The Maghribi Traders: a Reappraisal?

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Abstract

Distinct institutions prevented opportunism in agency relations among the late Medieval Maghribi and Genoese traders. A private-order institution based on multilateral reputation mechanism was particularly important among the Maghribis, while the legal system and bilateral reputation mechanisms were particularly important among the Genoese. Subsequent institutional, organizational, legal, and contractual developments reflect the impact of the associated cultural beliefs. The essay by Edwards and Ogilvie categorically rejects this analysis. Although their essay is rhetorically impressive, its methodology is deficient, its analysis is flawed, and its argument wrong. It is based on a superficial discussion of the secondary sources, an uninformed re-examination of translated documents, and a misrepresentation of my argument and the evidence.

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In my earlier work, I examined the institutions that mitigated opportunism in overseas agency relations in two late medieval traders groups, the 11th century Maghribi (Jewish) traders (from the Muslim west) and the 12th century Genoese traders. I argued, based on documents found in the Geniza (a depository of documents in Fustat (Old Cairo)), that among the Maghribi traders most agency relations were established without legally binding contracts and multilateral reputation mechanism was particularly important. The related institution, a 'coalition,' deterred opportunism in bilateral agency relations by a credible threat of losing future profitable relations with many other merchants. I contrasted this with the Genoese traders, who relied on legally binding contracts. In Genoa, legal enforcement and bilateral reputation mechanisms were particularly important and complemented each other in preventing opportunism. Initial cultural, social, and political processes led to this institutional bifurcation and were reinforced by the resulting institutions. The associated cultural beliefs, embedded in individuals and transmitted socially, influenced subsequent institutional, organizational, and contractual developments. Subsequent studies have refined and amended various historical and theoretical aspects of the analysis.[2]

The essay by Edwards and Ogilvie (E&O) challenges the general validity of the analysis. E&O do not argue that it should be modified or appended in some way but that it is categorically incorrect. Their argument rests on three specific claims. First, "not a *single* empirical example adduced to support the coalition hypothesis shows that it actually existed" (21). Second, the institutions governing agency relations among the Maghribis and in Europe were practically the same and culture thus could not have influenced institutional development (3). Finally, a "formal and public" legal system was the "*first resort*" in enforcing "agency agreements in long-distance trade" (12) among the Maghribis. (All emphases are added in this paper.) These claims are wrong.

To start off, it is instructive to compare the essay above with its 2008 namesake ('Reappraised, 2008').[3] In that earlier version, E&O claimed that the *evidence reveals* a widespread reliance on legal enforcement among the Maghribis. My rebuttal refuted their evidence (Greif 'Refuting') and E&O now make a different claim. Specifically, they now assert that the *evidence is biased* and thus obscures the widespread reliance on legal enforcement that

[2] E.g., González de Lara 'Secret' and 'Public Order,' Doosselaere 'Commercial,' Court 'Januensis,' Goldberg 'Geographies,', Ackerman-Lieberman, 'Partnership,' Harbord, 'Cooperation,' Dixit, 'Lawlessness', MacLeod, 'Reputation.' My analysis built on previous work such as Ellickson, 'Order', Landa, 'Theory', Kandori, 'Norms', and Shapiro and Stiglitz, 'Equilibrium' (although there are significant distinctions between my work and, in particular, Landa's).

[3] E&O left their 2008 version publically available (e.g., ssrn.com) as of Oct 2011 but do not cite it in the 2009 or the 2012 version. Yet E&O repeatedly refer to my response in both versions as if it is unrelated to this exchange (e.g., "Greif attempts to resurrect his view" (15) or "Greif seeks to shore up his argument" (16)). To enable the reader to better evaluate these statements, I posted the three versions of E&O's paper and my rebuttals at http://www.stanford.edu/~avner/greif-debate.html.

prevailed among the Maghribis.[4] Moreover, while E&O claimed in 2008 that the Maghribis had *bilateral reputation* mechanism just like the Europeans, they now claim that the Europeans had *multilateral reputation* mechanism just like the Maghribis.[5] Although based on mutually exclusive assertions regarding the historical evidence, the two versions of their paper nevertheless have almost identical abstracts, introductions and conclusions. While in 2008 E&O declared my analysis wrong because it misrepresents the evidence, E&O now declare it wrong because the historical documents misrepresent reality.

A good and lively scholarly debate enriches our knowledge. "The jealousy of Scholars shall multiply wisdom" taught *chazal*. Sad to say, the current debate is not scholarly. The paper by E&O may be good rhetorically, but it is bad economic history. I will demonstrate in detail that E&O's analysis is based on a superficial discussion of the literature, an uninformed reading of the documents, and a mis-representation of the issues and evidence. More importantly, I would argue that the shortcomings of E&O's methodology are the central problem in this debate. Their paper is a cautionary tale about how, by violating the historical and social scientific methods, E&O can seemingly support any conjecture regardless of the evidence.

E&O do not claim to have examined any of the primary sources in their original form, their argument is based on their reading of the – by now – extensive secondary literature and available transcriptions. Their discussion might lead some readers to infer that the experts E&O rely on have uniformly refuted the interpretations of Maghribi traders I proposed. The contrary is true. Phillip Ackerman-Lieberman, cited heavily by E&O, has no doubt that "Greif is undoubtedly correct that the reputation mechanism played an important role in preserving an individual's future opportunities in the market place" ('Partnership', 249). Similarly, Jessica Goldberg's 2005 dissertation, upon whom E&O lean heavily, repeatedly confirms my conclusions.[6] Moreover, Goldberg ('Reputation') responded to the current version of E&O by writing that "the evidence for the role of reputation in the [Maghribi] business community cannot be so easily dismissed as Edwards and Ogilvie suggest" (4). This is not to say that there is full agreement even among these experts on every point; the evidence allows for different interpretations on many subtle points. But E&O are obviously not interested in subtle points.

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[4] In 2008 E&O declared that, "a more thorough examination of the *evidence shows* [a] ... *widespread* ... use of the *formal legal* system" among the Maghribis ('Reappraised 2008', 37) while now they declare that "selection bias … *precludes using the Geniza documents* ... to evaluate the quantitative importance of legal mechanisms" (E&O, 16).

[5] In 2008 E&O declared that the evidence shows "the *Maghribis* using *the formal legal* system, supported by informal pressures based on *reputation* and repeated transactions between the *same parties, as in any* commercial economy" ('Reappraised 2008', 43) while now they declare that in *Europe*, "disputes were usually resolved using informal, reputation-based sanctions, in which *social networks* played an important role, and the *legal system* was typically employed only as a *last resort*" (E&O, 19).

[6] "Indeed, the merchant community, and not the legal system, was called upon to take up much of the work of enforcement and redress, particularly in the issues that arose around questions of agency, the preferred form of action and the one ill-covered by the formal legal system" (206).

My argument was that multilateral reputation mechanism mitigated the commitment problem associated with operating through overseas agent. The court system was relatively ineffective in this case due to the nature of the transaction and private-order institutions were used. While in 2008 E&O ('Reappraised, 2008') attempted to refute that argument, the current version accepts it (13-4, 18).[7] But E&O now misconstrue my position as if I argued that Maghribi traders *never* used courts and thus any indication that they did disproves my analysis.[8] But that has never been my position. I have noted that the Maghribis had access to "a well-developed [Jewish] legal system that was recognized by the Muslim authorities ... [and they] were allowed to use, and at times indeed used, the Muslim legal system" ('Exchange', 275; 'Institutions', 61). In some cases even "commercial disputes between merchants and agents were brought before the court.[9] The point is not that Maghribis never used the legal system, but that the legal system available to them had limited ability to prevent or respond to opportunism by overseas agents.

Reading E&O one might get the impression of a significant role for legal enforcement in agency relations among Maghribis. This impression is created by such means as referring to multiple secondary works that rely on the same documentary evidence as if each reveals a distinct legal case. As a matter of fact the multiple references in E&O contain evidence of only four agency-related legal disputes in the Jewish court and not a single dispute in a Muslim courts. Thus, although E&O allege that there were more agency-related legal disputes than I claimed ['Refuting'] they actually refer to fewer disputes.

More generally, E&O fundamentally misrepresent my argument and declare me wrong by refuting arguments I did not make. For example, they claim that "in Greif's portrayal, members of the Maghribi traders' coalition" constituted a "*monolithic*" and "*cohesive* group" with "*collective relationships*" in which exchange was "based on *collective ostracism* within an *exclusive* coalition" (2 and abstract). Their 'portrayal' is wrong. E&O refer the reader to Greif ('Reputation') for support (fns 4-6). But one would not find any support there (or elsewhere). The paper does not even contain any of the terms that E&O alleged to be its essence, that is, '*monolithic*,' '*cohesive*,' '*collective relationships*,' '*ostracism*,' or '*exclusive*.'

The false conjecture that E&O attribute to me is, of course, easy to refute. It is inconsistent with any in-group conflict or out-group agency relations. In fact, my analysis explains why intra-group trust and agency relations predominated, despite the information asymmetry inherent in agency relations and in the absence of a collective decision to shun non-

[7] "*All* ... business *association* [among the Maghribis] were based on *a [legal] deed*" ('Reappraised, 2008', 12) vs. "the mutual service agency predominated" and was established *"without written contracts*" (E&O, 13).

[8] "Greif ... view [is] that Maghribi agency relationships did not rely on legal enforcement ... The evidence contradicts this ... legal conflicts over business associations arose purely among Maghribis" (E&O, 17).

[9] Greif 'Enforceability', 529 (quotation); 'Reputation', 863-4, 872-3. I also discussed the legal forms of business associations, and the laws governing agency relations.

group members or impose intra-group, collectively organized sanctions. I showed why and when this outcome prevails, although the underlining commitment problems, and thus relations, are inherently bilateral.

It must be made clear from the outset that E&O, while appearing to refute my work on every point, actually accept most of its fundamental premises. I demonstrated that multilateral reputation mechanism generated "mutual trust among" traders who "in their letters ... refer to themselves as 'our people' [*ashābunā*], the Maghribi traders" (Greif 'Reputation', 862 and fn 21). In 2008 E&O purported to refute this claim ('Reappraised 2008' 12, 23). What do they argue now? "Reputational pressure based on a wider group of Maghribi traders" (22) supported agency relations "mainly among Jewish merchants who regarded one another as trustworthy ... [the] letters refer to this constellation of trustworthy individuals as the *ashābunā* – 'our associates' or 'colleagues'" (14).

Their interpretations and mine, according to E&O, are "very different" (3) because the '*ashābunā*,' and not the Maghribis (people originating from the Muslim world's west, particularly Tunisia and Sicily), is the relevant group. The problem is that E&O's *ashābunā* group is defined tautologically as composed of business associates who trust each other and its membership includes those who established relations with sufficiently many members. The *ashābunā* group, they claim, is open and without clear boundary but E&O nevertheless somehow know that members had agency relations with non-members. E&O similarly fail to explain how reputation mechanism works in such an ill defined group but are eager to establish that the *ashābunā* was an ill defined group. My analysis qualitatively hold even if the relevant group was based only on religion and not also on a geographical place of origin.[10]

I

Prior to refuting each of E&O's specific claims in detail, this section highlights the methodological flaws in E&O's argument. As I elaborated elsewhere, the challenge of institutional analysis is that beliefs regarding others' responses and opportunism's cost and benefit are not directly observable, inefficient institutions can persist, and multiple institutions

[10] To clarify matters, the term '*ashābunā*' appears more often in the Geniza than 'Maghribis' and it literally means "our companions," "our friends," or "our associates." The term has significant cultural overtone. It relates to the personal bond between the Prophet Muhammad and his first followers. Goitein ('Friendship', 485) argued that the term was used to denote both 'coreligionists' and one's group of business associates. Goldberg ('Geographies') conjectured that the *ashābunā* group was that of the "Arab Jewish traders" (178). E&O do not mention either of these interpretations although they refer to both works in discussing the issue. The core insight of my analysis holds even if the relevant 'reputation group' is that of the Arab Jewish (traders) and I noted that it is sometime difficult to identify whether an Arab Jewish trader is a Maghribi (e.g., Greif 'Reputation', 862). Goldberg relied on merchants' letters that under-reflects other uses of the term *ashābunā* such as refering to non-traders' Jews (e.g., P356, P586) or Karaites (K816, P291 P313). Moreover, agency relations with members of some groups of Arab Jewish traders are rare (e.g., Spaniard Jews; Goitein 'Society', I:21-2). Due to length limitation, Geniza documents are referred to here by their numbers in Gil' volumes, thus K622 indicates document 622 in Gil's 'Kingdom' while P203 indicates document 203 in his 'Palestine'.

usually govern the same transaction and each is used in different relations or circumstances.[11] In agency relations, for example, one can rely at the same time, on trust among kin, legal enforcement among strangers, social pressure within a group, or economic reputation in a business community.

