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### **Contract Enforcement and Risk Reduction: The Luso-Brazilian Companies in the last Quarter of the Eighteenth Century**

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17  
Dada em quanto este instrumento de sociedade e obrigacão vivem, q. no anno de  
Nascento de Nosso Senhor Jesus Christo de mil, e oitocentos, aos vinte, e quatro  
de maio de 1701, na cid. de Lisboa, a portada das doze mil e oitocentas e quatrocentas  
presentes partes, de nome Manoel Lopes Teixeira, homem de negocio, e de outro se  
primeiro Antonio Jose Teixeira Delgado, tambem negociante, q. de outro do mesmo nome,  
me, e ja amarrado por Provizão da Sua Magestade Real, e Príncipe Nosso Senhor, e  
parte deste Reino, e seu dominio, e q. do d.º do seu Tribunal do Rio de Janeiro do Paes  
de 20 dias do presente mez de Fevereiro deste anno de mil, e oitocentos, sendo em  
ella parte, moradores, nesta cid. de Lisboa da Ribeirinha. E logo por elle, q. do d.º do  
Teixeira Teixeira, e adiante nomeada, que estando elle Antonio Jose Teixeira  
Teixeira Delgado para partir para Pernambuco no presente Combrigo, havia aj  
lado com elle seu primo Manoel Lopes Teixeira humar sociedade mercantil de  
la cid. para os Pernambuco, e desta para ella, visto se achar com habilitado, pa  
ra este commercio a raiz de entrar elle Manoel Lopes Teixeira ja matricu  
lado no nome de negocio da Praza desta cid., e elle Antonio Jose Teixeira Del  
gado por negociante da Praza de Pernambuco, como me consta por Provizão  
que me apresentaram q. a outro da dita Christ. na conformidade de d.º de  
e adiante e copiarão, e com effeito dueram, que havia estabelecido entre  
elles a mesma sociedade de braço do d.º da escritura e condicoes seguintes: Que  
elle Manoel Lopes Teix. entra para o fundo della com a importância  
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revaria, e renda, que tem ja remetido ao porto de Pernambuco em difere  
tes annos, e de divida de duzentos vinte, e tres mil, e quinhentos reis, q. he deve  
M. Joaquin Palcio, que se obrigou a pagar lhos no d.º de Pernambuco, e tudo para d.  
importancia, podendo elle foyso Ant. Jose Teix. Delgado namfo cobrar do d.  
e pelo ad. quantia, como haver aq. aq. e fazendas remetida de quem na  
obrenha de fte della, tomase conta, para tudo beneficiar por conta desta  
cidade: Que elle Ant. Jose Teix. Delgado por hora não entra q. a mesma  
com fundo, ou capital algum, masfo com a sua administração, e gerencia, e tr  
balho: e por esta razão se fica obrigado a ajudar com todo o zelo, e pacia

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# Contract Enforcement and Risk Reduction: The Luso-Brazilian Companies in the last Quarter of the Eighteenth Century

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FELIPE SOUZA MELO

*Felipe Souza Melo holds a Bachelor's degree in History from the Federal University of São Paulo and a Master's degree in Economic History from the University of São Paulo. His research explores the economic features of the Portuguese Empire, especially the overseas trade, during the eighteenth century. Lately he has been pursuing a doctorate to continue his research into commercial relations between Portugal and Brazil.*

Recent investigations into long-distance trade in the early modern period have highlighted several strategies which were used by traders to mitigate risk. This article attempts to contribute to this historiography by analyzing contractual clauses of mercantile companies registered in Lisbon notarial records between 1784 and 1807, comprising merchants residing both in Portugal and in Brazil. These contractual clauses reveal that companies were a form of trade organization in which the capital owners residing in Lisbon limited the scope of action of agents in Pernambuco, in the northeast of Brazil, in order to protect their investments. In addition, this study demonstrates that mercantile hierarchies existed between the marketplaces of Portugal and Brazil. Thus, I cast some doubts on the most recent investigations of the economic history of the Portuguese Empire that argue for a predominance of Brazilian merchants in the overseas investments. I assert that, at the end of the eighteenth century, merchants residing in Lisbon still financed and directed colonial trade with agents in Pernambuco. This analysis explores the reasons that led trade to assume such a framework.

## *Introduction*

For exchanges to take effect, traders need to rely on institutions to enforce agreements in the future. The seminal theoretical framework of Douglass North states that there are two types of institutions that make this possible: formal and informal institutions. Formal institutions are normally associated with state organizations, broader economic regulations, laws and courts. Informal institutions, by contrast, are concerned with the behavior of private agents and the organizations they develop to carry out their business. Whether formal or informal, institutions are rules or social conventions that “define and limit the set of choices of individuals.” Both types of institutions can either reduce or increase transaction costs, which are the costs associated with the exchange of goods or services derived from market imperfections. These costs refer to the expenditure of money, time, supervision, and effort to obtain reliable information to ensure that a prop-



erty is transmitted to another party. Inspired by North, economists and historians have tried to interpret the history of commerce through this institutional paradigm.<sup>1</sup> This article seeks to incorporate this framework by investigating the ways in which mercantile company charters concluded in Lisbon for trade with Brazil stipulated rules that reduced the transaction costs for merchants who financed the enterprises, focusing on the informal institutions that supported part of the trade in the Portuguese Overseas Empire.

Institutions and transaction costs appear in the literature, directly or indirectly, as an essential feature for commercial analysis. Nonetheless, historiography on Portugal and Brazil has mostly focused on formal institutions. Several Portuguese regulatory bodies helped secure private property in trade. In the second half of the eighteenth century, the most important of these was the *Secretarias* and the Board of Trade (*Junta do Comércio*).<sup>2</sup> Imperial economic policies that guaranteed the exclusivity of exchanges with the colonies for the Portuguese tradesmen, manufacturing protectionism, regulation of freight prices, courts, among others, were also institutions that tried to make the mercantile scenario more secure and predictable for the Portuguese trading community and thus attempted to reduce the transaction costs of certain agents.<sup>3</sup>

However, traders relied on informal institutions to circumvent the deficiencies of formal institutions. Such deficiencies included the fact that recourse to courts was both costly and time-consuming. Legislation, while protecting certain agents and groups, discouraged others. The particularities of markets in the eighteenth century—the great distances, the weather, the risks associated with maritime travel, the lack of information and the mismatch between supply and demand in Atlantic ports—were elements beyond the control of formal institutions.

Despite their differences, the distinctions between formal and informal institutions should not be seen as overly rigid. Merchants who made use of their networks (informal institutions) were able to gain access to political circles and thus

<sup>1</sup> Douglass North, *Institutions, Institutional Change and Economic Performance* (Cambridge: Cambridge University Press, 1990), 4, 61. For some theoretical formulations on neo-institutionalism, see: Malcom Rutherford, *Institutions in Economics, the Old and the New Institutionalism* (Cambridge: Cambridge University Press, 1994); Ronald Coase, “The New Institutional Economics,” *The American Economic Review* 88, no. 2 (May 1998), 72–74. For a conceptualization of transaction costs, see: Oliver Williamson, *The Economic Institutions of Capitalism: Firms, Markets, Relational Contracting* (New York: The Free Press, 1985).

<sup>2</sup> For more information on the *Secretarias*, see: Nívia Pombo, *D. Rodrigo de Sousa Coutinho, pensamento e ação político administrativa no Império Português (1778–1812)* (São Paulo: Hucitec, 2015). On the Board of Trade, see: Nuno Luís Madureira, *Mercado e privilégios, a indústria portuguesa entre 1750 e 1834* (Lisboa: Editorial Estampa, 1997), 37–82.

