which did not incur the transaction costs of writing a contract, would naturally be preferred.70

But other aspects of the evidence — such as the contemplation and pursuit of lawsuits — do not fit as neatly. How indeed can the events described at the beginning of this article, where merchants in conflict so quickly involved government authorities, be fitted into a theory of effective private-order enforcement? In fact, to demonstrate that a private-order reputation mechanism was the primary enforcement mechanism used among the Geniza merchants would require two things to be shown: that merchants did not rely in the first place on formal institutional protections; and that they used letters conveying reputation discussions to monitor and report on honesty or to signal themselves to be honest.71 Yet neither of those can be shown to be true. A more careful dissection of the evidence on these very points shows that a ‘reputation mechanism’ did exist, but that Greif has misunderstood both its nature and enforcement capacity. This misunderstanding in turn arises from ignoring the distinction between the different kinds of enforcement challenges that Geniza merchants faced.

As to the first claim, that the Geniza merchants did not rely on formal institutional protections, various aspects of merchants’ practice show they valued the guarantees offered by the legal

69 That is, when we omit the formal opening and closing pleasantries of the letter: see Goldberg, ‘Geographies of Trade and Traders in the Eastern Mediterranean’, 80–1, 87–96, 110–11.


71 In theoretical terms, the model may fail if other conditions of the self-enforcing game cannot be fulfilled. Edwards and Ogilvie have questioned the evidence for two other conditions I do not consider here: the existence of a coalition, and evidence that merchants could effectively exclude a cheater: see Edwards and Ogilvie, ‘Contract Enforcement, Institutions and Social Capital’ (2008); Edwards and Ogilvie, ‘Contract Enforcement, Institutions and Social Capital’ (2012).
system, and relied on institutional protections of both the legal system and the state to protect the rights of property and executive authority they could gain through this system. Greif initially focused on the difficulty of pursuing lawsuits, as well as the paucity of case records, to make his case that the legal system was ineffectual. In challenging him, Edwards and Ogilvie note that the Geniza contains records showing that the courts resolved conflicts between living merchants; they also suggest that a statistic generated in my research which shows that legal action is mentioned in 5 per cent of the letters is, in the absence of any contemporary evidence, not demonstrably lower than that of other merchants, for example the Genoese. But this line of argument is problematic in isolation. Lawsuits are evidence that the legal system was a possible venue to attempt redress, undermining claims that merchants used only private-order enforcement. On the other hand, this does not preclude the suggestion that merchants used private-order schemes preferentially. Any lawsuit, moreover, is evidence of the failure of an enforcement system to prevent misconduct. A high frequency of lawsuits could also suggest that the legal system provided poor protection, since the threat of lawsuit was not a sufficient deterrent.

In fact, the evidence is much stronger that Geniza merchants used the legal system, and state institutions that supported it, in a precautionary way. That is, they relied on legal guarantees, ex ante, as the principal way to protect property and establish the degree of autonomy they granted their agents. Perhaps the best evidence for this use is the lengths to which merchants went to secure legally valid testimony of their intentions and activities. In so doing, they relied on the institutions of the supra-state legal

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73 Indeed, without accepting the notion of a private-order coalition as an enforcement mechanism, Edwards and Ogilvie discuss evidence that merchants in most economies prefer to resolve disputes informally: Edwards and Ogilvie, ‘Contract Enforcement, Institutions and Social Capital’ (2012).

