IEHC 2006 Helsinki Session 35

Francesca Trivellato

Merchants on Trial: Legal and Extra-Legal Sources of Cooperation within the Jewish Trading Diaspora in the Eighteenth Century [ϕ]

"…a person's worst enemies are among one's own family and kin," wrote David Attias in 1778. As he insisted, "one should not trust one's mother, nor one's children, nor brothers, nor [other] relatives, nor anyone in the world (….)"[1]

David Attias was a Sephardic Jew born an Ottoman subject in Sarajevo who spent most of his life in the Tuscan port of Livorno, and the author of *La Guerta de Oro* (The Garden of Gold), the first book ever written and published in Ladino, the Judeo-Spanish vernacular language employed by Iberian Jews in the Ottoman Empire, which did not deal with a religious topic. The book's aim was to promote secular education among Ottoman Jewry, and introduce them to the 'rationality' of Western European culture. As part of this endeavor, Attias exhorted his fellow coreligionists in the Middle East to expand their commercial alliances beyond the community's boundaries. Although not a systematic thinker, he thus put his finger on the two thorniest issues that historians have to address to understand business cooperation: what exactly allowed for solidarity within a group (however defined), and what instruments permitted members of that group to extend their collaboration beyond the group's borders.

Attias' blunt and admittedly hyperbolic assertions run contrary to prevailing assumptions among historians and anthropologists on how to think about trust and trading diasporas; for reasons that I will detail, economists generally display a less naïve and yet ambivalent position with regard to these issues. This paper offers some reasons why historians should take this protagonist of the vibrant Sephardic world in the eighteenth-century Mediterranean seriously. By telling a story about an abortive attempt to sell a rarely large diamond entertained by a group of Jewish associates in the 1740s, it explores important theoretical implications of the received notions of trust, according to which kinship relations or membership in an ethno-religious merchant community are interpreted to guarantee aptitude and honesty in overseas trade.[2] It

---

[ϕ] Preliminary version of a work in progress. Please do not quote without permission. Comments and suggestions are most welcome. Francesca Trivellato, Department of History, Yale University, 320 York Street, PO Box 208324, New Haven, CT 06520, USA. Email: francesca.trivellato@yale.edu

[1] "…los más negros enemigos que puede tener la persona son los de su caśa y de los suyos. (…) Y que non hay de fiarse ni de madre. Ni de fijos. Ni de hermanos. Ni de parientes. Ni de minguno al mundo." *La Guerta de Oro*, fols. 31-31a. Sincere thanks to Matthias Lehmann for sharing his transcription of parts of this text with me. For the importance, background and implications of *La Guerta de Oro*, see Matthias B. Lehmann, "A Livornese 'Port Jew' and the Sephardim of the Ottoman Empire", *Jewish Social Studies*, vol. 11, no. 2 (2005): 51-76. Part of the passage quoted in the text is also cited in ibid. p. 62.

[2] In this paper, as elsewhere in my work, I retain the term "trust" instead of replacing it, as suggested by Oliver Williamson, with "calculativeness" for two reasons. First, although in theory the new institutional economics that dispenses with trust as an analytical category makes room for both formal and informal contractual obligations and safeguards, in most of its applications it tends to emphasize institutional rather than informal threats and incentives. In the early modern period, such institutional threats and incentives were often weak. See Oliver E. Williamson, "Calculativeness, Trust, and Economic Organization", *Journal of Law and Economics*, vol. 36, no. 1, part 2, (1993): 453-486 and Timothy Guinnane, "Trust: A Concept Too Many", *Jahrbuch für Wirtschaftsgeschichte*, vol. 1 (2005): pp. 77-92. Second, my aim is to dialogue with those historians who invoke "trust" as a self-evident and self-explanatory concept and to suggest a more specific, non-culturalist but socially-grounded approach. See Francesca

pays particular attention to the demands made by merchants to civil courts, and the responses that they obtained, in case of contract incompletness.

I. Social and Legal Sources of Business Cooperation

In a time when the conduct of long-distance trade was endangered not only by warfare and natural disasters, but also by slow communication and somewhat fragile credit and legal institutions, merchants frequently resorted to family members and coreligionists as their agents overseas. Family and religious ties provided channels to monitor the reliability of these agents. To explain these mechanisms historians often invoke 'trust' as a self-evident and self-explanatory concept. As eminent a historian as C.A. Bayly thus calls trading diasporas "communities of mercantile trust"[3] as if the expression did not require any further elucidation. However suggestive, this label is both descriptively inadequate and methodologically misleading because by taking 'trust' for granted, as an entity that exists and does not require further explanations, we risk to obfuscate the historical specificity of the object of our investigation.

An opposite tendency has long prevailed among proponents of the new institutional economic historians who, in rehabilitating the role of state institutions against the neo-Smithian orthodoxy, have perhaps placed too much faith in the ability of institutions to work exactly as they were supposed to and to act as a force of integration and equalization. While there is no point in denying that the history of western capitalism is marked by a growing de-personalization of the market, it is impossible to write off the continued role played by personal networks, private organizations, and even legal and social discrimination in shaping the strategies early modern European merchants, and ethno-religious diasporas in particular.

