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Sources and Contextualizations: Comparing Eighteenth-Century North African and Western European Institutions

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COMPARISON: A CONTESTED APPROACH

Since the publication of Marc Bloch's seminal studies, much has been written about the difficulties involved in comparison as a research method.[1] Among

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[1] Within a huge bibliographic corpus, see the edited volume by M. Werner and B. Zimmermann, *De la comparaison à l'histoire croisée* (Paris: Seuil, 2004) and their co-authored article, "Beyond Comparison: Histoire croisée and the Challenge of Reflexivity," *History and Theory* 45, 1 (2006): 30–50. Also see D. Cohen and M. O'Connor, eds., *Comparison and History: Europe in Cross-National Perspective* (London: Routledge, 2004). With regard to a critique regarding national comparisons, see M. Seigel, "Beyond Compare: Comparative Method after the Transnational Turn," *Radical History Review* 91 (Winter 2005): 62–90; E. H. Gould, "Entangled Histories, Entangled Worlds: The English-Speaking Atlantic as a Spanish Periphery," *American Historical Review* 112, 3 (2007): 764–86. Useful criticism is also found in M. Espagne, "Sur les limites du comparatisme en histoire culturelle," *Genèse* 17 (Sept. 1994): 112–21; H. Atsma and A. Burguière, eds., *Marc Bloch aujourd'hui. Histoire comparée et sciences sociales* (Paris: Éditions de l'EHESS, 1990); P. Bourdieu, C. Charle, H. Kaelble, and J. Kocka, "Dialogue sur l'histoire comparée," *Actes de la Recherche* 106–7 (Mar. 1995): 102–4; J. Kocka, "Comparison and Beyond," *History and Theory* 42, 1 (2003): 39–44; and J. Élise, "Le comparatisme en histoire," *Hypothèses* 1 (2004): 191–201. The most recent and useful survey, with an extensive bibliography, is P. Levine, "Is Comparative History Possible?" *History and Theory* 53, 3 (2014): 331–47. In economic history the focus has been placed on the fact that comparison, while claiming to place objects under a common standard, is susceptible of creating hierarchies between them. The different histories of "lateness" are exemplary cases of this point of view and the Eurocentrism that results. "Reciprocal comparisons" between different countries are possible ways to avoid this; see

these difficulties, researchers from a wide range of disciplines consistently refer to one particular problem: the possibility that comparison may be in conflict with the "diversity of contexts" to which the objects of comparison belong. From the moment we identify the object or issue to be the focus of the comparison (family, market, labor, etc.), it is already loaded with so much contextual specificity that any possibility of its comparability appears to be neutralized. The "constraint" of context is all the more significant when the objects to be compared belong to different cultural areas. In such cases, the terms "context" and "culture" are treated as equivalent entities, which in turn suggests that "context" involves a preexisting and clearly defined framework.

Aware of these difficulties, certain recent analytical approaches have provided compelling answers to the question of the relationship between an object of study and its context and have, more or less explicitly, offered alternatives to comparison. Connected histories,[2] which favor a kind of "contextual continuum," proceed in fact to a "dissolution," or rather the "uniformization" of contexts. In this way, connected histories support the critique of the concept of cultural specificity (a notion related to cultural irreducibility) that has fueled the conservative political discourse in Western countries in recent years. In turn, *histoires croisées* originated in a desire to "reduce" the disturbing diversity of contexts. Here, the existence of a common ground between two historical objects becomes a prerequisite for comparison. This encounter outlines the "historical context" in which different objects put in contact reveal their differences as well as their similarities.[3] In both approaches there is a desire to construct a common ground that can question the incommensurability of cultures.[4]

K. Pomeranz, *The Great Divergence: China, Europe and the Making of the Modern World Economy* (Princeton: Princeton University Press, 2000); B. Wong, *China Transformed: Historical Change and the Limits of European Experience* (Ithaca: Cornell University Press, 1997); G. Austin, "Reciprocal Comparison and African History: Tackling Conceptual Euro-Centrism in the Study Africa's Economic Past," *African Studies Review* 50, 3 (2007): 1–28. For an approach that details the specificities of local contexts, see A. Stanziani, "Comparaison réciproque et histoire: Quelques propositions à partir du cas russe," in Jean-Paul Zuniga, ed., *Pratiques du transnational: Terrains, preuves, limites* (Paris: La Bibliothèque du CRH, 2011), 209–30.

[2] Since the publication of the seminal book by D. Hoerder, *Cultures in Contact: World Migration in the Second Millennium* (Durham: Duke University Press 2002), increased scholarly attention has been devoted to the notion of mobility and contact. Regarding the Mediterranean, see in particular C. Moatti and W. Kaiser, eds., *Gens de passage en Méditerranée de l'Antiquité à l'époque modern: Procédures de contrôle et d'identification* (Paris: Maisonneuve et Larose, 2007); and C. Moatti, W. Kaiser, and C. Pébarthe, eds., *Le monde de l'itinérance en Méditerranée de l'antiquité à l'époque moderne* (Bourdeaux: Ausonius, 2009).

[3] Werner and Zimmermann, *De la comparaison*.

[4] S. Subrahmaniyam, "Beyond Incommensurability: Understanding Inter-Imperial Dynamics," *Theory and Research in Comparative Social Analysis* 32 (2005), published as "Par-delà l'incommensurabilité: pour une histoire connectée des empires aux temps modernes," *Revue d'histoire moderne et contemporaine* 54, 4 (2007): 34–53; Serge Gruzinski, *La Pensée métisse*.

In short, in recent years scholarly thinking about comparison has mainly revolved around questions about how to properly understand contexts. Research strategies have been implemented in order to counteract: (1) the irreducible specificity of contexts; (2) the "rigidification" and stabilization of cultural systems; and (3) the unequal effects induced by the search for similarities. These strategies rely on a "domestication" of the specificity of contexts (and thus the establishment of "common places") by creating shared circulation and hybridization spaces.

To what extent do these various "connected histories" constitute a genuine alternative to comparison? Can they address the same issues while avoiding the approach's most obvious limitations? In fact, matters are more complicated than that. Indeed, the different stages of the evolution of "connected histories" have been paired with reflections on how connected histories relate to "classical" comparative methods, and it is significant that the responses on this matter have been far from unanimous. In the inaugural issue of the *Journal of Global History*, in 2006, Patrick O'Brien, while treating connected histories and comparative history as two sides of one coin, mapped out a "division of labor" of sorts between the two, assigning, in an unexpected manner, each to different levels of analysis. Global historians, O'Brien noted, "will tend to aggregate and average contrasts across more extended spaces and larger populations (continents, oceans, cultures, and civilizations) than their colleagues who will have the time and sources to engage in exercises in comparable history for more confined geographical and time scale."[5] This leads to a division of labor that implies distinct sources, methods, and objectives.

These different positions show that the matter is far from resolved. As David Armitage and Sanjay Subrahmaniyam observe, "The precise balance between a stress on connection and one on comparison is often quite hard to calibrate."[6] More often than not, this difficulty has been translated into a

[5] Patrick O'Brien "Historical Traditions and the Modern Imperatives for the Restoration of Global History," *Journal of Global History* 1 (2006): 3–39, 6. Also see M. Adas, "Reconsidering the Macro-narrative in Global History: John Darwin's *After Tamerlane* and the Case for Comparison," *Journal of Global History* 4 (2009): 163–73.

[6] D. Armitage and S. Subrahmaniyam, eds., *The Age of Revolutions in Global Context, c. 1760–1840* (London: Palgrave McMillan, 2009), xxiii. On this relationship, see also M. Miller, "Comparative and Cross-National History: Approaches, Differences, Problems," in D. Cohen and M. O'Connor, eds., *Comparison and History: Europe in Cross-National Perspective* (London: Routledge, 2004), 115–32, 115: "This chapter makes a simple argument. Cross-national history may become comparative history, but the two approaches are different kinds of historiographical animals with different objectives and differing benefits." On Subharmaniyam, see P. Levine, "Is Comparative History Possible?" Also see A. Stoler, "Tense and Tender Ties: The Politics of Comparison in North American History and (Post) Colonial Studies," *Journal of American History* 88, 3 (2001): 829–65. Werner and Zimmermann speak of a "family of relationship approaches" ("*De la comparaison*," 31); and H.-G. Haupt notes that transnational and comparative studies are distinctive and complementary, in "Comparative History: A Contested Method," *Historisk Tidskrift* 127, 4 (2007): 697–716.

refusal of the obvious risks of comparative history and thus an abandonment of the practice.[7]

COMPARISON AND SPECIFICITY

Here we will take a different tack, and demonstrate that the comparative approach both makes sense and matters. We contend that comparative analysis offers crucial and unique benefits, which Marc Bloch enumerated. Comparison does not simply detect resemblances and differences, but also provides an important method for denaturalizing objects. It paves the way for reading "against the grains" of the historiographical narrative/cultural frameworks in which objects have been inscribed, and calls into question their fallacious, discursive coherence. This is something connected histories cannot do.

In the model of comparison that we will establish, the criticisms just summarized are not passed over, and in fact they serve as the model's very basis. We focus particularly on what we believe to be the major limitation of comparative approaches: the presumed need to rigidify the objects of comparison, which detaches them from their contingent specificities and reduces cases to a set of data homogeneous enough to be compared. Our intention is to open up a discussion of the claim that comparative analyses must let go of specificity in order to conduct comparative analyses.