<sup>3</sup> For more on Portuguese trade exclusivity of exchanges with the colonies, see: Fernando Novais, *Portugal e Brasil na crise do Antigo Sistema Colonial (1777–1808)* (São Paulo: Hucitec, 1995). On protectionism, see: Jorge Pedreira, “Tratos e contratos: actividades, interesses e orientações dos investimentos dos negociantes da praça de Lisboa (1755–1822),” *Análise Social* 31 (1996), 136–137 (2.º–3.º). On the regulation of prices and freights, see: Felipe Souza Melo, *O negócio de Pernambuco: financiamento, comércio e transporte na segunda metade do século XVIII* (Master’s thesis, São Paulo FFLCH/USP, 2017).

help shape formal institutions. Therefore, the economic performance of some merchants and mercantile communities was also closely linked to their skilfulness or opportunism in clinging to the mechanisms of government power in order to extract private benefits.<sup>4</sup> Yet, unlike the state-backed institutions, the historiography on Portuguese trade (both with the colonies and with Europe) has paid little attention to informal institutions, especially with regard to the period spanning the end of the eighteenth century.<sup>5</sup>

This article presents and discusses some of the strategies that Portuguese merchants developed to mitigate the risks of moral hazard without the direct aid of formal institutions. Moral hazard—a crucial aspect of the principal-agent problem by which agents sought to derive maximum personal gain from the principal's capital—comprised the risk that the agent would have an economically dishonest attitude to the principal's property.<sup>6</sup> Moreover, this analysis attempts to offer a differing perspective on the business hierarchies in the Portuguese Atlantic and their agency arrangements.

It has been repeatedly asserted in Brazilian and Portuguese historiography for at least the last thirty years that merchants based in Brazil had become independent of the Portuguese-based merchants credits by the end of the eighteenth century. In such interpretations, the colonial merchants are seen as being mainly responsible for the financing of the exchanges in the Portuguese Atlantic. Criticism of this historiography targets the concept of “center and periphery.” With colonists doing overseas business without the assistance of the metropolitan capitals, “center and periphery” are no longer useful concepts.<sup>7</sup> More recently, with the advent of institutionalist literature and the concept of a principal-agent problem, another aspect has played a role in raising suspicion about center and periphery issues. In this interpretation, the relationship between the principal (the Portuguese-based

<sup>4</sup> See: Robert Brenner, *Merchants and Revolution: Commercial Change, Political Conflict, and London's Overseas Traders, 1550–1653* (Princeton: Princeton University Press, 1993), 54; Nuala Zahedieh, *The Capital and the Colonies: London and the Atlantic Economy (1660–1700)* (Cambridge: Cambridge University Press, 2010), 55.

<sup>5</sup> Daniel Strum has meticulously studied Portuguese trade in the sixteenth and seventeenth centuries from the agents' point of view in his *O Comércio do Açúcar: Brasil, Portugal e Países Baixos, 1595–1630* (Rio de Janeiro: Versal São Paulo, 2012); see also: Christopher Ebert, *Between Empires: Brazilian Sugar in the Early Atlantic Economy, 1559–1630* (Leiden: Brill, 2008). Towards the end of the eighteenth century, one of the few texts which focuses on agents is: Leonor Freire Costa, Maria Manuela Rocha, and Rita Martins de Souza, *O ouro do Brasil* (Lisboa: Imprensa Nacional–Casa da Moeda, 2013).

<sup>6</sup> On the principal-agent problem, see: Michael C. Jensen and William H. Meckling, “Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure,” *Journal of Financial Economics* 5, no. 3 (1976), 308–310.

<sup>7</sup> João Fragoso, “A noção de economia colonial tardia no Rio de Janeiro e as conexões econômicas do Império português: 1790–1820,” in *O Antigo Regime nos Trópicos: a dinâmica imperial portuguesa (séculos XVI–XVIII)*, ed. João Fragoso, Maria Fernanda Bicalho and Maria de Fátima Gouvêa (Rio de Janeiro: Civilização Brasileira, 2001), 327–328; A. J. R. Russell-Wood, “Senhores de engenho e mercadores,” in *História da expansão portuguesa, Vol. III: O Brasil na balança do Império (1697–1808)*, ed. Francisco Bethencourt and Kirti Chaudhuri (Lisboa: Círculo de Leitores, 1998), 208–209.

merchant) and the agent (in Brazil) was seen as one of interdependence and cooperation, rather than one of hierarchy. Relationships of control were viewed as irrelevant, making it more difficult to posit the existence of an economic hierarchy between merchants of Portugal and Brazil.<sup>8</sup>

Most importantly, this article demonstrates through analysis of company charters that merchants in Portugal managed and financed trade with agents in Pernambuco (a large region of sugar and cotton plantations in the northeast of Brazil). I argue, therefore, both that mercantile hierarchies between the marketplaces of Brazil and Portugal did exist and that it is perfectly possible to explore hierarchical relations through the institutional approach. Trading companies were a form of commercial organization that tried to overcome the moral hazards of colonial business. Written and notarized agreements could guarantee honest conduct and the fulfillment of contracts by the agents overseas. It was part of a governance mechanism of control, made by private agents and, at first, did not depend on the formal institutions of the Portuguese State. At the same time, the partnership agreement was an instrument permitted as evidence in legal disputes if merchants entered into disagreements in the course of or at the end of their activities, even though they sought to avoid and prevent this resolution. Likewise, contracts relied on formal institutions by certifying the identities of the agents and their capitals, signaling to the state authorities and the mercantile community that the merchants were responsible and trustworthy. Those contracts, above all, reflected the experience that the commercial community had about the hazards of the Atlantic world and the colonial market.

In this research, I scrutinized ninety-four contracts of mercantile companies contained in several record books of seventeen notary's offices in Lisbon for the period from 1780 to 1807.<sup>9</sup> Although these are the main sources used in this ar-

<sup>8</sup> Costa, *O Transporte no Atlântico*, 293; Leonor Freire Costa, *Império e grupos mercantis, entre o Oriente e o Atlântico (século XVII)* (Lisboa: Livros horizonte, 2002), 60; Leonor Freire Costa, "Entre o açúcar e o ouro: permanência e mudança na organização dos fluxos (séculos XVII e XVIII)," in *Nas rotas do império: Eixos mercantis, tráfico e relações sociais no mundo português*, ed. João Fragoso (Vitória: EDUFES, 2014), 99, 100, 101, 108–109; Fábio Pesavento, *Um pouco antes da corte: a economia do Rio de Janeiro na segunda metade dos setecentos* (Ph.D. diss., Rio de Janeiro UFF, 2009), 107–120, 198.

<sup>9</sup> Approximately 1,203 notary books of the Lisbon offices have been consulted, about 76% of the total number of notary books for the period from 1780 to 1807. The society contracts are in the National Archive Torre do Tombo (Arquivo Nacional Torre do Tombo – ANTT) in different Notary Books (Livros de Notas – LN) of Lisbon registry offices (Cartórios Notariais de Lisboa – CNL). The notarial documentation is henceforth referenced as ANTT, CNL–LN, Box (Cx.), Book. (liv.), fôlio (f.). The documentary reference of the ninety-four societies is as follows: 1º CNL–Ofício A, Cx. 120, liv. 548, f. 51–52. 1º CNL–Ofício B, Cx. 97, liv. 813, f. 12v–13v e 27–28. Cx. 98, liv. 815, f. 37v–38. 1º CNL–Ofício C, Cx. 14, liv. 68, f. 60–61. Cx. 15, liv. 72, f. 31v–32. 2º CNL, Cx. 132, liv. 624, f. 52v–53. liv. 626, f. 88v–90. Cx. 133, liv. 628, f. 58–58v. Cx. 135, liv. 638, f. 27–27v. Cx. 137, liv. 651, f. 55–55v. Cx. 139, liv. 662, f. 40–41v. Cx. 139, liv. 662, f. 42–43v. Cx. 140, liv. 664, f. 25v–26v. 6º CNL, Cx. 22, liv. 109, f. 96–98v, liv. 110, f. 38–39. Cx. 24, liv. 120, f. 14–16v. liv. 120, f. 93–95v. Cx. 26, liv. 129, f. 7–8v. Cx. 27, liv. 135, f. 22v–24, 58–59 e 97–99. Cx. 30, liv. 146, f. 54–55. liv. 147, f. 19–21. liv. 150, f. 15–16v. Cx. 31, liv. 154, f. 20v–22. Cx. 32, liv. 158, f. 13v–14v.

