

# The Maghribi traders: a reappraisal?

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For a shorter version of this paper see  
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## Abstract

Private-order contract enforcement institutions motivate compliance by means other than the state's coercive power and play an important role in any economy. They have been particularly important, however, in pre-modern and developing economies with ineffective court systems. Social and cultural factors influence the private-order that prevails in a given society and the related cultural beliefs influence subsequent contractual, organizational and legal development. Historically, the particularities of the European private-order institutions contributed to the rise of the modern—impersonal—markets in that region. A recent *Economic History Review* article by Edwards and Ogilvie challenges these claims by revisiting the comparative analysis of the Maghribis traders, Jewish traders who operated in the Muslim Mediterranean. They concluded that the 'Maghribi traders used informal sanctions but also resorted to legal enforcement, in ways strongly resembling European merchants' (p. 423). This article rebuts Edwards and Ogilvie's claim by presenting the evidence in the context of discussing the methodological challenge associated with comparative and historical institutional analysis.

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Economic history faces the challenge of understanding the institutional foundations of historical markets and their evolution. My analysis of the governance of overseas agents in two late medieval societies contributed to addressing this challenge.<sup>2</sup> I argued that a multilateral reputation mechanism was particularly important among the eleventh-century (Jewish) Maghribis traders who operated in the Muslim Mediterranean. The related institution, a ‘coalition’, deterred opportunism in bilateral agency relations based on a credible threat of losing future profitable relations in the broader traders’ community. In contrast, legal enforcement and a bilateral reputation mechanism were particularly important among the twelfth-century Genoese traders. Cultural distinctions—collectivism among the Maghribis and individualism among the Genoese—contributed to this distinction and the associated cultural beliefs influenced subsequent institutional, organizational, and contractual developments. In Europe, these developments fostered legal and organizational changes that facilitated impersonal exchange and market expansion.

Several tentative conclusions follow.<sup>3</sup> First, private-order institutions (that do not rely on the coercive power of the state) can support sophisticated exchange. Second, inter-societal distinctions in market institutions prevailed from as early as the late medieval period and had cultural and social origins. Third, Europe’s pre-modern private-order institutions were particularly conducive to stimulate the legal and other developments leading to the modern—impersonal—market. Fourth, contemporary market-promoting policies should take private-order institutions into account particularly in countries lacking an effective court system.

A recent article by Edwards and Ogilvie categorically rejects these conclusions by asserting that both reputation and the law mattered among the Maghribis. As discussed below, I have always noted that the Maghribis used the court for various purposes. Edwards and Ogilvie make the stronger claim that ‘the Maghribi traders combined reputation-based sanctions with legal mechanisms, in ways that resemble the practices of medieval European merchants’ and thus the ‘similarities between Maghribi and European merchants were more striking than the differences’.<sup>4</sup> Specifically, bilateral reputation<sup>5</sup> and ‘external’ courts governed agency relations in both groups<sup>6</sup> and there is ‘not a *single* empirical example’<sup>7</sup> supporting my analysis. This article shows in detail that these claims are wrong. It refutes each empirical claim while discussing the methodological issues associated with comparative and historical institutional analysis.

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<sup>2</sup> Greif, ‘Contract enforceability’; idem, ‘Reputation’; idem, ‘Cultural beliefs’; idem, *Institutions*.

<sup>3</sup> Greif, ‘Fundamental problem’; idem, ‘History lessons’; idem, ‘Commitment’; idem, *Institutions*, chs. 10, 12.

<sup>4</sup> Edwards and Ogilvie, ‘Reappraised’, pp. 440 (quotation), 441-3.

<sup>5</sup> Ibid., pp. 421, 442.

<sup>6</sup> Ibid., p. 436.

<sup>7</sup> Ibid., pp. 421.

It should be made clear from the outset, however, that the main problem in this exchange is the methodological shortcomings of Edwards and Ogilvie's analysis. Their article demonstrates how, by violating historical and social scientific methods, it is possible to produce a seemingly convincing—yet wrong—historical account. The following examples illustrate these shortcomings.

First, Edwards and Ogilvie's response to evidence that refutes their conclusion has been to change their evaluation of the historical records. To illustrate, compare their current article with its earlier version that has been on the web (SSRN.com) since 2008. That earlier version claimed that the *evidence shows* a widespread reliance on legal enforcement among the Maghribis.<sup>8</sup> My rebuttal refuted the alleged evidence<sup>9</sup> and Edwards and Ogilvie now claim that sample selection bias obscures the widespread reliance on legal enforcement.<sup>10</sup> Although based on mutually exclusive assertions regarding the historical sources and evidence, the two versions nevertheless have almost identical abstracts, introductions, and conclusions. While in 2008 Edwards and Ogilvie asserted that my analysis is wrong because it misrepresents the evidence, they now declare it wrong because the historical documents misrepresent reality.

Similarly, while in 2008 Edwards and Ogilvie claimed that the Maghribis had a *bilateral* reputation mechanism 'between the same parties *as in any* commercial economy' including, I assume, the Europeans, they now claim that the Europeans relied on reputation within *social networks*.<sup>11</sup> Thus, although Edwards and Ogilvie claim reappraising the analysis of the Maghribis based on new evidence, their argument actually hinges on their unexplained reinterpretation of the European experience.

Second, Edwards and Ogilvie's systematically misrepresent the literature and the evidence, thereby creating the *impression* of overwhelming evidence in their favour.<sup>12</sup> To illustrate, one legal case (K622, K623) is referred to in nine different ways and it is repeated 13 times in the 16 footnotes supporting reliance on either the Jewish court, or the Muslim court, or both.<sup>13</sup> In general, the discussion does not

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<sup>8</sup> 'The evidence shows that Maghribi traders made widespread and voluntary use of the formal legal system to enforce their contracts'; p. 37 in J. Edwards and S. Ogilvie, 'Contract enforcement, institutions and social capital: the Maghribi traders reappraised', CESifo working paper ser., 2254 (2008) (hereafter Edwards and Ogilvie, 'Reappraised' (2008)).

<sup>9</sup> A. Greif, 'Contract enforcement and institutions among the Maghribi traders: refuting Edwards and Ogilvie', CESifo working papers, 9610 (2008) (hereafter Greif, 'Refuting').

<sup>10</sup> 'Selection bias ... preclude[s] using the Geniza documents ... to evaluate the quantitative importance of legal mechanisms'; Edwards and Ogilvie, 'Reappraised', p. 436.

<sup>11</sup> In 2008 they claimed that 'the *Maghribi* [used] ... *the formal legal* system, supported by informal pressures based on *reputation* ... between the *same parties, as in any* commercial economy' (Edwards and Ogilvie, 'Reappraised' (2008) (see above, n. 8), p. 43). Now they claim that in Europe 'disputes were usually resolved using informal, reputation-based sanctions, in which social networks played an important role' (idem, 'Reappraised', p. 439).

<sup>12</sup> Edwards and Ogilvie's paper contains many irrelevant references as discussed below.

<sup>13</sup> Geniza documents are referred to by their numbers in Gil's volumes. For example, K622 indicates document 622 in Gil's Kingdom, while P203 indicates document 203 in his Palestine. Nine references: Cohen, 'Partnership'; Bodl. MS Heb. d 66.5,

reveal that all these references are to the same legal case. In eight footnotes it is the only relevant case, and in yet another footnote it is referred to three times. Edwards and Ogilvie systematically present the same (and often misleading) piece of evidence as if it were multiple pieces of evidence without informing the reader.

All the secondary sources that Edwards and Ogilvie cite to support their claim of many agency-related legal cases among the Maghribis refer to only four agency-related legal disputes in Jewish courts, and not a single actual dispute in a Muslim court. Thus, although Edwards and Ogilvie allege that there were more agency-related legal disputes than I claimed, they refer to fewer disputes. This misrepresentation of the evidence is characteristic of their critique. Similarly, Edwards and Ogilvie repeatedly claim to refute a relative statement, such as percentage of non-Maghribi agents, by providing counter-examples. This is a fallacy. Exceptions do not disprove the rule.

Third, Edwards and Ogilvie repeatedly misconstrue arguments thereby obscuring the issues and the relevant evidence. They wrongly claim, for example, to refute the multilateral reputation conjecture by presenting evidence for the use of the court by the Maghribis.<sup>14</sup> But this evidence is nothing new. I repeatedly noted, for example, that the Maghribis used the Jewish and the Muslim legal systems for various purposes<sup>15</sup> and some ‘commercial disputes between merchants and agents were brought before the court’.<sup>16</sup> Edwards and Ogilvie misconstrue my actual position as if I had argued that Maghribi traders *never* used courts and thus any indication that they did disproves my analysis. The issue is not whether the Maghribis had courts or used them for various purposes, but the extent to which their courts enabled over-seas agents to ex-ante commit not to act opportunistically ex-post, after they got goods they did not own.

Fourth, Edwards and Ogilvie’s analysis is ahistorical. Its premise is that any evidence of trade-related legal dispute among the Maghribis substantiates similar reliance on court enforcement.<sup>17</sup> That the Maghribis used the court thus allegedly implies that they ‘resorted to legal enforcement, in ways strongly resembling European merchants’.<sup>18</sup> Similarly, any indication that non-Maghribis tried to avoid courts or

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2, cited according to translation in Cohen, ‘Partnership’; Bodl. MS Heb. c 28.11, 2, cited according to translation in Cohen, ‘Partnership’; Gil, ‘Merchants’, pp. 311–12; *ibid.*, pp. 298–9; Goldberg, ‘Geographies’, p. 200; *ibid.*, pp. 200–1; *ibid.*, pp. 200–8; *ibid.*, pp. 173–4. Referred to in section III (that deals with court enforcement) in nn. 106, 109 (twice), 130 (twice), 131, 136 (three times and contains additional cases), 137, 149, 157, 160.

<sup>14</sup> Edwards and Ogilvie, ‘Reappraised’, pp. 422, 430, 437.

<sup>15</sup> Greif, ‘Fundamental problems’, p. 275; *idem*, *Institutions*, pp. 294–5.

<sup>16</sup> Greif, ‘Contract enforceability’, p. 529 (quotation); *idem*, ‘Reputation’, pp. 860–6, 872–3.

<sup>17</sup> Edwards and Ogilvie, ‘Reappraised’, p. 439–40.

<sup>18</sup> *Ibid.*, p. 423.

rely on private-order institutions is alleged to reveal similar private-order institutions.<sup>19</sup> This ahistorical approach has been used by Ogilvie to attack my works on various issues from as early as 1995.<sup>20</sup>

My position, in contrast, is historical. Although courts and reputation generally matter, their manifestations and relative importance depend on the historical context. The issue is not whether reputation mattered and courts existed in both societies, but whether they differed. Whether this was the case in some historical episode has to be verified, rather than asserted.

In the case of the Maghribis, the evidence reveals that reputation was particularly important for enforcement. Accordingly, my analysis focused on that issue. Courts, however, had roles other than enforcement and as such they complemented the multilateral reputation mechanism in various ways. Courts made opportunism public<sup>21</sup> and contributed to defining what actions constituted opportunism.<sup>22</sup> They also facilitated compromises, registered agreements, and confirmed compliance. Finally, by handling some disputes in which actions were legally verifiable such as debts and account clearing, the legal system probably reduced the frequency of costly multilateral punishments. Although an elaboration on these issues is beyond the scope of this paper, it provides sufficient examples to substantiate this claim.

The first section in this response refutes Edwards and Ogilvie's criticism of my documentary analysis. The second and third sections present the evidence regarding distinct reputation mechanisms and court enforcement respectively, and the fourth discusses culture. My 2008 rebuttal presents additional evidence regarding the court system and the documentary evidence. All articles pertaining to this debate by Edwards and Ogilvie and me are on my website: <http://www.stanford.edu/~avner/greif-debate.html>.

## I

Agency relations in long-distance trade are characterized by asymmetric information since the revenue an agent receives depends upon circumstances that are not directly observed by the merchant. In the absence of an appropriate institution, an agent can gain from being opportunistic by, for example, absconding with the goods, misreporting the revenues, or neglecting his duties. This agency problem attracted scholarly attention because of the importance of agency in pre-modern trade and the difficulty in monitoring faraway agents. Agency relations require an institution enabling agents to commit *ex ante* to refrain from opportunism *ex post*, after getting the goods.

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<sup>19</sup> Ibid., pp. 427, 439, 442.

<sup>20</sup> S. Ogilvie, 'Were merchant guilds really beneficial? A comment on Greif, Milgrom & Weingast', unpub. MS, Faculty of Economics, Univ. of Cambridge (1995).

<sup>21</sup> Goitein, *Mediterranean society*, vol. II, p. 340. See also Greif, 'Contract enforceability', and idem, *Institutions*.

<sup>22</sup> Ackerman-Lieberman, *Partnership*, pp. 254–84; Greif, 'Contract enforceability', p. 542. See also Clay, 'Trade without law'; idem, 'Trade, institutions, and credit'; Lydon, *Trans-Saharan*.

The Geniza documents,<sup>23</sup> on the basis of which I wrote my Master's thesis under the supervision of Professor Moshe Gil, reveal that the Maghribi traders considered agency relations crucial. As one trader wrote, "people cannot operate without people".<sup>24</sup> The evidence also led me to conjecture that commitment in bilateral agency relations was based on agents' concern with their reputation in the broader traders' group. For example, an agent explained that his choice of action was such that 'it would not be said about me that I did something that I was not ordered'.<sup>25</sup> Previously economic historians who studied such agency problems focused on legal institutions, trust within primordial groups, and innate honesty.<sup>26</sup>

Edwards and Ogilvie claim that not a 'single empirical example' I presented reveals that multilateral reputation within the Maghribi group mattered.<sup>27</sup> This claim is wrong. It is based on unfamiliarity with the original documents, misrepresentation of the literature, and misapprehension of the historical context and methodology. I consider below each of the five cases that Edwards and Ogilvie discuss.

