

# THE DARK SIDE OF REPUTATION

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## INTRODUCTION

In 2017, the English journalist Oobah Butler wanted to test his theory about “society’s willingness to believe absolute bullshit.”<sup>1</sup> He had previously had a job writing false TripAdvisor reviews: “Restaurant owners would pay me \$13, and I’d write a positive review of their place, despite never eating there.”<sup>2</sup> Using this experience, he set out to create a website for an entirely fictitious restaurant and, through the manipulation of reputation built on TripAdvisor posts, to make it the highest rated restaurant in London. The ostensible site of the restaurant was the shed in which Butler lived in the non-descript London suburb of Dulwich.<sup>3</sup>

Needless to say, Butler succeeded. He posted fake pictures of meals; enlisted his friends to write glowing reviews; and within a few weeks he was inundated with phone calls and emails requesting bookings for months in advance. In May 2017, the restaurant debuted at the bottom of the heap, ranked 18,149. By November 1st, “The Shed at Dulwich” was ranked number one with “89,000 views in search results” in one day.<sup>4</sup> Eventually, Butler decided to end the charade and see what would happen if he booked actual diners. He served them microwaved frozen dinners at “a hastily-assembled collection of chairs outside of my shed, and they left thinking it really could be the best restaurant in London—just on the basis of a TripAdvisor rating.”<sup>5</sup>

Reputation is the foundation of theories of private ordering. These theories contend that commercial actors will act honestly because if they do not, they will get a bad reputation and others will not want to do business with them in the future.<sup>6</sup> But economists and scholars of

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<sup>1</sup> Oobah Butler, *I Made My Shed the Top-Rated Restaurant on TripAdvisor*, VICE (Dec. 6, 2017, 5:20 PM), [https://www.vice.com/en\\_us/article/434gqw/i-made-my-shed-the-top-rated-restaurant-on-tripadvisor](https://www.vice.com/en_us/article/434gqw/i-made-my-shed-the-top-rated-restaurant-on-tripadvisor) [https://perma.cc/CQQ5-HLFH].

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> See, e.g., Douglas W. Allen & Dean Lueck, *The “Back Forty” on a Handshake: Specific Assets, Reputation, and the Structure of Farmland Contracts*, 8 J.L. ECON. & ORG. 366, 369 (1992) (“Punishment to cheaters, through lost future trade, encourages cooperation between the contract parties”); W. Bentley MacLeod, *Reputations, Relationships, and Contract*

networks increasingly realize that reputation has its defects.<sup>7</sup> Mixed in with trustworthy and useful reputation information on which commerce of all sorts relies is inaccurate, distorted, misguided, or outright fraudulent information. If TripAdvisor ranks The Shed at Dulwich as the best restaurant in London, people are willing to believe that it is.<sup>8</sup> And such inaccurate information threatens the effectiveness and efficiency of the reputation-based governance of the market.<sup>9</sup>

Much of the existing literature about reputation's flaws focuses on unintentional distortions caused by biases, the requirements of social niceties, and the dearth of fully representative information. This Article, by contrast, approaches the problem of the distortion of reputation from the dark side. It uses a rich set of sixteenth- and seventeenth-century English court cases and merchant correspondence to examine how the deliberate manipulation of reputation, and, importantly, people's failure to verify the gossip and rumors creating such reputation, enabled fraud.<sup>10</sup> It turns out that reputation was "a complex process,"<sup>11</sup> even in

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*Enforcement*, 45 J. ECON. LITERATURE 595, 609 (2007) ("individuals . . . choose to be trustworthy because of the effect upon their reputation and the future rents they would receive from keeping their reputation intact"); Barak D. Richman, *Firms, Courts, and Reputation Mechanisms: Towards a Positive Theory of Private Ordering*, 104 COLUM. L. REV. 2328, 2335 (2004) ("if a party cheats any other party, that party's misconduct becomes known throughout the community; and no one will transact with any individual known to have cheated in the past. Thus, . . . the prospect of future beneficial transactions induces cooperative behavior.").

<sup>7</sup> See *infra* Part I.

<sup>8</sup> Jonathan Silberstein-Loeb, *Reputation or: How I Learned to Stop Worrying and Love the Market*, in REPUTATION CAPITAL: BUILDING AND MAINTAINING TRUST IN THE 21ST CENTURY 23, 25 (Joachim Klewes & Robert Wreschniok eds., 2009) ("People believe in reputation, true or false, presumably because the costs of corroboration are too high, yet reputation is often forged of untrustworthy stuff.").

<sup>9</sup> Eric Goldman, *Regulating Reputation*, in THE REPUTATION SOCIETY: HOW ONLINE OPINIONS ARE RESHAPING THE OFFLINE WORLD 51 (Hassan Masum & Mark Tovey eds., 2011) ("[W]ell-functioning marketplaces depend on the vibrant flow of accurate reputational information"); Marcel Fafchamps, *The Enforcement of Commercial Contracts in Ghana*, 24 WORLD DEV. 427, 428 (1996) ("Enforcement mechanisms based on reputation are vulnerable to disinformation: they do not operate well unless a complementary mechanism ensures the accuracy and veracity of the shared information.").

<sup>10</sup> See Mark Granovetter, *Economic Action and Social Structure: The Problem of Embeddedness*, 91 AM. J. SOC. 481, 491 (1985) ("The trust engendered by personal relations presents, by its very existence, enhanced opportunity for malfeasance."); Peter Kollock, *The Emergence of Exchange Structures: An Experimental Study of Uncertainty, Commitment, and Trust*, 100 AM. J. SOC. 313, 319 (1994) ("[R]isk creates a breeding ground not only for trust but for exploitation as well.").

interconnected early modern markets in which merchants did business face-to-face and participated in active gossip networks.<sup>12</sup> Even being caught, tried, and found guilty of a serious fraud did not necessarily undermine one's business and perceived trustworthiness in these networks, which raises questions about how much the merchants depended upon reputation when making decisions about whom to trust.<sup>13</sup>

The English merchants were aware of the potential for fraud based on the manipulation of indices of reputation. The trials of fraudsters were public; friends and business partners were summoned to give depositions; and word got around town.<sup>14</sup> And yet, many merchants—just as diners, book buyers, moviegoers, hotel patrons, or purchasers of goods online today—preferred not to incur verification costs and instead chose to trust easily-obtained, but also easily-falsified information. The result was a windfall for scammers.

This Article seeks to contribute to the literature challenging the role of reputation in disciplining commerce. The historical disputes discussed here, which arose in the supposedly privately-ordered zone of the premodern merchant,<sup>15</sup> add nuance to our understanding of how

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<sup>11</sup> See Christopher McKenna & Rowena Olegario, *Corporate Reputation and Regulation in Historical Perspective*, in THE OXFORD HANDBOOK OF CORPORATE REPUTATION 260, 272 (Timothy G. Pollock & Michael L. Barnett eds., 2012) (“A second shortcoming of the historical literature is the tendency to take for granted the power of reputation and to depict it as an uncomplicated phenomenon, rather than as a complex process whose power to regulate may be weak or indeterminate.”).

<sup>12</sup> See DANIEL DEFOE, THE COMPLETE ENGLISH TRADESMAN 246–47 (1726) (discussing the commonality of merchant gossip); Letter from George Lowe to John Quarles, National Archives (U.K.), SP 46/176/fo201 (May 10, 1597) (reporting that the only thing merchants were talking about was other merchants' financial situations).

<sup>13</sup> See Silberstein-Loeb, *supra* note 8, at 27–28 (“Reputation may be too ambiguous and easily perverted to hold companies to account, for even when a firm is caught behaving badly, its reputation may emerge unscathed.”).

<sup>14</sup> See, e.g., Emily Kadens, *Cheating Pays*, 119 COLUM. L. REV. 527 (2019) (describing the early seventeenth-century case of a cheating grocer, the large number of deponents, and the spread of gossip throughout London and into the provinces about his frauds).

<sup>15</sup> See BARAK D. RICHMAN, STATELESS COMMERCE: THE DIAMOND NETWORK AND THE PERSISTENCE OF RELATIONAL EXCHANGE 133–34 (2017) (providing an overview of the law merchant theory and its influence); Bruce L. Benson, *The Spontaneous Evolution of Commercial Law*, 55 S. ECON. J. 644, 646–47 (1989) (on the concept of the privately-ordered medieval law merchant).

commerce works in the real world. Part I briefly reviews some of the problems the economic and network theory literature has identified with reputation. Part II turns to the history and demonstrates how trust could be cheaply manufactured due in part to potential partners' failure to look beyond superficial indicia of reputation. Part III then considers why reputation might have been so susceptible to manipulation even in the face-to-face networks of early modern merchants.

### I. THE KNOWN UNRELIABILITY OF REPUTATION

Reputation presumably supports higher levels of trade because actors with good reputations will succeed and actors with bad reputations will fail.<sup>16</sup> As a consequence, anyone who wishes to remain in business will strive to maintain a good reputation. The fly in this theoretical ointment is that reputation information is itself subject to distortions, and “any distortions in reputational information may effectively distort the marketplace itself.”<sup>17</sup> Aware of this problem, economists and network theorists have begun studying the unreliability of reputation.

Reputation, to use the dictionary definition, is “[t]he esteem in which someone is held or the goodwill extended to or confidence reposed in that person by others.”<sup>18</sup> Reputation thus arises from the perceptions and opinions of other people.<sup>19</sup> Depending on the situation, it results from an observation or experience communicated directly to others or from gossip passed from person to person further and further from the original source.<sup>20</sup> Gossip, however, has its own social dynamic and motivations,<sup>21</sup> of which accuracy is not necessarily one.<sup>22</sup>

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<sup>16</sup> See Goldman, *supra* note 9, at 53 (“[R]eputational information can play an essential role in rewarding good producers and punishing poor ones.”).

<sup>17</sup> *Id.*; see Silberstein-Loeb, *supra* note 8, at 25 (“Reputation may distort markets because it is often a red herring.”); Robert E. Scott, *A Theory of Self-Enforcing Indefinite Agreements*, 103 COLUM. L. REV. 1641, 1644 (2003) (pointing out that reputation-based governance works only under quite “stringent” and limited conditions).

