

On Principals and Agency: Reassembling Trust in Indian Ocean Commerce

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Ahmed Najoo Khan did everything right. He could have organized his business according to a microeconomics textbook, or even a textbook written a century *after* he was in business. Ahmed Khan was an Indian Muslim merchant and a successful landlord in the colonial entrepôt of Aden near the southwest corner of the Arabian Peninsula. In the summer of 1916, he was approached by a Somali merchant named Ali Ibrahim Noor with an exciting commercial opportunity in Asir. The previous year, this region on the Red Sea coast had become a new front in the First World War, as the leader of the Idrisi Sufi order inaugurated the Arab Revolt against the Ottoman Empire.¹ There was money to be made in the business of war, but the risks of trading in the midst of battle and entrusting capital to an unfamiliar agent were substantial. So, Khan did everything an economist would tell him to do: he created the right kind of profit-incentives for his agent, obtained a security deposit against losses, and he secured a legal contract with mechanisms for monitoring and arbitration in case of disputes. He seems to have done everything possible to secure the success of his enterprise.

But Ahmed Najoo Khan got it all wrong. All his contractual foresight and management of incentives ultimately resulted in failure. After initial successes, the profits started to dry up and Khan became convinced that Noor was embezzling the returns of their enterprise and diverting them to Noor's father. These two men would subsequently spend years fighting this dispute in courts across

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¹ See Anne K. Bang, *The Idrisi State in Asir: Politics, Religion and Prestige in Arabia* (London: C. Hurst & Co., 1997), 105.

the globe. The first suit was brought to a judge in the city of Maidi, in the Idrisi Emirate. Then it was re-litigated in colonial courts in Aden, then Bombay, and it ultimately reached the final court of appeal in the British Empire, the Lords of the Privy Council in London. But for all his litigious persistence, Khan lost the case.² So where did Ahmed Khan go wrong, and what might his failures illuminate about trust in Indian Ocean commerce?

Perhaps it is naive to imagine that trust had anything to do with this enterprise. Clearly, Ahmed Najoo Khan and Ali Ibrahim Noor had made extensive efforts to entrench their partnership within multiple legal frameworks. Moreover, it is clear that when the profits diminished Khan turned aggressively to the courts for restitution. Indeed, this partnership only exists in the historical record because it was so resolutely contested within the colonial legal system. The law was central to the establishment of this partnership, but it seems unlikely that the outcome was what either man had intended. This was not a simple debt transaction or a contract for a specific service; it was an agency contract. Khan needed Noor to use his expertise and discretion to find profitable markets, sell at high prices, and make numerous unknown and unanticipated decisions to facilitate the success of the enterprise. As the Nobel-prize winning scholarship of Oliver Hart has demonstrated, this was almost certainly a contract that was purposefully incomplete, because it was both impossible and counterproductive to attempt to specify everything that Noor should do.³ Leaving this enterprise loosely defined permitted the relationship and the business to evolve and change along with shifting market conditions. This ambiguity was good for business, but it obviously made the law less useful as a means of enforcing good behavior. As scholars have argued for other contexts, litigation is notoriously long, costly, and unpredictable, and thus becomes useful only *after* a contractual relationship has collapsed.⁴ The law might mitigate Khan's losses, but it could not insure his profits. At best, litigation provided a deterrent to outright malfesance, but it was of little help in sustaining this agency relationship, working through its difficulties, or enforcing its terms. Law was essential both in the construction and the

² Ahmed Najoo Khan vs. Ali Ibrahim Noor and Hajj Ibrahim Noor, case no. 72 before the Privy Council in 1923 (Henceforth 72 UKPC 1923). Page numbers are from the "Record of Proceedings."

³ Oliver Hart, *Firms, Contracts, and Financial Structure* (Oxford: Clarendon Press, 1995); Oliver Hart and John Moore, "Foundations of Incomplete Contracts," *Review of Economic Studies* 66, 1 (Jan. 1999): 115–38; Jean Tirole, "Incomplete Contracts: Where Do We Stand?" *Econometrica* 67, 4 (July 1999): 741–81; see also Jessica Goldberg, *Trade and Institutions in the Medieval Mediterranean: The Geniza Merchants and Their Business World* (Cambridge: Cambridge University Press, 2012), ch. 5.

⁴ See Lisa Bernstein, "Merchant Law in a Merchant Court: Rethinking the Code's Search for Immanent Business Norms," *University of Pennsylvania Law Review* 5 (1996): 1765, <https://doi.org/10.2307/3312639>; Francesca Trivellato, *The Familiarity of Strangers: The Sephardic Diaspora, Livorno, and Cross-Cultural Trade in the Early Modern Period* (New Haven: Yale University Press, 2012), 155–60; Goldberg, *Trade and Institutions*, ch. 5.

dissolution of an agency relationship, but was less useful in enduring the vicissitudes of commerce in between.

Ahmed Najoo Khan and Ali Ibrahim Noor were engaged in long-distance trade, which crossed political borders, legal jurisdictions, and cultural worlds. In the absence of an enforceable contract, or even a state that could reliably enforce such a contract, many traders turned to the institutions of diaspora. Cohesive social networks could monitor the actions of agents, mediate disputes, and increase/decrease social capital to incentivize good behavior. Historians and economists have worked out in great detail the mechanisms by which such social networks were able to facilitate long-distance trade.⁵ Yet Khan and Noor were not part of the same diasporic group; at most their social networks occasionally intersected. Khan was from India and Noor from Somalia, and these two diasporas were competitive if not mutually antagonistic.⁶ Khan did not have established networks in Asir that could monitor Noor actions, and if Noor proved to be an incompetent or duplicitous agent his reputation would not necessarily suffer in his own social networks. For these reasons, diasporic networks cannot provide an alternative institutional framework for explaining why Khan was willing to take such a large risk.

Rather than seeing the gaps in their social worlds as insurmountable, it is useful to think about why and how Khan and Noor tried to bridge them. Almost half a century ago, Mark Granovetter argued for the “strength of weak ties,” suggesting that the weak links that bridged social networks were often the most valuable.⁷ For Khan, this link made accessible vast returns from war-profiteering. For Noor, it made accessible capital that he sorely lacked. If this partnership was successful, then their social networks could connect and they could garner much of the value and social capital this connection generated. While exceptional in some aspects, this relationship between Khan and Noor presents an almost unique opportunity to explore how merchants

⁵ Philip D. Curtin, *Cross-Cultural Trade in World History* (Cambridge: Cambridge University Press, 1984); S. D. Goitein, *A Mediterranean Society: The Jewish Communities of the Arab World as Portrayed in the Documents of the Cairo Geniza* (Berkeley: University of California Press, 2000); Claude Markovits, *The Global World of Indian Merchants, 1750–1947: Traders of Sind from Bukhara to Panama* (Cambridge: Cambridge University Press, 2000); Trivellato, *Familiarity of Strangers*; Ghislaine Lydon, *On Trans-Saharan Trails: Islamic Law, Trade Networks and Cross-Cultural Exchange in 19th Century West Africa* (New York: Cambridge University Press, 2009); Sebouh Aslanian, *From the Indian Ocean to the Mediterranean: The Global Trade Networks of Armenian Merchants from New Julfa* (Berkeley: University of California Press, 2011); Goldberg, *Trade and Institutions*; Gagan D. S. Sood, *India and the Islamic Heartlands: An Eighteenth-Century World of Circulation and Exchange* (Cambridge: Cambridge University Press, 2016); Avner Greif, *Institutions and the Path to the Modern Economy: Lessons from Medieval Trade* (Cambridge: Cambridge University Press, 2006).

⁶ Richard Pankhurst, “The Trade of the Gulf of Aden Ports of Africa in the Nineteenth and Early Twentieth Centuries,” *Journal of Ethiopian Studies* 3, 1 (Jan. 1965): 36–81.

⁷ Mark Granovetter, “The Strength of Weak Ties,” *American Journal of Sociology* 78, 6 (May 1973): 1360–80. For a more recent treatment, see Ronald S Burt, *Brokerage and Closure: An Introduction to Social Capital* (Oxford: Oxford University Press, 2005).

moved beyond their own secure network of correspondents. Noor had much to gain and little to lose, but Khan risked everything he put into this enterprise in the hope of a competent and trustworthy agent. Why was Khan willing to take the risk of engaging in commerce where neither state nor society provided sufficient security?