Economist Avner Greif is among the scholars who have contributed most to close the gap between the new institutional economics approach and the common-sensical understanding of trust among historians. His recent book, which condenses and revises a large number of previously published essays, draws from a variety of disciplines and methodologies, and most profitably from game theory, economics and the law, and functionalist sociology.[4] By comparing the commercial organization of a specific group of North African Jews operating in the Mediterranean and the Indian Ocean from the tenth and twelfth centuries to the new contractual forms adopted by Genoese merchants beginning in the twelfth century, Greif finds that what he calls an Individual Legal Responsibility replaced a Community Responsibility System. The main innovation of the Genoese, in this account, consisted in replacing a system of reputation control enforced via information transmission and the collective boycott of those agents who were caught cheating with a set of legal institutions that ensured the punishment of those who infringed a contract with no further repercussion for the community at large. Greif's main theoretical contribution is to re-conceptualize the notion of "institutions" to include not just legitimate emanations of the state but also "social factors that conjointly generate a regularity of behavior" even in the absence of external enforcement (and by social factors he means "rules,

---

Trivellato, "Sephardic Merchants in the Early Modern Atlantic and Beyond: Toward a Comparative Historical Approach to Business Cooperation", in *Atlantic Diasporas: Jews, Conversos, and Crypto-Jews in the Age of Mercantilism, 1500-1800*, eds. Richard L. Kagan and Philip D. Morgan (Baltimore and London: Johns Hopkins University Press, forthcoming).

[3] C.A. Bayly, "«Archaic» and «Modern» Globalization, ca. 1750-1850", in A.G. Hopkins (ed.), *Globalization in World History* (Norton & Co., 2002), pp. 45-72 (p. 61).

[4] Avner Greif, *Institutions and the Path to the Modern Economy: Lessons from Medieval Trade* (Cambridge: Cambridge University Press, 2006).

beliefs, norms and organizations").[5] In so doing, he uncovers the effectiveness of stateless diasporas such as that formed by North African Jewish merchants in enforcing conformity, and, more generally, the role that informal social arrangements played historically in market organization. However, Greif argues that "social factors" only worked to deter misbehavior among members of a closed group. For this reason, he concludes that the Genoese system of Individual Legal Responsibility proved far more efficient and thus represents a step forward in the evolution of Western capitalist institutions.

It should be noted that his evidence is not in full agreement with the one presented by S.D. Goitein, the greatest scholar of the same North African Jewish community studied by Greif, whose documents were discovered in the late nineteenth century in the so-called *genizah* of the synagogue in Old Cairo.[6] Greif states that "Many, if not most, of the agency relations reflected in the gheniza were not based on legal contracts."[7] While insisting on the importance of what he calls "formal friendship" (something that resemble closely in concept if not in language to Greif's Community Responsibility System), Goitein also points to a variety of contractual agreements (including family partnerships, *commenda* contracts, commission agencies, loans, and powers of attorney) that these medieval Jewish merchants used to forge and monitor trading alliances.[8] Regrettably, neither Goitein nor Greif discuss what types of agreements and relations were sealed by contracts and what not, nor do they offer insights on the role of courts in enforcing these contracts (although Goitein cites cases of recourse to rabbinical as well as Muslim courts). Moreover, Greif glosses over Goitein's insistence on interfaith business cooperation between Muslims and North African Jews.[9] This omission is puzzling considering that Greif's game theoretical approach aims at demonstrating that religious identity mattered less than economic calculation in forging the glue among medieval Jewish merchants. He notices that no agency relations ever developed between North African Jews and Jewish merchants in the southern Italian peninsula, although there existed no political or legal restrictions against them and they would have been advantageous to both parties.[10] This clarification is crucial, because it demonstrates that coreligionists were not natural allies, and trust only developed where a specific and sufficiently dense network of communication existed. But the evidence of a lack of informal relations between Jews in North Africa and Southern Italy also leads Greif to conclude that a Community Responsibility System generally is less than efficient and a formal legal system is likely to be required to allow for business cooperation among members of rather closed groups and thus for the market expansion.[11] Finally, Greif maintains that the sheer existence of a formal legal system that assumes individual rather than collective responsibility

---

[5] Greif, *Institutions*, pp. 30, 382 and *passim*.
[6] S.D. Goitein, *A Mediterranean Society: The Jewish Communities of the Arab World as Portrayed in the Documents of the Cairo Geniza*, 6 vols (Berkeley and Los Angeles: University of California Press, 1967-93).
[7] Greif, *Institutions*, p.6 3.
[8] Goitein, *A Mediterranean Society*, vol. I, pp. 169-192. Originated in early Islamic law, *commenda* was a nearly universal type of contract in the medieval business world. It came in many versions, but it normally stipulated the shares of profits between a sedentary investor and a traveling partner for the conduct of a specific business transaction in a distant place, and entailed limited responsibility for both parties.
[9] Goitein, *A Mediterranean Society*, vol. I, pp. 72, 85, 116, 281. It should be added that Greif attributes the fragility of North African Jewish merchants to their Collective Responsibility System, while Goitein claims that they were put out of business by the rise of the Mamluks, who were adverse to trade and religious toleration, in Egypt in the mid thirteenth century and the naval superiority of the Genoese (ibid., pp. 38, 149).
[10] Greif, *Institutions*, p. 78.
[11] Greif, *Institutions*, pp. 88, 294.

exert a deterrent effect on opportunism, regardless of the actual ways in which courts implemented contracts and adjudication of disputes.[12]

In his examination of the different institutions that governed business cooperation and disputes in the early modern Netherlands (that is, the cradle of modern capitalism according to those scholars who do not espouse the early chronology and southern geography embraced by Greif and others), Oscar Gelderblom demonstrates that merchants used a combination of private, corporate and public institutions to secure their agreements and settle their disputes, and shows how improvements in the efficiency of contract enforcement in the Southern Netherlands and the United Provinces between the thirteenth and the seventeenth century were brought about by changes in both private and public institutions.[13] Gelderblom too, however, depicts a process of increased dissolution of corporate groups. It seems to me that a greater emphasis on the mutual reinforcement rather than the sequential substitution of social and legal enforcement mechanisms is particularly important when we seek to understand the problem of contract incompleteness.