Case 1 (P497): I noted that a trader, Abūn ben Sadaqa (Jerusalem), 'was accused (although not charged in court) of embezzling the money of another Maghribi trader. When a word of this accusation reached other Maghribi traders, merchants as far away as Sicily canceled their agency relations with him'.<sup>28</sup>

Edwards and Ogilvie's critique of this claim boils down to five points:<sup>29</sup> First, Abūn was accused in a court of law. Second, the accusation was that he 'robbed the government.' Third, he embezzled the

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<sup>23</sup> The (Cairo) Geniza documents were deposited in a synagogue in Fustat because they might have reference to God. Among the mostly religious texts there are thousands of documents pertaining to the social and economic history of the eleventh-century Jewish community. The largest single group of such historical documents is court documents (mainly regarding marriages, divorces, and inheritances) but there are also many letters written by traders who joined this particular synagogue. Professor Moshe Gil published any known document pertaining to the commercial, personal, legal, communal, or other affairs of known traders. There are 818 such documents, mainly letters between merchants and agents, but also 55 accounts and 26 court documents. Other collections useful for our purpose are the 105 previously unpublished partnership-related (but not necessarily trade-related) legal documents published by Ackerman-Lieberman ('Partnership') and 159 Arabic-written legal documents published by Khan ('Legal'). Although most documents are written in Hebrew characters, many are written in Arabic characters, presumably because people did not bother sorting old documents when depositing them. Documents were not deposited systematically and do not contain a complete correspondence of a particular trader. See references and elaboration below.

<sup>24</sup> Cited in Greif, 'Reputation', p. 864.

<sup>25</sup> P496, a, upper margin, lines 8–9.

<sup>26</sup> See Greif, 'Reputation', pp. 858–9, 867.

<sup>27</sup> Edwards and Ogilvie, 'Reappraised', p. 421. Specifically, they use the term 'coalition' here and I return to the relations between this term and multilateral reputation below.

<sup>28</sup> Greif, 'Reputation', pp. 868–9.

<sup>29</sup> Edwards and Ogilvie, 'Reappraised', pp. 424–6.

money of a Maghribi elder. Fourth, informal enforcement was secondary to legal sanctions. Fifth, Abūn was reprimanded by traders 315 miles away but not as far as Sicily.

The first critique that Abūn was accused in a court of law is based on an uninformed reading of a translated document. Abūn exclaimed that ““may God ban the person who wrote you solely on the strength of what he heard in the ... court”” of the head of the Yeshiva (the Jewish authority) in Jerusalem.<sup>30</sup> Edwards and Ogilvie use the word ‘court’ from the English translation they relied upon as if it meant ‘court of law’. But the ‘court’ in the original document is not a court of law (*beit-din* in Hebrew), but a *majlis*, a word used to refer to any place where people congregate, such as courtyards, audience halls, receptions halls, and even synagogues.<sup>31</sup> It was so common that Goitein noted that contemporaries considered ‘a house without a large hall [*majlis*] is not a house’.<sup>32</sup>

The second critique, that he ‘robbed the government’, is based on incomplete discussion of the analyses by Gil and Goitein on whom Edwards and Ogilvie rely. Both scholars assert that Abūn feared getting into trouble with the authorities and not that he was actually in such trouble. According to Gil Abūn wrote that he was concerned that ‘if a governor ... were to be appointed every week they [*Abūn*’s opponents] would approach him every week’.<sup>33</sup> Goitein’s interpretation is somewhat different, but he also does not claim that Abūn was actually in trouble with the authorities.<sup>34</sup> Goitein holds that the word ‘Sultān’ refers to the Muslim authorities and that rumors were spread that Abun had robbed the government. But in his translation, on the same page that Edwards and Ogilvie refer to, Abūn asks hypothetically, ‘what would happen if these rumors had reached the authorities?’.<sup>35</sup> The sentence indicates nothing more than a fear of the Muslim authorities. An eleventh-century Jewish person who actually ‘robbed the government’ would have been either on the run or in prison.<sup>36</sup>

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<sup>30</sup> *ibid.*, p. 425.

<sup>31</sup> See Diem and Radenberg, *Dictionary*, pp. 29–30; Gil, *Palestine*, vol. III, p. 695; vol. I, p. 567; Cohen, *Jewish self-government*, p. 263; Goitein, *Mediterranean society*, vol. II, p. 166; vol. VI, p. 66. A 1038 document mentions a celebration in the ‘*Majlis* [of the Head of the Yeshiva] 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 where all the community notables met’; Bareket, ‘Head’, p. 194. Although a court session could be held in a *majlis*, there is no corroborating evidence here. Gil’s (*Palestine*, vol. III, p. 222, line 32) transcription is *majlis*, but he accidentally translated it as *beit-din* and Simonsohn, on whom Edwards and Ogilvie rely, corrected him and wrote ‘court’; Simonsohn, *Jews*, p. 105.

<sup>32</sup> Goitein, *Mediterranean society*, vol. IV, pp. xiii (preface, quotation), 48–9, 62–9.

<sup>33</sup> Gil, *Palestine*, vol. III, p. 220.

<sup>34</sup> Goitein, *Mediterranean society*, vol. V, p. 303.

<sup>35</sup> *Ibid.*, vol. II, p. 372.

<sup>36</sup> *Ibid.*, pp. 372–3. For more details, see Greif, ‘Reappraisal?’ (see above, n. 21).

The third critique is due to lack of attention to the details of the case. Did Abūn cheat a trader or simply some gentleman? The letter says that Abūn was accused of embezzling the money of a Maghribi *sheikh* (elder) and the term, Edwards and Ogilvie argue, was not reserved only to traders. Abūn's letter, however, was sent by a trader, to a trader and as customary it refers to two known traders as 'elders'. It stands to reason that the third reference was also to a trader. In any case, Gil argued that the estate in question belonged to a Maghribi trader from Sicily who died in Jerusalem.<sup>37</sup>

Fourth, Edwards and Ogilvie claim that reputation was marginal: 'Any informal enforcement via denigration of Abūn's reputation was a supplement to formal institutions, not a substitute for them'.<sup>38</sup> But the document clearly reveals that the matter was publicly known, it is mainly concerned with reputation, and Abūn was harshly punished by uninvolved individuals. Abūn wrote to Hayyim (with whom he previously had agency relations) that '[you] are ashamed that my letters are reaching you' and complained that 'no one has been repudiated as much as I have been ... it came to pass that if someone had said [unclear words] ... he would have been told: *Abūn* consumed the money of the Maghribi elder.'<sup>39</sup> In another letter (P499) he wrote that "in these lands there is no one who will partner up in trading opportunities, attending the needs of his friends."

According to Gil, Abūn's predicament was not the law but that he 'was accused of dishonesty toward one of the Maghribis [and thus *not* the government]. Indirectly we can learn how strict the Maghribis were with one of their own who was dishonest'<sup>40</sup> Similarly, Goldberg, on whom Edwards and Ogilvie rely heavily, also holds the centrality of reputation. She 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 ... Abūn was able to clear his name of this charge, but had little success in maintaining or extending his network of associates.*<sup>41</sup>

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<sup>37</sup> The identification is reported in Gil, *Kingdom*, vol. I, p. 584, n. 330 (with a typo, 639 instead of 369). The trader was Hayyim's father. See K388, K649, and K651 and also K369, l. 28 and K749, b. 14.

<sup>38</sup> Edwards and Ogilvie, 'Reappraised', p. 425.

<sup>39</sup> Gil, *Palestine*, vol. III, pp. 219–20.

<sup>40</sup> Gil, *Palestine*, vol. I, p. 222. Edwards and Ogilvie also refer to the mistaken discussion in Gil, *History*, p. 168. that the letter is 'showing Abūn complaining that "his opponents pour abuse on him in the Muslim legal institutions"'; Edwards and Ogilvie, 'Reappraised', p. 425. This citation is misleading. When Gil published this document previously (*Palestine*, vol. III, no. 497, pp. 218–24) he did not make this statement. It is clear that when he wrote the above sentence, nine years later, he got various details mixed up. For example, he wrote by mistake that *Hayyim* was accused by *Abūn* when the opposite occurred: '[Abun's] 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'. Clearly, Gil got Hayyim, Abūn, and the details mixed up.

<sup>41</sup> Goldberg, 'Geographies', pp. 186–7 (bases on P499 r 11-12: "in these lands there is no one who will partner up in trading opportunities, attending to the needs of his friends," which she note attests to his continuing difficulties finding partners.



Edwards and Ogilvie seem to be unaware of her statement, although they refer to these pages twice.<sup>42</sup> They wrongly invoke Goldberg's authority in claiming that Abūn was not punished by the Maghribis when considering my argument 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 [*ashābunā*], the Maghribi travelers, each one by name'. Edwards and Ogilvie, claiming Goldberg's authority, assert that there is no evidence here for Abūn being under any kind of multilateral punishment. Requests to send regards to all of the Maghribis were common. But Goldberg, in fact, concurs with my reading that this request differed. She writes that 'shoring up his claim, under attack, as a worthy member of this group, Abūn ben Sadaqa ... asks to be remembered to "all *ashābunā*, the *maghariba* travelers, each one by name"'. He should not have been worried about 'shoring up his claim' of membership if collective reputation did not matter. Abūn also signed this letter by adding 'al-Qabisi' to his name, stressing his birth city in North Africa and thus that he was a Maghribi.

Fifth, as to the marginal matter of distance, we know that letters were sent to Alexandria on their way to Sicily. In fact, we know that prior to the affair; Abūn sent letters there to be forwarded to Hayyim's home town of Palermo in Sicily. Moreover, even if Hayyim was 'only' 315 miles away in Alexandria rather than in Sicily, it is difficult to believe that he did not communicate with his brothers and brothers-in-law in Sicily.

To sum up, there is nothing in Edwards and Ogilvie's analysis of case 1 that supports their critiques. It fully demonstrates the power of multilateral sanctions as penalties for opportunistic behavior.

Case 2 (K221): Samḥūn ben Da'ud (Qayrawān, Tunisia) complained that 'letters filled with condemnation had reached everyone' and therefore 'my reputation [or honor] is being ruined'.<sup>43</sup>

Edwards and Ogilvie allege that these letters were sent 'here to everyone', namely, everyone in Qayrawān. The case was thus known only to Maghribi traders in Fustat and Qayrawān implying that information was not widely shared.<sup>44</sup> Edwards and Ogilvie seem unaware that there are three translations of this document and the one they relied on is the least reliable. According to the other two translations (and Gil's transcription), the letters reached 'everyone'.<sup>45</sup> In any case, Fustat and Qayrawān were the

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<sup>42</sup> Edwards and Ogilvie, 'Reappraised', nn. 144, 190.

<sup>43</sup> Greif, 'Reputation', p. 869.

<sup>44</sup> Edwards and Ogilvie, 'Reappraised', p. 427.

<sup>45</sup> Published by Stillman, 'Relations', p. 270 and Gil, *Kingdom*, vol. II, p. 647. Edwards and Ogilvie relied on Goitein, Letters, pp. 27–8, who credited Stillman for the translation (although he edited the document in 1968). The letters reached כל אדם meaning 'to everyone'. The word 'here' was added by Goitein to Stillman's translation. Interestingly, although Goldberg, 'Geographies', p. 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 Edwards and Ogilvie's message.

Maghribis' two most important trade centres. Moreover, multilateral reputation does not require every trader to know of every transgression, but only that merchants have the ability and incentive to acquire such information prior to establishing agency relations.

Case 3 (K561): A letter sent around 1050 from Maymūn ben Khalfā (Palermo) to Nahray ben Nissīm (Fustat) suggests that relations between a particular agent and merchant were of concern to other coalition members.<sup>46</sup> Maymūn defended Nahray's agent in Palermo saying, 'do not blame him; he is not at fault', and said that the conflict worries everyone.<sup>47</sup>

Edwards and Ogilvie's counter-argument is based on a mistranslation and is illogical. They argue that 'Maymūn's statement is more plausibly interpreted in terms of the semi-public role of the agent as 'merchants' "representative"' (*wakīl*, according to them) who provided agency services for absent traders.<sup>48</sup> But the agent was not a representative. The Judeo-Arabic text referred to him as our 'respectable elder' (*sheikhnā*).<sup>49</sup> Moreover, even if the agent was a 'representative' and the other merchants believed that he was honest, why was the conflict a concern? After all, they could have continued to do business with him. The multilateral reputation conjecture explains this observation. An agent, who is considered to have cheated, has less to lose from cheating, imposing a higher agency cost on those who work with him, hence Maymūn's efforts to absolve the agent.

Case 4 (K319, K581): Khallūf ben Mūsā (Palermo, Sicily) sold the pepper of Yeshū'ā ben Isma'īl (Alexandria) for a low price because he 'was afraid that suspicion might arise against' him but subsequently sold his own pepper for a higher price. Khallūf had no legal obligation to compensate Yeshū'ā, but nevertheless shared the gain with him. 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.<sup>50</sup>

Edwards and Ogilvie advance a 'more plausible' interpretation that Khallūf acted out of 'a desire to minimize complications in ending the unsatisfactory partnership'.<sup>51</sup> They add that 'ending a Maghribi partnership could entail numerous legal steps in front of both Muslim and Jewish authorities ... this

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<sup>46</sup> Greif, 'Reputation', p. 870.

<sup>47</sup> Gil, *Kingdom*, vol. III, p. 862.

<sup>48</sup> Edwards and Ogilvie, 'Reappraised', p. 427.

