

Re-considering risk and the ‘Maghribī traders’: Agency relations, contract enforcement, and the economy of the eleventh-century Islamic Mediterranean*

Just about a thousand years ago, the Ben Ezra synagogue of Fustat (Old Cairo) was demolished on the order of the Fatimid caliph. The same caliph later gave the Jewish community permission to re-build. This small event—in the larger historic context of shifting economic patterns associated with Fatimid power, political struggles within and among the various Jewish communities of the Fatimid Empire, and varied and changing ideas about the sacrality of texts and writing in Hebrew script—resulted in a rare gift to economic historians.¹ When its 350,000 pieces of paper were dispersed to collectors and libraries at the close of the nineteenth century, the ‘Cairo Geniza,’ built as a storeroom in that eleventh-century synagogue, was found to contain nearly a thousand documents from the eleventh-century business papers and legal records of some of the Jewish merchants who lived in, visited, or had business interests in Fustat, men known in the economics literature as the ‘Maghribī traders’.² This is not a huge cache in historical terms, and in point of fact these papers represent only a modest fragment of the documents these men produced—consisting mostly of discarded business ephemera rather than formal records.³ But all the same, it is the largest identified group of related commercial documents from the medieval Islamic Mediterranean, and over the past fifty years, scholars have increasingly recognized that they have much to tell us about the medieval Mediterranean economy, especially in the otherwise document-poor eleventh century, recognized as a crucial period for European expansion in this area.⁴ But what exactly can we learn from this unusual collection? A dominant and perhaps pre-mature urge to make comparisons to Europe, and a narrow focus in the literature on differences in agency contracts and their governance, threaten to swamp discussion, and in fact obscure much broader opportunities both to examine the Mediterranean Islamic economy, and make more careful comparisons between Italian and Islamic medieval merchants. A re-examination of the agency relations used by these merchants that have been at the heart of recent scholarship and debate, particularly the complex array of

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¹ For a description of the Cairo Geniza, the custom of Geniza among Jews, and the extant documents, see Mark Cohen and Yedida K. Stillman, “The Cairo Geniza and the Custom of Geniza among Oriental Jewry: An Historical and Ethnographic Study” (in Hebrew),” *Pe`amin* 24(1985); Stefan C. Reif, *A Jewish Archive from Old Cairo: The History of Cambridge University’s Genizah Collection* (Richmond, Surrey, 2000).

² This term is a somewhat inaccurate modern construct; merchants never refer to their group by this term, though it, like other geographic labels, has meaning in a world where place of origin is an important valence of solidarity. The term businessmen did use to describe themselves, *aṣḥābunā*, and its special meaning, is discussed in S. D. Goitein, “Formal Friendship in the Medieval Near East,” *Proceedings of the American Philosophical Society* 115, no. 6 (1971); A. L. Udovitch, “Formalism and Informalism in the Social and Economic Institutions of the Medieval Islamic World,” in *Individualism and Conformity in Classical Islam*, ed. Amin Banani and Speros Vryonis (Wiesbaden, 1977); Jessica Goldberg, *Trade and Institutions*, chapter 2. *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.

³ See Goldberg, “Use and Abuse.”

⁴ See R.S. Lopez, *The commercial revolution of the Middle Ages, 950-1350* (Englewood Cliffs, NJ, 1971) and M.M. Postan, E. Miller, and C. Postan, *Cambridge Economic History of Europe, Vol 2: Trade and Industry in the Middle Ages*, 2nd ed. (Cambridge, 1987), 306-473 for overviews on Italian trade expansion. R. Morozzo della Rocca and A. Lombardo, *Documenti del commercio veneziano nei secoli XI-XIII* (Torino, 1940) includes the largest collection of eleventh-century Italian contracts, some 16 of which involve trade.

options merchants faced and a closer examination of their shifting preferences over the course of the eleventh century, shows how previous scholarship has mis-construed or over-simplified both institutional and structural differences in the economic situation of these merchants in comparison to their European counterparts. In doing so, it also reveals the weak foundations of scholarship that has attributed the differences in economic development between European and Islamic societies to disparities in contract formation and governance.

An Islamic business manual of the eleventh century states a truth on which modern economists agree: for success in long-distance trade, one needs agents.⁵ That is, only the ability to secure skilled commercial services allowed merchants to act simultaneously across geographically scattered markets. For the past two decades, economists and most economic historians have read these documents as having central importance in telling us how medieval Islamic merchants managed principal-agent problems in the context of long-distance trade. In fact, recent research can add a new layer of interest to this problem, for Geniza merchants appear to have had greater abilities to disperse their commercial activities through a wider array of markets and kinds of investment than any documentable western European merchants before the late thirteenth century, principally through very ramified agency.⁶

In the work of Avner Greif, Genza merchants have been a key case study for economists looking at problems of principal-agent relations, for they are understood as the first documentable example of a group successfully managing agency relations in a self-enforcing system. That is, Greif claimed merchants were able to make credible commitments and enforce contracts in the absence of an external system of law or policing provided by an impersonal state. Greif modeled that a reputation mechanism in force within a closed coalition of merchants provided this substitute. Any agent within the group received a surplus (above the ordinary market wage) that he stood to lose if misconduct were discovered. But since any pair of merchants might not have occasion to do business frequently, the prospect of loss from any bilateral relationship in itself was insufficient to ensure conduct. Rather, the existence of a coalition that shared information through letter-writing both allowed agents to “signal their honesty” to the group, and make it possible to communicate news of one act of misbehavior to all other merchants, increasing the probability of punishment in multilateral enforcement. “All coalition merchants... are expected never to employ an agent who cheated while operating on behalf of any coalition member.”⁷ That is, if a merchant hired an agent who was known to have previously cheated, the agent with the bad reputation would not expect to be hired by anyone else and thus had less to lose from cheating again, so the merchant who hired him would have to pay an even higher wage to keep him honest than he would for an agent with a clean record. This gave merchants the incentive to participate in the multilateral punishment of bad agents.⁸ As

⁵ al-Dimashqī, 2002: ch. 21. *El² “Tidjāra”*. Cf the date in Lopez et al, 2001: 23-27.

⁶ Diversification of investment and numbers of agents are discussed in Goldberg, *Business World*, chapters 4, 5, 9. Differences in available sources no doubt understate the number of agents used by early Italians, but Abulafia’s examination of early Genoese trade (D. Abulafia, *The two Italies: economic relations between the Norman kingdom of Sicily and the northern communes* (Cambridge, 1977)) suggest differences of an order of magnitude on number of agents, confirmed over a longer period by Q. Van Doosselaere, *Commercial agreements and social dynamics in medieval Genoa* (Cambridge, 2009), 61-169. See R.S. Lopez, *Genova marinara nel duecento. Benedetto Zaccaria, ammiraglio e mercante* (Messina, 1933) for an exceptional Italian, and compare van Doosselaere’s analysis of historical changes in contracts with Greif (Greif, “Organization”, 225-38).

⁷ *Ibid.*, 66.

⁸ Greif, 2006: 77-83.

economics has turned to institutional explanations of economic development, the Geniza merchants have thus been broadly seen as a critical case for explaining how trading system can be developed or maintained in situations of absent, limited, or highly corrupt state power.⁹

For economic historians, Greif provided a further thesis on the role of this private-order system of contract enforcement in explaining differential economic development. Greif contrasted the world of the Geniza merchants, characterized by private-order enforcement, with an Italian one that came to rely on formal, public ones.¹⁰ Though Greif did not argue that the use of private-order enforcement by the ‘Maghribis’ was inefficient in its own setting, he suggested 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 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 be less efficient than the formal, impersonal systems found in the west.¹²

Relying on recent improvements of access to editions and at least rough translations of Geniza documents, Edwards and Ogilvie have challenged both these claims. Looking in more detail at specific cases Greif cites, they argue the empirical evidence he presents for the effective functioning of multi-lateral punishment, and the existence of a discernible coalition, is insufficient. Reputation discussions in his examples, they suggest, are more easily read as bilateral threats common to merchants in many other times and places, while there are several examples of living merchants initiating and pursuing lawsuits against one another, undermining the notion that the reputation mechanism was a sufficient substitute for impersonal, state-sponsored enforcement venues. As they then note, if a substantially different contract mechanism

⁹ E.g. P. Collier and J.W. Gunning, “Explaining African economic performance,” *Journal of Economic Literature* 37, no. 1 (1999), A.K. Dixit, “On modes of economic governance,” *Econometrica* 71, no. 2 (2003), S.N. Durlauf and M. Fafchamps, “Social Capital,” in *Handbook of economic growth*, ed. P. Aghion and S.N. Durlauf, (Amsterdam, 2005), 1653, A. Greif, “Cultural Beliefs and the Organization of Society - a Historical and Theoretical Reflection on Collectivist and Individualist Societies,” *Journal of Political Economy* 102, no. 5 (1994), J. McMillan and C. Woodruff, “Private order under dysfunctional public order,” *Michigan Law Review* 98, no. 8 (2000), World Bank, *World Development Report 2002: Building Institutions for Markets* (Oxford, 2002). See the discussion of this scholarship in J. Edwards and S. Ogilvie, “Contract Enforcement, Institutions and Social Capital: the Maghribi Traders Reappraised,” in *CESifo Working Paper* (CESifo, 2008), 4-5.

¹⁰ Greif, *Path, passim* summarizes much of his work on this topic, but see also A. Greif, “Contract Enforceability and Economic Institutions in Early Trade - the Maghribi Traders Coalition,” *American Economic Review* 83, no. 3 (1993), Greif, “Cultural Beliefs,” A. Greif, “The organization of long-distance trade: reputation and coalitions in the Geniza documents and Genoa during the eleventh and the twelfth centuries” (Ph.D. Dissertation, Northwestern University, 1989).

¹¹ R.D. Cooter and J.T. Landa, “Person versus impersonal trade: The size of trading groups and contract law,” *International Review of Law and Economics* 4, no. 1 (1984), Greif, “Cultural Beliefs,” 930-936, B. Grofman and J. Landa, “The Development of Trading Networks among Spatially Separated Traders as a Process of Proto-Coalition Formation - the Kula Trade,” *Social Networks* 5, no. 4 (1983).

¹² Greif, “Cultural Beliefs,” 942-43.

cannot be shown at work, it follows that any argument for comparative development between the Islamic and European worlds based on enforcement regimes cannot be sustained.

Greif's work is in need of re-evaluation and potential revision in light of the fact that he used only a subset of eleventh century documents then available in edition or translation to formulate his theories, while now scholars agree that at least 90 percent of the corpus has been the subject of at least one edition, and Greif's corpus is a potentially unrepresentative collection of less than a third of extant documents.¹³ But the debate recently rehearsed is unfortunately limited in two critical ways, and thus perhaps does less to open discussion than the subject merits. On the subject of governance, both sides seem wedded to debating whether merchants relied principally on public institutions or private-order arrangements. Such an argument imposes a false dichotomy: there is substantial evidence instead for use of both the extant legal system and a private-order 'reputation mechanism' at work in enforcing contracts. Indeed, the fact that 20 percent of letter content is taken up with discussions of merchant behavior, and nearly half that discussion is about third parties, constitute strong *prima facie* evidence of a reputation mechanism acting in network.¹⁴ Asking whether merchants preferentially relied on one versus the other prevents us from asking the more nuanced question of how complex governance regimes operate, the limits and capacities of both formal and private-order regimes to prevent different kinds of opportunism.¹⁵

This article addresses a second problem, that of the broader historical inference drawn by Greif. For Greif's historical narrative contains the unexamined and unchallenged assumption that enforceability is central conundrum for merchants in agency relations, that it determines the nature and thus explains historical process of development of these relationships. And in fact scholarship has focused on the relative importance and enforcement capacity of formal legal institutions and informal social ones to allow individuals to make credible commitments. Cheating, or contract failure, may be a serious risk, yet theorists seem hesitant to ask some appropriate historical questions: does contract failure pose the same degree or kind of risk in every long-distance trade situation; is it always the predominant risk?¹⁶ How well does it need to be solved in the institutional and structural situation of trade? When might other risks appear more important, where is willingness to sacrifice some enforceability to gain other advantages? If we assume that merchants built agency institutions solely or principally for their ability to

¹³ Greif, "Cultural Beliefs," 924-25. Greif's 250 documents, for instance, because they were gathered from scholarly projects to work on material from particular geographic areas or related to particular individuals, unfortunately include only a small number of intra-Egyptian letters, which in fact are a plurality of the corpus.