Whether because of the need to contain costs or because of the inability to foresee all future contingencies, most contracts, and those of agency relations in particular, were (and still are in many cases) incomplete.[14] Naturally, this fact generated a considerable amount of dsiptue and formal litigation among merchants. Claude Markovits, for example, finds that most court cases involving Sindhi merchants in late-nineteenth and early-twentieth century Cairo were due to disputed interpretations of items not regulated by contracts and concerned individuals with unequal power in the community: they were often resolved in ways that mirrored these individuals' standing in the community rather than the terms of the contract alone.[15] As legal scholars and economists admit, contract incompleteness was not always unintentional nor was it always the result of cost-benefit calculation; it could be a deliberate choice dictated either by opportunism or by reasonable doubts about the fairness and efficiency of the formal regulatory system.[16] Lisa Bernstein finds that even in the contemporary U.S. business world, that is, in one in which risks and uncertainties are far fewer than in the early modern period, merchants might "deliberately leave aspects of their contracting relationship to be governed, in whole or in part, by extralegal commitments and sanctions." And she adds that "[t]hey may be moved to do so by

---

[12] Greif, *Institutions*, p. 328. In Oliver Williamson's definition, opportunism is "self-interest seeking with guile." Oliver E. Williamson, *The Economic Institutions of Capitalism: Firms, Markets and Relational Contracting* (New York: The Free Press, 1985), p. 47.

[13] Oscar Gelderblom, *The Resolution of Commercial Conflicts in Bruges, Antwerp, and Amsterdam, 1250-1650*. Unpublished paper (February 2005). Available at http://www.lowcountries.nl/workingpapers.html. My reading of Avner Greif's work differs in part from that offered by Gelderblom. Gelderblom stresses the extent to which Greif underplays the role of state formation in the market expansion that occurred in the medieval Mediterranean, while I see Greif as conceding that, theoretically, informal reputation surveillance can work across different groups (Greif, *Institutions*, p. 328), but stressing the fundamental importance of the formation of a legal system.

[14] My understanding of incomplete contracts comes, primarily but not exclusively, from: Ian Ayres and Robert Gertner, "Filling Gaps in Incomplete Contracts: An Economic Theory of Default Rules", *Yale Law Journal*, vol. 99, no. 1 (1989): 87-130; Oliver Hart, *Firms, Contracts, and Financial Structure* (Oxford: Clarendon Press, 1995); Jean Tirole, "Incomplete Contracts: Where Do we Stand?", *Econometrica*, 67.4 (1999): 741-781; Pierpaolo Battigalli and Giovanni Moggi, "Rigidity, Discretion and the Costs of Writing Contracts", *The American Economic Review*, vol. 92, no. 4, pp. 798-817.

[15] Claude Markovits, *The Global World of Indian Merchants, 1750-1947: Traders of Sind from Bukhara to Panama* (Cambridge: Cambridge University Press, 2000), pp. 262-263.

[16] Williamson emphasizes opportunism (*The Economic Institutions of Capitalism*, p. 70). Proponents of so-called private-order institutions stress a voluntary search for alternative to the weakness, costs, ineffectiveness or incompetence of legal institutions instead. See Avinash K. Dixit, *Lawlessness and Economics: Alternative Modes of Governance* (Princeton: Princeton University Press, 2004).

social norms, commercial custom, a concern for relationships, trust, honor, and decency, or for fear of nonlegal sanctions such as reputational damage or termination of a beneficial relationship."[17]

This paper pursues the implications of these assumptions through the examination of a prolonged litigation among coreligionists (a group of Sephardic traders from the eighteenth-century Mediterranean and a Persian Jew) in the 1740s. In so doing, it takes issues with essentialized notions of trust and bespeaks of the need to evaluate when and why merchants resorted to legal norms and formal adjudication, when and why they did not, and how effectively they utilized a combination of customary norms, formal contracts, tribunals, and extralegal sanctions. It also shifts the angle from a study of the long-term evolution of institutional frameworks to an examination of how merchants devised their strategies by drawing from a variety of informal and formal organizations. It thus implies that we need to uncover the actors' perspective in order to understand the extent to and limitations within which legal instruments and courts curtailed uncertainty and secured property rights in specific historical contexts. Without claiming exhaustiveness, this case study uncovers one among many examples that force us to complicate the conventional trajectory according to which exchanges were dominated by traditional, close-knit, communities until the rise of a more open, anonymous and legally secure market structure.

II. "The Big Diamond Affair"

"The big diamond affair" is the expression used in private business records as well as in the court papers of Livorno during the 1740s to refer to an audacious but ultimately disastrous business venture aimed at the sale of an unusually large diamond. In the early eighteenth century, the Tuscan port-city of Livorno was then the second largest Mediterranean port after Marseille. It was also the second largest settlement of Sephardic Jews in the West, second only to Amsterdam. For obvious reasons of space, I will here only summarize the salient features of "the big diamond affair."

In the Summer of 1738, Ergas & Silvera received an unusually large diamond of about 60 carats from their relatives in Aleppo, Syria.[18] Ergas & Silvera had been in business for over thirty years and were one of the dozen most reputable and successful Sephardic merchant houses in Livorno. As many of their coreligionists, Ergas & Silvera operated a joint partnership housed both in Livorno and in the Ottoman Empire, one that resulted from carefully planned marriage alliances and migratory patterns. They also traded extensively in Indian diamonds via the Cape

[17] Lisa Bernstein, "Merchant Law in a Merchant Court: Rethinking the Code's Search fro Immanent Business Norms", *University of Pennsylvania Law Review*, vol. 144, no. 5 (1996): 1765-1821 (pp. 1787-88). Ayres and Gertner also conceive that contract incompleteness may be the result of strategic choices by relatively informed parties, but assume that in these cases parties are motivated by a rent-seeking goal rather than by desire to let what Bernstein calls "social norms" rule (Ayers and Gertner, "Filling Gaps", p. 94).