<sup>18</sup> *Reputation*, BLACK’S LAW DICTIONARY (10th ed. 2014).

<sup>19</sup> Goldman, *supra* note 9, at 51.

<sup>20</sup> Silberstein-Loeb, *supra* note 8, at 24 (“Reputation is largely gossip.”).

<sup>21</sup> Sally Engle Merry, *Rethinking Gossip and Scandal*, in 1 TOWARD A GENERAL THEORY OF SOCIAL CONTROL 271, 276–77 (Donald Black ed., 1984).

Furthermore, reputation is “an evaluation made without a concrete empirical referent,”<sup>23</sup> and that untethered evaluation is sensitive to many warping effects. One of these is common social etiquette.<sup>24</sup> A gossip will share information in a way that conforms to the perceived preferences of his listeners.<sup>25</sup> If the speaker senses that the listener likes Jane, the speaker will shade the gossip he has to share so that it sounds more positive, and the opposite is also true. Relatedly, when this gossip occurs among the members of a closed network with a set of shared preferences, the shading creates an echo effect, reinforcing the biased view of the facts selectively communicated.<sup>26</sup>

The speaker’s own biases and fears can also impact the reputational information she conveys. If Jane is a member of a disfavored group, the gossip’s implicit or explicit biases can color how she perceives Jane or her actions and describes them to others.<sup>27</sup> Conversely, if the gossip fears retaliation from Jane if she says something negative but truthful, then she will shade her gossip to sound misleadingly positive.<sup>28</sup>

In addition, conveying reputation information is not costless.<sup>29</sup> Consequently, the motivations of the people who choose to take on the cost of being reputation-creators matter. Psychologists believe that those

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<sup>22</sup> See Diego Gambetta, *Godfather’s Gossip*, 35 EUR. J. SOC. 199, 211 (1994) (maintaining that reputation does not have to be true); Silberstein-Loeb, *supra* note 8, at 25 (“[N]either reliability nor truth are necessary conditions for reputation. A reputation may be founded on falsely held beliefs.”).

<sup>23</sup> RONALD S. BURT, *BROKERAGE & CLOSURE: AN INTRODUCTION TO SOCIAL CAPITAL* 175 (2005); see Gambetta, *supra* note 22, at 211 (“In gossip . . . there is no truth test involved; truth, as established by evidence, is not part of gossip.”).

<sup>24</sup> BURT, *supra* note 23, at 171.

<sup>25</sup> See *id.* at 170–71; Ronald S. Burt & Marc Knez, *Kinds of Third-Party Effects on Trust*, 7 RATIONALITY & SOC’Y 255, 260 (1995) (C will shade stories and gossip about B to fit what A seems to want to hear).

<sup>26</sup> See BURT, *supra* note 23, at 172 (discussing echo effect); Abbey Stemler, *Feedback Loop Failure: Implications for the Self-Regulation of the Sharing Economy*, 18 MINN. J.L. SCI. & TECH. 673, 693 (2017) (“[I]nitial confederate or fake positive reviews on Sharing Economy platforms can amplify the herding effect.”).

<sup>27</sup> Stemler, *supra* note 26, at 697–98 (discussing the problems of discrimination in reputation systems).

<sup>28</sup> *Id.* at 691–92.

<sup>29</sup> Yonathan A. Arbel, *Reputation Failure: Market Discipline and Its Limits* 17–19 (Univ. of Alabama, Legal Studies Research Paper No. 3239995, 2018), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3239995](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3239995) [<https://perma.cc/2X3W-VPP7>].

who spread online and word-of-mouth reputation information are often motivated to incur this cost to satisfy altruistic or vengeful needs.<sup>30</sup> The result is a biased perspective in which highly positive and negative experiences lead people to share their views, but “middling experiences” do not.<sup>31</sup> Online reviews, for example, tend to be overwhelmingly positive or negative, with few reviews in the middle.<sup>32</sup> This “regression to the extreme” creates reputations that do not reflect a normal distribution of perspectives.<sup>33</sup>

Shading, bias, and the unrepresentative perceptions of those with extreme views do not mean that the gossip shared is outright false. But gossip also does not have to be objectively true. It just has to be believable.<sup>34</sup> As discussed further in Part II, false but convincing gossip creates a false but convincing reputation. In the last several years, for instance, false but believable (and believed) online reviews have created a significant problem for the reliability of online rating systems and the reputations they create.<sup>35</sup>

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<sup>30</sup> *Id.* at 20–23.

<sup>31</sup> *Id.* at 21–22.

<sup>32</sup> *Id.* at 32; see Chrysanthos Dellarocas, *Designing Reputation Systems for the Social Web*, in THE REPUTATION SOCIETY, *supra* note 9, at 3, 6 (“[I]t has been documented that users are generally more likely to post feedback when they have had extreme (either very good or very bad) experiences than when they have had average experiences.”).

<sup>33</sup> Arbel, *supra* note 29, at 29.

<sup>34</sup> See Gambetta, *supra* note 22, at 211 (“Plausibility is more relevant than truth.”); Silberstein-Loeb, *supra* note 8, at 25 (“[N]either reliability nor truth are necessary conditions for reputation. A reputation may be founded on falsely held beliefs.”).

<sup>35</sup> See, e.g., Caroline Beaton, *Here to Help; Why You Shouldn’t Always Trust Negative Online Reviews*, N.Y. TIMES, June 15, 2018, at A3 (reviewing research on the unreliability of online reviews); Mark Bridge, *For Sale: Five-Star Amazon Reviews*, TIMES (Apr. 30, 2018, 12:01 AM), <https://www.thetimes.co.uk/article/for-sale-five-star-amazon-reviews-hsq5t6dwr> [https://perma.cc/6JG6-5XTL] (describing Amazon review farms that generate fake reviews); Robin Henry & Sanya Burgess, *Our Little Book Roots Out the Amazon Chart Cheats*, SUNDAY TIMES (Oct. 11, 2015, 1:01 AM), <https://www.thetimes.co.uk/article/our-little-book-roots-out-the-amazon-chart-cheats-c66ptc9p796> [https://perma.cc/2LHF-8CWT] (detailing fake gardening book pushed to the top of Amazon’s gardening bestsellers list by fake reviews); Ryan Kailath, *Some Amazon Reviews Are Too Good to be Believed. They’re Paid For*, NPR (July 30, 2018, 12:03 PM), <https://www.npr.org/2018/07/30/629800775/some-amazon-reviews-are-too-good-to-be-believed-theyre-paid-for> [https://perma.cc/8UM4-B5AZ] (describing process for obtaining fake reviews); Simon Parkin, *The Never-Ending War on Fake Reviews*, NEW YORKER (May 31, 2018), <https://www.newyorker.com/tech/annals-of-technology/the-never-ending-war-on-fake-reviews> [https://perma.cc/G7RD-QAYC]; Laura Stevens & Jon Emont, *To Game Amazon, Sellers Use*

Gossip, whether by word of mouth or by online reviews, speaks reputation into being.<sup>36</sup> Negative gossip sows the seeds of doubt even if the recipient of the information suspects the motivations of the speaker.<sup>37</sup> By contrast, positive gossip and appearances sow the seeds of trust, sometimes even when the recipient of the information should know better. None of this is new. Shading, manipulating, and falsifying reputation also occurred in the premodern era, a time of face-to-face, credit-based trade conducted within dense social networks in which individual merchants had access to information—some of it accurate, some of it false, and not all of it verified—about the trustworthiness of potential trading partners.

## II. CASE STUDIES OF REPUTATION FRAUD

This Part describes three cases from the early seventeenth century to illustrate how fraudsters used superficial indices of wealth to create a reputation for creditworthiness and thereby gain the trust of sophisticated merchants. In every instance, the victims could have dug a little deeper and discovered the speciousness of these reputational indicators, but they did not. Instead, blinded by what looked like a promising business opportunity, they trusted unwisely and ended up

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*Scams, Clicks & Dirty Tricks*, WALL ST. J., July 28, 2018, at B1–B2 (reviewing the methods, including fake reviews, to improve online ratings on Amazon); David Streitfeld, *The Best Book Reviews Money Can Buy*, N.Y. TIMES, Aug. 26, 2012, at BU1 (discussing fake Amazon book reviews); Emma Wollacott, *Amazon's Fake Review Problem Is Now Worse Than Ever, Study Suggests*, FORBES (Sept. 9, 2017, 12:13 PM), <https://www.forbes.com/sites/emmawollacott/2017/09/09/exclusive-amazons-fake-review-problem-is-now-worse-than-ever/#449a6eec7c0f> [<https://perma.cc/GY89-NNH5>] (describing study flagging many recent Amazon reviews as fake).

<sup>36</sup> See DEFOE, *supra* note 12, at 232 (“To say I am broke, or in danger of breaking, is to break me.”); THOMAS STARKIE, A TREATISE ON THE LAW OF SLANDER, LIBEL, SCANDALUM MAGNATUM, AND FALSE RUMOURS 12 (1813) (“Before mercantile convenience . . . had created what is termed credit, an imputation of insolvency could produce little prejudice, yet after the establishment of commerce, it might largely contribute to its own verification.”).

<sup>37</sup> DEFOE, *supra* note 12, at 233–34 (“[A]nd tho’ I know the Devil is a Liar, a Slanderer, a Calumniator, . . . yet there is a secret lurking doubt (about [the person gossiped about]), which hangs about me concerning him; the Devil is a Liar, but he may happen to speak truth just then.”); Beaton, *supra* note 35 (“[P]eople may see negative reviews as more informative, and therefore more valuable.”). Cf. Gambetta, *supra* note 22, at 209 (“Gossip does not work well if the receiver suspects ulterior motives behind the transmitter’s story.”).



scammed out of significant sums of money. These stories support the concern expressed in current literature that the ease with which reputational information can be falsified, the willingness of potential partners to trust, and their reluctance to incur costs to ensure that they base their decisions on accurate data will limit the ability of reputation to discipline the market.