This brings us back to the amorphous notion of trust. We use “trust” constantly in everyday parlance and understand the term intuitively in a variety of situations. But its very currency in different contexts means that trust has come to encompass a variety of diffuse ideas. I have no intention here of providing a general definition of trust, but in the context of commercial agency we might think of it as the irrational hope that one’s agent will act not in their own immediate self-interest but in the principal’s interest, that they will be, in a word, altruistic.⁸ It appears irrational to assume that someone will be altruistic, and yet this irrational trust seems integral to the operation of any principal-agent relationship. Trust is often experienced as a “gut feeling.” It does not itself mitigate risk, but it does make that risk palatable. This instinctual confidence in another’s altruism is also a hope that this risk will be mitigated over time by embedding it within a dense network of social ties. Trusting an unknown person is often a crazy idea, but over time it can prove to be prescient and profitable. Furthermore, this inchoate feeling of trust is essential to preserving a commercial relationship through the ups and downs of market exchange.

It is intuitively obvious that a relationship of trust, if successful, builds up and is proven over time, yet potentially can also collapse. Despite this, rather than exploring the dynamic and contingent nature of commercial agency, scholars have tended to examine it as the effect of a legal or institutional structure. In part, this is due to the binary of structure and agency that still undergirds most social science. No matter how nuanced this binary may be, it is poorly suited to explaining the dynamic temporality of agency relationships. Stable legal and social institutions cannot easily explain both the success of Khan and Noor’s partnership and its failure. We might understand what went wrong for Ahmed Khan if we focus a little less on how this agency was structured and more on how it evolved. This article investigates these temporal dynamics by framing this agency relationship as a dynamic, socio-material assemblage.

The concept of assemblages is useful here precisely because it circumvents the binary of structure and agency. Instead, assemblage theory focuses attention on the continuous work that is involved in maintaining the coherence of physical objects, social institutions, and in this case a commercial firm. Assemblage refers to an *agencement*, or arrangement of heterogeneous, human and non-human, material and intangible components, specifically (as

⁸ See the fascinating exploration of altruism in Samuel Bowles and Herbert Gintis, *A Cooperative Species: Human Reciprocity and Its Evolution* (Princeton: Princeton University Press, 2011).

the French connotes) an arrangement that *acts*.⁹ Assemblages allow us to understand a commercial partnership as a diverse collection of people, but also as something inclusive of and constituted by letters, commodities, account books, ships, laws, and even feelings of trust. As socio-material connections thicken, dissipate, and form anew, assemblages transform and come in and out of being. This approach allows us to study laws and social norms not as external institutions that structure this partnership, but rather as components that are enrolled within a commercial assemblage that also includes coffee beans, pieces of twine, and filial sentiments.¹⁰ By examining the partnership between Noor and Khan as an assemblage, we can trace how particular commodities, mistakes, and emotions dynamically shape first the success and then the failure of this relationship. To fully grasp this agency relationship, we must be attentive to its precarious cohesion and contingent dynamics. Khan and Noor drew upon multiple legal frameworks and social customs to establish their partnership, but it is the reconfiguration of these frameworks through specific expressions and silences, actions and inactions that explains why their relationship soured.

If we begin with trust as the *feeling* that underwrites risk, then we can then more accurately trace its role as a key component of this assemblage. This trust was initially tentative, but it was always necessary to undertake the risks that the partnership required.¹¹ Legal structures and social connections brought Ahmed Najoo Khan and Ali Ibrahim Noor together, but inchoate feelings of trust allowed a hesitant agreement to congeal into a commercial assemblage. For this commerce to be profitable, Khan had to believe that if he sent commodities to Ali Ibrahim Noor in a war-torn region Noor would not abscond with them, that he would exert his best effort to sell them at the highest price, and then would properly divide the profits and send Khan his share. He had to trust that Noor would act, not in his own best interest, but in the combined and amalgamated interests of both men operating as a single firm. Noor relied upon Khan, and Khan depended on Noor, and their success was contingent on the extent to which both operated as a single corporate body. In following the relationship between Khan and Noor, I will show the precarious and contingent role that trust played in sustaining their partnership. After a brief discussion of sources, I will proceed to examine how the two men drew upon

⁹ Gilles Deleuze and Felix Guattari, *A Thousand Plateaus: Capitalism and Schizophrenia*, Brian Massumi, trans. (Minneapolis: University of Minnesota Press, 1987); Manuel DeLanda, *A New Philosophy of Society: Assemblage Theory and Social Complexity*, annotated ed. (London: Bloomsbury Academic, 2006); Bruno Latour, *Reassembling the Social: An Introduction to Actor-Network-Theory* (Oxford: Oxford University Press, 2007).

¹⁰ For an excellent example of framing law through the prism of assemblages, see Fahad Ahmad Bishara, *A Sea of Debt: Law and Economic Life in the Western Indian Ocean, 1780–1950* (Cambridge: Cambridge University Press, 2017), 20–21, 247–56.

¹¹ My argument here builds off the notion of “uneasy trust” suggested in Trivellato, *Familiarity of Strangers*, 4–9.

multiple legal traditions, neighborly sentiments, and a surprising demonstration of trust to assemble their partnership. The section that follows will account for the myriad ways in which this relationship was bolstered and sustained through the circulation of goods, information, and profits. We might say that their trust was stabilized as it became incorporated into the routines of commerce. A third section examines how the sudden evaporation of trust caused the partnership to collapse, despite the stability of legal structures of support. The inchoate feeling of trust remained essential, and its disappearance reveals the precarity of such an agency relationship. The narrative arc of Khan and Noor's agency is not representative of all commercial firms, but its circuitous storyline displays the vital role that trust plays in assembling any agency relationship.

TRUST IN THE LEGAL ARCHIVE

Much of the historiography of long-distance trade has quite properly been built around large caches of commercial correspondence.¹² These substantial archives have permitted scholars to discern the aggregate patterns, norms, and structures that appear to regulate and undergird commercial practice. This approach has yielded enormous dividends, but there are also facets of commercial relationships that cannot be perceived at this scale of social structures. The microeconomic scope of a single case study, on the other hand, renders trust perceptible, and this is why the specific relationship between Ahmed Najoo Khan and Ali Ibrahim Noor is the central archival thread that organizes this article.

The strategies, efforts, and feelings of these two men and the nature of their relationship is accessible today only because both had the resources and the determination to take their case to the Lords of the Privy Council in London. The documentary fetish of the British Empire produced an enormously detailed record of all levels of their case. The records include pleadings, depositions, and cross-examinations by Khan and Noor themselves. The original correspondence and contracts are preserved in some cases down to the marginalia in the original Arabic script. But as meticulous as this case file is, it would be a mistake to imagine it to be a transparent reflection of their reality. It has undoubtedly been transformed by transcription, translation, and framing within the genre of common law litigation.

In the following pages, I make a concerted effort to read against the grain and through the conventions of this text to shed some light, however dim, on the ordinary operation of commercial agency in the Indian Ocean world. While laws are undoubtedly a key component of commerce, I do not propose here to investigate the legal systems, which have been most capably

¹² This approach was established in large part by the seminal work of Goitein, *A Mediterranean Society*, and Curtin, *Cross-Cultural Trade*.

examined by other scholars.¹³ Rather, I try to pay attention to the issues that flit through and stray beyond the legal archive. At various moments it becomes clear that withholding information from the court can yield substantial dividends in the courtroom. As the plaintiff in the initial suit, Ahmed Khan provided the correspondence he received from Noor as well as his own account books. Ali Ibrahim Noor, on the other hand, failed to produce his accounts or the correspondence he received from Khan. We cannot be certain that this was a cunning legal strategy, but it would be vital to Noor's ultimate success in the Privy Council. I attempt to read into these silences and around the legal debates to reconstruct the itinerary of trust in this agency relationship.

Further, we can supplement the "thick description" of this case with other evidence, particularly fatwas (non-binding judicial opinions) from the Indian Ocean world of the late nineteenth and early twentieth centuries. I draw on three fatwa collections that were explicitly engaged with the diasporic commerce of the Indian Ocean world. The largest collection is derived from the opinions of Imam Nur al-Din al-Salimi, who was perhaps the most important jurist in the Ibadhi sect of Islam in the late nineteenth century; and whose opinions were widely cited both in Oman and among merchants trading in Omani dominions in East Africa. The second collection is that of Shaikh Abu Bakr ibn Ahmed al-Ansari, a noted jurist of the Shafi'i school of Sunni Islam who catered to the Indian Ocean diaspora originating in the Yemeni region of Hadhramout. Lastly, I draw upon a fatwa collection catering specifically to Muslims from insular Southeast Asia and curated from the opinions of three jurists from Mecca. Most important among these was Shaikh Ahmed Zayni Dahlan: a historian, influential teacher, the chief Shafi'i jurist of Mecca, and for a period the Shaikh-ul-Ulama, or the highest juridical authority in the city. This broader archival canvas helps to fill in some of the gaps in the story of Khan and Noor, but it does so imperfectly.