[18] The diamond's size varies slightly from one primary source to another. In the contract drafted in July 1740 (see footnote 18) it is said to be 250 grains of Aleppo. Cassuto's travel diary notes that the diamond weighted 225 grains; Bodleian Library, Oxford (BLO), *Ms. Ital.* d.9, fol. 108r. In Ergas & Silvera's correspondence, the diamond is once said to weight 221 grains and twice 222 grains; Archivio di Stato di Firenze (ASF), *Lettere di commercio e di famiglia* (*LCF*), 1945, letter to Ephraim and David Cassuto in Florence (14 July 1738); ASF, *LCF*, 1953, letter to Ephraim and David Cassuto in Florence (21 April 1741); ASF, *LCF*, 1953, letter to Benjamin Mendes da Costa in London (17 July 1741). A petition to the High Court in The Hague described the diamond as weighting 58 carats of Aleppo; National Archives, The Hague, *Hoge Raad van Holland en Zeeland*, *Rekesten*, 142. Unless otherwise noted, all information about the "big diamond affair" comes from the outgoing correspondence of Ergas & Silvera in Livorno preserved in the State Archives in Florence. For sake of brevity, precise archival references are only given for verbatim citations. All translations are mine.

of Good Hope (until 1727, when diamond mines were discovered in Brazil, India and –to a much lesser extent Borneo – were the only known source of rough diamonds).

A diamond of 60 carats was a rarity. Even in the late nineteenth century, after the discovery of diamond mines in South Africa, only about a hundred diamonds in the world weight over 30 carats.[19] Ergas & Silvera in Aleppo could thus hope to make a huge profit from this sale as long as they were able to present it to an opulent European clientele. For this reason, they shipped it to their cousins in Livorno. The diamond market, however, was highly specialized, and Ergas & Silvera until then had only sold parcels of small diamonds, mostly rough. To sell a large, polished stone was an entirely different matter. It took time, which meant liquidity or access to credit, and it required that one have access to exclusive customers. Moreover, weight was not the only variable in a diamond's price. Clarity, color and cut also mattered a great deal. Large diamonds were particularly hard to sell. In the words of a contemporary dealer and expert: "In commerce Diamonds of magnitude rarely compensate the possessor, there being so few purchasers."[20]

Upon receiving the "big diamond," Ergas & Silvera described it as of nearly perfect quality.[21] They hired a Florentine artisan to cut and polish the stone in Livorno. They also had some copies made in crystal glass, as was customary, in order to show these models to potential buyers out of town. They approached several customers, including members of the Habsburg court and a Venetian Jewish dealer. But to no avail. Ergas & Silvera attributed the lack of offers to the fact that they had received the order from Aleppo to sell the stone for a price that they considered extravagant: 130,000 pieces of eight, the silver currency of most international exchanges at the time.

Why couldn't Ergas & Silvera lower the price? The reason is simple: the diamond did not belong to them. Their partners in Aleppo had a contract with a Persian Jew, Agah Menasseh, who represented the owners of the stone. Menasseh had lent the big diamond to Ergas & Silvera in Aleppo in exchange for a loan and agreed with them the terms of its sale. Ergas & Silvera in Livorno were obliged to execute the terms of the contract underwritten by their partners in Aleppo.

After two years of failed attempts to sell the stone in Tuscany, all parties agreed to change strategy. A new contract was drafted in July 1740 in Aleppo. This time it was stipulated that the Tuscan branch of Ergas & Silvera would carry the stone to seven European destinations: the first three being Paris, Amsterdam and London; four more would be determined in the unlikely event that the stone would remain unsold in these three.[22] Considering that Paris,

---

[19] Edwin W. Streeter, *The Great Diamonds of the World: Their History and Romance* (London: George Bell & Sons, 1882), pp. 29-30. The biggest diamonds in the world in the eighteenth century were those of the Mughal emperor (nearly 280 carats after being cut), the Duke of Orleans (140 carats), the Grand Duke of Tuscany (a fine yellow stone of 139.5 carats), and a 242-carat diamond that Tavernier allegedly saw in the hands of a private merchant of Golconda. The so-called Braganza diamond, an unusually large Brazilian stone of 1,680 carats, was probably a topaz.

[20] John Mawe, *A Treatise on Diamonds and Precious Stones: Including Their History-Natural and Commercial, To which is added, the Methods of cutting and polishing with colored plates*, London: Printed and Sold for the Author, 149, Strand; and Longan, Hurst, Rees, Orme, and Brown, Paternoster Row (second edition), 1823, pp. 46-47. Despite greater market standardization, today dealers still meet with great difficulties when selling large rough diamonds. See the vivid account in Matthew Hart, *Diamond: The History of a Cold-Blooded Love Affair* (New York: A Plume Book, 2002), pp. 1-21.

[21] "...non è di prima acqua ben sì qualcosa sommeno e non ha difetto alcuno..."; ASF, *LCF*, 1945, letter to Ephraim and David Cassuto in Florence (14 July 1738).

[22] The contract (*setar*) between Menasseh, Elijah Silvera of Ergas & Silvera and Belilios was drafted in Aleppo on 5 Tamuz 5500 (5 July 1740). Witnesses to the contract in Aleppo were R. Samuel son of Salamon Lagnado, R. Isaac

Amsterdam and London were the most important marketplaces for diamonds in the world, it was reasonable to leave the contract incomplete with regard to further destinations as the chance that the big diamond did not get sold in any of these three places may account as an "unforeseen circumstance."[23]

In exchange for keeping the stones in their custody during the trip, the Sephardic Jews loaned Menasseh 21,500 pieces of eight and took on the freight and insurance costs of shipping the diamond from Aleppo to Livorno. The diamond would then be used as collateral to finance the European expedition. In addition, Ergas & Silvera would receive a 1% commission on the final sale price, and receive a fixed amount of 45,000 pieces in return for their labor and time. Finally, it was established that if they could not sell the stone by 20 November 1740, Menasseh would pay back them the entire loan (21,500 pieces) plus half of the amount due to them at the sale (22,500 pieces), for a total of 44,000 pieces. Knowing that disputes might arise, Ergas & Silvera insisted that all legal documents relating to this affair be made "in a form that could be defended [in court] both in the Christian lands and in Aleppo."[24]