Our collaborative project originated in an attempt to articulate the intrinsic specificity of cases and contexts within a resolutely comparative approach. This project is not novel, and in fact similar approaches have led to significant interventions, especially in sociology.[8] The present paper shares a similar theoretical orientation to those approaches, although our specific historical material dictated a very different research process.

As our dual research unfolded, it became increasingly clear that not only was specificity not an impediment to comparison, but on the contrary, it had to function as its cornerstone. For this reason, we propose here a comparative approach that is focused on sources rather than objects. Sources are the

[7] Renouncing the comparative method became the basis for a redefinition of the nature and even the goals of comparison. Although comparison is valued as a reflexive activity that is implicit in every research endeavor, or as an analytical tool that seeks to denature objects and processes, its heuristic capacity is in peril when it is applied to the comparison of too wide a range of objects. Because their incommensurability can become an impediment, we agree that it "is always preferable to compare the difference of hierarchy of forms of evaluation within each culture under given circumstances": O. Remaud, J. F. Schaub, and I. Thireau, "Pas de réflexivité sans comparaison," in O. Remaud, J. F. Schaub, and I. Thireau, eds., *Comparer* (Paris: Éditions de l'EHESS, 2012), 13–20, 19.

[8] We are thinking in particular of Charles Ragin, who, by focusing specifically on case studies, has provided one of the best-grounded recent theoretical discussions of the conditions necessary for comparison: *The Comparative Method: Moving beyond Qualitative and Quantitative Strategies* (Berkeley: University of California Press, 1987); and C. Ragin, ed., *Issues and Alternatives in Comparative Social Research* (Leiden: Brill 1991). See also his *What Is a Case? Exploring the Foundation of Social Inquiry* (Cambridge: Cambridge University Press, 1992).

nexus of specificity: specific people produce them in a specific time and place and in specific environments. Moreover, sources correspond to specific situations to which they give form in a specific way through the use of specific language. In other words, specificity is the most fundamental and intrinsic quality of sources.

If sources are considered mere reservoirs of information, then their specificity can only be conceived as a limitation. From this perspective, in order to access the information that a source provides and to "extract" neutral data that can be manipulated and compared, this information and data must be separated from the sheath that the source itself constitutes. Information and data must be detached from the process of their production, which constitutes the locus of their specificity. Then, and only then, can the collective information and data be inserted into a pre-established framework.

Our perspective considers sources and their specificity in a completely different way. We consider sources to be actions in themselves, whatever their form and content might be, rather than the traces of social or intellectual practices, which would make them collectible fragments disguised as data that historians could carefully extract from "overly specific" conditions of production. Sources are actions endowed with intentionality. We wish to underscore the term's meaning: "the intentionality of sources" does not indicate a plan or particular goal, but instead imparts that their production (as actions) is situated within a specific context that simultaneously shapes and is shaped by them. The intention that sources are charged with is not the intention to do something, but rather an intention that is inscribed within the action of doing, the intention *in doing* something."[9] Therefore, considering sources in this manner allows us to access a very different form of information, namely information on actions whose construction is situated in a particular context. Thus the shape that these actions take—the sources—reveals the context within which they were enunciated.

From this perspective, one cannot speak of two separate levels of analysis —a source, and its context—with one involving the materiality of an object—the trace—and the other revealing an intellectual operation engaged in by the researcher, which can then be reconstituted within the context of its intelligibility. Reconstituting context is not something that belongs to the autonomous activity of the scholar. Sources inherently introduce the context out of which they arise, and indeed, they *are* the "contextualization" of topics or problems that then must be deciphered in their capacity to qualify the object that they thus introduce.

[9] See J. L. Austin's classic, *How to Do Things with Words*, J. O. Urmson, ed. (Oxford: Oxford University Press, 1962).

WHAT AND HOW TO COMPARE: *DROIT D'AUBAINE* AND BAYT AL-MÂL

Our engagement in this comparative project is an outgrowth of our long-standing acquaintance with each other's work. On many occasions we have noted similarities between our research (on Europe and the Maghrib, respectively), but because our studies focused on distinct cultural fields we were hesitant to develop a collaborative comparative study. What we needed was to change our units of analysis by relying, not on predefined objects, but instead on the sources themselves and the objects informed by those sources.

The study presented here compares two institutions. One, the *droit d'aubaine*, was in effect across most of Europe and defined the relationship between foreigners and territory, the power of the state to determine what was foreign and what was not, and the connection, maintained by the king, between being foreign and the right to transmit or inherit property and assets. This right belongs within a history of absolute monarchs defining what was foreign and what was natural, and the political history of Western Europe founded on the continuity between the prerogatives of feudal *seigneurs* and those of said monarchs.

The second institution in our comparison is the Bayt al-mâl, or treasury, a traditional Islamic fiscal institution found in a number of Ottoman-era governments, whose prerogatives were reduced to managing heirless estates and burying the poor. The Bayt al-mâl belongs to the history of the treasury and the methods of appropriation utilized by the largely exogenous and superficially implanted rule of the Ottomans over the province of Algiers. As an early and extremely important Islamic institution, it also illustrates the ineluctable rise of a form of government in which the political domain was inextricably dependent on the religious one.

In theory, the *aubaine* and the Bayt al-mâl belong to distinct cultural and historical realms. Yet, as we will argue, a careful analysis of the sources produced by each institution helps unpack these "cultural" constructions, produces new contexts in which both can be situated, and illuminates the processes of their construction and the very possibility of their comparison. We will offer a synthesis of our respective research on these institutions, research that for the most part developed in parallel. We have tried to keep intact our specific relationships to the historical sources so that our individual research experiences, based on original historiographical field studies, are not obscured by being blended within a single narrative. After we present these parallel research journeys, we will propose a common conclusion to this comparative research experience.

The Droit D'Aubaine

Among historians there is a relatively high degree of agreement concerning the interpretation of the *droit d'aubaine*. The law regulating this right and its

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associated practices was among the cornerstones of early modern royal power, particularly in France, where the *droit d'aubaine* was more widely practiced than in the rest of Europe. It constituted one of the key elements in the unification of customary law and legal rights. Stemming from the rights of *seigneurs* (that is, the right of local *seigneurs* to seize the estates of individuals not subject to their jurisdiction, exercised from the eleventh century onward), in the modern period the *droit d'aubaine* referred to the right of sovereigns to appropriate the property of foreigners who died on their territory and left behind no legitimate heir.

According to French jurists who promoted the *droit d'aubaine* in the early sixteenth century (such as Jean Bodin, Jean Bacquet, Jean Papon, and René Choppin), this right was above all a powerful instrument of social classification.[10] In 1620, Bacquet contended that the *droit d'aubaine* "was introduced in France … in order to have knowledge of who is born of the kingdom, and of who is not born of it, while nevertheless having come there to reside, and in order to make a distinction between the one and the other."[11] This distinction was of enormous significance because it revealed a fundamental legal flaw, which had to do with the crucial capacity to dispose, at the time of one's death, of one's own property and assets as well as the capacity to inherit from legal wills. As an instrument to identify "real" foreigners, the *droit d'aubaine* also provided the framework for one of the monarch's principal prerogatives: the right to modify an individual's civil status. Only the king could issue letters establishing citizenship, empowering foreigners to transmit or inherit property and thus endowing them with full control over their estates. This power helped to ensure that the *droit d'aubaine* became an important factor in constructing the equation between being foreign and being considered marginal or a minority.

That is not all. Historians have mainly focused on the *droit d'aubaine* in the French context because of the crucial role it was considered to have played in the construction of political subjects—the *droit d'aubaine* was a means not only of reconstituting the complex relationships between monarchy and foreigners, but also of constructing the "French" subject, whose rights and

[10] J. Bodin, *Les Six Livres de La République … Ensemble une Apologie de René Herpin* (Paris: J. Du Puys, 1583 [1576]); and J. Bacquet, *Les Œuvres de Jean Bacquet, des droits du domaine de la Couronne de France augmentées du plusieurs arrêts, et du Traité des rentes* (Paris: A. L'Angelier, 1608). For an excellent analysis of their positions, and those of Jean Papon and René Choppin, see P. Sahlins, *Unnaturally French: Foreign Citizens in the Old Regime and After* (Ithaca: Cornell University Press, 2004), ch. 1. The *aubaine* law was relatively widespread. Bodin mentions its use in Naples and Sicily as well as "the entire Empire of the Orient," while René Chopin added England, Spain, and Hungary to the list. Jean Bacquet mentioned that it had also spread to Scotland (*Les Œuvres,* 145).

[11] L. Bouchel, *La conférence des ordonnances et édits royaux par Pierre Guénois*, 2 vols. (Paris: E. Foucault, 1620), 1, 264.

duties were defined in opposition to the restrictions imposed upon foreigners.[12] From this perspective, the history of citizenship in France is fundamentally linked to the legal and political evolution of the French state, because only the king and his officers—and not *seigneurs* or local municipalities—had the power to confer on an individual the title and privileges of citizenship. This image of the French state's monopoly over access to citizenship is consistent with the concept of royal absolutism that these jurists supported. In a way, the theorists behind the formulation of the *droit d'aubaine* in the modern era helped establish an image of the French government's extreme originality within the larger European context.

