Adoption, acknowledgement of paternity and false genealogical claims in Arabian and Islamic societies[1]

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The common view of adoption in pre-Islamic times is that it was widespread, that adoptees were the legal equals of biological sons, and that the institution was abolished with the advent of Islam. In the first part of this study I question the first two of these views. In the second part I argue that adoption, acknowledgement of paternity and false genealogical claims are three distinct practices, although scholars often confuse one with another. I explain the differences between them, and identify the sources of the confusion. Finally, I briefly mention Islamic alternatives to adoption.

I. *Adoption*

Islamic law prohibits adoption *(tabannī*), and the classical law books do not in fact discuss it. When mentioned in the sources, *tabannī* is defined as the act whereby one person takes another as a son (*ittakhadhahu ibnan/waladan*). Muslim scholars are unanimous in basing the prohibition of this practice on Quran 33:4–5 and relating it to Zayd b. Ḥāritha, the adopted son of the Prophet. The story is constantly repeated in the sources, almost without variation: Zayd, who belonged to the Kalb tribe, had fallen captive in pre-Islamic times and was sold into slavery in Mecca, where he eventually came to be owned by the Prophet. Years later his father and uncle came to buy him free, but he refused to be freed and return to his family, choosing instead slavery and the company of the Prophet. The Prophet then manumitted him and formally adopted him, declaring at the Ka'ba, '[O people], witness that Zayd is my son, he will inherit from me and I shall inherit from him'. Zayd was given in marriage the Prophet's cousin, Zaynab b. Jaḥsh, whom he later divorced so that the Prophet could marry her.[2] Muḥammad was criticized for marrying a woman who had been divorced by his own son, an act that had been prohibited by Quran 4:23. In response to this criticism Quran 33:37–40 and 33:4–5 were revealed, justifying the Prophet. The former group of verses asserts the legality of Muḥammad's marriage. Among other things it is stated (verse 40) that the Prophet had no male offspring (so that Zaynab was not the ex-wife of his son). The latter group of verses proclaims that adopted sons are not real sons; the conclusion to be derived from these verses is that Muḥammad's marriage to Zayd's ex-wife did not breach the quranic prohibition. Believers are urged to trace the pedigrees of their adopted sons back to their biological fathers (33:5).[3]

[1] I would like to thank my colleague Frank Stewart for his valuable comments and suggestions.

[2] Jaḥsh, Zaynab's father, was an ally of Quraysh and lived in Mecca. He married Umayma, daughter of 'Abd al-Muṭṭalib and aunt of the Prophet. See Ibn Ḥabīb, *Munammaq*, p. 357.

[3] This story always appears in the exegesis to the verses mentioned here, and is also to be found in historical, biographical and *ḥadīth* literature. The classical law books, where they mention adoption at all, always do so in connection with the question of permissible marriage inherent in this story. See e.g. al-Ṭabarī, *Tafsīr* 4/323, 21/120, 22/14; al-Ṭabarī, *Biographies*, pp. 9, 26, 180–82 (note 116 on p. 26 should be ignored); al Qurṭubī, *Tafsīr* 14/117–20; Ibn Kathīr, *Tafsīr* 3/466–7, 493; al-Shawkānī, *Fatḥ al-qadīr* 1/446; al-Bayḍāwī, *Tafsīr* 4/363; Ibn Ḥajar al-'Asqalānī, *Fatḥ al-bārī* 8/517–24, 12/55; al-Bayhaqī, *Al-sunan al-kubrā* 7/161; al-Suyūṭī, *Al-durr al-manthūr* 6/561–64; al-Suyūṭī, *Lubāb al-nuqūl* 1/66. See also Santillana, *Istituzioni* 1/196, 239; Juynboll,

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This event from the Prophet's life served Muslim jurists as an explanation of the rule laid down in Quran 33:5, which was construed as the prohibition of adoption. The story also serves modern scholars as a source of information on a pre-Islamic practice. It is often argued that Zayd, the Prophet's adopted son, must have been considered to be the equal of a true son; were it not so, the Prophet would not have been criticized for breaching the incest taboo mentioned in Quran 4:23. Thus modern scholars usually infer from this story that adopted sons were the legal equals of biological sons. Indeed, the sources occasionally state that such equality existed. Sometimes the statement is general, i.e. 'they treated them like sons in every respect'.[4] On other occasions specific points are mentioned, usually that: (a) the adoptee used the name of the adoptive father as a patronyn (*da'āhu al-nās ilayhi*); and (b) he inherited from him (*waratha min mīrāthihi*).[5] As a rule, such statements do not indicate who inherited from whom, but the story of the Prophet and Zayd suggests that inheritance was reciprocal (for the Prophet said 'he will inherit from me and I shall inherit from him'). It is also worth noting that blood revenge and mutual liability are not mentioned in connection with adoption.[6] It could be argued that such matters were self-evident and they were therefore not mentioned explicitly. This explanation is, however, unsatisfactory, because inheritance is also self-evident, yet it is mentioned explicitly.

Specific evidence concerning adoption is in fact sparse. Apart from the public announcement made by the Prophet when he adopted Zayd, hardly any data are to be found about the circumstances, formal implementation, and legal implications of adoption. The procedure by which it was carried out is also not discussed in the sources that I have read. It is mentioned in passing that no oaths were required when announcing adoption, contrary to the practice prevailing in the formation of alliances.[7] There is no specific evidence of inheritance as a consequence of adoption—such as, for instance, reports of litigations between real and adopted sons of a deceased person.[8] There is, however, clear documentation of the use of patronyms. Explaining Quran 33:5, 'call them by the patronyms taken from their (true) fathers' (*ud'ūhum li-ābā'ihim*), Muslim commentators state that adopted sons had taken their patronyms from their adoptive fathers until this verse was revealed. It is reported that Zayd was always called 'Zayd b. Muḥammad', and a1-Miqdād's name was 'son of al-Aswad', after al-Aswad b. 'Abd Yāghūth who had adopted him, and so on; after this verse was revealed, the adoptees resumed the patronyms taken from their biological fathers: Zayd b. Ḥāritha, al-Miqdād

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Handbuch p. 187; Zaydān, *Al-mufaṣṣal*, 9/437–8, (also on the wisdom of this rule and of the Prophet's marriage to Zaynab). For the definition of *tabannā* in the lexica see Ibn Manẓūr, *Lisān* e.g. 14/91, 261, see also the references in note 5.

[4] Ibn Kathīr, *Tafsīr* 3/467; in the same vein al-Ālūsī, *Rūḥ al-ma'ānī* 21/14. For such statements in modern literature see Goldziher, *Muslim studies* 1/127, n. 5; Levy, *Social structure*, p. 147; Smith, *Kinship and marriage*, p. 52; Santillana, *Istituzioni* 1/193, 241; Juynboll, *Handbuch* p. 187; Huart, *Histoire* 1/15; Arazi, 'Les enfants', p. 6; Shalabī, *Aḥkām*, pp. 703–704; Zaydān, *Al-mufaṣṣal* 9/437; Naqvi, 'Adoption', p. 285. Al-Azhary Sonbol, 'Adoption' pp. 57–58 notes that there is no real basis for this conclusion.

[5] *Wa-kāna man tabannā rajulan fī al-jāhiliyya da'āhu al-nās ilayhi wa-waritha mīrāthahu*, al-Suyūṭī, *Al-durr al-manthūr* 6/563; al-Bukhārī, *Saḥīḥ* 3/64, 417; Ibn Ḥajar al-'Asqalānī, *Fatḥ al-bārī* 8/517; Ibn 'Abd al-Barr, *Tamhīd* 8/270; al-Zurqānī, *Sharḥ al-Zurqānī* 3/314. Ibn Kathīr, *Tafsīr* 3/467, makes an additional point, namely, the rules of relationships with the women of the family (*al-khalwa bi-l-maḥārim*). These statements are typically made in connection with Quran 33:5 (*d'ūhum li-ābā'ihim*) and the story of Zayd b. Ḥāritha,

[6] This matter is emphasized in alliances, see Landau-Tasseron, 'Alliances among the Arabs'.

[7] Al-Ḥanafī, *Mu'taṣar al-mukhtaṣar* 2/295. For the sources used to prepare this article see note 12.

[8] Inheritance by alliance is also hard to prove, except by general statements, see Landau-Tasseron, 'Alliances among the Arabs'.