system, on institutions of the market sustained by Islamic states, and on the participation of the merchant community in these systems. Thus, most major transactions were done in public space, where clerks and notaries were on hand to register transactions, agreements and terms; they wrote up contracts; and they noted the state, nature and labelling of shipments that were opened.\footnote{See, for example, Bodleian Lib., MS Heb a 3.9', l. 9; CUL, TS 13J 15.9', ll. 20–2.} If we look back at the activity surrounding the opening of the bale of indigo in Mazara, it shows not only the role of such officers, in the person of Ahmad who recorded the contents, but also that such records were made in the presence of reputable members of the merchant community who gathered as witnesses. Such witnessing was legally essential, partly because witness testimony was the main form of evidence in Islamic courts, and because access to the clerk’s register was usually available only in the particular market where it was made.\footnote{In CUL, TS 13J 15.9', ll. 20–2 a local merchant consults the register on behalf of distant colleagues: see the discussion of the relevant legal norms and extent of witnessing in Goitein, *Mediterranean Society*, i, 196.} Such a system provided shared norms, protection and a buttress against information asymmetry. The system was effective enough, for instance, for a merchant in Palermo to be able to get a legal certificate concerning the sales made by a different agent, then send the certificate back to an associate in Alexandria to prove the first merchant’s claim about the poor state of the market for some goods, thus forestalling the possibility of a lawsuit.\footnote{Bodleian Lib., MS Heb a 3.13', ll. 19–21. This case is discussed in detail in Goldberg, *Trade and Institutions in the Medieval Mediterranean*, 120–3, 151–2, 158–9. It is also one of the cases disputed between Greif, and Edwards and Ogilvie: see Edwards and Ogilvie, ‘Contract Enforcement, Institutions and Social Capital’ (2012), 427–8; Greif, ‘Maghribi Traders: Reappraisal?’ 451.} Indeed, registration was important enough that even merchants quite attentive to their dignity would fight publicly over it:

ibn al-Wasitī came to me when I was by the clerk and he said to him: ‘record that they are to the debit of al-Wasitī’. I said to him, ‘Don’t record them under any name except that of their owners’... and a terrible fight broke out between us in front of a group of our associates (āshābūnā).\footnote{CUL, TS 10J 10.30', ll. 9–21. Another such public fight is mentioned in ENANS 1.79.}  

Geniza merchants’ attention to formal registration shows their attachment to the legal protections it provided, particularly because it was possible to make many transactions in private space,
and the protections of registration came with the cost that it also provided evidence that taxes and fees would be owed.\textsuperscript{79} Merchants also requested or surrounded themselves with witnesses, and thus legal protection, in situations in which public registration was not possible: valuations of unsold goods, testimony to the state of the market for a particular commodity, opening of bales lodged in a merchant’s warehouse to verify contents, and witnessing to private sales made out of those warehouses. Merchants make specific reference to such witnesses and witnessing in over a third of their letters.\textsuperscript{80}

Geniza merchants also showed their reliance on the legal system in that they adhered closely to the legal norms of the Jewish and Muslim courts in making contracts among themselves. For agency, this was a simple operation, especially given the aid of market institutions in securing witnesses and registration of such contracts. But when merchants formed a partnership, it is telling that they had an overwhelming preference for written contracts favoured by the court: fewer than 3.5 per cent of contracts were \textit{mu‘āmala}.\textsuperscript{81} If merchants did not plan to use the court’s protection nor to follow its rules, we might expect that they would be exclusively using the \textit{mu‘āmala}. Since partnerships were very often formed in order to take advantage of two distant partners’ positions to trade in their respective cities, the fact that they took the trouble to travel, sometimes halfway across the Mediterranean, to legally secure a written contract surely shows a great devotion to legal norms.\textsuperscript{82} Moreover, although merchants preferred to form agency relationships with fellow Jews and to bring disputes to the Jewish court, they took the trouble to use contract forms that would also allow them access to the Muslim courts, and often further secured such protection by drawing up the contract before both a Muslim and a Jewish notary.\textsuperscript{83}

They also trusted the protections of the Muslim legal system.
sufficiently to enter into partnerships with Muslims, and to make Muslim merchants and brokers their agents.  

The trouble which Geniza merchants took to guarantee their activities legally is good evidence that they must have thought the protections of the legal system worth securing. There is also indirect evidence of their reliance on this system in that they limited the geography of their business to the Islamic Mediterranean where their contracts were recognized, despite the personal ties some of them had to Jews, even merchants, living under Christian rule.  

