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Introduction

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Texte intégral

1 This issue of *l'Atelier du CRH* brings together the findings of two workshops held in Paris in 2017.[1] The first –organized by Alessandro Buono and called "When the Household Fails: Abeyance and Vacant Successions from Institutional Guardianship to Local Belonging"– attracted scholars from the European worlds, from North Africa and the Near East. Since the very beginning, the meeting had been intended as the first step in a process of comparison not restricted to the Mediterranean region but embracing the widest horizon, during the so-called early modern era, without neglecting a few forays in earlier or later ages. The second workshop –which was made possible by the joint efforts of the two editors of this volume and which was named "Properties without owners. Inheritance in abeyance and vacant succession in comparative perspective during the early modern period (China, Korea, Japan, and Europe)"– aimed at carrying on with the comparative research plan through the involvement of the scholars who had attended the first meeting as well as specialists of East Asian social and legal history.

2 In the following lines, we do not want to offer a full-scale introductory essay. This would necessitate, for instance, to provide a large range of references to historiography, most of which the readers will find, incidentally, cited in the following essays. Moreover, the contribution by Alessandro Buono, which features as this issue's opening essay, was precisely conceived as a general presentation of the main problems at stake here. Thus, what we would like to do, as a foreword, is to reconstruct for the readers the path that led to the genesis of this dossier. We will do so in the light of the questions that were addressed to the authors in the first place, as well as in the light of the comparative work produced during the aforementioned workshops, with all the contradictions, but also the overtures, that emerged during the intellectual

confrontation between scholars coming from different paths. We will concentrate on drawing a common thread between all the essays –of course without losing track of the fact that important differences also exist between the various cases proposed– by highlighting the main themes that emerged during the round-table discussions, which followed the presentations of, and debates on, the various contributions (the result of such open discussions, as is well known, are often difficult to convey in the final work).

3 First, then, it may be useful to clarify what was our starting point. All the authors where called upon to analyze the ways in which various societies in different time frames and geographical settings faced what was assumed to be a shared problem : ensuring that no patrimony should remain without an owner, so as to guarantee the performance of reciprocal obligations and safeguard social and economic relations (for example, debit and credit payments, both worldly and otherworldly, both material and symbolic, and the fulfillment of fiscal and ceremonial duties, etc.). This research path, in fact, had already borne profitable results, as shown by Simona Cerutti and Isabelle Grangaud's comparative work on two eighteenth-century North African and Western European institutions.[2] The initial idea, as mentioned, was to try to test these questions on a research field not limited to the shores of the Mediterranean Sea, but expanded to include a wider range of European examples, as well as the Middle East, Spanish America and East Asia.

4 However, while the questions raised in the Mediterranean framework seemed to be understandable to scholars working on Eastern Europe and the Middle East,[3] the fact that they could be applied as such to the East Asian arena could not be taken for granted, as was shown by the initial reluctance of some of the participants. The use of concepts derived from the context of the European legal tradition[4] appeared right from the start as problematic in social, institutional, legal and procedural systems untouched by (or not in constant comparison with) the heritage of the legal and institutional grammar of Roman law. Thus, we consider that parts of the limits of the present comparative effort are largely related to this problem, that is, the *translation* from a context to another of the conceptual tools and of the questions and problems investigated –not to mention the logistical constraints that forced the workshop to be divided into two separate events.[5] Nevertheless, we believe that, especially in the wake of the round-table which concluded the second workshop –in which the majority of the participants as well as outside scholars were involved–, some interesting insights and ideas for further investigation have emerged.[6]

5 The articles presented in this issue all deal with the way different societies, distant in time and space, protected themselves from the risk of social discontinuity resulting from the precarious and ephemeral nature of the human being. Somehow, even beyond the different situations that clearly existed among them, it seems to us that all the essays in this volume address the different ways through which these societies solved the problem of the (temporary or permanent) inability of human beings to take care of resources and meet the obligations inherent in ownership. In other words, how human groupings (including households, various corporate entities, as well as government institutions) developed mechanisms to protect themselves from the unpredictability of individual lives, and how they tried to tame this unpredictability through devices designed to strengthen the bonds of responsibility and trust. Paradoxically enough, then, all such case studies describe situations in which discontinuity induced the framing of institutions devised to produce continuity (from lineages to entails, from communal institutions to royal and imperial courts, from lay to ecclesiastical bodies, etc.), often as the result of establishing "fictive owners" (the "ancestor", the "inheritance in abeyance", the "morgado", etc.), in other words immortal entities that would fill the voids left by the absent persons.