This interpretation raises a series of questions centered on an apparent contradiction in the implementation of the *droit d'aubaine.* First, what was the justification for such an aggressive attitude on the part of modern European monarchs toward foreigners, a population that was also highly prized and much sought after? How can one reconcile official efforts to recruit foreigners as territorial residents with such openly punitive policies toward them? Furthermore, what do the fifty letters of naturalization granted every year in France mean in the context of the hundreds or even thousands of individuals that a range of sources portray as proclaiming themselves as "French" or *bourgeois* from one city or another? Were these letters the sole pathway to formal citizenship? And, finally, is it ultimately possible for the state to exercise a monopoly over such matters?

All these questions are appropriate given the sources, particularly because, relative to the extraordinary claims early modern jurists made for it, the actual application of the *droit d'aubaine* has remained obscure. Historians have collected and analyzed requests for letters of naturalization addressed to the king, but actual seizures of foreigners' assets appear to have been quite rare, notwithstanding jurists' assertions to the contrary, and they have not been extensively studied.

The interest of the Duchy of Savoy-Piedmont, the focus of Cerutti's research, is partly linked to the wealth of the available archival sources, which include several dozen fascicles of records relating to the *droit d'aubaine*. These records contain hundreds of files, organized alphabetically, covering the period between the sixteenth and the late eighteenth centuries. The documents describe seizures of property owned by "private individuals born outside his majesty's states or deceased without heirs" (to quote the title of one of the many volumes in the archive).[13] The documents are replete with surprising

[12] According to Peter Sahlins, the history of the *droit d'aubaine* contributes to an understanding of the history of citizenship and nationality in France throughout the modern period. In fact, its abolition in 1819 coincided with the establishment of a clear distinction between the legal and political responsibilities associated with citizenship (*Unnaturally French*, xiii).

[13] Archivio di Stato di Torino (AST), Sez. Riunite, Camerale Piemonte, Ubena, art. 492. The archive consists of some sixty bundles organized in alphabetical order, each containing several fascicles. They cover the period from the mid-sixteenth to the late eighteenth centuries. Cerutti perused

information and insights, starting with the not-necessarily-obvious link between "foreigners" and individuals "deceased without heirs," which we will comment on later. Detailed examination of the records of over three hundred legal proceedings that took place during the seventeenth and eighteenth centuries allowed Cerutti to reconstruct and situate the actions taken in the name of the "*aubaine*" and identify the reasoning behind each instance in which the law was applied. This analysis convinced Cerutti that how and when the *droit d'aubaine* was applied merits re-evaluation, as does the relationship between the state and foreigners and the significance attributed to their "foreign" status.

A number of historians have been particularly struck by the feverish haste with which royal officers tended to apply and enforce the *aubaine* laws. This has generally been interpreted as evidence for a predictable expression of greed for the assets to be seized.[14] In the case of the Duchy of Savoy-Piedmont, the available sources seem to confirm this interpretation. When alerted, as prescribed by the law, that a foreigner had died—by the owners of a home or other buildings or by individuals called *chasseurs d'aubaine*, or *aubaine* hunters,[15] who could *du cujus* expect to receive one-fourth of the foreigner's property in exchange for this notification[16]—officials of the Royal Treasury would burst into the room where the corpse of the deceased was laid out. The records of this process have remarkable ethnographic value. In the early eighteenth century, though these were hasty interventions at the time of death, everything was recorded in meticulous detail: from the position and appearance of the deceased to the presence of doctors, priests, women, or servants assisting him, and especially neighbors and friends, relatives, or colleagues, whose every act and utterance were taken down. With the help of the testimony from those present, officials inventoried the assets and debts of the deceased, scrupulously affixing royal seals to every item and chest to certify the estate as "reduced under the king's hand."

Despite the apparent brutality of the seizures, they were actually only the beginning of the process. In most cases, "reducing" the deceased foreigner's belongings was merely the initial stage of a process whose length depended

all of these files and has transcribed some three hundred (including 150 for the period 1680–1730). These are of varying thickness, anywhere from a dozen to several hundred pages. See also AST, Sez. Riunite, I Archiviazione, Legge di Ubena, m. 1 and AST, I Sez., Materie Economiche, Ubena, m. 1–2.

[14] Sahlins, *Unnaturally French*, 42.

[15] J.-F. Dubost and P. Sahlins, *Et si on faisait payer les étrangers? Louis XIV, les immigrés et quelques autres* (Paris: Flammarion, 1999), 80.

[16] This was explicitly stated in documents pertaining to property belonging to Jean Louis Point, born in Normandy and deceased in Turin in 1740. A grocer named Parolis, who notified the authorities within hours of Parent's death, "as is the custom," came into possession of one-fourth of his estate (AST, Camerale Piemonte, art. 492, Ubena, m. 3, 1740).

primarily on two factors: whether or not persons "claiming rights" to the inheritance presented themselves (as well as the relative transparency of their claims); and secondly, the presence and number of creditors demanding reimbursement for debts or items owed to them (and the solidity of the evidence they presented). These claims could be made because the process, although hasty, was nonetheless very detailed and far from obscure; it was augmented by "public notices" issued by the secretary of the Treasury, who served as the "trustee of hypothetical as well as absent" heirs and invited "all persons claiming or hoping to be the heirs of the deceased" to present themselves.[17]

Because of these public notices, claimants in many cases were forced to come forward, creditors appeared, neighbors laid claim to pieces of furniture, and others presented themselves as proxies for absent third parties. The representatives of the Chamber of Accounts evaluated the claims of each of the parties, analyzing documents related to debts and deposing witnesses. In over half of the procedures analyzed, the royal fiscal officials ultimately recognized the heirs' legitimacy: "We recommend that the attorney general withdraw his claim to the inheritance of the *de cujus* in favor of the claimants, by further prolonging the sequestration of these same assets until such time as the creditors are satisfied." As this statement makes clear, sequestration was maintained because the officials' actions never entailed a blatant appropriation of the property of the deceased. Instead, sequestration was a precautionary measure intended to suspend the status of the property to protect both the interests of potential creditors and legitimate heirs (until it could be determined whether there were any). These objectives were often explicitly stated in the records of legal cases pertaining to the *droit d'aubaine*, and the Treasury described its functions as those of a "curator of the interests of 'uncertain' and absent persons claiming to be legitimate heirs or claiming interests or rights on the estate."[18] The Treasury did not act as the owner of the estates of deceased foreigners, which the *droit d'aubaine* allowed, but instead as the trustee of these estates. It was only when the inheritance, instead of being uncertain, proved to be "vacant" (when no legitimate heir was recognized) that the Treasury actually appropriated the estate. Yet even in these relatively rare cases, seizure was presented as the exercise of a responsibility essential to the orderly regulation of society—the need to designate an heir—and not as the fulfillment of a legally recognized right.

To understand the meaning of these actions, it is necessary to consider an important principle: that for every inheritance there had to be an heir or heirs, and this for the simple and fundamental reason that there might be creditors whose claims had to be met. This condition was necessary for trade and the

[17] Ibid., m. R-S-T/3, *Testimoniali*, 13 July 1735.
[18] This formula is featured in the title of the first file of the Tassinari trial: ibid.

free market, and this is why the intervention of a centralized institution was necessary and socially legitimate.

The assertion of the theorists of the *droit d'aubaine* that foreigners had the same status as persons "having no family" rested less on a need for paternal protection fulfilled by the king by default, as it were, than on the need of many foreigners to have a son or other legitimate heir (as we will see, the two terms were not necessarily synonymous).[19] Thus, when the king came to the aid of heirless foreigners, it was in the role of a son (i.e., a legitimate heir). The material benefits of a possible seizure of property belonging to foreigners were naturally part of the attraction of the *droit d'aubaine*, but these benefits could only be claimed for the crown once the first phase of a seizure —the satisfaction of the creditors—had been completed.

Roughly 60 percent of the three hundred cases that Cerutti analyzed ended in the recognition of one or more legitimate heirs and consequent "*levata della mano regio*" (a withdrawal of the Treasury's claim). In the vast majority of cases in which actual heirs or persons claiming to be heirs were found, this led the Treasury to withdraw its claims. And in every single case the Treasury intervened to protect "the interests of creditors," withdrawing from the proceedings only after having acted on their behalf. Thus the role of the Treasury was that of a guarantor for "rightful claimants" on an estate. This role legitimized the Treasury's actions, which were designed to generate social demand from private individuals. The officials were thus far from being voracious property grabbers; their actions, which sometimes admittedly did result in seizure of a deceased person's property, were carried out within a framework whose prime concern was to reach an agreement between the parties rather than to assert a legal right.[20]

The procedures that derived from the *droit d'aubaine* were generated by the need for the orderly handling of cases of dubious and possibly nonexistent succession. (A 1697 procedure contains the remark, "His Majesty's Patrimonial Officer is designated to succeed in the absence of true successors."[21]) These procedures were also the product of the need to protect against losses that uncertainty might have occasioned for certain members of society, notably creditors. Once again, the legitimacy of the state's interventions did not derive from repressive or punitive measures against foreigners (how would such a thing have been possible, for that matter?). Instead, it emerged from a need to protect certain legally vulnerable subjects.[22]

[19] This was stated by, among others, Antoine de Loysel and Pierre Jacques Brillon, quoted in Sahlins, *Unnaturally French*, 37.

[20] For this consensus-seeking aim of judicial actions in the modern period, see A. M. Hespana, "Pré-compréhension et savoir historique," *Ratthistorika Studier* 19 (1993): 49–67.

[21] AST, Camerale Piemonte, art. 492, Ubena, m. A-B1, 1697, Pietro Broglio.