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b. 'Amr, etc.[9] This explanation could have been taken as having evolved from the verse ('call them by the patronyms taken from their [true] fathers'), reflecting no real circumstances. Ironically, the fact that the latter half of the explanation is inaccurate vindicates its first half. In other words, contrary to the latter half of the explanation, not all the adoptees reverted to their original names, which of course proves that they did indeed assume the patronyms taken from their adoptive fathers. Al-Miqdād, for example, continued to be known as the son of al-Aswad (his adoptive father) in spite of the quranic verse condemning the practice.[10] Moreover, an adoptee, or his descendants, sometimes retained the patronym taken from the adoptive father while reinstating close relations with his original agnatic group. For example, it is recorded that Junāda and Jābir, sons of Sufyān b. Ma'mar of the Qurayshī section Jumaḥ, lived in Medina with 'their people' (*qawm*) Banū Zurayq of the Anṣār. This leaves the reader somewhat puzzled: how can Banū Zurayq of the Anṣār be the *qawm* of the sons of the Jumaḥī/Qurayshi Sufyān b. Ma'mar? Further investigation solves the puzzle: the sons of Sufyān did indeed originate from the Banū Zurayq; their father, Sufyān, was a Zurayqī, adopted by the Jumaḥī/Qurayshī Ma'mar. Sufyān's patronym, 'son of Ma'mar', was taken from his adoptive father.[11] Sufyān's sons continued to be known by the Jumaḥī pedigree of their adoptive grandfather Ma'mar, in spite of the quranic verse and in spite of the fact that they returned to live with their agnates.

If, indeed, adoptees were considered to be the legal equals of biological sons, then it could be expected that adoption was a powerful integrating factor and would result in the loss of the original identity of the adoptee, or at least of his descendants. The case of Junāda and Jābir cited above belies this expectation. It shows that the use of a patronym did not necessarily reflect integration, or equality, between adoptees and biological sons. There is further evidence that points in the same direction: notwithstanding the statement that adoption was a very common practice, the number of recorded adoptions is very small. The same few cases are repeated in thousands of books *of ḥadīth*, *fiqh*, *tafsīr*, *sīra*, and history, and the practice is not mentioned in poetry.[12] In all recorded cases adoption is associated with additional social ties. Every adoptee was also either a guest ally *(ḥalīf)*, or a freed man and a client (*mawlā*), of the adoptive father.[13] This fact sets the adoptees apart from the natural

[9] Ibn Ḥanbal, *Musnad* (1978) 2/77 (Zayd), 6/201 (SāIim); see also al-Suyūṭī, *Al-durr al-manthūr* 6/562; Ibn 'Asākir, *Ta'rīkh* 19/342, 25/216, 60/147; al-Nawawī, *Sharḥ al-Nawawī 'alā ṣaḥīḥ Muslim* 15/195; Ibn Ḥajar al-'Asqalānī, *Fatḥ al-bārī 12/55*, see also the references in notes 3 and 5. On Sālim see below note 114. For further discussion of the expression *da'āhu li/ilā* see below pp. 181–2.

[10] A1-Qurṭubī, *Tafsīr* 14/120; Ibn Baṭṭāl notes this fact and attempts to rationalize it, arguing that '[al-Miqdād] remained known by the patronym taken from his adoptive father by way of identification, it was not meant as a real pedigree' (*li-qaṣd al-ta'rīf lā li-qaṣd al-nasab al-ḥaqīqī*), see Ibn Ḥajar al-'Asqalānī, *Fatḥ al-bārī* 12/55. On al-Miqdād see also below, p. 173.

[11] Ibn 'Asākir, *Ta'rīkh* 22/471–72; Ibn 'Abd al-Barr, *Istī'āb* (Cairo) 2/139–40; Ibn Ḥajar al-'Asqalānī, *Iṣāba* (Cairo) *2/57.*

[12] The digital libraries which I used for preparing this article contain thousands of volumes (Al-Turāth, Center for Computer Research, Amman 1999: *AI-Maktaba al-Alfiyya*, *Maktabat al-Fiqh*, *Maktabat al-Tarīkh wa-l-Ḥadāra*, *al-Tafsīr wa-'ulūm al-Qur'ān*). The digital collection of poetry (*Al-mawsū'a al-shi'riyya*) yielded no results for the search of *tabannī* and its derivatives. The cases which I found are: Zayd b. Ḥaritha, adopted by the Prophet; Sālim, adopted by Abū Ḥudhayfa; al-Miqdād b. 'Amr, adopted by al-Aswad b. 'Abd Yāghūth; 'Āmir b. Rabī'a and Wāqid b. 'Abdallāh, adopted by al-Khaṭṭāb b. Nufayl; and Sufyān, adopted by Ma'mar b. Ḥabīb. Note that all the adoptive fathers are Qurayshīs. See Landau-Tasseron, 'The status of allies'. For some reason modern scholars maintain that adoption was a very common phenomenon, e.g. Santillana, *Istituzioni* 1/196, 239; Al-Azhary Sonbol, 'Adoption', p. 46; Goldziher, *Muslim studies* 1/127; Juynboll, *Handbuch*, p. 187. Ameer, *Mohammedan laws* 2/256, citing Caussin de Perceval, maintains that adoption was a widespread practice connected to religious concerns, but I found no evidence to substantiate this statement.

[13] This does not apply to the very few cases of adoption by women, see pp. 186–7. By the term guest allies I mean people attached to descent groups other than their original ones, see Landau-Tasseron, 'Alliances among the Arabs' and 'The status of allies'.

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sons of the adoptive fathers; the two categories were not legally equal. Another indicator of a boundary that might be set between the true members of an agnatic group and the adopted members thereof is the application of the rules of marriage. The only data we have concern the Quraysh. This tribe did not give its daughters in marriage to outsiders unless they were their allies. Al-Miqdād b. al-Aswad, mentioned above, was an ally and adopted son of the Qurayshī notable al-Aswad b. 'Abd Yāghūth. He was nevertheless considered inferior to the Quraysh for the purpose of marriage.[14] Naturally, adopted sons who were freed men were considered even more inferior, and noble women of the Quraysh refused to marry them.[15]

We cannot rule out the possibility that there were adoptees who, by taking their adoptive fathers' patronyms, were completely assimilated into the agnatic group of the latter. This would mean that these adoptees were indeed accepted as the equals of true sons. It would also account for the small number of recorded adoptions: if these people were assimilated their true origin became undetectable. But this possibility does not seem realistic to me, since we would expect the sources to be aware of the phenomenon, just as they were aware of the possibility of assimilation by false genealogical claims. Moreover, the true origins of groups that were assimilated into other groups by false genealogical claims could still be traced. Many such cases are recorded, as a glance at any genealogical work would reveal. The term used to denote such assimilation is 'they entered into...', (*dakhalū fī...*). By contrast, I found only one case of people who are said to have claimed descent from a group on the basis of the fact that their ancestor had been adopted by a member of that group.[16]

In conclusion, the evidence regarding adoption is sparse, and it is in part ex silentio. It suggests that, first, adoption was not widespread; second, that adoptees shared some traits with true sons, but they were not their legal equals, nor were they necessarily wholly assimilated into the groups of the adoptive fathers. These conclusions contradict the conventional wisdon on the subject.

II. *Acknowledgement of paternity*

Adoption should not be confused with acknowledgement of paternity, usually termed *istilḥāq* or *iddi'ā'* (sometimes *iqrār*, *i'tirāf*). The relationship established by acknowledgement of paternity is identical with the true parent–child relationship. It should perhaps be mentioned that the main point which Muslim jurists discuss in the context of *istilḥāq* is the matter of inheritance.[17] As we have seen, the relationship established by pre-Islamic adoption was more complex than a parent–child relationship, since it simultaneously involved other relationships (an alliance/*ḥilf* or patronate/*walā'*). But this is not the only difference between adoption and acknowledgement of paternity. When a person adopts another, he declares the adoptee to be his adopted son. When a person

[14] Ibn 'Abd Rabbihi, *'Iqd* 6/130, 136; on allies marrying into Quraysh see Landau-Tasseron, 'The status of allies'.

[15] Arazi, 'Les enfants', p. 9. Note that when the women refer to Zayd b. Ḥāritha as a slave and a client, it is not merely a hostile, abusive attitude as may be inferred from Arazi's presentation; it is simply a statement of fact, because Zayd was indeed a freed man and a client.

[16] Ibn 'Asākir, *Ta'rīkh* 10/169.

[17] The Prophet is reported to have said: 'if people acknowledge someone as one of their own, then he inherits from them' (*mā istalḥaqa qawm rajulan illā warithahum*, al-Ṭabarānī, *Al-mu'jam al-awsaṭ* 2/10). See discussion of acknowledgement, and inheritance by the acknowledged after the father's death, in al-Dārimī, *Sunan* 2/483; al-Haythamī, *Majma' al-zawā'id* 4/227; al-Būṣīrī, *Miṣbāḥ* 3/150–51; Ibn Māja, *Sunan* 2/917; 'Abd al-Razzāq, *Muṣannaf* 10/289; al-Bayhaqī, *Al-sunan al-kubrā* 6/260; Abū Dā'ūd, *Sunan* 2/279; Ibn Ḥanbal, *Musnad* (Cairo) 2/181; Ibn Mufliḥ, *Al-furū'* 5/403; Ibn Manẓūr, *Lisān* 10/328–9. See also Santillana, *Istituzioni* 1/242; Shalabī, *Aḥkām* 703; *Al-mawsū'a al-fiqhiyya* 2/84.

