

***Financing Business: Max Weber on Equity and Debt
in Medieval Commercial Partnerships***

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Abstract

To finance its operation, a business can rely on equity or debt, or both. How did this take place in the Middle Ages? Max Weber explored this question primarily in his dissertation and first book, *The History of Commercial Partnerships in the Middle Ages* (1889/2003), as well as in his later writings. Based on an analysis of a variety of primary records, Weber wrote about equity financing in various forms of commercial partnerships, predominantly in medieval Italy, and he touched on debt financing in the context of his discussion of usury laws. This paper outlines Weber's major arguments, namely, how a high degree of risk, particularly in maritime ventures, led to arrangements in which a return of capital was not, or at least not unconditionally, guaranteed, and there was no fixed rate of return on capital. Weber's analysis of legal as well as economic arrangements pertained to forms of equity-financed partnerships such as the unilateral and bilateral *commenda*, *societas maris*, *societas terrae*, *compagnia*, *dare ad proficuum maris*, *dare ad portandum in compagniam*, and *dare ad proficuum de terra in bottega vel alio loco* in cities such as Piacenza, Genoa, Pisa, and Florence. Recent scholarship on debt and credit financing shows the absence of consideration of debt financing in Weber's writings to be problematic.

In modern businesses, it is common to distinguish between equity financing and debt financing. In equity financing, a business raises capital by selling ownership interest in the business. In return to having equity in the business, the provider of capital assumes the risk of loss of such equity in return for some control over the operations of the business. In debt financing, a third party provides a loan to a business in return for the return of principal and interest. The third party sometimes requires securitization but typically does not have a say in the operations of the business. The lines between equity and debt financing can blur in cases in which the payment and rate of interest is tied to the success of business, or when the loan provider assumes significant control over business operations.¹

It may therefore be surprising that in all of Max Weber's writings, the terms "Eigenkapital" or "Eigenmittel" and "Fremdkapital" or "Fremdmittel" (the equivalent terms for equity and debt financing in German) do not occur at all. They do not occur in Weber's *Economy and Society*, nor in the posthumously published lectures, *General Economy History*. The words are also not used in Weber's dissertation, which was published in 1889 as *The History of Commercial Partnerships in the Middle Ages*, where he addressed business associations in the Middle Ages in greatest detail² and did use the

¹ For example, see Jeffrey R. Cornwall, David O. Vang, and Jean M Hartman, *Entrepreneurial Financial Management: An Applied Approach*, New York: Routledge, 2014, part III; Susan McLaughlin, *Unlocking Company Law*, 3d ed., New York: Routledge, chapter 6.

² Max Weber, *Zur Geschichte der Handelsgesellschaften im Mittelalter: Nach südeuropäischen Quellen*, Stuttgart: Enke, 1889; now in Max Weber Gesamtausgabe (MWGA) I/1: *Zur Geschichte der Handelsgesellschaften im Mittelalter: Schriften 1889-1994*, ed. G. Dilcher and S. Lepsius, Tübingen: Mohr, 2008; English translation: *The History of Commercial Partnerships in the Middle Ages*, trans. L. Kaelber, Lanham: Rowman and Littlefield, 2003; Max Weber, *Wirtschaft und Gesellschaft*, 5th, rev. ed., ed. J. Winkelmann, Tübingen: Mohr, 1985; English translation: *Economy and Society*, rev. ed., ed. and trans. G. Roth and C. Wittich, Berkeley: University of California Press, 1978; Max Weber, *Wirtschaftsgeschichte: Abriss der universalen Sozial- und Wirtschaftsgeschichte*, 3d ed., ed. J. Winkelmann, Berlin: Duncker & Humblot, 1958; now in MWGA III/6: *Abriss der universalen Sozial- und Wirtschaftsgeschichte: Mit- und Nachschriften 1919/20*, ed. W. Schluchter, Tübingen: Mohr, 2011; English translation: *General Economic*

terms “provision of credit” (*Kreditgewährung*) and “equity share” (*Gewinnbeteiligung*) in the context of financing business. Trained as a lawyer, Weber in that study looked mostly at legal arrangements, such as the limited and the general partnerships, as a way for law to set parameters for allocating risk and distributing profit. In this context, Weber did touch on equity financing in various forms of commercial partnerships, predominantly in late medieval Italy, and to a much lesser extent, on debt financing when he addressed the significance and impact on usury laws.