<sup>49</sup> David Kaufman Collection, Budapest, 230 d+a, K561, side b, line 17 published in Gil, *Kingdom*, vol. III, p. 862. Edwards and Ogilvie, 'Reappraised', n. 59, rely on the outdated version in Gil, 'Jews of Sicily', p. 106, and on Simonsohn, *Jews*, no. 109, pp. 209–12. The latter reference is wrong and these pages contain doc. no. 105 to which Edwards and Ogilvie refer in n. 52. Simonsohn's translation contradicts their claim as well: 'he is our agent and this (affair) worries all of us'; *ibid.*, p. 228.

<sup>50</sup> Greif, 'Reputation', p. 871.

<sup>51</sup> Edwards and Ogilvie, 'Reappraised', p. 428.

interpretation is supported by subsequent events: the partnership was dissolved only after formal litigation'.<sup>52</sup>

This 'more plausible' interpretation is actually far less so. First, according to Gil, the 'subsequent events' Edwards and Ogilvie point to took place in 1063, a full 12 years after the generous profit-sharing event (K319). If, as Edwards and Ogilvie claim, terminating a partnership required 'numerous legal steps' for 12 years, how could the legal system be useful in governing trade? Because the dating of Geniza documents is an art, not a science, it is reassuring that the legal case had nothing to do with Yeshū'ā's windfall but was regarding accounting issues.<sup>53</sup>

Finally, Khallūf did not end a partnership in 1051 but a form of agency relation (formal friendship) that did not require any legal procedure. Khallūf wrote, 'settle my account ... and give the balance to my brother-in-law'.<sup>54</sup>

Case 5 (K630, K632): 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 Yaḥyā ben Mūsā al-Majjānī (al-Mahdiyya in Tunisia), 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]".<sup>55</sup>

Edwards and Ogilvie's critique of my argument boils down to three points.<sup>56</sup> First, the agitation against Yaḥyā had nothing to do with agency but followed the arrival of a power of attorney unrelated to the agency dispute. Second, the non-payment was directed not against Yaḥyā's business, but against his father's estate. Third, the case reveals a legal system able to enforce agency relations in long-distance trade.

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<sup>52</sup> Ibid.

<sup>53</sup> Edwards and Ogilvie, 'Reappraised', p. 437, n. 155, present the case as unrelated evidence of legal enforcement. It ended with a deed explicating the (non-legally binding) settlement proposed by the elders, and not after 'the Jewish court imposed a complicated settlement', as Edwards and Ogilvie assert. They refer to Goitein, *Letters*, p. 134, who, however, writes ?? 'the "elders" ... took the trouble to go through the accounts and came up with a complicated settlement'.<sup>53</sup> 'In cases of real settlements outside the court, our documents state that "upright elders" ... brought about an agreement'; Goitein, *Abridgment*, p. 321.

<sup>54</sup> Goitein, *Letters*, p. 125. On formal friendship see Goitein, 'Friendship'; Greif, 'Reputation'; Goldberg, 'Geogrpahies'; Ackerman-Lieberman, *Partnership*. See below n. 160.

<sup>55</sup> Greif, 'Reputation', p. 870. I did not see the point of making the distinction between the obligation that Yaḥyā assumed by himself and those he inherited from his father. To highlight the departure from the text, I used square brackets.

<sup>56</sup> Edwards and Ogilvie, 'Reappraised', pp. 429-30.

To start with, the letter and the power of attorney are concerned with the same agency dispute. Ya‘qūb ibn ‘Allān, the protagonist in the letter (K630), was also the plaintiff in the court appeal (K632) concerning the agency dispute. This fact might have eluded Edwards and Ogilvie because Ya‘qūb is referred to in this instance by his honorific name (*kunya*), Abū‘l-Faraj, but Edwards and Ogilvie also overlook the fact that Goitein, on whom they otherwise rely, notes that ‘Yaḥyā... was publicly accused of malpractice (see the preceding selection)’.<sup>57</sup> The preceding selection is Ya‘qūb’s court appeal (K632). In his commentary to the letter, Goitein again notes that Ya‘qūb ibn ‘Allān was Yaḥyā’s ‘chief opponent’.<sup>58</sup> Gil concurs. ‘The main focus of the letter is on the monetary conflict between the writer [Yaḥyā] and Abū‘l-Faraj, Ya‘qūb ben Ibrāhīm ibn ‘Allān’.<sup>59</sup> The distinction that Edwards and Ogilvie make between ‘Yaḥyā’s business’ and ‘his father’s estate’ is irrelevant. Yaḥyā was liable to pay his late father’s financial obligations.<sup>60</sup> The seriousness of the commitment is suggested by the observation that subsequently his name appears on a list of recipients of communal charity.<sup>61</sup>

As to their third point: in no way does the case reveal a legal system able ‘to enforce agency relations in long-distance trade’.<sup>62</sup> Ya‘qūb says that he appealed to the court ‘various times’ prior to this particular appeal but Yaḥyā ‘was not reformed’.<sup>63</sup> In other words, the court did not force Yaḥyā to pay, leading Ya‘qūb to request the court to ‘repeat my claim’.<sup>64</sup> In repeating his claim, Ya‘qūb found it necessary to threaten that, unless the court resolved the matter, he would ‘be forced to make known his [Yaḥyā’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’.<sup>65</sup> The importance of Jerusalem here was, according to Goitein, in ‘the fact that almost every Jewish community ... had its representatives there, which made an appeal to the

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<sup>57</sup> Goitein, *Letters*, p. 102.

<sup>58</sup> *Ibid.*, p. 104, n. 8.

<sup>59</sup> Gil, *Kingdom*, vol. III, p. 87. It is not likely that the agitation against Yaḥyā arose from debt (and not agency) as Edwards and Ogilvie claim based on Yaḥyā’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*, p. 104. Goitein, on whom Edwards and Ogilvie rely, suggests that Abu-‘l-Tayyib was a creditor but does not provide any evidence; *ibid.*, n. 20. Gil, *Kingdom*, vol. IV, p. 89, n. 30, 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*, p. 98.

<sup>60</sup> Goitein, *Abridgment*, p. 348.

<sup>61</sup> Goitein, *Mediterranean society*, vol. II, p. 440.

<sup>62</sup> Edwards and Ogilvie, ‘Reappraised’, p. 430.

<sup>63</sup> Goitein, *Letters*, pp. 96–7.

<sup>64</sup> *Ibid.*, p. 97.

<sup>65</sup> *Ibid.*

public in that town particularly effective'.<sup>66</sup> The geography here is significant: while Ya'qūb was in Egypt and Yaḥyā was in Tunisia, he was threatening to take the issue all the way to Jerusalem.

Appeals to the court in Fustat did not intimidate Yaḥyā. A power of attorney was not followed by a legal proceeding, but by other traders withdrawing payments. Yaḥyā did not respond by lawsuits, but relied on the judge to try to convince the traders of his innocence. The Nagid (the leader of the Jewish community in North Africa), to whom Ya'qūb sent the legal documents, comforted Yaḥyā by saying that Ya'qūb had a reputation for making false claims and that people remember such things. As Yaḥyā wrote, the Nagid 'admonished me saying: "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 'Allān] has acted in such a way".<sup>67</sup>

Finally, Yaḥyā considered the court a means to coordinate expectations, thus 'stopping the affair'. He was 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'.<sup>68</sup> There is no evidence here that the court had enforcement power in agency relations. The case reveals the power and centrality of the multilateral reputation mechanism.

In summary, the documents clearly reveal multilateral reputation among the Maghribi traders. Information circulated widely and traders responded to actions taken in relations they were not involved with. Edwards and Ogilvie give the false impression that the experts they rely upon have uniformly concluded the opposite. This is not the case. Ackerman-Lieberman, cited heavily by them, notes that 'Greif is undoubtedly correct that the reputation mechanism played an important role in preserving an individual's future opportunities in the market place'.<sup>69</sup> Goldberg's 2005 dissertation, upon which Edwards and Ogilvie lean heavily, repeatedly confirms the importance of multilateral reputation.<sup>70</sup> Furthermore, Goldberg's response to Edwards and Ogilvie's current article is that 'the evidence for the role of reputation in the [Maghribi] business community cannot be so easily dismissed as Edwards and Ogilvie suggest'.<sup>71</sup> This is not to say that these experts endorsed every point I have made; the evidence

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<sup>66</sup> Ibid., n. 5.

<sup>67</sup> Ibid., p. 105, and see also n. 12 on that page.

<sup>68</sup> Ibid.

<sup>69</sup> Ackerman-Lieberman, *Partnership*, p. 249.

<sup>70</sup> 'The merchant community, and not the legal system, was called upon to take up much of the work of enforcement and redress, particularly in ... agency'; Goldberg, 'Geographies', p. 206.

<sup>71</sup> J. Goldberg, 'Making reputation work: re-examining law, labor and enforcement among Geniza businessmen', paper given at the conference 'Before and beyond Europe: economic change in historical perspective', Yale Univ. (Feb. 2011), p. 4.

allows for different interpretations on many subtle points.<sup>72</sup> Edwards and Ogilvie, however, tend to miss subtle points.

## II

While Edwards and Ogilvie's criticism of my documentary analysis is wrong, their methodological critique is directed toward one I do not use. According to them, 'Greif's argument' is that one can 'argue that any institution exists (even if there is no evidence for it) by claiming that it creates beliefs obviating the need for the institution actually to operate. Lack of evidence for the institution's existence can then be dismissed on the grounds that this demonstrates that the institution is perfectly successful.'<sup>73</sup> My position is exactly the opposite and is clearly stated in my work: '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'.<sup>74</sup> 'We want to *identify* the relevant institutions, not *assert* that a feasible one was relevant'<sup>75</sup> and 'while theoretical considerations can generate many hypotheses, one has to look at the evidence to verify any postulate'.<sup>76</sup>

I have discussed the methodology of comparative and historical institutional analysis repeatedly.<sup>77</sup> Multiple contract enforcement institutions usually can govern the same transaction and different ones are often used simultaneously. In agency relations, for example, one can rely on trust among kin, legal enforcement among strangers, social pressure within a group, or economic reputation in a business community. The specific institution motivating behaviour is often not directly observable, implying that the methodological challenge is to identify the relevant institutions and their relative importance.

My framework facilitates such identification by recognizing that all effective institutions generate beliefs concerning the relations between an agent's past conduct and his future welfare. A merchant who

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<sup>72</sup> For example, Goldberg, 'Geographies' argued that the Muslim authorities had important role in promoting trade. Ackerman-Lieberman, *Partnership*, found that the Jewish law impact norms of good conduct; van Doosselaere, *Commercial agreements*, noted the role of Genoese professional groups in disciplining member-agents. D. Harbord ('Enforcing cooperation among medieval merchants: the Maghribi traders revisited', Munich Personal RePEc Archive working paper no. 1889, 2006) extended the basic model to capture the motivation to share information and reciprocate in agency service. M. R. Cohen noted Maimonides' attempt to expand legal options in agency relations. ('Law and society in Maimonides' Mishneh Torah: codification in the post-Talmudic Islamic economy', lecture, Bernard Revel Graduate School of Jewish Studies. 8 Nov. 2011. Cohen's observation substantiates, in my view, that agency relations did not rely on court enforcement.

<sup>73</sup> Edwards and Ogilvie, 'Reappraised', p. 431.

<sup>74</sup> Greif, *Institutions*, p. 360.

<sup>75</sup> *Ibid.*, p. 365.

<sup>76</sup> Greif, 'Reputation', p. 868.

<sup>77</sup> Greif, 'Historical'; *idem*, 'Reputation', pp. 858–9, 867–8; *idem*, 'Fundamental problem', pp. 259–60; *idem*, *Institutions*, pp. 350–76; *idem*, 'Contract enforceability', pp. 531–2; Bates, et al, *Analytic narratives*, pp. 3–22.

believes that the agent considers honesty to be his best policy, would trust the agent. If the agent actually holds this belief, he is trustworthy. All effective institutions generate such beliefs based on different combinations of such means as legal punishment, social sanctions, innate honesty, and concern with reputation. This observation facilitates identifying the relevant institutions by evaluating the plausibility and manifestations of various beliefs in a particular historical context. In particular, it is possible to supplement direct evidence, such as the five cases above, with a comparative analysis of indirect evidence. That is, the evaluation of predictions (observable implications) generated under the assumption that a particular belief prevailed.

In studying agency relations, a parsimonious model facilitated the generation of predictions. My model's building block is the relationship between each of the many merchants and his (potential) agents. All agents are identical (in their propensity to cheat) and the relations between an agent and merchant might end in each period due to exogenous reasons. Such *forced separation* may be due to, for example, shifting trade pattern or bankruptcy. Following each period, a merchant can continue operating through him (unless forced separation had occurred) or recruit another. Clearly, this model does not do justice to the complex reality we seek to understand, nor is it aimed to do so. It is a means to facilitate examination of the issues involved and evaluation of various conjectures.

The analysis reveals, for example, that particular beliefs are required for a merchant to voluntarily participate in a collective punishment. Suppose that the traders share the belief that no one will hire an agent who had cheated; each merchant believes that his agent(s) expect other merchants to shun a 'cheater'. Under such 'collectivist belief', one who is considered a cheater would cheat again in situations in which other agents would not because, having a bad reputation, he has less to lose from cheating. Anticipating this, each merchant is better off not hiring a cheater, *ceteris paribus*. The threat of multilateral punishment is thus credible *despite* the fact that cheating in the past does not indicate that the agent is a 'lemon' and *despite* the fact that neither agents nor merchants would retaliate against a merchant who hires an agent known to have cheated before.<sup>78</sup> In contrast, if the 'individualistic belief' that *only* those close to the cheated merchant will respond prevails, uninvolved merchants have no reason to punish.

The coalition conjecture holds that bilateral agency relations were supported by an in-group multilateral reputation. Bilateral agency relations were established in the context of the Maghribi traders' group that constituted the social structure within which collectivist belief was shared, a common comprehension of appropriate actions prevailed, and information about conduct and identities circulated. This conjecture is broad enough to accommodate the limit of our knowledge, such as whether the group was a subset of the broader Maghribi community, how it evolved, or what actions were considered cheating.