title, I also used some powers of attorney from the same registry offices, as well as documents from the Overseas Historical Archive (*Arquivo Histórico Ultramarino*) and from the Board of Trade. I analyze a specific segment of the Portuguese-Brazilian trade, the Lisbon-Pernambuco circuit, in a context of commercial growth driven by increased exports of cotton and sugar.<sup>10</sup> In the period from 1760 to 1780, trade between Pernambuco and Portugal was under the monopoly of the General Company of Pernambuco and Paraíba. In 1808, the ports of Brazil were opened to other nations, and Portuguese merchants lost their commercial exclusivity. Thus, the years between 1780 and 1807/1808 constitute a period without major political and economic turmoil for Portuguese private merchants, who were able to conduct their business freely.<sup>11</sup>

The article consists of two sections. In the first section, I present the partners involved in the commerce with Pernambuco, the unequal division of the initial capital they invested, and the duration of existence of the companies. I then analyze the clauses of the contracts, emphasizing the duties that the partners without capital, or with little capital, had with the partners who called themselves owners of the society. At this point, it is important to note that the partner with more capital is referred to as the principal or the silent partner, while the partner with less or no capital is referred to as the agent or as an active partner. In the second section, I explore the reasons why charters were favorable to partners with more

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Cx. 33, liv. 165, f. 45v–47v. Cx. 35, liv. 172, f. 45–46v. liv. 175, f. 89v–92. Cx. 37, liv. 181, f. 72–74. liv. 183, f. 43v–44v e 49–50. Cx. 37, liv. 184, f. 86–87. liv. 185, f. 8–10. liv. 186, f. 57v–59. 7° CNL—Ofício A, Cx. 106, liv. 644, f. 16v–18. Cx. 109, liv. 662, f. 37v–40v. Cx. 110, liv. 671, f. 40v–42v. Ofício B, Cx. 26, liv. 116, f. 27–28. 9° CNL, Cx. 21, liv. 102, f. 4–5. 10° CNL, Cx. 22, liv. 121, f. 42–43v e 84v–86v. Cx. 24, liv. 132, f. 16–17v. Cx. 25, liv. 134, f. 42–42v. Cx. 26, liv. 136, f. 21–22v. liv. 141, f. 50–51v. Cx. 27, liv. 147, f. 99v–100v. Cx. 28, liv. 152, f. 29v–31. liv. 153, f. 25–26. Cx. 30, liv. 165, f. 109v–110v, 11v–12, 16v–17v, 4v–5 e 64v–65v. Cx. 31, liv. 167, f. 12–12v e 16v–17. liv. 168, f. 9v–10. liv. 169, f. 62–63v. liv. 170, f. 108v–109v, 25v–26v e 98–99. Cx. 32, liv. 175, f. 58–58v e 60–61. liv. 176, f. 4v–5v. liv. 185, f. 58–58v. liv. 187, f. 120v–122v e 47v–48v. liv. 189, f. 27v–28v e f. 30–31. Cx. 36, liv. 190, f. 103–104 e 67–67v. liv. 192, f. 110v–111. Cx. 37, liv. 196, f. 104–105. liv. 200, f. 36v–38. Cx. 38, liv. 203, f. 114–115v. liv. 204, f. 65v–67 e 77–78. liv. 206, f. 135–136. liv. 207, f. 44–45. Cx. 39, liv. 208, f. 8–9v. liv. 209, f. 77v–78. liv. 211, f. 127 e 43v–44. Cx. 40, liv. 216, f. 126–127 e 23–23v. liv. 218, f. 71–72. Cx. 41, liv. 221, f. 93–94. 11° CNL—Ofício B, Cx. 11, liv. 72, 35v–38. Cx. 12, Liv. 86, 57v–59. 12° CNL—Ofício B, Cx. 22, liv. 110, f. 92v–93v. Cx. 24, liv. 119, f. 88v–87. Cx. 29, liv. 143, f. 53–55. 14° CNL, Cx. 21, liv. 101, f. 1–2. 15° CNL—Ofício A, Cx. 125, liv. 781, f. 24–24v.

<sup>10</sup> Between the 1780s and 1790s, Pernambuco benefited from the high demand for cotton from Europe's textile manufactures. In addition, because of the slave revolution in Saint-Domingue, which was one of the largest sugar producers of the world, Pernambuco and the rest of Brazil increased their sugar exports. See: Melo, *O negócio de Pernambuco: financiamento, comércio e transporte na segunda metade do século XVIII*, 142–196.

<sup>11</sup> Although it corresponds to a relatively turmoil-free period for Portuguese private trade, it is necessary to mention that between 1793 and 1815 there were a series of wars and blockades in the Atlantic world. The specific ways in which these events affected trade between Pernambuco and Portugal requires detailed research that goes beyond the scope of this article.



capital, and investigate some of the strategies employed to overcome the dangers and risks of commercial activity in the late eighteenth century.

### *Agents, Capital and Contracts*

Companies—also called “mercantile societies,” “firms” or just “societies,” according to the individual society charter documentation—was a type of organization often used by merchants who plied the colonial trade. Its roots can be found in the *commendas* (a type of medieval merchant arrangement resembling early modern companies) and was a contract still used in the Portuguese Empire in the second half of the eighteenth century as well as elsewhere in Europe and the Americas.<sup>12</sup> It differed from the commission system, another well-known form of commercial organization in this period.<sup>13</sup> The Portuguese companies generally involved two agents: one resident in Lisbon and another resident within or regularly traveling to Brazil. Like commission contracts, the contractual terms of a trading company were also private and thus the nature of the agreements varied from case to case. However, unlike the commission contracts, which rarely appear in the notary records, companies were often registered.<sup>14</sup> Notarial records registered the obligations of each partner, the portion of capital that each committed and who was the main director for the company.

The profile of the partners was very heterogeneous, and the size of their investments varied. Companies were established by businessmen, merchants, grocers, clerks, tax farmers, goldsmiths, bakers, charioteers, tinsmiths, cooks, customs officers, ship captains and maritime pilots, carpenters, caulkers, cake sellers, sur-

<sup>12</sup> Robert Lopez and Irving Woodworth Raymond, *Medieval Trade in the Mediterranean World* (New York: Columbia University Press, 1961), 174–176. For the Spanish and Dutch case in the eighteenth century, see: Antonio García-Baquero, *Cádiz y el Atlántico (1717–1778): el comercio colonial español bajo el monopolio gadatino* (Seville: Escuela de Estudios Hispano-Americanos, 1976), 406; Jan De Vries, “The Dutch Atlantic Economies,” in *The Atlantic Economy during the Seventeenth and Eighteenth Centuries: Organization, Operation, Practice and Personnel*, ed. Peter A. Coclanis (Columbia: University of South Carolina Press, 2005), 2. The societies have also been analyzed for the Luso-Brazilian context. For Bahia, see: David Grant Smith, *The Mercantile Class of Portugal and Brazil in the Seventeenth Century: a Socio-economic Study of the Merchants of Lisbon and Bahia, 1620–1690* (Ph.D. diss., University of Texas at Austin, 1975), 345–351. For Rio de Janeiro, see: Antônio Carlos Jucá de Sampaio, “Os homens de negócio do Rio de Janeiro e sua atuação nos quadros do Império português (1701–1750),” in *O Antigo Regime nos Trópicos: a dinâmica imperial portuguesa (séculos XVI–XVIII)*, ed. João Fragoso, Maria Fernanda Bicalho and Maria de Fátima Gouvêa (Rio de Janeiro: Civilização Brasileira, 2001), 90–94.