[22] For laws protecting the *miserabiles*, see S. Cerutti, "Justice et citoyenneté à Turin à l'époque moderne," in J. C. Garavaglia and J.-F. Schaub, eds., *Lois, justice, coutume, Amérique et Europe latines (XVI^e–XIX^e siècle)* (Paris: Éditions de l'EHESS, 2005), 57–91.

Officials acted with great haste less out of greed than to cope with a particular feature in societies of the period with regards to the culture of property ownership, namely, the uncertain nature of property titles. This uncertainty is well-documented and often discussed in studies of the economy of the Old Regime.[23] To whom did these goods, property, furniture, and objects belong? How could one acquire property that was of uncertain provenance and which others might claim? How could such property be transferred under the shadow of such uncertainty? These are the questions that crop up over and again in sources related to the *droit d'aubaine*, and the issue of nationality arises out of issues related to property ownership. The uncertainty was particularly related to the high degree of vulnerability of properties at the moment of their owner's death. When the existence and precise identity of the heirs of an estate had not yet been established, the property of the deceased (real estate, personal items, and the like) fell into a liminal state: it no longer belonged to the deceased and, because it had not yet been assigned to their heirs, belonged in fact to no one. This meant that the property could belong to whoever felt entitled to lay a claim upon it, particularly usufruct rights, which generated constant conflicts and heated discussions.

The status of legacies "in abeyance" (*jacentes*) was very different from that for "vacant" legacies (two categories clearly defined in Roman law). The latter indicated an absence of heirs, while the former corresponded to a strictly temporary uncertainty concerning the identity of the legitimate successors.[24] It was this uncertainty or vacancy that the Treasury was called upon to sort out. Royal stamps signaled a state "in abeyance" and protected the estate from premature seizures. The crown only claimed successorial rights when the property's status shifted from being judged "in abeyance" to "vacant." In the interval, officials had to act as quickly as possible by inspecting the scene of death in order to guarantee the protection of the rightful successors and potential creditors. The status of estates whose inheritors were unclear was highly ambiguous. As property *in potestate nullius* (and therefore *sine*

[23] See, in particular, J.-Y. Grenier, *L'économie d'Ancien Régime: Un monde de l'échange et de l'incertitude* (Paris: Albin Michel, 1996); and R. Ago, *Economia barocca: Mercato e istituzioni nella Roma del Seicento* (Rome: Donzelli Editore, 1998).

[24] For useful discussions of these concepts, see E. Besta, *Le successioni nella storia del diritto italiano* (Milan: A. Guiffrè, 1961); and his *I diritti sulle cose nella storia del diritto italiano* (Milan: A. Giuffré, 1964); B. Dusi, *L'eredità giacente nel diritto romano e moderno* (Turin: Fratelli Bocca, 1891); C. Blandini, "Del subjetto dell'eredità giacente," *Antologia juridica* 6 (1892): 48–61; R. Orestano, "Diritti soggettivi e senza soggetto: Linee di una vicenda concettuale," *Jus* 11 (1960): 78–95; S. Leicht, *Storia del diritto italiano: Il diritto privato. Diritti reali e di successione* (Milan: Giuffré, 1960). For procedures that evolved in Roman law for circumventing the problem of legacies "in abeyance," see Y. Thomas, "Du sien au soi: Questions romaines dans la langue du droit," *L'écrit du temps* 14–15 (1987): 157–72; and "L'extrême et l'ordinaire: Remarques sur le cas mediéval de la communauté disparue," in J.-C. Passeron and J. Revel, eds., *Penser par cas* (Paris: Éditions de l'EHESS, 2005), 45–73. There is a close connection between this right and salvage rights, which the same jurists refer to in legal cases analyzed by these authors.

dominio until duly assigned), it had to be placed out of reach of acts of possession that might later be declared illegitimate, if not outright theft. It was enough for it to be considered *res nullius*—an interpretation equally widespread and frequently invoked in legal procedures—for it to be legitimately appropriated under the principle of *res hereditariae furtum not sit*.

One crucial issue merits particular emphasis: if property was vulnerable, this meant that lines of succession were vulnerable, which in turn questioned the entire system of kinship because inheriting "creates" ties that can be claimed in the same way as bloodlines. To paraphrase Marguerite Vanel's useful distinction, an individual does not necessarily inherit because he or she is a legitimate heir; rather, he or she becomes a legitimate heir because he or she has inherited.[25] Thus, since the problem of lines of succession was at the heart of the *droit d'aubaine* legal procedures, these procedures can also be seen as a locus for constructing, rather than merely recognizing, kinship relations.

A close reading of the *droit d'aubaine* documents provides a different image of the practice than what contemporary jurists and historians have provided. Not only did the crown never have a monopoly on conferring citizenship and naturalization, but it was constantly competing against individuals who displayed a remarkable capacity for manipulating this logic predicated on action. The *droit d'aubaine* was not about any preconceived exclusion from the community of persons born or residing "outside His Majesty's states." Instead, the *droit d'aubaine* addressed the matter of property and its transmission via inheritance, and thus it also addressed the status of foreigners, because a foreigner was an individual who was not part of a line of succession and who was unable to be a successor in the control of properties situated in a specific place and time. In this sense, the principle of kinship (which does not automatically signify having the same blood) and the principle of locality were not opposed and in fact were closely linked.

There are a variety of indications that this situation was not particular to the Duchy of Savoy. Similar observations can be made of the situation in France, especially given the state of the sources and, despite some historians' expectations, the difficulty of locating evidence of actual seizures of estates of foreigners.[26] The free exercise by the sovereign of the *droit d'aubaine* seems to exist, as it were, only in the writings of jurists such as Jean Bodin,

[25] In Old Regime societies, "It was for reasons of a successorial nature, and thus for strictly private interests, that legal rules evolved first. The theory of citizenship had to be defined for the sole reason that the settlement of a succession put its value into question.… In other words, an individual did not inherit because he was French; he was French because it was logical that he should inherit." In M. Vanel, *Évolution historique de la notion de Français d'origine du XVIe siècle au Code civil: Contribution à l'étude de la nationalité française d'origine* (Paris: Ancienne Imprimerie de la cour d'appel, 1945), 45–55. Peter Sahlins cites this passage in *Unnaturally French,* 57, and in his article, "La Nationalité avant la lettre: Les pratiques de naturalisation en France sous l'Ancien Régime," *Annales, Histoire, Sciences Sociales* 55, 5 (2000): 1081–108, 1096.

[26] M. Boulet-Sautel, *L'aubain dans la France coutumière du Moyen Age* (Paris: Édition de la Librairie Encyclopédique, 1958), 79.

Jean Bacquet, Jean Papon, and René Choppin; their importance derives precisely from the role that they played in drawing up the blueprint for the monarchy.[27] We can have every confidence in their erudition and loyalty to the king, but less so in their descriptive powers, and for that matter their writings never claimed to be descriptive.

Moreover, at the very time as Jean Bacquet and Jean Bodin were shaping the *droit d'aubaine* into crown laws relating to foreigners within the territory, other French jurists were contemplating the same question from a radically different perspective, one very similar to the view that emerges from the analyzed sources.[28] The definition of foreigners as persons without family or, more accurately, as persons who lacked succession (rather than as individuals belonging to another territory), was central to the thinking of jurists who paid particular attention to customary practices and differences in local law. The jurist Pierre De Cormis, author of a compilation of seventeenth-century Provençal jurisprudence, was particularly explicit on this point. Writing about a fifteenth-century document concerning the payment of transfer rights (*lods*) on *ab intestato* successions, he asserted that in such cases "foreign persons" should in fact be considered "collateral relations, like brothers, uncles, nephews, second cousins, husbands and wives…. In the case in question, only descendants and ascendants in a direct line are not foreigners."[29] Brothers, uncles, nephews, cousins, husbands, and wives were "foreign" insofar as they were barred from direct succession. Foreignness was thus defined by an individual's relationship to the deceased, not by his or her relationship to a foreign territory.

The Bayt al-mâl

By tradition, the Bayt al-mâl (literally, "the house of fortune") was the Islamic institution of the Treasury, whose creation, one of the foundations of the religious community, dates as far back as the Caliph Omar.[30] During the Ottoman period, the Bayt al-mâl was supposed to be responsible for only certain Treasury functions related to vacant properties and heirless estates, fugitive slaves, and missing livestock.[31] Thus the Bayt al-mâl was officially a fiscal agency, present in every province of the Ottoman Empire, administering ownerless property.

[27] R. Villiers, "La condition des étrangers en France dans les trois derniers siècles de la monarchie," in *L'Étranger* (Paris: Recueils de la Société Jean-Bodin pour l'histoire comparative des institutions, 1984), 139–50, at 145, 146, 147.

[28] Patrice Alex drew our attentions to the relative homogeneity of the perspective shared by the jurists that Peter Sahlins mentions, all of them confirmed royalists.

[29] C. Dolan, "Famille et intégration des étrangers à Aix-en-Provence au XVI^{e} siècle," *Provence historique* 35, 142 (1985): 401–11, 402.

[30] C. Cahen, "Bayt al-mâl, II," in P. Bearman et al., eds., *Encyclopédie de l'Islam*, 2d ed. (Leiden: Brill, 1986), 1178–81.

[31] B. Lewis, "Bayt al-mâl, III," in P. Bearman et al., eds., *Encyclopédie de l'Islam*, 2d ed. (Leiden: Brill, 1986), 1181–82.