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<sup>78</sup> Idem, 'Contract enforceability', p. 535; idem, 'Cultural beliefs'; idem, *Institutions*.

Edwards and Ogilvie misconstrue this conjecture and refute one I explicitly rejected. They say: ‘in Greif’s portrayal’ the Maghribi traders constituted a ‘*monolithic*’ and ‘*cohesive group*’ with ‘*collective relationships*’ in which exchange was ‘based on *collective ostracism* within an *exclusive* coalition’.<sup>79</sup> They refer to Greif, ‘Reputation’, but one will not find any support there (or elsewhere). The article they refer to does not contain any of the terms that are alleged to be its essence such as ‘*collective relationships*’, ‘*collective ostracism*’, or ‘*exclusive*’, nor does it make these claims using other terms. I explicitly rejected the primordial-group conjecture that Edward and Ogilvie allege I hold.<sup>80</sup>

This false conjecture is inconsistent with observations that motivated my analysis such as the fact that bilateral agency relations prevailed and there is no evidence for a collective ex-ante decision to shun non-group members. Moreover, this false conjecture transforms predictions that confirm my actual conjecture into evidence that refutes it. To illustrate, consider Edwards and Ogilvie’s crucial claim that *any* relation with non-Maghribis refutes the coalition’s conjecture. In fact, the multilateral reputation conjecture reconciles the puzzle of finding only a few inter-group agency relations in a society in which there was an ‘astonishing degree of inter-denominational cooperation’.<sup>81</sup>

A predominance of intra-group agency relations is actually a *prediction* of my conjectured and not a *condition* for it to hold. Multilateral reputation increases agency cost with a non-member because a non-member, not expecting to be hire by other members in the future, has less to gain from retaining his reputation. An outsider is thus less attractive to a member merchant (*ceteris paribus*). Non-member agents would be used only if the additional gain compensates for the higher agency cost. Moreover, the analysis also highlights that many relations with non-members undermine the multilateral reputation mechanism. The empirical question is not *whether* there were inter-group agency relations, but *how many* of them prevailed. A few exceptions are expected and would not disprove the rule.

Edwards and Ogilvie’s discussion gives the impression that the entire concept of the Maghribi group is both doubtful and uniquely mine: ‘The *existence* of a distinct subgroup of Maghribi merchants who [rarely established out-group agency relations] is *open to doubt*’.<sup>82</sup> The documents leave no doubt that the Maghribis were a distinct subgroup in the Jewish population.<sup>83</sup> The list of markers identifying Maghribis is long and includes characteristic first and last names,<sup>84</sup> birth places, ancestral homes, and relatives’

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<sup>79</sup> Edwards and Ogilvie, ‘Reappraised’, pp. 421-3, abstract (emphasis added).

<sup>80</sup> Greif, ‘Reputation’, p. 858.

<sup>81</sup> Goitein, *Studies*, p. 350.

<sup>82</sup> Edwards and Ogilvie, ‘Reappraised’, p. 423 (emphasis added).

<sup>83</sup> Goitein, *Studies*, pp. 316–28; Greif, ‘Reputation’, p. 860; Gil, *History*, pp. 260–77; Cohen, *Jewish self-government*; Bareket, ‘Head of the Jews’. There may have been Maghribi groups that are not reflected in the Geniza.

<sup>84</sup> We saw some of these names above: Abūn, Khallūf, Maymūn, Samḥūn, and al-Majjānī.



residences. Goitein, in a book on which Edwards and Ogilvie rely heavily, devoted several pages to establish that the Maghribis were a distinct subgroup within the Jewish community.<sup>85</sup> Maghribis refer to themselves as such. In case 1 above, Abūn referred to the ‘Maghribis’ and another merchant, Abraham ben Saadya, discussed in section IV, noted that that particular event ‘is known to many people, all the Maghribis in Egypt’.<sup>86</sup> Maghribis organized an embargo on Sicily, got into conflict with Jews from other localities, and were involved in communal power struggle in Jerusalem.<sup>87</sup> Moreover, as I noted:

*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.*<sup>88</sup>

But were agency relations held mainly among Maghribis? The Geniza’s commercial correspondence — among merchants and agents—was deposited mainly by Maghribis. Goitein concluded that ‘an overwhelming predominance ... at least 80 percent ... of all business correspondence’ was written by Maghribis.<sup>89</sup> Gil concurs. ‘The writers of the letters, almost all of them, were people from the Maghrib’,<sup>90</sup> and the number of ‘letters from merchants, called “Maghribis” ... is ... several times greater than all the letters ... of other merchants put together’.<sup>91</sup>

Agency relations with Muslims and Jews from Latin Europe, Byzantium, and Muslim Spain were uncommon.<sup>92</sup> My sample revealed that two per cent of agents were Muslim.<sup>93</sup> Edwards and Ogilvie dispute this finding by bringing examples supported by 25 references in 12 footnotes. In fact, all their

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<sup>85</sup> Goitein, *Studies*, pp. 316–28.

<sup>86</sup> Gil, *Kingdom*, vol. II, p. 672.

<sup>87</sup> See, for example, Greif, ‘Reputation’, p. 860; Gil, ‘History’, pp. 260–77.

<sup>88</sup> *Ibid.*, p. 862.

<sup>89</sup> Goitein, *Mediterranean society*, vol. I, p. 20.

<sup>90</sup> Gil, *Kingdom*, vol. I, p. 675.

<sup>91</sup> Gil, ‘Shipping’, pp. 248. Maghribis also dominated the trade with the Far East.

<sup>92</sup> Goitein, *Mediterranean society*, vol. I, p. 20; Gil, *Kingdom*, vol. I, p. 675; *idem*, ‘Shipping’, p. 248.

<sup>93</sup> Greif, ‘Cultural beliefs’, p. 930. Selection bias is unlikely as legal documents reveal many inter-faith relations. There are three industrial partnerships with a Muslim partner in a corpus of 105 legal, partnership-related documents (Ackerman-Lieberman, ‘Partnership’), but no partnership entailing long-distance agency relations. Similarly, among 159 Arabic-written legal documents (Khan, *Documents*), at least 16 reflect inter-faith economic ties. The only one related to long-distance trade (no. 77, c.1125) is a complaint by a Jewish trader regarding the confiscation of his goods by a *qadi*.

references contain evidence to only six (and at most 10) Muslim agents and partners.<sup>94</sup> The sample they draw upon, however, contains at least 550 different Maghribi partners and agents.<sup>95</sup> The percentage of Muslims is thus between 1.1 (6/550) to 1.8 per cent (10/550); lower than in my sample.

There were probably inter-group agency relations we do not know about, and non-Maghribis were also sometimes used for simple agency tasks such as delivering letters or goods. It is clear, nevertheless, that inter-group agency relations were the exception, not the rule.

Observing a few non-Maghribi agents is reassuring. If there was no evidence whatsoever of non-Maghribi agents, we could never know whether the outcome was 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'.<sup>96</sup> 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 postulated.<sup>97</sup>

In Genoa, inter-group relations were more common and increasingly so. From 1155 to 1164 at least 18.3 per cent of the total sent abroad through agents was sent or carried by a non-Genoese<sup>98</sup> while from 1190 to 1192, 33 per cent (450/1,363) of the 'individuals involved in long-distance trade' were 'foreigners or individuals living in nearby towns'.<sup>99</sup> The gap between the Maghribis and Genoese is too large to be dismissed.<sup>100</sup>

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<sup>94</sup> The relevant documents are Taylor-Schechter Collection, University Library, Cambridge 16.11, in Ackerman-Lieberman, *Dissertation*, vol. 1, pp. 56–7; K120, K184, K186, K193, K251, K479, K490–2, K517, K751, K554, K694. Four partnerships with non-Jews (of which two ended in a legal dispute and one involved a high-ranking Jewish doctor rather than a trader), three Muslim agents (one appearing in multiple documents), a Muslim intermediary in the Egyptian countryside, and two cases in which a Maghribi trader asked another to host one or two Muslims friends (two of whom, the Maghribi noted, can be trusted with goods). Many references are irrelevant and repetition is common. To illustrate, Gil, *Jews in Islamic countries*, p. 687, is alleged to describe 'business dealings with Christian merchants'; Edwards and Ogilvie, 'Reappraised', p. 432, n. 100. Clearly, business dealings are not agency relations. Moreover, Gil only says that an agent reported the approaching of a ship with Christian merchants.

<sup>95</sup> These documents include those of the two main Maghribi traders of the first and second halves of the eleventh-century (Ibn 'Awkal and Nahray b. Nissīm) who had more than 550 associates; Goldberg, 'Geographies', p. 184.

<sup>96</sup> Goitein, *Studies*, p. 350.

<sup>97</sup> The argument also explains the puzzle of a low rate of agency relations with European Jews even though the Maghribis considered exchange with Europeans and Byzantine traders to be highly profitable.

<sup>98</sup> *Idem*, 'Cultural beliefs', p. 931. Although the Genoese cartularies I consulted were written in Genoa and hence are biased toward reflecting agency relations among Genoese.

<sup>99</sup> van Dooselaere, *Commercial agreements*, p. 79, n. 36.

<sup>100</sup> Edwards and Ogilvie do not mention this comparative evidence although they refer to both works on other issues.

Edwards and Ogilvie accept my actual analysis while rejecting a distorted version of it. I argued that ‘trust’ in agency relations was based on multilateral reputation among traders who ‘in their letters ... refer to themselves as “our people” [*asḥābunā*], the Maghribi traders’.<sup>101</sup> What do Edwards and Ogilvie claim?<sup>102</sup> ‘Trust’ in agency relations was based on ‘reputational pressure ... [in] a wider group of Maghribi traders’ to whom the ‘letters refer ... as the *asḥābunā*’.<sup>103</sup> Edwards and Ogilvie’s claim that the two positions are ‘very different’<sup>104</sup> because there were some inter-group agency relations is wrong, as we just saw. Edwards and Ogilvie’s ‘very different’ interpretation is not different at all.<sup>105</sup>

My claim that the Maghribi group was relatively closed should not be confused with the claim that there were no changes in the composition of the merchant community. On the contrary, the symbiosis between the group and the institution reveals why and how this composition changed. The Maghribi traders group provided the familiarity and information network required for the operation of the economic institution. At the same time, the implied pattern of agency relations motivates retaining relations with the group. This symbiosis implies that social changes should have influenced the scope of the institution as in fact was the case. In Egypt, Maghribis married into families of local Jewish traders. The new set of social relations enabled them to shift more of their trade toward the Syrian coast where these Egyptian (Jewish) traders had operated before.<sup>106</sup>

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<sup>101</sup> Greif, ‘Reputation’, p. 862 (text and n. 21); idem, ‘Enforceability’, p. 546. To clarify matters, the term ‘*asḥābunā*’ appears more often in the Geniza than ‘Maghribis’ (as Goldberg, ‘Geographies’ pointed out) and it literally means ‘our companions’, ‘our friends’, or ‘our associates’. The term has significant cultural overtones. It relates to the personal bond between the Prophet Muhammad and his first followers. Goitein, ‘Formal friendship’, p. 485, argued that the term was used to denote both ‘coreligionists’ and one’s group of business associates. Goldberg, ‘Geographies’, p. 178, conjectured that the *asḥābunā* group was that of the ‘Arab Jewish traders’. Edwards and Ogilvie do not mention either of these interpretations although they refer to both works when 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 sometimes difficult to identify whether an Arab Jewish trader is a Maghribi (for example, Greif, ‘Reputation’, p. 862). Goldberg, ‘Geographies’, relied on merchants’ letters that under-reflect other uses of the term *asḥābunā* such as referring to Jews who were not traders (see, for example, P356 and P586) or were Karaites (K816, P291, P313). Moreover, agency relations with members of some groups of Arab Jewish traders are rare (for example, Jewish traders from Spain; Goitein, *Mediterranean society*, vol. I, pp. 21–2). The multilateral reputation conjecture explains why ‘despite the Maghribis’ perception that trade with the Christian world was most profitable ... Maghribi traders did not establish agency relations with the Italian Jewish traders who were active during this period’ (Greif, ‘Enforceability’, p. 536) although they held communal relations.

<sup>102</sup> Recall that in 2008 Edwards and Ogilvie categorically rejected my claim that ‘trust’ in agency relations was based on multilateral reputation. ‘Any opportunism would have resulted in bilateral punishment’; Edwards and Ogilvie, ‘Reappraised’ (2008) (see above, n. 8), p. 12.

<sup>103</sup> Edwards and Ogilvie, ‘Reappraised’, pp. 442, 434.

<sup>104</sup> *Ibid.*, pp. 423 (quotation), 421, 422, 434, 442.

<sup>105</sup> Although they claim that the *asḥābunā* group has no clear boundary, they nevertheless somehow know that members had agency relations with non-members. ‘Individuals who were *asḥābunā* also undertook business connections with individuals who were not *asḥābunā*’; Edwards and Ogilvie, ‘Reappraised’, p. 434.

<sup>106</sup> Goldberg, ‘Geographies’, p. 293.