There is little available scholarship on the Somali diaspora in the Arabian Peninsula or the history of Asir because of a paucity of records, which means it is almost impossible to firmly ground this case—of a young Somali merchant acting as agent in Asir for a more established Indian principal in Aden—in its unique historical context.¹⁴ So, while it is admittedly imprecise and broad,

¹³ There is a large and growing literature on the legal history of the Indian Ocean world: see Bishara, *Sea of Debt*; all of the articles in the special Issue of *Law and History Review* edited by Renisa Mawani and Iza Hussin, "The Travels of Law: Indian Ocean Itineraries," *Law and History Review* 32, 4 (2014); Elke E. Stockreiter, *Islamic Law, Gender and Social Change in Post-Abolition Zanzibar* (New York: Cambridge University Press, 2015); and Nurfadzilah Yahaya, "Legal Pluralism and the English East India Company in the Straits of Malacca during the Early Nineteenth Century," *Law and History Review* 33 (2015): 945–64. See also Beshara Doumani, ed., *Family History in the Middle East: Household, Property, and Gender* (Albany: State University of New York Press, 2003), Introduction, and 173–79.

¹⁴ Bang, *Idrisi State in Asir*; Pankhurst, "Trade of the Gulf." For more general histories of Somalia, see I. M. Lewis, *A Modern History of the Somali: Nation and State in the Horn of*

I will place this commercial relationship within the larger frame of Indian Ocean commerce. Fatwas issued for the Hadhrami diaspora in Java or the Omani diaspora along the Swahili coast are imperfect proxies for Somali-Indian partnerships in the Red Sea. Yet all of these were Indian Ocean milieus where laws overlapped, communities intermarried, and empires competed. As Fahad Bishara powerfully demonstrates, jurists and merchants were constantly expanding and transforming the law in the Indian Ocean. To accommodate the diversity of practices and partners, they drew together different legal traditions and reinterpreted old concepts for new transactions.¹⁵ Khan and Noor could draw upon this diverse, overlapping, and evolving set of Indian Ocean legal systems to assemble their agency relationship.

Like colonial records, these fatwa collections are also shaped by specific interests and genre conventions, and so must be read cautiously.¹⁶ The fatwas included in these collections were carefully selected to reflect the jurists' sense of their importance and potential use for other jurists and judges. They were also usually organized by legal concept, and the fatwas analyzed here fell under the headings of *mudaraba* and *wakala*, two subtly different kinds of commercial agency in Islamic jurisprudence. In an effort to glimpse the commercial world veiled within this specific legal discourse, I focus attention on the practices that frustrated the muftis (jurists qualified to issue fatwas) and on the questions from merchants rather than the answers of the muftis.¹⁷ Because these fatwas were non-binding, they reflect the ways that law was harnessed by merchants in constructing relationships rather than serving as a structure that was enforced upon them. While this was not as true of colonial courts, in a context of legal pluralism merchants wielded significant control over which laws applied to them and when they would be applied. I also focus attention on fatwas that indicate commerce occurring across the lines of religion and community. While these were not the norm, they had both greater need for the support of legal frameworks and greater flexibility regarding which laws applied. The partnership between Khan and Noor was exceptional in many ways, but this exceptionality was vital to Indian Ocean trade, which regularly trespassed the boundaries of community, sect, and polity. By situating this

Africa, 4th ed. (Athens: Ohio University Press, 2003); Lee V. Cassanelli, *The Shaping of Somali Society: Reconstructing the History of a Pastoral People, 1600–1900* (Philadelphia: University of Pennsylvania Press, 1982); Scott S. Reese, *Renewers of the Age: Holy Men and Social Discourse in Colonial Benaadir* (Boston: Brill, 2008); Scott S. Reese, *Imperial Muslims: Islam, Community and Authority in the Indian Ocean, 1839–1937* (Edinburgh: Edinburgh University Press, 2018).

¹⁵ Bishara, *Sea of Debt*, esp. chs. 3 and 4.

¹⁶ Muhammad Khalid Masud, Brinkley Morris Messick, and David Stephan Powers, eds., *Islamic Legal Interpretation: Muftis and Their Fatwas* (Cambridge: Harvard University Press, 1996).

¹⁷ In a sense, I am only working one side of what Doumani calls the double reading of the Ottoman legal archive, in *Family History in the Middle East*.

relationship within the Indian Ocean, I hope to discern the ways in which these two men developed trust in a diverse and complex, but ultimately shared commercial world.

BUILDING TRUST

Before 1916, Ali Ibrahim Noor had spent his entire career as an employee and commercial agent to his father. Hajj Ibrahim Noor trained his son in commerce and in turn trusted that Ali would loyally carry out his orders. It is unlikely that father and son had any written contract, yet Ali Ibrahim Noor acted on his father's behalf in distant ports.¹⁸ The firm of Hajj Ibrahim Noor, as a family business, was representative of much, if not most of the commerce of the Indian Ocean world. In all the collections examined here, a large percentage of fatwas involved family members acting as agents, and more than half of the fatwas concerning the *wakala* form of agency involved family.¹⁹ There is even evidence to suggest that family ties superseded the arms-length contracts enforced by legal authorities. In several fatwas, the merchants posing questions to the mufti indicate that family members de facto operated as commercial agents without any legal documentation. In more than one, the merchant seeking advice assumed that a family member's status took precedence over that of an agent with regards to the principal's property. In these fatwas, the mufti disabuses his questioners of this belief, insisting that the *shari'a* does not recognize any agency, even that of a family member, that has not been formally witnessed.²⁰ These muftis clearly dealt with this issue often enough that it merited inclusion in their collections and so family members, even if they had no legal backing, were routinely presumed to be trusted agents in Indian Ocean commerce.

If family was central to commercial agency, then how did Ahmed Najoo Khan come to appoint Ali Ibrahim Noor as his agent? Not only did they lack a familial bond, but they did not even belong to the same community. Ahmed Najoo Khan was Indian, but the court records provide us with no further information about his ethnic or religious ties. The Indian mercantile community was

¹⁸ See for example: Archive of 'Abdullah al-Tābūr, copies held at Juma 'al-Mājid Library, Dubai, henceforth Tābūr Archive: Abdallah Ṣāliḥ al-Muṭāwa' to Ahmed bin 'Abd al-Raḥmān bin Hadid, 28 Shawal 1346 AH; Sala Mohommed Jafferbhoy and Alli Mohamed Jafferbhoy v. Dame Janbai [1897] UKPC 17; Goldberg, *Trade and Institutions*, 136–37; 'Abd Allāh ibn Ḥumayyid Ṣālimī, *Jawābāt Al-Imām Al-Ṣālimī*, ed. 'Abd al-Sattār Abū Ghuddah (Muscat: Maktabat al-Imām al-Ṣālimī, 2010), vol. 4, 538a, the fatwas are not numbered separately so I have listed the first, second or third fatwa on a page as a, b or c respectively.

¹⁹ Ṣālimī, *Jawābāt*, vols. 4, 537–556, and volume 3, 283–87; Abū Bakr ibn Aḥmad ibn 'Abd Allāh al-Khaṭīb Anṣārī, *al-Fatāwa al-nāfi 'ah fī masā'il al-uhūl al-wāqī'ah* (Cairo: Muṣṭafā al-Bābī al-Ḥalabī, 1379), 76–79; N. J. G. Kaptein, ed., *The Muhimmāt Al-Nafā'is: A Bilingual Meccan Fatwa Collection from Indonesian Muslims from the End of the Nineteenth Century*, Seri INIS; 32. (Jakarta: INIS, 1997).

²⁰ Ṣālimī, *Jawābāt*, vol. 4, pp. 537a, 537b, 539a, 541a; Anṣārī, *al-Fatāwa al-nāfi'ah*, 77b, 78a.

quite diverse, including Hindus, Parsis, and various sects of Muslims. His name is also frustratingly generic and gives little indication as to his regional or sectarian heritage. Ali Ibrahim Noor is somewhat easier to place. That Hajj Ibrahim Noor settled in Aden makes him a member of a relatively defined Somali diaspora that was involved in the trade of cattle for meat and hides, which Indians tended to refrain from.²¹ So there are only two things that we can be sure these two men shared: Islam and commerce. If the antagonistic relationship between Indian and Somali merchants in Somalia is any indication, a shared religion or mercantile customs would not have easily overcome the competition and negative stereotypes that shaped the interactions between these communities.²² A broadly shared moral framework and overlapping worlds of commercial practice were shallow foundations for risking large amounts of capital.

Instead, it was the built environment of Aden that provided a point of intersection between these men. Located just outside the entrance to the Red Sea, with a marvelous natural harbor, Aden was an *entrepôt par excellence* (See Figure 1). For centuries it had brought together merchants from across the Indian Ocean and Mediterranean worlds.²³ Aden was an urban space that exemplifies what Francesca Trivellato has called the communitarian cosmopolitan character of this commerce.²⁴ Peoples of different religions, languages, and cultures traded with each other and yet also maintained endogamous communities. It was only in a cosmopolitan cauldron like Aden that Ahmed Najoo Khan could end up being neighbors with Hajj Ibrahim Noor. Their houses were on the same street, and Ahmed Khan might have even watched the young Ali Ibrahim Noor playing on the street and growing into a man.²⁵ These close quarters gave a certain level of familiarity that could precipitate bonds across communal bounds.