The Bayt al-mâl in the early modern context has been little studied. Traces of its operations in the archives are sparse. In fact, judges (*qâdî*) presided over the distribution of estates and appointed executors for minors in the provinces. It was only in "the absence of an heir that the representatives of the Treasury were present to assert the state's rights" and that the institution could "take possession of a deceased individual's estate."[32] Beyond the well-established role of appropriating heirless estates, the sporadic interventions of Treasury representatives have not interested historians.[33] There are very few scholarly allusions to the fact that the Bayt al-mâl was responsible for burying the poor and maintaining cemeteries.

By comparison, in Algiers, the capital of the southernmost Ottoman province, agents of the Bayt al-mâl appear in a singular documentary configuration, namely its own ledgers. These constitute a sufficiently important trove of partially preserved ledgers to form a separate section in the "Ottoman Collection" today conserved in Algiers. What is known as the "Ottoman Collection" corresponds to the "Arab Archives of the *Domaine* of the French State" collection for estate administration, an archive starting from 1850. It is therefore a colonial archive resulting from the activity of the French administration set up after the conquest of Algiers in 1830. Certain sections of the documents there date earlier, from the period of Ottoman rule, and colonial administrators assembled and classified these documents in the context of tensions and conflicts surrounding the redefinition and management of property rights. These records also document the activities of Ottoman institutions that continued to operate under colonial supervision of the *Domaine*.[34] The Bayt al-mâl continued to

[32] C. Establet and J.-P. Pascual, "Les inventaires après décès, sources froides d'un monde vivant," *Turcica* 32 (2000): 113–43, 126. See also A. M. Zaid, *The Islamic Law of Bequest* (London: Scorpion Publishing Ltd, 1986); A. Layish, "The Maliki Family *Waqf* according to Wills and *Waqfiyyât*," *Bulletin of the School of Oriental and African Studies* 46 (1983): 1–32.

[33] Establet and Pascual, "Les inventaires." Again, for example, the institution of Bayt al-mâl is not considered in a book dedicated to the state's agents of the Egyptian province of the Ottoman Empire: N. Hanna, ed., *The State and Its Servants: Administration in Egypt from Ottoman Times to the Present* (Cairo: American University in Cairo Press, 1995); or in A. Raymond's master book, *Artisans et commerçants au Caire au XVIIIème siècle*, 2 vol. (Damas: IFD, 1974), which makes only two brief, marginal references to it (vol. II, 698, 782). The traces of the Bayt al-mâl can be essentially summarized as legal procedures that opposed heirs and representatives of the institution that claimed to be able to appropriate their successional rights. On the interpretation of these procedures for the Anatolian provinces of the empire, see I. Tamdogan "Qu'advenait-t-il aux biens des 'étrangers' après leur décès dans la ville d'Adana au XVIIIe siècle?" S. Bargaoui, S. Cerutti, and I. Grangaud, eds., *Appartenance locale et propriété au nord et au sud de la Méditerranée* (Aix-en-Provence: Editions de l'IREMAM, 2015), http://books.openedition.org/iremam/3396.

[34] I. Grangaud, "Affrontarsi in archivio: Tra storia ottomana e storia coloniale (Algeri 1830)," *Società post-coloniali: ritorno alle fonti*, I. Grangaud, ed., *Quaderni Storici* 43,129 (2008): 621–52; and I. Grangaud, "Masking and Unmasking the Historic Quarters of Algiers: The Reassessment of an Archive," in Z. Celik and J. Clancy-Smith, eds., *Walls of Algiers: Peoples, Images, and Spaces of the Colonial and Postcolonial City* (Seattle: Getty and University of Washington Press, 2009), 179–92.

operate under local authorities at least into the 1860s, although it was initially under the control of the Domaine's agents and had lost its original institutional status in 1849. Records dating from the colonial period represent the most significant body of documents in the archive.[35] The view they provide is limited in space and discontinuous in time, but this should not overshadow the longevity and productivity of an institution that operated continuously in one form or another from before the Ottoman period until the 1860s.[36]

But what are these registers composed of? What kinds of activities were they a medium for and an instrument of? Neither the contexts of the ledgers nor their contents have been well-documented by the handful of historians who have explored them. The records have been used primarily as sources to depict the quotidian and economic life of the period or, in the case of post-mortem inventories, as indicators of wealth distribution and the socio-economic composition of Algiers.[37] These studies have not done full justice to the individuals who created and maintained these records or their state of mind; doing so would require an investigation of the disturbing logic underlying the ledgers.

A cursory reading of the archival sources appears to confirm the view that the inventory format reflects the overall contents of the records, but deeper investigation contradicts this. Although the ledgers hold a large number of probate inventories, there are also records that describe a variety of actions Bayt al-mâl officials took related to the inventories themselves, in ways that are variable and difficult to interpret. These actions involve such things as transporting and repatriating properties and assets of individuals who died far away; formal attestations about inheritances; donations or *waqf* (foundations); magistrates' correspondence; recognitions of heirs; resolutions of conflicts over inheritances; sales of objects and sellers' fees; purchases of funeral shrouds; late payments of inheritances; gifts; debts; building rentals; burials; and purchases of household linens, bread, and slaves for the governor's home. All of these expenses could be included, or not, with the lists of assets comprising the inventories. The inventories themselves occur in a variety of forms that reflect different and on the whole unevenly documented phases of

[35] Of the sixty-four preserved ledgers, only eighteen predate 1830 (most are from the early nineteenth century and the oldest dates from between 1699 and 1702), providing a record of activities in Algiers and within a 50 kilometer radius of the city.

[36] R. LeTourneau, "Bayt al-mâl, IV," in P. Bearman et al., eds., *Encyclopédie de l'Islam*, 2d ed. (Leiden: Brill, 1986), 1182–83.

[37] T. Shuval, *La ville d'Alger vers la fin du XVIIIème siècle: Population et cadres urbain* (Paris: CNRS Éditions, 1998); A. Merouche, *Recherches sur l'Algérie à l'époque ottomane, I. Monnaies, prix et revenus* (Paris: Éditions Bouchène, 2002). For a critique of historians' interpretations of these records, see I. Grangaud, ed., *La justice et ses écritures: Pratiques d'enregistrement à l'époque ottomane*, in *Revue de l'Institut des Belles Lettres Arabes (IBLA)* 74, 208 (2011–2012): 119–227; D. Ze'evi, "The Use of Ottoman Sharî'a Court Records as a Source for Middle Eastern Social History: A Reappraisal," *ILS* 5, 1 (1998): 35–56.

official activities. These inventories, and more broadly speaking the documentary traces, are part of wider procedures that call out for interpretation. These records are not, as some historians who have focused on the wealth of the period have thought, simple reports of the estates of individuals who died at a particular moment. Nor are they limited to records of unclaimed estates repossessed by the state. Reading these records properly requires particular attention to the conditions and practical ends under which they were constituted as well as a reconstitution of the full procedures that they were a part of.

"That which was found." The provenance of assets features prominently in many of the probate inventories in Bayt al-mâl ledgers. The place in question was often the residence of the deceased—a house, bedroom, *fondouk*, or *hammam*. Sometimes a bag or chest contained the deceased's personal belongings or even simply his or her body—"what he was carrying on his person." The notice describing the location of objects gives an indication of the procedure that presided over the inventory. Notaries who had rushed to the site noted the exact nature, size, and condition of the objects before appraisers estimated their value, after which they were carted away. As was common practice in eighteenth-century Cairo, seals were applied to the doors of the houses of the deceased.[38]

Bayt al-mâl officials conducted these acts as part of their oversight of the procedures of succession. According to an 1834 document by Hamdan Khudja, the Bayt al-mâl's oversight was systematic in that, when a parent died, family relatives had to call its agents before the burial and within a few hours of death.[39] But such legal steps—including the involvement of notaries, asset seizures, and the creation of inventories—applied only in cases where the property had no known heir. Many of the inventories transcribed in the ledgers initially resulted from these steps. The inventories themselves were then altered to reflect additions and supplemental information, including assets located subsequently or references to sales of less valuable goods. But, more generally, the ledgers are filled with a myriad of attestations. This is the result of processes that may have been drawn out but are not documented. An attestation could also sanction the end of a trial or confirm conflicts, deals, and recognition processes. These threads had to be followed "upstream" to reconstruct the movement and different stages beyond the initial procedure, which was thus prolonged.

But for now, let us more closely examine the situations covered by the procedures just described. Although we have made reference to occasional missing

[38] Comte Estève, "Mémoire sur les Finances de l'Égypte," in *Description de l'Égypte*, État moderne, vol. 1 (Paris: 1809), 367.

[39] Hamdan Khodja, *Le Miroir: Aperçu historique et statistique sur la Régence d'Alger* (Paris: Sindbad, 1985 [1833]), 116. This verification was also noted by French authorities who had also observed the practice, "Rapport sur le beït el-mal," Algiers, 6 Aug. 1836, Archives Nationales D'outre-Mer, Aix-En-Provence (henceforth FR ANOM), F80/1082.

heirs, the ledgers are more specific. The incipits repeatedly refer to "the inheritances of deceased persons who left no heirs or with absent or captive heirs."[40] It is not, therefore, a question of estates lacking heirs, which would have confirmed in part the image given by previous historical scholarship. If the Bayt al-mâldji was indeed the "administrator of the inheritances of the state" (*nâdhir al-mawârith al-makhzaniya*), he intervened in a far broader variety of situations when property transfers could not take place. In such cases, the institution played a conservation role. More concretely, assets were stored in chests pending the deposition of claims by authorized parties, in some cases over long periods. The analysis of one chest showed that it was "preserved" for over twenty-five years. "Conservation" only partly encompasses the semantic scope of the word the records use to describe this function: *hifdh*. The word's legal meaning extends beyond simply holding or conserving to include "maintaining in its original state," and "to safeguard it."[41] Another verb, *dhabata*, is also used to describe the Bayt al-mâl's activities as ensuring an orderly conservation process.[42]

Thus a whole new configuration arises in which the property of the "heirless" individuals is not all that is at stake. More specifically, behind this terminology lay a range of degrees of absence from temporary to permanent, or somewhere in between, and thus the property in question required protection and conservation. And it was above all the vulnerability of these phantom-like potential claimants that necessitated protection, which was ultimately tantamount to guardianship. In many cases, the Bayt al-mâl represented those who were absent when estates were divided, functioning as their substitute by defending their rights against rival claimants, recognizing them, and rendering what was owed them when they finally presented themselves.