¹⁴ See Goldberg, *Trade and Institutions*, chapter 5.

¹⁵ An exploration of this problem is the subject of a related article; see Goldberg, "Choosing and Enforcing business relationships in the eleventh-century Mediterranean: Reassessing the 'Maghribī traders,'" *Past & Present* (forthcoming). Both Edwards and Ogilvie, 2012 and Greif, 2012 (p. 12-13) acknowledge multiple institutions in theory, but in practice each argues for primacy of either 'multi-lateral reputation' or 'legal institutions' in generalized governance, rather than looking at different problems of governance, or merchants' own definitions of different kinds of contract failure.

¹⁶ **Query here: worth asking too whether, given research in economic psychology, merchants would have reasonably expected most individuals to cheat when possible, and thus gave more attention to this problem than other risks?** Greif takes note of the problem, but 'similar technology' argument.

prevent cheating, or choose among options principally on this basis, we may radically misrepresent the nature of economic activity and choices, and build false causal models.¹⁷

To understand the choices of Geniza merchants in agency relations and their meaning requires a broader re-examination of two issues, both complex. First, because the argument about contract enforceability arose initially from a comparison of Genoese and Geniza preferences in agency relations that is both partial and somewhat mischaracterized, it is necessary to sketch out the array of agent and agency relation options that Geniza merchants chose among. I then examine an important but previously unnoticed fact about these options: that some patterns in choosing among these options remained relatively stable across the century, but other preferences shifted significantly. To understand these preferences, I will argue, requires thinking more carefully about the evidence for broader patterns of institutional protections and risk in the Mediterranean Islamic marketplace, but also about the kinds of work merchants did in the economy and the kind of structural risks they faced. Looking at merchants choices from this broader context, and particularly at shifting preferences over the course of the eleventh century, shows that concerns with contract enforcement, while sometimes important, were not central in determining preferences. Instead, as trading conditions deteriorated over the course of the eleventh century, it was increasing concern for both entrepreneurial control of goods and more flexible access to limited supplies of expert agents that drove merchants choices in establishing agency relations.

1. Organizing agency relations

Greif's work modeling contract enforcement among the 'Maghribīs', and his comparison between Islamic and European ways of commercial cooperation, arise from a basic conundrum noted by earlier scholars who compared eleventh-century Geniza merchants' and twelfth-century Genoese merchants' choices in agency relations. For the twelfth-century Genoese, the *commenda* partnership (and somewhat later, the closely related *societas*), in which a passive or sleeping investor gives money to an active trader, and the active trader receives one-quarter of the profits (while having no liability for losses) was the dominant form of recorded commercial relationship. The Geniza documents revealed that the almost identical contract, the *qirād* or *muḍaraba* of Islamic law, was well known among these eleventh-century merchants, but they used it extremely rarely. S.D. Goitein's surveys of commercial relationships among Geniza merchants suggested that rather than any form of partnership, the most important form of cooperation was a relationship called a *suḥba*. In this relationship, a pair of established merchants engaged in reciprocal agency, doing services in distant markets on goods that each owned individually. The agent received no remuneration for any services done on his associate's goods, but would receive services for his own goods as compensation. Though this exchange of services resembles the early Venetian *rogadia* contract, unlike it, the on-going *relationship* was

¹⁷ The most influential article in starting the debate over the relationship between legal institutions and social norms in contract enforcement is S. Macaulay, "Non-Contractual Relations in Business - a Preliminary-Study," *American Sociological Review* 28, no. 1 (1963). Greif makes the specific argument for basing larger claims for efficiency on contract enforcement beginning in Greif, "Cultural Beliefs," followed by North, *Process*, and repeated in expanded form in Greif, *Path*.

not secured by legal contract; indeed it could not be, since it did not fit the requirements of any partnerships or employment contract in Islamic or Jewish law.¹⁸

A.L. Udovitch, who had documented the close relationship of Geniza commercial contracts to contemporary Islamic commercial law and the similarity of *commenda* and *qirād* contracts, also drew sharp attention to the contrast between the preferences of Italians and Geniza merchants when he more closely analyzed the nature of the *ṣuḥba*. He suggested a much higher rate of use of the *ṣuḥba*, and concluded from this patterns that “The Italian merchant lived and breathed in a world of contract, of partnerships, agencies, commissions, and loans,” he writes. “. . . 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.”¹⁹ It is this dichotomy that Greif explains, using the lens of contract enforcement. Analysis of the more complete commercial corpus, discussed below, confirms this contrast: they suggest two-thirds of eleventh century transactions were performed under the auspices of *ṣuḥba*, while *qirāds*, at the most generous estimate, could not have been used in more than 5 percent of cases.

But unfortunately, such a statistic is far less explanatory than it initially appears, given that merchants faced a more complex landscape of choices in trying to acquire merchant services than the basic dichotomy of *partnership* versus *agency* common to Islamic and Jewish law implies, or the dichotomy between *commenda/qirād* and *ṣuḥba* that lies at the heart of Greif’s model. Rather, merchants’ letters and contracts reveal that there were distinct kinds of agents available, and merchant and market norms, together with commercial law, made different kinds of relationships possible with different kinds of agents. The two main kinds of arrangement, *partnership* and *reciprocal agency (ṣuḥba)*, were used principally with members of the merchant community, largely fellow Jews but sometimes Muslims merchants as well. Often a pair of merchants would jointly invest part of their capital in a partnership, while at the same time carrying out commercial services for each other as agent on their individually-owned goods through *ṣuḥba*.²⁰ One could even make occasional use of *commission agency* to obtain the services of fellow merchants. But there were also several ways to have *some* of these services done by non-merchants—using a junior agent or a skilled slave, or paying a commission to a *broker* or a *wakīl al-tujjār* (representative of the merchants).

Before discussing the forms of arrangement available to secure commercial services in long-distance trade, we should note one that largely was not: the salaried employee. In the medieval Islamic world employment was often described as slavery, a dependence degrading for a mature man.²¹ Most skilled or artisanal work was done on the basis of partnerships in small

¹⁸ See Lopez, *Commercial Revolution*, 73-74 for a brief overview of the Venetian contract. Though the early Venetian contracts are rare, some eleventh century documents mention the *rogadia*. See Morozzo della Rocca and joint, 1940: docs. 4, 9, 32. See document 149 (twelfth century) for terms. On the problem in Jewish and Islamic law, see Goldberg, “Choosing and Enforcing.”

¹⁹ Udovitch, “Formalism and Informalism,” 74.

²⁰ Goitein, 1967-93: I, 167, 183-186.

²¹ See *Ibid.*: I, 161-162. Such attitudes likely represent the continuation of ancient prejudices (Scheidel, 2002, Zelnick-Abramovitz, 2005), no doubt amplified by the widespread practice of slaves working for wages (Hawkins, 2006: 196-214 and Cohen, 2000: 130-154). Goitein, 1967: 92-99. The wage labor that appears regularly in the legal or documentary records is most often that of unequipped manual laborers, who had only their muscular strength to offer. My interpretation differs from Goitein, 1967: 161-164. Most of the cases Goitein associates with employment are better explained by the junior associate system I outline.

shops—everyone in a shop was conceived of as a part owner paid from the profits of the investment. Within this framework, it is not surprising that merchants were unable to hire agents: in this society, not only could they not hire a salaried employee skilled in the ways of trade, but they could not offer a fellow merchant a money wage to undertake a specified task.

Partnerships, whether in Jewish or Islamic law or in the practice of the Geniza merchants, had as their object a specific capital investment—either a fixed sum of money or a particular set of objects. Different types of partnership were defined by how the profits, losses, and liabilities on this initial capital were divided among the parties. There is little disagreement among scholars as to what forms were available; scholars also agree that the (unfortunately quite limited) surviving documents fit the legal prescriptions of either Jewish or Muslim law, or, in many cases, both.²³

Most recorded partnerships among Geniza merchants were *venture* partnerships: the parties (two or more) were associated with capital for either a cycle of trade or a specific amount of time.²⁴ The first form in legal theory, joint-active venture partnership, is formally called a *shutafut* in Jewish law and an *'inan* in Islamic law, but was usually called a *khulṭa* (mixture) by the Geniza merchants, referring to its central feature, the mixing of moneys. In this form of partnership, two or more partners usually agreed to contribute capital to a venture and receive a return *in proportion* to their share of investment, whether profit or loss.²⁵ A partnership in this form usually makes no distinction as to the labor contributions of the parties, and defines each party as fully competent to make decisions with the shared moneys.²⁶

In the second form of venture partnership, *qirāḍ* (Islamic) or *'eseq* (Jewish), the partners did not share profits in proportion to their investment. Though the standard proportional splits common in the *commenda* were known in the Islamic world, in practice, the partner who managed the transactions (the active partner) simply received a larger portion of the profits than his share of investment.²⁷ One deed attesting to a *qirāḍ*, for example, gives Sasōn b. Natan 29 percent of the profits in a partnership in which he invested only 10 percent of the capital.²⁸ It was possible to assign the active and sleeping partner equal authority to make decisions, or to give just one partner the executive authority. Islamic law stipulates that the active partner is not financially liable for losses in the sleeping partner's capital; in Jewish law, by contrast, a portion of the sleeping partner's capital is considered a loan, and therefore must be repaid even in the event of losses. The paucity of surviving contracts of this form, and the lack of contract details in

²³ Udovitch, 1970, Udovitch, 1968, Udovitch, 1970a, Udovitch, 1970b, Udovitch, 1981a. Cf Ackerman-Lieberman, 2007: *passim*. Rustow points out the ability of Jewish law clerks to write contracts that would hold up in Muslim court, and their frequent care to do so. Rustow, 2008: 72-73, 266-268. Ackerman-Liebermann finds the same working from a different set of Geniza documents in Ackerman-Lieberman, forthcoming. Muslim legal scribes were similarly attentive to making sure their documents conformed to various schools of law, a practice they term *ihṭiyāt* (precaution). See Wakin's discussion in her introduction to *al-T'ah'āwī* and Wakin, 1972: 32ff

²⁴ Indeed, the central act of partnership, at least according to Maimonides, is the holding up by both parties of the joint purse. See the discussion and citations in Ackerman-Lieberman, 2007: 46-47.

²⁵ Though this split of profit is most often documented in eleventh-century letters, extant contracts, unfortunately only from the twelfth century, document joint-active partnerships in which slightly different amounts of capital are contributed, but profits are split evenly. See examples in Ackerman-Liebermann, 2007, II.

²⁶ Nyazee, 1999: 95-158, Udovitch, 1970: 119-141, examples in Goitein, 1967-69: I, 173-179.

²⁷ Goitein, 1967: I, 171-172, Pryor, 1977, Udovitch, 1969.