Accordingly, I used the methodology of economic history to evaluate the relative importance of an institution without necessarily rejecting reliance on other institutions. Economic history relies on formal rigor of mathematical modeling to derive predictions and on quantitative and historical analysis to evaluate them. It does so, however, on the basis of historical and contextual knowledge to assess the nature of the evidence and the limit of our arguments. In particular, historical analysis is useful to "reveal the details of the situation, generate hypotheses regarding relevant institutions, highlight the process of institutional selection, and provide the evidence required to evaluate theoretical predictions. At the same time, theory fosters evaluating various hypotheses by exposing their logical consistency, revealing causal relations, [and] generating predications" under the assumption that various institutions prevailed (Greif, 'Exchange', 259-60).[12]

In contrast, E&O purport to establish the primacy of legal enforcement mainly by refuting the multilateral reputation conjecture. E&O do not discuss what is known about the period's legal system or evaluate its capacity to govern agency relations. The "absence of evidence that any Maghribi coalition ever operated," is the main evidence that the Maghribis relied on the legal system "to enforce agency agreements" (23). Such 'proof by elimination' requires identifying all possible alternatives, establishing that they are mutually exclusive and empirically ruling out all but one of them. E&O's analysis fails to meet any of these requirements. Moreover, even their criticism of the multilateral reputation conjecture is flawed. What makes E&O's analysis so problematic?

1) E&O repeatedly mis-represent and misconstrue arguments in a manner allowing them to claim to have falsified them. The most blunt tactic is claiming to refute an argument that, in fact, was not advanced.[13] Another tactic is pushing a qualitative judgment made on the basis of

[11] E.g., Greif, 'Reputation', 858-9, 867, 'Exchange','Commitment', 'Impersonal', 'Institutions', 'Enforceability'. Effective contract enforcement institutions link past conduct and future well-being. They work, because they generate the shared beliefs that honesty is the agent's most rewarding course of action. This implies that the agent can credibly commit himself ex ante, prior to being employed, to be honest ex post, when he can act opportunistically.

[12] See the methodological discussions in Bates, et al 'Analytic' and Greif ,'Institutions'.

[13] To give an example (in addition to that made above), E&O criticize the claim "that by the twelfth century 'collectivism' was leading to Maghribi commercial decline and 'individualism' to Genoese commercial dominance" (21). Their critique, however, is directed at an argument I did not make. Although E&O refer to Greif (e.g., 'Beliefs', 942-3) as making the claim, nothing of the sort can be found there or anywhere else. On the pages they refer to, I argued that "although in the long run the Italians drove the Muslim traders out of the Mediterranean, the historical records do not enable any explicit test of the relative efficiency of the two systems" ('Beliefs', 942-3). The Maghribis, I noted,"were forced by the

the evidence into an illogical extreme position that is then seemingly refuted. An exceptional and unusual case that might prove the rule thus becomes seemingly a deadly blow. A third rhetorical device is arguing that the predictions that confirm an argument are necessary conditions for it to hold. As a consequence they present the exceptional evidence as proving the rule.

2) E&O's use of the secondary sources suffers from serious shortcomings.[14] First, historiographical consensus and dissent are misrepresented to suit the argument and important works are ignored. Second, the content of the works referred to is mis-reported and, third, E&O repeatedly fail to note that their distinct citations from the secondary sources in fact refer to a single or very few primary sources. Thus, a multiplicity of evidence is suggested where no multiplicity exists.

3) Finally, E&O's discussion of the evidence is mis-leading. First, E&O lack the contextual knowledge to interrogate and use the primary sources reported in the secondary sources carefully. Thus translation errors occur and the content of the primary sources is misrepresented. Second, E&O selectively present evidence and ignore even pieces of evidence they advanced in 2008, but subsequently shown by me ('Refuting') to contradict their argument. Third, E&O avoid any quantitative evidence enabling a meaningful comparison. Thus, for example, the quantitative analysis comparing the Maghribi and Genoese traders is ignored.

II

The heart of the E&O paper is, no doubt, their claimed refutation of the evidence contained in five documentary cases I used to support my interpretation of the Maghribi commercial system. Their text leaves no doubt that they believe that these five cases contain no evidence that supports multilateral sanctions on opportunists. This section deals with these five cases one by one.

Case 1 (P497): A trader, Abūn ben Sadaqa (Jerusalem) "was accused (although not charged in court) of embezzling the money of another Maghribi trader. When word of this accusation reached other Maghribi traders, merchants as far away as Sicily canceled their agency relations with him" (Greif, 'Reputation', 868-9).

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rising naval power of the Italian city-states to abandon this trade" ('Enforceability', 877).

[14] To illustrate, consider their statement that "Greif attempts to resurrect his view that legal enforcement was unimportant for Maghribi agency relationships by referring to Goldberg's ['Geographies'] finding that just five per cent of merchant letters and one percent of their text refer to legal action" (15). But even here E&O are wrong. Their reference (fn 138) is to Greif, 'Refuting', 1, 3-4 but in fact, I noted there that five percent is high enough to evaluate the role of the legal system. "Merchant letters can shed light on the use of the legal system because about five percent of them refer to a dispute" ('Refuting', 3). I found that its main use was unrelated to trade. Moreover, I noted this dispute rate in 1993 ('Enforceability', 528), but it is Goldberg, whom E&O repeatedly rely on, who concluded that this rate reveals "a low incidence of seeking redress through formal legal channels" ('Geographies', 204). Figures in Goldberg, 'Geographies', 106-07; Goldberg, 'Merchants', 25, n. 204."

E&O's critique of my argument seems to boil down to four main points. First, Abūn was supposedly accused in a court of law. Second, I failed to note that the accusation against Abūn was that he "robbed the government" (4) and thus was being "importuned by administrators of inheritances" (4). Third, he embezzled the money of a Maghribi who was not a trader (5). Fourth, he was reprimanded by traders 'only' 315 miles away but not as far as Sicily (5).

The central point made by E&O is that "the accusations against him [Abūn] were actually stated in a court of law" (5). The claim is based on the observation that Abūn "exclaims, 'may God ban the person who wrote you solely on the strength of what he heard in the Head's court'," that is (according to E&O) the court of the head of the Yeshiva in Jerusalem (ibid). How could this obvious observation be missed by experts? The answer is straightforward: E&O's interpretation relies on a blunder, replacing the word 'court' in the English translation they relied upon with the word 'court of law.' E&O, unfamiliar as they are with the original texts and languages in which they are written, confuse the terminology: the 'court' in the original document is not a court-of-law (*beit-din* in Hebrew) but a *majlis*, an Arabic word meaning 'sitting room.' It was used to refer to any place where people congregate such as a court yard, audience halls, receptions halls, and even synagogues.[15] It was so common that Goitein noted that contemporaries considered "a house without a large hall [*majlis*] is not a house" (Goitein, 'Society', IV: xiii; 49, 63-80).

In making their case that the accusation against Abūn was that he "robbed the government," E&O rely mainly on Gil, Goitein, and Goldberg. Gil ('Palestine') was the first to fully transcribe and translate the document and E&O failed to note that, on the page they refer to as supporting their position, Gil says that Abūn "complained that he was accused of dishonesty toward one of the Maghribis. Indirectly we can learn how strict were the Maghribis with one of their own who was dishonest" (I:222).[16]

Goitein and Gil are not quite in agreement on what Abūn said about the government. But E&O got both of them wrong. Gil's ('Palestine') interpretation is that he was accused of robbing

[15] See also Gil ('Palestine', III:695, I:567), Cohen ('Self-Government', 263) and Goitein ('Society', II:166, VI:66). A 1038 document mentions the '*Majlis* [of the Head] Nathan' in Ramle, the administrative capital of Palestine. Similarly,"the head of the Jews [in Fatimid Egypt] maintained a kind of court (*majlis*) at his home, a hall were all the community notables met" (Bareket "Head', 194). Although a court session could be held in a *majlis*, there is no collaborating evidence here. Gil ('Palestine') transcription is *majlis*, but he carelessly translated it as *beit-din* and Simonsohn ('Jews', 105), on whom E&O rely, corrected him and wrote 'court.'.

[16] E&O also refer to Gil ('History', 168) as saying that the letter is "showing Abūn complaining that 'his opponents pour abuse on him in the Muslim legal institutions" (5). A closer look suggests that here, the great scholar was not at his best. He wrote that Hayyim was accused by *Abūn* whose "letter is filled with complaints ... accusing *Hayyim*, for instance, of 'gobbling up the money of the Maghribi Gentleman'. His opponents pour abuse on him in the Muslim legal institutions'."

the Sultan but unlike E&O he does not translate the word Sultan as government.1[17] Gil asserts that Sultan here really means the (divine) ruler, that is God (and thus basically that Abūn was accused of dishonesty). Goitein's interpretation, on which E&O lean, is different but he ('Society', V:302) does not claim either that Abūn was actually in trouble with the authorities. Goitein holds that the word Sultan refers to the Muslim authorities but his translation is that Abūn asks hypothetically "what would happen if these rumors had reached the authorities" (Goitein, 'Society', II:372)? The sentence means nothing more than a fear of the Muslim authorities. An 11th century Jewish person who actually 'robbed the government' would have been either on the run or in prison.

Goldberg ('Geographies') provided the most extensive synopsis of the case and concluded that "known dishonesty may indeed have caused severing of all ties: when Abūn ben Sadaqa was accused of embezzlement, he knew that fellow merchants were ashamed to even be seen reading his letters and would fear to send him one, since exchange of letters indicated a business association. Abūn was able to clear his name of this charge, but had little success in maintaining or extending his network of associates: his correspondence with Nahray [ben Nissīm, a trader in Fustat] continued (perhaps after the intercession of some family friends), but is full of complaints about his lack of business friendships" (186-7). E&O seem to be unaware of her statement.

The letter says that Abūn was accused of embezzling the money of a Maghribi *sheikh* (elder). The term, E&O argue, could mean a gentleman and it is therefore not clear that the victim was a trader. This argument is vacuous: we know that Hayyim's deceased father, whose estate was at stake here, was a Sicilian trader.[118] Their conclusion that the Abun's victims were a "Maghribi gentleman" (not a trader) and the "government" is incorrect.

Finally, E&O claim that "any informal enforcement via denigration of Abūn's reputation was a supplement to legal institutions, not a substitute for them" (5). The claim is based on the above linguistic error but the document reveals that the matter was publicly known and Abūn was harshly punished by others' behavior. Abūn wrote in his letter to Hayyim that you "are ashamed that my letters are reaching you and ... permitted your friends and my friends to read" my letters. More generally, Abūn complained that "people are seeking to make me perish at once ... Things have come to such a pass that if someone said [missing word(s)] ... he would be told that Abūn has stolen money." (Gil, 'Palestine', III:219-20).

I argued that one indication of the collective nature of the punishment is the way in which Abūn requested Hayyim to send his regards to 'all our friends [*ashabūna*], the Maghribi travelers, each one by name.' E&O, claiming Goldberg's authority, assert that such requests

[17] Recall that letters are in Judeo-Arabic and thus the use of an Arabic word, in and of itself, is not informative.

[18] See the explicit statements in K388, K649, K651 where the father is mentioned as engaged in trade. The identification is reported in Gil, 'Kingdom', I:584, note 330 (with a typo, 639 instead of 369). See also K369, l 28 and K749, b. l 4.

were commonplace and thus there is no evidence here for Abūn being under any kind of multilateral punishment. Unfortunately, they did not read Goldberg's text closely and cite her selectively: she writes "shoring up his claim, under attack, as a worthy member of this group, Abūn ben Sadaqa ... asks to be remembered to 'all *ashabūna*, the *maghariba* travelers, each one by name'" ('Geographies', 177). Moreover, Abūn signed this letter while adding '*al-Qabisi*' to his name, stressing his birth city in North Africa.