The three cases that follow come from the records of the Court of Star Chamber, a court with a bad rap in history textbooks due to its involvement in a number of highly politicized and procedurally-questionable cases during the early seventeenth century.<sup>38</sup> For most of its existence, however, the Star Chamber played a useful role as a court of equity dealing with criminal misdemeanors and perversions of justice.<sup>39</sup> The regulation of trade and the punishment of fraud constituted two of the Star Chamber's more important areas of jurisdiction.<sup>40</sup>

The cases do not deal with reputation in its broadest sense of "information used to make a value judgment about an object or a person,"<sup>41</sup> but rather with the narrower subset of commercial reputation. For the premodern merchant, commercial reputation was virtually synonymous with creditworthiness. As Daniel Defoe, the writer of novels and commercial tracts, explained in 1726, "[a]s a good name is to another man, . . . the same is credit to a tradesman . . ." <sup>42</sup> It is, he continued, "the life and soul of his trade . . ." <sup>43</sup> Defoe defined creditworthiness as "[h]onesty; a punctual dealing, [and] a general

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<sup>38</sup> THOMAS G. BARNES, *SHAPING THE COMMON LAW: FROM GLANVILLE TO HALE, 1188-1688, 15253, 15862* (2008).

<sup>39</sup> J. H. BAKER, *AN INTRODUCTION TO ENGLISH LEGAL HISTORY* 118-19 (4th ed. 2002). *See also* JOHN A. GUY, *THE COURT OF STAR CHAMBER AND ITS RECORDS IN THE REIGN OF ELIZABETH I* 7, 52-53 (1985) (explaining that the court's regular membership consisted of the Privy Council—the king's closest ministers and advisors, many not trained in law—as well as the chief judges of the Courts of King's Bench and Common Pleas and the Chief Baron of the Exchequer).

<sup>40</sup> *See* 1 THOMAS G. BARNES, *LIST AND INDEX TO THE PROCEEDINGS IN STAR CHAMBER FOR THE REIGN OF JAMES I (1603-1625)* 34-36 (Thomas G. Barnes & Staff of the Legal History Project, American Bar Foundation, eds., 1975).

<sup>41</sup> Randy Farmer, *Web Reputation Systems and the Real World*, in *THE REPUTATION SOCIETY*, *supra* note 9, at 13.

<sup>42</sup> DEFOE, *supra* note 12, at 226.

<sup>43</sup> *Id.* at 225.

probity in every transaction,”<sup>44</sup> which closely aligns with a modern economist’s definition of reputation in the context of contract enforcement as “a person’s propensity to keep promises or . . . their reputation for trustworthiness.”<sup>45</sup> Just as it is today, having good credit in premodern England was the difference between being able to do business on trust and do business solely on a cash basis.<sup>46</sup>

A premodern merchant’s creditworthiness was something less than the sum of all the perceptions others had of him. The successful merchant could have good credit and yet be thought of poorly in other respects. For instance, at the end of the sixteenth century, the London merchant John Quarles had good credit in the England-to-Germany cloth trade carried out by the Merchant Adventurers, the monopolistic trading company of which he was a part.<sup>47</sup> That is, he could buy and sell on credit and others would take his bills of exchange and promissory notes. But because he associated with an unpopular, monopoly-busting non-member and assisted that interloper’s trade, he was not always personally well thought of by the other Merchant Adventurers.<sup>48</sup>

The cases in this Part all concern alleged bankruptcy bust outs. The bust out remains one of the most common bankruptcy frauds in the United States today,<sup>49</sup> but these cases show that it has roots deep in

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<sup>44</sup> *Id.* at 420; see Letter from George Lowe to John Quarles, National Archives (U.K.), SP 46/176/fo203 (Oct. 16–17, 1597) (explaining the need to pay debts when asked in order to avoid being discredited); Letter from George Lowe to John Quarles, National Archives (U.K.), SP 46/176/fo210 (June 4, 1597) (same).

<sup>45</sup> MacLeod, *supra* note 6, at 609.

<sup>46</sup> DEFOE, *supra* note 12, at 417 (“[I]f a man has ten thousand pounds in money, he may certainly trade for ten thousand pounds, and if he has no credit he cannot trade for a shilling more.”). See Letter from George Lowe to John Quarles, National Archives (U.K.), SP 46/176/fo62 (Oct. 16–23, 1594) (discussing fear of bad debts due to rampant bankruptcies among English merchants in Germany, forcing merchants to do business in cash only because everyone was afraid to trust and give credit).

<sup>47</sup> Thomas Leng, *Interlopers and Disorderly Brethren at the Stade Mart: Commercial Regulations and Practices Amongst the Merchant Adventurers of England in the Late Elizabethan Period*, 69 *ECON. HIST. REV.* 823, 834 (2016) (discussing Quarles’s credit).

<sup>48</sup> See Letter from George Lowe to John Quarles, National Archives (U.K.), SP 46/176/fo177 (Mar. 1, 1597); Letter from George Lowe to John Quarles, National Archives (U.K.), SP 46/176/fo205 (May 24, 1597) (reporting that members of the Merchant Adventurers speak badly about Quarles).

<sup>49</sup> STEPHANIE WICKOUSKI, *BANKRUPTCY CRIMES* 10 (3d ed. 2007) (on commonality of bust outs today).

English history. As a U.S. federal appellate court described the scam in 1976:

A bust out begins with the formation by the malefactors of a seemingly legitimate wholesale business. The fledgling business's first goal is to establish a favorable credit rating. This task is accomplished by a number of devices which can include temporarily putting cash into the business in order to create a strong balance sheet, bribing credit rating agencies, and inflating financial statements so as to vastly overstate the business's assets and net worth. Also, bills for the company's initial purchases are promptly paid—thus furthering the deception through enhancement of the company's credit standing. As the business becomes more established, its promoters order considerable amounts of additional merchandise although they have no intention of paying for these goods. A huge inventory, most of it not paid for, is built up. The principals then busy themselves disposing of their purchases at substantial discounts or secreting the unsold portion for later below-cost covert sales. In other words, they "bust out" the business. The company is then petitioned into bankruptcy with the mulcted creditors left to pick over the meatless carcass of an assetless enterprise. The con men, or at least those whose names are legally associated with the bankrupt company, suffer a loss of their credit standing and "good" name. In return, they and their co-conspirators reap handsome monetary benefits for having arranged in advance the demise of a local wholesale outfit.<sup>50</sup>

Other than the use of credit agencies, seventeenth-century bust outs operated exactly the same way.

The bust out depends upon creditors relying on indices of creditworthiness that turn out to be false. As a result, the court documents in the historical cases described below tend to be fairly explicit about the role reputation, and the abuse of reputation, played in enabling and encouraging the trades that ended up going bad.

Section II.A discusses a paradigmatic bust out case from 1612 in which otherwise experienced merchants were willing to extend more credit to an existing debtor whose creditworthiness they had good

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<sup>50</sup> United States v. Crockett, 534 F.2d 589, 592 (5th Cir. 1976).

reason to suspect.<sup>51</sup> They were “hoping against hope”—trusting blindly without doing due diligence.<sup>52</sup> In Section II.B, two other cases show how easily a buyer could dupe potential new contracting partners using superficial, but false, reputation signals.<sup>53</sup> Only after it became apparent that they had been cheated did the sellers make further, relatively simple inquiries and learn that the debtor was not who he seemed.

### A. *Hoping Against Hope*

Around December 1609, William Barkam found himself in some trouble. Barkam was a mercer—a dealer in cloth and dry goods—in the small Norfolk market town of Thetford, about eighty miles northeast of London.<sup>54</sup> He purchased his wares from London merchants, and by the end of 1609 he already owed £235 to one group of merchants and £600 to another group for various wares.<sup>55</sup> These were not negligible sums. Six hundred pounds in 1609 would be worth about £106,400 today.<sup>56</sup> Barkam was so worried about his solvency that he began hiding from his creditors. Concerned that he was “verie like to become a bankrupte,” he turned to local notable Edward Moore, to whom he also owed some small debts, for assistance.<sup>57</sup> Moore was a chapman—a regional

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<sup>51</sup> See generally *Brearily v. Moore* (Star Chamber), National Archives (U.K.), STAC 8/69/1 (1612).

<sup>52</sup> See ROWENA OLEGARIO, *A CULTURE OF CREDIT: EMBEDDING TRUST AND TRANSPARENCY IN AMERICAN BUSINESS* 6 (2006) (quoting lawyer from 1839 that “[i]n the operations of a rich and rapid commerce, great confidence must be often reposed in others, without the minute caution necessary to a perfect protection against fraud or unfairness.”).

<sup>53</sup> See generally *Hales v. Moxon* (Star Chamber), National Archives (U.K.), STAC 8/173/9 (1607); *Campe v. Llewellyn* (Star Chamber), National Archives (U.K.), STAC 8/105/5 (1610). The name Llewellyn is spelled several different ways in the documents related to this case. The spelling has been normalized here for clarity.

<sup>54</sup> Bill of Complaint, *Brearily v. Moore* (Star Chamber), National Archives (U.K.), STAC 8/69/1, fol. 3r (Nov. 25, 1612).

<sup>55</sup> *Id.*

<sup>56</sup> See *Five Ways to Compute the Relative Value of a UK Pound Amount, 1270 to Present*, MEASURINGWORTH, <https://www.measuringworth.com/calculators/ukcompare> [<https://perma.cc/2RVL-QGG3>] (last visited Mar. 19, 2019) (enter “1609” under initial year, “600 pounds” under initial amount, and the desired year; then, select “calculate”).