The rights of the absent were therefore at the core of the procedure that followed upon the seizure of assets. This procedure, such as it reveals itself to be, explains the seizure of assets and also makes explicit the reason why inventories were so meticulously consigned in writing: to *authenticate* their reality. The procedure also took other forms that went beyond merely supporting or guaranteeing absent successors' rights, including conducting inquests, initiating legal searches, and locating and informing heirs. This could involve a series of actions at the provincial level, including explaining rights, circulating information, and contacting legal authorities in other cities (scattered but multiple archival traces document these procedures). What is striking

[40] At the beginning of the *qa'ada al-harâm* in the year 1200 (1786), FR ANOM, 15mi1, ledger 2. In a ledger created twenty years later, the term employed is *al-manqurîn* (those without heirs), FR ANOM, 15mi2, ledger 5.

[41] E. Tyan, "La condition juridique de 'l'absent' (*mafkûd*) en droit musulman, particulièrement dans le Madhab hanafite," *Studia Islamica* 31 (1970): 249–56.

[42] M. Beaussier, *Dictionnaire pratique arabe-français* (Algiers: Bouyer, 1871), "dhabata," FR ANOM, 15mi1, ledger 1, 164.

about these legal steps is that they reveal latitude that Bayt al-mâl agents apparently enjoyed in activating networks that transcended the geographical boundaries of the city or the province in order to deal with issues arising from people's geographical mobility and the significant distances that could separate potential heirs from estates. By overcoming the problems raised by mobility and distance, the institution indiscriminately recognized the right to transmit an estate to individuals who died in the city. The absent—whether known or unknown, temporarily absent or not, living outside the city or outside the province—formed a continuum sharing fundamental rights. This is why the dead whose assets the Bayt al-mâl took care of were not exclusively urban residents whose heirs were temporarily absent, and in fact most were people passing through or working temporarily in the city, with families in the provinces or perhaps further away.

Such cases are quite remote from merely managing estates lacking heirs. This does not mean that cases of the latter did not arise, since the Bayt al-mâl was responsible for a significant body of wealth that was recovered from unclaimed estates (several ledgers are exclusively devoted to managing such estates). But when we reconstruct the activities of its officials from the ledgers, the Bayt al-mâl appears as a protector of assets, defending and providing active support of inheritance rights. Just where one would have expected the state to assert its rights, the institution's primary focus was the transmission of successions. Why was the Bayt al-mâl, an institution thought to be essentially involved in taking possession of estates without heirs, above all responsible for searching for uncertain inheritors and recovering their inheritances? How can one reconcile the appropriation of assets and property with these activities of investigating relationships, informing, transmitting, and redistributing in the name of heirs, activities that logically reduced what the state could logically claim as its due?

In reality, this opposition between heirs and the state was irrelevant to the operations of the institution. On the contrary, close observation of the ways in which the institution took control over assets with no clear succession demonstrates that the entire operation strictly followed the order of lineage. "Deceased leaving the Bayt al-mâl" (*al-mutawaffâ 'an Bayt al-mâl*); "His '*aṣab* is the Bayt al-mâl." These formulations are common in the inventories of individuals who died heirless ("*aṣab"* is a non-specific term meaning any agnatic or universal heir). The institution of the Bayt al-mâl therefore acted, in the name of the state, as an heir in the absence of legally recognized heirs. And in the case of vacant succession, the institution also acted as an heir in a very concrete context, namely burying the dead.

Among the important functions assigned to the Bayt al-mâl, one of the most central was burying the poor (*fuqarâ'*). This has helped fuel the perception that it was primarily a religious institution. It has even been interpreted as reflecting the inability of Islamized societies to allow the political and religious

domains to operate independently of each other.[43] However, it is now possible to restore this funereal role to the Bayt al-mâl's original function, as part of its responsibilities as a legal heir. Like an heir, the Bayt al-mâl shared costs associated with burials. The costs of burial shrouds were deducted from the institution's accounts, as were the costs of preparing the deceased for burial, transporting bodies, and maintaining cemeteries. The institution exercised these functions only for deceased individuals whose estates were either temporarily or permanently blocked from succession because of an absence of legal inheritors. It is also clear that poverty was not simply a reflection of an economic situation but was primarily a social condition. The "poor of the Bayt al-mâl" were not merely the wretched and the underprivileged; they were those who found themselves lacking heirs who could inherit their estates and whose mortal remains and estate were therefore under the institution's guarantee. In this context, the language of poverty points to a form of social stratification defined more by an individual's lack of social bonds than by the absence of wealth.

The taking of assets by the Bayt al-mâl was consistent with its role as a default heir. The Bayt al-mâl was therefore fully part of the lineage of legal claimants that would inherit within familial configurations of succession. But what were those configurations?

The identification of an "Islamic" family configuration by colonial jurists that referred only to inheritance law (both complex and specific) is the result of the creation, in the latter half of the nineteenth century, of a "Muslim law" that encoded primacy as a form of devolution and condemned other equally legal forms of devolution.[44] Before colonization, however, there were many possible modalities of transmission; according to David S. Powers, other legal pathways allowed the creation of a wide or potentially unlimited variety of family configurations.[45] The legacy that could amount to one-third of the estate, or even post mortem debts, which could be unlimited, constituted alternative ways of designating the transmission of estates and formalizing kinship bonds constructed by a common inheritance.[46] And within this legal apparatus, the *waqfs* or *habous*

[43] Regarding ideological aspects, constructions, and possible alternatives, see J. Dakhlia, *Le divan des rois: Le politique et le religieux dans l'islam* (Paris: Aubier, 1998); and M. Abbès, *Islam et politique à l'âge classique* (Paris: Presses Universitaires de France, 2009).

[44] D. Powers, "Orientalism, Colonialism, and Legal History: The Attack on Muslim Family Endowments in Algeria and India," *Comparative Studies in Society and History* 31, 3 (1989): 535–71. See also L. Buskens and B. Dupret, "L'invention du droit musulman: Genèse et diffusion du positivisme juridique dans le contexte normatif islamique," in F. Pouillon and J.-C. Vatin, eds., *L'Orient créé par l'Orient* (Paris: Karthala, 2011), 71–92.

[45] Powers, "Orientalism."

[46] P. Ghazaleh, "Heirs and Debtors: Blood Relatives, Qur'anic Heirs, and Business Associates in Cairo, 1800–1850," in N. Hanna and R. Abbas, eds., *Society and Economy in Egypt and the Eastern Mediterranean 1600–1900, in Honour of André Raymond* (Syracuse: Syracuse University Press, 2005), 143–58.

were the most powerful way of constituting the claims of stakeholders, whose configuration depended entirely on the founder of the kinship group. This form of devolution, which was also capable of transcending blood ties, gave rise to "chosen families."[47]

The Bayt al-mâl recognized and guaranteed each of these methods of estate transferal as well as the bonds that they created under the law. In lieu of legal heirs who were absent or nonexistent, the institution honored inheritance and debts. The Bayt al-mâl confirmed the transmission as established by the constitution of *waqfs*, which proceeded from the protection of lineage founded and sustained through inheritance rights. In fact, this was the institution's principal function: ensuring that succession rights were not only guaranteed and protected but were attributed properly to those who could legitimately inherit.

The Bayt al-mâl was the heir of individuals left without heirs (and therefore incapable of extending their lineage). This explains, at least in theory, the care with which the institution's officials saw to successions and the duties surrounding them, which ranged from burying heirless individuals to managing and maintaining properties whose succession remained uncertain. The right to inherit constructed lineage just as the right to inherit constructed the capacity of the Bayt al-mâl—the state, that is—to represent the community. The conflict, if it can be called that, did not involve the claimants to an inheritance and the state, but rather revolved around the state's ability to ensure that its role as heir (as the representative of the community) would be recognized against rival claims, which could be tribal or village-based, involving claims to legitimacy as "heirs" in lieu of the Bayt al-mâl.[48] The community represented by the institution was clearly less religious than political, and sources refer explicitly to the *makhzen* or provincial administration.

Why was the Bayt al-mâl so prominently involved in these matters, and why did the institution grant such importance to lineage? The answers to these questions appear to be reflected in the negative by the terms used to describe individuals without heirs, who were labeled "poor"; their poverty was associated with a lack of social bonds as evidenced by the fact that they had no heirs. But the ledgers also use another term to define the condition of those who were dead without heirs: the word associated with the acts of burials, purchasing burial shrouds, and the fees for transporting bodies to cemeteries was *gharib*, or "foreigner."

In modern times, and seemingly throughout the Ottoman Empire, the term *gharib* was specific to the Bayt al-mâl and it appears only in records related to successions in Algiers, Constantinople, and the neighboring province of Tunis.