But letters also supply occasional evidence that registration and witness testimony could be effective weapons of legal prevention. In one case, a merchant reports that he had suppressed the attempt of the men who purchased his flax at an inflated price to avoid paying, because ‘there were witnesses against them with respect to the money.’ We also find episodes in which a qāḍī (judge), and even occasionally a higher official, intervened in the market on the basis of such claims: Geniza merchants would run to such officials to have them sequester goods in immediate dispute before ships and owners departed, in order to sort out claims, and they could also be persuaded to release such goods on the strength of proper paperwork, again helping prevent the necessity of a lawsuit.  

Geniza merchants certainly avoided lawsuits whenever possible: then, as now, the court system was cumbersome, slow and unlikely to provide complete satisfaction; and there was always the blow to any respectable merchant’s reputation from being embroiled in suits that were highly public.  

These very same considerations, combined with the geographically unlimited jurisdiction of the courts, did make the threat of legal action powerful — through the use of a power of attorney, merchants

84 A few examples: CUL, TS 18J 3.13’, l. 5; TS 8J 18.33’, right margin; Halper 389’, ll. 30–1, 389’, l. 40; CUL, TS 20.69; TS 13J 8.13; TS 10J 9.5; TS 20.180. Some were relationships of long duration.
85 See, for example, CUL, TS 13J 16.4; TS 13J 16.7; TS 8.265’, ll. 11–12.
86 Halper 389’, ll. 63–9.
87 On sequester and release based on proper paperwork, see CUL, TS 13J 17.11’, ll. 8–11; for other examples of sequester during a dispute, see CUL, TS 10J 13.21; TS 16.163’, ll. 23–8.
could and did bring actions against agents living in far distant locales under different political regimes. Merchants used legal threats of increasing severity to provoke compliance — threat of action, mention or issuance of power of attorney, preparing legal testimony, then beginning a suit. For a telling instance of how harmful such threats could be, we can look at the case of Ibn ‘Allān’s lawsuit, pursued in Fustat, against Yahya ibn al-Majjānī in Qayrawān. When the suit was first threatened, Yahya found his credit ruined in Qayrawān as well as in Fustat by the news — reports had already come to Qayrawān, and back in Fustat an anxious creditor had sued out a power of attorney against him. Even though the Nagid assured him he would prevail against ibn ‘Allān, and the Jewish judge in Qayrawān stopped the power of attorney, ‘the people’ of Qayrawān were agitated and hostile, and attempted to withhold their own payments. Yahya was forced to write to Fustat to insist he would accept any ruling of its court: he just needed to end the matter as soon as possible.

There is thus ample evidence that Geniza merchants used the formal institutions of law and state in the first instance to establish and protect whatever rights they could with respect to their agents in any form of agency relationship. Regarding the second claim of the model, that Geniza merchants made use of a reputation mechanism to monitor and signal honesty, the situation is more complex. For there is also ample evidence that merchants did make use of a private-order reputation mechanism. But they did not use the reputation mechanism in place of formal institutions to prevent what they understood to be cheating; rather, they used it to address the particular problems of service reciprocity raised first by the limits of the law and then by their preference for the suhba relationship that gave the agent no natural incentive to make a good deal for his principal’s goods.

Geniza merchants used a reputation mechanism to manage incentives and compensation in the suhba relationship. The major threats to reputation that merchants could make were those that affected their fellows’ ‘wage’ within reciprocal agency. Wages must have been a thorny problem when merchants were

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89 Among many other similarly dispersed cases aired in both Muslim and Jewish courts, see CUL, TS 12.371; Mosseri VII, 101 (L 101); CUL, TS 20.4; TS 20.9; TS 13J 15.5; CUL, Or 1080 J 42.
90 Bodleian Lib., MS Heb a 3.26; MS Heb a 2.17. This attempt to resolve the matter proved fruitless; ibn ‘Allān pursued a lawsuit, unsuccessfully, for years.
compensated for their efforts not through a return on the transaction, but rather by the promise of services of equal value from the principal. Such a system entailed difficulties not only of motivation but also of assessment — how could merchants assure that their tasks were given priority and determine the value of work done? The problem cut both ways: on the one hand, the principal was concerned that the appropriate amount of labour be expended on a particular job; on the other, the agent had to ensure that his principal was aware of his efforts, which could well, as we have seen in the case of the bale of indigo, bear little relation to the returns achieved. Geniza merchants used reputation to ensure that they obtained appropriate labour for specific tasks, a problem they saw as completely distinct from honesty and cheating. They did so by linking ‘wages’ to a form of reputation made up of diligence, expertise and social connectedness.