The institutional distinction conjecture also implies that social stratification would systematically differ depending on the prevailing reputation mechanism. Theoretically, the ways that merchants can reduce agency costs depend on the prevailing reputation mechanism. Under the multilateral reputation mechanism agents who are also merchants—who also invest through agents—can better commit to honesty<sup>107</sup> for a reason reflected in cases 2 and 5. One’s capital constituted a bond to honesty as traders withheld payments to a perceived cheater. If each merchant preferred operating through a merchant, the resulting group would be composed of traders each of whom invests through agents and provides agency services. The evidence confirms this prediction. I found that among the Maghribis 71 per cent of the (repeated) traders operated as merchants and agents as compared to 21 per cent in mid-twelfth-century Genoa.<sup>108</sup>

In describing the Maghribis’ business organization, Geniza scholars noted that ‘members of a family usually worked together, but preferred to keep their accounts *separate*’.<sup>109</sup> Moreover, ‘complete and long-range pooling of resources ... seems to have been the *exception* rather than the rule’<sup>110</sup> although the required contractual forms were known and legal. In thirteenth-century Italy, in contrast, family firms that pooled capital on a permanent basis emerged and diffused.<sup>111</sup> These family firms were used *not* ‘to govern agency relations among family members, but to govern agency relations between family and non-family’ agents.<sup>112</sup> They extended the expected length of agency relations by pooling (initially family members’) capital and employing non-kin agents on a permanent and exclusive basis.

This different evolution is as predicted by the institutional distinction conjecture. To see why note that under a bilateral reputation mechanism, a merchant can reduce agency cost by adopting organizational forms that extend the expected length of his agency relations. The longer the expected employment of an honest agent is (the lower is the likelihood of forced separation), the lower the agency cost. The agent has more to lose by being dismissed. In contrast, under a multilateral reputation mechanism, other merchants will respond to cheating, increasing the penalty for bad behaviour. Thus, the reduction in agency costs due to extending the expected length of bilateral relations will be smaller or even nil.

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<sup>107</sup> Greif, *Institutions*, pp. 282–7; idem, ‘Cultural beliefs’, pp. 925–8.

<sup>108</sup> *ibid.*, pp. 927–9.

<sup>109</sup> Goitein, *Mediterranean society*, vol. I, p. 183, emphasis added. Goldberg, ‘Geographies’, p. 84 concurs.

<sup>110</sup> Goitein, *Mediterranean society*, vol. I, p. 183, emphasis added.

<sup>111</sup> See discussion and references in Greif, ‘Organizations’, pp. 473–7.

<sup>112</sup> *Ibid.*, pp. 487 (quotation), 480.

Edwards and Ogilvie wrongly claim that ‘most Geniza scholars find *plentiful evidence* of Maghribi merchants forming family firms’.<sup>113</sup> First, Geniza scholars casually and rarely used the term ‘family firm’ and clearly did not have the above perspective in mind. Stillman, for example, noted that ‘the main office of ... [a particular trader] was located... in the family home, as was the case with such family firms since the days of antiquity’.<sup>114</sup>

Second, Edwards and Ogilvie create the impression of supporting evidence by introducing extraneous words favourable to their case when presenting the literature. Consider, for example, Edwards and Ogilvie’s discussion of Stillman’s work concerning the Maghribi trader Ibn ‘Awkal. They argue that Stillman ‘*likening ... the Ibn ‘Awkal family firm to ‘the Medici in Florence,’ and other firms.*’<sup>115</sup> Stillman, however, only noted that the House of Ibn ‘Awkal (and *not* his ‘*family firm*’) operated *prior* to these Italian family firms and *not* that it was *like* them. In his words, the Geniza reveals ‘the organization of a medieval business house which was prominent long before’ the above Italian family firms.<sup>116</sup> Edwards and Ogilvie quote this sentence in full in their 2008 paper.<sup>117</sup> Similarly, Edwards and Ogilvie cite Goitein as saying that ‘the Taherti *family firm* of Qayrawan, “ideally exemplify a family business”’.<sup>118</sup> Although they carefully they carefully employ indirect speech here the sentence is misleading as Goitein does not

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<sup>113</sup> Edwards and Ogilvie, ‘Reappraised’, p. 440 (emphasis added).

<sup>114</sup> Stillman, ‘House’, p. 21. He casually also uses the term ‘family firm’ on pp. 49, 71 and 83. There is no entry for ‘family firm’ in the indices of such seminal Geniza studies as Goitein’s *Mediterranean society*, Udovitch’s *Partnership*, and Gil’s *Palestine and Kingdom*.

<sup>115</sup> Edwards and Ogilvie, ‘Reappraised’, p. 440 (emphasis added). They also claim there that Goitein, *Mediterranean society*, vol. I, pp. 180–1, describe ‘the *family firms* of the Maghribis as resembling those of the medieval Venetians’ (emphasis added). Goitein only noted, however, that Frederic Lane, who worked on family partnerships in Venice, concluded that ‘in most societies, at most times ... the *great family*’ was economically important (Goitein, *Mediterranean society*, vol. I, p. 181) as was the case among the Maghribis

<sup>116</sup> Stillman, ‘House’, p. 83.

<sup>117</sup> Edwards and Ogilvie, ‘Reappraised’ (2008) (see above n. 8), p. 41. Similarly misleading is Edwards and Ogilvie’s claim (‘Reappraised’, p. 440) that ‘Stillman characterizes the Ibn ‘Awkal family firm as being “reminiscent of the [Venetian] *fraterne*”’ The similarity that Stillman refers to is that in both cases ‘most business undertakings were done entirely with the family’s capital’; Stillman, ‘House’, p. 24; idem, ‘Relations’, p. 78. Stillman is explicit that this similarity was not the one relevant to this debate. The house of Ibn ‘Awkal did not operate through exclusive and permanent agents; Stillman, ‘House’, p. 23. In contrast, the Venetian *fraterne* had permanent, exclusive agents. The one studied by Lane, to whom Stillman refers, had two agencies abroad. One was managed by a ‘salaried agent [who] ... finally ... was made a partner’ in the agency and the other was managed by a Venetian to whom the firm loaned the capital he traded with while holding his family in Venice legally responsible for repaying it; Lane, ‘Family’, p. 184.

<sup>118</sup> Goitein, *Mediterranean society*, vol. I, pp. 180-1, cited by Edwards and Ogilvie, ‘Reappraised’, p. 440 (emphasis added). Similarly, Goitein does not describe ‘the *family firms* of the Maghribis as resembling those of the medieval Venetians’ as Edwards and Ogilvie, ‘Reappraised’, p. 440, allege (emphasis added). 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 (Goitein, *Mediterranean society*, vol. I, p. 181) as was the case among the Maghribis.

use the term ‘family firm’. In fact, nowhere does Goitein state that the Maghribis had family firms as defined above.

Were private-order institutions in Europe similar to the Maghribis? I have always emphasized the universality of private-order institutions and their importance. I stressed the Maghribi traders’ coalition precisely because it is a particularly good example of a general phenomenon. Edwards and Ogilvie, however, see any case in which people tried to avoid courts or rely on private-order institutions as vindicating their view of institutional similarity.<sup>119</sup> In contrast, my analysis is historical. Although reputation generally matters, its manifestations and prevalence depend on the historical context. The issue is not whether reputation mechanisms existed in Europe and among the Maghribis, but whether they were similar.

Even the examples that Edwards and Ogilvie advance regarding European private-order institutions reveal institutional distinctions.<sup>120</sup> By way of illustration, consider the Genoese traders. Edwards and Ogilvie argue that ‘twelfth-century Genoese *merchants* relied *chiefly* on “verbal agreements based on *custom*”’.<sup>121</sup> The quotation is from Byrne who, in fact, discussed agreements with *ships’ operators*<sup>122</sup> and noted that contractual agreements were the rule. In his words, for ‘the twelfth-century, rich as the [legal] records are in most details of commercial life... [there is] almost no trace of the arrangements made between merchant and ship-owner ... [suggesting they] were chiefly verbal agreements based on custom’.<sup>123</sup> By the thirteenth-century these relations were contractual.<sup>124</sup>

The only other work by an expert on Genoa that Edwards and Ogilvie rely upon here, is Court whom they quote as saying that in the sixteenth-century, ““with no durable centralized state institutions to regulate and bolster long-distance trade, Genoese merchants relied on informal networks””.<sup>125</sup>

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<sup>119</sup> Edwards and Ogilvie, ‘Reappraised’, pp. 427, 439, 442 (The Maghribis ‘supplemented informal bilateral mechanisms with reputational pressure based on a wider group of Maghribi traders,... such use of social ties in mercantile relationships is no different from that observed in many pre-modern economies, including Genoa...’).

<sup>120</sup> They cite, for example, the case of the sixteenth-century Dutch merchant Hans Thijs; Edwards and Ogilvie, ‘Reappraised’, p. 439. Yet, according to Gelderblom, on whom Edwards and Ogilvie rely, agents were always business friends and there was no collective response; Gelderblom, ‘Governance’, p. 634.

<sup>121</sup> Edwards and Ogilvie, ‘Reappraised’, p. 438 (emphasis added).

<sup>122</sup> Byrne, *Genoese shipping*, pp. 28–9.

<sup>123</sup> *Ibid.*, p. 28.

<sup>124</sup> *Ibid.*

<sup>125</sup> Court, ‘Januensis’, p. 987 (Edwards and Ogilvie, ‘Reappraised’, p. 439).

But did private-order institutions differ, as I have argued? Evidence regarding information flows reveals that they differed. Under a bilateral reputation mechanism information about others' agents is less valuable to merchants and if a court might award compensation, the cheated merchant might benefit from not informing others of a dispute. He is more likely to collect following a favorable verdict if the agent is employed by other merchants. In contrast, information is more valuable under multilateral reputation information. A merchant cares about past relations, because an agent whom others consider to have cheated is more likely to cheat again. Moreover, being perceived as honest is more valuable and agents are this motivated to reveal information by conducting business in a manner protecting their reputation (for example, naming witnesses who can confirm their report, absorbing some losses or praising their relative superior performance).<sup>126</sup> Finally, by revealing information the cheated merchant can pressure the agent to compensate him.

The evidence confirms this prediction as is well reflected in the documents discussed in section I. The Geniza letters are rich with agency-related information, including information about others' actions and disputes.<sup>127</sup> About 15 per cent of the letters' content discusses other traders' behaviour and it is the largest single category after that of reporting transactions.<sup>128</sup> In contrast, according to Court, 'sixteenth-century Genoese merchants did not punish sloth and malfeasance by public airing' and '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'.<sup>129</sup> 'Commitment problems' were solved 'without the need for public airing of bad behaviour'.<sup>130</sup> The Genoese did not share information in earlier periods either.<sup>131</sup>

The other pieces of evidence that Edwards and Ogilvie advance similarly reveal distinct private-order institutions.<sup>132</sup> Moreover, Court's analysis of Genoa also highlights that the institutional distinctions between the Maghribis and Genoese cannot be explained only by differential access to the state. The multilateral reputation mechanism is both more efficient and more profitable for the merchants in the

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<sup>126</sup> Greif, 'Reputation', pp. 880-1. Edwards and Ogilvie wrongly assert twice ('Reappraised', pp. 435 and 436) that conducting business in front of witnesses is consistent *only* with legal enforcement. Moreover, under Jewish law an unpaid agent (as most Maghribi agents were) is not liable for a loss (after taking an oath) if there are not witnesses; Maimonides, *Mishneh Torah*, ShSh 2:9.

<sup>127</sup> For example, Greif, 'Reputation', pp. 879-81; idem, 'Contract enforceability', pp. 529, 531-2; Goldberg, 'Geographies', pp. 87-6, 237-44.

<sup>128</sup> Goldberg, 'Geographies', p. 81.

<sup>129</sup> Court, '*Januensis*', pp. 993, 990. See also the evidence in Greif, 'Cultural beliefs', p. 924; idem, *Institutions*, p. 281.

<sup>130</sup> Court, '*Januensis*', pp. 994-5.

<sup>131</sup> Greif, 'Cultural beliefs', p. 924; idem, *Institutions*, p. 281-2.

<sup>132</sup> They cite, for example, the case of the sixteenth-century Dutch merchant Hans Thijs; Edwards and Ogilvie, 'Reappraised', p. 439. Yet, according to Gelderblom, on whom Edwards and Ogilvie rely, agents were always business friends and there was no collective response; Gelderblom, 'Governance', p. 634.

absence of effective courts. In Genoa bilateral reputation prevailed, however, even when, according to Court, the legal system was ineffective.<sup>133</sup>

In summary: indirect evidence regarding asocial stratification, organizational forms, the pooling of capital, and information flows also confirms the institutional distinction conjecture. Thus both direct and indirect evidence reveals that private-order institutions differed.

### III

Edwards and Ogilvie's second main claim is regarding reliance on court enforcement. It boils down to three assertions. First, 'the evidence contradicts'<sup>134</sup> my conclusion that 'the majority of legal actions mentioned in the ... [Maghribis] letters are concerned with legal issues unrelated to trade or agency relations'.<sup>135</sup> The evidence, they claim, reveals that the Maghribis 'took for granted' that they could rely on the court to discipline agents.<sup>136</sup> Second, 'no sensible conclusions can be drawn concerning the relative importance of the legal system to their [the Maghribis'] agency relations'.<sup>137</sup> Third, the Maghribis 'used informal sanctions but also resorted to legal enforcement, in ways strongly resembling European merchants.'<sup>138</sup>

Although we still have much to learn about the relevant court systems, the evidence contradicts Edwards and Ogilvie's claims. Consider their first claim that the evidence contradicts my finding that the majority of legal actions among the Merchants were unrelated to agency relations. For support they bring examples of agency-related legal disputes.<sup>139</sup> It is a fallacy, off course to use examples to refute a relative statement ('the majority of legal actions'). In any case, even the examples that Edwards and Ogilvie present do not survive inspection.

Edwards and Ogilvie's citation practices create the *illusion of strong evidentiary support* to their position.<sup>140</sup> First, the secondary sources are regularly described as supporting claims that they actually do not. For example, they twice refer to a particular page in Gil's work in claiming that the Maghribis

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<sup>133</sup> See discussion in Greif, 'Problem of exchange', pp.273-4; idem, *Institutions*, pp. 278-82; idem, 'Institutional structure', pp. 74-80; idem 'Cultural beliefs'.