[47] P. Ghazaleh, ed., *Held in Trust: Waqf in the Islamic World* (Cairo: American University in Cairo Press, 2011), 9.

[48] The source documents contain a few eloquent traces of such rival claims.

Despite the actual meaning of the term, there has been a tendency to see the *gharib* as the poorest of the poor, the most miserable of the miserable, and a suitable target for the charitable activities attributed to the institution. This was all the more true because the *gharib* was not necessarily foreign to the city.[49] The misery that characterizes the *gharib* in this context, however, lies in the impossibility of knowing them (sometimes even their name was not known), or of knowing to whom they were related, and finally the fact that they were deprived of successors—heirs—to bury them. This is what led the Bayt al-mâl to become responsible for the burials of those thus designated as "foreigners."

The context that the reading of the source documents has brought to light reveals the significance of inheritance rights in the political community and the importance that the Bayt al-mâl granted to the implementation of those rights. These rights defined communal belonging or, in the case of the inability to transfer one's property, identity as a foreigner.

TWO INSTITUTIONS, THE SAME CONFIGURATION, DIFFERENT ARRANGEMENTS

Having presented our parallel analyses, let us now return to our original argument. If sources are "contextualizations," then what are the contexts described by the sources regarding the *droit d'aubaine* and the Bayt al-mâl? Our first observation is that we must question the dominant historiographical traditions, in both cases, that portray the state as holding an essentially repressive role consisting of persistent control and taxation of individual wealth. Such violent acts did sometimes take place as did asset seizures. But a situated interpretation of the sources has helped to identify the actual actors involved in the *droit d'aubaine* and the Bayt al-mâl and to specify their expectations. This, in turn, allows us to formulate a new interpretive framework.

Both cases entail the construction of configurations whose elements involve networks of kinship, transfer, and belonging or foreignness (to a territory or a group). In both situations, institutions were designated to deal with problems and respond to similar social demands: the need to impose order on unclear inheritances and thus to protect lineages (which are shaped by the transfer of assets); the need for institutions to serve as substitutes in cases of intestacy by recovering debts, paying off creditors, and distributing bequests; and finally, the need to protect the rights of absent or "unknown" heirs to an estate. In both our cases, such activities were undertaken through a consensus about the defining characteristics of the "foreigners" with whom these

[49] Abdehamid Larguèche, *Les Ombres de la ville: Pauvres, marginaux et minoritaires à Tunis (XVIII^e^ et XIX^e^ siècles)* (Tunis: Centre de publication universitaire, 1999); Abdalwahad al-Muknî, "Al-madîna wa-l-ghurabâ' fi al-'ahd al-'uthmânî. Mithâl Sfaqs fî al-qarn al-tâsi' 'ashar," *Revue d'histoire Maghrébine* (Zaghouan), 337–52.

institutions dealt—namely, the fact that they were not inscribed within an inheritance lineage.

The actions taken by the agents of the *aubaine* in the king's name thus enabled them to take possession of heirless legacies not as a father (as the traditional image of the king might suggest), but rather as a son, or better yet, as an heir who could carry on the estate. The same function was explicitly formulated for the Bayt al-mâl, whose right to appropriate the estates of deceased persons lacking heirs was legitimized by its role as *'asab*, or universal heir, which it assumed in relation to the deceased.

The activities of both institutions provide persuasive evidence that, in both cases, the power of the state resulted directly from its ability to compensate for weak ancestral lineages and sovereignty was shaped by the configuration of lineages.[50] The study also shows that the transfer of wealth ultimately structured categories of belonging.

What can comparison achieve in such fields of inquiry? First, it brings into question the nature, and therefore the origins, of these institutions. With regard to the *droit d'aubaine*, comparison leads us to question one of the foundational historiographical tenets of the institution, namely its seigniorial origins. As mentioned earlier, historians of the *droit d'aubaine* unanimously recognized in it an echo of the right that feudal lords enjoyed to seize the properties of individuals who died on their territories but who were not subject to their jurisdiction. This implied a continuous conception of sovereignty from the Middle Ages to the early modern period, and additionally served as a basis of its legitimacy. Similarly, our work of comparison has called into question the dominant historiographical interpretation linking the Bayt al-mâl to classical Islamic genealogy, as well as the articulation between provincial entities and imperial construction within the Ottoman context. Quite clearly, comparing the activities of *droit d'aubaine* and the Bayt al-mâl makes self-reproducing genealogies problematic. It also leads us to further question the conditions for exchange and the communication of institutional experiences within a relatively restricted geographical area.

A second common point that this comparison has revealed between the two institutions is the fragility of property ownership in these early modern societies. Property ownership arises from a multiplicity of coexisting, legitimate mechanisms of appropriation, ranging from property titles to the possession, use, and familiarity with an object. We have seen in the case of the *aubaine* how this fragility accounted for some of the institution's operating methods, among them how quickly its agents intervened, the printing and posting of public bans, and the measures taken to stabilize the status of properties (seals, inventories, etc.). Although for the Bayt al-mâl there are no

[50] Along the same lines of Sarah Hanley: "Engendering the State: Family Formation and State Building in Early Modern France," *French Historical Studies* 16, 1 (1989): 4–27.

records allowing us to precisely reconstitute how the procedure unfolded, several elements suggest that similar precautions were taken to protect the ownership of assets belonging to those "without heirs." These included a shared eagerness to establish inventories and to seal house doors. A number of other sources also attest that in early modern North African societies the fragility of property ownership was related to multiple modes of appropriation.[51] The institutions of the *aubaine* and the Bayt al-mâl were required to deal with the vulnerability of assets and of their owners' status. These two institutions protected properties awaiting legitimate heirs. This is a crucial point because kinship lines were shaped by the transmission of goods across generations. Protecting property thus meant protecting the family and kinship.

Finally, our comparison brings to light another set of fascinating features. In both cases, a relationship was established between being put into a line of succession and becoming entitled to the rights of belonging. Conversely, foreignness was associated with being excluded from that line of succession and failing to achieve integration into a group. In the same manner, poverty was viewed primarily as a failure of social integration rather than as a state of material deprivation.

This convergence is not apparent at first glance. The *droit d'aubaine* formally underscores the status of foreigners. Yet the contextual meaning of the *droit d'aubaine* is surprising: by focusing on the question of transmission, its procedures define a foreigner as a person who cannot transmit an inheritance. By contrast, the documentation of the Bayt al-mâl is formally centered on the transfer of inheritance. The institution labeled "those with no family" as "poor" and/or "foreign." In both cases, a "foreigner" is essentially defined as someone who has no heirs. Individuals who moved around a lot and/or hailed from other cities or lands were often in this position. But in both cases the category "foreign" included all those unable to transfer ownership of their property. In both of the cases that we have examined, the words used to designate those who shared this social condition were the same: they are "foreigners" or "the poor."

This striking similarity merits further consideration. The historians who have studied these two institutions have failed to see the many links that

[51] See, for example, F. Arin, "Essai sur les démembrements de la propriété foncière en droit musulman," *Revue du Monde Musulmane* 26 (1914): 277–317; J. Abribat, "Essai sur les contrats de quasi-aliénation et de location perpétuelle auxquels l'institution du habous a donné naissance," *Revue tunisienne et marocaine de législation et jurisprudence* 17 (1901): 121–51. For Ottoman Cairo, see P. Ghazaleh, *Fortunes urbaines et stratégies sociales. Généalogies patrimoniales au Caire 1780–1830* (Cairo: Institut d'archéologie oriental, 2010), esp. 371 et seq. Ottoman Tunis: Abdelhamid Henia, *Propriété et stratégies sociales à Tunis (XVI^{ème}–XIX^{ème} siècles)* (Tunis, Publications de la Fac. Des Sciences humaines et sociales de Tunis, 1999). Medieval Tunis: Jean-Pierre Van Staevel, *Droit mâlikite et habitant à Tunis au XIV° siècle: Conflits de voisinage et normes juridiques d'après le texte du maître-maçon Ibn al-Râmî* (Cairo: Institut français d'archéologie oriental [IFAO], 2008).

existed between these different social categories. In the historical scholarship on North Africa, the care provided by the Bayt al-mâl to *gharib*-s has been seen as merely charitable work on behalf of the poor. Due to this, the word *gharib*—which designated foreigners—came to be conflated with the poor, and the Bayt al-mâl's sphere of action was seen as confined to caring for the poor. This shift caused foreigners to disappear from the institution's sphere of action. Therefore, in the critical domain of political community and the rights associated with belonging, an entire sphere of the institution's prerogatives was erased, and the Bayt al-mâl was reduced to a charity. Our reading of source documents, however, has enabled us to identify how these two figures were articulated: the *gharib*'s "poverty" was essentially that of individuals who had no heirs and who therefore did not belong to any lineage. In these societies, the conception of poverty therefore involved not only a lack of wealth but also a lack of social bonds.

In European historical scholarship, in the early modern period a foreigner was typically defined as an individual "coming from elsewhere," which has made territory the main criterion of belonging (and made the state the guarantor of belonging). However, recent research has revealed that the language of naturalness and of citizenship was comprised of not only notions of origins but also social inclusion and belonging. "Foreigners" were individuals who had no relatives and therefore had weak social ties; they were therefore not entitled to the specific rights and resources of a particular place. This definition of foreignness—as social isolation and exclusion from certain rights—was the reason sources conflated "foreigners" and "the poor."[52] A "poor person" was someone who had "little [of something]" and this lack was to a greater extent social rather than material.[53] The poor and foreigners thus shared the same plight, nowhere more visible than in the absence of an heir. The *aubaine* took care of "foreigners," that is, those who were "poor" in family relatives or lineage. Anachronistic readings have mistakenly transformed these "foreigners" into a group of outsiders.