Partnerships and the Financing of Business

Before turning to medieval partnerships, Weber addressed financing of business and allocation of risk in business in Antiquity. In *General Economic History*, he noted in his lecture module “The Circulation of Goods and Money in the Pre-Capitalist Era” in the section on “Organizational Forms of Transport and Trade” that in the Rhodian law about jettison (*lex rhodia de iactu*), which was adapted from Greek law into Roman law of the sea, “a ship typically carried the merchandise of a number of merchants. If goods had to be thrown overboard in times of distress, the loss was borne equally by the participants.”³ For sea loans, Weber continued to note,

From the court pleas of the Attic orators, Demosthenes and others, we know that sea loans resulted in affording to the lenders the possibility of getting sea commerce in their power to a large extent. They prescribed to the ship owner the course and duration of the voyage and where he should market the goods. The extensive dependence of the sea merchants upon the capitalists which finds expression in this arrangement leads us to infer that the former were weak in capital. In order to distribute the risk a number of lenders usually participated in the loan upon a single ship.⁴

History, trans. Frank Knight, New Brunswick, NJ: Transaction Books, 1981.—In retranslating writings by Weber, in the following I have sometimes changed the translation from the original.

³ Weber, *Abriss der universalen Sozial- und Wirtschaftsgeschichte*, p. 261; *General Economic History*, p. 204.

⁴ *Ibid.*

The financial arrangement Weber described comes much closer to equity financing than debt financing, for the risk of the loss was equitably shared by the lender, and the lender involved himself in the operations of the business. The institution carried over from Antiquity to the Middle Ages.

The *foenus nauticum*, or sea loan, accommodated a situation of extraordinary risk in which debt financing, at least in the form of loans at fixed interest rates, was out of the question. For those providing capital, the high risk led to interest rates of 30% (or even 35%, according to Pisa's *Constitutum Usus*), but also the assumption of loss should a business venture on sea fail.⁵ Another way to deal with such high risk was for several providers of assets to own a ship together, or have joint ownership in several ships, and associations were formed for individual ventures. Such sea trading ventures, Weber explained, included the ship owners, the captain and crew, and the merchants on the ship, who could form an association with joint assumption of risk and distribution of gain and loss according to a fixed rule. Weber called this form of partnership based on equity financing a "genossenschaftliche Risikogemeinschaft."⁶

The way to deal with such risk, of the type found in the sea loan, namely the return of principal and a high interest, on a venture-by-venture basis, was not atypical but could be found in forms of partnerships such as the *societas maris* and in the *dare ad proficuum de mari*. Weber discussed these arrangements in detail in his dissertation, in the context of the *commenda* and the modern limited and general partnerships. These partnerships had their equivalent in modern German law, he argued, in the *Offene*

⁵ Weber, *Abriss der universalen Sozial- und Wirtschaftsgeschichte*, pp. 261-62; *General Economic History*, p. 204.

⁶ Weber, *Abriss der universalen Sozial- und Wirtschaftsgeschichte*, p. 262; *General Economic History*, p. 205.

Handelsgesellschaft and *Kommanditgesellschaft*. The general partnership has a “separate fund” distinct from the individual partner’s own liable assets. The partners also act “on behalf of the partnership” when contracting with third party. Such actions result in solidary liability (joint and several) toward creditors for debts and obligations. The partnership also operates under a joint name (as a firm) by which it conducts business. The main difference between general and limited partnership is that in the case of the latter, the limited partners take not take on management responsibility in running the firm, and their liability is limited to the amount of their capital contribution.⁷ In both, however, the contribution of capital is a form of equity financing.

Weber argued that medieval Italian partnerships known as *commendas* were the progenitors of these modern forms of commercial companies, and that they also relied on equity financing. In a *commenda* a sedentary investor, the *commendator*, would invest capital in a business run by a partner, the *tractator*, who would put this capital to work by undertaking business trips and conducting business on behalf of the partnership. The *commendator* could retain some control over the way in which business operations were conducted but the *tractator* made the everyday decisions. Either both parties contributed capital to the business (a bilateral *commenda*), with bilateral equity financing, or only the *commendator* did (a unilateral *commenda*), with unilateral equity financing. After the expiry of a certain period of time or the conclusion of one or several business trips, the *tractator* was obliged to account for the business’s successes and failures to the *commendator*. The partners would divide any profit, after the deduction of expenses, and