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acknowledges paternity of another, he declares him to be his begotten son. The acknowledged person may be a daughter, as in the case of the singer known as 'the girl of Ṣuraym';[18] but I encountered no cases of adopted daughters. A clear indication of the difference between adoption and acknowledgement of paternity occurs in the biography of the Companion al-Miqdād b. al-Aswad mentioned above. Three alternative explanations are offered for his relationship with al-Aswad, from whom he took his patronym: (1) al-Aswad accepted him as an ally and adopted him (*ḥālafahu wa-tabannāhu*); (2) al-Miqdād was raised in al-Aswad's custody (*kāna fī ḥijrihi*); or (3) al-Aswad acknowledged him as his own son (*istalāṭahu*).[19] Obviously, the three are distinct from one another, or they would not have been given as different explanations. A further indication of the difference between adoption and acknowledgement of paternity is the Islamic attitude towards them. Islam prohibited adoption, severing the ties that had been created on this basis in the Jāhiliyya. The adoptions of Zayd b. Ḥāritha (by the Prophet), al-Miqdād b. 'Amr (by al-Aswad), and Sālim the *mawlā* of Abū Ḥudhayfa (by Abū Ḥudhayfa) etc., were declared null and void. As for acknowledgement of paternity, Islam restricted, but did not abolish it. The ties created in the Jāhiliyya on this basis were left intact.[20] Finally, adoption could only be concluded by a living person, be that a man or a woman, who proposed to be the adoptive parent. By contrast, acknowledgement of paternity is not necessarily implemented by the parent. The sons of a deceased person, for instance, may testify that their father acknowledged someone as a son.[21] According to the Mālikites, a cousin, an uncle and a nephew may do so as well, but their testimony has only a limited legal effect.[22]

I found only one piece of evidence which seems inconsistent with the above distinction between adoption and acknowledgement of paternity. Among other definitions of *tabannā*, the lexicographer Ibn Manẓūr gives the following: *tabannaytuhu ay idda'aytu bunuwwatahu*, namely, '[the expression] "I adopted him" [means] that I claimed that he was my son'.[23] This unusual definition is not substantiated by any specific examples in this source or in any other that I have read; it should therefore carry no weight in light of the analysis and the evidence indicating a distinction between adoption and acknowledgement of paternity.

Acknowledgement of paternity, unlike adoption, often entails a comment on the immoral behaviour or low status (a slave-girl or prostitute) of the mother of the acknowledged person. Consequently, *istilḥāq*/*iddi'ā'* is a reason for ridicule and abuse. The most famous case of *istilḥāq* is that of Ziyād b. Abīhi, said to have been the first of its kind in Islam.[24] The caliph Mu'āwiya, son of Abū Sufyān, declared Ziyād to be his half brother, begotten by Abū Sufyān. Intercourse between Abū Sufyān and Ziyād's mother, Sumayya, was illicit according to Islamic standards, since Abū Sufyān was neither her husband nor her master. This *istilḥāq* was vehemently opposed by many people. Ziyād's brothers (or half brothers) objected to the defaming of their mother.

[18] Al-Iṣfahānī, *Aghānī* 19/169.

[19] Al-Mizzī, *Tahdhīb al-kamāl* 28/453; Ibn 'Asākir, *Ta'rīkh* 60/145–57.

[20] Ibn al-Athīr, *Al-kāmil* 3/202. See also below ('Umar's decision). The rules governing the acknowledgement of paternity are discussed below, p. 176.

[21] See the references in note 17 above.

[22] Bousquet, *Précis* 1/161–2. According to Santillana, *Istituzioni* 1/240, only the father is entitled to acknowledge paternity, no one else may do it on his behalf. *Mawsū'at al-fiqh* 7/343–45, 24/131, records that the Ḥanbalīs and the Ẓāhirīs allow *istilḥāq* by a woman, see also Brunschvig, 'Filiation'.

[23] Ibn Manẓūr, *Lisān* 14/91.

[24] Al-'Askarī, *Awā'il*, pp. 167–8. See examples of ridicule in Arazi, 'Les enfants', pp. 14–32.

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Mu'āwiya's descent group, the Umayyads, rejected the implication that Abū Sufyān had been a fornicator. The Umayyads also declined having a person born out of wedlock count as one of them.[25] In addition, many others opposed the acknowledgement (*istilḥāq*) of Ziyād out of piety, suspecting that the caliph Mu'āwiya did not act in good faith in the matter. The opponents raised either one of two arguments: (a) Abū Sufyān never begot Ziyād, so that the acknowledgement was based on a lie; or (b) even if Abū Sufyān did beget Ziyād, he was not legally his father. Ziyād should be considered the son of his mother's husband, according to the Prophet's ruling 'the child belongs to the bed [where it was born]'.[26]

Scorn and ridicule were precipitated, especially in cases of acknowledgements suspected to be based on lies. Thus al-Walīd b. al-Mughīra was ridiculed because his father acknowledged him only when he reached the age of eighteen.[27] It is insinuated that, had he been a true son of al-Mughīra, the acknowledgement would have occurred much sooner.

Modern scholars frequently confuse adoption with acknowledgement of paternity. The *istilḥāq* of Ziyād is always referred to as adoption in modern scholarly literature.[28] Goldziher refers to *istilḥāq* as adoption; the examples he adduces in his discussion include adoptees, acknowledged persons, as well as people who made false genealogical claims. Goldziher makes no distinction between them.[29] Ullmann gives 'to adopt' as the translation of *istalḥaqa*, and adduces cases of acknowledgement (which are indeed *istilḥāq*, not adoption).[30] Robertson Smith discusses adoption, then illustrates his argument with the case of the poet 'Antara, stating that 'his father recognized him as his son'. 'Antara was indeed acknowledged, not adopted. Smith similarly refers to Dhakwān b. Umayya as the adopted son of Umayya, though Dhakwān was, in fact, Umayya's true son by a Jewish slave-girl; Umayya had met her in Palestine, had intercourse with her, and acknowledged the son she bore as his own (*istalḥaqahu*). Smith in fact conceives of adoption and acknowledgement as a single institution when he states that 'the right of adoption, however, was not limited to the legitimation of the offspring of a free tribesman by a slave-girl'.[31] Santillana treats adoption and acknowledgement of paternity separately, but he discusses the latter under the heading 'Adozione'. He maintains that 'adoption took in Islam the form of acknowledgement of paternity'. This is correct in the sense that such acknowledgement served as an alternative to adoption (see below, part III), but he calls the acknowledging father and the

[25] The reaction of Ziyād's brothers: Ibn Khallikān, *Wafayāt* 6/358; Ibn al-'Arabī, *Al-'awāṣim* 1/250; other opposition, see loc. cit. Ibn al-'Arabī, however, refutes all the arguments against Ziyād and Mu'āwiya and justifies the *istilḥāq*, see op. cit. 1/248–54; see also al-Ṭabarī, *Ta'rīkh* 3/195; al-Qalqashandī, *Ma'āthir* 1/112, 3/343. The case is discussed in detail by Hasson, 'Ziyād b. Abīhi'; Hasson, 'L'adoption'.

[26] See e.g. al-'Askarī, *Awā'il*, p. 168, where the two arguments are recorded one next to the other; Ibn Manẓūr, *Lisān* 14/261; see also al-Qalqashandī, *Ma'āthir* 1/112. (*wa-l-nās lā yuthabbitūna nasabahu min abī sufyān*...). Rubin, '*Al-walad li-l-firāsh*', pp. 20–23, lays emphasis on the second argument, but cf. p. 15 of the same article. For further discussion of the 'bed principle' see below, pp. 176–180.

[27] Al-Bayḍāwī, quoted by Goldziher, *Muslim studies* 1/127, n. 7.

[28] See e.g. Arazi, 'Les enfants', pp. 28–9; Hinds, 'Mu'āwiya'; Bosworth, 'Marwān b. al-Ḥakam'; Hasson, 'Ziyād b. Abīhi'; Hasson, 'l'adoption (*di'wa*, *istilḥāq*) de Ziyād b. Abīhi'.

[29] Goldziher, *Muslim studies* 1/126–8; on p. 127 n. 5 and 128 n. 1, the references are to Habbār (in al-Azraqī) and to al-Shanfarā (in *Aghānī*), both adopted. On p. 127 note 7, the references are to Sa'd b. Abī Sarḥ (in Ḥassān) and to al-Walīd b. al-Mughīra (in al-Bayḍawī), the first a pretender, the second an acknowledged son.

[30] *Wörterbuch*, 2/330.

[31] Smith, *Kinship*, pp. 52–3. On Dhakwān b. Umayya see al-Iṣfahānī, *Aghānī* 1/15; al-Bakrī, *Mu'jam mā ista'jam* 3/387; al-Bakrī, *Faṣl al-maqāl* 1/401; Kister and Plessner, 'Notes', p. 65. Lecker, 'Note', pp. 19–20, records the story of Dhakwān in detail and refers to him as an adopted son of Umayya.