Before discussing the role of reputation in wages, we must note that Geniza merchants did care about their reputation for honesty. The existence in the documents of a discourse about honesty, with its own special vocabulary, shows that merchants made a clear distinction between different kinds of reputation. Merchants used the word ‘ird’, whose semantic field includes ‘honour’ and ‘dignity’, to talk about probity. And they used it precisely in reference to misconduct that might be subject to legal action. Thus Israel b. Natan warned Barhūn b. Ishāq al-Tāhirti that ‘you and your ird are being made shabby’ when a valuable textile arrived in Fustat and one merchant claimed that Barhūn had told him to sell it while another claimed he had promised it as a gift — a clear case of property rights. It was important that Barhūn write quickly and ‘save your soul from the tongue’ of the merchant who claimed the good. When Samḥūn b. Da’ūd in Qayrawān got involved in a dispute with the powerful Yūsuf ibn ‘Awkal in Fustat, and Yūsuf retaliated by withholding money from his creditors, a retaliation that might make Samḥūn the object of lawsuits for failure of promised payment, Samḥūn

91 Hans Wehr and J. Milton Cowan, A Dictionary of Modern Written Arabic, 3rd edn (Ithaca, 1976), 706. See also Goitein, Mediterranean Society, v, 200–4, where he also claims that complaints about honour are common in the mercantile correspondence, in contrast to the findings that emerge from my analysis.
92 CUL, TS 12.362r, ll. 7–13, right margin.
noted, ‘Their letters of reproach have now come to everyone; and it’s open season on disgracing my ‘ird’.

However, appeals to such honesty, and discussions of it, are extremely rare, especially in comparison to talk about legal actions. Appeals and threats referring to a reputation for honesty, ‘ird, occur in less than half a per cent of the letters; compare this to the one-third of the letters that discuss witnessing, or the 5 per cent of the letters that mention, prepare or threaten legal action. If a reputation mechanism were chiefly about signalling and monitoring honesty, we would expect merchants to refer incessantly to their integrity and honour, and to appeal to the upright character of potential associates when recommending them; yet they do not, though the letters are full of recommendations. Such absence is all the more notable in that such appeals are common in early modern European recommendations for commission agents. Thus it seems that threats to reputation were occasionally used by Geniza merchants to help prevent cheating, but only as a very minor plank laid on top of an important framework of market and legal institutions.

This tiny trickle of talk about honesty in Geniza merchant letters exists, moreover, within a veritable sea of discussion of each other’s behaviour: merchants continuously invoked, sustained and threatened each other’s reputations. But rather than honour and honesty, their discussion revolved around two other kinds of reputation. One set of comments involved the merchant’s knowledge, competence and diligence, qualities that would make his hands-on service worthwhile; and the second set involved his personal connections — the ‘pull’ he had.