As to the matter of distance, the letter was sent to Alexandria. Yet, we know that prior to the affair, Abūn sent letters there to be forwarded to Hayyim with whom he previously had business relations and whose hometown, prior and following this affair, was Palermo in Sicily. But even if Hayyim was 'only' 315 miles away in Alexandria and not in his hometown in Sicily, it is difficult to believe that he did not communicate on the matter with his brothers and brothers-in-law in Sicily.

To sum up, there is nothing in E&O's analysis of case 1 that supports their critiques. It fully demonstrates the power of multilateral sanctions as penalties for opportunistic behavior. The documents attest that Abūn clearly paid a heavy toll for his dishonesty, and that his penalty was in line with a world of a multilateral reputation mechanism.

Case 2 (K221): Samhūn ben Da'ud (Qayrawān) complained that "letters filled with condemnation had reached everyone" and therefore "my reputation [or honor] is being ruined" (Greif 'Reputation', 869). E&O allege that these letters were sent only to 'everyone here' namely, everyone in Qayrawān, Thus, there is no evidence that it was known to Maghribi traders in any place beside Fustat and Qayrawān (7). Never mind these were the Maghribis' two most important trade centers. Once more, the secondary sources they consult seem to have fooled them. There are three translations of the document and the one E&O relied on is the least reliable. According to the other two translations (and Gil's transcription), the letters reached 'everyone.'[19] Presumably, everyone who mattered in this case.

Case 3 (K561): A letter sent around 1050 from Maymūn ben Khalpha (Palermo) to Nahray ben Nissīm (Fustat) suggests that relations between a particular agent and merchant were of concern to other coalition members (Greif, 'Reputation', 870). Maymun defended Naharay's agent in Palermo saying "do not blame him; he is not at fault" and said that the conflict worries everyone.

E&O argue that "Maymun's statement is more plausibly interpreted in terms" (7) of the semi-public role of the agent as the 'representative of the merchants.' But the agent was not a representative. The Judeo-Arabic text referred to the agent as our 'respectable elder' (*sheikhna*) and not as 'representative' (*wakil* as E&O claim). Moreover, E&O's argument is unreasonable

[19] The relevant line (a l. 28) is "פגאת כתבהם באללאימה **לכל אחד** וצאר ערצי מבאח" — the two words in bold are Hebrew for "to everyone." The word "here" was added by Goitein to Stillman's translation. Interestingly, although Goldberg ('Geographies', 242), also relies on the incorrect translation she immediately adds that "multiple letters had traveled half the length of the Mediterranean and reached their target through the mouths of his fellow residents" — contradicting E&O's message.

even if the agent was a "representative." If the other merchants believed that the agent was honest, why was his conflict with someone else a concern? After all, they could have continued to trust him and do business with him. My argument explains the observation. Under multilateral reputation mechanism, agency cost to each merchant increases as the number of other merchants who might work with the (honest) agent in the future falls. Hence Maymun's efforts to absolve the agent.

Case 4 (K581, K319): Khallūf ben Mūsā (Palermo) sold the pepper of Yeshū'ā ben Isma'ī (Alexandria) for a low price because he "was afraid that suspicion might arise against me" but then sold his own pepper for a higher price after ships with buyers unexpectedly arrived (Greif 'Reputation', 871). Khallūf had no legal obligation to compensate Yeshū'ā but nevertheless shared the gain by transferring the transactions to their partnership. The generosity is particularly illuminating because Khallūf planned to limit his relation with Yeshū'ā suggesting that Khallūf shared the gain to retain his reputation within the group.

E&O argue that a "more plausible" interpretation is that the agent shared the profit out of "a desire to minimise complications in ending the unsatisfactory partnership" (8). They add that "ending a Maghribi partnership could entail numerous legal steps in front of both Muslim and Jewish authorities ... This interpretation is supported by subsequent events: the partnership was dissolved only after formal litigation" (8).

This 'more' plausible interpretation is actually far less so. First, the 'subsequent events' E&O point to took place in 1063, a full twelve years after the generous profit-sharing event (K319).[20] If, as E&O claims, terminating a partnership required "numerous legal steps" for twelve years, how could the legal system be useful in governing trade? Moreover, the legal case does not mention pepper anywhere and it had nothing to do with Yeshū'ā's windfall. The case ended with a (non-legally binding) settlement proposed by the elders and not after "the Jewish court imposed a complicated settlement" (17), as E&O argue.[21] Second, Khallūf did not end a partnership in 1051 but a formal friendship that did not require any legal procedure. Khallūf wrote "settle my account ... and give the balance to my brother-in-law" (see Greif 'Reputation', 871.)

Case 5 (K632, K630): This is an involved and complex case from around 1040, in which one Ya'qūb ben Ibrahīm ibn 'Allān (Fustat) appealed in court (K632) against Yahyā ben Mūsā al-Majjānī (al-Mahdiyya), whose letter on the matter has survived (K630). Of the many details, I only reported that a trader in Fustat "accused his Tunisian agent of having failed to remit the revenues from a certain sale. As a result of the accusation, so the agent complained, "the people became agitated and hostile to [me] and whoever owed [me money] conspired to keep it from [me]" (Greif 'Reputation', 870).

[20] On page 17, fn.155 E&O present the case again as unrelated evidence of a legal dispute that transpired in 1063.

[21] "In cases of real settlements outside the court, our documents state that "upright elders" ... brought bout an agreement" (Goitein 'Abridgment', 321).

E&O's critique of my argument boils down to three points. First, the agitation against Yahyā had nothing to do with agency relations. Second, the non-payment was directed not against "Yahyā's business but against his father's estate" (9). Third, the case reveals a legal system able to enforce agency relations in long-distance trade.

To start with, the letter and the power of attorney are related. Ya'qūb ibn 'Allān, the protagonist in the letter (K630) was also the plaintiff in the court appeal (K632). The identity of the protagonist in the letter might have eluded E&O because Ya'qūb is referred to in this instance by his honorific name (*kunya*), Abū'l-Faraj but E&O also overlooked the fact that Goitein ('Letters'), on whom they otherwise rely, notes that "Yahyā ... was publicly accused of malpractice (see the preceding selection)" (102). The preceding section is Ya'qūb's court appeal (K632). In his commentary to the letter, Goitein again notes that Ya'qūb ibn 'Allān was Yahyā's "chief opponent" (104, n.8). Gil ('Kingdom') concurs. "The main focus of the letter is on the monetary conflict between the writer [Yahyā] and Abū'l-Faraj, Ya'qūb ben Ibrahīm ibn 'Allān " (III: 87).[22] The distinction that E&O make between "Yahyā's business" and "his father's estate" is vacuous. Yahyā was liable to pay his late father's financial obligations (Goitein 'Abridgment', 348). The seriousness of the commitment is suggested by the observation that subsequently his name appears on a charity list (Goitein', Society', II:440).[23]

As to their third point: in no way does the case reveal a legal system able "to enforce agency relations in long-distance trade" (10). On the contrary, it reveals that the court was at best supplementing enforcement by multilateral reputation mechanism. Ya'qūb says that he appealed to the court "various times" prior to this particular appeal but Yahyā "was not reformed" (Goitein 'Letters', 97). In other words, the court was unable to force Yahyā to pay, leading Ya'qūb to request the court to "repeat my claim" (ibid). In repeating his claim, Ya'qūb found it necessary to highlight that unless the court will resolve the matter he would "be forced to make known his [Yahyā's] doings to the communities of Israel in east and west, and in particular to the community of Jerusalem and the head of the high council there" (ibid). The importance of Jerusalem here was, according to Goitein ('Letters', 97) in "the fact that almost every Jewish community ... had its representatives there, which made an appeal to the public in that town particularly effective." The geography here is significant: while Ya'qūb is in Egypt and Yahyā in Tunisia, he threatening to take the issue all the way to Jerusalem.

[22] It is not likely that the agitation against Yahyā arose from debt (and not agency) as E&O claim based on Yahyā's statement that "the letter of the elder Abu-'l-Tayyib arrived, containing a power of attorney ... the people became agitated and hostile to me" (Goitein 'Letters', 104). Goitein, on whom E&O rely, suggests that Abu-'l-Tayyib was a creditor but does not provide any evidence. Gil ('Kingdom', IV: 89) does not consider Abu-'l-Tayyib a creditor. Both scholars described the letter as being about the agency dispute with Ya'qūb who noted in his appeal that he had someone representing him at the court of the Nagid (Goitein, 'Letters', 98).

[23] I did not see the point of making the distinction between the obligation that Yahyā assumed by himself and those he inherited from his father. To highlight the departure from the text I used, as is customary, square brackets.

Appeals to the court in Fustat did not intimidate Yahyā. A power of attorney was not followed by a legal proceeding, but by other traders withdrawing payments. Yahyā did not respond by lawsuits, but relied on the judge to try to convince the traders in his innocence. The Nagid, to whom Ya'qūb sent the legal documents, comforted Yahyā by saying that Ya'qūb had a reputation for making false claims and that people remember such things. As Yahyā wrote, the Nagid "admonished me saying: 'As far as you are concerned, do not commit any wrong in this matter. For people know these matters and remember them, and this is not the first time that he [Ya'qūb Ibn 'Allan] has acted in such a way'" (Goitein, Letters, 105 and n.12). Thus, as I noted, "when accusing an agent, an insider merchant puts his own reputation on the line" ('Beliefs', 925).

Finally, Yahyā considered the court as a means to coordinate expectations and thereby "stopping the affair." He is not concerned about the legal process or punishment but about clearing his name. "My only wish is to be cleared and to get rid of this; if they want to sue me, I shall honor [the decision of the court] and do what is imposed upon me, for my only wish is to be cleared" (Goitein, 'Letters', 105). There is no evidence here that the court had enforcement power in agency relations. The case unequivocally reveals the power and centrality of multilateral reputation mechanisms.

III

The interpretation of historical documents is often difficult and the Geniza is no exception. Accordingly I used a parsimonious model to foster evaluating my conjecture. The model's building block is the relation between each self-interested merchant and (potential) agents when a merchant can invest in gaining information about his agent's conduct from the others who also invested. The analysis identifies the set of institutions that are self-enforcing in the sense that no trader can profit from changing his behavior.

In particular, two institutions are of interest. In the first, traders share the belief that each merchant would hire an agent regardless his past history with others. History thus has no value, merchants do not invest in gaining information and thus do not respond to past cheating, confirming the original beliefs. In the second, traders share the belief that each merchant would respond to opportunism toward others. History has value and merchants invest in gaining information since, given these 'collectivist' beliefs, an agent who cheated in the past is more likely to cheat. Intuitively, if relations might end even if an agent is honest, an agent who is being shunned by others has less to lose from cheating. The threat of multilateral punishment is thus credible although participation is not mandatory and past opportunistic behavior does not indicate that one is inherently more likely to cheat. The analysis highlights particular causal relations between beliefs, relations, and reputation mechanism.

That a multilateral reputation mechanism can be self-enforcing, however, does not imply that it prevailed. "While theoretical considerations can generate many hypotheses, one has to look at the evidence to verify any postulate" (Greif, 'Reputation', 868). Moreover, "we have to avoid the pitfall of asserting that producing a model generating the observed behavior [we seek to explain] is sufficient to account for this behavior" ('Institutions', 360). In other words, the

historical relevance of a theoretical possibility has to be empirically verified. For this reason, I supplemented the analysis of direct evidence, such as the five cases above, with indirect evidence, that is, the evaluation of predictions generated under the assumption that a particular institution prevailed. In our case, the conjecture of institutional distinction provides a consistent and rationale explanation to multiple trade-related phenomena.

E&O both deny that I rely on indirect evidence (10-1) and dispute my analysis of three of them. They claim to thereby establish that the institutional "similarities between Maghribi and European merchants were more striking than the differences" (20). Specifically, E&O argue that, first, the Maghribi traders were not a distinct group and agency relations with non-Maghribis were common. Second, the Maghribis, like the Italian traders, had family firms and, third, European merchants relied on private-order institutions similar to the Maghribis' coalition. These claims are wrong.