<sup>13</sup> Societies and commissioned relationships were perhaps the two main ways by which the merchants concluded deals with each other. For the commission system, see: Jacob Price, “Transaction Costs, a Note on Merchant Credit and the Organization of Private Trade,” in *The Rise of Merchant Empires: Long-Distance Trade in the Early Modern World, 1350–1750*, ed. James Tracy (Cambridge: Cambridge University Press, 1990), 279.

<sup>14</sup> It is worth remembering that only societies formed for negotiations with Pernambuco were consulted here. In the Lisbon offices, there are many other companies for Rio de Janeiro, Bahia, Maranhão, Angola, Asia and other places.



geons, priests, and owners of shipyards. The average duration of a society was around 4 years and 2 months, with companies lasting at least 1 year, up to 8 years, some with a possibility of renewal.<sup>15</sup>

Lisbon-based partners contributed the most capital and they thus proclaimed themselves the real owners of the companies. In total, they subscribed 216,116,924 *réis* (73.02%). Those who traveled to Pernambuco or who were already there invested 79,825,769 *réis* (26.98%). All subscriptions, most of them invested in manufactured goods (so-called *fazendas*), totaled 325,012,999 *réis*.<sup>16</sup> The average amount of funds for each company was about six million *réis*. However, some societies had capital as low as 72,710 *réis*, while others had 41,820,000 *réis* at their disposal.

Among a number of different rules, one clause appears constantly in almost all companies charters: profits and losses would be equally divided between all partners at the end of the company (although a few contracts divided gains and losses unequally). This is another difference from commission contracts. In the latter, merchants in Lisbon carried the risks on the goods (*fazendas*) consigned to merchants in Pernambuco, while the commissioner in Brazil did not bear any risk. Splitting equal shares of profits between the partner in Lisbon and Pernambuco, the mercantile society paid agents in Brazil or those who were going to travel there larger remunerations than commission arrangements. In addition, merchants in Pernambuco generally did not subscribe funds. In most cases, they entered into a society only with their work and, in few cases, they contributed a small portion of capital. On the other hand, these agents could not maximize their own profits, as I shall try to demonstrate. Moreover, in cases of partial losses or total bankruptcy, partners in Pernambuco shouldered half of the losses.

Merchants in Lisbon resorted to company charters to secure the exclusive services of an agent in the colony. Commission agents instead could work for multiple merchants. This exclusivity clause limited the parallel mercantile activities that could jeopardize the interests of the senior partner. Senior partners in Lisbon, however, could have more than one partner in Pernambuco, and of course, they could have commission agents and partners in other colonial marketplaces.

An example that demonstrates how company charters limited the leeway of agents in Brazil is that of Manuel da Silva Franco and José de Matos Girão, both of whom were businessmen from Lisbon. They entered into a partnership in 1797,

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<sup>15</sup> Fifty-eight societies declared their duration of existence, eleven functioned indefinitely and twenty-five simply did not declare the duration for their existence.

<sup>16</sup> This is the total sum of all societies, even those that did not distinguish between what was owned by the Lisbon merchant and what was owned by the merchant in Pernambuco. That is why it is a value greater than the sum of the capitals divided up between the merchants in Lisbon and those of Pernambuco. Of the ninety-four societies, fifty-three declared the amount of initial capital with which they would work. The *fazendas*, as they were commonly called, consisted of foodstuffs, cloths, wines, olive oils, irons, copper, steels, and a number of other products that were produced in the Kingdom of Portugal or abroad.

which was to last seven years. The 32 million *réis* funds belonged solely to Manuel da Silva Franco. José de Matos Girão did not subscribe any capital but participated in the company “only with his agency, service and intelligence.” According to the contract, Girão was to go to Pernambuco, where he was to rent houses and warehouses, and receive and reinvest the goods that the partner of Lisbon sent him. The latter should always be considered “at all times as sole master of the entire assets and owner of this society, both of the capital, and of the profits to be made during the said seven years of its duration, in which time there will be no division of the same profits, but shall join the same capital.” Girão could not do other business outside the company, since “everything must be employed and occupied in the progress and advancement of this society.” Franco, by contrast, could enter into other commercial operations, in other ports, with other people, including in Pernambuco. The reason for this was that Franco owned the company’s capital and “because this negotiation [the company in partnership with Girão] is also considered as one of the branches of its trade.” Girão could even act as a consignee for other people in Pernambuco, but one third of the profit from this activity would go to the partner in Lisbon. Expenses arising from provisions and the employment of clerks, among other things, would be paid by each one at their respective place of residence. Both partners should send the annual balance sheets of the company. After five years, Franco could withdraw 50% of the invested capital, and after the sixth year could withdraw the other 50%. In the seventh year, he would share profits and losses equally with Girão.<sup>17</sup>

Even when partners subscribed an identical number of shares of capital, the contractual terms could be disadvantageous to the partner in Pernambuco. Take the example of Manuel Francisco Lavra in Lisbon and Amaro Branco in Pernambuco. In 1793, both agreed on a partnership that would last 4 years and each subscribed the same amount of six million *réis*, which they quickly invested in goods. The analysis of contractual clauses makes evident some strategies used to better manage the business and clearly discriminate how the partner in Lisbon sought to diminish the influence and interests of the other partner. For example, if there were shipwrecks on the round trip, both partners should share losses equally. Since in Brazil there were no insurance houses, the partner in Lisbon was responsible for taking out a policy and the partner in Pernambuco was obliged to consent to the policy terms, even if he did not agree with the premium rate. The company had to keep their books “in the form of the merchant style,” so the partners could check one another’s records in case of suspicion of dishonest activity. They could sell the goods and receive the payments later, but the collection of debts would be the responsibility of each one and not of the society. This provided an incentive to the parties to commit themselves to recover the money.

<sup>17</sup> ANTT, 7º CNL–Ofício A, LN, Cx. 110, liv. 671, f. 40v–42v.

More than that, these last two partners were barred from making use of the company capital in potentially risky and perhaps unnecessary activities. They could not act as guarantors at all and could only buy shares or interest in a ship with the explicit authorization given by the other partner. If a partner acted as guarantor for someone, he was obliged to surrender the gains of that activity to the other partner. Commission profits “from any remittances or cargo of goods from private persons consigned to them” would be directed to the company and not benefit one of the partners. The firm would only be charged for the rental of the warehouse in Pernambuco, with the partners sharing the costs. Each partner would bear the costs of clothes, wages and support of clerks. They could not contract another society. However, although both entered into a company with equal shares, the partner in Pernambuco could not trade on his own account, only the Lisbon merchant could do so. At the end of the society, each one would take back their money and divide the profits, or losses, equally.<sup>18</sup>

Almost ten years later the same Manuel Francisco Lavra began a company with José Francisco Mindello, already based in Pernambuco. Mindello entered into the partnership with an attorney who represented him in Lisbon. According to the contract, the company would last 5 years and had an initial fund of 4,800,000 *réis*, of which the members invested equal shares. Despite the equality of capital subscribed, the one who benefited most from the negotiation was Lavra. Among other things, Lavra was free to enter into contracts with other companies and agents of Pernambuco. Mindello, however, was restricted to acting only with the partner. The purchase of a vessel—or shares in a ship—by the partner in Pernambuco, for example, was explicitly forbidden, as was the purchase of real estate. The partner in Lisbon, on the other hand, was free to make such investments. José Francisco Mindello could not negotiate on his own, neither in Pernambuco nor elsewhere. Yet, the Lisbon-based partner could freely negotiate anywhere with capital that was not owned by the company. At the end of the partnership, José Francisco Mindello would have to travel to Lisbon and settle the accounts, recovering the initial capital he had subscribed and sharing profits and losses equally. Having “more funds and credits,” only the partner of Lisbon had the freedom to terminate the partnership and to have the accounts of the partner in Pernambuco to be presented when he requested.<sup>19</sup>

An extreme case of how these contracts limited the autonomy of merchants in Brazil is that of Nuno Antônio Rodrigues Lima, who was about to go to Pernambuco in 1788. The company would begin on January 1<sup>st</sup> of that year and would end in December 1793. The Lisbon partner was the grocer Antônio Pires Marinho, who had subscribed “his present and future movable property” in the society. The partner in Pernambuco did not enter with any capital, only with his “agency

<sup>18</sup> ANTT, 6º CNL–LN, Cx. 30, liv. 147, f. 9–21.