93 Hungarian Academy of Sciences, Budapest, David Kaufmann Collection (hereafter DK) 327 a–d, l. 28.
94 The count for legal action comes from my sample set; that for ‘ird is across the corpus.
95 See Goldberg, ‘Geographies of Trade and Traders in the Eastern Mediterranean’, 182–3. Two exceptions help prove the rule. There is one instance in which a merchant is warned not to deal with another who is dishonest: ‘He’s a person who is a liar; you know him. Guard against giving him shipments that belong to you; let them be under your own hand’: ENA 2805.24r, right margin 1–2. In one other case, the honesty of an apprentice is used in the correspondence to commend him, but this is the only instance of use of the term a/f, meaning ‘honest and virtuous’, in the whole of the correspondence: see Bodleian Lib., MS Heb d 65.17r, l. 9.
The most common way to invoke reputation was by stereotyping: merchants urged each other to sustain a character particularly for knowledge and effort. The formulation ‘a man like you’ or ‘you are the kind of man’ recurs throughout the Geniza and generally represents an appeal to sustain a character already formed, or to confirm that you are indeed the ‘kind’ of person described. In commercial letters, the desired character was associated with diligence and knowledge. In one note, Ishāq b. ‘Alī al-Majjānī invokes both, telling his associate, ‘In God’s name, make haste; one like you really needs no instructions . . . there is no need for me to urge you on’.97 The recipient is the sort of person who knows that time and diligence are of the essence. Nahray b. Nissīm, on the other hand, had occasion to remind his associate ‘Ayyāṣh b. Sadaqa of his known limitations: ‘You had little to do in Fustat last year, whereas this year you are inundated from all sides. Much less work would suffice for someone like you’.98 Sometimes Geniza merchants instead invoked reputation by talking about their colleagues’ ‘habits’ or ‘usual’ behaviour. In complaining of Nahray’s own neglect in a certain account, Maymūn b. Khalīfa says such behaviour was unexpected, because ‘I know that it is your habit and in your nature to take care of people’s needs’.99 Nahray uses the same technique in requesting that his associate ‘Awad b. Hanān do a service for him ‘with your usual industry and acumen’.100 Occasionally, too, Geniza merchants praised each other for unique competencies that gave added value to their work in certain fields. Nahray received these kinds of accolade in two letters. In one, a merchant thanked him for fulfilling a difficult task: ‘In your letter you mentioned that transaction which only a man like you was fit to carry through, may God reward you’.101 In another, his unique knowledge was noted: ‘I was delighted by your speedy

97 CUL, TS 8J 25.3, ll. 12–14. All emphases in this and the following quotations are my own.
98 Bodleian Lib., MS Heb d 66.41, ll. 3–5.
100 CUL, TS 10J 15.14, ll. 14–15.
return to Fustat because I know that you are the expert in the business affairs of Būṣir.  

A senior colleague’s recommendation of a new associate to Nahray is strikingly couched in terms of displayed diligence and expertise, not honesty:

I have told you of the relations between me and my master Abū ‘Imrān Mūsā b. Naftal, how much trouble he took from me in handling this oil business. I received a letter from him asking me to write to you, and I ask you the same thing: that your hand be his hand and your business his business . . . for he is an expert on flax and other things. I’ll be very pleased if you enter into suhba with him.  

In addition to his reputation as an effective worker, a merchant traded on his ‘pull’ — his personal connections. Merchants used the word jāḥ to refer to this kind of reputation, a term that occurs five times as often as ‘ird. The primary semantic range of jāḥ as reputation includes ‘social rank’, ‘standing’ and ‘prestige’; for Geniza merchants, this meant in the breadth and strength of a merchant’s personal ties — the number and importance of his Jewish associates, but also his connections to Muslim merchants and powerful non-merchants, officials and patrons. Thus Zakariyyā b. Ya’qūb b. al-Shāma, Nahray b. Nissīm’s closest associate in Tripoli, asked Nahray to take care of some of his Muslim colleagues: ‘assist them’, he urges, ‘. . . even if you have to abandon your own affairs for a day or two in order to do this . . . I would like them to come back here grateful to you, having accomplished their purpose to their satisfaction . . . I would like you, thereby, to strengthen my jāḥ’. His reputation would be enhanced in that he had the pull to get Nahray to abandon personal work for unprofitable work at his behest. Similarly, Farah b. Yūsuf requests that an associate ‘strengthen my jāḥ’ by doing a favour for a fellow merchant regarding payment of a draft — demonstrating his pull by getting a merchant to make a cash payment, inconvenient in a world of low liquidity. jāḥ could indicate the strength of one’s ties or their extensiveness, as a third