Even if the commerce of Aden put these two men in the same time and place, Ahmed Khan was unlikely to enter into business with a young, unproven merchant like Ali Ibrahim Noor without additional assurances. It was almost certainly the elder Hajj Ibrahim Noor who initiated the link between his son and Ahmed Khan. Khan undertook this partnership with the understanding that the father stood as a guarantor for his son. In fact, Ali Ibrahim Noor

²¹ Pankhurst, "Trade of the Gulf."

²² Scholarship on Somalia focuses overwhelmingly on the pastoral society and economy, which was far more important than the small-scale maritime trade. Cassanelli, *Shaping of Somali Society*; Lewis, *Modern History*; Reese, *Renewers of the Age*, ch. 4.

²³ Roxani Eleni Margariti, *Aden & the Indian Ocean Trade: 150 Years in the Life of a Medieval Arabian Port* (Chapel Hill: University of North Carolina Press, 2007); S. D. Goitein and Mordechai Akiva Friedman, *India Traders of the Middle Ages: Documents from the Cairo Geniza* (Leiden: Brill, 2008).

²⁴ Trivellato, *Familiarity of Strangers*, 18. For the cosmopolitan milieu of Aden, see Reese, *Imperial Muslims*.

²⁵ Examination of plaintiff (Khan), 72 UKPC 1923, 7.



FIGURE 1. Map of the Red Sea Region. Given the constantly changing and porous borders of the region during the First World War I, I have not indicated borders in this map; and country names indicate their general location. Map by author, based on 'Arabian Sea Map', last modified 19 July 2005, http://commons.wikimedia.org/wiki/File:Arabian_Sea_map.png.

routinely sent the profits of the partnership to Ahmed Najoo Khan via a *hawala* (a remittance instrument) drawn on his father.²⁶ There is little question that Hajj Ibrahim Noor was essential to both the establishment of this partnership and its

²⁶ Noor to Khan, 6 Dhu al-Hijjah 1334 (3 Oct. 1916), 72 UKPC 1923, 101.

successful operation. These men relied upon the intermediary of Hajj Ibrahim Noor and a coincidence of Aden's urban geography to construct a personal relationship that could facilitate commerce.

Yet these social connections were insufficient in and of themselves, so they also turned to the law to bolster this precarious arrangement. They obtained stamped papers from the colonial government of Aden and wrote down the terms of their joint enterprise. The contract appears to have been written in both English and in Arabic, with each partner keeping copies. It was signed by both men and witnessed by one person from each side.²⁷ Legal documentation was thus crucial to the establishment of this enterprise.

That said, the legal environment in which Khan and Noor documented their partnership was diverse and complex. In Aden at the turn of the twentieth century, one might have encountered merchants applying English common law, Anglo-Muhammadan law, the Shafi'i school of Islamic law, modernist interpretations of Islamic law that borrowed from different schools, Hindu and Parsi legal traditions, and varied understandings of mercantile custom. These varied legal traditions often overlapped, and in any case arbitrators and judges were open to ruling on the basis of multiple and combined legal frameworks. The court of the assistant resident of Aden, where Khan and Noor would eventually submit their dispute, was presided over by a revolving cast of British officers who happened to be posted in the city. Their case was judged by a Captain H. M. Wightwick, who was likely a military officer with little legal training. The court proceedings suggest that he administered justice more according to a general understanding of fairness than a scrupulous adherence to legal procedure.²⁸ Asir presented a less complicated legal terrain where the state courts probably followed Shafi'i jurisprudence, though it is again possible that some *qadis* (judges) borrowed from the other three recognized schools of Sunni jurisprudence. Khan and Noor might have seen Shafi'i jurisprudence as a common framework for establishing their partnership, though there is no indication of this in the legal record. There was no pre-established legal framework through which the terms of this commercial agency could be predictably defined.

Instead, it appears that this partnership was left open to potentially be adjudicated in any British, Islamic, or mercantile court.²⁹ Moreover, the two men would eventually take their case to merchant arbitrators, *qadis*, and colonial courts. In the pleadings we have, the only legal framework explicitly appealed to was that of mercantile custom. Further, we can see that key components of

²⁷ Copy of an agreement between plaintiff and defendant, no. 1, 72 UKPC 1923, 34–35.

²⁸ See trial proceedings and judgment of the Assistant Resident, 72, UKPC 1923, 44–50. For an excellent discussion of the overlapping and contested nature of the legal system in Aden, see Reese, *Imperial Muslims*, ch. 4; For a similar understanding of colonial law in East Africa, see Bishara, *Sea of Debt*, 137–47.

²⁹ On merchants framing contracts to be legible in multiple legal regimes, see Goldberg, *Trade and Institutions*, 124–26, 150–64.

this relationship were denied legal validity in different levels of the colonial legal system. Hajj Ibrahim Noor was clearly a key player in the enterprise, but his name appears nowhere in the contract of partnership.³⁰ Khan insisted in court that Hajj Ibrahim Noor had verbally agreed to stand as a guarantor of his son's performance.³¹ Islamic law and mercantile custom gave real weight to such verbal agreements, especially if they were witnessed and documented in other ways. Captain Wightwick accepted Hajj Ibrahim Noor as a participant in this enterprise, but the appellate judges above him gave little credence to contractual obligations not explicitly written in the contract.³² This overlapping of legal traditions allowed the litigants a great deal of flexibility, but it provided Khan with little precision or security in enforcing the terms of the contract.

This muddled legal environment is further reflected in the contract between Khan and Noor. On one hand, it was written in English on colonial government-stamped paper. The English text referred to this relationship as a partnership and colonial courts would consequently define it as a common law partnership.³³ Interestingly, Ali Ibrahim Noor also left a security deposit against potential losses, which was unusual for agency relationships in Indian Ocean trade. Clearly, Khan was wary and relied upon colonial legal forms to protect his interests. On the other hand, both parties signed this document in their own vernacular scripts, which indicates that neither were literate in English. There was also an Arabic text of this contract, which unfortunately was not preserved in the records. Perhaps the Arabic original/translation was framed in the conceptual vocabularies of Islamic law and served as the primary legal document, but Ahmed Najoo Khan did not understand Arabic either. Thus, we have two translations, neither of which is comprehensible to the individual primarily being protected by the document. These two men documented their obligations to each other, yet the document's precise meaning was shielded from them in unfamiliar languages. Therefore, this contract appears less a precise delineation of obligations and more a totemic document that formalized their agency relationship.

If the languages of this contract were somewhat opaque, there was nevertheless a general familiarity with the kind of relationship into which these two men were entering. This enterprise was clearly structured as a *mudaraba* partnership.³⁴ This was a long-established form of limited partnership that was

³⁰ Examination of plaintiff (Khan), 72 UKPC 1923, 6–7.

³¹ On the prevalence of verbal contracting, see Goldberg, *Trade and Institutions*, 133–35.

³² Judgement of the Privy Council, and Judgement of the High Court of Bombay, 72 UKPC 1923, 78–80.

³³ There was an Islamic form of partnership, *sharika*, but it would have involved both partners contributing capital.

³⁴ Abraham L. Udovitch, *Partnership and Profit in Medieval Islam* (Princeton: Princeton University Press, 1970); see also Margariti, *Aden & the Indian Ocean Trade*; Sebouh Aslanian, "The

commonly used in Indian Ocean trade. Khan was the elder, stationary partner who provided all the capital and sent commodities from the home port of Aden. Noor was the agent who provided the skilled labor and undertook the risks of traveling to distant places to sell those commodities and who would send the profits and other goods back to Aden. The profits were split evenly between them.³⁵ The *mudaraba* partnership provided a clear framework for the relationship that would be legible in multiple legal traditions. Legal concepts like *mudaraba* provided an essential scaffolding for assembling this relationship and within which conflicts could be negotiated. The contract thus served as an important reference point for two men building up a commercial assemblage.³⁶

There is one final detail that is necessary to understand the role of trust at the origins of this enterprise, one so insignificant to the participants and their lawyers that it passed without comment over years of depositions, court proceedings, and judgements. I myself did not notice it for months during which I read and re-read these court records. Ali Ibrahim Noor and Ahmed Najoo Khan signed their contract of partnership on 17 August 1916. But three days earlier, on 14 August, Khan handed over almost 12,000 rupees worth of textiles, cinnamon, ginger, and various kinds of rice to Noor without the security of a legal contract.³⁷ Certainly this transfer was done in coordination with and in anticipation of the signing of a contract, but legal protections were not a prerequisite of this venture. This legal contract sustained and bolstered an assemblage that was already being constituted by personal networks and an unsecured transfer of capital.