<sup>19</sup> Society created in 1802. ANTT, 6º CNL–LN, Cx. 35, liv. 175, f. 89v–92.



and personal work”. In Pernambuco, Nuno Antônio had to leave all his business operations registered in books: the draft, the book in which he copied the letters he received and sent, the journal and the ledger book. The contract stipulated that Nuno Antônio could “hire a clerk if he needs” or even buy, on behalf of the company, “a slave to serve him and as many as they need.” Both could sell goods to receive payments in the future, but these types of sales could not exceed the limit of one million *réis*. On the other hand, the clerks could not do this without the permission of their “bosses.” The partners could not “take any money from this society, nor the partner from Pernambuco [Nuno Antônio] to pay individual debts.” This part of the contract clearly refers to Nuno Antônio, who had defaulted on debts of 626,439 *réis* with six people, including his own partner Antônio Pires Marinho. Still, Nuno Antônio could not “receive goods from other people”; also, throughout the duration of the company, he could not marry, could not join any brotherhood or “make superfluous expenses.” These clauses would ensure that Nuno Antônio’s property would not be shared with either a wife or religious institutions.

Most of the contracts stipulated the equal share of profits and losses at the end of the companies. It was, as already mentioned, one of the few clauses favorable to the agents about to travel to Brazil. However, some contracts divided gains and losses unequally. In one of them, for example, Manuel Xavier did not subscribe capital, but only “his agency and personal work.” As a result, Xavier would receive, at the end, a third of the profits. Moreover, the losses, “whether of sea or land,” were his own sole responsibility. The partners in Lisbon—Correia, Viana and Company—would receive two thirds of the profits.<sup>20</sup> In another case, the company would keep all the profits from commissions, sales, or purchases they made on behalf of other people. According to the contract, the partner in Pernambuco could not be a tax farmer, a guarantor, and he could not buy buildings and ships. At the end of the company, the partner in Pernambuco would receive 33.3% of the profits and the one based in Lisbon would be entitled to receive the remaining percentage.<sup>21</sup> At the end of another firm, the partner in Lisbon, the cod seller José Rodrigues, would receive 66.6% of the profits and the partner in Pernambuco, Martinho Francisco Pereira, would receive the rest. Furthermore, the latter was prohibited from doing business with other people. The contract explained the unequal division of earnings. Since the partner in Pernambuco did not subscribe any capital, he was exempt from paying the debts to the company’s creditors. However, the partners would share freight and insurance costs.<sup>22</sup>

<sup>20</sup> ANTT, 6º CNL–LN, Cx. 27, liv. 135, f. 97–99.

<sup>21</sup> The partner in Lisbon had subscribed eight million *réis* in the society and the partner in Pernambuco subscribed four million *réis*. Society between Fernandes de Matos, in Lisbon, and Antônio do Couto, in Pernambuco. ANTT, 10º CNL–LN, Cx. 31, liv. 169, f. 62–63v.

<sup>22</sup> Society formed in 1803. ANTT, 10º CNL–LN, Cx. 39, liv. 208, f. 8–9v.

As should now be clear, analysis of the contracts demonstrates clear asymmetry between the counterparties in terms of invested capital. Lisbon-based merchants usually subscribed either the entire startup capital or the largest part of it. The contribution of the Pernambuco-based partners comprised largely their “work and agency.” Even when both counterparties subscribed equal shares, the relations were unequal as it limited the potential gains of the Pernambuco-based partner. Moreover, many contracts stipulate that the Pernambuco-based merchant should obey the strict orders of the Lisbon partner. According to a company charter, when Manuel Lourenço went to Pernambuco in 1797, he was to establish “a house of business that he will administer with all care and zeal, following the orders of João José [the partner in Lisbon].”<sup>23</sup>

These examples suffice to reveal the clear existence of hierarchies of command between the merchants of Lisbon and the agents in Pernambuco. These unequal conditions are explained by the role of capital originating in Lisbon, which governed relations with the colony. Restricting the latitude of merchants in Pernambuco was a strategy to minimize the moral hazard of agency relations. From the perspective of the Lisbon-based merchant, it was unproductive to allow partners in Pernambuco dedicate their time to operations that would not maximize the senior partners’ profits. Hence, the agent was prohibited from doing business on his own. Likewise, the profits accumulated from activities outside the societies should be allocated to the company’s capital, as in the case of commissions.<sup>24</sup> It also guaranteed that, in the event of losses, capital would not be sacrificed. Therefore, Lisbon-based merchants insisted that their partners in Pernambuco could not act as guarantors, inhibiting their participation in any type of transaction involving mortgages, as was the case of tax farming, or buying ship-shares. Moreover, these clauses may explain why some merchants in the colony had no part in sugar mills, leaving that investment—and others mentioned above—in the hands of colonial merchants who were not bound by company contracts.

The equal division of profits remained as one of the few sources of profit for the agents who moved to the colony, even though they were responsible for sharing the losses as well. Nonetheless, these unequal contracts might have been ultimately favorable to those minor partners. Being deprived of capital and dependent on a senior partner could be more profitable than participating in another type of arrangement, such as commissioner agent or being a full merchant. As a commissioner, the agent earned only commissions, a lower remuneration when compared to the money he would earn as a partner. As a merchant who traded at his own

<sup>23</sup> ANTT, 10° CNL–LN, Cx. 32, liv. 176, f. 4v–5v.

<sup>24</sup> The best example of this is a society charter dating from 1790. It was stipulated that a member in Lisbon would receive 3% for both purchases and sales, and the members of Pernambuco would receive 5% in sales and 3% in purchases. The fact that commissions’ fees were higher in Brazil, which gives the impression of greater gains to these agents, is quickly negated by the clause stipulating that the fees would go to the society and when the company ends, profits and losses would be divided equally. ANTT, 10° CNL–LN, Cx. 26, liv. 141, f. 50–51V.

risk, the agent would cease to be an agent and would have the possibility of greater profits than if he were a partner or a commissioner, but in such an arrangement he would bear all expenses and eventual losses.

*Risk, Credit, and Strategies*<sup>25</sup>

The reason for such caution in these contracts may be rooted in the startup capital of the companies. Whether from Lisbon members or from partners of Pernambuco, the funds could have origins in loans. Some companies made it clear that they were registering contracts at notary offices in order to produce legally admissible evidence to their creditors and enable them to file a lawsuit to recover their credits. It should not be surprising, therefore, that companies first pledged to pay their creditors before sharing profits and losses. Even if the companies started with their own resources, they could, in the course of their activities, opt for loans.