102 CUL, TS 12.793, ll. 7–8.
103 CUL, TS 20.69v, ll. 24–8. Goitein also uses this passage in explaining suhba (our translations differ in a few details): Goitein, Mediterranean Society, i, 165.
104 It appears in 3 per cent of letters in the corpus.
106 CUL, TS 8J 19.24r, ll. 18–23.
107 CUL, TS Misc 28.235r, ll. 17–18.
example shows. ‘I told him I was a favourite of yours’, Salāma b. Nissīm al-Barqī writes to Nahra b. Nissīm. ‘Please strengthen my jāh and your own by extending your connections to his friend through me’.108

Within the medieval Islamic economy, jāh could be as important as diligence and expertise in assuring success. Hayyim b. ‘Emanuel ibn Qayyūmā noted with gratitude that his associate Mevūrakh b. Saadya’s jāh allowed him to speedily arrange a shipment,109 while Salāma b. Mūsā congratulated himself that his own jāh allowed him to collect payment (illicitly) on a particularly good deal he had made.110 Samḥūn b. Da‘ūd went so far as to tell Yūsuf ibn ‘Awkal, during the dispute mentioned above, that the only thing he valued from their relationship was this jāh. ‘It is my desire to avail myself of your jāh for those things I send you’, he writes, and hammers his point home with the language of reputation at the end: ‘I have no doubt that you will take care of my goods in a manner befitting one like yourself’.111

Reputation talk was about diligence, competence and connections, not honesty. The difference is not one of degree, of minor cheating rather than major. The vocabulary merchants used makes a categorical distinction between actions that were subject to legal redress, and those that were not. This distinction is essential: in theory, economists may be right to consider all less-than-ideal agent activity as a continuous function of ‘moral hazard’, but this is not how Geniza merchants understood their problems. One set of problems could be (and was) managed by a reputation mechanism; the other could (and was) not. But it is equally important to note the interdependence of these systems — Geniza merchants did not choose between institutional and private-order contract enforcement mechanisms; rather, they needed both in order to address the very different enforcement issues that confronted them in their relationships.

The reputation mechanism that managed ‘wages’ explains the puzzle that opened this article, and shows why Isma‘īl b. Hārūn and Nissīm b. Shemariah were so eager to run from Palermo to Mazara to fight for the opportunity to deal with a bundle of someone else’s sodden indigo. They were busy building up their work

109 CUL, TS 13J 23.15’, ll. 8–9.
reputations, and thus the wage their services would command. Reciprocal agency was equal exchange, but that meant value for value, not task for task. A merchant whose time was more valuable might exert himself very little to adequately compensate one whose labour the community assessed as relatively worthless. An associate of Yusuf ibn ‘Awkal, whose impressive jāh has already been mentioned, thus details endless travels and services done for ibn ‘Awkal in al-Mahdiyya and Palermo, apologizes for not returning earlier to present himself and the proceeds of the sales, and asks in return only that ibn ‘Awkal collect a payment he is owed. Likewise, Yahuda b. Yusuf details numerous services he will have completed for Isma‘il b. Barhūn, but requests in return only that Isma‘il oversee the work of his brother-in-law, noting ‘I have not charged you with this because I know... how terribly busy you are... I am content with your assistance through insistence [ability to force a price agreement] and advice. For me this is worth as much as your work, or even more’.

The threat to labour reputation allowed Geniza merchants both to retain and punish imperfect agents. It was a credible threat in that each time a merchant lost an associate he lost some jāh, and his labour lost value. Reports of negligence or poor performance could do the same. In a virtuous cycle, more associations not only gave a merchant more agents or potential agents in any market, but they also made his own work more valuable and thus required him to do less of it. He might aspire to become a Yusuf ibn ‘Awkal or an Isma‘il b. Barhūn, whose connections and knowledge were so important that his effort was no longer needed at all.