In Livorno, Ergas & Silvera arranged for the European journey and hired Moses Cassuto, an experienced traveler and member of a family of Florentine Jews whom they had known for years. Cassuto would travel together with the Persian Menasseh, and would receive the 1% commission due to Ergas & Silvera as his payment.[25]

The task of selling the big diamond proved more difficult than anticipated, and things soon went from bad to worse. No offers were made at the court of Versailles, and the Persian Jew turned down the few bids available in Amsterdam and London, considering them too low. As it became clear that the stone was worth much less than it had initially believed (and probably no more than 50,000 pieces of eight), Menasseh began to sabotage any efforts to sell it because he owed Ergas & Silvera as much if not more than the diamond was worth. In other words, the Persian Jew no longer had any economic incentive to cooperate with his associates. Frustrated by Menasseh's procrastination, Cassuto took him to court in The Hague hoping to obtain a sentence that would force him to sell the diamond at an auction in Amsterdam. But the original contract conferred upon Menasseh the authority to refuse. How could a court in The Hague invalidate the original agreement underwritten by all parties? The Persian Jew was in no

---

Berahas, Jacob Rivero Enriquez, Illel Piciotto and Josef son of Jacob Pignero. An Italian translation of these obligations was handed to court in 1747; Archivio di Stato di Livorno, *Capitano, poi Goverantore e Auditore: Atti civili spezzati*, 2249, no. 953. For sake of brevity, in this paper I omitted to mention the role played by the Belilios family of Venice and Aleppo. This omission does not change the course and meaning of the story.
The term "Agha" derives from the Turkish appellative "master, lord, chief," which was commonly applied to prominent merchants in Ottoman and Persian territories (or, more specifically, to the business associate who supplied the capital for a joint venture). In the only surviving letter written to him by Ergas & Silvera, he is addressed by the honorary title "rav".

[23] Tirole, "Incomplete Contracts", p. 743.

[24] ASF, *LCF*, 1953, letter to Moses Cassuto in Amsterdam (25 December 1741).

[25] In the previous decade, Cassuto had traveled to Jerusalem in 1733-35. During this journey, he spent a month in Aleppo in the summer of 1734, but his diary does not mention the people he met there; BLO, *Ms. Ital.* d.9, fols 49v-52r. We thus cannot establish whether he encountered the Silvera family in the Levant. The manuscript containing Cassuto's travel accounts was first examined in Richard D. Barnett, "The Travels of Moses Cassuto", in J.M. Shaftesley (ed.), *Remember the Day: Essays on Anglo-Jewish History presented to Cecil Roth by members of the Council of the Jewish Historical Society of England* (London: The Jewish Historical Society of England, 1966), pp. 73-121. Barnett, however, focused on Cassuto's travels to the Ottoman Empire in 1733-35, while I will here draw from his diary of the "tour of the seven provinces" that he took on behalf of Ergas & Silvera in 1741-43. To our disappointment, this diary is rich in descriptions of local customs and Jewish communities that Cassuto encountered throughout central and northern Europe, but poor in details concerning the big diamond and his partners in business.

violation of the contract. Ergas & Silvera could accuse him of being unreasonable, but this was not a matter over which a court could deliberate. Meansseh behaved opportunistically because he sought to protect his interests at the expense of any implicit understanding on the part of Ergas & Silvera about how he would behave. No tribunal could monitor or punish such opportunism.

In the absence of legal sanctions, in theory, cooperation could have been restored by recourse to informal sanctions, such as social ostracism or economic threats. In this case, although they were coreligionists, Ergas & Silvera lacked any leverage against Menasseh. The networks of Persian and Western Sephardic Jews overlapped minimally, and apparently Ergas & Silvera and Menasseh had no other interests in common beside the big diamond. Unfortunately we know very little about the dealings between the Aleppo branch of Ergas & Silvera and Jewish merchants from Persia, but we have reasons to believe that they were sporadic, or at least not as dense as with their fellows in Livorno. Ergas & Silvera thus lacked the ability to threaten Menasseh with informal injunctions.

The intense exchange of letters between Ergas & Silvera in Livorno and their traveling agent Cassuto (which also constitute the main body of sources documenting this case) gives us a palpable sense of their irritation as well as the constrictions under which they operated. Frustrated with Menasseh, they called him first a "hard head,"[26] and then "a barbarian," "a crazy man," "an infamous type," "a dog."[27] A debate ensued between Ergas & Silvera in Livorno and Aleppo, as well as with Cassuto, on how to proceed. The debate was hampered by slow communication. It took at least 40 days for a letter to travel from Livorno and Aleppo, and another 20-25 from Livorno to Amsterdam.

Having failed to force the Persian Jew to sell the diamond in Amsterdam, Cassuto pursed the only remaining avenue. As required by the original contract, he secured a court order listing the next four destinations where he could bring the big diamond. Two years after he had left Livorno, Cassuto departed from Amsterdam, quickly passed via Dresden, Berlin, and Vienna to fulfill his obligations but did not succeed in selling the stone. The final destination was Florence. On 18 June 1743, he was back to his family villa outside Florence with the big diamond in his hands and having accomplished nothing except having lost all confidence in Menasseh and spent over 6,000 pieces of eight of his patrons' money.[28] The market price of the big diamond was 50,000 pieces. If we subtract 6,000 that went into paying the trip across Europe, we are left with 44,000 pieces, which is what Menasseh owed Ergas & Silvera.

Moreover, in those same years Ergas & Silvera began to suffer financial losses in the most firmly established branch of their commercial activities, the Levant trade, due to severe natural disasters and warfare in the Mediterranean.[29] Shortage of liquidity forced them to file for

---

[26] "testa dura"; ASF, *LCF*, 1953, letters to Moses Cassuto in London (28 August, 4 September 1741).