⁷ For this and the following, see my “Introduction,” in Weber, *The History of Commercial Partnerships*, pp. 22-27; Gerhard Dilcher and Sabine Lepsius, “Einleitung,” in Weber, *Zur Geschichte der Handelsgesellschaften im Mittelalter* (2008), pp. 41-53; and my “Max Weber’s Dissertation: An Analysis (and a Comparison to his Habilitation),” In *The Foundation of the Juridico-Political: Concept Formation in Kelsen and Weber*, ed. P. Langford, I. Bryan, and J. McGarry, London: Routledge, 2015.

the original capital contribution according to conditions set forth in their business contract. Typically, in the unilateral *commenda* the *commendator* carried the risk of loss of capital alone, whereas in the bilateral *commenda* the *tractator* assumed some of this risk.

When Weber explored the legal underpinnings of several forms of commercial partnerships in medieval Italy, he came to reject the notion that the modern limited and general partnership had directly descended from them, as constitutive elements of liability and assumption of risk were markedly different. The historically older unilateral *commenda* was not the origin from which the modern limited partnership arose. The managing partner had no capital invested of his own and, at least from Weber's perspective, merely participated in the business as an agent of a principal, buying and selling goods in his own name on account of the latter, while assuming no risk for loss of capital on his own. Thus, the managing partner's role in the business involved neither equity nor debt financing. Nor did Weber think that the modern general partnership descended from the *societas maris* (a commercial venture at sea in the form a bilateral *commenda*). The contributing partners did not fully assume joint liability, and for a separate fund, there were only traces of a construct of this sort, such as was the case in Genoa. Other forms of business ventures were also different from modern forms of partnership, as was the case for the *dare ad proficuum maris* (a sea-venture with a fixed dividend on capital) or the *dare at portandum in compagniam* (a partnership for overland trade without a separate fund). However, in the partnership called *societas terrae* or *compagnia di terra* in Piacenza, some partners had unlimited liability while other partners' liability was capped at their capital contribution. In Pisan commercial

statutes concerning the *societas maris*, Weber in fact considered to have discovered the historical origins of the modern limited partnership, for he found, for the first time, both the existence of a separate fund and the conduct of business in the name of a firm—even though (full) solidary liability was not mentioned in Pisa’s *Constitutum Usus*, Pisa’s codified commercial customs dating back to as early as c.1146-1154.

If Pisa was the incubator in the Middle Ages for modern law’s limited partnership, medieval Florence served the same historical function for the modern general partnership. Weber traced the institution of the *compagnia* of the Scali, Bardi, Alberti, and Peruzzi families well into the fourteenth century. The Florentine *corpo della compagnia* constituted a separate fund representing the joint equity of a partnership, the partnership operated as a “firm,” and the partners were solidarily (jointly and severally) liable for partnership debt, including debt encumbered by other partners acting on the partnership’s behalf and in its name. Weber did not elaborate on the function of such debt, however, and whether it was used to finance the partnership for a longer term.

Debt

Weber addressed debt most and foremost when he traced the roots of solidary liability to household formation, shifting the focus away from purely commercial ventures to constellations of family and kin. He conducted a sociological study of household arrangements in medieval Italian cities. In this context Weber analyzed the household not primarily as a “community of consumption” but as one of “production.”⁸ As families

⁸ Weber, *The History of Commercial Partnerships*, p. 88 (*Zur Geschichte der Handelsgesellschaften* [2008], p. 194): “[in this context] the family is primarily a natural ‘community of production’ (*Produktionsgemeinschaft*), not, as it appears to be the rule to us, a mere ‘community of consumption’

turned to urban, profit-seeking craft production, continuous profit-seeking partnerships in the craft sector replaced family associations as the locus of enterprise, and the legal concept of limiting liability to those debts that were incurred on the account of the partnership spread: that is, only debts and obligations incurred in the name of the partnership, or for the firm, rendered the partners liable. The operation of a continuous commercial enterprise with its own name, a firm, and the practice of executing contracts in the firm's name incurring liability for its partners, then became applicable to commercial enterprises that focused not on production, as the craft households did, but on trade. Urban, profit-seeking craft production, as "communities of labor," was thus the nucleus of a legal development that would inform modern commercial law. *Gemeinschaft* had evolved into formal sociation on a contractual basis (*Gesellschaft*). The distinction between joint (business) and personal assets lent itself to treating business assets as a separate fund, a fund held liable for all debts of the association and its members. Weber's analysis of a broad range of documents shows that a household's creditworthiness related, to a large extent, to legal stipulations that came into effect in the case of bankruptcy, namely, stipulations establishing solidary liability, among members of a household that form a unit of production, and no longer among kin. As family associations were replaced by continuous profit-seeking partnerships, in the course of capitalist development in medieval Italy, there was a tendency to limit solidary liability to debts incurred on the account, and in the name, of the partnership.⁹