²⁸ TS 12.784. Discussed in Gil, 2003: 278

Geniza letters, has given rise to a lively debate on the question of fiscal liability in this kind of contract.²⁹

In addition to *venture* partnerships, there was one type of *durable* partnership: the family partnership or family firm. Such partnerships are attested in the eleventh century in only two types of situation: a father and sons, and a group of brothers. Thus far, no written contract for such a partnership has emerged. Goitein noted, however, that a contract for a family partnership from the early twelfth century (1112) suggests the terms of eleventh-century versions—indeed, the written terms of this contract mirror those that can be inferred from reading eleventh-century Geniza letters. Such partnerships followed the terms of an Islamic *mufāwada*?a partnership—all capital possessed by each individual belonged to the group, and each member had full power to undertake acts for which all were legally as well as financially liable.³⁰

To enter into a *written* partnership required that all parties be present—such contracts could not be formed by proxy.³¹ Merchants, however, occasionally wished to form partnerships for specific capital investments with associates who were not on hand—not unexpectedly, given the geographical dispersion of their friends and partners, and the possibility that an individual’s travels might suffer protracted delays. Both business letters and Jewish courts referred to these arrangements as *mu’āmala*, literally mutual dealing, although it is often not clear whether it was a joint-active or a sleeping-active partnership.³² These varieties of partnership are familiar in their general outline to most economic historians of medieval Europe, although the laws governing them do have an important distinction. In medieval Jewish and Islamic contract law, financial liability is always unlimited for whoever has liability; limited liability concerns *legal* liability—the partner in a limited liability contract is not accountable for further contracts made by his partner, or any misdeeds. Scholars coming from Europe sometimes confuse an Islamic limited liability partnership with the European limited liability contract, the latter a contract that limits *fiscal* liability.³³ The other clear distinction lay in the opportunities to make fine distinctions in the pricing of labor in partnerships (principally in the *qirād*, but also in the *‘inan*) though the freedom allowed in deciding on proportion of capital invested versus proportion of returns to each partner.³⁴

Partnerships are familiar to European scholars as a basic form of agency relation, but it was different kinds of legally recognized *commercial agency* that tended to dominate business throughout the eleventh century. Agency was indeed the central concept underpinning most

²⁹ Udovitch, 1970: 238-243, cf. Ackerman-Lieberman, 2007: I, 52-54, 75-57.

³⁰ Goitein, 1967: I, 180-183. For examples of documents written to and from family partnerships, see TS 12.133 translated in Goitein, 1973: 72-79, ULC Or 1080 J 248, ULC Or 1080 J 291, TS 8 J a 2.1, TS 8 J 36.2, TS 12.224, ULC Or 1080 J 35, TS 8.12, DK 246 a-b, TS 13 J 25.18. On *mufāwada* Udovitch, 1970: 40-118, amended by Nyazee, 1999: 51-56.

³¹ Although both Islamic and Jewish law recognize agency, powers of attorney did not extend the ability to form new partnership contracts. Indeed, extant partnerships were held to be ended when one of the partners died—the inheritors of the estate and the living partner would settle affairs as they stood. Inheritors did not inherit an obligation to complete outstanding contracts. See Bodl MS Heb a 3.26, Bodl MS Heb a 2.17.

³² Ackerman-Lieberman, 2007: 128-129. An example: ENA NS 18.24 r 17-18. Cf. Gil, 2003: 276-277

³³ Udovitch, 1970: 40-41, Nyazee, 1999: 81-88, 220.

³⁴ This distinction discussed in van Dooselaere (pages), who understands the striking endurance of fixed schemes in Genoa, which do not make distinctions among agents in compensation schemes, as a function of social relations among partners. Accounting costs and Goitein’s analysis.

Islamic commercial law.³⁵ The agent may play one of two roles: he is either a messenger who conveys, or an actor who carries out, the instructions of his principal.³⁶ Whichever role he plays, the full property rights and liability of the principal are always maintained. The agent is presumed to be limited and must act according to instructions, but one can make someone an unlimited agent through the statement, “Act at your discretion.”³⁷

Merchants used three different forms of relationship in which *agency* underpinned property relations between the parties. As noted above, the most common of these was a *ṣuḥba* (association), formed only between full-fledged merchants. A merchants’ *ṣuḥba* was a strictly one-to-one relationship,³⁸ and gave both associates (*aṣḥāb*³⁹) the following right: the ability to unilaterally designate one’s associate as an agent for particular goods, and to request specified tasks on specified goods through written instructions in a letter. The principal was free to do this as often as he liked, and to be as specific as he wished in outlining these tasks: instructions could range from a rank ordering of a dozen different goods an agent should consider purchasing with the proceeds of a sale to the simple injunction to “do whatever your propitious judgment suggests to you.”⁴⁰ The agent, on the other hand, could refuse to accept a particular task, although he retained a responsibility not to abandon the goods specified. The arrangement was reciprocal in that the exchange of services (*khidma*, pl. *khidām*) was expected to be of equal value; any order for commercial services would create a corresponding obligation for the principal to carry out reciprocal services at some time or place.

The *ṣuḥba* was crucial to merchants’ extensive agency because it was through this relationships that one could unilaterally designate a merchant as agent through letters, that is, at a distance. Designating someone an agent in the absence of a *ṣuḥba* was considered actionable: “I wish I knew by what right your friend appointed me his agent,” writes an incensed Yūsuf b. ‘Alī al-Kohen. “I shall return to Fustat and sue him.”⁴¹ The existence of the relationship was consequently not taken lightly; it was both begun and ended formally.⁴²

Although the *ṣuḥba* relationship, under the terms “friendship,” “informal cooperation,” “informal business cooperation,” and “formal friendship,” has been discussed by previous

³⁵ Schacht, 1964: 119-120. Its definition is particularly well worked out in the Hanafī tradition on commercial law; although the Fatimid rulers were Shi’ite, civil law appears to have remained, like the majority of the population, Sunni. Allouche, 1985. As has often been noted, this theoretical development sharply distinguishes Islamic Law from the Roman Law, where no concept of agency exists. See Buckland, 1947: 59, 73, Gardner, 1993: 264-265, 406-267.

³⁶ Nyazee, 1999: 59-61. Udovitch, 1970: 68-69, 98-99, and especially 85.

³⁷ Schacht, 1964: 119-120.

³⁸ Udovitch, 1977: 74-77.

³⁹ The plural, *aṣḥāb*, was used to refer in general to associates and colleagues, but the singular, *ṣāhib*, was used less frequently, for it suggested the merchant referred to was known chiefly in the context of his relationship with someone more important, rather than as an independent operator. That is, he was a junior associate, as discussed below. Goitein, 1967-93: 1, 169. When introducing merchants of independent standing to new people, one was more likely to say “partner” or “friend,” (*sharīk* or *sadiq*).

⁴⁰ ULC Or 1080 J 42. cf instructions in TS 8 J 22.8 r 7-13.

⁴¹ TS 16.179 v 25-26.

⁴² See Goitein, 1971: 487.

scholars, its specific obligations and limits have not been recognized.⁴³ Goitein and Udovitch, and Greif in their wake suggested it was unbounded, describing the services provided as “endless” and as being extended to “friends of friends.”⁴⁴ A closer reading shows that Geniza merchants did not provide unlimited services within a *ṣuḥba* relationship; nor did they fulfil every request. Rather, they understood this system as reciprocal service, a form of ‘balanced reciprocity’ in which returns of equal value were expected within a finite period—letters include refusals of service, requests accompanied by service offers and promises, arguments, discussions, and instructions about adequate reciprocity.⁴⁵

Merchants made somewhat sparing use of *commission agency*, an agency relation so important in some of these same geographic areas in the early modern period.⁴⁶ Chiefly, it was *brokers*, specialists in particular commodities in specific markets who did not form part of the merchant community, who were paid a modest proportion of the profits on the specific transactions they undertook. These too were limited: well-connected brokers were chiefly used to help merchants purchase primary production in local markets near production sites, to help round up buyers for an auction, or to arrange an auction of private sale. *Commission agency* was the only way in which the services of these brokers could be acquired. Very rarely, that is in less than a quarter of a percent of text on transactions, one can find a fellow merchant requesting or being offered *commission agency* for a particular deal—essentially when unusual circumstances meant the services required would go beyond possibility of balanced reciprocity of the *ṣuḥba*.

Though there is no word or contract for apprenticeship among the Geniza businessmen, the documents testify to an informal system of *junior associates* that applied to a variety of potential merchants. Within merchant families, son did not ordinarily inherit their fathers’ business, nor did they work under their fathers. Instead, an aspiring ‘boy’ would become the junior associate of one of his fathers’ associates.⁴⁷ The mentor paid all the junior’s living expenses while the apprentice worked, unpaid, on his mentor’s individual investments and partnerships.⁴⁸ This system allowed the junior to use his beginning capital stake to make his own deals.⁴⁹ A junior often traveled on behalf of his mentor, during which he would be both trained

⁴³ Goitein, 1967-93: I, 164-169, Udovitch, 1977 #1877, Greif, 1989: 872. Greif borrows the term ‘formal friendship’ from Goitein (see Goitein, 1971). Indeed Goitein’s description of the system (Goitein, 1967-93: I, 164-169) suggests much of the reciprocity I describe, despite his summary comments.

⁴⁴ Goitein, 1967: 166. Goitein’s claim for “friends of friends” is based on a single twelfth-century letter, which appears in Goitein, 1973: 49-51. Whether agent relations extended this way in the twelfth century remains an open question, but I find nothing to support this claim for the eleventh century – indeed, quite the contrary, as shown by the example presented in the text. Udovitch similarly concludes that “Geniza letters are replete with ... requests from one merchant to another—requests that often required great expenditures of time and effort; and yet, these were invariably fulfilled.” Greif only describes the obligation as follows: “As long as the relation was in force ... each party was bound to provide his friend with trade services” without specifying any conditions. Greif, 1989: 872, Udovitch, 1977: 64 Both cite Goitein, 1967-93: I, 164-165.

⁴⁵ E.g.,: “He should do for me as I did for him and not put it off for a single hour.” TS 10 J 20.16 r 8-9. Balanced reciprocity: Sahlins, 1972: 194-195 as amended in Ensminger, 2001: 188.

⁴⁶ See Trivellato, *Familiarity*.

⁴⁷ These associates were often but not invariably relatives: uncles or cousins. See *Ibid.*, 78-81.

⁴⁸ A small set of accounts written by Nahray b. Nissim during his apprenticeship with his aunt’s husband, Barhūn b. Ish?āq al-Tāhirtī, attest to the financials: Bodl MS Heb e 98.64-65 column 2, 6. See also AIU V a 70 v 2-4 on paying living expenses.

⁴⁹ We find businessmen giving their sons or other relations a small amount of capital to begin trading on their own account, and sometimes even arranging for a partnership with another apprentice. An example of this is found in TS

and evaluated by members of the business community. If he made money and earned trust for his probity and competence, a junior could be given a greater variety of business tasks, then graduate into partnerships and *ṣuḥba* with his mentor, just as he was acquiring associates, partners, expertise and local contacts in the areas where he spent the bulk of his time doing his mentor's tedious and time-consuming legwork.⁵⁰ The system provided a source of low-cost labor of *variable competence*; it also sorted out future merchants from mere aspirants.⁵¹

Junior agency could also mask something closer to employment. For in addition to the scions of substantial families, we also find cases in which young and perhaps not-so-young men from less moneyed families remained in dependency longer, continuing to be given a maintenance and acting principally as one man's agent.⁵² Slaves with sufficient skills for mercantile work were quite expensive. A slave's situation, on the few occasions when we do find one, was similar.⁵³ A slave also traveled on his master's business and undertook missions requiring substantial skill and trust; and his behavior was assessed. Slaves did business on their own account; they were sometimes manumitted and became full merchants.⁵⁴

This array of options reveals that merchants were making choices that involved a complex welter of potential costs, benefits and risks, among them: entrepreneurial control over one's investment; degrees of labor expertise; ability to disperse agency, labor cost (both form and amount); liability for losses; agent incentives to perform; transaction costs; and ability to specify and secure legal protection of contract. The trade-offs of these systems are complex, and fail to arrange themselves neatly along a single axis, which must make us wary of pre-judging which costs merchants saw as most onerous, which risks as central, and which benefits were most important to seize.