E&O's discussion gives the impression that the entire concept of the Maghribi group is uniquely mine. "The *existence* of a distinct subgroup of Maghribi traders ... is *open to doubt*" (3). The documents, however, leave no doubt that the Maghribis were a distinct subgroup in the Jewish population.[24] The list of markers identifying Maghribis is long and includes self-identification, references by others, first and last names,[25] birth places, ancestral homes, and relatives' residence. Goitein ('Studies'), upon whom E&O rely so heavily on other matters, devoted no less than twelve pages to explain that the Maghribis were a distinct sub-group within the Jewish community (316-28). Information flows within this group facilitated the operation of multilateral reputation mechanism.

The commercial correspondence in the Geniza – among merchants and agents – was deposited overwhelmingly by Maghribis. Goitein concluded that "an overwhelming predominance ... at least 80 percent ... of all business correspondence" ('Society', I:20) found in the Geniza were written by Maghribis from Tunisia and Sicily. Gil ('Kingdom') concurs, "the writers of the letters, almost all of them, were people from the Maghrib" (I:675) and "letters from merchants, called "Maghribis" ... is ... several times greater than all the letters in the Geniza documents of other merchants put together" ('Shipping', 247-8).[26]

Were agency relations held *only* among Maghribis? Clearly not, although the consensus is that most agency relations reflected in the Geniza were among Maghribis. E&O argue, however, that *any* relations with non-Maghribis refutes the coalition's conjecture (12). This

[24] For example, "the distinct identity of the Maghribi traders within the Jewish communities is also suggested by letters written by Jews other than the Maghribi traders. In 1030 a letter from Fustat to the head of the yeshiva in Jerusalem happily reports that some Maghribis have joined the Fustat yeshiva's synagogue. Twenty-four years later, in a report sent to Jerusalem concerning the condition of that synagogue, the "Maghribi people" are still mentioned as a separate group" (Greif, 'Reputation', 862).

[25] We seen some of these names above: Abūn, Khallūf, Maymūn, Samhūn, and al-Majjānī.

[26] Maghribis also dominated the trade with the Far East. "One is struck by the predominance of merchants from North Africa in the India trade" (Goitein and Friedman 'Traders', 21).

argument is wrong. In fact, a bias in favor of intra-group agency relations is a *prediction* of my analysis and not, as E&O allege, a necessary *condition* for it. The multilateral reputation mechanism increases agency cost with non-members because an agent who would be subject to a collective punishment is more attractive to a merchant, *ceteris paribus*. A merchant would thus operate with a non-member agent only if the additional gain compensates for the higher agency cost.

Observing a few non-Maghribi agents actually further confirms rather than refutes reliance on multilateral reputation mechanism. If there was no evidence whatsoever of non-Maghribi agents, we could have never known whether the outcome is due to other reasons such as inter-faith hostility. Fortunately, the Maghribis operated in a pluralistic and open society and inter-group relations were common. "The Geniza letters reveal an astonishing degree of inter-denominational cooperation" (Goitein 'Studies', 350). The evidence of a few agency relations with non-Maghribis in the communication-intensive agency relations is thus highly indicative of precisely the kind of institutional set-up I indicated.[27]

The empirical question is thus not whether there were inter-group agency relations, but how many. I found only two Muslim agents among the 97 business associates of the most prominent Maghribi trader in the first half of the 11th century (Greif, 'Beliefs'). Also notable is the rarity of agency relations with Jews from Europe, Byzantium, and Spain. E&O allege that I underestimated the number of Muslim agents and provide 25 references in eleven footnotes (93, 95-104) to support the claim of many relations with non-Maghribis. Yet, as far as trade is concerned, the evidence they provide reveals *less reliance* on Muslim agents, not more.[28] In all these 25 references there are three partnerships with Muslims (one of which ended in a legal dispute, one is by a high ranking Jewish doctor), three Muslim agents (one appearing in multiple documents), a Muslim intermediary in the Egyptian countryside, and two cases in which a Maghribi trader asks another to host one or two Muslims friends (two of whom, the Maghribi noted, can be trusted with goods). There is also one partnership with a Christian that ended in a legal dispute.[29]

All told, there were five Muslim agents and partners (including the two I have identified) and one Christian partner.[30] But E&O's focus on this number is deceiving because what matters

[27] The argument also explains the puzzle of a low rate of inter-group agency relations with the observation that the Maghribis considered exchange with Europeans and Byzantine traders to be highly profitable.

[28] Many references are irrelevant and repetition is common. To illustrate, Gil ('Countries', 687) is alleged to describe "business dealings with Christian merchants" (12, fn 100). Clearly, business dealing is not agency relations. Moreover, Gil only says that an agent reported the approaching of a ship with Christian merchants.

[29] TS 16.11 in Ackerman-Lieberman, 'Partnership', 56-7; K120, K184, K186, K193, K251, K479, K490-2, K517, K751, K554, K694. The three partnerships are K694, K120, TS 16.11.

[30] Selection bias is unlikely to be the reason. There are three industrial partnerships with a Muslim partner in a corpus of 105 legal, partnership-related documents (Ackerman-Lieberman, 'Dissertation'), but no partnership entailing long-distance agency relations. Similarly, among 159 Arabic-written legal

is the percentage on non-Maghribis. The six cases in E&O references are drawn from documents that also mention at least 450 different Maghribi partners and agents implying 1.3 percent Muslims, much less of what I found.[31]

Even two percent of out-group relations among the Maghribis is far less than what I found in Genoa, much as the theory predicts. Although the Genoese cartularies I consulted were written in Genoa and hence are biased toward reflecting agency relations among Genoese, they nevertheless clearly indicate the establishment of agency relations between Genoese and non-Genoese. For example, in the cartulary of the Genoese Giovanni Scriba (1155-1164), at least 18.3 percent of the total sent abroad through agents was sent or carried by a non-Genoese (Greif, 'Beliefs', 931). A subsequent analysis of the cartularies from 1190 to 1192 revealed that 33 percent (450/1,363) of the "individuals involved in long-distance trade" were "foreigners or individuals living in nearby towns" (Doosselaere, 'Commercial', 79 n. 36). E&O cite the latter work but not on this particular issue. There were probably more out-group agency relations among the Maghribis than we know of and non-Maghribis were also sometimes used for simple agency tasks such as delivering letters or goods. Yet the gap between the Maghribis and Genoese is too large to be dismissed.

Did the Maghribis develop or adopt family firms? E&O's second claim is that the Maghribis had family firms like the Italians and that I failed to see that "most Geniza scholars find *plentiful evidence* of Maghribi merchants forming family firms" (20). In fact, E&O see evidence where there is *none*.[32] For support E&O only quote Goitein and Stillman both of whom, however, only claim that the Maghribis had family 'businesses' or 'partnerships.' E&O incorrectly present the positions of these two scholars, introducing extraneous words favorable to their case (that are not in the original works) and thereby creating the false impression that the words are in the original.[33]

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documents (Khan, 'Legal') at least 16 reflect inter-faith economic ties. The only one related to long-distance trade (no. 77, circa 1125) is a complaint by a Jewish trader regarding the confiscation of his goods by a *qadi*.

[31] The two main Maghribi traders of the first and second halves of the 11th century (Ibn 'Awkal and Naharai) had 450 associates. Goldberg ('Geographies', 184).

[32]1 It is easy to verify that most Geniza scholars do not find evidence of Maghribi merchants forming family firms. There is no entry for 'family firm' in the indices of such seminal Geniza studies as Goitein's 'Society,' Udovitch's 'Partnership' and Gil's *magna opera* 'Palestine' and 'Kingdom'.

[33] Goitein ('Society', I:180-1) is cited by E&O (20) as saying that "the Tāhertī *family firm* of Qayrawān, 'ideally exemplify a family business'" — although they carefully employ indirect speech here as Goitein does not use the term "family firm." This is a sleight of hand. E&O imply that he uses the term, but *nowhere* does Goitein state that the Maghribis had family firms. In particular, Goitein does not describe "the *family firms* of the Maghribis as resembling those of the medieval Venetians" as E&O allege (20). Goitein only noted that Frederic Lane, who worked on family partnerships in Venice, concluded that "in most societies, at most times ... the *great family*" was economically important ('Society' I:181) as was the case among the Maghribis. Stillman's two works are basically identical (a dissertation and its published form). E&O also claim that "Stillman ['Relations,' 78] characterizes the Ibn 'Awkal *family firm* as being

What, precisely, is the dispute about? The dispute is not about agency relations or partnerships among members of extended families. Similar to most pre-modern societies, large and wealthy families whose members collaborated in commercial activities were economically significant among the Maghribis and the Genoese. Goitein and Stillman refer to the ways that such Maghribi families organized themselves as 'family partnerships,' 'family businesses' and 'great houses.' The dispute is about the *intentional 'pooling'* of the capital by merchants for its use in operating through *non-kin agents*. The various types of partnerships established for this aim in Italy are referred to as 'family firms' because they originally were among family members. "The family firm ... was not established to govern agency relations among family members, but to govern agency relations between family and non-family" agents (Greif, 'Organizations', 487).

The essence of an Italian family firm was the permanent pooling of capital and the employment of non-kin agents on a long-term basis. The family firms were "quasi-permanent ... partnerships ... that ... were not dissolved with the death or retirement of a partner ... and even upon dissolution ... they were immediately renewed" (Hunt, 'Super-companies', 76). Moreover, "agency relationships were usually not established among family members" (Greif, 'Organizations', 480).[34] The Italian family firm reduced agency cost with non-kin in two ways. First, employing agents on a permanent and exclusive basis by a long-lived firm fostered loyalty by rendering the bilateral penalty in the case of cheating more costly to the agent. Second, the firm created a (subsidiary, limited liability) partnership with an exclusive agent. Opportunism by the 'junior' partner was limited by, for example, contributing the family firm's capital via a re-callable loan to the agent and holding his property and family liable.[35]

Initially, neither the Maghribis nor the Genoese traders had family firms. By the 13th century, however, the family firm emerged in Italy and quickly diffused.[36] Similar developments did not occur among the Maghribis, among whom "complete and long-range pooling of resources ... seems to have been the *exception* rather than the rule" (Goitein, Society, I:183).

'reminiscent of the [Venetian] *fraterne*" (20). But Stillman did not use the term 'family firm' here either, but the term "the House of Ibn 'Awkal." Stillman ('House' 83) also did not "*likening* it [the House of Ibn 'Awkal] to" the Italian family firms, as E&O claim (20, fn 186) but noted that it reveals "the organization of a medieval business house which was prominent *long before*" the Italian family firms. Stillman casually use the term 'family firm' on pages 21, 49 and 71. Page 21 reveals that he uses the term generically, "the main office of the business House of Ibn 'Awkal was located, no doubt, in the family home, as was the case with such family firms since the days of antiquity."

[34] "For example, the Peruzzi company, probably the second-largest Italian company during the late medieval period, had fifteen overseas "branch managers," namely agents, in 1335, but only three of them were members of the Peruzzi family. Similarly, in 1402, none of the overseas employees of the Medici company was a Medici" (ibid).

[35] De Roover, 'Medici', 'Rise', 'Organization'; Herlihy, ''Households', Hunt, 'Super-companies', Greif, 'Organizations'.

[36] De Roover, 'Organization', argued that the family firms first emerged in inland cities such as Siena (70-1). See Greif, 'Organizations', for a literature review.

Moreover the "general impression conveyed by the Geniza records is that the members of a family usually worked together, but preferred to keep their accounts *separate*" (ibid).[37]

These distinct developments are as predicted by my conjecture. Under bilateral reputation mechanism the longer expected employment of an honest agent (due to the pooling of capital) reduces agency cost. This reduction is lower or absent under a multilateral reputation mechanism, because the length of employment of an agent with a particular merchant matters less. Other merchants will also respond to cheating.