(*Konsumtionsgemeinschaft*). In Italian cities especially it served as the foundation of more extensive forms of sociation (*Vergesellschaftung*)."

⁹ For a more detailed account of the treatment of such legal developments and stipulations in Weber's dissertation, see my "Introduction," in Weber, *The History of Commercial Partnerships*, pp. 25-7.

While Weber addressed debt in such legal arrangements, he did not address the issue of contractual relations of borrowing money and the return of capital. He did address it, however, in the context of the taking of interest on commercial loans.

Debt Financing, Interest, and Usury

In *The History of Commercial Partnerships*, Weber addressed business debt mainly in his response to an argument that had been raised in scholarly literature at the time.¹⁰ The jurist Wilhelm Endemann, one of the most distinguished scholars next to Heinrich Thöl and Levin Goldschmidt (with whom Weber had studied) on commercial law in Germany at the time,¹¹ had argued that medieval partnerships had developed mainly as a strategy to circumvent canon law's prohibition of usury, adopted by secular statutes. Weber responded:

Endemann argued that even loans that represented, from an economic point of view, a loan of capital in return for the payment of fixed interest [i.e., debt financing] were constructed in the form of a partnership. We know of similar attempts to construct the purchase of perpetual rent as a hidden interest-bearing loan secured by a mortgage, but this view has been abandoned. The analyses by Arnold and others have shown that the purchase of perpetual rent developed gradually out of renting real estate in towns, and that it fulfilled independent economic needs and not at all acted as a stopgap for the missing interest-bearing loan. This holds true even when capital available for investment later employed this institution—but not before it had come to fruition independently—as a substitute for the non-existent interest-bearing mortgage loan. . . . While we have also seen that the *commenda* and the *societas maris* were indeed used as forms of investment, even for the property of wards, according to the statutes of Pisa, at that time these partnerships had already developed into their most advanced form in the Middle Ages. Therefore, it is a vast exaggeration to assume that capital invested in such a way had chosen this form of investment because there was no way for it to be invested in the form of an interest-bearing loan. There is no evidence for that; in fact, there is evidence of the contrary. . . .

¹⁰ In the following, I draw on my “Max Weber and Usury: Implications for Historical Research,” in *Money, Markets, and Trade in Late Medieval Europe: Essays in Honour of John H.A. Munro*, ed. L. Armstrong, I. Elbl, and M. Elbl, Leiden: Brill, 2007, pp. 59-86.

¹¹ See Gerhard Dilcher, “Personenverzeichnis,” in Weber, *Zur Geschichte der Handelsgesellschaften* (2008), pp. 507ff.

In the case in which a maritime venture experienced a catastrophic loss, the repayment of a loan taken out for the purpose of funding the venture had to appear highly questionable. This explains . . . why the investment of capital took on the form of a share of the risk in exchange for a share of the profit, the latter of which nascent commerce, in need of capital, supplied willingly. . . . This institution corresponded to views prevalent in Mediterranean trade, the oldest area of large trade, which could not perceive of the investment of capital for the purpose of an expedition overseas in any other terms than as a participation in it—that is, as sharing its risk as well. Changes in these views reflect the fact that risk became more calculable. This, rather than a subtle attempt to circumvent the prohibition of usury, explains why part of the risk was assumed by capitalists. It also explains why forms of partnerships that economically resembled a loan still appear to have legally been constructed as partnerships with a fixed dividend.