When a merchant entered into a partnership, for instance, he traded a loss of entrepreneurial control and degree of geographic flexibility for the advantages of acquiring a highly skilled agent with a built-in incentive to provide appropriate labor.⁵⁵ Any written

20.76 and TS 10J 20.10 (one document) where the writer reminds the recipient that the goods for these beginners should be labeled in one of their names, not those of the senior businessmen.

⁵⁰ Barhūn b. Iṣḥāq's letters to his junior Nahray b. Nissīm—Bodl MS Heb 3.19-20, TS 13J 14.9, TS 20.180, TS 20.69, ENA NS 1.86 (L 123), ENA 2805.19, TS 10J 9.5—along with other mentoring letters to apprentices illuminate that aspiring young businessmen were encouraged to form partnerships with their peers, and their work on behalf of their mentors was mostly done in agency, not as junior partners in *qirād* contracts.

⁵¹ One might posit that the junior agency system addressed some of the transaction costs associated with labor: principally search (the costs of finding labor) and adverse selection (the possibility of choosing a 'bad' agent)—the issue merits further study. 'Bad' can refer to either the propensity to cheat or incompetence where employment is concerned; the theoretical literature tends to concentrate on the former. See the general discussion and literature cited in Greif, *Path*, 430-32.

⁵² Even in cases where a man would be known for decades principally as the agent of a more important merchant, there is no evidence he was paid, as discussed above at n. 21.

⁵³ Goitein, 1967-93: I, 130-134.

⁵⁴ See TS 8.12 and DK 246 a-b. There are not enough documents to make it clear how slaves acquired capital to trade.

⁵⁵ See the discussion of the relevant law in Ackerman-Lieberman, "Partnership Culture," 133-34. Though it was possible to write a contract that gave one party primary decision-making power, there is only one extant example in the general Geniza (and that for a shop in which a father makes all the decisions in a partnership with his son): see TS 16.168, discussed in Ackerman-Lieberman, "Partnership Culture," 59. and translated at *ibid.*, vol 2 138-40.

partnership gave parties substantial legal protections: the power to specify terms (*e.g.*, planed activity and expenses, length of contract), to secure a quittance that recognized completion of the contract, and to bring suit if terms were violated. At the same time, information, another form of entrepreneurial control, could be limited: partners were not required to send accounts to one another before the end of the term of partnership, and it was considered an avowal of mistrust to request one prior.⁵⁶ If he used a *khulṭa* (mixture) or family partnership, a businessman also spread his risk in that liability was shared, while assuring there were no charges for labor. In a *qirād*, on the other hand, a businessman paid a large share of his profit to get labor (though he radically reduced his own labor burden), and may have given up his ability to spread the risk of loss as well—depending on whether a Jewish or Islamic form was used. Finally, when businessmen used a *mu'āmalā*, unwritten partnership, they lost the ability to specify terms but avoided an important transaction cost of written partnership: entering into a written partnership required all partners to be present, which could be onerous when one's desired partner lived half-way across the Mediterranean.

Using *ṣuḥba* relationships gave businessmen enormously flexible access to skilled labor—a businessman was only limited by the number of his associates in dispersing his capital into different ventures; and he could also divide the work on any particular set of goods among many agents in many locations. Meanwhile, the principal avoided transaction costs of accounting (making accounts for partners or determining commissions for labor) and travel, as he could initiate actions through letters. All work acquired under this system would require compensation in the form of the principal's own labor (or that of his junior associates)—there were thus limits on the total amount of work one could get done. Junior associates were the least expensive form of labor (the overhead of their living costs was, from extant accounts, a modest burden), requiring almost no return on the mentor's part, but their competence was limited. Most significantly, in both arrangements, the agent lacked any natural fiscal incentive to do his best work for the principal on any particular transaction. A commission agent's work, on the other hand, was highly skilled and incentivized; it was also priced in money and appeared as a cost in accounts.

Perhaps the most misunderstood aspect of all agency relations was the fact that merchants gained slightly *stronger* property protection in an agency contract, while at the same time abandoning any legal labor claims. When he designated someone as his agent by putting goods or capital into his hands by a label on a bale or instructions in a letter, a merchant was protected by agency law.⁵⁷ Whether in contemporary Jewish or Islamic law, the principal retained complete property rights and executive authority: his agent was required to follow his instructions, and he could demand either his property or an account at any point. Indeed, the commercial lawsuit with the longest extant paper trail in the Geniza is a suit against an agent for not following instructions.⁵⁸ Yet agency was specifically not a *labor* contract: the principal had no claims on his agent's labor and could not sue for inaction, while the agent could claim no compensation for the work he had done. The principal thus had no legal way to force his agent to

⁵⁶ See Ackerman-Lieberman, "Partnership Culture," 32-41; Gil, "Jewish Merchants," 283-90.

⁵⁷ See Gideon Libson, *Jewish and Islamic Law: A Comparative Study of Custom During the Geonic Period* (Cambridge, MA, 2003) on the related developments. An agent could be given charge either of property (money or goods) or the collection of a debt.

⁵⁸ See Goitein and Friedman, *India Book*, 167-210 for translations and discussion of the documents, and *passim* for general discussion and review of the scholarship around this lawsuit.

act; and once an associate *had* done work for another, he also had no legal claim to reciprocal services in return. Thus, labor reciprocity, and the on-going nature of a *ṣuḥba*, was indeed informal, as were the labor arrangements of junior agency. But this sketch should dispel any simple idea that merchant use of agency as opposed to partnership represents a simple choice between formal and informal contracts, or a more recent claim that in using *ṣuḥba*, merchants ‘established agency relations mainly in a way affording the least legal protection.’⁵⁹

2. Using mercantile labor

Previous scholars who examined business relations agreed that *s?uh?ba* was perhaps the most important form of business relationship, accounting for at least half of transactions, although they disagreed on the exact proportion.⁶⁰ Analyzing letter *content* across the eleventh century, I found that nearly three-quarters of assignable transaction discussions in eleventh-century letters involved reciprocal agency, nearly one-quarter partnership.⁶¹ Mentions of commission occur in less than 2 percent of letters, and never more than once in a letter—altogether less than a tenth of a percent of material.⁶² Of the agency transactions, less than 10 percent of the material can securely be linked to a junior associate.⁶³ Thus, we see the following approximate division of assignable transaction text: reciprocal agency, 67 percent; any kind of partnership, 24 percent; junior agency, 7 percent; any kind of commission, less than 1 percent.⁶⁴

But these overall statistics mask certain important changes between the early and later eleventh century, especially as materials from the latter period account for nearly 80 percent of letters. The early eleventh century data are somewhat more complex, because a significant portion of transactions, just over 15 percent, involve a durable family partnership, and family partnerships disappear by the early 1040s. Agency still dominates transaction data, accounting for 70 percent, but the picture is more mixed: though commission is still rare, nearly 10 percent of agency transactions involve a merchant engaging in reciprocal agency with a family

⁵⁹ Greif, 2012. (p. 4)

⁶⁰ Udovitch proposed a fifteen- or twenty-to-one ratio of informal to formal arrangements when the problem is posed in terms of *number* of transactions, while Goitein thought about half the business dealings of the Geniza were done through the system. (S. D. Goitein, “Commercial and Family Partnerships in the Countries of Medieval Islam,” *Islamic Studies* 3(1964): 316; Udovitch, “Formalism,” 72-73). Udovitch only counts one letter and discussed its fit with his impressions, Goitein similarly only offers an impression. Gil construes all relationships as partnerships in Gil, “Jewish Merchants,” 273-86. Greif asserts both a majority of transactions were done through informal relationships, and an overwhelming majority done in situations where both parties had capital at risk. Greif, “Organization,” 109, 55-57.

⁶¹ I analyzed percentages of text devoted to partnerships and agency in the sample set of letters rather than attempting to count individual transactions. See Goldberg, “Geographies,” 81-87 and Jessica Goldberg, *The Business World of the Medieval Mediterranean: Institutions and Geographies of Trade in the Eleventh Century* (Cambridge, forthcoming), chapter 3 for further discussion of methodological problems and chapter 5 for a count of transactions on a smaller sample set, confirming the preference. By no means all transactions are assignable. When a businessman writes, as is often the case, “I sold the sal ammoniac,” there is no way of telling whether it was sold for a partnership or as an agent action.

⁶² See Goldberg, “Geographies,” 84.

⁶³ As junior associates slowly became full businessmen and dating letters is difficult, it can be hard to determine when work is done by a junior.

⁶⁴ These numbers do not include acts like carrying money, which, as discussed below, were free community services.

partnership (maintain a *ṣuḥba* with one or more members of the family), almost 25 percent are junior associates, and the remainder *ṣuḥba* between individuals. We thus arrive at the following division: pure reciprocal agency, 46 percent; junior agency, 18 percent; pure partnership (of any kind), 30 percent; and mixed partnership and agency, 7 percent. By contrast, in the latter eleventh century, reciprocal agency is 69 percent, partnership 24 percent, junior agency 5 percent. We see then a substantial preference for agency throughout the century, but a significant shift toward *ṣuḥba*, particularly at the expense of junior agency and family partnerships, but an overall drop in partnership as well.

Within partnerships, merchant heavily preferred written contracts: *mu'āmalas*, or oral partnerships, are at most 3.5 percent of partnership mentions.⁶⁵ Among formal partnerships, merchants had a marked preference for the joint-active partnership (*khulṭa*) that assigns returns in proportion to capital investment: there is a *minimum* 80 percent preference for 'mixture' in written contracts, (check for early versus late). Merchants sometimes indeed mention being forced to make a *qirāḍ* as a hardship.⁶⁶ We can thus document the basic contrast that underlies Greif's work, but the more complete data leads us to question whether overall preferences are well explained by appeals to enforceability.

For this set of choices suggests overall and shifting preferences in cost, risk and opportunity. The combined dominance of mixture partnership and reciprocal agency throughout the century suggest the strongest preference is an aversion to monetary remuneration for labor: commission agency and *commenda* partnerships, which both take a share of the proceeds of a sale as the price of labor, are used very sparingly—perhaps as a last resort. The shift over the course of the eleventh century to a more dominant use of reciprocal agency and declining use junior associates, disappearance of family partnership, and decline in partnerships overall imply a growing value for individual entrepreneurial control and expertise. The desire for entrepreneurial control over information and investment decisions seems to have taken precedence over the obvious benefits of partnership—shared risk, the active party's incentive to make the best deal, and unlimited access to whatever services the venture might require.

What is strangest in looking at these shifting preferences, given current debate, is the ambiguity of the data on preferences for 'formal' versus 'informal' contracts. Though Greif's argument rests in part on a contention that legal guarantees were unusable and thus went unused,⁶⁸ merchants' preferences and behavior suggest that they were often eager to gain the greatest legal protections each kind of contract could offer—perhaps stronger evidence to their *ex ante* trust in the legal system's protective capacity than evidence recently debated for incidence of lawsuits or their resolution.⁶⁹ First, they adhered closely to the legal norms of the

⁶⁵ Mercantile usage is not always exact; this number is an upper bound of mentions that might indicate informal partnerships.