<sup>57</sup> Bill of Complaint, *Brearily v. Moore* (Star Chamber), National Archives (U.K.), STAC 8/69/1, fol. 3r (Nov. 25, 1612).

middleman serving as the intermediary between London wholesalers and provincial traders<sup>58</sup>—and a man of substance in Thetford. He was styled a “gentleman,”<sup>59</sup> suggesting that he was a member of the local landed gentry.<sup>60</sup>

According to the complaint, which is our only significant source of information about the case, Moore had a plan to take advantage of Barkam’s trouble and convinced Barkam to go along.<sup>61</sup> He took Barkam to London, where he gave him £100 (£17,740 today) with the instructions to buy as many goods as he could, using the money to pay about twenty percent down and taking the rest on credit. Moore estimated that with the £100, Barkam should be able to “take up foure or five hundred powndes worthe of wares more upon Creditt & truste.”<sup>62</sup>

Barkam returned to his existing creditors and used Moore’s cash to buy additional goods, largely on credit, in his own name and without any indication that Moore was involved. He then immediately transferred the wares to Moore’s warehouse, where Moore took the goods, leaving Barkam wares worth only £30.<sup>63</sup> Moore sent Barkam back to the London suppliers twice more, once with £40 and another time with £30, to buy more goods on credit.<sup>64</sup>

When the creditors finally grew suspicious, and it became clear that they would imprison Barkam for the debt and sue him for their money, Moore persuaded Barkam to flee to the “Northerne p[ar]tes of this kingedome” where the creditors would not find him.<sup>65</sup> Before

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<sup>58</sup> See DAVID HEY, *PACKMEN, CARRIERS AND PACKHORSE ROADS: TRADE AND COMMUNICATIONS IN NORTH DERBYSHIRE AND SOUTH YORKSHIRE 200–02* (1980).

<sup>59</sup> Thetford Borough Council Records, Norfolk Record Office (Norwich, England), T/C1/9 (no foliation) (Jan. 31, 1613) (notation linking Barkam and Moore, who is styled “gent”).

<sup>60</sup> ROBERT BUCHOLZ & NEWTON KEY, *EARLY MODERN ENGLAND 1485–1714: A NARRATIVE HISTORY* 160 (2d ed. 2009).

<sup>61</sup> Bill of Complaint, *Brearley v. Moore* (Star Chamber), National Archives (U.K.), STAC 8/69/1, fol. 3r (Nov. 25, 1612) (Moore told Barkam that he was “a foole to greive or be sadde, for if he woulde be Ruled by . . . Moore, he . . . would advise such a course for [Barkam], that woulde make . . . Barkam a man in the worlde againe, for that [Moore] coulde att any tyme make fooles of londyners (meaninge [the plaintiffs]) & other the saide then Creditors of the said Barkam.”).

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

Barkam left, however, Moore had him make a fraudulent transfer of all his assets, worth over £100, to a strawman “but to the proper use & benefit of . . . Edward Moore” in exchange for a “sixpence in silver.”<sup>66</sup> Barkam then disappeared, leaving no assets for his creditors to seize.<sup>67</sup>

What is interesting about this case is that Barkam was able to scam the same people from whom he had made purchases in the past, men to whom he already owed a great deal of money. He apparently looked quite different to the creditors when he came to them with ready cash. Either they did not know about his existing financial troubles, despite the fact that he had been keeping himself hidden from them to avoid having to confess he could not make payments,<sup>68</sup> or the creditors’ concerns were sufficiently assuaged when Barkam reappeared seemingly flush with cash.<sup>69</sup> Without doing any additional investigation into the source of the sudden new funds, and without asking Barkam to pay down his existing debt, the various creditors extended him another £460 in credit.<sup>70</sup> Whether due to their gullible willingness to trust Barkam or to their greed, the creditors permitted the scam to succeed. This case demonstrates that when fraudsters can manipulate the information on which trust is based, that same information becomes a tool to enable cheating.<sup>71</sup>

It is, of course, possible that fraud of this nature was so uncommon as not to have been within the ordinary contemplation of these creditors. Where misconduct is unlikely, trust is not misplaced. Bust outs and fraudulent transfers, however, were a well enough known risk to be go-to claims to make in order to get jurisdiction in Star Chamber.<sup>72</sup> That court sat in public sessions,<sup>73</sup> meaning that anything

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<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> Amar Bhide & Howard H. Stevenson, *Why Be Honest if Honesty Doesn't Pay*, 68 HARV. BUS. REV. 121, 123–24 (1990) (“When the expected reward is substantial . . . reference checking goes out the window. In the eyes of people blinded by greed, the most tarnished reputations shine brightly.”).

<sup>70</sup> Bill of Complaint, *Brearley v. Moore* (Star Chamber), National Archives (U.K.), STAC 8/69/1, fol. 3r (Nov. 25, 1612).

<sup>71</sup> See Granovetter, *supra* note 10, at 491 (“The more complete the trust, the greater the potential gain from malfeasance.”).

<sup>72</sup> See *infra* Section II.B (discussing cases that claim to be bust outs but probably are not); see also GUY, *supra* note 39, at 58–60.

that came out about the parties and their nefarious deeds could quickly become common knowledge amongst traders. The three cases described in this Section involved allegations—true or not—of bust outs and fraudulent transfers brought in the Star Chamber over the course of only a few years between 1607 and 1612. Each case involved merchants connected to the London cloth trade. While this was not a closed network, the world of London merchants was not so large that Barkam's creditors would plausibly have had no inkling that such frauds were occurring in their trade.

To finish the story, after sending Barkam away, Moore had his apprentice inform the creditors that “Barkam was Bankrupte, run awaie & fledd & had nothings wherew[ith]all to satisfie his saide debtes.”<sup>74</sup> Then he waited. Once the creditors realized that neither Barkam nor his assets were anywhere to be found, Moore approached them with an offer to buy up Barkam's debt. Three of the largest creditors agreed to compose for four shillings in the pound and to sign a release freeing Barkam from any remaining debts owed to them.<sup>75</sup> Three others, however, refused to be drawn into Moore's scheme and chose to sue instead, thus leaving us this record of early modern malfeasance.

The Star Chamber books recording the court's rulings are lost. Indeed, this case may never even have gotten past the pleading stage, as no interrogatories or depositions are extant. Nonetheless, we can make some assumptions about the truth of the complaint based on Moore's answer. After alleging that the plaintiffs paid Barkam, “[a] man utterlie decayed both in his estate and Creditt and one destitute of all conscience,” to confess to the scam,<sup>76</sup> Moore said that the frauds with which he had been charged “were Comitted and donne” before the most

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<sup>73</sup> BARNES, *supra* note 38, at 152 (2008) (“Star Chamber did not meet in secret. All trials in the court were public, in a chamber of Westminster Palace, the Camera Stellata. . . . In fact, perhaps even more than Shalcespeare's Globe, Star Chamber trials provided one of the most engrossing spectacles in the capital. A notable case between great persons would draw in scores of spectators, so many that they crowded in almost to the bar of the court.”).

<sup>74</sup> Bill of Complaint, *Brearley v. Moore* (Star Chamber), National Archives (U.K.), STAC 8/69/1, fol. 3r (Nov. 25, 1612).

<sup>75</sup> *Id.* A pound consisted of twenty shillings.

<sup>76</sup> Answer of Edward Moore, *Brearley v. Moore* (Star Chamber), National Archives (U.K.), STAC 8/69/1, fol. 2r (Nov. 16, 1613).

recent general royal pardon granted in 1609 and not afterwards,<sup>77</sup> as claimed by the plaintiffs. As such, while he appears to admit to the acts alleged in the complaint, he contended that those acts were “clearelie p[ar]doned and remitted.”<sup>78</sup>

The bust out is an “end game” fraud. Presumably, having scammed his creditors out of their money, the fraudster should not assume that people will be lining up to do business with him in the future. And yet, in each of the three cases discussed in this Part II, at least the mastermind of the fraud seemed to have remained in business. Barkam is still in Thetford in January 1613, when he is recorded as making a cession of property to Thomas Stegold—the original strawman—in the presence of Moore.<sup>79</sup> That is all we know about him, but given how little remains in the Thetford archives from the period, this does not necessarily mean very much. Moore, by contrast, prospered. Two years after the lawsuit, in 1614, he was elected mayor of Thetford, a position of social and economic prominence that he subsequently held several more times.<sup>80</sup> It is entirely possible that instead of paying with his good name for making “fooles of londyners,”<sup>81</sup> his reputation in this provincial town was improved by scamming the big city merchants.

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<sup>77</sup> *Id.*; see also Cynthia Herrup, *Negotiating Grace, in* POLITICS, RELIGION AND POPULARITY IN EARLY STUART BRITAIN 124, 126 (Thomas Cogswell, Richard Cust & Peter Lake eds., 2002).

[G]eneral pardons were broadly framed acts of grace available to anyone who fell within their purview. . . . [They] could be purchased directly from the office of the Lord Chancellor. . . . Monarchs issued general pardons when, where and as they chose. . . . The specific contents of each pardon was different, but the scope was always broad: most forgave all save the worst of felonies, suits already in progress and transgressions that closely touched the finances of the crown. The customary instrument for such grace was a royal proclamation . . . .

*Id.*

<sup>78</sup> Answer of Edward Moore, *Brearley v. Moore* (Star Chamber), National Archives (U.K.), STAC 8/69/1, fol. 2r (Nov. 16, 1613).

<sup>79</sup> See Thetford Borough Council Records, *supra* note 59; Bill of Complaint, *Brearley v. Moore* (Star Chamber), National Archives (U.K.), STAC 8/69/1, fol. 3r (Nov. 25, 1612).

<sup>80</sup> THOMAS MARTIN & RICHARD GOUGH, *THE HISTORY OF THE TOWN OF THETFORD, IN THE COUNTIES OF NORFOLK AND SUFFOLK, FROM THE EARLIEST ACCOUNTS TO THE PRESENT TIME* 256–57 (1779).

<sup>81</sup> Bill of Complaint, *Brearley v. Moore* (Star Chamber), National Archives (U.K.), STAC 8/69/1, fol. 3r (Nov. 25, 1612).



## B. *Trust and Do Not Verify*

Reputation is not an end in itself. In commerce, it serves to assist the recipient of the reputation information in deciding whether to trust some person or entity and thus to engage in trade.<sup>82</sup> The remaining two cases in this Section detail how fraudsters manipulated superficial indices of reputation to build that necessary trust.