With this in mind consider E&O's claim that "Stillman characterizes the Ibn 'Awkal family firm as being 'reminiscent of the [Venetian] *fraterne*" (20). Stillman, however, does not use the term 'family firm,' and, more importantly, the similarities he talks about have nothing to do with agency relations.[38] Stillman explicitly says that the House of Ibn 'Awkal did not operate through exclusive and permanent agents. Business associates "were not employees, but rather smaller, and not so small, merchants who provided services ... not for any commission, but in order to request similar, reciprocal services" ('House' 23). In contrast, the Venetian *fraterne* had permanent, exclusive agents. The one studied by Lane ('Family'), to whom Stillman refers, had two agencies abroad. One was managed by a "salaried agent [who] ... finally ... was made a partner in the" agency (184) and the other manager got a loan by the family partnership and his family in Venice was legally responsible for it (Ibid).

E&O assert that my analysis reveals a "failure to use family firms" (2) among the Maghribis. My view, however, is that a development distinct from Europe's is not a failure. The absence of family firms among the Maghribis was a consequence of profound differences in cultural beliefs between Maghribi and Italian societies as I discuss elsewhere (Greif, 'Beliefs' and 'Institutions').

E&O's third claim is that reliance on private-order institutions is universal due to the cost of using the legal system. I agree. In fact, I have always emphasized the universality of private-orders and their importance in the institutional foundations of markets.[39] By alleging that I argued anything else, E&O set up a false caricature of my work. People prefer to settle and use reputation mechanisms instead of going to slow, costly, and often corrupt formal courts. I

[37] Goldberg, 'Geographies', concluded that the Maghribis had "clear preference" for "controlling and managing the majority of their investments as individuals" (84).

[38] The similarity is that in both cases "most business undertakings were done entirely with the family's capital" ('House', 24, 'Relations', 78). In the case of the Maghribis, it was a by product of intra-family relations. In any case, Great Houses were no longer important by the 12th century.

[39] E.g., "Even in modem economies "private-order institutions mitigate the FPOE [fundamental problem of exchange] reflecting the limited effectiveness of legal institutions … Information costs, the difficulty of verifying past actions, the inability to write comprehensive contracts, and the boundaries of the state's jurisdictional power limit the state's ability to support exchange. Arguably, ... private-order institutions, were even more pronounced in past economies" (Greif, 'Exchange', 259).

stressed the Maghribi traders' coalition precisely because it is a particularly good example of a general phenomenon.

But E&O seem to feel that any situation in which people tried to avoid courts or rely on private-order institution vindicates their view that there is nothing special about the Maghribis. "People gossip, and this creates reputational sanctions ... These practices cannot be portrayed as specific to the Maghribi traders" (7). Although reputation generally matters, the a-historical view that all reputation mechanisms have been the same ignores that the manifestations and prevalence of reputation depend on the historical context. The issue is whether reputation mechanisms in Europe and among the Maghribis were similar, not if they existed in both (Greif, 'Beliefs,' 'Exchange', 'Institutions').

Even the examples picked by E&O do not support the alleged similarity. To illustrate, consider E&O's discussion of the Genoese traders (19). They argue, quoting Byrne, ('Shipping', 28-9), that "twelfth-century Genoese *merchants* relied *chiefly* on 'verbal agreements based on *custom*'" (18). But this in not what Byrne said. In fact, he does not refer to agreements among merchants but with *ships' operators*. Moreover, according to Byrne verbal agreements were the *exception* and even shipping agreements were becoming formal.[40] In his words, for "the twelfth century, rich as the [legal] records are in most details of commercial life, one can discover almost no trace of the arrangements made between merchant and ship-owner ... One is forced therefore to conclude that ... such arrangements were chiefly verbal agreements based on custom" (ibid, 28).

The only other work by an expert on Genoa that E&O rely upon is Court ('*Januensis')* who is quoted (19) as saying that "as late as the sixteenth century, 'With no durable centralized state institutions to regulate and bolster long-distance trade, Genoese merchants relied on informal networks". But did multilateral reputation prevail? The hallmark of the Maghribis' private-order institution was that uninvolved merchants learned, directly or indirectly, about the actions and disputes of others. In contrast, according to Court, "sixteenth-century Genoese merchants did not punish sloth and malfeasance by a public airing" (993).[41]

The pieces of evidence that E&O advance regarding other European traders allegedly being no different from the Maghribi also crumble upon touch. They cite, for example, the case of the 16th century Dutch merchant Hans Thijs and argue that his experience reveals that

[40] The "law, like trade, was growing fast" (ibid, 29). In the 13th century contracts between ship-owners and the most important merchants were so detailed that "little was left to chance or to informal" understanding (ibid). By the 14th century the legal code specified the legal responsibilities of the parties (ibid 28).

[41] More generally, "in the thousands of letters preserved in the Brignole archive, there is not one that broadcasts details of a deal to anyone not already party to it" (ibid, 990). See also the evidence in Greif ('beliefs', 'Institutions'). A recent detailed longitude analysis of patterns of agency relations in Genoa (Doosselaere 'Commercial') also reveals no multilateral reputation mechanism. E.g., he found that bilateral, infrequent agency relations were based on legal contracts and "enforcement by social relations" (147) in occupational groups.

Europeans avoided litigation against defaulting agents, "preferring relational contracting, amicable settlement, and informal pressure" (19). Yet, according to Gelderblom ('Governance'), on whom E&O rely, most agents "were always business friends of Hans Thijs or his family" (634). To press "unwilling debtors ... he wrote letters or asked agents to contact" them (634). In other words, there was no collective response.

Both cases also highlight that the institutional distinctions between the Maghribis and Genoese cannot be explained only by differential access to the state. Nothing prevented the Genoese from having a private-order similar to the Maghribis' if, as Court argued, the legal system was ineffective at that time. Similarly, Hans Thijs was a member of a large group of merchants from Antwerp who moved to Amsterdam. Unlike the Maghribis, multilateral reputation did not prevail despite the lack of effective legal enforcement.

E&O ignore many institutional differences between the Maghribis and European traders. For example, the conjecture of distinct contract enforcement institutions predicts different stratification of traders' groups (Greif, 'Beliefs', 'Institutions'). Under multilateral reputation mechanism, but not under bilateral reputation, traders who both provide agency services and invest through agents can better commit to honesty. The conjecture of institutional distinction thus implies that Maghribis agents should have also been merchants who operated through other agents, but not so among the Genoese. The evidence confirms this prediction. In mid-twelfth century Genoa only 21 percent of the (repeated) traders operated as merchants and agents compared to 71 percent among the Maghribis ('Beliefs,' 927-9).

Multilateral reputation mechanism also theoretically implies a mutual reinforcement between a social structure – the traders' group – and the associated economic institution, the coalition. Familiarity and information flows within the group facilitated collective punishment, while the gains from the resulting economic institution motivated retaining affiliation with the group. In fact, following their migration to Egypt, the Maghribis' social structure evolved as traders married into families of Jewish Egyptian traders. Subsequently, as implied by the inter-dependency of the social structure and the economic institution, their trade shifted toward the Syrian coast where the Egyptian (Jewish) traders had operated before (Goldberg 'Geographies', 293). Similarly, in the information-poor 12th century Indian trade, the Maghribis increasingly relied, for agency services, on a (Jewish) semi-public official (*wakīl al-tujjār*) in Aden (Margariti, 'Aden'). The increased risk of opportunism was countered by rendering the position hereditary.

To sum: even the evidence that E&O amass regarding institutional similarity does not survive scrutiny and many other pieces of evidence refute this conjecture.

IV

The third specific claim in E&O is that "to enforce agency agreements ... [the] Maghribi traders' *first resort* was to the Jewish legal system" (12). Recall, however, that the dispute is not about whether the Maghribis had access to courts or used them; my argument was purely that for the enforcement of their relationships with their agents, the multilateral reputation mechanism

was vastly superior. Hence, a finding that these traders did have some connections with courts in other cases proves absolutely nothing.

What do the documents show about the importance of courts in agency relations? The evidence reveals that courts were not in the business of enforcing agency relations (Greif, 'Refuting'). To illustrate, a sample of every tenth document in Gil ('Palestine', 'Kingdom') has 83 documents. Only one document (K622) mentions a legal dispute involving agency relations among Maghribis. There are additional four documents in which legal actions are mentioned in the context of trade. This number corresponds to Goldberg's finding that legal actions are mentioned in five percent of the documents (E&O, 15). But Goldberg's data does not reveal what the legal actions were about. In the sample here, three cases are concerned with disputes with non-Maghribis. (Two are debt disputes with Muslim traders and one is a dispute with a non-Maghribi agent who tried to get a hold of goods sent to another agent.) In only one of these cases a legal action was actually taken. One document mentions a promissory note among Maghribis.

Similarly, Gil's ('Kingdom') corpus of 745 traders-related documents contains precisely 29 court documents (i.e., court cases, contracts, appointments, deeds, testimonies, and wills). That comes to 3.9 percent. Of those, only twelve are trade-related, of which six are partnerships and debts contracts that do not reflect litigation, and three reflect agency disputes.[42] Thus, the upper-bound of the share of court documents concerned with trade-related disputes is six or about 0.8 percent of the total (6/745).[43] It is still a conservative estimate because each court document discusses one dispute but there are on average five agency relations in other documents. The ratio of agency-related court documents relative to the number of agency relations is thus minuscule.[44]

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[42] Goldberg ('Geographies'), 162-3 noted that two reputation-related terms appear in five percent of the documents, *'ird* (honor and dignity, 1 percent) and *jāh* (skills and ties, 4 percent). In terms of my analysis, the former relates to misconduct while the latter (and here my interpretation differs from Goldberg's) refers to the expected gains from being honest and thus one's ability to commit to honesty. In any case, reputational considerations are also reflected in ways that do not require using these terms. E.g., an agent who did not take a particular action because he did not wish that "people will ... say that I did something that I was not ordered" (P496, a, um, ll. 8-9). See also K212, K216, K667, K751.

[43] Other sources reaffirm the conclusion. Among all 105 previously unpublished partnership-related legal documents (Ackerman-Lieberman, 'Partnership'), about 35 percent are concerned with long-distance trade. Yet only two legal documents pertain to agency conflict (nos. 57 and 78). The first is a power of attorney given to an agent who would travel and collect a delayed payment from a former partner abroad. Such power of attorney was legally required. The second is a merchant who asserted that the agent cheated him, contemplated taking a legal action — but he did not probably because of the difficulty of formally proving opportunism. I discussed this case in 'Reputation'.

[44] The legal documents in Gil ('Kingdom') reaffirm that reliance on the law is not obscured by selection bias. The estate of a trader who died abroad was distributed by the court. There were, obviously, more agency relations than agents and each entered into many agency relations that could end up in a dispute. Informatively, there are 13 cases involving the estates of deceased agents. Given the number of agency relations that each trader entered upon during his lifetime relative to the one-time event of dying, the ratio of agency cases and estate cases illustrates how rare the former were.

Having conceded that the Geniza documents do not provide much support for their 2008 assertion that only the law mattered, E&O now fall back on the assertion that the Geniza is biased and thus under-represents the use of the legal system. The bias, according to them, is mainly because "legal cases recorded in Arabic script (necessary for Muslim courts) escaped the Geniza depositing rules (applicable to documents in Hebrew characters that might bear the name of God)" (16). From this they infer that there were many such cases, only we cannot observe them. The "Maghribi merchants took for granted the existence of a formal legal framework which could be used, if necessary, to enforce agency relationships" (16).[45]

One reason to doubt E&O's bold assertion regarding selection bias is that in the 11th century "civil cases were still largely brought before Jewish courts" (Goitein, 'Studies', 283) and thus they were written in Hebrew characters. Moreover, legal documents constitute the largest single group of documents from that period. Goitein ('Studies'), whom E&O cite regarding the above depositing rule, makes these points in a chapter on 'The Documents of the Cairo Geniza' that E&O do not refer to. There is plenty of evidence – in documents written in Hebrew and Arabic characters – on legal contracting and disputes regarding real estate transactions, marriages, divorces, and businesses among Jews and with non-Jews.[46] It is thus informative that these documents reveal only very few legal disputes concerning agency relations. Furthermore, the Maghribis' letters are filled with personal and business matters, and one would expect that lawsuits against agents, if they had happened, would be mentioned. In fact, the main legal disputes we know of are mentioned in both letters and legal documents.[47]

E&O still assert that the "evidence contradicts" (17) my view that "the majority of legal actions mentioned in the merchant letters are concerned with legal issues unrelated to trade or agency relations" ('Refuting', 2. cited by E&O, fn. 150). For support, E&O provide 36 references in 21 footnotes.[48] It is, of course, a fallacy to refute a relative statement ('majority') with examples. Moreover, references are a poor substitute for evidence and E&O's citation practice only creates the *illusion* of large number of evidence.