The system had a place for Yusuf ibn ‘Awkal; it also had one for Yeshu‘a b. Isma‘il. Reading the letters to, from and about Yeshu‘a, he does not appear to have been a pleasant person or an agreeable colleague. One long letter from an angry partner and colleague, Khallūf b. Mūsā, who writes to conclude their partnership and end their suhba, complains about sharp practices in assigning costs and profits in the partnership, all falling just the right side of unethical, that are entirely confirmed by reading Yeshu‘a’s own letters. He had a string of broken-off relationships with other

112 CUL, TS Ar 5.1.
113 CUL, TS 12.224', esp. ll. 10–14.

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Geniza merchants, and his character was well known among them: ‘had I listened to what other people say’, writes one, ‘we wouldn’t have been in a *suhba* in the first place’. Yet this merchant not only survived, he had a very long, and according to all the evidence, successful career. Though irritable and irritating, he was extremely diligent and hard-working. His detailed accounts of his own efforts, if occasionally overblown, make clear the extent of his activity. Even Khallūf did not complain of inaction, but rather of excessive industry in inappropriate endeavours. Of course, the two were related. His *jah* being limited, Yeshūʿā had to do more work for most of the merchants who engaged him than he would get in return. A merchant would have to judge whether such industry would be worth the irritation and suspicion of behaviour at the edge of cheating. Khallūf mis-calculated; his business relations with Yeshūʿā ended in court. Nahray b. Nissīm, on the other hand, maintained a *suhba* with him for more than forty years.

### III

**CONCLUSION**

Much of the success of Hayyim and his associates who were gathered around the bale of indigo in Mazara was owing to their use of long-term reciprocal agency relationships, *suhba*, formed with fellow Jewish merchants around the Islamic Mediterranean. Although they could and did form other kinds of agency relationships, the special features of the *suhba* allowed them to expand their activities and manage risk through the diversification permitted by highly ramified and easily transferable agency with networks of agents. The norms of service reciprocity in this relationship and in the *khulta* partnership were recognized by the merchant community but not by the legal system. Merchants perforce relied on a private-order system to enforce service reciprocity amongst themselves, in which a reputation mechanism

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115 Letters mentioning broken-off connections include CUL, TS 10J 9.21; TS 12.389; also Bodleian Lib., MS Heb a 3.13, esp. 13r, ll. 28–9, which includes the quotation above.
116 The Geniza even contains his will — that of a respectable merchant: CUL, TS 13 J 34.5º.
117 Bodleian Lib., MS Heb a 3.13º, ll. 3–12.
118 A draft of the settlement is recorded in Yeshūʿā’s own hand: CUL, TS 16.163º.
operated by setting the ‘wage’ that each merchant’s service could command — that is, how much service he could expect in return for his own work. Reputation was not as powerful a tool as Greif’s theoretical model has suggested. Geniza merchants did not place much trust in the power of reputation to keep an agent from embezzling goods or delaying payment; there, they depended on tools of law and market — the registration and witnessing provided at public markets, the contracts that specified goods held in partnership and what might be done with them. Yet even in its more limited guise as a mechanism to enforce service reciprocity, this use of reputation is an important example of private-order enforcement. Indeed, it is perhaps most interesting as an example of labour management across great distances, since the problem of enforcing the quality of work an agent provides is a perennial difficulty which is ill served by legal mechanisms.119

This system made the Geniza merchants’ relationships and contracting preferences quite different from those used by twelfth-century Italians. But we cannot use the Geniza merchants, so attentive to the witnesses, contracts and registrations that would legally protect their property, to sustain a narrative according to which reliance on private-ordering sowed the seeds of Islamic decline. Rather, the Geniza merchants’ widespread use of the suhba system should be viewed as being driven by a need to gain the protections of agency contracts. Islamic market institutions and a shared legal system made such contracts especially convenient to establish, and the contract itself gave the principal somewhat greater protection for his property than did partnerships. He could transfer agency at will, and could demand information or return of proceeds from his agent at any time, whereas in a partnership, any accounting, disbursements of profits, or end to the agent’s power to transact could come only at the end of the agreed term. It was standard to make accounts in partnership yearly; not only was there no legal claim for earlier information, but also a request for inter-term accounts was considered an avowal of mistrust.120 The creation of the informal suhba system thus unexpectedly demonstrates a preference for law, for

the strongest legal protections for property rights, on the part of the Geniza merchants.