⁶⁶ The indiscriminate use of the term *shirka* complicates the count. Yet the term *khulṭa* (mixture) is used approximately six times more often than the term *shirka*, and ten times more often than both *qirāḍ* and *muḍāraba* (the two terms for *commenda*), yielding the minimum assessment above. *Commenda* as a hardship: Halper 389 v 6-19.

⁶⁸ Greif, "Contract Enforceability," 529 and *passim*, Greif, *Path*, 63-64.

⁶⁹ Both Greif and Edwards and Ogilvie debate the meaning of both rates and success of lawsuits, but incidence of lawsuit can be read in different ways: as evidence for reliance on a legal system, as evidence for the failure of the threat of legal action to prevent cheating, as a first boundary or last resort for redress. See Edwards and Ogilvie, 2012: 12-18 (pre-print version), Greif, 2012, Goldberg, "Choosing and Enforcing."

Jewish court in making contracts amongst themselves, and made efforts to secure the most specified contracts. For instance, Jewish law expected partnership contracts to be written; though the court would rule on cases involving *mu'āmala* (unwritten contract), it would only accept written evidence of contract stipulations.⁷⁰ If they did not expect to use the court's protection and thus need to follow its rules, we would expect to find them exclusively using the *mu'āmala*, but in fact they used it extremely rarely. Since partnerships were very often formed 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.⁷¹ Moreover, although merchants preferred to form relationships with fellow Jews and to bring disputes to the Jewish court, they also 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 Jewish notary.⁷² They also trusted the protections of the Muslim legal system sufficiently to enter into partnerships with Muslims, and make Muslim merchants and brokers their agents.⁷³

Perhaps even better evidence, given its sheer volume, to businessmen's attention to securing legal protection was the extent to which they secured legally valid testimony to their activities. We thus find them obtaining certificates attesting to transactions and quittances to completed contracts, but much more universally, making sure that their acts were witnessed—the chief form of evidence in both Jewish and Muslim courts. Witness testimony was particularly important if businessmen were to secure protections for commercial agency, as it was not assigned through written legal instrument.⁷⁴ Witnessing was systematic in public market acts, but businessmen requested or surrounded themselves with witnesses in many other situations: valuations of unsold goods, testimony to the state of the market for a particular commodity, opening of bales lodged in a businessman's warehouse to verify contents, and witnessing to private sales made out those warehouses. Businessmen make specific reference to such witnesses and witnessing in over a third of their letters.⁷⁵

Yet equally, in both agency and partnership contracts, merchants throughout the century established agency relations whose labor protections were either weak or absent, and in which the agent had little natural incentive to provide good service. In the *ṣuḥba*, 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 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. Letters reveal that these were not simply theoretical, but

⁷⁰ See ULC OR 1080 J 290 for a lawsuit over a *mu'āmala* and *Teshuvot ha-geonim sha'arei s'edeq*, part 4, ch. 8, n. 10 for a relevant Gaonic *responsum* on stipulations.

⁷¹ See, e.g. INA D-55.14 r 28-29, v 10-11.

⁷² Goitein, *MS*, I, 179, 87-9.

⁷³ A few examples: TS 18J 3.13v 5, TS 8J 18.33 rt margin, Halper 389 r 30-31, v 40, TS 20.69, TS 13J 8.13, TS 10J 9.5, TS 20.180, some were relationships of long duration.

⁷⁴ The written instrument of agency is the power of attorney. The only transaction in commercial agency in which the Jewish court recognized a power of attorney might be used was in the collection of a debt—a situation in which the transfer of responsibility is not obvious. See Ackerman-Lieberman, "Partnership Culture," 18.

⁷⁵ For editions and translations of quittances and releases, see Ackerman-Lieberman, "Partnership Culture," volume 2. The statistic, which counts both the word witnesses and descriptions of witnessing (often by 'the people' or '*aṣḥābunā*') is from the sample set.

persistent problems—letters vehicles for bilateral claims about how much and how valuable were the services each had performed and was thus owed. We also find in letters a rich discussion of third-party behavior among members of the community (*‘aṣḥābunā*)—the ‘reputation mechanism’ that Greif identified existed, though more careful analysis suggests that it was only used to govern the labor reciprocity aspect of agency relations.⁷⁶

The preference patterns of Geniza merchants thus do not sustain schematic claims that merchants preferred private-order governance, or that cultural beliefs in ‘collectivism’ drove their choices. One could, however, make two plausible causal arguments based on the aggregate data for the eleventh century solely within an examination of governance. It is possible to read a preference for agency as aimed at securing stronger property protections at the expense of protections for service claims or compensation, and see the use of a private-order reputation mechanism arising as a way to compensate for the particular limits of Islamic contract law.⁷⁷ One might also argue that the dual governance regime was the most efficient system of governance—with the lowest transaction costs and highest compliance. But I argue here that despite their plausibility, a broader view, especially on change across the century, suggests a different causality: a need to manage a variety of more pressing and economically central risks and opportunities pushed merchants increasingly towards *ṣuḥba* relations. There was a concomitant reliance on reputation mechanism to manage the resulting labor problems, but the evidence suggests that the reputation mechanism was not entirely satisfactory, but that merchants were indeed trading a degree of contract enforceability for other advantages.

3. Merchant preferences in their institutional and infrastructural context

Several aspects of institutional context suggest reasons other than contract enforceability drove merchants’ choices. First, there is evidence that port and market institutions reduced the potential costs of cheating, the scope of the dishonest agent’s action. Second, both the business activities of merchants and other institutional constraints made qualities aside from honesty loom large in merchants’ preferences about agents. Finally, a changing balance of risk as the eleventh century progressed pushed merchants into certain patterns of choice as they put pressure on business relationships.

3.1. Institutional protection and risk

In framing the conundrum the principal-agent problem in long-distance trade, economists paint a bleak theoretical problem: when a principal entrusts his goods to a distant agent, the agent can potentially use the distance to cheat (moral hazard). From shirking work to mis-reporting trades to embezzling goods, the agent can make use of delays or deficiencies in information, “information asymmetries,” to his profit.⁷⁸ Several strands of evidence show, however, that

⁷⁶ Goldberg, “Choosing and Enforcing.”

⁷⁷ This argument is explored in detail in Goldberg, “Choosing and Enforcing,” with particular emphasis on institutional systems discussed below that supported establishment of property rights.

⁷⁸ The long-distance principal-agent problem can properly be considered part of the general problem of contract enforcement, but one in which distance magnifies the possibilities of opportunistic behavior. The literature in this field is vast and expanding, with work spanning economics, sociology, management and law. A review of the

merchants took for granted the capacity of Islamic institutions of ports and markets to radically reduce the length of this list, and place rather strong limits on the potential losses that contract failure could present.

Merchants' methods of handling a problem of transport show that they trusted Islamic institutions of the market to protect them to an unexpected degree. As will be discussed below, the infrastructure of transport meant someone had oversee goods on board a boat or in a caravan; equally, when purses of money or letters were transported by ship, someone needed to carry them. Such tasks required almost nothing in the way of labor for anyone already traveling; at the same time, they seem to repose an enormous degree of trust in that person. Such tasks, interestingly, were essentially performed as a free service in the general merchant community, among both Muslims and Jews. Geniza merchants relied on fellow Jewish businessmen when possible: send this with "one of *as?h?ābunā* (our associates)," they would ask, indifferent to which one. But a Muslim businessman would do, and in a pinch, a Muslim ship's captain might carry a purse, an individual sailor look after a bale. Such actions reveal both institutions and merchant beliefs: the institutions at the ports were sufficient guarantee that persons so entrusted could not simply walk off with their goods.⁷⁹

Both unloading of ships and major transactions were often done in public space (ports, public markets, the warehouses of the 'agent of the merchants'), where both state officers and the local merchant community also provided substantial protects against 'information asymmetries.' Notaries and clerks recorded many transactions, payment agreements, and terms; they wrote up contracts; and they noted the state, nature, and labeling of shipments that were opened. But they were never alone: members of the Islamic merchant community witnessed these acts as well.⁸⁰ Indeed, the witnessing job of the business community was constant and necessary because some acts, like sales, were not completed by written instrument or record, but were legally concluded by oral offer and acceptance or symbolic act, meaning witness testimony would be the only evidence.⁸¹ The system of registration and witnessing made it possible, for instance, for one merchant in Palermo to get a legal certificate on sales made by another, then send the evidence back to his associate in Alexandria (with whom he was in dispute) to prove his claim on the poor state of the market for some goods.⁸² Registration was important enough that even businessmen quite attentive to their dignity would fight publicity 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,

theoretical problem in game theory and the literature is provided in Martin Osborne and Ariel Rubinstein, *A Course in Game Theory* (Cambridge, MA, 1994); see chapter 8 for the repeated games of most interest to these discussions as they relate to the long-term relationships seen among businessmen.

⁷⁹ On the nature of such community services, see Goldberg, "Geographies," 177-181. Generally entrusting goods or letters to "one of *ašh?ābunā*": among many, DK 231 g-k r 22 and Bodl. MS Heb a 3.13 r 19, Halper 414. Muslims carrying letters: TS 13 J 28.9r 7, BM Or 5542.9 upper margin 1-2. Asking that a businessman entrust goods to either a Jewish or Muslim businessman: TS 13J 26.9 r 17-18, TS 12.133 margin. Carrying money: TS 8 J 21.2 r 3-4, a businessmen instructs the recipient to send it with "whomever you deem suitable, Muslim or Jew." Using a ship's captain to carry money: TS AS 145.81r 6-7. Entrusting oversight and delivery of goods to a sailor, Bodl MS Heb a 3.13 v 11.

⁸⁰ For deals gone wrong that give particular good details on the presence of witnesses, see Halper 389 r 13-21. 39-40, 63-69, TS 20.122 r *passim*, v 1-12.

⁸¹ Handclasp and symbolic purchase were both used. See the discussion of the relevant legal norms and extent of witnessing in Goitein, *MS I*, 196.

⁸² Bodl Ms. Heb a3.13 r 19-21.

‘Don’t record them on any name except that of their owners.’ ... and a terrible fight broke out between us in front of a group of our associates.”⁸³

States provided another prop against fraud: it set and publicized official market prices for important goods in the central markets when the bulk of a season’s shipping arrived. Though actors in the market were not compelled to use the market price, sales before the market price was fixed, or that deviated too far from it, were voidable.⁸⁴ Information on transactions and prices was thus a public good; letters, often in multiple copies, traveled throughout the year: 45 percent contain some market price reports (but tellingly this percentage jumps to 85 percent if we look at letters traveling in market season between ports and central markets or between the central Mediterranean and Egypt). The setting of guideline ‘official prices,’ and the role of merchants in multiply disseminating this information both reduced information asymmetries in fact, and created trust that reported sales could not be too wildly inaccurate despite price volatility for many goods.⁸⁵

Records and witnesses not only reduced information asymmetries and head off opportunities for cheating, they could sometimes provide speedy sorting out of time-sensitive claims. Geniza businessmen could take urgent disputes to the local business community, whose knowledge, testimony, and authority were often sufficient to resolve matters.⁸⁶ When goods in dispute were about to move or a businessman’s credit collapsed, the Muslim qadi (or even the Sultan) could intervene to sequester the goods in order to sort out claims, and could also be convinced to release them on the strength of proper paperwork.⁸⁷ In these circumstances, then, merchants might have worried less about cheating when establishing agency relations: agents in any relationships had opportunities to shirk work, to delay work or return of payment, but merchants’ behavior shows they believed themselves protected against fraud or embezzlement.