We can only imagine what it felt like for Ahmed Najoo Khan to hand over this large and valuable cache of commodities. There would have been the queasiness of uncertainty, but also the hope for outsized returns. Something in his demeanor, their interactions, and the wider environment must have convinced Khan that Noor could be trusted despite the risks. This gut feeling, this irrational hope for another's altruism, was the first blush of trust as a component of this relationship. This interaction of law, social structures, profit motives, and gut feelings convinced Ahmed Khan to take on this large risk. His initial

Circulation of Men and Credit: The Role of the Commenda and the Family Firm in Julfan Society," *Journal of the Economic and Social History of the Orient* 50, 2/3 (Jan. 2007): 124–71.

³⁵ Copy of an agreement between plaintiff and defendant, no. 1, 72 UKPC 1923, 34–35.

³⁶ This resonates with a recent article on contract theory; see Oliver Hart and John Moore, "Contracts as Reference Points," *Quarterly Journal of Economics* 123, 1 (1 Feb. 2008): 1–48.

³⁷ This would be worth a little over £50,000 in 2017, in terms of commodity prices, but as a proportion of the total economic activity of Britain at this moment its value would be at least half a million pounds today. See discussions of purchasing power and economic cost conversions in, "Measuring Worth—Purchasing Power of Pound," <https://www.measuringworth.com/ppoweruk/> (accessed 2 Aug. 2017).

trust was precarious and uncertain, and Noor's subsequent behavior would determine whether it would remain tentative or blossom into something more.

STABILIZING TRUST

As Ali Ibrahim Noor sailed up to Asir he would put political borders, cultural boundaries, and hundreds of miles of sea between himself and his principal. Their partnership could function only through the regular movement of ships, commodities, letters, and money. The logistics of managing this ebb and flow between Aden and Asir would become the central effort of managing the business and solidifying the assemblage. These material objects connected, obligated, and at least precariously united Ahmed Khan and Ali Ibrahim Noor in one commercial enterprise. As commodities, information, and profits began to routinely flow between the two partners, the role of trusted receded into the background, but it never disappeared altogether.

Ali Ibrahim Noor made his way up to the city of Jizan, as specified in their contract. Jizan was the major port of the Idrisi state and was served by the British-Indian steamships of Cowasji Dinshaw Brothers.³⁸ Noor set about selling the various goods that Khan had provided, but the market in Jizan was not as profitable as he had expected. Perhaps others saw the same opportunities and beat Noor to the profits. But he continued to work his connections and search out information about which markets could make the enterprise a success. Almost immediately, then, Noor had to explore options unspecified in their partnership contract. Finally, on the 16 September 1916, Noor sent a letter bearing good news: he had found his profitable market in the city of Maidi.³⁹

Maidi was south of Jizan, and actually closer to Aden, but it was not served by any steamship lines during the war. Since the port of Maidi was a little more isolated, commodity prices were higher and less tied to market prices in Aden. Despite its isolation from global markets, the small port of Maidi was buzzing with activity. Noor wrote that some two thousand camels were anxiously waiting in the city for sufficient textiles, tobacco, and especially potash (a kind of fertilizer) to carry into the interior of Asir. Noor implored Khan to send goods as fast as possible and quoted current prices for different kinds of sugar, textiles, cigarette paper, and thread.⁴⁰ But though it had taken time for Noor to write to Aden with promising opportunities, it would take Khan even longer to take advantage of them.

Part of the difficulty was that communication between Maidi and Aden was challenging at the best of times. Maidi's poor connections with the

³⁸ India Office Records, British Library: R/20/A/2960, W. Baddeley, Admiralty to Undersecretary of State for Foreign Affairs, 22 Sept. 1919; Aden Residency Note, 15 Nov. 1919; Major A. S. Meek, Political Officer, Hodeida to First Assistant Resident, 3 Dec. 1919.

³⁹ Noor to Khan, 16 Sept. 1916, 72 UKPC 1923, 102–3.

⁴⁰ *Ibid.*

wider world made it a more profitable market, but also made communication unpredictable. Three days after Noor sent his first letter from Maidi, he sent another that reprised the information in the first letter, but with greater detail and a more fervent sense of urgency. In this second letter, Noor says that he has sent several letters with duplicate copies. He wrote a third, much shorter letter in early October that again referred to the many previous letters and praying for the swift delivery of the commodities requested. He wrote again and again because he had not heard back and could not be sure that his letters were reaching Ahmed Khan.⁴¹ Keeping lines of communication open was vital for the transmission of market prices and trends. Letters from both men would eventually inform the other partner about current prices, recent trades, and perhaps most importantly, the reasoning behind their commercial decisions. Understanding why one partner had made a decision helped the other know what to expect in the future, and they could reassure each other in cases of questionable transactions. This enterprise would yield profits largely to the extent that the two men, separated by hundreds of miles, could act as one.

This work of communication and explanation allowed Khan and Noor to operate as a single commercial assemblage distributed across markets and jurisdictions. One of the few legal obligations of a commercial agent to his principal was to explain why he took the decisions he did. In the fatwa collection of Shaikh Ansari, a merchant complains to the mufti about his agent who mysteriously cannot account for some of the property that was entrusted to him. The merchant thinks his agent may have stolen from him and wants full compensation.

The shaikh advises instead that the principal must accept whatever losses his agent has incurred, though he can demand an explanation.⁴² The agent could have made a mistake, suffered from bad timing, or simply made poor decisions. If the agent could explain exactly what occurred, then the principal had to be satisfied, at least in this mufti's interpretation of the law. What was absolutely required of the agent was not to make profits, or even preserve value, but to be scrupulous in accounting for what their decisions were and how they made them.

The underlying moral of this fatwa is that an agent has expansive powers over the property of the principal and so one should refrain from appointing an agent whom one cannot implicitly trust. Numerous fatwas affirm and reaffirm that an agent's decisions unequivocally bind the principal. Merchants complain of agents seeming to overstep boundaries or badly managing transactions, but the muftis repeat that the principal has delegated their authority and is bound to

⁴¹ Noor to Khan, 22 Dhu al-Qa'ada (19 Sept. 1916); 6 Dhu al-Hijjah (3 Oct. 1916), 72 UKPC 1923, 104–6.

⁴² Anṣārī, *al-Fatāwa al-nāfi'ah*, 76a; Goldberg, *Trade and Institutions*, 134.

the decisions of their agent.⁴³ The idealized agent would intuit and carry out the intentions of the principal; they would simply be an instrument of the principal's will. The perfect commercial agent has no agency in the fuller sense of the term. In reality, principals either transferred their agency over to their agents, or this agency was distributed and shared across two individuals working together as a single commercial assemblage. Legal enforcement could not constrain an agent's powers, so principals had to find ways of directing agents to further their interests.

Merchants trying to insure their agents could be trusted therefore worked to realign the incentives, ambitions, and sentiments of their agents. This was accomplished through not just the sharing of market information, but also effusive personal greetings, inquiries after the health and families of correspondents, and sharing gossip and news about political events.⁴⁴ One mercantile proverb exhorts the scrupulous sharing of accounts in the service of brotherly bonds rather than vice versa.⁴⁵ One of the most interesting aspects of Ali Ibrahim Noor's letters to Ahmed Najoo Khan is his frequent reference to Khan as "father"; once it is even "beloved dear father," and Noor signs off as "your son."⁴⁶ This was as much a term of respect and honor as an expression of actual filial sentiment, but the language nevertheless underscored the ways in which they needed to be more than simply business associates. Such words and social graces helped to inculcate the unity characteristic of family firms into this more precarious partnership. Noor was reassuring Khan that they were acting together and that their interests were merged. These epistolary conventions hopefully reassured Khan that his agent was as loyal as a son, and their interests were aligned and inextricable.

If these subtle and meaningful forms of communication were vital to maintaining trust, the mechanics of transporting commodities were equally important. In the opening and closing to each of Noor's letters we hear of constant efforts to overcome obstacles to transportation.⁴⁷ Goods and letters were

⁴³ Anṣārī, *al-Fatāwa al-nāfi'ah*, 76a; Sālimī, *Jawābāt*, vol. 4, 537a, 537b, 540a, and 554b. There are also exceptions: 552a, 556a.