### 1. *Campe v. Llewellyn*

In the 1610 case *Campe v. Llewellyn*,<sup>83</sup> the plaintiffs claimed that the London merchant Maurice Llewellyn set up Paul Barrowe, his young former apprentice, in a nice house in a fashionable area and gave him two well-stocked shops selling cloth in the Royal Exchange, the commercial heart of London at the time. The goal, so the plaintiffs claimed, was to convince cloth merchants like themselves that “Barrowe was reputed to be a man of good Creditt and abilitie” so that they would sell him wares on credit.<sup>84</sup> Llewellyn, they alleged, even provided Barrowe with money so that he could pay cash for a third of the purchase price of goods he bought from the creditors, “the better Creditt mighte be geven unto the said [Paul] Barrowe and to drawe on [the plaintiffs] and others to truste him.”<sup>85</sup> Anxious to make sales, the merchants permitted this appearance of wealth to draw them in. When Barrowe could not pay his debts, and the merchants discovered that he had made a fraudulent transfer of his assets to Llewellyn,<sup>86</sup> they realized that they had been deceived, for Barrowe turned out to be “a man of smale or noe estate, creditt, or hability att all.”<sup>87</sup>

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<sup>82</sup> Mark Eisenegger, *Trust and Reputation in the Age of Globalisation*, in REPUTATION CAPITAL, *supra* note 8, at 11–12 (arguing that we do business with people because we trust them, and reputation establishes that trust).

<sup>83</sup> Bill of Complaint, *Campe v. Llewellyn* (Star Chamber), National Archives (U.K.), STAC 8/105/5, fol. 12r (Feb. 8, 1610).

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

Although allegedly a bust out, the evidence suggests this story was not all it seemed. The real scam may have been Llewellyn's manipulating Barrowe into making a fraudulent transfer of his assets to Llewellyn's use and to the disadvantage of Barrowe's creditors.<sup>88</sup> Nonetheless, the possible falsity of the bust out claim should not obscure the message of the merchants' pleading. They based their decisions about Barrowe's creditworthiness on how successful he looked. The fact that he appeared to be rich meant that he must be rich.

These merchants were not rubes. They included men prominent in the cloth trade: a leading member of the Merchant Taylor guild and one-time sheriff of London;<sup>89</sup> a merchant who later served as King Charles's silk purveyor;<sup>90</sup> a draper wealthy enough to leave £1500 to his children and fund the construction of almshouses (that still exist) at his death in 1613;<sup>91</sup> and two leading foreign merchants.<sup>92</sup> Nonetheless, their complaint gives no sense that they felt they had acted unreasonably in permitting themselves to be misled by Barrowe's illusory reputation signals, and they expected the court to sympathize with their plight.<sup>93</sup>

The court may indeed have sympathized. Although the opinion does not exist in *Campe*, the Star Chamber found Llewellyn guilty in a related contemporaneous lawsuit for fraudulently arranging for Barrowe

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<sup>88</sup> Answer to Interrogatory 8, Deposition of Thomas Hathwait, *Barrowe v. Llewellyn* (Court of Chancery), National Archives (U.K.), C 24/359, fol. 5r (Apr. 23, 1611) (describing Llewellyn's machinations to convince Barrowe to make the fraudulent transfer).

<sup>89</sup> Nigel Victor Sleight-Johnson, *The Merchant Taylors Company of London, 1580-1645*, 92, 127 n.1 (June 1989) (unpublished Ph.D. dissertation, University College, London) (Richard Hearne was a plaintiff against Barrowe, as were his former apprentices Walter Eldred and Samuel Paske).

<sup>90</sup> THOMAS A. MASON, *SERVING GOD AND MAMMON* 93 (1985) (naming Walter Eldred, plaintiff against Barrowe, as silkman to King Charles).

<sup>91</sup> Will of Lawrence Campe, National Archives (U.K.), PROB 11/123/33 (proved Dec. 29, 1613).

<sup>92</sup> See Bill of Complaint, *Att'y Gen. v. Munsey et al.* (Star Chamber), National Archives (U.K.), STAC 8/25/23 (Feb. 1620) (Leonard Sweers and Abraham Becke, plaintiffs against Barrowe, among a large number of major merchants and foreign traders, sued for the export of bullion from England).

<sup>93</sup> Bill of Complaint, *Campe v. Llewellyn* (Star Chamber), National Archives (U.K.), STAC 8/105/5, fol. 12r (Feb. 8, 1610).

to be executed on for a debt to Llewellyn that he did not, in fact, owe.<sup>94</sup> Despite this, Llewellyn remained in business, and he was repeatedly asked to be a guild warden, including in the months after the original bust out allegations had become public.<sup>95</sup> Barrowe similarly remained in the good graces of his guild, which elected him to a lower office in the guild in 1613 and twice in the years after the lawsuit gave him substantial loans.<sup>96</sup>

## 2. *Hales v. Moxon*

Perhaps Barrowe's creditors could not have obtained more accurate information about his trustworthiness. Some evidence that he was a reasonably successful trader prior to getting involved with Llewellyn means that his existing reputation would have been both good and not predictive of his future malfeasance.<sup>97</sup> The 1607 case *Hales v. Moxon*<sup>98</sup> is also allegedly, though likely not actually, a bust out. Unlike the murkier facts in *Campe*, however, the rich detail in the *Hales* case file provides precise information about how the debtor's reputation first formed with his trading partners and how they failed to take simple extra steps to investigate his identity and creditworthiness.

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<sup>94</sup> Bill of Complaint, *Barrowe v. Llewellyn* (Star Chamber), National Archives (U.K.), STAC 8/56/2, fol. 37r (Nov. 18, 1610); see Report of the Star Chamber Judgment, *Barrowe v. Llewellyn* (Star Chamber), British Library (U.K.), Stowe MS 397, fol. 38v (1615).

<sup>95</sup> See Minute Book 1608–1622, Worshipful Company of Leathersellers (London, England), fol. 43 (describing Llewellyn's refusal to serve as warden from 1616 to 1617); see also Retha M. Warnicke, *A Dispute Among the Freemen of the Draper's Company in Elizabethan London*, in 1 GUILDHALL STUDIES IN LONDON HISTORY 59, 64 (1974) (discussing a mid-sixteenth-century arbitrator accused of fraud and later kicked off the London Court of Alderman and fined for misbehavior, "but, interestingly, that expulsion and his participation on the board of mediation the previous year did not seriously damage his reputation, as he was elected master of the Drapers' in 1566").

<sup>96</sup> See Minute Book 1608–1622, *supra* note 95, at fol. 63 (mentioning Barrowe's election to warden of the yeomanry and his receipt of a loan of £50 in 1613); Liber Curtes: Accounts and Inventories, 1584–1647, Worshipful Company of Leathersellers (London, England) at fol. 181 (Barrowe being approved for another loan of £50 in 1617).

<sup>97</sup> See Answer to Interrogatory 22, Deposition of Thomas Hathwait, *Barrowe v. Llewellyn* (Court of Chancery), National Archives (U.K.), C 24/359, fol. 9r (Apr. 23, 1611) (discussing Barrowe's prior trade).

<sup>98</sup> *Hales v. Moxon*, National Archives (U.K.), STAC 8/173/9 (1607).

As the complainants tell it, the story behind this alleged bust out is quite straightforward. For a period of about one year beginning in November 1605, eighteen different Suffolk clothiers individually sold a total of 147 Suffolk-made cloths to Thomas Moxon,<sup>99</sup> a young man whom they apparently believed to be a reputable citizen of London and member of the Merchant Adventurers.<sup>100</sup> Most of these sales were made on credit with anywhere from two to forty-four percent of the purchase price paid upfront, but in four instances with no money down at all.<sup>101</sup> Ultimately, Moxon's total debts to these clothiers amounted to £1343 (about £275,500 today),<sup>102</sup> and he also had other creditors not involved in this lawsuit.<sup>103</sup> Once Moxon took possession of the cloth, he passed it on to a Merchant Adventurer, John Skynner, who exported it in his own name or that of his business partner, William Burton.<sup>104</sup>

About a year into his buying spree, Moxon fled the country, unable to pay his debts. According to the complainants, Skynner sent him away, emptying his cash box and borrowing money from his neighbor in order to provide Moxon with funds to disappear.<sup>105</sup> By this time,

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<sup>99</sup> Star Chamber Cause List, Huntington Library (San Marino, Cal.), Egerton Papers, EL 2765, fol. 2r (no date) (court papers with notes on the oral argument in the *Moxon* case).

<sup>100</sup> Bill of Complaint, Hales v. Moxon (Star Chamber), National Archives (U.K.), STAC 8/173/9, fol. 68r (Mar. 9, 1607) (alleging that Moxon was "in shewe and profession a Marchant adventurer"); see Report of the Star Chamber Judgment, Hales v. Moxon, British Library (London, England), Stowe MS 397, fol. 15v (1610) ("Moxon pretending himselfe to bee a Merchant where in truth hee was not").

<sup>101</sup> Bill of Complaint, Hales v. Moxon (Star Chamber), National Archives (U.K.), STAC 8/173/9, fol. 68r (Mar. 9, 1607) (listing the sales prices and the amount still owed).

<sup>102</sup> Star Chamber Cause List, Huntington Library (San Marino, Cal.), Egerton Papers, EL 2765, fol. 2r (no date) (court papers with notes on the oral argument in the *Moxon* case). For the conversion, see *Five Ways to Compute the Relative Value of a UK Pound Amount*, *supra* note 56.

<sup>103</sup> Bill of Complaint, Skynner v. Moxon (Court of Chancery), National Archives (U.K.), C 8/8/87, fol. 1r (Apr. 27, 1607) (referring to attachments made by Moxon's other creditors); Bill of Complaint, Lyndall v. Skynner (Court of Exchequer), National Archives (U.K.), E 112/95/589 (1608) (suit brought by different creditors of Moxon's).

<sup>104</sup> Bill of Complaint, Hales v. Moxon (Star Chamber), National Archives (U.K.), STAC 8/173/9, fol. 68r (Mar. 9, 1607).

<sup>105</sup> Answer to Interrogatory 19, Deposition of William Judson, Hales v. Moxon (Star Chamber), National Archives (U.K.), STAC 8/173/9, fol. 22r (Mar. 22, 1609) ("Skynner hath Confessed that the *said* Thomas Moxon had of him at suche the tyme of his departure all the money that hee the *said* Skynner had in his Cashe and alsoe some money that hee borrowed to gyve him in his purse when hee soe wente awaye"); Answer to Interrogatories 18, 19,

most of the cloth was gone, sold abroad by Skynner and Burton. What little remained Skynner attached for a debt Moxon supposedly owed him.<sup>106</sup> The clothiers were left with nothing, ultimately causing them to sue. Various branches of the dispute ended up working their way in separate, virtually simultaneous actions through Common Pleas, King's Bench, Chancery, and Star Chamber.<sup>107</sup> Yet another case against Skynner by different Moxon creditors was brought in the Court of Exchequer.<sup>108</sup>

The clothiers gave Moxon, a man whom none of them seemed to have known previously, so much credit because they had heard that he had a good reputation and then made assumptions about him that increased their trust level.<sup>109</sup> They obtained this information with little investment, and it turned out to be false.