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acknowledged person 'adottante' and 'adottato', which is misleading.[32] Naqvi, too, discusses adoption and acknowledgement of paternity separately, but among the goals of adoption he lists 'the legitimation of illegitimate children'. By this statement he confuses adoption with *istilḥāq*, at least as far as the Jāhiliyya and classical Islamic law are concerned. The means by which to legitimize illegitimate children was acknowledgement of paternity, not adoption. The cases of adoption which Naqvi cites are in fact cases of acknowledgement of paternity.[33]

Levy, speaking of acknowledgement of paternity, does not use this term but calls it 'true adoption in which the adopted son comes to be regarded as offspring by blood...'.[34] Azhary Sonbol discusses the procedure of *mulā'ana* in conjunction with adoption, which is unwarranted: *mulā'ana* is the procedure by which a man divorces a wife whom he suspects of infidelity. The issue, therefore, is not adoption, but the establishment of paternity.[35] Arazi treats adoption, acknowledgement of paternity and forged genealogy as a single phenomenon epitomized in the term *da'iyy*.[36] Rubin writes that '...many Arabs tried to adopt the sons of prostitutes with whom they have (sic.) intercourse, or were forced to adopt them...'. Rubin's statement is not accurate. What those Arabs did was not to adopt, but to acknowledge paternity of sons of prostitutes with whom they had had intercourse. Moreover, Rubin construes Quran 33:4–5 ('...call them by the patronyms taken from their [true fathers...') as part of the campaign against *di'wa.* This is again not accurate: *di'wa* means acknowledgement of paternity (as Rubin himself writes, p. 10), and false genealogical claims, whereas the quranic verse in question was revealed in connection with the Prophet's adopted (not acknowledged) son. The verse was intended to counter adoption, not acknowledgement of paternity. The latter, it will be recalled, is allowed in Islam under certain conditions (detailed below). It is true that the term *ad'iyā'*, which occurs in Quran 33:5, has multiple meanings, but this does not justify a confusion between two distinct institutions.[37] Bousquet is aware of the distinction between the two, and warns against confusion between them, but he does not give the Arabic terms. It is therefore not clear whether his distinction is fully accurate.[38] One may distinguish between the institutions and still confuse the terms, as did Shalabī. This scholar failed to apply his conceptual distinction between the two to the use of the terms, and equated *tabannī* (adoption) with '*istilḥāq*' (acknowledgement). As a result he needed to coin a third term to designate acknowledgement of paternity, *al-iqrār bi-l-bunuwwa*.[39]

The problem of establishing paternity was omnipresent in pre-Islamic Arabia. Muslim sources allege that it was due to the prevalence of prostitution, but it may be assumed that the lack of restrictions on divorce and remarrying was a major cause of the problem.[40] Prostitution was strictly prohibited by

[32] Santillana, *Istituzioni* 1/196, 239, 240 n. 189.

[33] Naqvi, 'Adoption', pp. 283, 285. Naqvi states that adoption was clearly forbidden but discusses the legal consequences (or lack thereof) of the institution (see especially pp. 288–9, 296–9). He gives no references to legal sources, nor does he mention the Arabic terms, so it is not clear to what extent he distinguishes between *tabannī* and *istilḥāq*.

[34] Levy, *Social structure*, p. 149. The whole discussion is full of misconceptions, for example, the statement that 'adoption ... is free to any Muslim ...', see pp. 147–9.

[35] Al-Azhary Sonbol, 'Adoption', p. 50, in fact the whole article discusses adoption and acknowledgement of paternity interchangeably. On *mulā'ana* see below note 62.

[36] Arazi, 'Les enfants'.

[37] See Rubin, '*Al-walad li-l-firāsh*'. The term *di'wa* and the different uses of *d'w* will be discussed below, pp. 181–5.

[38] Bousquet, *Précis*, 1/158.

[39] Shalabī, *Aḥkām*, pp. 703–04.

[40] Ibn al-Athīr, *Nihāya* 4/238; Ibn al-Athīr, *Al-kāmil* 3/302; Ibn Manẓūr, *Lisān* 10/328; al-Ibshīhī, *Al-mustaṭraf* 1/408; Goldziher, *Muslim studies* 1/126; Schacht, *Origin*, p. 181.

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Islam, and restrictions were placed on remarrying, in the form of the *'idda* rules. However, the problem of establishing paternity did not altogether vanish, and Islamic law needed to define its attitude towards it. There seems to be no major differences among the schools of law in this matter. They all permit acknowledgement of paternity only under certain conditions. The most important of these are: (a) that the acknowledged person have no known father (*majhūl al-nasab*); (b) that there be no obvious reason to disbelieve the statement (*an yūlad mithluhu li-mithlihi*) so, for example, a person cannot acknowledge as his son another person who is older than himself; and (c) that a father may not acknowledge as his offspring the fruit of illicit relationships (*walad al-zinā*); so, for example, the child of an unmarried free woman cannot be claimed by the man who begot him. Such a child would be traced back to his mother alone and would be called a child of fornication. Notwithstanding, certain early jurists are reported to have allowed acknowledgement of children of fornication, provided that the mother was neither married nor a slave. Under the same condition, the Ḥanafīs allow marriage between the mother and the father of the illegitimate child.[41]

The stipulation that the acknowledged person have no known father in fact lays down that acknowledgement of paternity in Islam may only occur in cases where there is no dispute in the matter. Such disputes occurred mainly in connection with slave-girls, who were often sold. Sometimes their offspring could be claimed by both the seller and the purchaser. When a slave-girl married and gave birth shortly afterwards, the offspring might be claimed by both her master and her husband.[42] There may also be cases of adultery in which the child is the offspring of a man other than the husband or the master of the adulterous woman. In all these cases of disputed paternity, acknowledgement was circumscribed by the Prophet's ruling, 'the child belongs to the bed [where it was born]' (*al-walad li-l-firāsh*, henceforth the *firāsh* principle). This means that a child born of an illicit relationship cannot be claimed by its biological father; it is considered to be the offspring of the mother's husband. If the mother is a free unmarried woman, then the child is a child of fornication, as already mentioned. If the mother is an unmarried slave-girl, the legal father is the man who was her master when she gave birth to the child. The *firāsh* principle seems to mark a departure from the Jāhilī practice, where acknowledgement of paternity was apparently not restricted.[43]

[41] On the conditions for acknowledgement see Santillana, *Istituzioni* 1/239; *Al-mawsū'a al-fiqhiyya* 2/84–85; Ameer, *Mohammedan law* 2/257–76; Ibn Mufliḥ al-Ḥanbalī, *Al-nukat* 2/401–12; Ibn Mufliḥ al-Ḥanbali, *Al-mubdi'* 8/103; al-Bahūtī, *Kashshāf* 4/235–7; Ibn Mufliḥ al-Maqdisī, *Al-furū'* 5/400–03; al-Mardāwī, *Al-inṣāf* 9/256–57, 269; Ibn Taymiyya, *Kutub wa-rasā'il* 34/10; Ibn Qudāma, *Al-mughnī* 8/57; al-Ghazālī, *Al-wasīṭ* 3/356–57, 4/314–18; al-Sarakhsī, *Al-mabsūṭ* 10/213–14. See also the references in note 17. For differences among the schools of law in this matter see Ibn al-'Arabī, *Al-'awāṣim* 1/252–3; Zaydān, *Al-mufaṣṣal* 7/394–404. On *walad al-zinā* see Dāwūdī, *Amwāl*, p. 85 (*man istalhaqa walad zinā fī al-Islām yahiqqu bihi idhā lam yakun lahu firāsh*); Zaydān, *Al-mufaṣṣal* 7/381–4; Ibn Qudāma, *Al-mughnī* 6/228 (Abū Ḥanīfa's view). The common view is that the child of fornication does not inherit, *walad al-zinā lā yarithu wa-in idda'āhu al-rajul*, al-Baghdādī, *Ta'rīkh Baghdād* 13/93; Ibn al-Athīr, *Al-nihāya* 2/369; Ibn Manẓūr, *Lisān* 14/387; Brunschvig, 'Filiation'.

[42] See e.g. the biography of the poet Arṭāṭ b. Suhayya, Ibn Ḥajar al-'Asqalānī, *Iṣāba* (Beirut) 1/189–90; Ibn Manẓūr, *Lisān* 10/328–9; Ibn Qudāma, *Al-kāfī* 3/338; al-Marghīnānī, *Bidāyat al-mubtadi'* 1/95.