The practice of borrowing money from smaller and more speculative investors, such as ship crews, or traveling commissioners, was probably more frequent in the early stage of the company. In this particular situation, trading through traveling commissioners (*comissários volantes*) is very similar to short-term societies. Traveling commissioners were small traders who worked as agents of merchants in Portugal. They gathered capital from several investors and went to Brazil to do quick business and return to the Kingdom with the tropical goods. In this case, the only difference between traveling commissioners and short-term companies was that in the first instance, agents received commissions and in the latter, they had equal participation in the profits and losses of negotiations. João Francisco Lucas and Manuel da Silva Soares, both traveling to Pernambuco are a case in point. According to the company charter, they borrowed money from several people, which they employed in commodities (the “*fazendas*”). They registered the society at a notary’s office to prove to the creditors that they were committed to pay the debts.<sup>26</sup> João Raposo and Manuel Inácio Ferreira, both crewmembers of the ship Santo Antônio Delfim, began an unlimited-duration partnership for trading with Paraíba (an administrative region adjacent to Pernambuco). Both signed up to a company charter to guarantee payment to both present and future creditors. They pledged to pay them, whether through “credit, risk, interest or gratuity.” The

<sup>25</sup> Many issues discussed here were inspired by the analyses of researchers who discussed the relationship between risk and credit, see: Antonio-Miguel Bernal, *La financiación de la Carrera de Indias (1492–1824), dinero y crédito en el comercio colonial español con América* (Madrid: Consorcio Urbanístico del Pasillo Verde Ferroviario de Madrid, 1992); Nuala Zahedieh, “Credit, Risk and Reputation in Late Seventeenth Century Colonial Trade,” *Research in Maritime History* 15 (1998); Jeremy Baskes, *Staying Afloat: Risk and Uncertainty in Spanish Atlantic World Trade, 1760–1820* (Stanford: Stanford University Press, 2013).

<sup>26</sup> Society signed in 1789. ANTT, 10º CNL–LN, Cx. 25, liv. 134, f. 42–42V.



profits could only be divided after the debts were settled with the creditors and, in order to guarantee the payments, they mortgaged their assets.<sup>27</sup>

Another company also formed by two seamen, Manuel dos Santos da Cruz and Domingos da Costa, was valid only for a round trip. The contract left open if both or only one of them went to Pernambuco. Yet the contract was very clear about the following: “that this society makes them of several parcels of money, that both took at risk, and of the most that they could find ...” and that everything was employed in goods. After they returned from Pernambuco, they would pay the “respective risks” and interest and then would make a profit-and-loss split.<sup>28</sup> The society that was named “João Manuel Alves and Company,” with a fund of 4,800,000 réis and a duration of three years, could not be guarantor of anything and anyone. Furthermore, the firm was also forbidden to be responsible for tax farming contracts, since nothing should come out of it other than paying the creditors. For this reason, the contract stipulated that the sales should be made only to people of trust and no company capital could be used for operations outside it.<sup>29</sup>

These examples demonstrate how credit was critical to trade, not only for small operators, since even large merchants made use of money from others. Moreover, mercantile societies could rely on long chains of credits. The contract between José Joaquim Ramos e Silva in Lisbon and Manuel Rodrigues Sete in Pernambuco exemplifies this. The list of creditors who invested in the company was very long and judging by the foreign names of the dealers, it is safe to conjecture that the credits came from income with other places in Europe. Julien Guilot, Porter & Horton, João Batista Travesso, João Henrique Hannivenkel, Gilstiphens & Company, Vale & Peres, Delente & Costa, Antônio Hozenclever (son of Pedro Jacob Hozenclever), Tealdor Brothers, Sebastião Alizeri, João Batista Bertholon & Company, Lequen & Company, all residents of Lisbon, Joaquim Ramos da Costa and Antônio Monteiro Neves, both from Porto and Manuel José Pereira, from Vila do Conde, were “all dealers and creditors of the society.” Even though they were based in different places, distance did not prevent them from making a joint power of attorney to allow the merchant João Crisóstomo da Fonseca e Silva collect their credits from Manuel Rodrigues Sete in Pernambuco.<sup>30</sup>

Charging debts, sometimes, might not be easy. When João Theodoro Koster and Company, described as “British Nation businessmen with established house” in Lisbon, wished to charge the company composed by Francisco José da Costa and Feliciano Batista de Aguiar, residents of the village of Goiana, Pernambuco region, they encountered many difficulties. Not only did the debtors refuse to pay,

<sup>27</sup> Society of 1792. ANTT, 10º CNL–LN, Cx. 28, liv. 153, f. 25–26.

<sup>28</sup> Society of 1793. ANTT, 1º CNL–Ofício A – LN, Cx. 120, liv. 548, f. 51–52.

<sup>29</sup> Society formed by João Manuel Alves in Lisbon and José Francisco Belem in Pernambuco, signed in 1789. ANTT, 10º CNL–LN, Cx. 26, liv. 136, f. 21–22V.

<sup>30</sup> Power of attorney written in 1785. The register of this company was not found. ANTT, 10º CNL–LN, Cx. 21, liv. 114, f. 12v–13.

but the courts also did not enforce the law, according to Koster. The British merchant had loaned more than five million *réis* to the Pernambuco-based merchants in the form of goods in the year 1782. Since the debtors were slow to pay, Koster issued a power of attorney for someone to charge them. The attorney went to the town of Goiana and “ordered the relevant action against the” debtors “in the ordinary court of the said village.” However, “ordinary judges” of that place “are lay men who dispatch by advisors who are often the lawyers of the parties themselves and, when they are not, they are always dependent on them because the debtors are powerful” men in Goiana. Besides, Koster was afraid that the debtors could “bribe” their attorneys in the village. That is why he asked for the official of justice (*Ouvidor*) of Pernambuco to intervene in the case. In 1787, the debts were still outstanding.<sup>31</sup> The last two cases describe that the capital necessary to deal with Brazil went beyond national borders as they could be raised through foreign merchants residing in Lisbon. More than that, these examples show how investors had jurisdiction to charge their debtors, either by private solicitors or through government officials in the colony.

Sales on credit called for caution, especially in Brazil. Poorly paid goods, or simply unpaid, could be reflected in the merchants’ accounts in Lisbon, affecting even their credit lines. One of the functions of Francisco Nunes Correa, a partner in Pernambuco who did not subscribe any capital in the firm led by Antônio José dos Santos Rodrigues in Lisbon, was to sell the goods in exchange for money and only sell on credit to people “of reputable credit and probity.” By doing so, he would remit the proceeds of sales as quickly as possible “so that he [Antônio] does not suffer humiliation by the creditors of the society.”<sup>32</sup>

Goods not sold in the colony owing to bad payers, could make it difficult to purchase colonial goods, which in turn caused extreme distress to the partner in Lisbon, who probably had to pay the goods bought on credit that he had sent to Brazil in the first place. The old practice of purchasing sugar in advance by selling goods on credit (*adiantamentos*) was still in use in Pernambuco in the last quarter of the eighteenth century. It was one of the ways that Antônio José da Silva, in Pernambuco, could use to sell the goods that the partner in Lisbon, Manuel José da Cruz e Silva, sent to him. According to the contract, he should sell the goods “for cash and in exchange for agricultural products and still even sale goods on credit for a limited time.” This tactic could be used in regions outside Recife (capital of Pernambuco), “to well-established *sugar mill* owners and cane growers” so that at the time of harvest, the planters would pay their debts with sugar to

<sup>31</sup> Overseas Historical Archive, 015, Cx. 160, D. 11524. João Theodoro Koster, or John Theodor Koster, later returned to England. In Liverpool, he became one of the main importers of cotton from Portugal between 1784 and 1815. See: Alexey Krichtal, *Liverpool and the Raw Cotton. Trade: A Study of the Port and its Merchant Community, 1770–1815* (Master’s thesis, Victoria University of Wellington, 2013), 57–60.

<sup>32</sup> The Society had been established in 1783, but was only recorded on paper in 1785. ANTT, 2º CNL–LN, Cx. 132, liv. 626, f. 88v–90.

José da Silva.”<sup>33</sup> The same strategy was not found, for example, in the company between Francisco Antônio Lago and José Pinto, who, although allowing sales on credit, excluded this practice from the interior (*sertões*) of Pernambuco.<sup>34</sup> These examples of mercantile strategies clearly show that the senior partners sought to minimize risks by stipulating the privileged spaces in which the junior partners would act.