According to the depositions in the case, Moxon's reputation was built by a game of telephone. The Suffolk clothiers were interested in doing business with him, so they asked one of their London factors what he knew about Moxon. This factor asked another London factor, George Massy, who had known Moxon for years.<sup>110</sup> Massy shared his belief that Moxon was an honest dealer.<sup>111</sup> The factors and clothiers also questioned Skynner and Burton about Moxon's estate.<sup>112</sup> They may have

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Deposition of Hanamiell Wardell, *Hales v. Moxon* (Star Chamber), National Archives (U.K.), STAC 8/173/9, fol. 26v (Apr. 11, 1609) (“[T]he *said* John Skynner . . . did confesse unto this deponent that hee had sente unto the sayed Thomas Moxon . . . all the money *which* the sayed John Skynner then had & some alsoe that hee borrowed of his neighbour for the *said* Moxon to take in his purse.”).

<sup>106</sup> Bill of Complaint, *Skynner v. Moxon* (Court of Chancery), National Archives (U.K.), C 8/8/87, fol. 1r (Apr. 27, 1607).

<sup>107</sup> Answer to Interrogatory 18, Deposition of John Skynner, *Hales v. Moxon* (Star Chamber), National Archives (U.K.), STAC 8/173/9, unpaginated (May 6, 1607) (discussing suits in King's Bench and common pleas); Bill of Complaint, *Skynner v. Moxon* (Court of Chancery), National Archives (U.K.), C 8/8/87, fol. 1r (Apr. 27, 1607).

<sup>108</sup> *Lyndall v. Skynner* (Court of Exchequer), National Archives (U.K.), E 112/95/589 (1608).

<sup>109</sup> Bill of Complaint, *Hales v. Moxon* (Star Chamber), National Archives (U.K.), STAC 8/173/9, fol. 68r (Mar. 9, 1607).

<sup>110</sup> Answer to interrogatory 17, Deposition of George Massy, *Hales v. Moxon* (Star Chamber), National Archives (U.K.), STAC 8/173/9, fol. 54v (May 15, 1609).

<sup>111</sup> Answer to Interrogatory 7, Deposition of George Massy, *Hales v. Moxon* (Star Chamber), National Archives (U.K.), STAC 8/173/9, fol. 54r (May 15, 1609).

<sup>112</sup> Answer to Interrogatory 3, Deposition of Hanamiell Wardall, *Hales v. Moxon* (Star Chamber), National Archives (U.K.), STAC 8/173/9, fol. 25v (Apr. 11, 1609).

believed that Skynner was Moxon's partner; at the least, he seemed to them to be Moxon's close associate.<sup>113</sup> Skynner assured them that Moxon was "an honest, conscionable dealer" whom he would trust with £500 in credit.<sup>114</sup> He also told them that Moxon was "a man of very good sufficiency and estate," who had property in the north of England, and could, if he wanted, have a wife who would bring a dowry of £800.<sup>115</sup> When one of the clothiers, John Ranson, expressed some doubt about Moxon's creditworthiness, Skynner and Burton allegedly berated him, accusing him of doing irreparable and unjustified harm to Moxon's good name and credit.<sup>116</sup>

What Skynner did not tell the people who inquired about Moxon is that Moxon was not a citizen of London; he was not even a native-born citizen of England.<sup>117</sup> Instead, Moxon was born and grew up in Antwerp, where his father, who was a Merchant Adventurer from Yorkshire, was living and trading.<sup>118</sup> Skynner later claimed that he did

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<sup>113</sup> Answer to Interrogatory 2, Deposition of Hanamiell Wardall, *Hales v. Moxon* (Star Chamber), National Archives (U.K.), STAC 8/173/9, fol. 25r (Apr. 11, 1609).

<sup>114</sup> Bill of Complaint, *Hales v. Moxon* (Star Chamber), National Archives (U.K.), STAC 8/173/9, fol. 68r (Mar. 9, 1607); Answer to Interrogatory 6, Deposition of Hanamiell Wardall, *Hales v. Moxon* (Star Chamber), National Archives (U.K.), STAC 8/173/9, fol. 68r (May 14, 1609). Cf. DEFOE, *supra* note 12, at 255 (also using the example of whether "I would trust him with five hundred pound" when talking about giving a reference).

<sup>115</sup> Bill of Complaint, *Hales v. Moxon* (Star Chamber), National Archives (U.K.), STAC 8/173/9, fol. 68r (Mar. 9, 1607).

<sup>116</sup> *Id.*; Answer of John Skynner and William Burton, *Hales v. Moxon* (Star Chamber), National Archives (U.K.), STAC 8/173/9, fol. 67r (Apr. 29, 1607); Answer to Interrogatory 8, Deposition of Hanamiell Wardall, *Hales v. Moxon* (Star Chamber), National Archives (U.K.), STAC 8/173/9, fol. 26r (Apr. 11, 1609) ("Skynner & Burton, hearinge of the doubt made by the sayed John Ranson, sente for him & this deponent and verye sharpelye reproved the sayed Ranson for discreditinge of the said Thomas Moxon and then greatlye commended boathe his the said Moxons sufficiencye and honestye . . .").

<sup>117</sup> He was, in fact, naturalized by a private act of Parliament in 1601. DAVID DEAN, LAW-MAKING AND SOCIETY IN LATE ELIZABETHAN ENGLAND, THE PARLIAMENT OF ENGLAND, 1584–1601 221 (1996) (mentioning Moxon's naturalization); see Surrejoinder of Thomas Moxon, *Moxon v. Iles* (Duchy Chamber), National Archives (U.K.), DL 1/220/164, fol. 2r (Oct. 18, 1604) (acknowledging that he was naturalized by an act of Parliament).

<sup>118</sup> Surrejoinder of Thomas Moxon, *Moxon v. Iles* (Duchy Chamber), National Archives (U.K.), DL 1/220/164, fol. 2r (Oct. 18, 1604).

not know whether Moxon really was a Merchant Adventurer. Like everyone else, he had just assumed that Moxon was.<sup>119</sup>

All of this new information mattered a great deal to the creditors. When they assumed he was a citizen of London and a Merchant Adventurer, he had credit in their eyes and seemed trustworthy. Once they found out he was foreign born and not a citizen of London, most of them refused to trust him any further.<sup>120</sup>

It was only after the creditors and their factors began to fear something was amiss, because Moxon had disappeared, that they made more thorough inquiries about him. In addition to learning that he was not a citizen of London, not a Merchant Adventurer, and “Alien borne,”<sup>121</sup> they also discovered at the Customs House that Skynner and Burton had exported all of the cloth in their own names and that Moxon had never exported anything.<sup>122</sup>

None of this information had been secret. The creditors could have inquired earlier about Moxon’s exports at the Custom House. They could have asked other Merchant Adventurers about him. They could have investigated his guild membership, which was a prerequisite to citizenship in London.<sup>123</sup> They could have spoken to merchants and factors from Yorkshire who knew something of Moxon’s history.<sup>124</sup> They could, in other words, have obtained more reliable data about Moxon, either prior to dealing with him or at least before extending him considerable amounts of credit. But they did not bother.<sup>125</sup> Instead, the creditors relied on cheaply-obtained information, taking the word of a few people—people who may either have had something to gain from

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<sup>119</sup> Answer to Interrogatory 20, Deposition of John Skynner, *Hales v. Moxon* (Star Chamber), National Archives (U.K.), STAC 8/173/9, unpaginated (May 15, 1609).

<sup>120</sup> Answer to Interrogatory 5, Deposition of William Judson, *Hales v. Moxon* (Star Chamber), National Archives (U.K.), STAC 8/173/9, fol. 53r (May 15, 1609).

<sup>121</sup> Bill of Complaint, *Hales v. Moxon* (Star Chamber), National Archives (U.K.), STAC 8/173/9, fol. 68r (Mar. 9, 1607).

<sup>122</sup> *Id.*

<sup>123</sup> See ROBERT O. BUCHOLZ & JOSEPH P. WARD, *LONDON: A SOCIAL AND CULTURAL HISTORY, 1550–1750* 77–78 (2012).

<sup>124</sup> See Replication of Alexander Lyndall, *Lyndall v. Skynner* (Court of Exchequer), National Archives (U.K.), E 112/95/589 (1609) (suit by Yorkshire merchants over Moxon’s debts and referring to Moxon as a foreigner).

<sup>125</sup> Answer to Interrogatory 8, Deposition of George Massy, *Hales v. Moxon* (Star Chamber), National Archives (U.K.), STAC 8/173/9, fol. 54r (May 15, 1609).

deceiving them or may have been telling them what they wanted to hear.<sup>126</sup> That information turned out to be inaccurate.

Ultimately, the court sided with the complainants, fining the defendants and ordering them to make restitution of the money owed, with interest, and to remain in prison until they had done so.<sup>127</sup> Moxon was also to stand in the pillory at Westminster (where the court sat) and at Cheapside (the main commercial thoroughfare) with a paper hung around his neck detailing his fraud.<sup>128</sup> Yet despite this ruling, Burton and Skynner seem to have remained in business.<sup>129</sup> Moxon disappears from the record, so we do not know what happened to him in the aftermath of the lawsuit. He may have returned to his usual business abroad, or he may have fled to his property in Yorkshire.

These stories illustrate the dark side of reputation. The exact same indicia of trustworthiness that facilitate honest trade and private ordering can, if false, also facilitate fraud. When people choose to rely on those indicia alone without checking the facts, they set themselves up to be victims.