[43] Ibn Ḥajar al-'Asqalānī, *Fatḥ al-bārī* 12/32–9; Shalabī, *Aḥkām*, pp. 683–7; Rubin, '*Al-walad li-l-firāsh*'. There is disagreement as to whether the *firāsh* principle applies to slave-girls, e.g. Ibn Manẓūr, *Lisān* 10/328–9. According to al-Shāfi'ī, mere possession of a slave-girl is not enough to establish paternity of the master, and the latter must admit to having had intercourse with her, see al-'Aẓīmābādī, *'Awn al-ma'būd* 6/261–2. According to the Ḥanafīs, the child of a slave-girl belongs to the master not by the *firāsh* principle but by acknowledgement (*di'wa*). Since the master can refuse to accept a child by the *firāsh* principle, there is practically no difference between the schools, see al-Zara'ī, *Ḥāshiyat Ibn al-Qayyim*, 6/252–4; cf. Ibn al-Athīr, *Al-nihāya fī gharīb al-athar* 4/238.

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There is one Prophetic tradition which is not entirely consistent with the *firāsh* principle. It is reported that the Prophet decreed the following: a boy [born to a slave-girl] may be acknowledged (*yustalḥaq*) as a son of a deceased person by the heirs of the latter, provided that the slave-girl (i.e. the mother) had been owned by the deceased at the time when she conceived the boy. In other words, the point in time that determines paternity, according to this *istilḥāq* tradition, is the time of conception, contrary to the *firāsh* principle where the decisive point is the time of birth. This rule, however, apparently fell into oblivion, as the standard works fail to mention it among the conditions for acknowledgement.[44]

According to Rubin, the *firāsh* principle was not binding in the early Islamic period, even though the Prophet himself may have acted upon it.[45] It may be added that the early Muslim jurists did not just hesitate about the *firāsh* principle; they wavered between various solutions to the problem of disputed paternity without necessarily having recourse to any prophetic tradition. This conclusion emerges from contradictory decisions taken by the scholar Ṭāwūs (d. 106/724). It is reported that one of several brothers testified that their deceased father had acknowledged as his own a son born to a slave-girl. Ṭāwūs refused to recognize the man as the offspring of the deceased, but allotted him a portion of the inheritance.[46] This decision corresponds neither to the *istilḥāq* tradition nor to the *firāsh* principle. The same Ṭāwūs tried to enjoin his contemporaries from claiming their offspring born of illicit relationships. When confronted with such a case, he admittedly did not reject the claim out of hand, but denied the claimant the right of inheritance.[47] This decision partly accords with the *firāsh* principle.

Decisions ascribed to ʻUmar show that he did not always settle disputed paternity by the *firāsh* principle. ʻUmar agreed that persons born in the Jāhiliyya to slave-girls from illicit relationships may be acknowledged by their biological fathers and may take their patronyms from them. However, he stipulated that these fathers should make financial compensation to the masters of the mothers, because these masters had a right of ownership to the offspring of their slave-girls.[48] Since the *firāsh* principle prevails in Muslim law, it is curious that the jurists did not suppress this decision of ʻUmar which preceded their own times; instead, they cited and disputed it.

ʻUmar ignored the *firāsh* principle in yet another issue. Two tribes, Juʻfiyy and ʻUqayl, claimed the notable Rabīʻa b. ʻĀṣim as a member. The dispute arose from the report that Rabīʻa's mother was divorced from her Juʻfiyy husband, Hubayra, while pregnant. She gave birth while already married to the next husband, the ʻUqaylī ʻĀṣim. It was therefore disputed whether the boy, Rabīʻa, was the son of the first, or the second, husband. ʻUmar decreed that Rabīʻa was the son of the first, Hubayra, even though he was born 'on the bed of' the second, ʻAṣim. Apparently the dispute did not subside, for it was raised again before ʻAlī, who issued a contradictory decision.[49] Judging by Rabīʻa's name, namely, Rabīʻa b. ʻĀṣim al-ʻUqaylī, ʻAlī's decision, based

[44] See the references in note 17 above. Al-Khaṭṭābī tries to harmonize this report with the *firāsh* principle by claiming that the first prevailed in the beginning and the second superseded it, see Ibn al-Athīr, *Al-nihāya fī gharīb al-athar* 4/238; Ibn Manẓūr, *Lisān* 10/328 (this version has *ustulḥiqa bi-ghayr abīhi* 'he was traced to someone other than his biological father', which makes no sense; it is apparently a scribal error for *baʻda abīhi*, meaning that he was traced to his biological father after the latter had died).

[45] Rubin, '*Al-walad li-l-firāsh*', pp. 19–23.

[46] Ibn Abī Shayba, *Al-muṣannaf* 6/288; ʻAbd al-Razzāq, *Al-muṣannaf* 10/291.

[47] ʻAbd al-Razzāq, *Al-muṣannaf* 7/453.

[48] Ibn al-Athīr, *Al-nihāya* 2/369; Ibn Manẓūr, *Lisān* 14/387; al-Zamakhsharī, *Al-fāʼiq* 2/179–80.

[49] Ibn Ḥabīb, *Al-muḥabbar*, pp. 338–9, see also Landau-Tasseron, 'Alliances in Islam'.

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on the *firāsh* principle, overruled that of 'Umar. Needless to say, 'Umar is also reported to have followed the *firāsh* principle rather than ignore it.[50]

Perhaps as late as the time of the caliph al-Mahdī, disputes about paternity were not necessarily decided by the Prophetic *firāsh* principle. It is related that the wife of Barmak (the eponym of the Barmakid family) fell captive during the conquest of Balkh and was given to 'Abdallāh b. Muslim, brother of the commander Qutayba b. Muslim. Shortly afterwards a treaty was signed and she was returned to her husband Barmak, already with child from 'Abdallāh. During the reign of al-Mahdī, the sons of 'Abdallāh b. Muslim claimed the son born to her, Khālid b. Barmak, as their half brother. They were dissuaded and relinquished the claim, but not because of the *firāsh* principle which was not even mentioned.[51] Incidentally, al-Mahdī is credited with implementing the *firāsh* principle in the case of Ziyād b. Abīhi. The caliph removed Ziyād's pedigree from Abū Sufyān and returned it to 'Ubayd, the husband of Ziyād's mother.[52]

There is a certain contradiction between the ideas underlying the *firāsh* principle on the one hand, and *istilḥāq*, acknowledgement of paternity, on the other. The latter is based in principle on the pursuit of truth (except in cases of foundlings, on which see part III below). In both Jāhiliyya and Islam, *istilḥāq* aims at establishing the identity of the true, i.e. biological, father of the child. This as a rule holds true even though, in the case of Jāhilī prostitutes, considerations other than the truth sometimes played their role. A prostitute might choose any of the men who had visited her to be the father of her child, as she saw fit.[53] Yet it is generally assumed that the parties speak the truth, and, in Islam, traditions condemning lies about paternity and pedigree were spread. The denial of a genuine child is forbidden, as are forged pedigrees. The Prophet is reported to have said, 'whoever knowingly claims descent from someone other than his father is an infidel'. Ibn Baṭṭāl explains the severity of this judgement by pointing out that a person who pretends to be the offspring of someone other than his biological father lies about God; it is as if he is saying, 'God created me from the sperm of so-and-so', whereas he was created from the sperm of someone else.[54] The traditions condemning a change of pedigree were perhaps the result of the opposition to Ziyād b. Abīhi, whose claim to be a son of Abū Sufyān was widely condemned as false.[55] Ironically, Mu'āwiya insisted that his motivation in acknowledging Ziyād was the pursuit of justice and truth.[56] The *firāsh* principle, in contrast, is based on the knowledge that the child's biological father is not necessarily the 'owner of the bed' (*ṣāḥib al-firāsh*), i.e. the lawful husband or master of the mother. The *firāsh* principle serves two ends. On the one hand, it presupposes and therefore asserts the prevalence of the ideal situation in which no Muslim woman commits adultery or practises prostitution. The children are of necessity

[50] See Rubin, '*Al-walad li-l-firāsh*, pp. 11–12, 18–19, and below.

[51] al-Ṭabarī, *Ta'rīkh* 3/671. The large gap in time should be noted. According to the story Khālid was born in the year 705/87 and claimed between 774–785/158–169!

[52] AI-Qalqashandī, *Ma'āthir* 1/185; Ibn al-Athīr, *Al-kāmil* 5/235.

[53] See e.g. al-Ibshīhī, *Al-mustaṭraf* 1/408, the story about the mother of 'Amr b. al-'Āṣ, who chose al-'Āṣ from among four men with whom she had had intercourse, because he used to spend money on her. This of course may be just a slander of 'Amr, in the *Mathālib* style. A similar story is told of Hind, mother of Mu'āwiya, see Kister and Plessner, 'Notes', p. 65.