6 What emerged during the discussion, from a theoretical standpoint, was the necessity to overturn an often predominant individualist and anthropocentric perspective of historical analysis: instead of looking through the lens of the human as

being the bearer of ownership rights, the authors were invited to invert the perspective by looking at the duties and responsibilities that assets imposed upon their owners. From this point of view, the case studies analyzed in this dossier clearly show the fruitfulness of considering property holders, whether entities or individuals, more as temporary managers than as absolute owners in the modern sense of the word. All individuals must pass, whereas properties generally remain. Therefore, things –claiming a right to be properly used and preserved– are the real player in this affair: hence the proliferation of institutions and bodies that try to protect them.

7 As the following contributions tend to show, it is precisely this need –or shall we say this "right" of the things to be suitably managed and safeguarded?– which generally appears as a harbinger in the process leading to the establishment of corporate bodies and communities of different composition and nature, whether households or lineages, charitable institutions or village and neighborhood communities, etc. In many cases, the proliferation of such entities seems to have been associated with the huge stratification of ownership claims over assets. It is precisely this stratification that dictates the endless reshaping of the bodies claiming rights on a given property: an example is the way in which the mechanisms of genealogy or of the ancestors' cult seem to be able to create and reshape the family bodies, by including or excluding people, even entire generations, from the enjoyment of property rights. Concurrently, the case studies presented here also show how any claimed right is always associated with duties and obligations. This suggests that the relationship between people and property cannot be reduced to a relationship between a subject and an object and, therefore, that any "possessory" relationship always encapsulates specific scopes of action and social relations.

8 Another issue which emerged as central in the comparative work carried out was that of "ritual succession" –in fact, this was probably the most important axis around which the discussion among the authors developed, and which resounds as a common echo in the internal dialogue between the texts. The notion points to the primary necessity for a corporate household to have a "ritual heir" at every generational shift, in charge of preserving the connection between the living and the dead members of the body corporate. We consider that the unveiling of the pivotal role played by the "ritual heir", not only in the Korean or Chinese case studies –where this is most obvious–, but also in the Euro-Mediterranean cases, is maybe one of the main innovative results of our joint effort. Not by chance, thus, pondering upon the central role of the "ancestral cult" was crucial in order to reconsider a whole set of ritual practices that were widespread, up to not so long ago, in the Mediterranean as well as in the East Asian worlds. Secondly, insisting on the ritual as a way to legitimize the process of selection of the heir sheds new light on the common mechanisms devised in order to mitigate the intrinsic weakness of the lineage corporations in the different contexts studied here (such as, for instance, *trusts* established to act as "ritual heirs"). Note also that reasoning in terms of "ritual heir" can help investigate the history of Western or Islamic institutions that have not been specifically conceived in such terms: the Portuguese *morgado* or *Misericórdias*, for example, or courts like the *Juzgado de bienes de difuntos* or the *Bayt al-mâl*, which all justified their role as the alleged spiritual protectors of the dead (from the accomplishment of burial rituals to ceremonies for the otherworldly wellbeing of the dead).