Senior partners could also raise capital from partners’ debts, whether past, present or emerging from the activities of the company. For instance, Álvaro Gonçalves owed eight million *réis* to José Bento de Araújo and it was with this money that they started a company in 1796. Even so, Álvaro was forbidden from negotiating with anyone other than his partner in Lisbon.<sup>35</sup> The ten million *réis* that Jacinto José Dias de Carvalho, the partner in Pernambuco, invested in the company was a loan from the partner of Lisbon, Manuel Ribeiro da Silva. The partner in Pernambuco should pay the partner in Lisbon 4% p.a. interest to satisfy the loan, and if the partner in Lisbon wanted to borrow money to leverage the firm, both partners should take responsibility for debt repayments.<sup>36</sup> At the end of the company between the Lisbon baker, José Rodrigues, and the seaman, Domingos da Costa, in 1804, da Costa owed Rodrigues 2,773,130 *réis*, which was used as credit to renew the company for another four years.<sup>37</sup>

The issue of indebtedness is particularly interesting, as seen in the previous case. Because formal institutions were weak and/or insufficient, merchants relied on informal mechanisms to mitigate their losses. One of these strategies involved assisting debtors with their finances. As frustrating as it may have been, this was the less disruptive option for creditors: by supplying debtors with more credit, creditors hoped that they would be eventually reimbursed in the near future. In addition, initiating or renewing contracts with defaulting agents in Brazil was perhaps a strategy that the partner with more capital consented to in order to have an experienced agent in the colonial market. Appealing to higher judicial bodies—formal institutions—constituted an alternative strategy, but here, resolving disputes took a long time and entailed a high operational cost. In the worst-case

<sup>33</sup> The tactic of using an “advance” (*adiantamento*) meant that the merchant sold goods on credit to sugar mill owners and cane growers so that he, the merchant, would receive the crates of sugar in the future. Thereby the trader could avoid the market of free-floating prices. In this type of negotiation, planters promised crates of sugar exclusively to the merchant who had financed them. Society of 1785. ANTT, 6º CNL–LN, Cx. 22, liv. 109, f. 96–98v. See: Stuart Schwartz, *Sugar Plantations in the Formation of Brazilian Society, Bahia, 1550–1835* (Cambridge: Cambridge University Press, 1985), 207–208.

<sup>34</sup> Society of 1801. ANTT, 6º CNL–LN, Cx. 35, liv. 172, f. 45–46v.

<sup>35</sup> ANTT, 10º CNL–LN, Cx. 32, liv. 175, f. 58–58v.

<sup>36</sup> Society of 1803. ANTT, 10º CNL–LN, Cx. 38, liv. 206, f. 135–136.

<sup>37</sup> For the initial formation of society in 1796, see: ANTT, 10º CNL–LN, Cx. 32, liv. 175, f. 60–61. For the renewal of society, eight years later, see: ANTT, 10º CNL–LN, Cx. 39, liv. 211, f. 127.



scenario for the creditor, he would break the agreement with the debtor and waive his debts.

Some companies expressly prohibited recourse to the courts. One charter made it clear that any quarrels arising at the end of the company could not be settled judicially.<sup>38</sup> Another charter stipulated that in case of disagreements, each partner should appoint a private arbiter—*louvado*—to mediate and decide the matter. If that did not work out, they should appoint a third arbiter to settle it.<sup>39</sup> In other instances, merchants ultimately resorted to the formal institution of the Board of Trade. In the “settlement of accounts” of a company, if there was any contestation or doubt, it would proceed as follows: two arbiters would be appointed, one for each partner, and if they were not resolved, they would ask the Board of Trade to appoint a casting vote.<sup>40</sup> In another company, if the decision of the arbiters did not find a solution, the case would be sent to the Board.<sup>41</sup> Finally, only one contract out of the ninety-four expressly stipulated that any disagreements would be resolved “summarily” at the Board of Trade.<sup>42</sup>

Private judgments, with *ad hoc* arbitrators—*louvados*—being called to resolve disputes thus clearly played an active role. This is very relevant considering that arbiters were also traders. As such, arbiters of such judgments were experts in trade matters and commercial documents and accounts. This means that there were networks of arbiters/merchants who were familiar with resolving disputes between merchants in the trading community. Their performance fostered the production of information on both the most reputable and least reliable traders. This informal and private arrangement helped the merchant community of Lisbon to identify the agents’ reputations, thus reducing the possibility of moral hazard.<sup>43</sup>

In the above cases, disputes between partners were resolved or at least there was a planned solution. However, in other cases, the partners who broke the charter of the company encountered penalties. Twelve powers of attorney registered in the Lisbon notary offices reveal that partners in Lisbon appointed agents in Pernambuco to fine the partners who violated the contract.<sup>44</sup> Contrasting society charters with the powers of attorney curiously reveals that the societies mentioned

<sup>38</sup> ANTT, 10° CNL–LN, Cx. 32, liv. 176, f. 4v–5v.

<sup>39</sup> ANTT, 7° CNL–Ofício A, LN, Cx. 110, liv. 671, f. 40v–42v.

<sup>40</sup> ANTT, 2° CNL–LN, Cx. 132, liv. 626, f. 88v–90.

<sup>41</sup> ANTT, 10° CNL–LN, Cx. 31, liv. 169, f. 62–63v.

<sup>42</sup> ANTT, 6° CNL–LN, Cx. 30, liv. 150, f. 15–16v.

<sup>43</sup> Avner Greif discusses issues surrounding agent reputations in “Reputation and Coalitions in Medieval Trade: Evidence on the Maghribi Traders,” *The Journal of Economic History* 49, no. 4 (1989); Zahedieh, “Credit, Risk and Reputation.”

<sup>44</sup> There were twelve mercantile companies mentioned in records of powers of attorney for the period from 1784 to 1799. ANTT, 10° CNL–LN, Cx. 21, liv. 114, f. 12v–13. Cx. 26, liv. 139 f. 92–92v. Cx. 32, liv. 173, f. 115. Cx. 36, liv. 190, f. 41v. ANTT, 6° CNL–LN, Cx. 26, liv. 128, f. 93–94. Cx. 27, liv. 133, f. 54v–55v. ANTT, 7° CNL–Ofício A, LN, Cx. 107, liv. 647, f. 6v–7. Cx. 110, liv. 667, f. 85v–86. ANTT, 1° CNL–Ofício C, LN, Cx. 12, liv. 58, f. 49. ANTT, 2° CNL–LN, Cx. 132, liv. 624, f. 52v–53. ANTT, 3° CNL–LN, Cx. 152, liv. 711, f. 53–53v. ANTT, 14° CNL–LN, Cx. 25, liv. 122, f. 82v–83v.

in the powers of attorney are not listed in the 94 society charters analyzed as part of this study. Therefore, not all actors felt the need to notarize their companies in Lisbon. To be sure, the merchant João Antônio Fernandes Batalha declared to have made a “verbal society” with Francisco José Peixoto de Freitas.<sup>45</sup> Yet, even without a written charter—private or notarized—creditors could grant powers of attorney to recover their capital in Brazil, authorizing their representatives to turn to the colonial courts and to have the assets of the debtor partner sequestered.<sup>46</sup>

One of the most striking cases is that of the company between the brothers Julião Gervásio de Aguiar and José Estevão de Aguiar, underwritten in 1799.<sup>47</sup> It reveals that kinship ties did not preclude the two brothers from having to register a charter in the presence of a public notary.<sup>48</sup> This is not the only case. Joaquim Leocádio da Fonseca e Silva, who owned one of the largest number of ships in the 1780s, operated as a resident merchant in Pernambuco since at least 1777. He had a company with his father, Manuel da Fonseca e Silva, a businessman resident in Lisbon. The company started with 6,400,000 réis in 1777 and was to end in 1783. However, Manuel da Fonseca e Silva filed a suit against his son at the Board of Trade in 1784, accusing Leocádio of having started a partnership with his brother, João Crisóstomo da Fonseca e Silva, resident in Pernambuco, and of investing the capital he owed to his father.<sup>49</sup> Although there are few cases of family-owned companies, the vast majority of the charters did not have their immediate relatives as partners. Moreover, as seen in the above two cases, even when a mercantile society was composed of relatives, legal disputes could arise. Companies therefore relied upon these more formal features including notarial scriptures rather than depending on family relations.