One factor leading to this illusion is that E&O refer to secondary sources as supporting claims that, in fact, they do not. For example, E&O refer to Gil ('Merchants', 314) as providing an example that the Maghribis "enforced agency agreements using legal mechanisms" (2-3, fn 16). The reader would expect to find at least one example of a Maghribi trader taking to court a fellow Maghribi trader in a agency-related dispute. Yet Gil only describes a legal dispute (K694) "with a Christian, apparently concerning financial matters" and a man "who will testify falsely against me" (ibid). Another document (K651) is described as revealing that "around 1050,

[45] Repeated on pages 14 and 16 where E&O refer (fn 144) to Goldberg ('Geographies', 187). Yet she only discusses "the question of government involvement in ... trade" (e.g., custom, registration, bribe) which the traders "took ... for granted." Legal disputes in agency relations are another matter.

[46] E.g., Goitein, 'Society', II:395-42; Ben-Sasson, 'Emergence'; Cohen, 'Geniza'; Khan, 'Legal'.

[47] Letters (K581, K229, K622, K630) and their respective legal documents (K319, K230, K623, K632).

[48] Footnotes: 107-10, 131-2, 135-7,149, 151-60.

several Jewish merchants in Sicily brought accusations 'in front of Muslim authorities' over agency relationships involving wares from Egypt" (17, fn. 154). E&O refer to Goldberg ('Geographies', 2-3) who, in fact, says nothing of the sort. According to her a trader was accused "that he was undermining Muslim institutions by evading customs duties" (2).

E&O also create the impression that many pieces of evidence reveal legal enforcement by referring to the same alleged evidence multiple times as if each reference reveals another evidence. To illustrate, the above dispute between a Maghribi and a Christian (K694 in Gil, 'Merchants', 314) is repeated three times (footnotes 16, 136, 160) while another (K622, K623) is repeated in seven of the 11 footnotes containing references to the use of the Muslim court. It is also referred to 10 times in 8 out of the 14 footnotes supporting reliance on the Jewish court. Three of these footnotes are consecutive and each refers to a different secondary work. In six footnotes it is the only legal case and yet another one refers to it three times. [49]

In fact, E&O's 36 references contain only three disputes among Maghribis in which an agent was accused of opportunism in court and one legal dispute over the balance due at the end of a partnership.[50] All of them were included in my analyses and two were already discussed. The first is case 5 above (K630, K632, K633) and the second is the dispute over the balance due that resulted in a legal agreement based on non-legally binding arbitration (K319 dated 1063, mentioned in case 4 above). The last two cases (K229, K230) and (K622-3) are among the 29 court documents discussed above. In all these cases, the accusation is made in the Jewish court and is of failing to remit funds. This suggests the limited legal verifiability of more information-demanding accusations such as embezzlement.[51] In any case, three or four cases is a lean harvest for such a large number of notes and a narrow basis for E&O bold conclusions. In particular, the evidence does not, as E&O allege, "contradicts" (17) my claim that "only a *few* documents indicate that commercial disputes between merchants and agents were brought before a court" (e.g., 'Reputation', 865-6; 'Institutions', 63).

Moreover, the rare agency-related disputes that ended in court do not reveal effective legal enforcement. Similar to case 5, the two others do not support the claim that agency relations were established based on the ex-ante expectations of ex-post reliance on legal remedies by a court with coercive power. The first case is reflected in two documents, a letter and a power of attorney from 1085 (K622-3, Cohen, 'Partnership'). Yahūda ben Mūsā ibn Sighmār (Alexandria), who sent the letter in 1085, requested from 'Allūn ha-Kohen ben Ya'īsh (Fustat) to represent him in a lawsuit against a former partner, Abraham ben Faraj. The partnership was established circa 1075 and since then Abraham had been eluding Yahūda, sending him soothing letters, but not an account or money. Yahūda decided to sue for his share

[49] The case is the only evidence in fns. 103, 128, 134, 146, 154, and 157. It is also listed in 132, 133 (3 times).

[50] Excluding one case from the 12th century trade with India.

[51] P193 is a dispute about rights over consignment fee. It further supports the view that the Jewish court did not rely on the power of the state. This particular court was not recognized by the authorities.

and thus sent, along with the letter, a power of attorney to ʻAllūn. Jewish law requires that an agent in such collection cases would have power of attorney.

Yahūda and Abraham had been partners but it is quite clear that they had never bothered to formalize the relation.[52] Arguably, had the partnership been initiated based on the expectations for legal remedy in case of dispute, they would have established the relations in a way that fosters legal enforcement in case of need. They did not. Moreover, Yahūda waited 10 years prior to approaching the court, did not sue in Alexandria, where he lived, but pursued his case in Fustat after hearing that Abraham was there.

In the second case involving an agent (K229), the Maghribi trader who approached the Jewish court in Fustat, Abraham ben Saadya (Qayrawān), had sent his brother and son with goods to trade in Fustat. Once there, however, the brother got involved in alchemy and the alchemist he worked with absconded after incurring a large debt. The authorities sought to arrest the brother suspecting that he helped the alchemist to escape but he eluded them. Abraham's son and a relative were caught and perished after torture. The brother eventually bribed the authorities, got the goods back, and made a living selling them. "And all of this" claimed Abraham "is known to many people, all the Maghribis in Egypt" (Gil, 'Kingdom', II:672). Clearly, it is an extraordinary case that proves the rule: agency relations were not supported by expected legal remedies.

In contrast, the circumstances under which opportunism occurred in both cases are consistent with the (multilateral) reputation conjecture in which cheating occurs in equilibrium if it is particularly profitable. In the first case, the rate-of-return on the agent's capital outside the group increased. Specifically, Judah had planned to sell the good in Egypt but Abraham carried it further east, beyond the Maghribis trading orbit, and made a quick 50 percent additional profit by selling goods to Byzantine traders. In the following years Abraham made two trips from Tunisia to the East probably making similar trades. In the second case the agent clearly saw his future in Alchemy, not trade. The goods he carried (probably pearls) were worth 500 dinars, a very large sum when a middle class family's monthly expenses were about 2.5 dinar.

The above legal dispute between the two brothers reveals that the capacity of a Muslim court to prevent opportunism by overseas agents was limited by asymmetric information, limited geographical reach, and corruption.[53] Relying on the Muslim court was also complicated by the fact that the Jewish leadership "regarded any application to the Muslim court by one of their flock as a religious offense ... and this transgression was liable to be punished with

[52] Cohen, 'Partnership', on whom E&O rely here, noted that the parties did not record the terms of their partnership and there were no witnesses to their agreement or to subsequent transactions.

[53] After the Fatimids' court moved to Egypt by the late 10th century, North Africa and Sicily increasingly fell under the control of local dynasties. One accessible work on the Muslim court is section VII in S.D. Goitein's volume II of the *Mediterranean Society*. Although this volume is on EO's references list, there is no indication in their paper that this chapter was consulted.

excommunication" (Goitein, 'Society', II:395-402).[54] By necessity or choice Jews nevertheless used the Muslim court but in "the vast majority of cases mentioned in the Geniza, Jews made use of the Muslim judiciary not for litigation but for the concluding of contracts" particularly regarding debts and real estates (Goitein, 'Society', II: 400).

In fact, E&O's references do not contain a single case of Maghribis approaching a Muslim court to resolve a trade-related dispute. The only three cases mentioning this possibility are the same ones that E&O cite as evidence for reliance on the Jewish court and in no case the evidence reveals that a Muslim court was actually used. The first case (K229) is the abovementioned dispute between the two brothers that provides a powerful illustration of the reason why Jewish traders stayed away from Muslim courts if at all possible. The second is the power of attorney discussed above (K623) which contains the standard, centuries old, authorization to approach the non-Jewish court and the last case (K630, K632, case 5 above) contains a threat to approach the Muslim court.

In my work I have recognized that although the number of legal cases is informative, it is a poor measure of reliance on legal enforcement. A low number of legal cases is consistent with both a very effective court system that deters opportunism and an ineffective one that is ignored. I thus also presented other pieces of evidence regarding, for example, legal capacity, evidentiary laws, length of contentious legal disputes, and contractual choices. E&O ignore this discussion and, more generally, the relevant literature. The evidence, however, is crystal clear. The court system available to the Maghribis did not have the enforcement capacity the Genoese court system had. Moreover, distinct contractual choices, legal developments, and patterns of agency relations are as predicted by the conjecture that among the Maghribis the court complemented enforcement provided by a private-order institution while the Genoese court enforced agency contracts.

The Jewish court system was central to the Jewish community. Yet, it had limited coercive ability to discipline opportunistic overseas agents. Particularly relevant to agency relations is the possibility of absconding. "People tried to evade their ... obligations by fleeing to another country" (Goitein, 'Society', I:69).[55] This sentence eluded E&O who refer to this page in asserting the opposite (fn. 136). In fact, the Jewish court had no independent means to force one to stand trial and "with one exception, no reference has been found ... to the apprehension of a culprit by the Jewish authority" (Goitein, 'Society', II:330). Moreover, an 11th century Jewish court could impose few sanctions. It could have someone flogged (but rarely did) and

[54] E&O note Goitein's ('Society', I:259-60) statement that the "Jewish legal officials ... reserve themselves the right to "extradite" [Jews who evaded their debt obligations] ... to the Muslim authorities'" (13). But Goitein's statement is taken out of context. What he clearly means is that reliance on the Muslim court threatened the Jewish authorities who attempted to restrict its use by demanding the sole right to 'extradite' a Jew to the Muslim authorities.

[55] I know of seven such cases involving Jews and Muslims.

excommunicate (if the public cooperated).[56] But a Jewish court could not imprison and imposing monetary fines (let alone collecting them) was legally and practically problematic.[57] Above all, as Goitein noted, "punishments are confined in the Geniza almost entirely to transgression in the sphere of religion or of community life" ('Society', II, 333). Contentious legal disputes involving commerce lasted for many years and longevity was costly to the plaintiff because the court did not award damages, impose penalties or charge interest on late payments.[58]

Legal developments are indicative of the role of the law and the Jewish law evolved to complement a reputation-based private-order. Since the 9th century agency relations among Maghribis were managed by sending letters and accounts. At that time such documents were inadmissible as evidence in the Jewish and Muslim courts. Only in the early 11th century did the relevant Jewish legal authority recognized accounts as legal evidence. Letters were accepted only in cases involving a deceased trader. Although this enhanced the court's ability to resolve disputes, conduct in agency relations remained beyond the court's purview because it did not evaluate the veracity of these documents. Notably, the Jewish law in Europe was not similarly changed (Ben-Sasson, 'Emergence', 97-8).

Contractual choices among the Maghribis were also as predicted by the conjecture of multilateral reputation. Most agency relations among Maghribis (about 75 %) were established through 'formal friendship,' an agreement for mutual provision of agency services that did not require a legal contract.[59] It allowed for flexibility in agency relations and economized on travel cost but provided little, if any, legal protection.[60] An unpaid agent was legally defined as a 'messenger' (חילש) and not a partner and while the law governing the relations is complex and sometime unclear to us but even E&O now recognize that enforcement in formal friendship was reputation-based (14).[61] Note that the Maghribis could have used contractual forms that afforded

[56] "Excommunication is never even mentioned, however, in the eleventh-century materials" (Goldberg, 'Geographies', 202).

[57] Goitein, 'Society', I:259, II:331-3; Gil, 'Merchants', 298, 'Palestine', I:757; Ben-Sasson 'Emergence', 227-41.

[58] Greif, 'Reputation', Goldberg, 'Geographies'.

[59] See Greif 'Refuting' for discussion. The percentage was calculated by Goldberg, 'Geography' although the dominance of formal friendship was noted earlier. This type of agency relation was the focus of my analysis.