9 Many authors of the papers presented here also focused their attention on the issue of the substitution and tutelage of absent or incapacitated persons. From the problem of physical and mental deficiency to that of death or absence, these studies shed light on the common mechanisms devised in order to attend to instances of discontinuity and to the substitution of the incapacitated person by other individuals in a position to make up for the former's deficiencies. In the contexts addressed in this issue, the individuals who claim such a role are most diverse. Thus, it would be an oversimplification to consider them merely through the lens of the opposition between

public and private, or lay and clerical. Indeed, the various examples analyzed here bear witness to the fact that the boundaries imposed by such categories were always blurred: the actions of *public* authorities could be legitimized through a claim for succession or by the defense of the souls' otherworldly salvation; *private* institutions and trusts could step in and play a role of substitution for public institutions as well as for family bodies; by creating corporations and trusts, lineages played a role that was taken up, in other settings, by associations based on co-residence and proximity, or by *sovereign* and *public* powers.

10 Generally speaking, the majority of the articles also points to the high level of conflict inherent in the transmission of relationships between people and things, since there never seems to be one single, final instance, in any context, that can successfully claim a monopoly over the management of discontinuity. Such management seems to beget an extremely important power of inclusion and exclusion, the power to establish who is a "member" and who is a "stranger" in the community that handles the resources (the family, the territorial community, the state, etc.). But the overall picture they allow to reconstruct of these processes –*i.e.* from "family", to "community", to "state"– is a non-linear and non-progressive one. In other words, they do not support the claim that there would be a definite line of evolution extending from the (Eastern) "archaism" of the clans to the (Western) "modernity" of the state. The "public" authorities' claim over vacant successions was (and actually is) the attempt to impose a hegemony and it inherently clashed, every single time, with other claims (from institutions, communities, trusts, lineages, etc.) that were no less powerful in their conceptual and social legitimization. While it is known, for instance, that during the Song dynasty in China (960-1279) the government actively claimed the confiscation of the property of "extinct households", as the Roman *fiscus* started to do in the 2nd century CE, the same cannot be said for instance of the Ming (1368-1644) and Qing (1644-1911) governments –more inclined to leave the lineages to deal with the problem. Similarly, the medieval and modern European rulers, as the Ottoman *Bayt al-mâl*, were confronted with the claims of other entities (local lords and communities, religious foundations, etc.) until well into the 19th century.

11 An issue that came strongly to the fore during the comparative work was how to handle both the similarities and dissimilarities that emerged. In this instance, the above-mentioned problem of *translation*, to wit, the tendency to address research questions through different lenses, often came to the fore. For the sake of convenience, it can be subsumed under the general heading of "the legalist approach" (in Western and Islamic cases) as opposed to the "ritualistic approach" (in East Asian cases). On one hand, to quote Jack Goody, we could say that the "frequent and intimate association between property and the ancestral cult" may draw the observer to abstain from treating "religion as the independent variable",[7] or, conversely, to judge the cultural (and legal) dimensions as marginal in comparison with the far more substantial economic and social dimensions. How are we to consider such differences without indulging in reductionist or essentialist postures? In some ways –as we have argued– the comparative work carried out has resulted in the rediscovery of dimensions that the respective historiographical traditions had tended to underestimate or to consider as irrelevant. For instance, we believe it is no coincidence if the problem of vacant succession, which in the Chinese and Korean worlds was regarded as a "ritual and legal impossibility", elicited a redefinition of "eastern" lineage bodies as inalterable entities capable of autarchic regulation, as they auto-represented themselves. On the other hand, the emphasis placed on the issue of the ancestral cult also sheds new light on institutions that have been mostly regarded as economic and legal entities (such as the *morgado*). It can be said, therefore, that comparative work has once again proved its effectiveness in denaturalizing phenomena and processes that, when read in isolation, risk being considered specific to a given social or cultural context.

12 Ultimately, it may well be that the most relevant results of this collective research are to be found not in the actual conclusions it has come to, but in the new issues that it raises.