There is clearly a great proximity in these two cases between the elements that constitute belonging and foreignness and those that cement social hierarchies. In these societies, different as they were in institutional structures and family organization, lineage or the lack thereof defined the condition of "foreigners" and "the poor."

These striking similarities do not mean there were no differences between the *aubaine* and the Bayt al-mâl. One major one is particularly significant, and relates to the Bayt al-mâl's responsibility for burying the poor, which was not

[52] Simona Cerutti, *Étrangers: Etude d'une condition d'incertitude dans une société d'Ancien Régime* (Paris: Bayard, 2012).

[53] See, in particular, Giacomo Todeschini, *Visibilmente crudeli: Malviventi, persone sospette e gente qualunque dal Medioevo all'età moderna* (Bologna: Il Mulino 2007), 205 et seq.

shared by the officials responsible for enforcing the *droit d'aubaine*. It would be easy to interpret this difference in terms of "cultural specificity" with a religious undertone. But doing so would lead us back to the tenets of irreducibility.

Does this specific activity confirm that the Bayt al-mâl is in fact a religious institution? That is what historical scholarship has suggested by linking charity work toward the poor with the functions of a religious institution. Does this amount to a conflict between secular (Western) and religious (Islamic) institutions? That interpretation is inadequate if one accepts our analysis of the "poor" of the Bayt al-mâl (those without heirs) and this institution's actions as a default heir. The responsibility for burying the dead was, in fact, one of the first tasks assigned to universal heirs, along with reimbursing creditors and distributing bequests. By burying the dead, the Bayt al-mâl was thus not acting out of charity, but rather fulfilling its role as an heir.

Given that the range of tasks for which *aubaine* authorities were responsible was essentially identical to those of the Bayt al-mâl, why was burial not among its formal functions? Why did the institution not fully accomplish its role as universal heir?

The fate of dead "foreigners" found in *aubaine* ledgers was not the institution's responsibility but rather that of the parish where the death occurred. Overseeing passage into the afterlife was among the responsibilities of the Church and other religious institutions such as the brotherhoods. This is another instance of the division of labor between religious and secular jurisdictions that was a source of conflicts and struggles throughout the history of the Christian West. The division led to a conflation between the religious and the ecclesiastical spheres, as well as a separation of the religious sphere from every other aspect of social life. As a result, our traditional views have to be overturned—it was not because burying the poor was a religious activity that it had to be carried out by the Church or its institutions; instead, it was because the Church buried the poor that burial was perceived as charitable, religious work. The lengthy and difficult process through which the Church constructed its jurisdiction has thus been taken for granted, as reflecting a "natural" separation between the religious and the civil spheres.[54] In reality, that the *aubaine* did not care for the poor was related less to its intrinsically secular character than to the division of labor between religious and secular institutions. This tendency to conflate matters relating to death and the afterlife and charity with the Church or related institutions also produced a biased

[54] This has given rise to a certain number of anachronistic and myopic interpretations on the part of historians, one good example being the separation in wills of data concerning a pious bequest and instructions for burials from data regarding the transmission of assets. For a critique of this approach followed by Michel Vovelle (in *Piété baroque et déchristianisation en Provence au XVIII^e siècle: Les attitudes devant la mort d'après les clauses de testaments* [Paris: Seuil, 1978]), see Angelo Torre, *Il consumo di devozioni: Religione e comunità nelle campagne dell'ancien régime* (Venice: Marsiglio, 1995), p. 3.

reading, tainted by Orientalism, of the Bayt al-mâl. The Bayt al-mâl buried the dead, but that did not make it a religious institution. Conflating charity and religion is blatantly ethnocentric yet anachronistic: it arises from the efforts by French colonial administrators to disqualify Algerian institutions by denying their political status and reducing them to manifestations of religion, beliefs, and faith. Thus we cannot understand the differences between these two institutions as primarily due to cultural differences, and instead the differences give us tools for understanding the contingent, historical dimensions of their respective activities.

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Recent studies of the Mediterranean region have focused on reconstituting trading practices (concerning merchandise, men, and captives), and identifying agents (merchants, diplomats, slaves, or prisoners), because communications and the intermingling of populations built bridges between worlds that were otherwise different in every respect (religiously, politically, etc.). Comparing different geographical areas could be done not only outside of, but in fact, *in spite of* "irreducible" institutional distance. Our analysis here, by making central institutions the subject of comparison, has been based precisely on these "irreducible" points. This has allowed us to reconstruct the conditions, forms, and modalities of comparison. It has also exposed what was at stake in diplomatic relationships between certain agencies, such as foreign consuls and the Bayt al-mâl or *aubaine* officials, regarding the assets of absent individuals.[55]

In this sense, our comparative project, which may also be read as a contribution to the history of circulation, has a broader aim. We seek to reverse the received perspective that envisions contact as a necessary condition for a relevant comparison. A highly detailed comparison that scrupulously respects contextual specificities makes possible an understanding of the *conditions* of circulation and contact. Similarities between the activities of the Bayt al-mâl and the *aubaine* were not simply the product of interactions arising from diplomatic encounters; these institutions and the individuals who used them had similar preoccupations, configured in comparable ways, regarding succession and its connection to kinship. The terms "the poor," "foreigner," "property rights," and "lineage" all had similar meanings and implications. The failure to recognize this represents a significant blind spot in previous historical scholarship, which has cast the Bayt al-mâl as merely an agency for managing heirless assets and the *aubaine* as simply a mechanism for punishing foreigners. This closeness between the two institutions is what made possible the interweaving of such thick relations within this space in the modern period.

[55] We thank Natividad Planas for calling attention to some of these sources.

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These results stem from an approach that proceeds against the mainstream, classical current of comparative study. As we have pointed out, such studies often follow the path of an "etic" analysis, that is, one based on categories defined by the researcher *in order to* overcome local specificities. Here, we have instead been attentive to the actual actors' actions, which are transcribed *in* and are produced *by* the sources, constituting a resolutely "emic" comparative approach.[56] In our approach, comparisons are grounded in the practices, interactions, and procedures of legitimization and of meaning attribution, in action. Applied to institutions, such as the *aubaine* and the Bayt al-mâl, this pragmatist approach shows how their activities are the results of tensions between the demands expressed by different social groups and the logics of governance, consensus, and corporation defense that are likely to define their physiognomies. In sum, this pragmatist approach paves the way for procedural and generative analysis of state formations, precisely where we have sited the present comparison.[57]

One final point: while communication as a paradigm tends to assert itself at the expense of, or in spite of, local specificities and contexts, our analysis was developed not by abstracting local specificities but instead by taking them seriously into account, deriving our interpretation from the sources themselves and inscribing them within the processes that produced them. The "contextualization" offered by each source is that of a configuration, whose individual components retain their specificity. Specificities should not be considered impediments to comparison. The ones our research has illuminated cannot be explained as irreducible alterity; they were the results of different responses to comparable situations. We should not be put off by either differences or specificities, and in fact they can, and must, constitute the foundation of the exercise in communication that is comparison.

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[56] While the debate about emic/etic is rich in the anthropological field, historians seem more reluctant concerning the issue. Carlo Ginzburg is a remarkable example; see in particular "Our Words, and Theirs: A Reflection on the Historian's Craft, Today," in Susanna Fellman and Marjatta Rahikainen, eds., *Historical Knowledge: In Quest of Theory, Method and Evidence* (Cambridge: Cambridge Scholars Publishing, 2012), 97–119. For an approach linking emic and pragmatic perspectives, see Simona Cerutti, "Microhistory: Social Relations versus Cultural Models?" in A. M. Castrén, M. Lonkila, and M. Peltonen, eds., *Between Sociology and History: Essays on Microhistory, Collective Action, and Nation-Building* (Helsinki: S.K.S., 2004), 17–40.

[57] The classical reference is Fredrik Barth, *Process and Form in Social Life: Selected Essays*, vol. 1 (London: Routledge & Kegan Paul, 1981). For a pragmatist approach to institutions, see Luca Giana and Vittorio Tigrino, eds., "Istituzioni," special issue of *Quaderni Storici* 139 (2012).

Abstract: Our collaborative project originates in an attempt to articulate the intrinsic specificity of cases and contexts within a resolutely comparative approach. We focus particularly on what we believe to be the major limitation of comparison, namely the supposed need to rigidify the objects of comparison, to detach them from their contingent specificities and reduce cases to a set of data homogeneous enough to be compared. Our intent is to start a critical discussion regarding the hypothetical need to let go of specificity as the condition of comparison. With this in mind, we propose a comparative approach focused on sources rather than objects, and we consider them in terms of actions endowed with intentionality. The present study compares two institutions: the *droit d'aubaine*, and the Bayt al-mâl or Treasury, a traditional Islamic fiscal institution found in a number of Ottoman-era governments, whose prerogatives have typically been reduced to managing heirless estates and burying the poor. In theory, the *aubaine* and the Bayt al-mâl belong to distinct cultural and historical realms. Yet, as we demonstrate here, a careful analysis of the sources produced by each institution helps unpack these "cultural" constructions, produces new contexts in which both can be situated, and sheds light on the process of their construction and their amenability to comparison.