[60] E&O assert twice (15 and 16) that witnessing is consistent *only* with legal enforcement. It is not. It is also consistent with multilateral reputation mechanism (Greif, 'Reputation', 881). Moreover, under Jewish law an unpaid agent is not liable for a loss if there are no witnesses. An agent is legally obliged to procure witnesses only if the "loss occurred in a place where it was likely that he [the agent] would be able to find witnesses" (Maimonides, Mishneh Torah, ShSh 2:9). Evidently, agents neither took advantage of this loophole nor colluded with others to testify.

[61] E.g., Maimonides, 'Mishneh Torah, ShSh', Greif, 'Enforceability', 529, Goldberg, 'Geographies' 204, Ben Sasson, 'Emergence', 299-300, Ackerman-Lieberman, 'Partnership,' 19-23, 28, 33, 57, 91, Libson??

more legal protection but lower gains from agency relations (e.g., a paid agent). They did not (Greif, 'Reputation', 872-3).

In contrast, an Italian agent who declined to submit to the jurisdiction of his consul abroad was subject to heavy penalties, which usually could be extracted from him when he returned to his home city or from his relatives if he did not.[62] Italian courts, in general, accepted written documents, including letters, as legal evidence and in some cities the publically recorded profit rate of other agents could be brought as evidence against an agent. Some cities created an elaborated system of scribes and price control that provided the court with information to evaluate conduct. More generally, Pryor's ('Commenda') seminal analysis concluded that "everything about the structure of notarial acts for the [agency] contract and the statutory law concerning it suggests that conflict of interest between the parties and the possibility of fraud were constant preoccupations" (192). The common response to the high cost of litigation was a contractual obligation to submit to legally binding arbitration in case of dispute.[63]

During the 12th century, the Genoese mainly used commenda contracts that afforded legal protection from absconding and other opportunistic behavior but entailed much traveling to and from Genoa. A failure to return to the city or deviation from instructions were usually subject to double penalty. The agent's goods, property, and future income could be captured. As trade became more regular, the law circumvented the agency problem by specifying a pre-determined rate of return in the absence of a satisfactory account. More generally, Genoese private-order institution evolved to complement legal enforcement. Trade became progressively concentrated at the hands of professional traders who relied on credit contracts to finance their ventures and on the law and repeated relations to prevent opportunism (Doosselaere, 'Commercial', 139-48). Reliance on family members also increased from about five percent in the 12th century (Greif, 'Beliefs', 918) to over 20 percent by the 14th century (Doosselaere, 'Commercial,' 177-8).

E&O claim that the "reliance on personal letters ... [among] the Maghribi traders but on legal contracts ...[by] European merchants" (16) precludes comparing reliance on legal enforcement. Even ignoring the question whether the historical sources allow such a comparison, this statement confuses the endogenous and exogenous variables.[64] The Genoese records contain agency contracts precisely *because* legal enforcement mattered. The Maghribis – that left many

[62] Although the European law also recognized that agency relations were based on trust and good faith. The discussion is based on on Pryor 'Commenda' and 'Geography', Astuti '*Origini* ', Luzzatto, 'Commenda', Ashburner 'Sea Law' and Lattes *'Il Diritto'*, Udovitch, 'Origin', and González de Lara, 'Public-Order'.

[63] Although the European law also recognized that agency relations were "founded to a considerable degree on simple agreement, trust, and good faith between the parties" (ibid). The discussion is based on on Pryor 'Commenda' and 'Geography', Astuti '*Origini* ', Luzzatto, 'Commenda', Ashburner 'Sea Law' and Lattes *'Il Diritto'*, Udovitch, 'Origin', and González de Lara, 'Public-Order'.

[64] Comparison is possible. E.g. Andrea Barbarigo, a fifteenth century Venetian trader whose records survived, brought at least three suits before the "court of commercial jurisdiction.... and in each case the court supported Andrea's claims and at least in one case he got a hold over a portion of the palace of the defaulter" (Lane, 'Barbarigo', 97-8).

other legal documents – did not leave behind a similar set of agency-related documents precisely *because* they relied on a private-order institutions. Similarly, E&O's claim that the use of partnerships among the Maghribis refute the multilateral reputation conjecture is a red herring. Partnership relations are distinct from agency relations. "Whenever a partner utilized the partnership's capital, he acted as an agent for the partnership" ('Reputation', 865). Although partnerships probably afforded more legal protection but were entered also for a variety of other reasons (such as economies of scale and property right protection) and in one third of the (long-distance trade) partnerships, a partner(s) relinquished the right to legally challenge the partner who would serve as an agent (Greif, 'Refuting').

E&O seem to believe that the Jewish court system was based on the coercive power of the state. It was "formal and public" (12) in the sense of being based on "legal mechanisms provided by ... persons outside" the traders' community ('Reappraised, 2008', 9). This view is uninformed.[65] Under the Jewish law the congregation (קהל, *kahal*) is the ultimate judicial authority and judgment is the prerogative of both laymen and scholars. "Thus, the main characteristic of the Jewish judiciary was a court composed largely of laymen, who frequently supplanted each other" (Goitein, 'Society', II:314). We know that members of the merchants' community frequently served as lay judges while expert judges and legal scholars were often traders. Thus, in business matters, the Jewish "court ... had largely the character of a merchants' court, since most of its members were experienced businessmen" (Goitein 'Studies', 335).

In Maghribi society the legal system was not the ultimate enforcer of agency relations but constituted an integral part of a private-order institution. Its contribution was not in imposing legal sanctions backed by the state but in fostering and supporting the operation of multilateral reputation mechanism. It contributed to the shared code of conduct that is necessary to render a multilateral punishment credible (Ackerman-Lieberman, 'Partnership', ch. 4).[66] Similarly, legal scholars and courts were involved in resolving disputes, proposing compromises, registering agreements and confirming their execution. In addition, lawsuits and legally demanded oaths seem to have impact on reputation in ways not yet fully understood.[67] Finally, by handling some disputes in which legal verification of agency conduct was not an issue (e.g., debts and account clearing), the legal system may have reduced the frequency of costly multilateral punishment. Frequent punishments would have reduced the value of good reputation thereby undermining the coalition.

[65] E.g. Goitein, 'Society', II; Cohen, 'self-government', Ben-Sasson, "Emergence', Gil, 'Kingdom,' Goldberg, 'Geographies'. One accessible work on this issue is the chapter on the Jewish 'Communal Jurisdiction' in S.D. Goitein's volume II of the Mediterranean Society. Although this volume is on EO's references list, there is no indication in their paper that this chapter was consulted.

[66] Greif ('Enforceability', 542) discuss the code's customary origin. For related insights see Clay ('Trade', 'California') and Lydon ('Trans-Saharan').

[67] Goitein, 'Society', II:340, and II:354, fn. 3. For a documentary example, see K751. See Greif ('Enforceability', 'Institutions') on the related issue of protecting the agent from abuses.

To sum up: If E&O wish to argue that a legal system existed and that it was used for certain disputes and issues, they are correct, although their summary is incomplete, inaccurate and adds nothing new. If, on the other hand, they mean to maintain that a court based on the coercive power of the state was the "first resort" in enforcing "agency agreements in long-distance trade" (p. 12), they are wrong. The Maghribis did not settle their disputes in the shadow of the law, as E&O assert, but litigated in the shadow of multilateral reputation.

V

What can we conclude from evaluating the evidence in light of E&O's 'reappraisal'? First, the evidence reveals that among the Maghribi traders multilateral reputation mechanism mitigated opportunism by overseas agents. Second, their experience supports the view that private-order institutions play an important role in fostering sophisticated exchange in the absence of, or in addition to, effective legal enforcement. Third, there were significant institutional, organizational and contractual distinctions among traders from Europe and the Maghribis. These distinctions, as I demonstrated elsewhere, had cultural origin and manifestations.

My analysis of the cultural origin of the institutional distinctions contributes to the growing literature that has been exploring the co-evolution of institutions, culture, and markets.[68] E&O dismiss this literature by alleging novelty in offering "an essential first step" in bringing us closer to a "theory" of market development. This claim rings hollow. After all, E&O deny that there are variations to be explained and their "scrupulous examination" of the evidence crumbles upon inspection. Advancing our knowledge regarding market development is demanding and requires sensitivity to subtle analytical distinctions in complex historical realities and a deep understanding of the evidence. Perhaps it is why E&O repeatedly attempt to demonstrate that 'whatever is, is not right.' In the case here, pointing to superficial similarities is easier than advancing our knowledge regarding subtle distinctions. Be it as it may, E&O reappraisal of the Maghribi traders is erroneous and misleading.

[68] A small sample of this work, particularly among economists would include Roland and Gorodnichenko 'Culture,' Francois 'Norms,' Guiso, Sapienza and Zingales 'Culture,' Tabellini 'Culture,' Djankov, et al 'Comparative Economics,' Ostrom 'Institutional Analysis,' Greif 'Commitment', and Greif and Tabellini 'Cultural'. Among the many related works are Gelderblom, 'Governance,' Kambayashi, 'Registration ,' Okazaki, 'Coalition', and Aslanian, 'Julfan' in economic history and in other areas Aoki, 'Analysis', Kranton, 'Exchange', McMillan, 'Bazar', Ingram, 'Solution', Platteau, 'Institutions', Fafchamps, 'Market', Casella and Rauch, 'Market,' Marin and Schnitzer, 'Trade', and Nee and Ingram, 'Embeddedness'.

References:

Ackerman-Lieberman, P. I., "A Partnership Culture: Jewish Economic and Social Life Seen Through the Legal Documents of the Cairo Geniza." (unpub. Ph.D. thesis, Princeton University, 2007)

Ackerman-Lieberman, P. I., *A Partnership Culture: Jewish Economic and Social Life Seen Through the Documents of the Cairo Geniza*. Book MS. 2011.

Aoki, M. *Toward a Comparative Institutional Analysis*. (Cambridge, 2001)

Ashburner, W.M. A.,. *The Rodian Sea-Law*. (Oxford, 1909).

Aslanian, S., "'The Salt in a Merchant's Letter': The Culture of Julfan Correspondence in the Indian Ocean and the Mediterranean," *Journal of World History*, 19, 2 (2008), pp. 127-188.

Astuti, G., *Origini e Svolgimento della Commenda dalle Origini fino al Secolo xiii*. (Milan, 1933).

Bates, R. H., A. Greif, M. Levi, J. L. Rosenthal, and B. Weingast. *Analytic Narrative*. (Princeton, 1998).

Bareket, E. "The Head of the Jews in Fatimid Egypt: A Re-evaluation." *SOAS*, 67, 2 (2004), pp. 185-97.

Ben-Sasson, M. *The Emergence of the Local Jewish Community in the Muslim World. Qayrawan, 800-1057*. Hebrew. (Jerusalem , 1997).

Byrne, E. H. *Genoese Shipping in the Twelfth and Thirteenth Centuries*. (Cambridge, 1930).

Casella A., and J.E. Rauch, "Anonymous Market and Group Ties in International Trade," *Journal of International Economics* 58, 1 (2002), pp. 19-47.

Clay, K., "Trade Without Law: Private-Order Institutions in Mexican California," *Journal of Law, Economics, and Organization*, 13, 1 (1997a), pp. 202-31.

Clay, K., "Trade, Institutions, and Credit," *Explorations in Economic History* 34, 4 (1997b), pp. 495-521.

Cohen, M. R. *Jewish Self-Government in Medieval Egypt: The Origins of the Office of Head of the Jews, ca. 1065-1126*. (Princeton, 1980).

Cohen, M. R., "A Partnership Gone Bad: a Letter and a Power of Attorney from the Cairo Geniza, 1085" in *The Sasson Somekh Festschrift [not yet titled]* eds by D. Wasserstein and M. Ghanaim. (Tel Aviv, 2008). (2010 forthcoming).

Cohen, R., M., "Geniza for Islamicists, Islamic Geniza, and the 'New Cairo Geniza.'" *Harvard Middle Eastern and Islamic Review* 7(2006), pp. 129–145.

Court, R., "'Januensis Ergo Mercator': Trust and Enforcement in the Business Correspondence of the Brignole Family." *Sixteenth Century Journal* 35 (2004), pp. 987-1003.

De Roover, R., *The Medici Bank. Its Organization, Management, Operation, and Decline*. (New York, 1948).

De Roover, R., *The Rise and Decline of the Medici Bank, 1397-1494*. (Cambridge, 1963).