13 This issue of l'*Atelier du CRH* opens with Alessandro Buono's essay about claims for vacant successions in Europe between the end of the Middle Ages and the 18th century. The essay tries to retrace the debate that took place in the legal sources, while providing a brief overview of such claims in several European countries. It then focuses on the case study of the Spanish monarchy, mainly investigating claims on ownerless properties (*bona vacantia* and *res nullius*) made by the king of Castile starting from the 13th century. The main object of the article is an exclusive jurisdiction established by the Spanish monarchy in the New World, the so-called *Juzgado de bienes de difuntos*. What the essay shows is the king of Castile's powerful claim, as the ultimate "heir" to vacant properties, to be involved in the inheritances of the Spaniards who moved within the global jurisdiction of the Spanish Crown, something that can be also found in the Islamic world, as other articles in this issue show. Thanks to this claim, the Spanish monarchy sought to regulate the relations between people and goods, establishing a curatorship of hereditary transmissions in order to safeguard the social and economic local order. The article by Thomas Glesener is also centered on the Spanish world, focusing more specifically on the kingdom of Castile between the 15th and the 17th centuries and analyzing a fairly unknown aspect of the *Cruzada* administration, a Papal institution under royal patronage. The essay intends to show that, apart from royal or royally-delegated institutions, many entities (cities and territorial communities, local lords, lay and religious corporations) claimed their rights on vacant property or ownerless goods (*bienes mostrencos*). By examining a series of cases, Glesener shows that despite the Crown's attempt to regain possession of a jurisdiction that, in the Middle Ages, had been delegated to several lay and religious corporations, the establishment of the Crusade administration ended up consolidating a whole range of local actors' claims on ownerless goods, and, instead of eradicating them, actually helped perpetuate them until the end of the Ancien Régime.

14 In keeping with the plurality revealed by Glesener's article, the next two essays deal with the context of the kingdom of Portugal from the late Middle Ages to the early modern era, showing other potential solutions to the problem of vacant successions and other players moving on this stage. Maria de Lurdes Rosa looks at the figure of the "founder" of the Portuguese *morgados*, *i.e.* one of those forms of fideicommissum that existed in pre-modern Europe (*mayorazgos*, *entails*, *majorats*, *fedecommessi*, etc.) and which were originally intended to turn a corporate family into a veritable institution. In order to fully understand the role played by subjects that, although non-human (such as the souls of the dead, the chapels, the houses, etc.), were nevertheless regarded as actors in their own right, as *personae fictae*, the author argues that we need to make the effort to comprehend the different anthropology of pre-modern Europe. While, then, such institutions as the *morgados* could be mechanisms devised by households so as to shelter the family properties from the risk of being left without an owner, and the souls of the dead from having no one to administer the rites for their salvation, Isabel dos Guimarães Sá's article points to another solution to the same problem. Sá provides a few examples to explain the role of the *Misericórdias*, the powerful confraternities which acted as "ritual heirs" in order to collect uncertain or vacant successions, or even to challenge the dead's relatives' claims. The aim, here, is to come to terms with Jack Goody's famous thesis, according to which the Church was interested in weakening family ties so as to gain access to the assets of those households that did not have legitimate heirs. The essay shows that in such circumstances, a series of other actors could benefit from successions, including the powerful confraternities controlled by the local elites and supported by the king.

15 The last article about the Western-European scenario is authored by Francesca Chiesi Ermotti. In it, she describes a case study that is very different from those of the

Iberian monarchies. The essay considers the so-called "bailiwicks" (*baliaggi*) of the Italian-speaking area of Switzerland, mountainous regions with traditionally high rates of emigration, both temporary and permanent. By reviewing the sources of the local communities living in these bailiwicks, which were largely independent from their distant rulers, the cantons of the Swiss Confederation, Chiesi Ermotti describes the way the problem addressed in this issue was tackled in this instance: emigration led entire communities to join forces and take care of the properties and successions of the people who had left them, testifying to the importance of local actors in contexts where the ruling institutions were less effective in their claims to attend to instances of discontinuity. Ultimately, what Chiesi Ermotti's essay shows is a sort of "substitutability" between the community's members, urged to make sure someone's absence would not impair the tight networks of rights and duties that local membership involved.