⁴⁴ This is a well-established idea in the literature; see Sebouh Aslanian, "'The Salt in a Merchant's Letter': The Culture of Julfan Correspondence in the Indian Ocean and the Mediterranean," *Journal of World History* 19, 2 (June 2008): 127–88; Gagan D. S. Sood, "'Correspondence Is Equal to Half a Meeting': The Composition and Comprehension of Letters in Eighteenth-Century Islamic Eurasia," *Journal of the Economic and Social History of the Orient* 50, 2 (June 2007): 172–211; and "The Informational Fabric of Eighteenth-Century India and the Middle East: Couriers, Intermediaries and Postal Communication," *Modern Asian Studies* 43, 05 (Sept. 2009): 1085–116; Trivellato, *Familiarity of Strangers*; Goldberg, *Trade and Institutions*; Markovits, *Global World*.

⁴⁵ Atmaran Sadashiva Grandin Jayakar, *Omani Proverbs* (Cambridge, UK: Oleander Press, 1987), 29, 65. Also see "brotherly" greetings in the Tābūr Archive: 'Abdallah Ṣaliḥ al-Muṭawa' to Ahmed bin 'Abd al-Rahmān bin Hadīd, 28 Shawal 1346 AH; 'Abd al-Rahmān Madfā' to Shaikh Jum'a Mohammed al Mutawa' 22 Sha'ban 1356.

⁴⁶ See letters in 72 UKPC 1923, 101–11.

⁴⁷ Noor to Khan, 16 Sept. 1916; 22 Dhu al-Qa'ada (19 Sept. 1916), 72 UKPC 1923, 102–6.

sent by steam ship and by sailing dhow, moved through many cities, and passed through the hands of multiple merchants before reaching Khan and Noor.⁴⁸ Noor's letters also convey anxieties over the climatic rigors of sea travel. He asks for tarpaulins to protect the goods from waves and inclement weather and obsesses over the packaging of the goods. In one excruciatingly detailed passage, he instructs that certain kinds of textiles must be removed from their packaging and placed in a case with a tin lining, while others should be enclosed in doubled-up gunny sacks. He specifies that Parsi soap should be sent with four packages combined into one, but American soap should combine eight packages into one. He even describes how the ropes should be tied to ensure the packages are securely fastened together. He also warns that Khan's letters should clearly specify what commodities were being sent and in what weights, and that he should send those letters separately from the cargo because if they arrived in the same vessel a sailor who discovered the correspondence could easily purloin the most valuable commodities. Probably related to this concern with thievery, Noor also specifies how much the captains of vessels should be paid for delivering goods and letters.⁴⁹ Neither Noor nor Khan would have profited if their goods were damaged or pilfered in route, so sustaining this commercial assemblage and maintaining trust was as much a logistical challenge as anything else.

One further logistical hurdle shadowed this enterprise. During the First World War, British colonial officials intensively managed the trade of this region. The Red Sea was a notably complicated space to govern because it was partly controlled by the Ottoman Empire and the Ottoman allied Imam of Yemen, partly by French and Italian colonies, and partly by British-allied Arab rulers in the Hijaz and Asir. The Royal Navy attempted to enforce a blockade on the Red Sea in general, and particularly on Yemeni ports, to starve Ottoman and Yemeni forces. Trade between Aden and Asir was therefore highly regulated and limited to the Cowasji steamers plus a handful of licensed dhows. A total blockade was imposed from French and Italian ports to Maldi because it was easily accessible to the territories of the Imam of Yemen and was thus a smuggling threat. Legal trade was funneled to Jizan because there was less of a concern about smuggling from there. Still, most merchants around the Red Sea paid little attention to these new regulations and the blockade was much more substantial on paper than in practice.⁵⁰ It was almost certainly the counterintuitive effects of this blockade that caused Ali Ibrahim Noor to find a dull trade at Jizan and the thriving market in Maldi in 1916.

⁴⁸ Statement showing the goods sent for partnership, 72 UKPC 1923, 93–97.

⁴⁹ Noor to Khan, 22 Dhu al-Qa'ada (19 Sept. 1916); 16 Nov. 1916, 72 UKPC 1923, 104–9.

⁵⁰ National Archives of the United Kingdom: T161/90 Memo W.M.P. Wood, 1st Assistant Resident, Aden, 6 Sept. 1917; J. M. Stewart, Political Resident in Aden to High Commissioner of Egypt, 31 Aug. 1918.

The war severed commodity flows, increased regulations, and elevated prices. Noor's ability to circumvent those regulations and exploit higher price levels must have made this partnership worthwhile to Ahmed Khan. Noor repeatedly asked Khan to obtain special permits to trade in goods like thread and particularly kerosene, which was banned because of its high value for military purposes.⁵¹ Since we do not have Ahmed Khan's side of the correspondence we do not know if he obtained the permits, but it is clear that they were importing kerosene into Maidi.⁵² These men were doing a healthy trade that pushed the limits of what was legally permitted, and possibly strayed well beyond those limits. Merchants certainly could not rely on colonial law to enforce transactions that circumvented colonial laws. When pushing the boundaries of legal trade, social ties and outsized profits were necessary to sustain trust and solidify this commercial assemblage.

Given these myriad regulatory and logistical obstacles between Aden and Asir, it was difficult and yet also vital that value complete the circuit between Khan and Noor. The venture's profits were the essential adhesive that secured their partnership. In the initial consignment of goods, the sugar and cloth appear to have been profitably sold off in Maidi, but rice and spices made up half of the cargo and Noor found it more difficult to sell these even in the thriving market of Maidi.⁵³ So the profitability of this venture was decidedly mixed, and Khan had reason to be concerned: was Noor's mistaken information a result of the unpredictable fluctuations of a market in uncertain times, or were Noor's informants less reliable than he had thought?

Khan seems to have bided his time before deciding. The court records only include Noor's letters to Khan, but they also include Khan's account books, which provide the dates when he shipped goods to Maidi. We cannot know why, but Khan refrained from sending commodities to Maidi for over a month. Then, in a very curt letter in early October, Noor informed Khan that he was sending three bags of coins totaling 4,500 Maria Theresa dollars (the main trade currency of the Red Sea region (1 Maria Theresa dollar = ~1.6 rupees)). By the end of October, Khan had received these coins and additional profits that, in all, totaled a few hundred rupees more than his initial investment. This may have been a meager return, but it was the proceeds from the sale of half of the cargo. This generative circuit of value from Aden to Maidi and back likely reassured Khan that his initial trust was well-placed.

In early November, a little over a week after receiving this money, Khan sent a new consignment of commodities to Noor worth almost 17,000 rupees. Once the first circuit of value had been completed, Noor and Khan settled into a regular flow of letters and commodities. Noor would write a letter specifying

⁵¹ Noor to Khan, 22 Dhu al-Qa'ada (19 Sept. 1916); 16 Sept. 1916, 72 UKPC 1923, 102–3.

⁵² Statement showing the goods sent for partnership, 72 UKPC 1923, 93–97.

⁵³ Noor to Khan, 16 Sept. 1916, 72 UKPC 1923, 102–3.

which commodities could fetch the highest prices in Maidi, and in the following days and weeks Khan would purchase whatever goods were available at remunerative prices in Aden.⁵⁴ In November and December, their relationship entered a virtuous cycle and their enterprise found considerable success. Noor's letters from this period are almost carefree; they tell Khan to send whatever he can get his hands on since prices are high and the market is brisk.⁵⁵ The value that was being generated by this circulation of goods helped to ensure that their individual self-interests were becoming inextricable. Khan could leave decisions to Noor because their interests had coalesced, the trust between them had become routine, and they now functioned as a single, incorporated entity.

COLLAPSING TRUST

Unfortunately, markets are fickle. One moment prices are high, trading is brisk, and profits are easy. The next, traders are scarce, prices slump, and profits turn into losses. Something happened around the turn of the New Year that seems to have led to a slump in Maidi. There were no obvious shifts in the battles around Asir and colonial regulatory provisions did not change with the new year. Nevertheless, this was a war-zone and such markets are quite naturally volatile because trade routes can unexpectedly be severed or reopened. Even rumors of new troop movements can cause markets to wildly fluctuate. The profits garnered during war can compensate for this increased volatility. It is no surprise, then, that on 9 January Ali Ibrahim Noor wrote that he could find no buyers for the textiles, tobacco, or even the kerosene that he had requested just a few weeks before. In lieu of a cash sale, Noor had managed to barter some tobacco and kerosene for coffee beans that he hoped could be sold in Aden at a profit. The transaction was done under the general duress of a hard market and Noor seems to have paid too much for inferior goods.⁵⁶ This could have been a bump on the road to a long and enduring commercial relationship. Khan and Noor had overcome serious obstacles before, and their patience eventually yielded significant profits. But this time would be different.

The breakdown of trust was as unpredictable and dependent on "gut feelings" as the initiation of trust had been. As we have seen, commercial agency was contingent on the continuous transfer of goods, information, and value. Noor and Khan had set aside their doubts and regularly took the risk of trusting each other so as to make profits. This was not a house of cards, but even the best constructed building can collapse under the right conditions. While sending commodities out and profits back could performatively consolidate a

⁵⁴ Statement showing the goods sent for partnership, 93–97; statement showing the goods sold by defendant no. 1, 72 UKPC 1923, 99–100.