When the doctrine of usury—if one can agree that such existed—appeared on the economic scene, the development of the forms of partnership, as Lastig has strongly argued against Endemann, had long been concluded. The role played by the canonical prohibition was therefore not a small one, in Italy as well as in other places. Almost all statutes addressed it But one cannot argue that the development of a new institution of law, or merely the further development of an existing institution, happened due to this prohibition. The prohibition led to the end of some institutions such as the *dare ad proficuum maris*; and otherwise, it also served a restrictive, not creative, function. Even the *proficuum maris*, which corresponds most poorly to the institution of a partnership but seems best suitable as a paradigm of Endemann’s theory, appears to have been fully developed before the doctrine of usury took hold, and it later fell victim to this doctrine once it had fully taken hold. Its demise was not due to the way in which risk was distributed but happened because of the *certum lucrum*. These facts show clearly that the prohibition of usury did not give rise to the form of partnership.¹²

Weber advanced several important arguments here, some of which are buried in obscure language and references.

First, he did not advocate that usury laws were without impact. Distinguishing loans for consumption from loans for investment purposes, he acknowledged that for consumption loans the prohibition of interest was indeed a constraining factor; for investment loans, on the other hand, it was more rare to have had deleterious consequences. Weber noted in the passage above that the prohibition of usury “led” to the decline of the *dare ad proficuum maris*, a form of partnership that was based on a

¹² Weber, *Zur Geschichte der Handelsgesellschaften* (2008), pp. 269-72; *The History of Commercial Partnerships*, pp. 137-39.

capitalist's willingness (literally) "to contribute for making a profit on maritime voyages." According to Weber, this type of partnership developed in Pisa, and as time went on, diminishing risks on commercial voyages to sea ports in the Mediterranean allowed for the calculation of an average profit, a share in which could then be reasonably guaranteed.¹³ Its equivalent on land was the *dare ad proficuum de terra in bottega vel alio loco*, where an investor invested in a company operating out of a shop.¹⁴ In their historical development, Weber commented, such arrangements increasingly tended to take out the risk for a capitalist, who merely contributed his capital without further involvement and relied on a fixed dividend or rate of return (*certum lucrum*) and therefore became less an equity investor than a provider of a commercial loan. This arrangement gravitated toward what Weber called a simple "granting of a loan" (*Darlehensgewährung*); i.e., debt financing.¹⁵ It provided more than a fixed dividend in so far as the provider of capital came to retain the right of return of the invested capital, particularly in partnerships in overlade trade, as Weber noted in *General Economic History*.¹⁶ It made such partnerships vulnerable to the accusation of usury and resulted in the ultimate demise of the type of partnership Weber described for the Pisan case. The prohibition of usury was therefore not entirely without teeth.

Weber's second argument relates to the investment of capital in other, more common types of partnerships, both on land and at sea. The usury ban's effect on those partnerships, he argued, was limited. Investment loans were more important for economic

¹³ Weber, *Zur Geschichte der Handelsgesellschaften* (2008), p. 268; *The History of Commercial Partnerships*, pp. 136-37.

¹⁴ Weber, *Zur Geschichte der Handelsgesellschaften* (2008), p. 281; *The History of Commercial Partnerships*, p. 145.

¹⁵ Weber, *Zur Geschichte der Handelsgesellschaften* (2008), p. 269; *The History of Commercial Partnerships*, p. 136.

¹⁶ Weber, *Abriss der universalen Sozial- und Wirtschaftsgeschichte*, pp. 315-16; *General Economic History*, p. 201.

development than consumption loans, and in the various forms of partnerships capital found ready investment opportunities. Since in medieval partnerships a partner who provided capital typically assumed at least some of the risk of losing it, and sometimes involved himself in carrying on business, he could legitimately reap a profit. Such a profit was seen as entirely different from taking interest on a loan, which, with certain exceptions, was prohibited. Hence, the prohibition of usury did not apply to most of the commercial associations Weber explored.

The third argument concerns the timing of the emergence of stricter usury laws and the legal development of partnerships in the later Middle Ages. In 1874 and 1883, the aforementioned legal scholar Wilhelm Endemann had published a massive two-volume study on the economic doctrines in Roman canon law. It was not the first study that addressed usury, but compared to studies by Catholic theologians, it focused more on usury laws' legal construction, practical effects, and economic relevance than on their ethical aspects. In rejecting Endemann's contention that medieval partnerships developed mainly as a means of circumventing increasingly stringent usury laws, Weber relied in some measure on the scholar of Roman and German history Wilhelm Arnold on German cities.¹⁷ Yet Weber's main argument derives to a greater extent from his own studies, and those of the scholar of law Gustav Lastig, on medieval partnerships. In a pioneering analysis of documents in Italian archives, Lastig had launched an attack on Endemann's thesis, as it had first appeared, for not sufficiently distinguishing between different types