[54] Ibn Ḥajar al 'Asqalānī, *Fatḥ al-bārī* 12/55. See also al-Qurṭubī, *Tafsīr* 14/121; al-Ṭabarī, *Tafsīr* 21/120; al-Suyūṭī, *Al-durr al-manthūr* 6/562; al-Dārimī, *Sunan* 2/317; Ibn Qāni', *Mu'jam al-ṣaḥāba* 2/104; al-Dhahabī, *Siyar a'lām al-nubalā'* 4/133, 17/642; Ibn Sa'd, *Al-ṭabaqāt* 6/103; Ibn Manẓūr, *Lisān* 14/261; Shalabī, *Aḥkām*, pp. 677–8; *Al-mawsū'a al-fiqhiyya* 2/84.

[55] On the opposition to the *istilḥāq* of Ziyād see above, pp. 173–4. On the spread of these *ḥadīths* see Rubin, '*Al-walad li-l-firāsh*', pp. 20–23, see also below (on *da'iyy*).

[56] Al-Ṭabarī, *Ta'rīkh* 3/195.

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legitimate.[57] On the other hand, the *firāsh* principle was meant to provide a ready-made solution to disputes about paternity. Either way, it is not concerned with truth based on biological reality, however inconsistent this fact is with Ibn Baṭṭāl's explanation mentioned above. The case of Ziyād proves that legal considerations superseded neutral biological facts. Those who based their objection to the *istilḥāq* of Ziyād on the *firāsh* principle admitted that Abū Sufyān may have begotten Ziyād, but argued that legally Ziyād was the son of his mother's husband, not of Abū Sufyān.[58] Muslims were aware of this characteristic of the *firāsh* principle, as is illustrated in an anecdote about the same ʻAbdallāh b. Muslim mentioned above. He ridiculed one of his adversaries, al-Ḥuṣayn b. al-Mundhir, saying that al-Ḥuṣayn had married a woman who was already pregnant by someone else. Al-Ḥuṣayn retorted, ʻ so what, she will have the child on my bed, and he will be considered ʻʻ son of al-Ḥuṣayn ʼʼ exactly as ʻAbdallāh is considered son of Muslim ʼ.[59] The story of the litigation between Saʻd b. Abī Waqqāṣ and ʻAbd b. Zamʻa clearly points to the fact that the *firāsh* principle was not concerned with genuine paternity. This observation holds true even if the story is fictitious, because it was meant to prove that the *firāsh* principle supersedes all other considerations. It is related that Zamʻa, father of Sawda (one of the Prophet's wives), had a slave-girl, who had a child by ʻUtba b. Abī Waqqāṣ. After both ʻUtba and Zamʻa had died, Saʻd b. Abī Waqqāṣ declared that the child had been begotten by his brother ʻUtba, whereas Zamʻa's son, ʻAbd, claimed that the child was the offspring of his father Zamʻa, who had been the girl's master. The Prophet saw the great resemblance of the child to ʻUtba b. Abī Waqqāṣ, yet decreed that he ʻ belonged to the bed ʼ, that is, he was to be considered as Zamʻa's son, because Zamʻa had been the girl's master. Nevertheless, the Prophet ordered his wife Sawda b. Zamʻa, now the child's half sister, to veil herself in his presence as if he were a stranger. Muslim scholars had difficulty explaining this report. Only rarely did a scholar explicitly state the inevitable conclusion: the *firāsh* principle does not create a real pedigree.[60] Thus Sawda did not become the true sister of that person, and she had to veil herself in his presence. ʻUmar and ʻAlī, too, are reported to have decided disputed paternity in favour of the lawful husband or master of the mother, in spite of their knowledge that the biological father of the disputed person was another man.[61]

The *firāsh* principle means that the husbands and masters of adulterous women should acknowledge as their own children whom they know to have been begotten by others. This is, obviously, a problem—but a way was found to avoid acknowledgement if the husband or master so wished.[62] Another problem precipitated by the *firāsh* principle involves incest. The following issue is recorded in the law books: if a man commits adultery and a female child is

[57] Naqvi calls this an ʻ assumption of legitimacy ʼ, which does not prevent him from rationalizing the *firāsh* principle with the words ʻ we must not ascribe parentage of persons to those who are not in fact their parents ʼ (p. 299).

[58] E.g. Ibn al-ʻArabī, *Al-ʻawāṣim* 1/250, 252. See above, p. 174.

[59] Al-Sharīf al-Murtaḍā, *Amālī* 1/288.

[60] Ibn al-ʻArabī, *Al-ʻawāṣim* 1/253–4. This story and its implications caused much dispute among Muslim scholars, see ibid., 1/242–53; al-Zurqānī, *Sharḥ* 4/24–30; al-Ṣanʻānī, *Subul al-salām* 3/211–12; Al-Ḥanafī, *Muʻtaṣar al-mukhtaṣar* 2/45; Ibn Ḥajar al-ʻAsqalānī, *Fatḥ al-bārī* 12/34–8; al-Zaraʻī, *Ḥāshiyat Ibn al-Qayyim* 6/252–4; Rubin, *ʻAl-walad li-l-firāsh* ʼ, pp. 8–9.

[61] Rubin, ibid., pp. 11–12, but see the modern scholars, Shalabī, *Aḥkām*, pp. 684–6 and Zaydān, *Al-mufaṣṣal* 7/321, who set conditions to the *firāsh* principle so that it is not applicable if conception by the lawful husband or master was impossible. See also Schacht, *Origin*, p. 181.

[62] A husband who doubts the fidelity of his wife may disavow her through a process known as *liʻān* or *mulāʻana*, whereby he disavows her child as well (*intifāʼ*). The master of a slave-girl may disavow the child alone (*ankara*, *anfā*), see the references in note 17, but according to some, *liʻan* is practised in such cases too, see Rubin, *ʻAl-walad li-l-firāsh* ʼ, p. 10. See also Ibn Mufliḥ al-Ḥanbalī, *AI-mubdiʻ* 8/95; Iba Qudāma, *Al-mughnī* 6/228; Shalabī, *Aḥkām*, p. 688.

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born as a result of it, may he marry that child, since she is not legally descended from him? As usual, there are differing opinions, some allowing, some forbidding such a marriage.[63] Clearly, the jurists were aware of the discrepancy between legal and biological paternity that was caused by the *firāsh* principle; some of them let the general cultural taboo on incest override the Prophet's ruling, and prohibited marriage between a man and his illegitimate child. Others did not, and allowed it. Notwithstanding, the *firāsh* principle is sometimes depicted as part of the Islamic campaign against lies about descent, rather than as a solution to the problem of contested paternity. The *ḥadīth lā di'wa fī al-Islām*, which is often attached to the *firāsh* tradition (*al-walad li-l-firāsh*), is explained thus: '*di'wa* is the act whereby a person claims descent from someone other than his father and descent group. This was a common practice, and the Prophet forbade it and decreed that the child belongs to the bed'.[64] This explanation implies that the fraudulence involved in a *di'wa* was its main problem. But the combination of these two traditions may also be interpreted as a guide of the perplexed, meaning that there should be no disputes about paternity (*lā di'wa*), for there is always a solution ready, namely, '*al-walad li-l-firāsh*'.

The source of confusion between adoption and acknowledgement of paternity: the ambiguity of the words from the roots lḥq, lwṭ and d'w

The literal meaning of the verb *istalḥaqa* is 'to attach'; when it is applied to groups, it denotes the assimilation of one group into another. When it is applied to individuals, it denotes acknowledgement of paternity, regardless of whether the acknowledgement is based on fact or on fiction.[65] Being neutral, the verb in fact becomes somewhat ambiguous, for it may be rendered as 'acknowledge' or 'falsely claim', depending on the case. When al-Ḥārith b. Kalada *istalḥaqa* Abū Bakra, the son of his slave-girl, he acknowledged paternity of him. When Mu'āwiya *istalḥaqa* Ziyād, another son of the same woman, he is said to have falsely claimed him (as a brother).[66] The poet 'Antara, who was the son of a black slave-girl, was acknowledged (*ustulḥiqa*) by the man who was probably his progenitor; but the poet Suwayd was claimed by Abū Kāhil (*istalḥaqahu Abū Kāhil wa-idda'āhu*), who clearly was not his real father: Suwayd's mother was already pregnant when Abū Kāhil married her. Suwayd sometimes claimed one man and sometimes the other as his father, according to immediate interest.[67]

Like the verb *istalḥaqa*, the expression *mulḥaq* may be neutral, referring to a genuine child acknowledged by the father, or a negative term, referring to a person acknowledged on a doubtful basis. But the noun *laḥaq*, derived from the same root, is less ambiguous, and contains a judgement of the case to

[63] Ibn 'Abd al-Barr, *Al-tamhīd* 8/191; Ibn al-'Arabī, *Al-'awāṣim* 1/253–4; cf. Ibn Abī Ya'lā, *Ṭabaqāt al-ḥanābila* 2/103.