### III. MIXED REPUTATIONAL SIGNALS

Material from other cases and commercial correspondence from the late sixteenth and early seventeenth centuries provide a number of explanations why reputational information might have been susceptible to manipulation and why it did not serve the disciplinary function assumed by the private ordering theories even in the sorts of dense networks to which the traders in the bust out cases belonged. These explanations both parallel and add to the defects already noted in the

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<sup>126</sup> See Silberstein-Loeb, *supra* note 8, at 24–25 (discussing unreliability of reputation information).

<sup>127</sup> Exchequer Memoranda Rolls and Enrolment Books, National Archives (U.K.), E 159/444, fol. 226r–226v (1610) (recording fines of £100 for Skynner and Moxon and £50 for Burton).

<sup>128</sup> Report of the Star Chamber Judgment, Hales v. Moxon (Star Chamber), British Library (U.K.), Stowe MS 397, fol. 16r (1610).

<sup>129</sup> Grocers Company Orders of the Court of Assistants, Guildhall Library (U.K.), MS 11,588 vol. 3, fol. 250 (May 27, 1623) (recording Burton as taking out a loan in 1623); Ironmongers' Company Court Minutes, Guildhall Library (U.K.), MD 16967/2, fol. 71r (Dec. 25, 1609) (listing Skynner as a “bachelor,” which was a status in the guild hierarchy).



economic and network theory literature.<sup>130</sup> First, reputation is historical information. It may not accurately predict future behavior. Second, accurate information may be scarce or secret, leaving those not “in the know” to rely on inaccurate assumptions. Third, although reputations are presumed to be slow to change within closed groups, in fact gossip may be fickle, and it can influence the listener in subtle ways. Fourth, in trade, actors need to trust, and they cannot always verify what they perceive to be the good reputation of their potential partner. Sometimes they trust unwisely. Finally, the alleged fraudster who produces a convincing counternarrative may succeed in creating questions and confusion about which available reputational information is most accurate.

#### A. *Reputation is Backward Looking*

First, reputation, by definition, is based on prior behavior that may not correctly foretell future behavior.<sup>131</sup> In the case of Thomas Moxon, for instance, even if Skynner and the creditors’ agent, Massy, had no nefarious intentions in praising Moxon to the cloth sellers, the information they had to offer concerned only their past interactions with Moxon. As Skynner kept protesting in the lawsuit, he believed his own assertions to the creditors that they could trust Moxon, because he had found him trustworthy before.<sup>132</sup> But if Moxon decided to commit fraud, that historical data became not just useless, but in fact affirmatively harmful. It allowed Moxon and his accomplices to build up

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<sup>130</sup> See *supra* Part I.

<sup>131</sup> Goldman, *supra* note 9, at 58 (“[R]eputational information relies on the accuracy of past information in predicting future behavior, but this predictive power is not perfect.”).

<sup>132</sup> Answer of Skynner and Burton, Hales v. Moxon (Star Chamber), National Archives (U.K.), STAC 8/173/9, fol. 67r (Apr. 29, 1607):

John Skynner saieth that the said Moxon was a Merchant and a dealer of good Creddytt in buyeng, transporting, and selling of clothes long before the *defendant* had any acquaintans, familiarity, or dealinges with him. And afterwarde by Reason of such his Creddytt and of the good Report that other Merchantes gave out of his sufficiency and honest dealing, This *defendant* did sometymes deale with him . . .

*Id.*; see also Silberstein-Loeb, *supra* note 8, at 27 (noting that a person with a good reputation can leverage it to cheat).

a positive reputation for Moxon that they could then manipulate to their benefit.

### B. *Scarcity of Information*

Second, the person with accurate information about another may want to hoard that information, leaving less accurate or incorrect information to circulate. Perhaps the hoarder seeks a competitive advantage, perhaps she is protecting her friends, or perhaps she is protecting herself. Such was the case in 1582, for example, when the merchant Martin Delafallia refused to divulge the name of the person who passed forged bills of exchange to him because if he did, the forger would be ruined and Delafallia would not be paid the money the forger owed him.<sup>133</sup>

The late sixteenth-century correspondence between the London merchant John Quarles and his agent George Lowe, based in Stade, Germany, also offers insight into the keeping of commercial secrets.<sup>134</sup> In one letter, Lowe reported to Quarles that the credit of Robert Burleyghe, another merchant, was poor, but asked him to keep that knowledge secret.<sup>135</sup> This secret was not costless to others. When Burleyghe failed shortly after, Lowe noted that he had avoided doing business with him because he had known his credit to be worthless. But other merchants had not realized this, and suffered for their lack of knowledge.<sup>136</sup>

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<sup>133</sup> Answer of Martin Delafallia, *Alldersey v. Delafalia* (Star Chamber), National Archives (U.K.), STAC 5/A4/16, fol. 1r (Feb. 15, 1582); see OLEGARIO, *supra* note 52, at 21 (“The mere whiff of trouble . . . could bring creditors to his door, demanding that he pay his debts immediately.”).

<sup>134</sup> See Leng, *supra* note 47, at 828.

<sup>135</sup> Letter from George Lowe to John Quarles, National Archives (U.K.), SP 46/176/fo122 (Feb. 26, 1596). This letter also asks Quarles to conceal information about goods Lowe purchased secretly. *Id.*

<sup>136</sup> Letter from George Lowe to John Quarles, National Archives (U.K.), SP 46/176/fo299 (Mar. 29, 1597). This letter is incorrectly catalogued as missing and dated [1660]. It is, in fact, located in Part II of the letters with the stamp “300” on the verso of the first page. See also Letter from George Lowe to John Quarles, National Archives (U.K.), SP 46/176/fo225 (Aug. 3, 1597) (Lowe asking that news about Quarles shop being shut up be kept secret); Letter from George Lowe to John Quarles, National Archives (U.K.), SP 46/176/fo138 (July 8, 1596)

Refusing to share information could by itself create a negative impression. In 1726, Daniel Defoe wrote in his *Complete English Tradesman* about the practice of checking into the credit of a potential new partner by first making enquiries about him “and of his circumstances among his neighbours and fellow tradesmen, perhaps of the same profession, or employment.”<sup>137</sup> Defoe saw no good coming from these inquiries. The competitor may have wanted to disparage the object of the inquiry in order to drive business away from him,<sup>138</sup> while the man who praised him did not want to be responsible if he ended up proving untrustworthy.<sup>139</sup> And yet, remaining silent and refusing to divulge what one knew was “downright giving him the worst character” one could, for the interlocutor would interpret the silence as a polite way of refraining from spreading negative gossip, even though that might not be the case.<sup>140</sup>

### C. *Fickleness of Reputation*

The third reason fraudsters could easily manipulate reputation was that reputation could change quickly with the infusion of a new piece of, perhaps entirely false, information. Defoe claimed that “the loss of credit is never repair’d,”<sup>141</sup> but in this he seems to have been mistaken. New gossip could chase away perceptions created by earlier gossip, and facts could correct fictions. The Lowe-Quarles correspondence provides examples of both situations. In two letters, Lowe told Quarles to ignore reports that his credit was impaired, that this was just malicious gossip, and that his trade was, in fact, doing just fine.<sup>142</sup> In another letter, Lowe

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(concealing purchases); *see also* Letter from George Lowe to John Quarles, National Archives (U.K.), SP 46/176/fo154 (Aug. 15, 1596) (concealing ties to an unpopular merchant).

<sup>137</sup> DEFOE, *supra* note 12, at 247.

<sup>138</sup> *See id.* at 247; *see also id.* at 246 (“[N]o men are apter to speak slightly and coldly of a fellow-tradesman, than his fellow tradesmen . . .”).

<sup>139</sup> *Id.* at 248.

<sup>140</sup> *Id.* at 248–51.

<sup>141</sup> *Id.* at 235.

<sup>142</sup> Letter from George Lowe to John Quarles, National Archives (U.K.), SP 46/176/fo124 (Feb. 28, 1596); Letter from George Lowe to John Quarles, National Archives (U.K.), SP 46/176/fo126 (Mar. 9, 1596) (assuring Quarles that the rumors are untrue and his credit is good).

reported that gossip had rumored him to be in financial trouble but that his quick return from a business trip had been all it took to change the narrative about him.<sup>143</sup>

Similarly, Maurice Llewellyn, in denying the allegations of fraud made by Paul Barrowe's creditors, accused Barrowe of spreading spurious accusations of misconduct against him and claimed that those accusations had ruined his credit at the Royal Exchange.<sup>144</sup> And yet, within a few months after the case against him became public knowledge, Llewellyn was elected warden (or governor) of his guild—a position of significant trust and authority.<sup>145</sup>

By contrast, the 1620 case *Grigg v. Wheeler* shows how easily a few convincing negative words could destroy a reputation.<sup>146</sup> Grigg claimed that he bought cattle from Wheeler, who ended up cheating him by repossessing the cattle a short time later and refusing to return Grigg's bond or earnest money. Wheeler justified his actions to the community by claiming that he believed Grigg was going to defraud him.<sup>147</sup> The result of Wheeler's gossip was that, whereas before Grigg had dealt with Wheeler Grigg's "word & Creditt was currant & would passe in the Countrey w[i]th and amongst his neighbours for twenty, thirtie, or fortie poundes, or much more . . . nowe they make it verie scrupulous to take [his] word or p[ro]mise, yea scarcely his bond for a matter of five poundes."<sup>148</sup> A few negative words from Wheeler, and Grigg saw his reputation ruined among people he had presumably known for most of his life.

Defoe himself provided ample evidence of the fickle nature of gossip. He told the story of a spurned lady who used innuendo to turn her former fiancé's reputation from good to bad, causing a run by his

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<sup>143</sup> Letter from George Lowe to John Quarles, National Archives (U.K.), SP 46/176/fo173 (Feb. 1, 1597).

<sup>144</sup> Answer of Maurice Lewellyn, Barrowe v. Llewellyn (Star Chamber), National Archives (U.K.), STAC 8/56/2, fol. 35r (Nov. 27, 1610).

<sup>145</sup> See Minute Book 1608–1622, *supra* note 95, at fol. 43 (recording Llewellyn's refusal to serve as warden in 1611).

<sup>146</sup> See Bill of Complaint, *Grigg v. Wheeler* (Court of Chancery), National Archives (U.K.), C 2/JasI/G9/36, fol. 1 (Oct. 31, 1620).