⁵⁵ Noor to Khan, 16 Nov. 1916, 16 Dec. 1916, 72 UKPC 1923, 107–9, 111.

⁵⁶ Evidence of Sayad Ahmad bin Taha Safi, Sayad Mahamad Mohsin Safi, Sheriff Mahamad Hasson, 39–41; Noor to Khan, 16 Rabi' al-Awwal (9 Jan. 1916), 72 UKPC 1923, 98.

relationship of trust, small miscommunications, misplaced goods, and other mistakes quickly eroded an otherwise solid relationship. Ali Ibrahim Noor merely bought the wrong kind of coffee, but that undermined Khan's trust and initiated a vicious cycle that unraveled their partnership.

This coffee frustrated Ahmed Khan partly because it highlighted what had been a nagging problem in the partnership from the beginning. In several months of successful trading, Khan regularly asked Ali Ibrahim Noor to send him detailed accounts of what he had sold at what prices. Noor's letters detailed current market conditions and were full of specifics about what commodities Khan should purchase and how exactly to ship them. But they mostly glossed over the sales Noor had made in Maidi. When profits were accumulating this was merely annoying, but in a downturn it began to take on more ominous tones. If trust had receded in importance as business was good, it re-emerged as vital when business was bad. When the material and monetary bonds that secured this assemblage were strained, those nebulous feelings of trust took on greater salience. This overpriced coffee purchase led Khan to rethink his partner's neglectful attitude toward accounting, and as January turned into February the skeins of trust were starting to fray.

Khan had entered into this partnership with Noor in part because he had no trusted relations or friends who could undertake a trading enterprise in Asir. And yet by the end of February he had been seeking out correspondents in Maidi who could provide him with alternate sources of information about his agent. It was only prudent for Khan to broaden his social network into this region where he had devoted so much of his capital. Such networks were often most useful for the information they could provide to monitor and regulate the actions of agents.⁵⁷ Khan eventually received a report from the nephew of a shaikh in Maidi that Noor had sold all of the partnership goods at double-profit and was absconding to the interior of Asir.⁵⁸ Why exactly Khan believed this new correspondent, whom he had never met, over his own agent is hard to discern, but if nothing else it shows that he no longer had confidence in the information coming from Noor. Khan now believed that he had spent the last several months and over 50,000 rupees as a patsy in a complicated con by Ali Ibrahim Noor and his father. There is, of course, another interpretation: that a mistake fed Khan's suspicions, which compounded and became self-perpetuating. Noor denied the charge and no hard evidence was ever forthcoming to corroborate these rumors from the shaikh's nephew. Whatever the underlying cause, their trust had turned brittle. Khan no longer believed in

⁵⁷ Sood, "Informational Fabric"; Aslanian, "Salt in a Merchant's Letter"; Goldberg, *Trade and Institutions*, chs. 3 and 7.

⁵⁸ Plaintiff's reply, 24 July 1918, 72 UKPC 1923, 12. For the role of rumors in regulating trading reputations, see Sebouh Aslanian, "Social Capital and the Role of Networks in Julfan Trade: Informal and Semi-Formal Institutions at Work," *Journal of Global History* 1, 3 (2006): 383–402; Aslanian, *From the Indian Ocean*, 184; Trivellato, *Familiarity of Strangers*, ch. 6.

his own agent and so became receptive to these rumors, with the result that their commercial assemblage was on the verge of collapse.

Ahmed Najoo Khan resolved to catch Ali Ibrahim Noor before he escaped and seize Khan's rightful share of the profits. Khan did not go to Maidi himself, but instead sent his servant Abdul Razzak Fadoo as his agent to bring Noor back into line. This second agency would generate its own complications. Both Noor and Fadoo were agents of Ahmed Najoo Khan, but their status in law was very different. Noor's agency was in the form of a *mudaraba* partnership in which each shared equally a joint venture's profits. Fadoo's agency was in the form of *wakala*, which is often glossed as a power of attorney. A *wakeel* had broader powers to handle the affairs of their principal. A *wakeel* was often an intimate relation or friend, and already had the interests of the principal at heart. By the time he was sent to Maidi, Fadoo had been employed by Ahmed Khan for about twelve years: he collected rents at Khan's properties around Aden, read and wrote all his Arabic correspondence, and often signed off for Khan in his everyday business affairs.⁵⁹ The meaning of *wakala* and the precise powers that Fadoo had as Khan's agent would become the fulcrum on which the case of Khan v. Noor would turn.

On 21 March 1917, Khan made out a *wakala* in the office of the *qadi* of Aden, in the presence of witnesses. The document empowered Fadoo to settle accounts with Ali Ibrahim Noor, recover any monies due to Ahmed Khan, and if necessary pursue litigation against Noor in the courts at Maidi. Legally, the partnership between Khan and Noor still existed, but this moment marks Khan's clear decision that it was over. This *wakala* and the subsequent negotiations were simply about recovering the monies due to him. Most contentiously, the *wakala* document included the formulaic phrase: "*wa bil-jumla fa qad aqām maqām nafsihi*," which the court translated as "generally he has appointed him in his place as if he was personally present in the matter."⁶⁰ Khan took special care that this document was only written on a 1 rupee-stamped paper, because in his interpretation a full power of attorney could only be transferred on 5-rupee stamped paper. He claimed to have been reluctant to use even the 1 rupee-stamped paper and that he had done so only because Arabs in Maidi would not deal with a servant like Fadoo unless he could show written authority on stamped paper.⁶¹ For Khan, the paper on which a legal document was written had profound implications for the power it conferred and the relationship that it fashioned.

⁵⁹ Evidence of Abdul Razzak Fadoo, 72 UKPC 1923, 19–28.

⁶⁰ Questions put to plaintiff's witnesses (in Arabic), 38; Power of Attorney passed by plaintiff in favor of Abdul Razzak Fadoo, 25 Jumadā al-Awal 1335 (21 Mar. 1917, second translation), 72 UKPC 1923, 112–13.

⁶¹ Plaintiff's reply, 24 July 1918, 72 UKPC 1923, 12–13. Regarding the duties and powers of subordinate agents, see Goldberg, *Trade and Institutions*, 135–38.

Khan was constructing a very particular assemblage that tried to calibrate and confer a specific amount of agency on Fatooh. Noor and his attorneys dismissed these details of paper quality as trivial distractions from the words themselves. After all, if stamp duties were not paid to the colonial government in Aden then why should officials in the Idrisi Emirate care. Generally in Islamic jurisprudence, documents did not derive their power from the imprimatur of the state, but rather from the reliability of the witnesses who lent their seals and their honor to make paper a carrier of trust.⁶² In the court proceedings, Noor continually harped on the phrase “as if he was personally present,” which indicated that Fatooh exercised complete agency, including the power to dissolve the partnership of Khan and Noor. Noor highlighted the strength of Khan’s trust in Fatooh, as well as the broad powers conveyed by the legal concept of *wakala*.⁶³ A commercial agent, whether legally empowered through a *wakala*, *mudaraba*, or simply through mercantile custom, had broad powers in the world of Indian Ocean trade.

This argument would likely have held water with many muftis along the Indian Ocean littoral. Jurists of various traditions insisted that the principal must accept whatever price his agent sells his goods for, and even if there are conflicting orders issued by principal and agent, it is the agent’s orders which take precedence since the principal no longer controls the commodities.⁶⁴ While the powers of a *wakeel* were often restricted in specific ways, it is clear that they were generally deputized to handle the principal’s affairs. In one interesting fatwa, a merchant asks the Omani jurist Imam al-Salimi whether an agent commissioned to sell a principal’s goods has the right to buy them for himself. Al-Salimi states that this is not permitted because a sale requires two parties, and so this is not a sale.⁶⁵ We can either interpret this as suggesting the goods now fully belong to the agent, or that the agent has fully taken on the mantle of the principal. In either case the power of the agent is reaffirmed and the seemingly natural distinctions between the two individuals are blurred. As we saw earlier in the fatwa by Shaikh Ansari, a principal may demand explanations from his agent, but his agent’s actions must be accepted. In this fatwa the

⁶² See Ghislaine Lydon, “A Paper Economy of Faith without Faith in Paper: A Reflection on Islamic Institutional History,” *Journal of Economic Behavior & Organization*, “The Economic Performance of Civilizations: Roles of Culture, Religion and the Law,” 71, 3 (Sept. 2009): 647–59, <https://doi.org/10.1016/j.jebo.2009.03.019>; Lydon, *Trans-Saharan Trails*, 294–95, 355, 393; Fahad Ahmad Bishara, “Paper Routes: Inscribing Islamic Law across the Nineteenth-Century Western Indian Ocean,” *Law and History Review* 32, 4 (Nov. 2014): 797–820. Khan’s argument about the importance of text might indicate a similarity with what Jessica M. Marglin found in colonial Morocco, in “Written and Oral in Islamic Law: Documentary Evidence and Non-Muslims in Moroccan Shari’a Courts,” *Comparative Studies in Society and History* 59, 4 (Oct. 2017): 884–911.