16 The next two contributions are about two different Islamic contexts. Christian Müller's article deals with the institutional mechanisms aiming at safeguarding inheritances, as well as children, analyzed from the archival records of *al-Ḥaram aš-Šarīf*, an extremely rich corpus (mostly notarial deeds) of documents about 14th-century Mamluk Jerusalem. Through a review of these sources, Müller describes the role of the *qadi* and his court in such procedures, and shows that these interventions could at times be made in order to assist family strategies that tried to elude the strict rules of Islamic inheritance law. In addition to local judges and corporate actors, even in the context described by Müller, a powerful role was played by the Mamluk institutions, in this case the "Bureau of Escheat Estates" (*dīwān al-mawārīṯ al-ḥašriyya*), designed to defend the rights of the public Treasury (*Bayt al-māl*) as the institutional heir to any vacant succession. In the province of Algiers between the 18th and the 19th century, the Ottoman *Bayt al-māl* is similarly one of the main characters of the essay written by Isabelle Grangaud. As the author makes clear, this institution stood alongside a wide array of other corporations (households, village and tribal communities) that would step in to claim their rights as heirs to vacant successions. An analysis of different forms of competing claims –which include the claim to the role of '*âsib* (agnate relative) as much as the performance of the rituals associated with the otherworldly salvation of the dead– drives Grangaud to question the exceedingly strict contrasts between lay and religious, institutional and informal, language of kinship and language of politics. Here, as in any other essay of this collection, the gist of the matter clearly is the harsh competition for assuming responsibility in times of discontinuity, so as to replace the missing or incapacitated persons and take over their rights and duties. Andreea-Roxana Iancu's article deals with Wallachia, a principality which paid tribute to the Ottoman Sublime Porte, between the late 18th century and the early 19th century. Iancu focuses her investigation on the public protection of the Boyar families, especially the establishment of a new institution to protect inheritances from "inadequate heirs". Similarly to what is shown by other case studies proposed in this issue, the rationale of the reforms ultimately aimed at replacing the incapacitated person, including those individuals who were judged as socially inadequate, with far more reliable institutional heirs (lay and religious), whose "eternity" allowed for the protection of the families' worldly and otherworldly interests.

17 The next five essays bring us into the world of East Asia and its differing traditions. However, as mentioned at the start of this foreword, the topics addressed by the authors often overlap with the findings of the previous group of contributions. The articles by Matsubara Kentaro and by Sun Jiahong and Luca Gabbiani deal with late imperial and Republican China. Matsubara draws a general picture of the inheritance laws and of the organization of Chinese lineages, in an attempt to show that they were intended to prevent, and theoretically eradicate, the problem of vacant successions, which, as we saw, was a major issue in Europe as well as in the Middle East and North Africa. Even if this happened in a context that tended to deny the problem altogether,

yet the strategies devised for the establishment of such institutions as “ancestral property” or “lineage property” cannot but bring to the fore some of the aspects elaborated in the previous case studies. While, even in the Chinese scenario, the imperial authorities did eventually make a few claims on the property of extinct households, this process cannot be simply equated to the progressive replacement of the “private-family” sphere with the “public-state” sphere. Sun and Gabbiani’s essay focuses on the specific case of the “incapacitation” of women, who were excluded from inheritance in many different ways and who were considered, depending on the circumstances, as a *danger* for the household or as a subject *in danger* and, as such, in need of protection by local and supra-local authorities as well as by lineages.