[27] ASF, *LCF*, 1953, letters to Moses Cassuto in London (24 September 1741), in London and Amsterdam (9 October 1741), in Amsterdam (26 March, 14 May, 6 and 20 August 1742). In other letters to Cassuto again and again they called him "pazzo" (26 February, 26 March 1742), "cattivo huomo" (9 April 1742), "mal sogieto" (30 April 1742), "cane" (20 August 1742), "un sugieto tan infame" (letter to rabbi Jacob Belilios in Venice, 7 September 1742).

[28] ASF, *LCF*, 1953, letter to Moses Cassuto in Amsterdam (2 November 1742); ASF, *LCF*, 1957, letter to Jacob and Joseph Belilios in Venice (12 March 1745); ASF, *LCF*, 1960, letter to Jacob and Joseph Belilios in Venice (31 December 1745).

[29] Aleppo was hit by an unusually long and severe plague from mid April 1742 to February 1744; Alexander Russell, *The Natural History of Aleppo…*, 2 vols (London: Printed for G.G. and J. Robinson, 1794), II: 341r, 335r-387r. The Ottoman-Persian war escalated and the Syrian city was nearly put under siege in December 1743; Abraham Marcus, *The Middle East on the Eve of Modernity: Aleppo in the Eighteenth Century* (New York: Columbia University Press, 1989), p. 21. Already in September of that year, the French consul feared the damaging

bankruptcy in 1746. For nearly seven years, they battled Menasseh, first, and then their creditors in the civil courts of Livorno and Florence. With recourses to arbitration resulting into a deadlock, appeals were brought to local and high civil courts of appeals. Menasseh and Ergas & Silvera each claimed property rights over the big diamond, which, as agreed, had been used as collateral in financing Cassuto's travels. Having lost any hope to recuperate their credits, Ergas & Silvera succeeded in leading the trials to a standstill in 1750.[30] All parties emerged from it in poor shape, although they only had themselves, and not the legal system, to blame.

III. Negotiating Networks and Contracts

The "big diamond affair" is a story with larger implications. It reminds us, if necessary, that the world of trade was fiercely competitive, and that we should approach it with the necessary disenchantment.[31] This was neither the first nor the last time that a merchant attempted to enrich himself at the expense of his coreligionists. All protagonists of this story were Jewish. But Ergas & Silvera and Menasseh belonged to different branches of the diaspora. This fact weakened the effectiveness of the reputation effects that enhanced the merchant organization of stateless diasporas. What mattered here was less the religious identity of the actors involved, than the density of the networks that linked them. At the same time when they lost confidence in Menasseh and proved unable to retaliate against his opportunism, Ergas & Silvera had been maintaining solid business relations for at least thirty years with Hindu merchants in Portuguese India, who they never met and with whom they shared only selective economic interests, and in circumstances in which they lacked the support of any overarching legal institutions. The reliability of such an informal, cross-cultural business network between Jews in the Mediterranean and Hindus in the Indian Ocean was secured by the fact that a large number of Sephardic partnerships of Livorno, as well as a few from London as well, participated in it, making it a dense and interconnected network of communication and reputation effects. In sum, contrary to Greif's documentary findings but in line with his theoretical assumptions, other activities conducted by Ergas & Silvera show that informal mechanisms based on group level punishment and information sharing (and not on ethno-religious ties or the recourse to court) permitted market expansion.[32]

The uncooperative behavior of the Persian Jew toward Ergas & Silvera constitutes a failure of trust in the sense that he betrayed his associates' expectations about how he would

---

consequences on local trade as the conflict approached Aleppo; Chambre de Commerce de Marseille, *AA1801*, J.908 (letter of 30 September 1743). Meanwhile, in 1742 a fire destroyed perhaps two-thirds of Smyrna, the most important Levantine port at the time, with consequences on the Levant trade; Elena Frangakis-Syrett, *The Commerce of Smyrna in the Eighteenth Century (1700-1820)* (Athènes: Center for Asia Minor Studies, 1992), pp. 55-59. Livorno too was hit by an earthquake for three consecutive weeks in late January and early February 1742: the damages to the infrastructures were light, but people's confidence was shaken and business slowed down considerably in the aftermath of the quake ASF, *LCF*, 1953, letters to Moses Cassuto in Amsterdam (22 January and 5 February 1742). In the midst of all of this, the war of the Austrian Succession reached into the Mediterranean in 1744, French commerce was nearly halted for a while, and insurance premiums on shipped cargo went through the roof.

[30] ASL, *CGA. Cause delegate*, 2500; ASL, *CGA. Atti civili spezzati*, 2249, no. 953.

[31] Here I follow Williamson's admonishment not to forget that cynics populate the market; Williamson, "Calculativeness", p. 485.

[32] Francesca Trivellato, "Juifs de Livourne, Italiens de Lisbonne et hindous de Goa: réseaux marchands et échanges interculturels à l'époque moderne", *Annales HSS*, 58.3 (2003): 581-603. Greif admits that "[t]heoretically, the community responsibility system can foster intercommunity impersonal exchange." Greif, *Institutions*, p. 328.

conduct himself in circumstances that were not explicitly covered in the contractual agreement.[33] The "big diamond affair" broke down because of a failure of trust among coreligionists. It had been a greatly risky business since the beginning because of the poor information at Ergas & Silvera's disposal when they entered into agreement with Menasseh. They acquired the diamond in Aleppo from Persian agents about whom, in all likelihood, they knew too little.[34] Presuming to be knowledgeable in the diamond trade but having only dealt in smaller diamonds until then, they grossly underestimated how difficult it would be to place that stone on the market, especially once it turned out to be of a lesser quality than it was initially believed.[35]

The Livorno branch of the firm had greater expertise than the partners in Aleppo in handling diamonds. Available records, however, do not reveal if any consultations have been taken place between the two branches on whether to accept the "big diamond" and on which terms (we have no way of establishing whether communication channels other than the regular business correspondence, which still survives, were used to agree upon this venture). A colossal misjudgment about the quality of the "big diamond" led Ergas & Silvera to overestimate its marketability. As a result, they also miscalculated Menasseh's incentive to act cooperatively in order to regain the sum from which his credit was going to be repaid. On the basis of the information available to them, they had all reasons to believe that they would have sold the "big diamond" either in Paris, London and Amsterdam, and therefore did not make any provisions in the contract for a worse case scenario that later turned into reality. We do not know if, when he signed the contract, Menasseh was in possession of any information that he deliberately withheld from Ergas & Silvera, although it is reasonable to assume that he and his commissioners did not embark on such a tribulation with the sole objective of brining Ergas & Silvera down.