¹⁷ Arnold's major study on the development of real property in German cities included *census* contracts (an annuity or perpetual rent), which he showed not have emerged as a response to the prohibition of usury (see Wilhelm Arnold, *Zur Geschichte des Eigentums in den deutschen Städten*, Basel: Georg, 1861, p. 92).

of partnerships and misrepresenting how capital was invested in them.¹⁸ Weber supported many of Lastig's arguments but transcended the scope of Lastig's inquiry by showing that changes in the legal arrangements of medieval commercial partnerships made them increasingly less similar to an interest-bearing loan or other such types of investments at the same time as the usury doctrine stiffened.

Of the two main forms of *commendas* he studied, the unilateral and the bilateral *commenda*, Weber considered the first one to be historically older; over time, Weber argued, the managing partner's role changed from carrying out the business transactions without partaking in the risk to becoming capital investor's agent, buying and selling goods in his own name on the account of the principal (the investor). Weber argued that the unilateral *commenda* was therefore the medieval precursor to the modern form of commission agency. In the *Constitutum usus*, this form of partnership was known as *dare ad portandum in compagniam*. It lacked a separate fund, which is a constitutive element of the bilateral partnership, for an investor contributed capital but was not made liable to third parties by his partners' actions. The risk was thus limited to the investor's contribution, and his involvement in the partnership was not transparent to third parties. As Weber pointed out, the equivalent in modern German commercial law is the "dormant partnership" (*Stille Gesellschaft*), which does not have an exact equivalent in Anglo-American common law countries, where undisclosed or "silent" partners have unlimited personal liability in the absence of a limited partnership agreement. In so far as the dormant partner receives a return on his contribution as a percentage of the profit, not at a

¹⁸ Gustav Lastig, "Beiträge zur Geschichte des Handelsrechts, I," *Zeitschrift für das Gesamte Handelsrecht* 23 (1878): 138-78; "Beiträge zur Geschichte des Handelsrechts, II," *Zeitschrift für das Gesamte Handelsrecht* 24 (1879): 387-449.

fixed rate, as in the case of a loan, the dormant partner's contribution constituted yet another form of equity financing.¹⁹

The characterization of finance as equity financing also applies to the bilateral partnership, as we have seen. In the case of the *societas maris* in the *Constitutum usus*, the sedentary partner's legal liability was limited to his capital contribution, whereas the traveling partner's liability was unlimited; it was the historical predecessor to the modern limited partnership. Weber noted that a semblance of this type of arrangement could also be found in Piacenza. Drawing on the *Statuta antiqua mercatorum Placentiae*, Weber noted that the *societas terrae* or *compagnia di terra* was set up for a period of carrying on business in overland trade, and that the development was toward a limitation of the liability of the investors of capital to their capital contribution.²⁰

Time plays an important role, Weber argued, for the shift away from unilateral partnerships and toward bilateral ones as a preferred form of investment was well underway before elaborations of canonical usury prohibitions began in the late twelfth century. This finding not only undercuts the argument that religious prohibitions affected these economic changes but also explains why Weber holds that, when the doctrine of usury got its teeth, "the development of the forms of partnership . . . had long been concluded."²¹

¹⁹ Weber, *Zur Geschichte der Handelsgesellschaften* (2008), pp. 266-67; *The History of Commercial Partnerships*, p. 135.

²⁰ Weber, *Zur Geschichte der Handelsgesellschaften* (2008), pp. 184-88; *The History of Commercial Partnerships*, pp. 78-92.

²¹ It might be worth noting that Weber's *Doktorvater* Goldschmidt agreed substantively with Weber's position. Rejecting Endemann, Goldschmidt stated that the prohibition of usury was not effective in throttling economic development, for even canon law had provisions that permitted the taking of interest, not to mention more lenient secular laws. At most usury laws introduced additional restrictions to the market for credit, thus increasing rather than decreasing interest rates (see Levin Goldschmidt, *Universalgeschichte des Handelsrechts*, Stuttgart: Enke, 1891, pp. 140-41).

On the Reception of (and Corrections to) Weber's Views

The scope of this paper does not allow for the assessment of the veracity of Weber's claims and arguments in the light of recent historical and legal scholarship, but a few remarks on the reception and relevance of Weber's views seem appropriate.