De Roover. R.,"The Organization of Trade." *The Cambridge Economic History of Europe. Vol. III*. ed. by M. M. Postan, E. E. Rick, and M. Miltey. (Cambridge, 1965).

Van Doosselaere, Q., *Commercial Agreements and Social Dynamics in Medieval Genoa* (Cambridge, 2009).

Dixit, A., *Lawlessness and Economics: Alternative Modes of Governance*. (Princeton, 2004).

Djankov, S., E. L. Glaeser, R. La Porta, F. Lopez-de-Silanes, and A. Shleifer, "The New Comparative Economics," *The Journal of Comparative Economics*, 31, 4 (2003), pp. 595-619.

Edwards, J. and S. Ogilvie.,"Contract Enforcement, Institutions and Social Capital: The Maghribi Traders Reappraised." CESifo. Working Paper Series No. 2254, 2008. http://www.stanford.edu/~avner/greif-debate.html

Edwards, Jeremy and S. Ogilvie. "Contract Enforcement, Institutions and Social Capital: The Maghribi Traders Reappraised." Cambridge Working Papers in Economics. No. 0928, 2009. http://www.stanford.edu/~avner/greif-debate.html

Ellickson, R. C. *Order without Law*. (Cambridge, 1991).

Fafchamps, M., *Market Institutions in Sub-Saharan Africa*. (Cambridge, 2004).

Francois, P."Norms and Institutions." Department of Economics, University of British Columbia, CEPR, CIFAR, 2008.

Gelderblom, O., "The Governance of Early Modern Trade: The Case of Hans Thijs (1556¬1611)", *Enterprise and Society* 4 (2003), pp. 606-639.

Gil, M., *In the Kingdom of Ishmael*. 4 vols, In Hebrew and Judeo-Arabic. (Tel Aviv, 1997).

Gil, M., *Jews in Islamic Countries in the Middle Ages*. Translated from the Hebrew by D. Strassler, (Leiden, 2004a).

Gil, M., "The Jews in Sicily Under Muslim Rule, in the Light of the Geniza Documents," *Italia judaica. Atti del I Convegno internazionale Bari* 18-22 maggio (1981) 2, (1983a), pp. 87-134.

Gil, M., "The Jewish Merchants in the Light of Eleventh-Century Geniza Documents", *Journal of the Economic and Social History of the Orient* 46 (2003), pp. 273-319.

Gil, M., "Shipping in the Mediterranean in the Eleventh Century A.D. as Reflected in Documents from the Cairo Geniza", *Journal of Near Eastern Studies* 67 (2008), pp. 247-92.

Gil, M., *Palestine During the First Muslim Period (634-1099)*. Hebrew and Judeo-Arabic. (Tel Aviv, 1983b)

Gil, M., *A History of Palestine 634-1099*. (Cambridge, 1992).

Goitein, S. D., "Formal Friendship in the Medieval Near East", *Proceedings of the American Philosophical Society*, 115 (1971), pp. 484-489.

Goitein, S. D., *Studies in Islamic History and Institutions*. (Leiden, 1966).

Goitein, S. D., *Letters of Medieval Jewish Traders.* (Princeton, 1973).

Goitein, S. D., *A Mediterranean Society, Vol. I, Economic Foundations*. (Los Angeles, 1967).

Goitein, S. D., *A Mediterranean Society, Vol. II, The Community*. (Los Angeles, 1971).

Goitein, S. D., *A Mediterranean Society, Vol. IV, Daily Life*. (Los Angeles, 1983).

Goitein, S. D., *A Mediterranean Society, Vol. V, The Individual*. (Los Angeles, 1988).

Goitein, S. D*., A Mediterranean Society, vol. VI, Cumulative Indices*. (Los Angeles, 1993).

Goitein, S. D., *A Mediterranean Society: An Abridgment in One Volume*, Revised and edited by J. Lassner. (Los Angeles, 1999).

Goitein, S. D. and M. A. Friedman, *India Traders of the Middle Ages: Documents from the Cairo Geniza ('India book')*. (Leiden and Boston, 2008).

Goldberg, J,."Geographies of Trade and Traders in the Eleventh-Century Mediterranean: A Study Based on Documents from the Cairo Geniza." (unpub., PhD thesis, Columbia University, 2005).

Goldberg, J., "Making Reputation Work: Re-examining Law, Labor and Enforcement among Geniza Businessmen." University of Pennsylvania, 2011.

González de Lara, Y., "The Secret of Venetian Success: a Public-order, Reputation-based Institution," European Review of Economic History 3, 2008, 247-285.

González de Lara, Y., "Self-Enforcing, Public-Order Institutions for Contract Enforcement: Litigation, Regulation, and Limited Government in Venice, 1050–1350," *Political Economy of Institutions, Democracy and Voting* eds.by N. Schofield and G. Caballero. (Berlin 2011), pp. 95-117.

Greif, A., "Reputation and Coalitions in Medieval Trade: Evidence on the Maghribi Traders,' *Journal of Economic History* (1989), 857-882.

Greif, A.,"Contract Enforceability and Economic Institutions in Early Trade: the Maghribi Traders' Coalition," *American Economic Review* 83 (1993), pp. 525-548.

Greif, A., "Cultural Beliefs and the Organization of Society: a Historical and Theoretical Reflection on Collectivist and Individualist Societies", *Journal of Political Economy* 102 (1994), pp. 912-950.

Greif, A., "On the Study of Organizations and Evolving Organizational Forms Through History: Reflection from the Late Medieval Family Firm." *Industrial and Corporate Change* 5, 2 (1996), pp. 473-501.

Greif, A., "Institutional Structure and Economic Development: Economic History and the New Institutionalism." In *Frontiers of the New Instiutional Economics* ed. by J. N. Drobak and J. Nye, Volume in honor of Douglass C. North. (New York, 1997), pp. 57-94.

Greif, A., "The Fundamental Problem of Exchange: A Research Agenda in Historical Institutional Analysis," *Review of European Economic History* 4, 3 (2000), pp. 251-84.

Greif, A., "Commitment, Coercion, and Markets: The Nature and Dynamics of Institutions Supporting Exchange" In the *Handbook for New Institutional Economics*. ed. by C. Menard and MM. Shirley, (Norwell, 2005), Chapter 28.

Greif, A., "The Birth of Impersonal Exchange: The Community Responsibility System and Impartial Justice," *Journal of Economic Perspective* 20, 2 (2006), pp. 221-236.

Greif, A., "Contract Enforcement and Institutions among the Maghribi Traders: Refuting Edwards and Ogilvie", CESifo working papers 9610, 2008. Available at: http://www.stanford.edu/~avner/Greif_Papers/SSRNAUG202008.pdf

Greif, A., *Institutions and the Path to the Modern Economy: Lessons from Medieval Trade*. (Cambridge, 2006).

Greif, A. and G. Tabellini. "Cultural and Institutional Bifurcation: China and Europe Compared." *American Economic Review*, 100, May (2010), pp. 135–140.

Guiso, L., P. Sapienza and L. Zingales, "Does Culture Affect Economic Outcomes?" *Journal of Economic Perspectives*, 20 (2006), pp. 23-48.

Harbord, D., “Enforcing Cooperation among Medieval Merchants: the Maghribi Traders Revisited”, Munich personal Repec archive working paper, 2006.

Herlihy, D., *Medieval Households*. (Cambridge, 1985).

Hunt, E. S., *The Medieval Super-Company*. (Cambridge, 1994).

Ingram, P.,“Organizational Form as a Solution to the Problem of Credible Commitment: The Evolution of Naming Strategies among US Hotel Chains, 1896-1980,” *Strategic Management Journal* 17 (1996), pp. 85-98.

Kambayashi, R.,“The Registration System and the Grade Wage: from Cooperation to a Market for Human Capital? A Lesson from the Japanese Silk Reeling Industry,” in *Production Organizations in the Japanese Economic Development*, ed by T. Okazaki. (New York, 2006).

Kandori, M., "Social Norms and Community Enforcement," *Review of Economic Studies* 59, 1 (1992), pp. 63-80.

Khan, G., *Arabic Legal and Administrative Documents in the Cambridge Genizah Collections*. (Cambridge, 2006).

Kranton, R. E., “Reciprocal Exchange: A Self-Sustaining System,” *American Economic Review* 86, 4 (1996), pp. 830-51.

Landa, J. T., "A Theory of the Ethnically Homogeneous Middleman Group: An Institutional Alternative to Contract Law,” *Journal of Legal Studies* (1981), pp. 349-62.

Lane, F.C. “Family Partnerships and Joint Ventures in the Venetian Republic,” *The Journal of Economic History* 4 (1944), pp. 178-96.

Lane, F. C. *Andrea Barbarigo*. (Baltimore, 1944).

Lattes, A., *Il Diritto Marittimo Privato nelle Carte Liguri dei Scoli XII e XIII*. (Citta del Vaticano, 1939).

Lydon, G., *On Trans-Saharan Trails*. (Cambridge, 2009).

Luzzatto, G., “La Commenda nella Vita Economica dei Secoli XIII e XIV.” In *Atti della Manifestazione pro Tabula d'Amalphi*, I, Convegno di Studi di Diritto Marittimo. (Napoli, 1934)

MacLeod, W. B., "Reputations, Relationships and Contract Enforcement," *Journal of Economic Literature*, 45, 3 (2007), pp. 597-630.

Margariti, R. E., *Aden and the Indian Ocean Trade: 150 Years in the Life of a Medieval Arabian Port.* (Chapel Hill, 2007).

Marin, D., and M. Schnitzer, “Tying Trade Flows: A Theory of Countertrade with Evidence,” *American Economic Review* 85, 5 (1995), pp. 1047-64.

McMillan, J., *Reinventing the Bazar: A Natural History of Markets*. (New York, 2002).

Nee, Victor, and P. Ingram. "Embeddedness and Beyond: Institutions, Exchange and Social Structure.” In *The New Institutionalism in Sociology*, ed by M. Brinton and V. Nee. (New York, 1998), pp. 19-45.

Maimonides (Rabbi Moshe ben Maimon), Mishneh Torah. Sefer Kinyan. Edited by Rabbi Eliyahu Touger (New York, 1999).

Okazaki, T., “The Role of the Merchant Coalition in Pre-modern Japanese Economic Development: A Historical Institutional Analysis,” *Explorations in Economic History* 42, 2 (2005), pp. 184-201.

Ostrom, E., “Doing Institutional Analysis: Digging Deeper than Markets and Hierarchies,” in *Handbook of New Institutional Economics* ed by C. Menard and M. Shirley. (The Netherlands, 2005), pp. 819-848.

Platteau, J. P., *Institutions, Social Norms and Economic Development*. (Amsterdam, 2000).

Pryor, J. .H., “Mediterranean Commerce in the Middle Ages: A voyage under commenda.” *Viator*, 14 (1973), pp. 132-194.

Pryor, J., *Geography, Technology, and War*. (Cambridge, 1988).

Roland, G. and Y. Gorodnichenko. “Culture, Institutions and the Wealth of Nations.” Working Paper, UC Berkeley, 2011.

Shapiro, C., and J.E. Stiglitz, “Equilibrium Unemployment as a Worker Discipline Device." *American Economic Review* 74, 3 (1984), pp. 433-44.

Simonsohn, S., *The Jews in Sicily, Volume I: 383-1300.* (Leiden, 1997).

Stillman, N. A.”East-West Relations in the Islamic Mediterranean in the Early Eleventh Century: A Study in the Geniza Correspondence of the House of Ibn ‘Awkal’.” (unpub., Ph. D. Thesis, University of Pennsylvania, 1970).

Stillman, N. A., “The Eleventh Century Merchant House of Ibn ‘Awkal (A Geniza Study),” *Journal of the Economic and Social History of the Orient*, 16 (1973), pp. 15-88.

Tabellini, G., “The Scope of Cooperation,” *Quarterly Journal of Economics*, 123 (2008), pp. 905-50.

Udovitch, A. L. *Partnership and Profit in Medieval Islam*. (Princeton, 1970).

Udovitch, A. L., ‘At the origins of the western commenda: Islam, Israel, Byzantium?’, *Speculum* 37 (1962), pp. 198-207.