[64] Ibn Manẓūr, *Lisān* 14/261: *al-di'wa fī al-nasab ... wa-huwa an yantasiba al-insān ilā ghayr abīhi wa-'ashīratihi wa-qad kānū yaf'alūnahu fa-nahā 'anhu wa-ja'ala al-walad li-l-firāsh*; sometimes the emphasis is laid on the adulterous behaviour of the child's parents rather than on the lie about descent, see al-'Aẓīmābādī, *'Awn al-ma'būd* 6/263; Abū Dā'ūd, *Sunan* 2/283; Ibn Ḥanbal, *Musnad* (Cairo) 2/179, 207; Ibn Ḥajar al-'Asqalānī, *Fatḥ al-bārī* 12/34, 38; Ibn Mufliḥ al-Maqdisī, *Al-furū'* 5/405; al-Zurqānī, *Sharḥ* 6/250, 12/38 Cf. Rubin, '*Al-walad li-l-firāsh*' p. 11; see also below p. 184 and note 83.

[65] See above p. 172. The terms *iqrār*, *i'tirāf*, *taṣdīq* and *ithbāt al-nasab* are sometimes used as well, e.g. Ibn Mufliḥ al-Ḥanbalī, *Al-mukat* 2/401–12.

[66] For Abū Bakra see al-Dhababī, *Siyar* 3/6; Ibn Khallikān, *Wafayāt* 6/362–3; for Ziyād see e.g. al-Ṭabarī, *Ta'rīkh* 4/557, and above, p. 173.

[67] Al-Iṣfahānī, *Aghānī* 8/246–7, 250 ('Antara), 13/116 (Suwayd). In the story of 'Antara the terms *istilḥāq*, *i'tirāf* and *iddi'ā'* are used interchangeably. In the story of Suwayd the terms used are *istalḥaqa*, *istalāṭa* and *idda'ā* (to be discussed below).

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which it is applied. *Laḥaq* is defined as someone considered to be the son of a man other than his real father (*al-daʿiyy al-mūṣal bi-ghayr abīhi*).[68] The term *laḥaq* is derogatory, because in Arab culture a pure, well established genealogy constitutes a claim to fame, whereas a doubtful pedigree brings shame.

Another ambiguous term is *istilāṭ*. Linguistically, it is equated with *istilḥāq*. Lane defines *istalāṭa* as 'He claimed him as a son, he not being his',[69] but this is inaccurate, because the term is neutral. It may be applied to true, albeit illegitimate, sons acknowledged by their fathers, as well as to pretenders. The reports that 'Umar confirmed claims of paternity made by Muslims with respect to children born in pre-Islamic times interchangeably employ the verbs *alḥaqa*/*istalḥaqa* and *alāṭ*/*istalāṭa*.[70] But in the following case the verb *istalāṭa* clearly refers to a false claim. According to the scholar Abū 'Ubayda (Maʿmar b. al-Muthannā) and others, Abū Ṣufra, the ancestor of the famous Muhallabī family, was not an Arab from the Azd tribe, but a Persian. The Azd attached him to themselves as one of their own (*istalāṭūhu*) because they admired his resourcefulness in war.[71] Perhaps it is no accident that it was the son of al-Muhallab, Yazīd, who transmitted the *ḥadīth* 'whenever people acknowledge someone as one of their own he has the right to inherit from them' (here the term *istalḥaqa*, not *istalāṭa*, is used).[72] The case of al-Muhallab, however, seems more like one of false genealogical claims than of acknowledgement of paternity. The difference is that, in the latter case, a legal parent–child relationship is established between two individuals, whereas in the former no such relationship ensues.

The root *dʿw* is much more complex than *lḥq* and *lwṭ*. Certain derivatives, such as *daʿiyy*, are pejorative, while others are not. The complexity is amplified by the fact that the meaning depends not only on the context and on the specific case discussed, but also on the construction of the root and its complements (*mafʿūlāt*). Further confusion ensued as a result of the quranic use of the term *daʿiyy* (to be discussed in detail below).

A distinction must first be made between *iddaʿā* that takes both a direct and an indirect object (*iddaʿā* s.o. *ilā*/*li*) and *iddaʿā* that takes only a direct object. The former is used in the sense of 'to trace the pedigree', 'to ascribe', derived from the basic notion of the root *dʿw*, 'call' (the connection will presently be shown). *Iddaʿā ilā* may be applied to any father–son relationship. On the other hand, *iddaʿā* governing a direct object alone means 'to claim', which is another basic notion of the root *dʿw*. In the context of father–son relationships, *iddaʿā* thus constructed is only used in cases of acknowledgement of paternity.

The verb *iddʿā* takes both a direct, and an indirect object, preceded by the preposition *ilā*, in sentences such as '*tabannāhu wa-iddʿāhu ilayhi*', '[x] adopted [y] and ascribed him/traced his pedigree back to himself'.[73] The meaning 'to ascribe/to trace the pedigree' most probably derives from the basic meaning of the root *dʿw* 'to call', because being ascribed/traced back to a father, and being called by the patronym taken from him, are in fact one and the same thing. In the same vein, the quranic verse 33:4 *udʿūmhum li-ābāʾihim* means 'call them by the patronyms taken from their [true] fathers' and 'ascribe them

[68] Ibn Manẓūr, *Lisān* 10/328.
[69] Lane, *Lexicon*, s. v. lwṭ.
[70] Ibn Rushd, *Bidāyat al-mujtahid* 2/269: *kāna yulīṭu awlād al-jāhiliyya bi-man istalāṭahum fī al-islām*, see also notes 48 and 76.
[71] Yāqūt, *Muʿjam al-buldān* 2/337; al-Iṣfahānī, *Aghānī* 20/85.
[72] *Mā istalḥaqa qawm rajulan illā warithahum*, al-Ṭabarānī, *Al-muʿjam al-awsaṭ* 2/104; al-Jurjānī, *Taʾrīkh* 1/52.
[73] Ibn Saʿd, *Ṭabaqāt* 3/386.

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to their [true] fathers/trace their pedigrees to their [true] fathers', all at once. The verse, it will be recalled, was revealed in connection with the adoptees who had used the names of their adoptive fathers as patronyms.[74] The following explanation is often adduced to clarify this verse: *wa-kāna man tabannā rajulan fī al-jāhiliyya daʿāhu al-nās ilayhi wa-waritha mīrāthahu*. Bearing in mind that the adoptees used patronyms taken from the adoptive fathers, this explanation should be rendered as follows: 'whoever adopted someone in pre-Islamic times, people would ascribe/trace the adoptee back to him, call the adoptee by the patronym taken from him, and he would inherit from him'. The lexicographer Ibn Manẓūr equates the expression *yudʿā lahu* with *yunsab ilayhi fa-yuqāl fulān b, fulān*, '[x] is ascribed/traced back to [y] and is called "x son of y"'; Ibn Manẓūr remarks that he means someone who is not a real son of the one from whom he took his patronym. In fact the tracing of pedigree applies not only to adoptees, but to all sons (and daughters). The same Ibn Manẓūr refers to an acknowledged person (*mustalāṭ*) as one 'who is ascribed/traced back to [someone] and is called by a patronym taken from him'. Here the lexicographer employs two different expressions, *yudʿā lahu* and *yudʿā bihi*, respectively.[75] However, the fact that the expression *yudʿā bihi* exists does not invalidate the explanation offered above for *yudʿā li*, *iddaʿa ilā*, etc.

In conclusion, the verb *iddaʿa/daʿā*, when constructed with the preposition *ilā/li* and an indirect object, means 'to ascribe/to trace the pedigree', which entails the use of patronyms ('a call'). It may apply both to adoptees and to acknowledged persons.

On the other hand, when the verb takes a direct object, it is used of acknowledgement of paternity and it means 'claim': *iddaʿāhu abūhu*, 'his father claimed him as his own', namely, acknowledged him as his begotten son. Like its parallels *istalḥaqa* and *istalāṭa*, *iddaʿā* thus used implies neither a comment on the veracity of the claim, nor mockery. *Iddaʿā* may refer to acknowledgements based on fact as well as to such that are based on fiction and lies. Law books use the term *iddaʿāhu*, 'he claimed him', when discussing permissible acknowledgement of paternity.[76] Al-Ḥārith b. Kalada, mentioned above, acknowledged paternity of some of the sons born to his slave-girl Sumayya. This acknowledgement, expressed by the verb *iddaʿā*, was accepted as veracious: 'al-Ḥārith acknowledged Nāfiʿ (i.e. son of Sumayya) and admitted that he was his son, so Nāfiʿ's pedigree is correctly traced to al-Ḥārith (*iddaʿāhu al-Ḥārith wa-ʿtarafa annahu waladuhu fa-thabata nasabuhu annahu minhu*). The verb is used in the same sense in the story of the poet ʿAntara. But when applied to Muʿāwiya's acknowledgement of Ziyād, *iddaʿā* often denotes a false claim. It clearly does so in the case of the poet Suwayd.[77]

A second distinction must be made concerning *iddaʿā*, this time not about the objects (complements) of the verb, but about its active subject (the agent, *fāʿil*). In the examples given so far the subject is the father, whether an adoptive one who gives his name to the adoptee (*mutabannī*), or one who claims another as his own son (*mustalḥiq*). The meaning of the verb is somewhat different when its subject is the other party. In this construction the verb means 'to

[74] See the references in note 3.