Yet with this institutional protection came institutional risks. In theory, Islamic law requires that customs dues for non-Muslims, *dhimmīs*, be double those of Muslims, and also that ‘strangers’ or ‘foreigners,’ whatever their religious affiliation, can legitimately be charged

⁸³ TS 10J 10.30 r 9-21. Another such public fight is found in ENA NS 1.79. Officially, registration was not of the sale, but of the resulting payment and credit obligations—sale and payment were separate transactions, often spaced months apart; registering such arrangements at the time of sale was thus crucial. TS 10 J 6.1 contains more details on how clerks registered credits and debits resulting from sales and prior debt obligations.

⁸⁴ Determining market price represented a significant investment on the part of the state—it involved the monitoring of shipping through a system of watchtowers (*ribāts*) as well as monitoring arriving goods. Businessmen include reports on market prices in 40 percent of letters in the sample set. On market prices, see Goitein, *MS I*, 218-220. Market prices could only be indicative as fine distinctions of grade were made by buyers and seller. An incident in which the buyers claimed the rights to void a pre-market sale and the writer privately acknowledged it: Halper 389 r 63-69.

⁸⁵ The multiple infrastructure of letters is discussed in S. D. Goitein, “The Commercial Mail Service in Medieval Islam,” *Journal of the American Oriental Society* 84(1964). I discuss the extent and limits of the infrastructure, mercantile expectations of their correspondents, and multiplicity of reports in Goldberg, *Trade and Institutions*, chapter 7, and Goldberg, “Use and Abuse.”

⁸⁶ See TS 12.435, in which ‘everyone, Jews and Muslims’ were helping him get a delinquent debtor to pay, and DK 230d v 5-20, where a writer forcefully suggests his Fustat colleague accept the resolution—based on both certificate and knowledge of the local situation—that the business community of Palermo had made in his dispute with another Palermitan.

⁸⁷ See TS 13J 17.11 r 8-11 on sequester and release based on proper paperwork, TS 10 J 13.21 and TS 16.163 r 23-28 for other examples of sequester during a lawsuit.

double the customs due for locals. A Geniza merchant from Egypt whose goods arrived publicly in Palermo or al-Mahdiyya in 1055, to be registered by the clerk and inspected by the customs officer, could in theory, and sometimes in practice, be charged a 10 percent customs fee, the dreaded ‘*ushr*’⁸⁸. Mediterranean Islamic states of the period, moreover, had a simple expedient for supplying themselves with non-strategic foreign commodities: they would ‘sequester’ goods that arrived on ships that state official thought *might* be needed. At some later date, the goods would either be purchased at the ‘market price’ or released. Though in bad years merchants sometimes welcomed government purchase, sequester was often an economic hardship: goods could be kept from particularly eager buyers ready to pay more or released after the end of the market season, delaying capital turnover for months or a year; individual businessmen could unexpectedly have so much of their investment sequestered as to lose the necessary liquidity to make new trades.⁸⁹

The balance between risk and protection was complicated by the fact that the application of market rules was often but not invariably determined by patronage relations. Thus merchants regularly sent goods to the care of reputable local merchants, Jewish (or sometimes Muslim) associates with ‘*jāh*’ (standing, prestige, and connection) who maintained close relationships with clerks and customs officers, assuring that sealed packages were never inspected, their contents recorded on the witnessed word of the merchant, the customs negotiated for common bulk goods at rates closer to 2 or 3 percent, and some more valuable or government-desired goods passed through either unnoticed or under false record. Such cozy arrangements, however, were kept in check by government ‘inspectors,’ members of the secret service who could sometimes intercept letters that warned fellow merchants of the arrival of such goods. They were also sometimes undermined by over-riding ‘authorities’ who would arrive at market to search for desired goods or insist on payment of standard customs, or even by angry fellow merchants denouncing goods to ‘authorities’ or ‘inspectors.’ But even in such circumstance, *jāh* could determine if and how these burdens were imposed, and on whom.⁹⁰ This complex institutional situation pushed merchant preferences in two ways: it gave merchants a reason to prefer to have fellow merchants, people with local *jāh*, oversee some of the transactions done on their goods. Ideally, secure legal claim to property through registration while avoiding potential costs of such protection. (*Also pushed to work with fellow Jews?*)

3.2. Merchant activity: opportunities, risks, and demands of mercantile work

But merchants had a high value for *both* the ‘*jāh*’ and expertise of full merchants for reasons beyond the particular nexus of government protection and threat that arose at ports and markets. Geniza merchants played a rather different role in their economy than what we know of their northern Italian counterparts in the twelfth century (particularly the Genoese), and the requirements of this role also shaped their preferences. The most important part of merchants’ business was in the regional economy, where they brought primary products and manufactures of their home regions to central markets around the Islamic Mediterranean. That is, these men went

⁸⁸ Cite ‘*ushr* documents, and Halper 389.

⁸⁹ Government sale as a boon: see Goitein, *MSI*, 267-68 for a number of examples. Loss of season: TS 13J 17.11 r 18-20.

⁹⁰ A powerful merchants reports on his successful argument with an official on his undue sequester burden: “you have received the bale, so must you sequester the indigo too ... he was ashamed ... and said ‘go and sell it.’ T-S 10 J 6.1 r 21-23.

to rural villages and estates to buy raw goods (e.g., olives, flax plants, grapes), oversaw the processing and packaging that turned them into standard commodities in standard units (e.g., skins or jars of olive oil and soap, 200-kilo bales of flax, skins of wine), then exported these products for sale in the wholesale markets of the great cities and their ports, places like Palermo, Qayrawan, al-Mahdiyya, Alexandria, Tripoli or Fustat. Equally, they traveled to villages and secondary cities near their home bases to purchase local specialty manufactures and bundled the dresses of Ascalon or cloaks of Susa into graded lots for wholesale or retail sale, again in the central markets. Dealings in trans-shipped goods (work most commonly associated with ‘merchants’) made up an important secondary line of business—the bourses of Fustat, for instance, were a great emporium for goods from the Red Sea and Indian Ocean, profitably exported to the central and western Mediterranean. Finally, businessmen organized manufacturing in cities large and small—producing goods as varied as yarn, shoes, strings of pearls, and luxurious holiday outfits. Individual businessmen made different choices about the ways they balanced investments in different kinds of goods and types of activity, although almost all were involved in the primary production markets.⁹¹

In whatever areas they worked, businessmen were organizers in the economy: those who moved goods both across space and through production processes. They did not trade in abstract goods or give orders to subordinate shipping or manufacturing firm by virtue of their control of capital or knowledge of market supply and demand. They were rather the central actors who created task-specific temporary firms and factories, bringing together workspace, workers, and goods in organizational efforts that went well beyond moving goods between established shops. The simple act of moving a bale of flax from a warehouse in Cairo to a warehouse in Alexandria, preparatory to overseas shipping shows the extent of hands-on management. A businessman would himself need to purchase canvas and rope, hire packers to wrap the bale for seafaring, decide how to label it, hire porters, rent space in a boat, go to the boat to oversee proper stowage (and perhaps argue for the best location), pay a visit to the customs official to negotiate rates, accompany the bale to oversee its safety in transit, negotiate a second customs stop along the way, and arrange for porters at Alexandria to move his goods again. These are the movements without complications, and assuming that he already had access to warehouses in both locales.⁹²

Only a combination of knowledge, standing, and local connections made most of these transactions possible: expertise to assess quality of merchandise at different stages of production; standing in the community to make purchases on credit; and most importantly, knowledge and

⁹¹ This analysis of the main strands of Geniza business and their relative importance is based mostly my own research; see Goldberg, *Trade and Institutions*, chapters 4 and 9. See also A.L. Udovitch, “International Trade and the Medieval Egyptian Countryside,” in A. K. Bowman and E. L. Rogan eds., *Agriculture in Egypt: From Pharaonic to Modern Times*, (Oxford, 1999), 267-285.

⁹² A particularly good letter on the multiple steps for negotiating the passage of bales along the Nile is TS Box J 2.66; on negotiating shipping rates, see Or 1080 J13 r 17 (both of these are discussed in detail in A. L. Udovitch, “Merchants and Amirs: Government and Trade in Eleventh-Century Egypt,” *Asian and African Studies* 22(1988)); on arranging placement in ships, see TS 12.224 r 17, TS 10J 19.19 r 13-14 and TS Box Misc 28.225 r 15-16. On arranging customs rates and its difficulties, see TS 8J 19.27 r 6-9, TS 12.371 r 19-22, Bodl Ms Heb d 65.18 r 4-6, TS 10J 9.21. On overseeing goods in transit, see among others TS 13J 17.3 r 1, 9 ULC Or 1080J 258 and TS 12.290r 11. The account at Bodl Ms Heb d 65.18 and the discussion of port payments in TS Box J 2.66 both suggest that customs, tolls, portage, and gratuities at the port were all individually arranged and negotiated. See the extensive discussion of packing and its steps in Goitein, *MS I*, 332-5. On permanent and season rental of warehouses, see Halper 389 and TS 12.270 r 2-3 and TS 12.793

connections in local markets and ports that allowed one to hire more competent workers, successfully put goods in the best places on the best ships, arrange the right set of buyers for an auction, collect payments in a timely manner, etc etc.⁹³ Some tasks required not merely a full-fledged merchant, but a principal's choice might be limited to the few individuals in the community with the requisite expertise. By contrast, the Genoese of the twelfth century, as far as we know, were largely port-centered importers and arbitrage agents. That is, they brought money or arms to the great port markets, and purchased (or occasionally raided) goods to supply expanding European demand for both bulk and luxury goods—requiring less place-specific expertise.⁹⁴

Though merchant letters provide rather unsatisfactory and sometimes vague data on questions we would like to know to further examine merchant preferences—for instance, how much capital was invested using different kinds of agency relations—they provide a wealth of discursive data. As noted, nearly 20 percent of letter content involves discussions of merchant behavior, and they let us know how large expertise and ‘*jāh*,’ or connectedness, loomed in merchants’ minds as they considered agency relations. It was varied aspects of competence, rather than honesty, that was most often at stake in merchants’ recommendations of new associates or assessments of juniors, sometimes in association with questions of diligence. Thus, one long recommendation describes a prospective colleague’s dual competence the two key primary production markets, olives and flax:

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 will be very pleased if you enter into *ṣuḥba* with him.⁹⁵

Meanwhile, another aspiring merchant is warned of his recognized 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*.”⁹⁶ Indeed, merchants’ invoked reputation in their mechanism largely by typing. “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 one is indeed the “kind” of person described. The most common of all refrains of this type are variations on the formulas: “One like you needs no instructions,” or the reserve claim “I am not among those who need instruction” emphasizing one’s competence.⁹⁷

⁹³ On the nature of credit, and the Islamic jurists recognition that credit-worthiness is socially limited, see A. L. Udovitch, “Credit as a Means of Investment in Medieval Islamic Trade,” *Journal of the American Oriental Society* 87, no. 3 (1967); A.L. Udovitch “Reflections on the Institutions of Credits and Banking in the Medieval Islamic near East,” *Studia Islamica*, no. 41 (1975).

⁹⁴ A good recent discussion of this economic role and the literature, with some comparisons to Geniza players that echo some of the analysis here, is found in Quentin Van Doosselaere, *Commercial Agreements and Social Dynamics in Medieval Genoa* (Cambridge, 2009), 45-60.

⁹⁵ TS 20.69 r 24-28. Goitein also uses this passage in explaining *ṣuḥba* (our translations differ in a few details). Goitein, *MS*, I, 165.

⁹⁶ Bodl Ms Heb d 66.41v 3-5.