Scholars in law and history have by and large ignored Weber, save for a few studies that acknowledged the continued importance of Weber's arguments in contexts of studies such as on *compagnia* agreements in medieval trade,²² emerging notions of property and property rights,²³ the origins of the *commenda* and its dispersion in Eurasian trade,²⁴ the impact of usury laws on the development of medieval markets and businesses,²⁵ and the history of limited liability and "entity shielding" in businesses to shield business owners' personal assets from a firm's creditors and firms' assets from their owners' personal creditors.²⁶

While seemingly unaware of Weber's writings on commercial partnerships, Van Doosselaere (2009) explored about 20,000 notarial records that pertain to over 10,000 commercial agreements in Genoa over the period of the mid-twelfth century to the mid-fifteenth century.²⁷ In the first 100 years, *commendas* as single-voyage contracts between investors and traveling merchants prevailed. In long-distance maritime trade,

²² Franz-Josef Arlingshaus, "'Io', 'noi' und 'noi insieme': Transpersonale Konzepte in den Verträgen einer italienischen Handelsgesellschaft des 14. Jahrhunderts," in *Bene vivere in communitate: Beiträge zum italienischen und deutschen Mittelalter*, ed. Th. Scharff und Th. Behrmann, Munster: Waxmann, 1997, pp. 131-53).

²³ Laura Ford, "Max Weber on Property: An Effort in Interpretive Understanding," *Socio-Legal Review*, 6 (2010): 24-100.

²⁴ Ron Harris, "The Institutional Dynamics of Early Modern Eurasian Trade: The *commenda* and the Corporation," in *Journal of Economic Behavior and Organization* 71, 3 (2009): 606-22.

²⁵ Mark Koyama, "Evading the 'Taint of Usury': The Usury Prohibition as a Barrier to Entry," *Explorations in Economic History* 47, 4 (2010): 420-42.

²⁶ Henry Hansmann, Reinier H. Kraakman, and Richard Squire, "Law and the Rise of the Firm," *Harvard Law Review* 119, 5 (2006): 1333-1403.

²⁷ Quentin Van Doosselaere, *Commercial Agreements and Social Dynamics in Medieval Genoa*, Cambridge: Cambridge University Press, 2009.

equity financing for the funding of episodic business ventures was the norm under conditions of heterogeneous social pairings (partners from different social backgrounds and drawing more widely on different parts of the population). However, thereafter credit agreements became prominent, and Van Doosselaere also found substantial numbers of maritime insurance contracts. Credit agreements, mostly in the form of the *cambium* and short-term promissory notes, brought investors together over the span of multiple voyages, and these investors were fewer in number, more homogeneous in social status, and differed more sharply from the rest of society than had been the case in earlier times. Maritime insurance contracts allowed the discharging of risk to third parties; however, as the typical underwriters appear to have been other merchants in a homogenized network, and social, not economic, considerations in underwriting seem to have figured prominently, these contracts tied such families further together socially into *alberghi*, exerting control over political affairs and civic culture.

This research thus complements Weber's analysis by providing insights about debt financing; in this case, for the city of Genoa. The same point can be made for Dean Williamson's analysis of the financing of business in Venice.²⁸ Williamson addresses the existence of both unilateral and bilateral *commendas* in close to 2,000 maritime trade ventures in Venice from 1190 to 1220 and in Venetian Crete in the fourteenth century. He also finds debt financing to have been prevalent. Why did merchants choose one over the other? Williamson offers an interesting hypothesis:

Commenda may have afforded risk-sharing, but it also afforded agents opportunities to expropriate returns that would have otherwise ... [gone to the]

²⁸ Dean V. Williamson, "The Financial Structure of Commercial Revolution: Financing Long-distance Trade in Venice 1190-1220 and Venetian Crete 1278-1400," unpublished ms., available at http://www.tilburguniversity.nl/tilec/events/30092010/Financial_Structure_CommRevolution.pdf

merchants. Debt may have denied contracting parties the advantages of risk-sharing, but it resolved the governance problem by finessing it. An agent may very well misrepresent transactions, but debt yielded to merchants payoffs that were invariant to agents' reports. Second, merchants and their agents aligned *commenda* and debt with underlying attributes of trade ventures in a discriminating way. *Commenda* lined up with ventures for which merchants had access to informal sources of information. Merchants used them, for example, to finance ventures that involved commodities, such as pepper, that agents commonly acquired in markets commonly attended by other agents. Informal information gave merchants some capacity to detect cheating if not to verify it. An agent might misrepresent transactions, but other agents, including other merchants' agents, might yield reports of commodities prices against which a merchant might compare any one agent's report. A deviant report might not constitute evidence of cheating that parties could exploit in formal enforcement processes, but it could provide a basis for informal sanctions. In contrast, debt emerges as the mode of financing of last resort: merchants and their agents used it to finance ventures in which merchants had no means of detecting (much less verifying) cheating.²⁹