<sup>134</sup> Edwards and Ogilvie, 'Reappraised', p. 437.

<sup>135</sup> Ibid; Greif, 'Refuting' (see above, n. 9), p. 2, cited by *ibid.*, n. 150.

<sup>136</sup> Edwards and Ogilvie, 'Reappraised', p. 436.

<sup>137</sup> *Ibid.*, p. 435.

<sup>138</sup> *Ibid.*, p. 423.

<sup>139</sup> *Ibid.*, p. 437.

<sup>140</sup> *Ibid.*, Section III, nn. 106-10, 130-7, 148-9, 151-60.



‘enforced agency agreements using legal mechanisms’.<sup>141</sup> The reader would expect to find at least one example of a Maghribi trader taking to court a fellow Maghribi trader in an agency-related dispute. Yet Gil only describes a legal dispute (K694) ‘with a Christian, apparently concerning financial matters’.<sup>142</sup> The Maghribi trader said that the partner used a false witness against him and he absconded to avoid trial. Similarly, Edwards and Ogilvie twice refer to a document (K651) as revealing that ‘around 1050, several Jewish merchants in Sicily brought accusations “in front of Muslim authorities” ... over agency relationships involving wares from Egypt’.<sup>143</sup> They refer to Goldberg who, in fact, discusses a Maghribi trader accused of ‘undermining Muslim institutions by evading customs duties’.<sup>144</sup>

Second, all the references that Edwards and Ogilvie provide contain at most four agency-related legal disputes among Maghribis.<sup>145</sup> These disputes were included in my analyses and two of them were already discussed; an agency and inheritance dispute (K630, K632, case 5 above) and the dispute over the balance due at the end of a partnership (K319, dated 1063, mentioned in case 4). The only two other cases, a dispute between two brothers (K229, K230) and a power of attorney from 1085 (K622–3), are discussed below. In any case, this evidence confirms my conclusion that ‘only a few documents indicate that commercial disputes between merchants and agents were brought before a court’.<sup>146</sup>

Edwards and Ogilvie give the impression that I accepted the strength of the evidence they present. To illustrate consider one discussion of my response to the 2008 version of this paper (that Edwards and Ogilvie do not refer to but left on-line (SSRN.com)). ‘Greif attempts to resurrect his view that legal enforcement was unimportant for Maghribi agency relationships by referring to Goldberg’s finding that just 5 per cent of merchant letters ... refer to legal action’.<sup>147</sup> But even here Edwards and Ogilvie are wrong. In the work they refer to I noted that 5 per cent is high enough to evaluate the role of the legal

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<sup>141</sup> Ibid, pp. 422-3 (quotation), n. 16, and p. 435, n. 136 referring to Gil, ‘Merchants’, p. 314.

<sup>142</sup> Gil, ‘Merchants’, p. 314.

<sup>143</sup> Edwards and Ogilvie, ‘Reappraised’, p. 437 (quotation), nn. 133, 154.

<sup>144</sup> Goldberg, ‘Geographies’, p. 2.

<sup>145</sup> There are only 13 legal cases that Edwards and Ogilvie claim are relevant or that are actually relevant in their references (K120, P193, (K229, K230), K317, K319, K373, K581, (K622, K623), (K630, K632, K633), K651, K694, K844, TS 13 J 7 f. 11 (unpublished)). All documents in parentheses relate to the same case. Eight cases have no bearing on enforcing agency relations among Maghribis. Of the five legal cases involving traders, at most four are agency-related legal disputes among Maghribis. The fifth is P193 which is a dispute about rights over consignment fees. P193 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 Muslim authorities. I exclude one case from the twelfth-century trade with India.

<sup>146</sup> Idem, ‘Contract enforceability’, p. 529; idem, *Institutions*, p. 63.

<sup>147</sup> Edwards and Ogilvie, ‘Reappraised’, p. 435, n. 138 referring to Greif, ‘Refuting’ (see above, n. 9), pp. 1, 3–4.

system: ‘Merchant letters can shed light on the use of the legal system because about five percent of them refer to a dispute’.<sup>148</sup>

What do the documents reveal? I present some of the findings below.<sup>149</sup> A random sample of 10 per cent (83 documents) of the corpuses of merchants’ letters,<sup>150</sup> contains two (K622 and K632) of the above four trade-related legal disputes among Maghribis. There are also two trade-related debt disputes with Muslim traders (K242, K332) and one dispute with a non-Maghribi Jew who tried to acquire some goods (K582). A similar picture arises from inspecting the 29 court documents in Gil’s main corpus of 745 documents.<sup>151</sup> Only 12 legal documents are trade-related, six are contracts, three reflect agency disputes, and three more are deeds (e.g., debt) that might be related to such disputes. Thus, the upper bound of trade-related court documents is six, or about 0.8 per cent of the total (6 out of 745). This is a conservative estimate because each legal document discusses one dispute, while many agency relations are reflected in other documents. The ratio of agency-related court documents relative to the number of agency relations is thus miniscule.

Edwards and Ogilvie’s second claim is that ‘lacking comparative studies of equivalent datasets of documents... no sensible conclusions can be drawn concerning the relative importance of the legal system’.<sup>152</sup> Although the lack of equivalent data is unfortunate, the argument ignores the possibility that useful institutions are more likely to appear in the historical records. Arguably, the Genoese left behind tens of thousands of *notarized* agency contracts *because* legal enforcement mattered.

Be it as it may, the evidence in the Geniza shows that agency-related legal disputes were rare. Compare the number of agency-related legal disputes with estate-related legal cases in which an agent died abroad, an issue always settled in court, as a matter of law. There are 13 such cases, as compared with six agency disputes. A merchant could only die abroad one time but entered into many agency relations during his

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<sup>148</sup> Ibid., p. 3. It is Goldberg, on whom Edwards and Ogilvie repeatedly rely, who concluded that this rate reveals ‘a low incidence of seeking redress through formal legal channels’; Goldberg, ‘Geographies’, p. 204. Figures in *ibid.*, pp. 106–7; *idem*, ‘Merchants and merchant work in the eleventh-century’, memo, Univ. of Pennsylvania (2008), p. 25, n. 204.

<sup>149</sup> See to Greif, ‘Refuting’ (see above, n. 9) for details..

<sup>150</sup> Gil, *Palestine*, vol. II, III; *idem*, *Kingdom*, II, III, IV. Edwards and Ogilvie, ‘Reappraised’, pp. 435-6, refer to Goldberg’s finding that 1% of merchant letters’ text refers to legal action. Goldberg does not distinguish between trade- and non-trade-related actions. Edwards and Ogilvie, ‘Reappraised’, pp. 435-6, refer to Goldberg’s finding that 1% of merchant letters’ text refers to legal action. Goldberg does not distinguish between trade- and non-trade-related actions. Goldberg (‘Geographies’, pp. 162–3) also noted that two reputation-related terms appear in 5% of the documents, *’ird* (honor and dignity, 1%) and *jāh* (skills and ties, 4%). 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, the documents reveal reliance on reputational considerations in ways that do not require using these terms. See P496, K212, K216, K667, and K751.

<sup>151</sup> Gil, *Kingdom*.

<sup>152</sup> Edwards and Ogilvie, ‘Reappraised’, p. 435.

lifetime. This ratio illustrates how rare agency disputes were.<sup>153</sup> Similarly, among all 105 previously unpublished partnership-related legal documents (relating to Maghribis and others) in Ackerman-Lieberman's *Partnership*, about 35 are concerned with long-distance trade. There is no single clear case of agency-related legal dispute and there are at most three trade related disputes.<sup>154</sup> In contrast, 22 of the other 70 commercial and industrial documents reveal a legal dispute.

Edwards and Ogilvie also fall back on the assertion that the Geniza is biased and thus under-represents the use of the legal system. 'Legal cases recorded in Arabic script (necessary for Muslim courts) escape the Geniza depositing rules (applicable to documents in Hebrew characters that might bear the name of God)'.<sup>155</sup> From this they infer that there were many such cases, but we cannot observe them.

This bold assertion regarding selection bias ignores the fact that legal records are 'the largest ... group of Geniza documents'.<sup>156</sup> Moreover, in the eleventh-century 'civil cases were still largely brought before Jewish courts' and thus they were written in Hebrew characters.<sup>157</sup> Goitein makes this point in his work *Studies*, which Edwards and Ogilvie cite regarding the above depositing rule. He repeats it elsewhere on a page that Edwards and Ogilvie refer to on another matter.<sup>158</sup> There is plenty of evidence—in documents written in Hebrew and Arabic characters—on legal contracting and disputes regarding real estates, marriages, divorces, and businesses among Jews (Maghribis and others) and with non-Jews.<sup>159</sup> It is thus very striking that these documents reveal so few legal disputes concerning agency relations.

Moreover, the Geniza reveals—in documents written in Hebrew and Arabic characters—Maghribi traders using the Jewish and Muslim courts in matters unrelated to agency relations. We find Nahray ben Nissim (Fustat), the most prominent Maghribi trader in the second half of the eleventh-century, relying on the Muslim and Jewish courts in, for example, cases concerning estates (e.g., K819, K775 and Khan, *Documents*, no. 59). But we don't find him using the court in agency disputes. Furthermore, the Maghribis' letters are filled with personal and business matters, and one would expect that lawsuits

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<sup>153</sup> See Greif, 'Refuting' (see above, n. 9), p. 6.

<sup>154</sup> *Ibid.*, pp. 12–13.

<sup>155</sup> Edwards and Ogilvie, 'Reappraised', p. 436.

<sup>156</sup> Goitein, *Abridgment*, p. 13.

<sup>157</sup> Goitein, *Studies*, p. 283.

<sup>158</sup> *Ibid.*, pp. 279–94. Repeated in *idem*, 'Cairo Geniza', p. 79 to which Edwards and Ogilvie refer to on p. 13, n. 108.

<sup>159</sup> For example, Goitein, *Mediterranean society*, vol. II, pp. 311–45; Ben-Sasson, *Emergence*; Cohen, 'Geniza for Islamicists'; Khan, *Documents*. Goitein, *Studies*, p. 280, concluded that 'a large number of papers written in Arabic characters have been preserved in the Geniza', while Cohen, 'Geniza for Islamicists', p. 131, explains that the prevalence of Arabic documents reflects that 'rather than sorting through to find pages that contained something "religious," everything was removed to the Geniza'.

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.<sup>160</sup>

Did the Maghribis resort to legal enforcement in ways strongly resembling European merchants? Edwards and Ogilvie evaluate the use of the legal system by focusing on the dubious measure of the number of legal cases. Yet, a few legal cases are consistent with an effective court that deters opportunism and an ineffective one that does not. In addition, traders are likely to respond to better enforcement by establishing agency relations that are more rewarding and more prone to disputes. Thus, as I noted, ‘in reading the historical records to determine whether a major role of a particular institution was to ensure contract compliance, the number of instances of enforcement is not a useful indicator’.<sup>161</sup>

Accordingly, in evaluating reliance on a court system it is useful to consider additional pieces of evidence revealing their deterrence capacity and use. Although legal remedies are usually time-consuming and costly, court systems nevertheless differ in their ability and incentive to verify and respond to opportunism as was the situation in our case.

Edwards and Ogilvie anachronistically portray the Jewish court as ‘formal and public set of legal mechanisms’<sup>162</sup> provided by ‘persons outside’ the Maghribi community.<sup>163</sup> In fact, although the Jewish court was authorized by the state, it was an extension of the Jewish community of which the Maghribis were an integral part. The congregation (*kahal*) is the ultimate judicial authority under Jewish law and traders – including Maghribis – frequently served as lay judges while expert judges and legal scholars were often traders.<sup>164</sup> Goitein concluded that in business matters the Jewish ‘court ... had largely the character of a merchants’ court’.<sup>165</sup>

Moreover, the Jewish court had limited capacity to enforce judgment on those who were unwilling to accept it. It faced difficulties in tracking down agents who emigrated<sup>166</sup> and had no independent means to either force one to stand trial or independently verify agents’ reports.<sup>167</sup> The Jewish court sought to

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<sup>160</sup> Letters (K581, K229, K622, K630) and their respective legal documents (K319, K230, K623, K632).

<sup>161</sup> Greif, ‘Fundamental problem’, p. 259 or idem, *Institutions*, pp. 350–75.

<sup>162</sup> Edwards and Ogilvie, ‘Reappraised’, p. 432.

<sup>163</sup> Idem, ‘Reappraised’ (2008) (see above, n. 8), p. 9.

<sup>164</sup> For example, Goitein, *Mediterranean society*, vol. II, pp. 311–407; Cohen, *Jewish self-government*, pp. 248–63; Ben-Sasson, *Emergence*, pp. 293–346, particularly p. 342; Goldberg, ‘Geographies’, pp. 200–9.

<sup>165</sup> Goitein, *Studies*, p. 335. Edwards and Ogilvie, ‘Reappraised’, nn. 122, 158 refer to this page in discussing the court system;

<sup>166</sup> ‘People [successfully] tried to evade their ... obligations by fleeing to another country’; Goitein, *Mediterranean society*, vol. I, p. 69. This sentence eluded Edwards and Ogilvie even though they refer to this page when discussing this issue. Edwards and Ogilvie, ‘Reappraised’, n. 136. I know of seven such cases involving Jews and Muslims.