⁹⁷ Among many, TS 8J 25.3v 12-14, Bodl MS Heb a 3.13, TS 12.793, TS 10J 19.8, TS 10J 5.24 r 11-12, TS NS J 12 r 14-15.

Equally, when requesting services from one another or negotiating or the amount of labor done and thus owing in their *ṣuḥba* relations, merchants would very often cry up their own special expertise or appeal to that of their colleagues, and occasionally too note it was *jāh* that was sought or operated in successful transactions. Thus, one merchant notes: “I was delighted by your speedy return to Fustat because I know that you are the expert in the business affairs of Būṣīr.”⁹⁸ This same expert in another letter urges one colleague to do a service for him with “your *usual* industry and acumen,” and another to “make your greatest efforts for me ... as I know you are capable of.”⁹⁹ A merchant in dispute with a colleague lets him know he is only sought for his standing: “It is my desire to avail myself of your *jāh* for those things I send you” he writes, concluding with the reputational kicker: “I have no doubt that you will take care of my goods in a manner befitting one like yourself.”¹⁰⁰ On the other side, making claims for themselves, we find merchants noting that their *jāh* allowed one to get special treatment in shipping merchandise, another to speedily and (perhaps illicitly) collect payment, a third to note that he was able to pressure manufacturers in some villages in the Egyptian Delta to buy his colleague’s unsalable (in the city) dye in order to maintain their friendship with him.¹⁰¹

In a paragraph that shows the mix of self-defense, self-promotion, insistence on his own expertise and denigration of others, as well as the complexity of both assigning and assessing appropriate labor, Salāma b. Nissīm writes about his activity in acquiring flax in the countryside:

No bundle of flax, or even a fraction of it, do I put in the warehouse until I unpack it, open it, and inspect it. If I find them of good quality, only then do I register them and enter them into the accounts and the books...As for what you told me about the flax I purchased for our maternal uncle, that it was too expensive and he did not authorize me to pay so much, the fact is that I acted against instructions for the sake of the excellent quality and purity of the flax. Others are asking for it at this price that I paid and got it, and they haven’t succeeded. I am not the sort of man who has to be told what to do. Had I commissioned Qāsīm¹⁰² and waited until bought for me or favored me, I wouldn’t have gotten a thing. By God, not only wouldn’t I have seen a smidgen of gain in it, but we would, my brother, have been ruined.¹⁰³

Finally, in reputation discussions about third parties that form most of our evidence about the functioning of a ‘reputation mechanism’ among the merchants that helped maintain compliance for labor reciprocity, it is both expertise and demonstrated diligence that dominate the discussion. Merchants’ *jāh* is sometimes explicitly and often implicitly threatened or promised to increase in this mechanism, but next to no mention of mercantile probity, known as *ird*, is made.¹⁰⁴

⁹⁸ TS 12.793 r 7-8.

⁹⁹ TS 10J 15.14 r 14-15, TS 10J 19.8 r 14.

¹⁰⁰ DK 327 A-D r 42-43, v 1.

¹⁰¹ TS 13J 23.15 r 8-9, Halper 389 r 63-68, TS 12.243 r 16-19

¹⁰² A well-known broker in Būṣīr. See TS Box 25.19, Bodl. Ms. Heb. c28.33, TS 13J 13.11.

¹⁰³ TS 12.793r 10-11, v 1-6.

¹⁰⁴ See Goldberg, “Choosing and Enforcing.”

3.3. *Transport: infrastructure, institutions, and risk*

Geniza merchants thus had more options, opportunity and variety in their investment choices in the Islamic market than their Genoese counterparts, but taking advantage of these opportunities often required access to agents whose competences lay in both their local standings and their expertise. By the same token, they faced a different set of structural risks and challenges in the realm of transport than did the Genoese. Geniza merchants did not own ships themselves, and perhaps the most important risk for them to control was that posed by a lack of state support for economic order and security *outside* the city. Businessmen moving goods by water or land, locally or long-distance, had to provide their own protection; it is during movements outside the city that we find reports of violence, robbery, and even murder. The costs of protection could be substantial or even insurmountable—even in peacetime, a businessman moving a single bale of purple from Rashīd to Alexandria, two ports on the western side of the Nile Delta about 50 km apart, had to hire three guards to protect it.¹⁰⁵

On the seas, lack of government attention and resources undid notional state organization. There were restrictions on overloading and official weighers, for instance, but they were regularly evaded by ship-owners and businessmen alike. Similarly, ships were often meant to travel in convoy, and sometimes even held in port until a convoy assembled, but it was rare indeed for a warship to escort the convoy or force ships to sail together—ships that left in convoy quickly dispersed and many slipped away before it assembled. Nor were commercial ships themselves armed, again in contrast to Italians. Ship-owners had incentives to overload, rates for freight floated, and businessmen incentives to get their goods on ships that arrived earliest in the market to get the best prices—lacking serious oversight, the result was a shabby merchant marine that moved as scattered individual ships across the Mediterranean, at the mercy of pirates and heavy seas.¹⁰⁶ Losses to pirates or shipwreck appear with (to the modern mind) alarming frequency, but damage was the dominant problem, appearing seven times as often as reports of loss.¹⁰⁷ Overloaded ships had particular difficulties crossing port bars, resulting in the near-port dumping of part of the cargo.¹⁰⁸ Moving goods presented a major portion of the risk merchants faced throughout the eleventh century, the most significant source of reported loss.

¹⁰⁵ See Gottheil-Worthell XXXVI, discussed in Goitein, *MS I*, 339-342. On the degree of danger in overland travel, see Goitein, *MS I*, 275-281.

¹⁰⁶ On ship ownership and organization of the market in general, see Goitein, *MS I*, 309-13. and A. L. Udovitch, “Time, the Sea and Society: Duration of Commerical Voyages on the Sourthern Shores of the Mediterranean During the High Middle Ages,” in *La Navigazione Mediterranea Nell’alto Medioevo* (Spoleto, 1978). See Udovitch, “Merchants and Amirs,” 64 on competitive freight rates. Van Doosselaere, *Commercial Agreements*, 59-60 discusses the comparative oversight and protection of Genoese and Islamic shipping and previous literature on this topic.

¹⁰⁷ Seven percent of letters in my corpus that crossed the eastern basin of the Mediterranean in the eleventh century mention shipwrecks the writers had heard about, most of which involved losses of goods of members of the businessman network, and some involving deaths of members. See, among other, TS 10J 11.17, ULC Or 1080 J 22, TS 24.6, ENA 2727.6 B, TS AS 145.81 and TS 13J 23.18 (one document), TS 13J 28.2. Just under 1 percent of eleventh-century letters involving sea travel mention incidents of piracy.

¹⁰⁸ Coast-wise shipping and strategic dumping decreased risks of total loss, while making problems of damage rampant—though businessmen made attempts to put goods in the “best places” on ships (TS 12.224 r 17 and TS Box Misc 28.225 r 15-16). See the discussion in Udovitch, “Time,” 542-46, and some instances of dumping in TS 10J 11.17, TS Arabic 5.1 r 16-17, TS 10J 19.19 r 23.

Given these structures, merchants could manage risk by distribution: spreading shipments across vessels and markets.¹⁰⁹ Because of their role in the economy, they could also manage it by shifting balances between goods with greater and lower price volatility, as well as shifting investment between transit and manufacture. Structurally, therefore, both responding to the range of opportunities available in the economy and addressing risk pushed merchants' needs for geographically dispersed agents, and towards individuals with special local knowledge and power.

If these aspects of merchants' situation place their preferences into some context, and provide a number of reasons to explain a decided preference for the services of fellow merchants, they do not fully explain either the full pattern of preferences or why they shifted. For it is important to note that throughout the century, merchant practices made junior agency an attractive alternative. Merchants generally sent juniors off to markets where they would work under the supervision of a full merchant—often expressly asking one of their colleagues to watch over the youngster not only in general to assure compliance, but for the specific tasks where either *jāh* or expertise was required, direct oversight that would have been an insult to a full-fledged merchant. “By God, sir, I want you to be strict with my boy and keep an eye on him, supervising the sale together with him,”¹¹⁰ a typical request reads. They could thus maximize their available labor in a market, making more modest claims on *ṣuḥba* service, assuring the quality of services, and making it much more likely that their transactions would be given priority, which emerges as the perennial problem in *ṣuḥba* relations.¹¹¹ Equally, *khulta* partnerships just as well as *ṣuḥba* relations allowed merchants access to their colleagues' expertise, and one would have to debate whether the transaction cost of travel to establish one would not have been outweighed by the benefit of the partner's natural incentive to put forth efforts on transactions. Family partnerships, since family members often settled in dispersed cities, could combine the benefits of access to local expertise with a greatly reduced transaction costs in establishing partnerships.

Finally, one must account for merchants' reluctance to remunerate services monetarily, for otherwise, use of a fellow merchant in a *qirād* or wider use of commission agent offer not only the advantages of access to a broader range of expert services, but provide the agent with the strongest natural incentives. This preference does seem in part the sort of cultural and self-reinforcing bias Greif's work discusses: with an initial prejudice against the idea of employment, paying monetarily for labor and seeing it on accounts might look increasingly strange and unattractive as businessmen did more and more business in which labor costs did not appear on ledgers. But it could have been influenced as well by the contemporary systems of credit and payment. These turned collecting and distributing proceeds of a sale into the most onerous of all business tasks: the second most common kind of complaint in letters is about the difficulties and

¹⁰⁹ It oversimplifies to suggest that dispersing *all* goods across many markets was an optimal strategy; I discuss the question of how different goods were distributed and central place dynamics in the Islamic marketplace Goldberg, *Trade and Institutions*, chapter 9.

¹¹⁰ DK 230 d + a r right margin 15-20.

¹¹¹ See Goldberg, “Choosing and Enforcing.” **Discuss Greif's claim of one's capital as bond of honesty (Cultural beliefs, 927-9) leading to choice of fellow merchants, weighed against future profits? Incidental evidence of lawsuits and legal manuals suggesting that capital as bond less powerful than prospective revenue if become a merchant?**

delays in payment.¹¹² Indeed, problems of payment and collection likely influenced merchants' balance between partnership and agency as the century progressed.

4. The shifting landscape of the eleventh century

Merchants of the later eleventh century did an increasing proportion of business through *ṣuḥba*, despite the difficulties of service compensation and enforcement of reciprocity it involved. The focus of reputation discussions around competence, and questions of judgment and management that arose in service negotiations, are key to understanding why this was so. As the century progressed, businessmen had an increasing value for individual entrepreneurship and mobile access to expertise due to changes in the balance of risks they faced. By the middle of the eleventh century, political control of Ifrīqiyya and Sicily (central to this community's business model) didn't just change hands (a manageable problem), it became unstable and unpredictable. Though warfare rarely included economic retaliation specifically against the merchants of an enemy polity,¹¹³ wars could unexpectedly close ports and divert goods; in worse cases, enemy navies attacked harbors and whatever shipping lay in them, nor were they adverse to seizing ships at sea.¹¹⁴ In this period, it was difficult to predict which ports might suddenly be closed to trade, where an enemy navy might appear, who to pay off to get access to the olive harvest. In the 1050s, 60s, and 70s, reports of goods diverted, entrenched pirates, unexpected port closures after goods are sent, and failures of political connections increase five-fold over the period 1000-1035.¹¹⁵ Such instability both made market strategies less obvious and increased chances of things going awry.