⁶³ Evidence of Sayad Mahamad Mohsin Safi, Sheriff Mahamad Hasan, Ahmad bin Taha Safi, 58–59; Argument of appellants (Noor) to High Court of Bombay, 72 UKPC 1923, 22, 38–41.

⁶⁴ Sālīmī, *Jawābāt*, vol. 4, 554a, 554b, and 555.

⁶⁵ *Ibid.*, 556a; see also Bishara, *Sea of Debt*, 207–10.

questioner seems to suggest that his agent is cheating him and believes that the agent should provide full restitution. The shaiikh responds that the principal cannot expect a guarantee against his agent, because this would effectively be a guarantee against his own actions.⁶⁶ *Wakala* thus produces the convergence of principal and agent, and it confirms how this relationship presumes the coalescing of two individuals into one corporate enterprise.

In the opinions of these various jurists we see a general consensus that an agent was an extension of the principal. No matter their regrets, these merchants had released the genie of commercial agency and these muftis would not stuff it back in the bottle. A power of attorney/*wakala* seems to perform a mystical legal process through which the principal is able to divide their individual agency, and then by means of a piece of paper disperse that agency across vast distances. This notion of shared and distributed agency reaffirms the importance of a deep and multiplex relationship between these partners, rather than simply an arms-length, legally enforceable contract. It also suggests that law in the absence of a relationship of trust cannot sustain this shared notion of agency.

When Abdul Razzak Fadoo finally met Ali Ibrahim Noor in Maidi, two different agents of Ahmed Najoo Khan haggled over his interests and property. According to Noor, they examined each other's account books, divvied up the partnership property, and eventually signed a contract dissolving the *mudaraba* partnership. Their negotiations were facilitated by mediators and the final contract was signed in the presence of official witnesses from the Idrisi government. Fadoo, in stark contrast, claimed that he had seen no accounts and had only signed the agreement under duress. He was a peaceful, helpless Indian merchant in an uncivilized region populated by armed Bedouin. Noor had allegedly hinted that a man's life in Maidi was worth two *annas*—the price of one bullet.⁶⁷ Fadoo claimed that he had been prevented from boarding a vessel for home until he signed what was placed before him. It is impossible to know which account is correct, or if the truth was somewhere in between. Be that as it may, on 18 April 1917, exactly eight months after Noor had left Aden, the dissolution agreement was signed, legally dissolving what had failed some months before. Khan insisted that Fadoo never had the legal authority to dissolve the partnership and so Noor still owed him half of his continuing profits. However much Khan hoped that the law could recover his profits, his trust in Noor had obviously collapsed.

THE CORPSE OF TRUST

It is strangely appropriate that the case that arrived at the Judicial Committee of the Privy Council was brought by Ahmed Najoo Khan, *deceased*. The appeals

⁶⁶ Anṣārī, *al-Fatāwa al-nāfi'ah*, 76a.

⁶⁷ Plaintiff's reply, 24 July 1918, 72 UKPC 1923, 12–13.

process lasted until 1924, longer than Ahmed Khan himself, and in many ways it was an extended post-mortem of the relationship of trust we have been exploring. Ahmed Khan did not survive the long appellate process, but in Indian Ocean commerce an unexpected death often marked the beginning of a legal battle and the end of relationship of trust.

Commercial assemblages were constituted by material objects like paper, coins, and ships, yet they were also made up of physical bodies. These bodies had to endure the stresses of sea travel, political violence, and disease vectors. In fatwa collections, death and the problems of inheritance were a regular occasion for the public airing of private disputes. With some frequency, agents and principals passed away *in media res*. Subsequently, all kinds of disputes arose as to which obligations had to be fulfilled and who might claim the property and profits.⁶⁸ While the partner was still alive, conversations and negotiations might resolve disputes, and specific rights could remain ill-defined under the assumption that they would be jointly addressed if and when the time came. Death removed the possibility of this deferral and forced heirs and business associates to reform the assemblage or extract themselves from the ties that bound both to the deceased.

So how is it that Khan and Noor's partnership died before either of them did? And why was Khan, such a cautious and rational economic actor, so woefully unprepared for the challenges of this enterprise? In one interpretation, Khan was too quick to trust the legal and social structures that undergirded his relationship with Noor. Noor was able to deceive Khan and the colonial legal system and embezzle a small fortune by exploiting the slippages in the structure that governed this commerce. In another interpretation, Noor was not a criminal mastermind, but simply more patient than his partner. Markets had their ups and downs, and experienced traders knew how to wait out the slumps and quickly exploit the bubbles. Khan, in this reading, saw a minor mistake and jumped to the conclusion that it was systematic fraud. Khan's trust in Noor dissipated as the flows of goods and profits were interrupted, and without that trust the partnership itself could not endure.

Trust is a slippery concept. Rather than try to pin it down and enclose it within a precise definition, it can be more productive to follow trust's slippery tracks. We can recover the explanatory value of trust if we acknowledge its protean qualities. I hope that this article has done just that, tracing the dynamics of trust between Ahmed Najoo Khan and Ali Ibrahim Noor. Trust in each other was performed by risking items of value in the hope of altruistic behavior. As a regular flow of communication and profits became established and the agency relationship was solidified, trust became routine. But though trust was vital it was always precarious: subtle changes in behavior, poor decisions and bad

⁶⁸ Kaptein, *Muhimmât Al-Nafâ'is*, xxi, xxxvii; Anṣārī, *al-Fatāwa al-nāfi'ah*, 77a, 77b; Sālimī, *Jawābāt*, vol. 4, 537a, 537b, 539a, 539b, 540a, 547a, and 550a.

luck could all contribute to its breakdown. Even if one supposes that Noor had been deceiving his partner from the first day, it was overpriced coffee beans that turned the tide for Khan. The vicissitudes of time and markets are therefore essential to understanding the dynamics of commercial agency in the Indian Ocean.

The dynamic nature of trust is also connected to the fact that it is embedded in and emergent from the material world. In Indian Ocean trade, trust helped to assemble things, bodies, ideas, and sentiments so that they might act together. These assemblages could be extended, modified, and recreated with legal contracts and economic incentives, but they required considerable effort, support, and perseverance. The contention, emotion, and unpredictability of the legal proceedings between Khan and Noor provide a glimpse into the broad and ever-changing connections and contexts through which commercial agency was assembled and sustained, and sometimes broke down.

The law was clearly a vital part of Khan and Noor's relationship, but legal systems were too weak and unpredictable to mitigate, much less obviate, the need for some kind of trust. Social and economic structures, too, were inadequate to the task of sustaining this enterprise across communal and political borders. Indeed, there is little to suggest that either social or legal frameworks could constrain the agency of Ali Ibrahim Noor. Ahmed Khan was a rational actor, but to realize this opportunity he would have to hope or at least gamble that he could align economic interests, forge a familial bond, *and* sustain a relationship of trust with Noor. Ultimately, Khan did not have the patience to endure the tortuous life-cycle of this assemblage. An Arabic proverb from North Africa advises, "Those who are not patient with the treason of trade partners will never get wealthy."⁶⁹ If Ahmed Khan had taken this advice, he probably would have been much more prosperous. But then he also would have denied us the possibility of reading the dynamics of trust in the entrails of this commercial assemblage.

⁶⁹ Lydon, *Trans-Saharan Trails*, 336–37.

Abstract: The role of trust in long-distance trade has been a topic of inquiry and debate among economists, sociologists, and historians. Much of this literature hinges on the social, legal, and economic structures that undergird, if not obviate, the concept of trust. This article draws on assemblage theory to suggest that trust in Indian Ocean trade is better understood as a key component of a commercial assemblage. Laws or social mores are not external to but rather enrolled within an assemblage constituted by people, commodities, profits, and “feelings,” as well as judicial systems. This conceptualization of trust is demonstrated through a close analysis of one trading relationship between a Somali merchant and an Indian merchant based in Aden and trading in the Idrisi Emirate of Asir. They established a partnership to exploit elevated prices in Asir during the First World War. After several months of trading, accusations of fraud and embezzling unraveled the partnership and entangled both men in years of legal battles. By tracing the changing socio-material assemblage of this partnership, the article demonstrates how trust should be understood as a dynamic and contingent factor in the operation of commercial agency.

Key words: trust, assemblage, agency, Indian Ocean, altruism, fatwa, Aden, law, trade, diaspora