The association between Menasseh and Ergas & Silvera is a demonstration of the potentials and the risks involved in what sociologist Mark Granovetter has labeled "the strength of weak ties."[36] While social scientists traditionally focus on relations among kin, Granovetter shows how, in uncertain situations, new information and thus new opportunities are more likely to be the results of contacts with acquaintances rather with friends and family. A diamond of some 60 carats was not going to be placed on board a ship by the Hindu merchants in Goa with whom Ergas & Silvera had long been trading. A diamond of that size could only be acquired in person. However, the weak ties that existed between the Western Sephardim and Persian Jews, meant that Ergas & Silvera lacked any safeguards against contract incompleteness. In other words, they took a great risk on the basis of inadequate information and with little precautions, and in the end of were met with the worst consequences.

Once the contract was signed and the business venture began, Ergas & Silvera had no legal recourse against Menasseh's opportunism. Both in Livorno and the Netherlands (although the latter often regarded as having a better system of legal protection of property rights than Southern Europe), Dutch and Italian courts behaved in the same way and ruled on the sole basis

---

[33] Partha Dasgupta, "Trust as a Commodity", in Diego Gambetta (ed), *Trust: Making and Breaking Cooperative Relations* (Oxford and New York: Basil Blackwell, 1998), pp. 49-72.

[34] The literature on Iranian Jews in this period is scant. A few mercantile elite still existed, but Persian Jewry was mostly poor and in disarray after the Afghan invasion of 1722-30 had brought down the Safavid dynasty and stirred chaos in Iran. See Vera Basch Moreen (ed.), *Iranian Jewry During the Afghan Invasion:* The Kitāb-I Sar Guzasht-I Kāshān *of Bābāī b. Farhād* (Stuttgart: Franz Steiner Verlag, 1990).

[35] On the complexity of the international diamond market in the seventeenth and eighteenth centuries, see Edgar Samuel, "Gems from the Orient: The Activities of Sir John Chardin (1643-1713) as a Diamond Importer and East India Merchant", *Proceedings of the Huguenot Society*, vol. XXVII, no. 3 (2000): 351-368.

[36] Mark S. Granovetter, "The Strength of Weak Ties" *The American Journal of Sociology*, 78/6 1973): 1360-1380, and "The Strength of Weak Ties: A Network Theory Revised" *Sociological Theory*, 1 (1983): 201-233.

of the information disclosed in the contract.[37] While Ergas & Silvera were able to monitor Cassuto because of the extent to which their economic and social networks overlapped, they were powerless before Menasseh's opportunism because they had not dealt with him before and would probably never deal again with him or his friends. What weakened the effectiveness of the contract between the Persian Jew and the Sephardim was the absence of sanctions (whether social or legal, it doesn't matter) that permitted that contract incompleteness be abused. In advising their agent Cassuto, who insisted on taking Manasseh to court, Ergas & Silvera articulated what legal scholar Lisa Bernstein recently argued: that merchants only resort to court when they no longer wish to deal with one another or when they are required to do so, but not when they wish to preserve a cooperative relationship. As Ergas & Silvera put it: "…we never heard that one magistrate expedites a lawsuit to another just to see that when the parties appear in court they reach a friendly agreement. If two parties resort to court it means that they were unable to adjust their dispute, and that there is no remedy to it."[38]

The structure of Ergas & Silvera firm, the most common among Western Sephardim at the time, also had an impact on the disastrous fate of the "big diamond affair." Ergas & Silvera were one of the many bilateral partnerships that operated with one branch on the north-western and one on the south-eastern shore of the Mediterranean. Partners were bound by unlimited liability (they operated *in solidum*, in the language of the time), and at the same time had a high degree of independence. This arrangement came with considerable advantages: it allowed partners to save on the cost of writing contracts and monitoring agents; moreover, in a world of slow and uncertain communications, it allowed them to made much-needed fast decisions. In contrast, the factor of an English partnership operating in Aleppo in the same years as Ergas & Silvera had very little autonomy: he could not, for example, deliberate on the purchasing price of silk in Aleppo without approval from London.[39] At the same time, the independence enjoyed by each branch of the Sephardic partnerships across the Mediterranean also increased the risks of mismanagement. Here, however, it is important to stress that, unlike what predicted by the modern theory of the firm, which assumes that the firm's boundaries are chosen in order to provide the optimal allocation with respect to the parties involved in a transaction, customary and sometimes legal impediments existed to the range of partners that could be chosen by Jewish merchants.[40] While there is plenty of evidence of temporary, and even prolonged agency relations between Sephardic merchants and outsiders to the group, I have not encountered a bilateral unlimited partnership between Jews and non-Jews.

Finally, it should be noted that all the litigation produced by the "big diamond affair" did not involve any discussion of the role of the so-called merchants' law. With regard to the medieval Mediterranean, Avner Greif understands merchants' law as a set of commonly-accepted rules of behavior among merchants that helped maintain honesty in circumstances that were not specifically designated in a contract.[41] By the time of the "big diamond affair,"

---

[37] On the general propensity of courts, still today, to enforce the terms of incomplete contracts and not to investigate any further on ulterior motives and information, see Ayres and Gertner, "Filling Gaps", p. 92n.28.