<sup>167</sup> Greif, ‘Contract enforceability’, p. 529.

preserve the community and thus, as Goitein noted, ‘punishments are confined in the Geniza almost entirely to transgressions in the sphere of religion or of community life’.<sup>168</sup> Moreover, the court could impose few penalties without resorting to the Muslim authorities or communal participation.<sup>169</sup> In fact, contentious commercial disputes in the Jewish court lasted for many years and even generations and were costly to the plaintiff because the court neither awarded damages nor charged interest on late payments.<sup>170</sup>

To illustrate, consider one of the two agency-related legal cases not discussed so far. Edwards and Ogilvie refer to this case 13 times and it is reflected in a letter and a power of attorney from 1085 (K622–3). Yahūda ben Mūsā ibn Sighmār (Alexandria), who sent the letter, requested that ‘Allūn ha-Kohen ben Ya‘īsh (Fustat) represent him in a lawsuit against a former partner, Abraham ben Faraj. The partnership was established *c.* 1075, and since then Abraham had been eluding Yahūda, not sending an account or money. The limited reach of the law is clear. Yahūda waited many years to appeal to the court. He did not sue in Alexandria, where he lived, but pursued his case in Fustat, after hearing that Abraham was there. In fact, Yahūda and Abraham, who had non-contractual agency relations before, did not initiate their partnership with a legal contract, thereby further limiting legal recourse. The long delay, choice of venue, and lack of legal verifiability do not reveal deterrence by the court or enforcement based on coercive power

What about the Muslim court? Edwards and Ogilvie seem unaware of the complex relations between the Jewish and Muslim courts. To illustrate, Jews, in general, were not qualified to serve as trustworthy witnesses (*mu‘addalīn*) in the Muslim court while the Jewish leadership opposed reliance on Muslim courts.<sup>171</sup> Although the Muslim court was nevertheless used, ‘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 estate.<sup>172</sup>

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<sup>168</sup> Goitein, *Mediterranean society*, vol. II, p. 330 and see pp. 334–45 on the limited enforcement ability of the Jewish court.

<sup>169</sup> ‘Excommunication is never even mentioned, however, in the eleventh-century materials’; Goldberg, ‘Geographies’, p. 203. The next most severe legal recourse was an oath. I know of one case in which an oath was contemplated in agency relations but there is no indication that it was actually taken (ENA 2738.35, Ackerman-Lieberman, *Dissertation*, no. 23). Ironically, an oath was considered such a serious matter, if taken formally, that there was rarely used. Goitein, *Mediterranean society*, vol. II, p. 340.

<sup>170</sup> Greif, ‘Reputation’, pp. 865–6; Goldberg, ‘Geographies’, pp. 202–4.

<sup>171</sup> Goitein, *Mediterranean society*, vol. II, pp. 401 (quotation), 395–402. In K844 the Jewish court prohibits using a deed issued by the Muslim court. . Edwards and Ogilvie (‘Reappraised’, p. 433) note Goitein’s (*Mediterranean society*, vol. I, pp. 259–60) statement that the ‘Jewish legal officials ... “reserve themselves the right ‘to extradite’ [Jews who evaded their debt obligations] ... to the Muslim authorities’”. 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.

<sup>172</sup> *Ibid.*, p. 400.

The fourth legal dispute that Edward and Ogilvie refer to is the only one in which the Muslim authorities are involved in agency dispute among Maghribis. Edwards and Ogilvie, however, only note that it reveals that a ‘conflict between a Maghribi trader and his brother ... was brought before a Jewish judge’.<sup>173</sup> In fact, the case (K229, K230) reveals the peril of relying on the Muslim authorities. A Maghribi trader named Abraham ben Saadya had sent his brother and son with goods to trade in Fustat. Once there, however, his brother became a student of an alchemist who absconded after incurring a large debt. The authorities, suspecting that the brother had helped the alchemist to escape, confiscated the goods and sought to arrest him. Although the brother eluded them, Abraham’s son and a relative were caught and perished after torture. The brother eventually bribed the authorities and got the goods back. Abraham approached the Jewish court in Fustat, asking for help in regaining control over his goods. ‘And all of this’, claimed Abraham, ‘is known to many people, all the Maghribis in Egypt’.<sup>174</sup>

Edwards and Ogilvie do not provide even a single legal case in which the *Muslim* court was actually used in an agency-related dispute among Maghribis.<sup>175</sup> Their alleged evidence amounts to no more than repeatedly referring to three of the four legal cases brought before the *Jewish* court. The first is the above dispute between the two brothers. The second is the 1085 case in which the power of attorney contains the standard, centuries-old authorization to approach the non-Jewish court. The associated letter of instructions, however, mentions only the Jewish court. The third (case 5 above) contains a threat to approach the Muslim court.

Moreover, in the four legal cases opportunism seems to have actually transpired when it was particularly profitable as predicted by the multilateral reputation conjecture. In the 1085 case, the accused cheater made a large profit by trading with Byzantine traders. In the case of the two brothers, the agent clearly saw his future in alchemy, rather than trade, and carried a very large sum. Finally, all the cases are accusations in the Jewish court and they are concerned with remitting funds, suggesting that more information-demanding accusations such as neglect were governed by multilateral reputation.

What about the Italian courts? Bilateral reputation mechanisms encourage reliance on courts, for without additional check on opportunism, an agent is better off embezzling the merchant's capital and trade with it. The expectation of legal punishment can counter this gain. In contexts where agents are also

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<sup>173</sup> Edwards and Ogilvie, ‘Reappraised’, p. 438.

<sup>174</sup> Gil, *Kingdom*, vol. II, p. 672.

<sup>175</sup> There is no good measure of legal impediments for trade during the late medieval period. For some examples, see Goitein, *Mediterranean society*, vol. II., pp. 271–89; Khan, *Documents*, no. 77 (a complaint c. 1125 by a Jewish trader regarding the confiscation of his goods by a *qadi*), no. 79 (a petition to the vizier concerning confiscatory impounding of property, 1151). After the Fatimid moved to Egypt by the late tenth-century, North Africa and Sicily increasingly fell under the control of local dynasties. One accessible work on the Muslim court is section VII of Goitein, *Mediterranean society*, vol. II. Although this volume is on Edwards and Ogilvie’s reference list, there is no indication in their article that this chapter was consulted

merchants, by contrast, a multilateral reputation mechanism can substitute for legal punishment. Embezzlement comes at the cost of, for example, not operating through in-group agents.

Italian city states responded to the need to complement private-order institutions. Although Genoa's court records from the twelfth and thirteen centuries did not survive, ledgers of notaries reveal court enforcement in agency relations.<sup>176</sup> To cite only two examples, one document reveals a witness interrogated concerning prevailing prices in the overseas market where another merchant's agent operated while another document reveals the Genoese consuls authorizing the forced sale of goods to repay a loan.<sup>177</sup> Expected reliance on court enforcement<sup>177</sup> is evident in contractual details. To illustrate, wives co-signed on agency contracts (sea-loans) when required under the Roman law in order to place their property as collateral for the loan.<sup>178</sup> By the early fourteenth-century, Genoese law separated the regulations of mercantile activity from both civil and criminal matters.<sup>179</sup>

Legal records from other European trading cities support the contention that courts routinely heard agency disputes, inflicted punishments, and evaluated the veracity of agents' accounts based on evidence inadmissible in a Jewish or Muslim court.<sup>180</sup> Commercial customs were codified in a manner suggesting 'that conflict of interest between the parties and the possibility of fraud was constant preoccupations.'<sup>181</sup> Penalties could be collected when an agent returned or from his relatives if he did not.<sup>182</sup> The administration of trade, particularly in Venice, was structured to foster verifiability of conduct.<sup>183</sup> In the early fourteenth-century the first *mercanzie*, specialized courts for commercial disputes, were established.<sup>184</sup>

Although we should be careful not to overstate the coercive powers of any pre-modern court, private archives also show clear evidence of enforcement, as with one fifteenth-century Venetian merchant who

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<sup>176</sup> Similarly lost are accounting records.

<sup>177</sup> *Giovanni Scriba*, no. LXVI and *Giovanni di Guiberto*, no. 94-98. Notaries' ledgers were not supposed to contain court cases.

<sup>178</sup> Hoover, 'Sea-Loan', pp. 508-9..

<sup>179</sup> Promis, 'Statuti,' pp. 515-523, 735-754. Cf. Piergiovanni, *Gli statuti*, pp. 30-8.

<sup>180</sup> E.g., Pryor, 'Mediterranean commerce', particularly p. 183; González de Lara, 'Secret', pp. 269-71; Chiaudano, 'Mercanti', pp. 125-6; idem, 'Controversia'; Tucci, *La Nave*, no. 26 and pp. 129-30; Hoover, 'Sea-Loan', pp. 508-9; Lane, *Barbarigo*, pp. 97-8; Reyerson, *Business*, pp. 14-5, 95-106.

<sup>181</sup> Pryor, 'Mediterranean commerce', p. 192 (quotation); Rossetti, et al, *Formazione*.

<sup>182</sup> Ashburner, *Sea Law*, p. cxxiv (quotation); Lane, 'Family', p. 184; González de Lara, 'Public-order institutions'; Greif, 'Responsibility'.

<sup>183</sup> González, 'Self-enforcing'.

<sup>184</sup> Astorri, *La mercanzia*. For the different types of cases handled, see pages 200-205.

took various agents to the “court of commercial jurisdiction’ three times ‘and in each case the court supported ... [his] claims and at least in one case he got a hold over a portion of the palace of the defaulter’.<sup>185</sup>

While in Italy the law evolved to mitigate contractual difficulties, the Jewish law evolved in response to contractual choices. Although as early as the ninth-century, agency relations among Maghribis were settled by sending accounts, only in the early eleventh-century the court accepted them as legal evidence although without verifying their veracity. Letters were accepted only in cases a trader died. Notably, the Jewish law in Europe was not similarly changed.<sup>186</sup>

The most common form of agency relations among the Maghribis (‘formal friendship’) afforded the least legal protection.<sup>187</sup> About 75 per cent of agency relations were established through ‘formal friendship’, an agreement for mutual provision of agency services without pay.<sup>188</sup> An unpaid agent was legally defined, in our period, as a ‘messenger’ (שליח) and even Edwards and Ogilvie now recognize that formal friendship was reputation-based.<sup>189</sup> The Maghribis could have used contractual forms that afforded more legal protection but lower gains from agency relations (for example, paid agency). They did not, in contrast to the Genoese who did.<sup>190</sup>

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<sup>185</sup> Lane, *Barbarigo*, pp. 97-8. Smail, ‘Violence’, claimed that debt collection stimulated growth in states coercive apparatus (p. 11).

<sup>186</sup> Ben-Sasson, *Emergence*, p. 98.

<sup>187</sup> See n. 52. In a ‘formal friendship ... a principle would have no recourse for unsatisfactory fulfilment’; Ackerman-Lieberman, ‘Partnership’, p. 100. An unpaid agent formally had the least amount of discretionary power (unless provided with such power) and no ownership over the goods. Yet, in ‘most Jewish legal sources ... liability increases correspondingly with an individual’s level of ownership and discretion in the bailment’; *ibid.*, p. 119. See discussion in Greif, ‘Contract enforceability’, p. 529; Goldberg, ‘Geographies’ p. 204; Ben-Sasson, *Emergence*, pp. 299–300; Ackerman-Lieberman, ‘Partnership’, pp. 69–87. The laws governing relations with an unpaid agent changed over time and different Jewish authorities held distinct views. In general, however, although an unpaid agent may sometimes be required to take an oath, he does not assume liability for inaction and damage due to unavoidable acts and theft. He is also not liable if the goods got lost, if loss occurred (and he did not deviate from the merchants’ instruction) or if he got discretionary power (for example, if he was allowed to act at his discretion or the merchant recognized that the agent’s actions could advance or subvert the merchant’s causes). See Maimonides, *Mishneh Torah*, ShSh 1:3. Most letters to agents, however, are mute on whether the agent got discretionary power and we don’t know the default. Yet the evidence suggests that the default allowed discretion. Goitein, *Mediterranean society*, vol. I, p. 168, noted that ‘one of the main causes of discord’ in the Geniza letters is agents ‘acting against ... instructions’ and causing losses. Yet merchants neither sued in such cases nor generally threatened to do so. Thus Ackerman-Lieberman, ‘Partnership’, p. 81, noted that the ‘agent generally does not bear the risk of loss—unless he fails to fulfill his duty as an agent, either by negligence or by running afoul of his assignment.

<sup>188</sup> See Greif, ‘Refuting’ (see above, n. 6), pp. 9–10, for discussion. The percentage was calculated by Goldberg, ‘Geographies’, although the dominance of formal friendship was noted earlier. This type of agency relation was the focus of my analysis.

<sup>189</sup> Edwards and Ogilvie, ‘Reappraised’, p. 434.

<sup>190</sup> Greif, ‘Reputation’, pp. 872–3.



In summary: the evidence of the Jewish, Muslim, and Italian court systems reveals that they had or developed different capacities and were used differently.<sup>191</sup> This further confirms the institutional distinction conjecture. The evidence on legal capacities is crystal clear: the court system available to the Maghribis did not have the enforcement capacity that the Genoese court had.

#### IV

Discussing the complex relations between culture, institutions and market development is beyond the scope of this article but a few words are in order.<sup>192</sup> Edwards and Ogilvie deny the possibility that culture could have mattered by claiming that there were no institutional distinctions. But such distinctions prevailed, as established, and Edwards and Ogilvie's claim that culture could not matter is thus void.

I have claimed that culture influenced institutions in this case in two ways. First, culture was among the factors that coordinated traders on distinct contract enforcement institutions. 'Cultural "focal points" as well as social and political events in the early development of these societies were ... instrumental in shaping diverse institutions'.<sup>193</sup>

The Maghribis' cultural heritage rendered beliefs in multilateral – collective – punishment a focal point. They were *mustarbin*, non-Muslims who adopted the values of the Muslim society. Each member of the *ummah*, the Muslim community of believers, is obliged to personally righting wrong done by any member. "Whoever sees a wrong, and is able to put it right with his hand, let him do so... and that is the bare minimum of faith" is a saying attributed to the Prophet Muhammad.<sup>194</sup> The Maghribis were also part of the Jewish community, which shared the idea that all the people of Israel were responsible for one another. Finally, as is common among immigrant groups, the Maghribis retained social ties that enabled them to transmit the information required to support collectivist equilibrium.