18 In turn, the Chinese context leads to a subject, which, though no less central to the Christian and Islamic worlds, seems even more blatant in the East Asian sphere. The role of “ritual succession” and of the “ritual heir”, the guarantee of the ancestral cult and the safeguarding of the associated property take center stage in Martina Deuchler’s and Marie Seong-Hak Kim’s articles, the first on Chosŏn Korea (1392-1910) and the second on the period of Japanese colonial rule in that same country (1910-1945). In her description of the mechanisms set up for the management of economic and ritual inheritance from the times of the Koryŏ dynasty (932-1392) until the adoption of Neo-Confucian social norms in the early decades of the Chosŏn dynasty, Deuchler points out that Korea’s social structure, largely based on corporate households and single-surname villages, tended to turn the problems of abeyance and of vacant estates into an ancillary question. By means of entities such as the *munjung*, which grouped all agnates of the lineage or lineage segments, moments of crisis (such as the inadequacy or lack of a suitable individual able to take on the duties of the “ritual heir”, *i.e.* the ancestral cult and the management of the family’s properties) were largely handled within the group, with the state authorities having little or no say in these matters. While in pre-modern Korea, the language of rites and its rationale spelled out times of discontinuity and helped rebuild continuity beyond the hiatus of succession, Kim’s essay –about the “Western” legal logic brought in by the Japanese colonial ruler– gives pride of place to a comparative analysis between the “traditional” ritual approaches, as understood and standardized by the Japanese colonial courts, and the “modern” legal approaches that such courts tried to spread. In this instance, the problem of succession, far from losing its centrality, appears as a veritable battlefield in a colonial context in which the boundaries between the economic and the ritual, the public and the private, the family and the state, were redefined.

19 The last essay, written by Mary Louise Nagata, introduces the reader into the Kyoto of the late Tokugawa age (1603-1868). Nagata reviews a wide range of sources from the city’s neighborhoods (registers of property owners, wills, population surveys) spanning from 1842 to 1869, in an attempt to understand what happened to property in abeyance and ownerless goods. This essay reveals that in the Japanese urban context, local communities played a leading role. Kyoto’s neighborhood bodies, in particular, enjoyed great autonomy in the management of absent individuals (whether temporarily or permanently) by protecting uncertain successions and assisting vulnerable persons (especially children). This case study thus sheds light on yet another local actor who directly and successfully claimed the right to take care of resources located within the community’s boundaries, replacing the households that could not properly do it and reassigning their assets to different households, which had committed to reside in the neighborhood and to respect the obligations deriving from these properties.

Notes

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2 Simona Cerutti, Isabelle Grangaud, “Sources and Contextualizations: Comparing Eighteenth-Century North African and Western European Institutions”, *Comparative Studies in Society and History*, v. 59, nº 1, 2017; see also Isabelle Grangaud, Simona Cerutti, “Sources et mises en contexte Quelques réflexions autour des conditions de la comparaison”, in Florent Brayard (dir.), *Des contextes en histoire. Actes du Forum du CRH, 2011*, Paris, La Bibliothèque du Centre de Recherches Historiques, 2014, p. 91-102.

3 The same applies to other contexts which, even if not covered in this issue, were still taken into account at the workshops through the involvement of other colleagues: northern Italy (Emanuele C. Colombo, Germano Maifreda) and the Netherlands (Richard J. F. Paping) during the Ancien Régime.

4 Such as “inheritance in abeyance” (*hereditas iacens*), “vacant estates” (*bona vacantia*), “properties without an owner” (*bona nullius*).

5 In addition, the change in the title of the two workshops led the attendees to focus their attention on dimensions of the problem (the *failure* of the family or *properties without owner*) that do not perfectly match.

6 The editors would like to thank the authors and all the scholars who took part in the roundtable discussion at the workshop of 10 November 2017, whose relevant suggestions have widely inspired this foreword, especially Simona Cerutti, Emanuele C. Colombo, and Angelo Torre.

7 Jack Goody, “Adoption in Cross-Cultural Perspective”, *Comparative Studies in Society and History*, v. 11, nº 1, 1969, p. 65.

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Articles du même auteur

- **The King Heir. Claiming Vacant Estate Succession in Europe and in the Spanish World (13th-18th Centuries)** [Texte intégral]
  Paru dans *L’Atelier du Centre de recherches historiques*, 22 | 2020

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Articles du même auteur

Dangerous Women or Women in Danger? Women and Properties of Extinct Households in Late Imperial China [Texte intégral]
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Droits d'auteur