[38] "...mai aviamo inteso dire che un magistrato la cometa al altro per vedere amichevolmente convenire poi comparendo in giudizio, è segno che fra le parte non è potuto sortire acomodamento basta al fatto non vi è rimedio..."; ASF, *LCF*, 1953, letter to Moses Cassuto in Amsterdam (19 March 1742).

[39] Ralph Davis, *Aleppo and the Devonshire Square: English Traders in the Levant in the Eighteenth Century*, London: Macmilan, 1967, pp. 147-148.

[40] Oliver Hart (*Firms, Contracts*), unlike most economists, considers power an exogenous factors that influence the organization of the firm, but does not define exactly what he means by power and regards it as an a-historical category.

[41] Greif, *Institutions*, p. 70.

merchants' law was something more specific than that. After the middle of the sixteenth century, merchants' law was codified, first in Italy, then in France and in other European countries, and consisted primarily in a set of procedures designed to render justice fast, cheap, and effective. Thus, as a general rule, no written evidence was admitted to a merchant court, and sentences issued by merchant courts could not be appealed except with express permission granted by the prince –a prescription rendered necessary by the need to ensure speediness and effectiveness. Specialized courts were set up in various European cities, where merchants (rather than members of the legal professions) administered this speedy and equitable justice. In addition, civil courts in large port-cities could sometime incorporate the principles of merchants' law when adjudicating in mercantile matters.[42] In Tuscany, there existed two courts that ruled on the basis of the procedures and substance of merchants' law, one in Florence (*Mercanzia*) and one in Pisa (*Consolato del Mare*). The latter was only a few miles from Livorno, but in order to spare merchants from traveling even a short distance, both the lay tribunal of the Jewish Nation (*massari*) and the highest municipal court (*Governatore e Auditore*) incorporated widely accepted customs of merchants' law when it deemed it necessary. Legal scholars analyze the evolution of the doctrine and the establishments of new tribunals rather than their actual functioning. Economists interested in the role of institutions, on the other hand, tend to credit commercial law with tremendous importance in creating a truly impersonal market but limit their analysis to theoretical models with little or no support from archival evidence.[43] In reality, although in principle sentences adjudicated by a merchant court could not be appealed, it was not uncommon to obtain a revision of a trial conducted by a merchant law through a petition to the highest authorities. The result was a frequent journey from commercial lawsuits to civil courts rather than the autonomous self-enforcement of the merchant law.[44]

To conclude, the analysis that I proposed here is situated at the crossroads of social, economic, and legal history. It aims at dissecting the components of business cooperation (ranging from information exchange, social ties, and interpersonal networks to legal contracts and institutions), with a special concern for the operations of minority stateless diasporas in the early modern period. It contests predominant historical accounts that offer an essentialist representation of trust and ethno-religious communities. It thus subscribes wholeheartedly to Sheilagh Ogilvie's indictment of the new wave of idealization of pre-industrial communitarian institutions among historians of early modern Europe considering that the literature on trading diasporas can be the target of her criticisms as easily as studies of craft guilds.[45] At the same

---

[42] For an introduction to the history of European merchants' law, see Francesco Galgano, *Storia del diritto commerciale* (Bologna: Il Mulino, 1976); Jean Hilaire, *Introduction historique au droit commercial* (Paris: PUF, 1986); Vito Piergiovanni (ed.), *The Courts and Development of Commercial Law*, Berlin: Duncker & Humbolt, 1987); Romuald Szramkiewicz, *Histoire du droit des affaires* (Paris: Montchrestien, 1989). Economic historians often rely on a somewhat idealized and a-historical account by Bruce L. Benson, "The Spontaneous Evolution of Commercial Law", *Southern Economic Journal*, vol. 55 (1989): 644-661.

[43] In a famous paper that describes how the tribunal of the Fairs of Champagne in the thirteenth century functioned as a clearing information house for merchants coming from afar and with no personal connections to each, the authors outline a theoretical possibility but not offer any concrete empirical evidence in its support. See Paul R. Milgrom, Douglass C. North, Barry R. Weingast, "The Role of Institutions in the Revival of Trade: The Law Merchants, Private Judges, and the Champagne Fairs", *Economics and Politics*, vol. 2, no. 1 (1990): 1-23. The same critique can be found Greif, *Institutions*, p. 315-318.

[44] On the misleading treatment of *lex mercatoria* in isolation from *ius commune* in most of the literature, although for different purposes than those underlined here, see Simona Cerutti, *Giustizia sommaria: Pratiche e ideali di giustizia in una società di Ancien Régime* (Torino: Einaudi, 2003), p. 23.

[45] Sheilagh Ogilvie, *A Bitter Living: Women, Markets, and Social Capital in Early Modern Germany* (Oxford and New York: Oxford University Press, 2003); Ead., "How Does Social Capital Affect Women? Guilds and

time, my approach is weary of the opposite tendency to describe changes in legal institutions and contracts as determinant to the development of the market economy with little regard for the ways in which access to information as well as legal and customary forms of discrimination were bound historically. The "big diamond affair" opens a window onto the difficult choices that entrepreneurs had to make in a period when Jews normally did not establish stable partnerships when non-Jews, and all merchants made decisions in a context of slow communication and scarce information. In highlighting the limits of tribunals' ability to securing property rights in cases of incomplete contracts, it suggests that we look at the broad range of legal and extra-legal incentives, guarantees, and enforcing mechanisms that sustained business cooperation, whether among coreligionists or not.

Communities in Early Modern Germany", *American Historical Review*, vol. 109, no. 2 (2004): pp. 325-359; Ead., "The Use and Abuse of Trust: Social Capital and its Development by Early Modern Guilds", *Jahrbuch für Wirtschaftsgeschichte*, vol. 1 (2005): 15-52.