By the time the Genoese began trading they had already internalized different culture. By the late medieval period, the individual, rather than his social group, was at the center of Christian theology. In Catholicism praying requires a priest, in Judaism, it requires a sufficient number of participants. In Islam, praying in the company of others is more meritorious, and praying with the congregation is mandatory for the noon prayer on Friday, the Muslim holy day. During the twelfth-century, the confession, long confined to the monastic world, became widespread among Christian laypeople. The individual and bilateral relations were also at the center of twelfth-century feudal culture, of which Genoa was an integral part.

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<sup>191</sup> Greif, *Dissertation*; idem, 'Cultural Beliefs'; idem, *Institutions*; de Roover, 'Organization', p. 89.

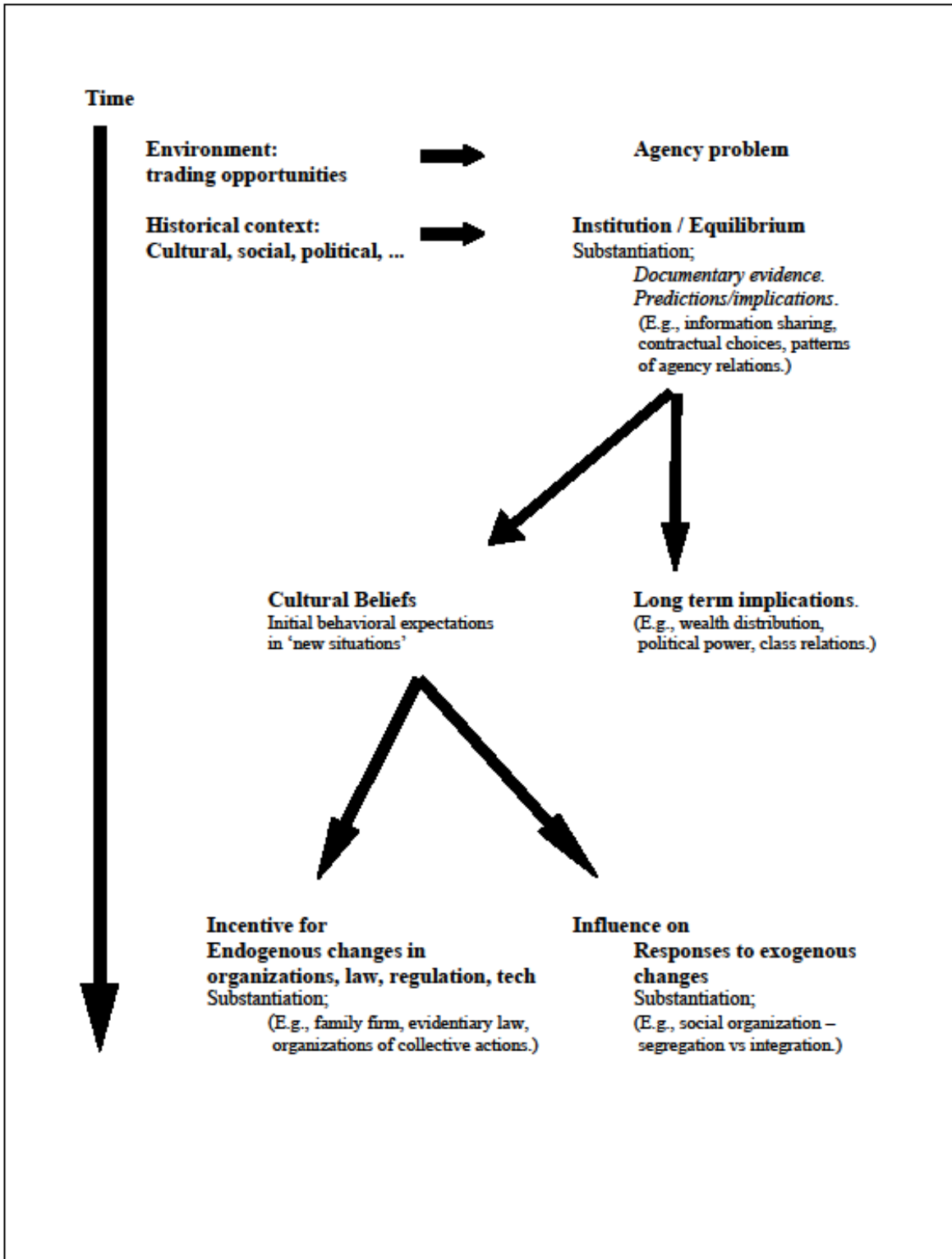
<sup>192</sup> The following discussion is based on Greif, *Institutions*, ch. 9, particularly pp. 273–82 and idem., 'Cultural beliefs', p. 922.

<sup>193</sup> Greif, 'Cultural beliefs', p. 915.

<sup>194</sup> Cook, *Forbidding*, p. 12 and see his work for an extensive discussions.

The second influence of culture is more subtle. The distinct behavioural expectations associated with each institution – bilateral or multilateral response -- became cultural beliefs in constituting the default expectations in new situations. Traders sought to improve their lot by, for example, creating the family firm, selecting particular contracts, or choosing agents with particular attributes. A necessary condition for taking such action is that those able to initiate it expect to gain from it. Because the traders' expectations depend on their cultural beliefs, different cultural beliefs led to distinct trajectories of organizational and contractual development.

The following chart presents the conceptual and methodological components of this analysis. The environment provides the opportunity to gain from trade and agency relations.



This analysis is not arbitrary and avoids the pitfall of ex-post justifying outcomes by invoking an unobserved cultural propensity.<sup>195</sup> The set of admissible cultural beliefs is restricted to those that are self-enforcing in the sense that each individual finds it in his interest to respond to the prevailing beliefs by taking the actions confirming these beliefs. Similarly, focusing on a particular transaction in a particular historical context exposed the exact causal mechanisms through which culture exerts its impact. The analysis also explicates why culture has a persistent impact and the limit of his impact. On the one hand, the institutional embeddedness of culture perpetuates its impact. On the other hand, the impact of cultural beliefs is limited by the extent to which they are self-enforcing.<sup>196</sup>

Distinct cultural beliefs are sufficient to account for institutional distinctions between the Maghribis and Genoese.<sup>197</sup> This does not imply, as Edwards and Ogilvie claim I argued that cultural differences led to the Maghribis' 'failure to use family firms or legal enforcement'.<sup>198</sup> In my framework, all individuals are similarly rational. The Maghribis did not 'fail' to use the family firm any more than the Genoese 'failed' to rely on a multilateral reputation mechanism. The family firm and multilateral reputation were different means to reduce agency cost by increasing the expected gains from being honest. People make different choices in different cultural contexts. If a Genoese were to find himself in the midst of the Maghribis, he would not be better off by establishing a family firm.

Different cultural and institutional systems have distinct comparative advantages. Multilateral reputation better supports intra-group agency relations, while bilateral reputation, augmented by the court system, better supports inter-group agency relations. Which system was more efficient in the eleventh- and twelfth-century is thus impossible to say. '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.'<sup>199</sup> It seems that initially the Maghribis were more successful and there is no doubt that in the eleventh-century the market economy in the Muslim Mediterranean was more developed than anywhere in Latin Europe.

The comparative and historical analysis of the Maghribis and Genoese suggests, however, the possible long-run benefits of the individualistic system.

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<sup>195</sup> Greif, *Cultural Beliefs*, p. 915; Idem, *Institutions*, pp. 269-273.

<sup>196</sup> Greif, *Cultural Beliefs*, p. 942 and idem, *Institutions*.

<sup>197</sup> Greif, *Cultural Beliefs*, pp. 922, 943; Greif, *Institutions*, pp. 273–82, 301.

<sup>198</sup> Edwards and Ogilvie, 'Reappraised', p. 422.

<sup>199</sup> Greif, 'Cultural Beliefs', pp. 942–3 (and in idem, *Institutions*, pp. 300–1). Edwards and Ogilvie, 'Reappraised', p. 441, n. 189, refer to these pages while alleging that I argued the opposite. According to them these pages say that 'by the twelfth-century "collectivism" was leading to Maghribi commercial decline and "individualism" to Genoese commercial dominance'. This seems to be the height of strawmanship: their critique is entirely directed at an argument I did not make.

*'To the extent that the division of labor is a necessary condition for long-run sustained economic growth, formal enforcement institutions that support anonymous exchange facilitate economic development. Individualist cultural beliefs foster the development of such institutions and hence enable society to capture these efficiency gains'.*<sup>200</sup>

Ironically, the deficiency of the individualistic system seems to have contributed to the institutional development that fostered impersonal exchange and thus the modern market economy.<sup>201</sup> But while the individualistic private-order institutions generated demand for legal enforcement, the prevailing political institutions determined the supply of effective market-promoting legal institutions as I examined elsewhere.<sup>202</sup> Finally, the analysis highlights that one difficulty is inter-societal institutional transfer and imitation is that the impact of an institution depends on the prevailing cultural beliefs

## V

The 'scrupulous examination' of the Maghribi traders by Edwards and Ogilvie's does not survive scrutiny.<sup>203</sup> First, Edwards and Ogilvie discuss documentary evidence carelessly, avoid meaningful—detailed or quantifiable—comparison and misreport the content and number of the documentary evidence. Second, historiographical consensus is misreported, important works are not mentioned, and secondary sources are alleged to support claims that, in fact, they do not. Third, Edwards and Ogilvie repeatedly misrepresent arguments, confuse pre-conditions with predictions, and do not distinguish the exception from the rule. They refute arguments that were not made based on evidence that does not refute the original arguments. Fourth, their analysis is ahistorical in focusing on the existence of courts and reliance on reputation rather on their nature and use.

Multiple pieces of direct and indirect evidence reveal that the multilateral reputation mechanism was particularly important among the Maghribis and fostered market development by mitigating agency problems in long-distance trade. The Maghribis' coalition constituted an endogenous response to the limited reach of the law. Collectivist beliefs, personal familiarity, and information flows supported a multilateral reputation mechanism that deterred opportunism. The Maghribis' experience thus reveals that private-order institutions linking past conduct with future economic opportunities can support sophisticated exchange without relying on legal enforcement. The Maghribis did not establish agency relations in the shadow of the law but used the court in the shadow of multilateral reputation.

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<sup>200</sup> Greif, 'Cultural Beliefs', p. 943 and see also idem, *Institutions*, p. 301.

<sup>201</sup> Greif, 'Cultural Beliefs'; Idem, *Institutions*; idem, 'Commitment'.

<sup>202</sup> Ibid.

<sup>203</sup> Edwards and Ogilvie, 'Reappraised', p. 442.

In Italy, individualistic beliefs and the associated bilateral reputation mechanism necessitates establishing agency relations in the shadow of the law. Legal and administrative means were developed to foster enforcement by the court and organizational and contractual means evolved to mitigate opportunism that could not be checked by the court. Agency relations were established in the shadow of the law.

The comparative and historical institutional analysis of the Maghribis and Genoese contributes to a research agenda that studies the institutional foundations of markets and the ‘development of markets that support ... impersonal exchange’.<sup>204</sup> It recognizes that markets have always rested on historically contingent complexes of ‘legal institutions, private-order institutions that do not rely on the state, and hybrids of the two forms’<sup>205</sup> while various transactions are governed by distinct components of such complexes.

Edwards and Ogilvie assert to provide ‘an essential first step’ and ‘promising insights into the institutional basis for impersonal exchange’.<sup>206</sup> This assertion rings hollow given that their ‘scrupulous examination’ of the evidence crumbles upon inspection and their assertion that bilateral reputation and court enforcement are prominent everywhere denies the need for a theory to explain variations. The issue is the nature, capacity, and uses of informal and court enforcement in various historical episodes and not their existence.

The essence of exchange is therefore about scholarly interactions in the pursuit of the enterprise we refer to as economic history. The analysis of the Maghribi traders—as common in economic history—responded to the challenge the historical records posed to our historical and economic knowledge. It built on the contributions of previous Geniza scholars, economic historians, and economists. It relied on the rigor of mathematical modeling to derive predictions, and on historical, comparative, and quantitative analyses to form conjectures and to evaluate them. In short, the analysis was motivated by the historical records, built on previous scholarship, and aimed at advancing our knowledge.

Edwards and Ogilvie’s article presents an alternative vision of economic history. The essence of this vision is disputing an argument rather than advancing our understanding the phenomenon it seeks to address. Their paper seeks to establish that my work has no merit *whatsoever* rather than to build on whatever minor contribution it may offer. In this pursuit, primary sources ceases being a lens to the past and become fishing-holes for counter-examples, ad hoc explanations triumph over comprehensive ones, and unverifiable or unsubstantiated arguments override those that do not perfectly fit the data. This is neither creative destruction nor Economic History as I know it.

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<sup>204</sup> Greif, ‘Commitment’, p. 727.

<sup>205</sup> Greif, ‘Fundamental problem’, pp. 252, 297. See idem, ‘Commitment’ (‘Coercion and Exchange. How did Markets Evolve?’ (2008) is a shorter version of the paper. See <http://www.stanford.edu/~avner/>); idem, Institutions.

<sup>206</sup> Edwards and Ogilvie, ‘Reappraised’, p. 442.

Advancing our knowledge regarding the co-evolution of culture, institutions and markets is demanding. It requires sensitivity to subtle analytical distinctions in complex historical realities and a deep understanding of the evidence. The analysis has to acknowledge the diversity that history has to offer and examine enforcement as an integral component of the broader cultural, social, and political context.<sup>207</sup>

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<sup>207</sup> Greif, 'Fundamental problem', p. 278; idem, 'History lessons'; idem, *Institutions*, pp. 392–9; idem, 'Commitment'.

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