Williamson describes what is known as the principal-agent problem in economics: it is an example of information asymmetry in a situation in which the traveling partner may have an interest in hiding profits on business afar from the sedentary partner in order to increase his own share of the profit. Williamson's hypothesis, however, does not line up with Van Doosselaere's findings, as debt contracts were much more prevalent in the later periods under study in Genoa, when Genoese partnerships tied more homogenous groups together and thus established a setting in which principal-agent problems might have been *less* likely to occur. Williamson similarly notes that the "proportion of *commenda* declined before virtually disappearing by the 1340s."³⁰

²⁹ Williamson, "The Financial Structure of Commercial Revolution," p. 2.

³⁰ Dean V. Williamson, Review of *Commercial Agreements and Social Dynamics in Medieval Genoa*, by Quentin van Van Doosselaere, *The Journal of Economic History* 69, 4 (2009), pp. 1169-1170.— Further scholarship on partnerships in Renaissance Florence and its implications for Weber's analysis cannot be discussed here. See John F. Padgett and Paul D. McLean, "Organizational Invention and Elite Transformation: The Birth of Partnership Systems in Renaissance Florence," *American Journal of Sociology* 111 (5): 1463-1568; "Economic Credit in Renaissance Florence," *Journal of Modern History* 83, 1 (2011): 1-47.

Summary

The explication of Weber's writings demonstrates that Weber's interest in the issue of financing of business was rather limited in his dissertation, but where he did address the issue, his remarks pertain almost exclusively to forms of partnerships and business associations that employed equity financing, particularly in risky maritime but also in overland trade, where a configuration of donation of capital and the assumption of risk in return for high interest payments and a co-assumption of risk prevailed. Concerns about *usura pravitatis* played only a minor role, at least in the financing of businesses that, as Weber considered typical, lacked a fixed rate of return, a share in the profit or loss of the enterprise, and the assumption of some risk of loss of capital contribution. In Weber's perhaps best-known writing, *The Protestant Ethic and the Spirit of Capitalism*, Weber summarized his views as follows:

The truth is that [1] the church began to reconsider the prohibition of interest only at a rather late time; [2] at the time when this happened the forms of purely business investment were *not* loans at a fixed interest rate but the *foenus nauticum*, *commenda*, *societas maris*, and the *dare ad proficuum de mari* . . . yet other than by a few rigorous canonists they were not held to fall under the ban; [3] when investments at a fixed rate of interest and discounting became possible and common, they encountered discernable difficulties stemming from the prohibition of usury, which led merchant guilds to adopt drastic defensive measures (blacklisting!); [4] the canonists' treatment of usury was purely formal-legalistic, and without any such tendency as to "protect capital"... [5] lastly, the Church's attitude toward capitalism, in so far as it can be ascertained at all, was determined by, on the one hand, a traditional hostility, mostly diffusely held, toward the growing power of capital, which was impersonal and hence not readily amenable to ethical control . . . ; on the other hand, the necessity for accommodation.³¹

Weber's views shortly before his death on usury and its relation to the financing of business had not changed significantly since his studies with Goldschmidt. The ban on

³¹ Max Weber, "Die protestantische Ethik und der Geist des Kapitalismus," in Max Weber, *Gesammelte Aufsätze zur Religionssoziologie I*, Tübingen: Mohr, 1988, pp. 57-58; English translation: *The Protestant Ethic and the Spirit of Capitalism*, 3d ed., trans. S. Kalberg, Los Angeles: Roxbury, 2001, p. 176 n. 32.

usury did not rank among the chief reasons capitalism, in its “modern” manifestation in form and spirit, did not develop in the Middle Ages, nor was the Church’s rejection of interest in return for giving loans, while firm, responsible for the investment of money in ethically less clouded forms of investments such as commercial partnerships. Weber’s argument about credit being mostly used for consumption and his view that commercial credit transactions were not widespread cannot be sustained, however.