However, by the same token, Geniza merchants’ practices cannot support Kuran’s theory that what prevented economic growth in the Islamic world was the existence of merely a limited set of contracts in Islamic law. In the eleventh century, Geniza merchants were perfectly capable of innovating the *suhba* contract that used the widespread protections of Islamic agency law while overcoming the temporal limitations of both agency and venture partnerships. That is, even in Kuran’s ‘stagnant millennium’, we find merchants creating effective contracts to address one of the chief problems that he associates with Islamic contract law: non-durability.

The complexity of Geniza merchants’ agency relationships and contract enforcement regimes thus overturns the excessively broad dichotomies and neat causality of recent grand theories about the economic rise of ‘the West’ or the economic decline of the Islamic world. Furthermore, they suggest that the dichotomy theorists have attempted to draw between legal institutions and informal networks may do more to obscure than illuminate the problem of how people enforce long-distance trading contracts. Such dichotomies fail to do justice to the ways in which informal networks and legal institutions often form an interlocking, complementary system, as in the case of the Geniza merchants. They have also prevented economists and economic historians from asking more nuanced questions — exactly what kinds of contract protection can be achieved through legal or informal means? What specific mechanisms and institutions allow economic actors to rely on them? Can either effectively substitute for the other?

The Geniza documents are a unique resource — the chance survival of ephemeral business papers reveals what legal documents do not. Thus the deliberate, record-keeping documents of these same merchants betray nothing of the mechanics of

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121 As in de Mesquita and Stephenson, 'Legal Institutions and Informal Networks'.


123 For some thoughtful analyses of this problem in an early modern context, see Trivellato, *Familiarity of Strangers*, 10–16, 271–7.
reciprocal agency, and barely hint at the existence of *ṣuḥba*.\(^{124}\) These voices from the eleventh century, however, do not suggest that the Islamic world was heading down a ‘path’ that would lead to economic decline; rather, they suggest the problems of claiming and documenting the ‘path dependency’ upon which the new grand narratives rely. In this theory, North and his successors ask us to take seriously both institutional constraints and the agency of the actors who negotiated them in determining the economic trajectory of a society.\(^{125}\) The letters of Geniza merchants indeed reveal them to have been intelligent manipulators of the resources of law and community, as users of innovative combinations of formal and informal relationships. But they also show that even over the course of the eleventh century, their contracting preferences were not fixed, but shifted in response to changing balances of risk in the broader economy, and would shift again in the next century.\(^{126}\) It is surely premature to conclude, in a relative vacuum of comparative documents, that their Islamic successors over the centuries were less capable of agile responses to new opportunities, or of creating relationship forms that worked around institutional limitations.\(^{127}\)

\(^{124}\) There are many indications that letters were used as ephemeral and not record-keeping documents: see Jessica L. Goldberg, ‘The Use and Abuse of the Geniza Mercantile Letter’, *Jl Medieval Hist.*, xxxviii (2012).


\(^{126}\) A related article looks at this problem to consider the degree to which Geniza merchants’ preferences in agency relationship are fully explained by the problem of contract enforcement. Examining risks and benefits of different relationships in the larger context of Geniza merchants’ business, I show that contract enforcement, and the mechanisms outlined in this article, were important to merchants, but choice of agency relationship was increasingly driven by other concerns, particularly considerations of agent expertise and merchants’ desire to maintain entrepreneurial control of their capital. See Goldberg, ‘Re-Considering Risk and the “Maghribī Traders”’.

\(^{127}\) Kuran argues that the paucity of the documentary materials is itself evidence of institutional stagnation: Kuran, *Long Divergence*, 71.