Company charters thus had the function of providing written guarantees to creditors. They also helped to resolve disputes among partners through the use of

<sup>45</sup> ANTT, 10° CNL–LN, Cx. 26, liv. 139 f. 92–92v.

<sup>46</sup> For more on how courts were an efficient way for resolving trade disputes, see: Yadira González de Lara, “The Secret of Venetian Success: A Public-order, Reputation-based Institution,” *European Review of Economic History* 12 no. 3 (2008). For an opposite view, see: Francesca Trivellato, *The Familiarity of Strangers, the Sephardic Diaspora, Livorno, and Cross-Cultural Trade in the Early Modern Period* (New Haven: Yale University Press, 2009).

<sup>47</sup> On two occasions, the partner in Lisbon charged the brother for debts of the society in 1804. ANTT, 1° CNL–Ofício C–LN, Cx. 14, liv. 69, f. 24V–25 and ANTT, 1° CNL–Ofício C–LN, Cx. 15, liv. 75, f. 7V–8v.

<sup>48</sup> According to a more traditional historiography, religious, family and ethnic ties were sufficient to resolve the problems of commerce. It is argued that such ties were more reliable, for example, in concluding agreements with relatives, thus reducing the possibility of moral hazard. For these cases, see: Daniel Maurice Swetschinski, *The Portuguese Jewish Merchants of Seventeenth Century Amsterdam: a Social Profile* (Ph.D. diss., Brandeis University, 1979). However, according to other authors, even familial business partners could be dishonest. Furthermore, to expand their business, merchants necessarily would have to expand their networks by looking for agents outside family circles. See, for instance: Sheryllynne Haggerty, *‘Merely for Money’?: Business Culture in the British Atlantic, 1750–1815* (Liverpool: Liverpool University Press, 2012), 52.

<sup>49</sup> ANTT. Junta do Comércio, Registo Geral, liv. 122, f. 137–140v.

arbiters and the Board of Trade. However, society charters had another function as well. It is worth stressing that some merchants and adventurers who were both inexperienced and only periodically engaged in colonial trade, sometimes acted unscrupulously. Employed as “traveling commissioners” (*comissários volantes*), they received capital from merchants in Portugal, traveled to Brazil to conduct quick business, and returned to Portugal thereafter. This arrangement was legally banned in 1755, when traveling commissioners were accused of having repeatedly defaulted.<sup>50</sup> Despite the ban, the activities of traveling commissioners never ceased,<sup>51</sup> which forced both colonial and metropolitan authorities to monitor their movements on the routes between Portugal and Brazil. When in 1788 the king and the Board of Trade inquired if the traveling commissioners were going to Pernambuco, the officials of the Board in Brazil, who controlled their entry, recommended that all those who went to Brazil were to present their company charters, with the names of the partners in Lisbon and the capital they had at their disposal to do business. This allowed the officials “to find out whether or not the trade they are going to do is right.”<sup>52</sup> Basically, the concern was to make sure that the partners would not be mistaken for traveling commissioners and to prove that the travelers had capital, signaling to the authorities that they were trustworthy merchants.

In addition, the Board of Trade had clear intentions to privilege firms over other colonial trading arrangements. Notaries, for example, were only to register company charters for those who produce evidence of their enrollment in the Board of Trade, in accordance with the law of August 30<sup>th</sup>, 1770. That law, according to the Board itself, reserved trade with the colonies only to merchants enrolled in the Board of Trade.<sup>53</sup> Obviously, this did not happen, and most of the charters never presented merchants’ registers. In addition, another part of the trade was made without the need for notarization, including for resident and traveling commissioners.

Still, there is no doubt that by ensuring that agents in Brazil had honest and responsible actions contractually, the merchants of Lisbon were given greater security in business, thereby facilitating market flows. By circumventing these moral hazards, several avenues were thus opened for merchants to sell colonial goods in different marketplaces in Europe. Cotton and sugar were the principal colonial goods sold in this period. Cotton was exported to Great Britain and France in great

<sup>50</sup> Antonio Delgado da Silva, *Collecção da Legislação portuguesa desde a ultima compilação das ordenações [...] Vol. 1* (Lisbon: Tip. Maigrense, Correia da Cunha, 1830–1849), 404. Kenneth Maxwell, “Pombal and the Nationalization of the Luso-Brazilian Economy,” *Hispanic American Historical Review* 48, no. 4 (November 1968), 613–614.

<sup>51</sup> The performance of the traveling commissioners at the end of the eighteenth century is discussed in Melo, *O negócio de Pernambuco*, 261–287.

<sup>52</sup> ANTT. Junta do Comércio, mc. 10 (38). “Correspondência recebida das autoridades ultramarinas.”

<sup>53</sup> ANTT. Junta do Comércio, Registo Geral, livro. 113, f. 128–129.

quantity; sugar, meanwhile, was in high demand in Hamburg, in the Italian states and in the Netherlands.<sup>54</sup>

### Conclusion

Contrary to the conventional historiography outlined in the introduction, the mercantile societies for trading between Lisbon and Pernambuco clearly indicate that most capital was invested by the Lisbon-based partners. In addition, various contractual clauses significantly limited the freedom to pursue individual trading activities for the partners in Brazil. While merchants in Portugal subscribed the largest amounts of capital for the business ventures, in most cases it was the residents in Brazil who contributed their work and sometimes some capital. Hence, societies' charters suggest a hierarchy between trading actors that follows the hierarchies between marketplaces. Maximiliano Menz has already pointed to such relationships between marketplaces: "...a Lisbon was worth three Rio de Janeiros, a Rio de Janeiro was worth eight Rio Grandes and so on. Consequently, market communities tended to reflect this mercantile territorial distribution."<sup>55</sup>

The analysis of many companies' charters makes it possible to recognize that these asymmetric relations were the manifestation of the hidden concerns and needs of financiers and managers in Lisbon to reduce the moral hazards of employing agents in Brazil. In the case of mercantile companies, it was the management of risk, therefore, that led the economic relationship between merchants and agents to be unequal. Notarized charters helped ensure honest conduct of the agent overseas, the need for minimal control over agent activities and ensured that agents monitored the marketing and transfer of assets, while also ensuring that bookkeeping was accurate and information was constantly exchanged. Likewise, contracts made it possible to raise capital from different creditors and at the same time ensured that the financiers, including foreigners would be paid. Resolutions of disputes between partners were also incorporated in the contracts, with the services of private arbiters being the most frequently used contractual stipulation. All this made the company a very appropriate strategy to mitigate risk and thus reduce transaction costs for those players who had more capital and who led the negotiations.

<sup>54</sup> José Jobson de A. Arruda, *O Brasil no comércio colonial* (São Paulo: Ática, 1980), 362–363, 370–371. H. E. S. Fisher, "Lisbon, its English Merchant Community and the Mediterranean in the Eighteenth Century," in *Shipping, Trade and Commerce: Essays in Memory of Ralph Davis*, ed. P. L. Cottrell and D. H. Aldcroft (Leicester: Leicester University Press, 1981), 23–44.

<sup>55</sup> Maximiliano Menz, "O crédito e a economia colonial," in *À vista ou a prazo: comércio e crédito nas Minas setecentistas*, ed. Angelo Alves Carrara (Juiz de Fora: Ed. UFJF, 2010), 28.



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