<sup>147</sup> *Id.* ("[H]ee thought in his conscience hee shold have bin cheated & cousoned both of ye monie and Catall.").

<sup>148</sup> *Id.*

creditors that ultimately nearly bankrupted him.<sup>149</sup> And he pointed out that even if the recipient of the rumor knew that the person conveying the gossip was “a Liar, a Slanderer, a Calumniator,” the hearer still wondered, perhaps the liar “may happen to speak truth just then, he may chance to be right, and I know not what there may be in it, and whether there may be any thing or no, but I will have a little Care.”<sup>150</sup> In other words, when reputation arises from gossip and appearances “without a concrete empirical referent,”<sup>151</sup> it may sometimes be as ephemeral as the gossip itself.

#### D. *Need to Trust*

Ultimately, commerce relies on trust. At some juncture in the process of trade, each person is forced to take a risk and trust the other without having either complete information or the possibility of verification.<sup>152</sup> These junctures, in which parties must rely on mere reputation, introduce opportunities to cheat because the trust bestowed on another may be given unwisely.

Fraudsters know how to play on the willingness to suspend disbelief. In 1601, for example, Attorney General Edward Coke brought suit against a certain “John Kellam al[ia]s Gray al[ia]s Cotton” for defrauding a respectable but vulnerable widow whom he had convinced that he possessed alchemical powers.<sup>153</sup> He gained her trust by showing her “strange peeces of pap[er] wrytten some with Figures, some w[i]th Cyphers, and Certaine strange Invented characters & wordes,” by giving her talismans and tokens that seemed mysterious, and by maintaining “a Contynuall fyre w[i]th stills uppon ytt that burned Six weekes night and daie and sett upp Certaine Instrumentes as yf he were about some such

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<sup>149</sup> DEFOE, *supra* note 12, at 237–44.

<sup>150</sup> *Id.* at 234.

<sup>151</sup> BURT, *supra* note 23, at 175.

<sup>152</sup> Niklas Luhmann, *Familiarity, Confidence, Trust: Problems and Alternatives*, in TRUST: MAKING AND BREAKING COOPERATIVE RELATIONS 94, 95 (Diego Gambetta ed., 1988) (“[T]rust is a solution for specific problems of risk.”).

<sup>153</sup> Bill of Complaint, Att’y Gen. v. Kellam (Star Chamber), National Archives (U.K.), STAC 5/A1/18 (Feb. 20, 1601).

strange worke.”<sup>154</sup> Misled by these appearances, the widow kept handing over more and more money.

Not only widows, but also world traders paying small fortunes settled for trusting rather than verification. Around December 1608, a group of wealthy Amsterdam merchants subscribed to a maritime insurance policy, insuring part of the cargo in an English ship sailing from Livorno, Italy, to Spain for £2200—roughly £399,000 today.<sup>155</sup> In all, the cargo was said to be worth £8000—or approximately £1,451,000 today. This astonishing sum was merited by the rich silks, gold velvets, and other expensive merchandise said to be aboard the ship. And what evidence did the insurers have of this unusually expensive cargo? The bill of lading listed these wares, and they had been laded aboard the ship packed the way silks and velvets were normally packed, and the shippers had impressed upon the crew the costly nature of the freight. These indicia of authenticity apparently sufficed even though no objective party had ever actually seen the goods. Not surprisingly, the true cargo was waste paper and soap. But the insurers only discovered this long after the ship “accidentally” sunk (as planned and instigated by the shippers) and the insurance benefits were paid out.<sup>156</sup>

#### E. *Counternarratives*

Finally, a credible counternarrative can raise questions about the reputation value of existing information.<sup>157</sup> For instance, while their creditors might be spreading gossip that Moxon and Skynner, the alleged perpetrators of a bust out, were dishonest, the story as the accused related it sounded quite different. In their telling, the debts reflected an unfortunate, but not fraudulent, confluence of circumstances. In this version, Moxon, who mostly did business on the

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<sup>154</sup> *Id.*

<sup>155</sup> Bill of Complaint, Att’y Gen. v. Goodlake, Povey, & Webbe (Star Chamber), National Archives (U.K.), STAC 8/12/6 (July 19, 1613). See *Five Ways to Compute the Relative Value of a UK Pound Amount*, *supra* note 56.

<sup>156</sup> Bill of Complaint, Att’y Gen. v. Goodlake, Povey, & Webbe (Star Chamber), National Archives (U.K.), STAC 8/12/6 (July 19, 1613).

<sup>157</sup> See BURT, *supra* note 23, at 175 (discussing how gossip can transmit “more than one truth” about a person); Gambetta, *supra* note 22, at 211 (“Plausibility is more relevant than truth. A convi[n]cing story gets gets repeated because of its appeal not its truthfulness.”).

continent, came to know Skynner on his trips to London. Moxon would assist with Skynner's exports abroad, and, when Moxon needed help in London, he expected the same assistance from Skynner in turn. This help became particularly pressing between 1604 and 1606 when Moxon was often required to go to Yorkshire to prosecute a lawsuit seeking to reclaim land he had inherited from his father. During his absences, Skynner acted as his London agent with the clothiers and their factors and shipped Moxon's purchases abroad in his own name. But the lawsuit was costly, and Moxon found himself overstretched. He went overseas for a short time to try to get his affairs in order, not to defraud his creditors.<sup>158</sup>

This explanation is perfectly plausible and accounts for the evidence offered at trial. The lawsuit in Yorkshire did happen, and it generated a great deal of paper, so it likely was expensive.<sup>159</sup> Skynner never denied doing business with Moxon or attesting to his honesty.<sup>160</sup> And the practice of shipping goods in another merchant's name was not unusual, and may have had something to do with Moxon's legal status.<sup>161</sup>

Faced with both sides of the story, could the parties' contemporaries have known for sure whether the defendants committed fraud or were rather the victims of a fraud on the court by the plaintiffs? If the facts communicated were ambiguous, the reputational information derived from them could also be ambiguous. Perhaps Skynner and Moxon were fraudsters who should never have been trusted again; and perhaps Moxon was an unfortunate debtor and his friend Skynner an innocent associate whose deep pockets looked very

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<sup>158</sup> Answer of Thomas Moxon, *Hales v. Moxon* (Star Chamber), National Archives (U.K.), STAC 8/173/9, fol. 66r (May 9, 1608).

<sup>159</sup> See Bill of Complaint of Thomas Moxon, *Moxon v. Iles* (Duchy Chamber), National Archives (U.K.), DL 1/218/44 (no date); Answer of the Defendants, *Moxon v. Iles* (Duchy Chamber), DL 1/219/92 (no date); Rejoinder of the Defendants, *Moxon v. Iles* (Duchy Chamber), DL 1/220/164, fol. 1 (1604); Surrejoinder of Thomas Moxon, *Moxon v. Iles* (Duchy Chamber), DL 1/220/164 fol. 2; Depositions, *Moxon v. Iles* (Duchy Chamber), DL 4/48/59 (1604–1605); Depositions, *Moxon v. Iles* (Duchy Chamber), DL 4/47/1 (1604–1605).

<sup>160</sup> Answer to Interrogatory 4, Deposition of John Skynner, *Hales v. Moxon* (Star Chamber), National Archives (U.K.), STAC 8/173/9 (unpaginated) (May 6, 1607).

<sup>161</sup> Answer to Interrogatory at 4, Deposition of Edward Misselden, *Hales v. Moxon* (Star Chamber), National Archives (U.K.), STAC 8/173/9, fol. 59r (May 22, 1609).

attractive to Moxon's creditors. Moxon and Skynner's future reputations may have depended upon whom one talked to.

In sum, therefore, reputation fraud could occur because reputation was, and is, formed from a complex web of information, misinformation, and absence of information. What a trader does not know might cause him to make bad decisions, but what he thinks he does know might do the same. He may hear good things about bad people, and bad things about good people. At some point, however, traders have to trust to do business, and they then open themselves up to the possibility of fraud.

#### CONCLUSION

We do not know how often commercial fraud occurred in premodern commerce. But we know that it did happen, and that it happened at least in part because merchants could not verify the honesty of all their partners. They could try to avoid the need for trust by using contractual mechanisms, such as requiring the debtor to name sureties, put up pledges, or give his bond or bill of exchange to guarantee payment.<sup>162</sup> But sureties could dispute their liability or disappear. Bonds and bills could be lost, forged, or used fraudulently against the debtor. At some point, therefore, the English merchants would have had to rely on mere reputation. Unfortunately, that reputation evidence could be falsified, reinterpreted, misinterpreted, and hoarded. Fraudsters took advantage of such distortions of reputation to cheat.

This ability to make the data say different things should raise questions about any notion that reputation alone suffices to incentivize honesty. It may also help explain why the English court records contain plenty of commercial fraud cases. The availability of public enforcement permitted traders to rely on questionable reputation information and then sue for damages *ex post* when the information turned out to have

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<sup>162</sup> DEFOE, *supra* note 12, at 421 (stating that if a man has credit "then he may borrow again whenever he will, he may take up money and goods, or any thing, upon his bare word, or note," but if he does not then he "must give bondsmen, or *mainprize*, that is, a pawn or pledge for security, and hardly be trusted so neither"); SHEILAGH OGILVIE, *INSTITUTIONS AND EUROPEAN TRADE: MERCHANT GUILDS, 1000–1800, 287–89* (2011).



been bad, instead of expending time and money doing perhaps costly due diligence before entering into contracts. And the potential for reputation fraud may also help explain why some early modern commentators were less optimistic than many modern economists about the potential of self-regulating commerce. As the lawyer John Stone observed in his seventeenth-century lecture on the 1571 Elizabethan bankruptcy statute, “as the Number of Merchants hath increased, so have their cunning and crafty dealings increased, so as now a dayes it falls out, that we had more need to make Laws against them, than for them.”<sup>163</sup>

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<sup>163</sup> JOHN STONE, *THE READING UPON THE STATUTE OF THE THIRTEENTH OF ELIZABETH*, CHAPTER 7: TOUCHING BANKRUPTS 3 (1656); *see* *Twyne’s Case* (1602) 76 Eng. Rep. 809, 815; 3 Co. Rep. 80b, 82a (“[F]raud and deceit abound in these days more than in former times.”).