A shift to more individualized entrepreneurial activity was one strategy for addressing these risks, alongside changes in investment patterns that distributed more capital into regional production and manufacturing as opposed to long-distance transit.¹¹⁶ The tipping of the balance towards entrepreneurial individualism is not the only possibility; increasing investment stakes in partnership also seems plausible. One might think that giving the agent an ownership stake would assure the proper attention of the agent in circumstances where more time-sensitive decisions might need to be made. Two considerations seem to be at work in the preference for

¹¹² See the discussion in Goitein, *MS I*, 196-200, 258-59, confirmed by more systematic reading of a sample set of letters in Greif, "Organization," 109.

¹¹³ Only one letter in the Geniza mentions such reprisals, and the author's involvement with a local ruler makes his account as a general policy somewhat questionable. See Halper 389 r 38, 60-61 where the merchant explains his losses a part of the Sultan's general embargo on goods of the merchants of Sfax.

¹¹⁴ For some examples, see Halper 389 r 30-32, 36-38, Halper 414, TS 10J 10.25 r 4-11, Mosseri VII, 101 (L 101) r 7-14, TS 8 Ja 1.5, Bodl. MS Heb d66.15, TS 13J 17.3, TS 8J 24.21, ULC Or 1080 J 22r 15-17, TS 20.127r 65-67, ENA NS 2(1).13v 11-13, TS 12.386r rt. mar. In both TS 20.76v 4-5, TS 12.372r 10-12, merchants are either partly spoiled or feared so when their vessels are seized at sea by the "enemy" (as it appears in the letters, rather than by pirates).

¹¹⁵ A few examples that discuss diversion of ships, closing of ports, uncertainty about whether ports are open or ships will move, or uncertainty about where to relocate oneself: ENA 2727.6B r 8-9, TS 10J 10.25 r. 4-9, ENA NS 18.24 r 2-11, BM Or 5542.9 r 9-1, ENA 2727.38 11 v 12-14, TS 12.270 v 18-19, upper margin, DK 230d r 28-35, ENA NS 2.30 7-12, 17-20, TS 12.372 r 7-13, v 1-7, TS 13J 16.19 v upper margin, TS 10J 10.14 r 10-12, Bodl. Ms Heb b 3.22 r 9-15, v 5-7, TS 16.179 v 30-40, INA d-55.14, Halper 389, Halper 414.

¹¹⁶ I discuss this aspect of business response in Goldberg, "Geographies," 299-307, 73-89.

suḥba: if goods were more likely to end up in unexpected places, merchants wanted to give more attention to assuring that a network of labor was available to handle these goods, and that one could switch agents without cost. Assuring agents had an the ownership stake of partnership presented an insurmountable practical difficulty—that of attempting place all goods in a written partnership among many businessmen in many locations.¹¹⁷ Perhaps more importantly, in circumstances of such uncertainty, large-scale partnerships involving goods with *volatile* markets placed unupportable trust burdens, of a particular sort, on partners, and also increased merchants desire to have their goods in the hands of the most competent agents directly, not at the remove of oversight of a junior agent.

A look at the dissolution of one of the larger partnerships of this period show both the difficulties of the situation and kinds of trust issues it provoked. Salāma b. Mūsā al-Safāqūsī and Yahūda b. Mūsā b. Sighmār were both wealthy and well-connected businessmen in their respective homebases: Sfax, one of the centers of olive production in Ifrīqiyya, and Fustat, the commercial capital of Egypt. Their partnership involved thousands of dinars and a wide range of goods. But over the course of a little over a year (1063-64) and a series of angry letters, things fell apart. Among a slew of unfortunate or inappropriate decisions, Salāma had attempted to pull off an extremely big deal: using his connections with the *qa'id*, the governor-turned-independent ruler of Sfax, he secured a major part of the olive crop before harvest, laying out ready money to growers and the Bedouin. “I handled the affair well,” he insists of the complex deal. When the Sultan in al-Mahdiyya decided to bring the *qa'id* in Sfax to heel, his troops managed to take over the olive groves where Salāma’s olives were yet to be picked. Salāma’s earlier *jāh* was suddenly a liability: the Sultan would not let the deal stand.

In the meantime, Yahūda had used partnership funds to send a bale of indigo to al-Mahdiyya. When Salāma went to fetch it, it was denounced to the Sultan’s men by “envious” Jewish associates and he ended up facing the executioner’s sword. Salāma escaped, but had to smuggle the indigo west, where, without proper oversight, it met a bad end. Salāma complained bitterly that his Yahūda was within his partnership rights but showed poor judgment in sending the indigo. These adventures may seem enough, but there were more problems: Salāma’s oil in Palermo was delayed first by ships surrounding the walls and later, when finally sent out, more port closure meant some was diverted to Sciacca to be sold at a loss, while the other part was captured en route from Sfax by the ships of the Sultan. In such circumstances, it was hard to distinguish between bad judgment and bad luck. In the end, Salāma agreed to end the partnership, noting “If the partnership continues there will be discord...we no longer feel as we used to, when we relied on each other.” He had no current plans to make any partnerships “I made myself a solemn promise not to enter a partnership this year” but ends his letter begging his former partner to continue reciprocal agency: “I am your support and vice versa...commission me with anything and I’ll do it...mark it (a shipment of flax or anything else) with my name so as to continue the connection between us.”¹¹⁸ This example is one of the

¹¹⁷ In fact, some quantity of flax was subject to larger group partnerships, but this meant three or four businessmen. The geography of businessmen in the network, and the requirements of legal contract made group ownership a practical impossibility.

¹¹⁸ Halper 389 and 414, *passim*. Quotations at Halper 389 v 4-5, 30 44, Halper 414

more dramatic failures, but recriminations over judgment in partnerships, a fault for which there is no legal recourse, become common.¹¹⁹

In a situation where businessmen could choose the kinds of risks they would accept in dealing with their fellows, their choices are perhaps surprising. They wanted to trust their associates, and by and large they did trust their honesty. The greater burden on trust was the ability to make profitable decisions. Businessmen constantly urged each other to be the sort of businessman who “needs no instructions,” who “knew what to do”¹²⁰ But in the tumultuous conditions of the later eleventh century, where so many possible risks in movement of goods confronted businessmen, their choices show they more willing to risk the failure of a fellow businessman’s honesty or diligence, than be at the mercy of his judgment.

Such concerns also help explain the decline of family partnerships and junior agency, otherwise surprising in that the most important families in the early period used both extensively. But merchants of the next generation, even from those same families, chose to conduct business as individuals.¹²¹ A concern for competence outweighed the trust advantages of working within families whose solidarity is well documented. The problem was two-fold—in such a partnership, one must not only trust family members to make business decisions, but one’s own labor reputation could be diminished by less competent relatives; one’s associate in a *ṣuḥba* might be unwilling to risk that reciprocal work would be handled by the less able family member.¹²² Equally, merchants were less willing to have goods in the hands of less competent or powerful junior agents, even with oversight. Junior agency became less an alternative labor option than a system to train members of merchant clans—and it is notable in this period that we can document members of these clans starting in business and failing to become full merchants.¹²³

A careful examination of businessmen’s actions and choices thus reveals an unexpected focus on individual entrepreneurship and expertise, but one that can only be understood within the context of a particular business community, its social and institutional setting, and its

¹¹⁹ A few examples: TS 8J 22.10, ENA 2727.b6, TS 10J 10.25 17-19, ENA NS 18.24 r 30, rt margin, AIU V A 70 r 7-18, ENA 1822a.67 r 10-11, TS 12.270 r 15-21, r 4-7, DK 230d v 5-8, Bodl Ms Heb a 3.13, TS 12.389. The last two are discussed in Goitein, *Letters*, 120-27.

¹²⁰ Bodl. MS Heb a 2.20.

¹²¹ The most important case is that of the al-Tahirtī family, active throughout the eleventh century, whose relationships are made clear by the more than 150 letters in which one of them is a sender or recipient. A family partnership is documented for the patriarch Barhūn and his four sons, while none of his eight grandsons was in a family partnership with his father or brother, though these descendants often made *ṣuḥba* and venture partnerships with their brothers and cousins.

¹²² TS 20.127, a complicated letter of the late 1030s that spends almost a third of its space (some forty lines) alternately defending the good practice of the writer, excusing himself to a father-son partnership, and then subtly denigrating the competence of the father before suggesting the son may fall prey to the same problems, is suggestive of these dynamics. Family members could be excluded because business success was not closely associated with identity and social status; no social opprobrium resulted when family members failed to become businessmen. See Goldberg, *Trade and Institutions*, chapter 2.

¹²³ There may have been failed businessmen in the early eleventh century as well, but the documents of the period 1040-1080 provided two clear examples of young men whom we find doing business as juniors, and then find later in the letters as non-businessmen. One was the brother of Mūsā b. Abī'l-Hāy, one of the most successful and long-lived businessmen in the correspondence (see Gottheil and Worrell 3, ULC Or 1080 J 271, Bodl MS Heb d 66.40, TS Misc 25.70, Bodl MS Heb c 28.52, ENA 2805.16 A for letters from him later in life); the other is Israel b. Natan, discussed in section 2.3 below.

historical situation. Geniza documents provide unique window into the function and structures of the Mediterranean economy in the eleventh century, and the human relationships that underwrote economic activity. The complexity my analysis reveals should make us wary of some problems in examining economic history. On a theoretical plane, it suggests that principal-agent decisions cannot be isolated from the larger context of risk and opportunity in which agency relationships operate, and indeed the larger problem of isolating one institutional, economic, or geographic constraint as a central lever of explaining economic change. For this analysis does not support a simple dichotomy that divides Europe and Islam in preferences for private- versus public-order solutions to problems of governance, but it does suggest that a broad array of institutional and economic differences placed Genoese and Geniza merchants in different positions that profoundly shaped the choices they made.

The agency relations of Geniza merchants were different from what we know of Italians. Those differences do not arise from static cultural preferences for ‘collectivism’, or for group rather than individual solidarity. Rather, agency relations were structured to address the fact that merchants engaged in a great variety of economic activities, many of which required labor that was scarce and difficult to replace. Agent options were limited not because businessmen were limited to the trust network of fellow Jews, but by the demanding meaning of business competence—the mix of knowledge, diligence, and connections in specific markets business success required. The opportunities, support and constraint offered by the structures of the economy, legal system and state thus helped determine labor preferences. Preferences for entrepreneurship and geographically wide access to expert labor, and a prejudice against monetary remuneration may have been partially cultural and self-reinforcing; they were also dynamic responses to shifting economic terrain.

Finally, if the words risk, choice, and entrepreneurship have recurred throughout this article, that is no accident. In a recent article, Ogilvie has challenged economic historians for their tendency to assume the institutions they examine promoted efficiency, and then judge the institutions on a value scale of such efficiency.¹²⁴ I would argue that the problem for historians lies deeper, that such analyses frequently argue for theoretical efficiencies which the scholar has not demonstrated anyone at the time sought. They may provide models to solve imaginary difficulties, ignoring the real problems, and thus the agency, of the actors whose behavior they judge.¹²⁵ But I think we must take preferences more seriously as economic evidence. The choices merchants made are not simply a reflection of cultural values of beliefs. If we take medieval merchants seriously as intelligent analysts of their own situation, their choices are also the best evidence for the efficiencies that were important to gain, the opportunities the market offered, and the risks that loomed largest on the landscape.

¹²⁴ S. Ogilvie, “‘Whatever Is, Is Right’? Economic Institutions in Pre-Industrial Europe,” *Economic History Review* 60, no. 4 (2007).

¹²⁵ In the case of the Geniza, the implications of such mis-representation can be substantial, in that the supposed “lessons” of the past are used in current policy debates. Thus, as discussed in Edwards and Ogilvie, “Contract Enforcement” the “informal” enforcement mechanisms of a Geniza traders’ coalition is supposed by the World Bank to hold lessons on how to develop institutions for markets in the developing world.