[75] Ibn Manẓūr, *Lisān* 14/261. For the statement about the adoptees of the pre-Islamic times see note 5.

[76] E.g. al-Shāfiʿī, *Al-umm* 5/296, 8/26; al-Nawawī, *Rawḍat al-ṭālibīn* 12/105, 207; al-Marghīnānī, *Bidāyat al-mubtadi'* 1/95, 123, 170, 196, 201, cf. Ibn al-Athīr, *Al-nihāya* 2/369: *kāna ʿUmar yulḥiqu awlād al-jāhiliyya bi-man iddaʿāhum fī al-islām*.

[77] Nāfiʿ: Ibn Ḥajar al-ʿAsqalānī, *Iṣāba* (Beirut) 6/405; Ibn Saʿd, *Ṭabaqāt* 7/70. Ziyād: e.g. Ibn al-ʿArabī, *Al-ʿawaṣim* 1/250, 253, as against Ibn al-ʿAdīm, *Bughyat al-ṭalab* 6/2646. ʿAntara and Suwayd: above, p. 180.

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ascribe oneself to', 'to trace one's pedigree to', which in fact amounts to 'to claim descent from'. The person from whom one claims descent serves as the indirect object (preceded by *ilā/li*). In this construction the two basic notions of the root, 'call/trace the pedigree' and 'claim', come very close to one another. A famous *ḥadīth* states 'whoever claims descent from (or: traces himself to) someone other than his father, knowing it, is an infidel' (*laysa min rajul idda'ā ilā ghayr abīhi wa-huwa ya'lamuhu illā kafara*).[78] The same expression is used to denounce as false the claimed pedigree of Ziyād b. Abīhi. Ziyād is blamed for initiating the literary genre of Vices (*mathālib*) in order to cover up for his own forged pedigree: 'Ziyād, may God curse him ... when he falsely claimed to have been begotten by Abū Sufyān ... he initiated a Book of Vices ascribing to the Arabs every possible shame and blame' *Ziyād la'anahu allāh... lammā idda'ā ilā Abī Sufyān...'amila kitāb al-mathālib...*.[79] Obviously, the author of this passage considered Ziyād's claim as false. It should also be recalled that the Vices literature focused on lies about pedigrees and immoral behaviour of ancestresses. It is therefore clear that *idda'ā ilā* in this case refers to a fraudulent claim, not to mere ascription/tracing of pedigree.

The verb *idda'ā* occurs in yet another construction, this time with a clear judgement as to the veracity of the claim. The phrase 'he claimed a pedigree' (*idda'ā nasaban*) means, unambiguously, that the person in question made a false genealogical claim. Similarly, the phrase 'a claim by so-and-so that they belong to...' (*idda'ā' ... annahum min ...*) always denotes a false claim.[80]

The following *ḥadīth* illustrates various uses of *idda'ā*. It is reported that the Prophet decreed, 'one who was acknowledged to be the son of a deceased person, from whom he claims descent, the heirs of the deceased having claimed him [as their brother] ... should count as the [brother] of those who acknowledged him ... He should not count as such if the one from whom he claims descent had denied him [before he died]' (*kull mustalḥaq ustulḥiqa ba'da abīhi al-ladhī yadda'ī lahu idda'āhu warathatuhu min ba'du...fa-qad laḥiqa bi-man istalḥaqahu ... wa-lā yulḥaqu* (or: *yalḥaqu*) *idhā kāna alladhī yadda'ī lahu ankarahu*).[81] The claim of descent is expressed in the *ḥadīth* by *yadda'ī lahu*, both when it is accepted and when it is rejected. The claim by the half brothers is expressed by the same verb governing a direct object, *idda'āhu*.

It has been shown that the verb *idda'ā* may be a negative as well as a neutral term. One could expect the word *di'wa* to serve as a nomen verbi (*maṣdar*) and be, accordingly, neutral at times, negative at others. But *di'wa* is strongly associated with acknowledgements based on lies and with forged genealogies, and has therefore negative connotations. It is defined by the lexicographer Ibn Manẓūr as 'a claim by a person to be the son of someone other than his real father'.[82] It is also worthy of note that permissible acknowledgement of paternity is not usually called *di'wa* in the law books, but *istilḥāq*. In the same vein, there is no *ḥadīth* condemning *istilḥāq*, whereas *di'wa* is explicitly associated with the Jāhiliyya and with prostitution in the famous *ḥadīth* which lays down the *firāsh* principle. One of the versions of this tradition runs as follows: '*lā di'wa fī al-islām, dhahaba amr al-jāhiliyya, al-walad li-l-firāsh wa-li-l-'āhir al-ḥajar*', 'No [false] acknowledgement of paternity should

[78] Ibn Manẓūr, *Lisān* 14/261. See also al-Dhahabī, *Siyar* 2/26. where the false genealogical claim of Suhayb is condemned (*...iddi'ā'uka ilā al-Namir b. Qāsiṭ...*).

[79] Al-Iṣfahānī, *Aghānī* 20/85.

[80] E.g. Ibn al-'Imād, *Shadharāt al-dhahab* 2/72 (condemning the false pedigree of Ibn Tūmārt), 2/340; Ibn Khaldūn, *Muqaddima* 1/132; *iddi'ā' awlād ribāb ... annahum min banī Sulaym...iddi'ā' banī 'Abd al-Qawī b. al-'Abbās annahum min wuld al-'Abbās b. 'Abd al-Muṭṭalib...* .

[81] Al-Kinānī, *Miṣbāḥ al-zujāja* 3/150, and the references in note 17.

[82] Ibn Manẓūr, *Lisān* 14/261; al-Fayyūmī, *Al-miṣbāḥ* 1/131.

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exist in Islam, the practice of pre-Islamic times is over, the child belongs to the bed [where it was born], and the adulterous man gets the stone'.[83]

Like *di'wa*, the term *da'iyy* has a strong tendency to be pejorative. It is associated with the practice of forging genealogies, which was common, and condemned, in the Arab society that was based on descent groups. Goldziher amply describes the practice, as well as the ridicule on the one hand, and the pious objection on the other, which were precipitated by false genealogical claims. One modification of his account is perhaps necessary. Goldziher remarks that 'unjustified claims to belong to a tribe ... must have been common in the pagan era (by way of adoption)'.[84] This parenthetical remark confuses false genealogical claims with adoption. Contrary to Goldziher's suggestion, adoption was not the vehicle through which false genealogical claims were made. As already mentioned, adoption was concluded when both parties, the adoptee and the adoptive parent, were alive. It was publicly declared, with no fraudulent intentions involved. By contrast, forged genealogies are fraudulent by definition. The ancestors to whom the claimants related themselves were, more often than not, already dead and buried. The claimants usually argued that they were true offspring of, not adopted by, the dead ancestor. It is therefore necessary to distinguish adoption from false genealogical claims, just as it is necessary to distinguish between adoption and acknowledgement of paternity.

The term *da'iyy* strongly connotes pretence and forgery. It is often glossed by *mulṣaq*, or *laḥaq*; these are pejorative terms that unambiguously denote someone attached to a group which is not related to him by blood. *Da'iyy* is equated with even harsher terms such as *zanīm* (ignoble), *fāḥish* (immoderate, evil), *la'īm* (base), *hajīn* and *mu'alhaj* (of impure descent), and so on.[85] Its counterparts are *'abd* (slave) and *ibn al-'āhira* (son of a whore). The typical *da'iyy* of Islamic times is the notorious Ziyād b. Abīhi, discussed above.[86] Although hardly attested in pre-Islamic poetry, the pejorative connotation of the term *da'iyy* must be ancient and deeply rooted in the Arab culture, which placed pure descent at the top of social values. Its meaning and negative connotations did not change in Islamic times, deriving as they do from the term's association with fraudulent genealogical claims.[87] Muslim jurists even pondered the question of whether or not the reference to someone as *da'iyy* should be considered as libel, punishable by law.[88]

Following Quran 33:4, 37, the term *da'iyy* is understood as referring to, among other things, adoptees. As far as I can tell, this meaning of the term has never been questioned. In light of the analysis offered above, however, it seems to me that the quranic use of the term is not based on its meaning in the Jāhiliyya. At that time, *da'iyy* did not signify 'an adoptee' even though derivatives of the root *d'w* were used in the context of adoption. I base this conclusion on two considerations. First, neither shame nor ridicule was

[83] See above p. 180. On *istilḥāq* being positive even if false see also below pp. 187–8 and note 108.

[84] Goldziher, *Muslim studies* 1/127; note 5 is a reference to true adoption (*tabannī*). For the discussion of genealogies and false claims see ibid., pp. 126–54. On the scorn for *da'iyys* see also Arazi, 'les enfants'; his conclusions are discussed below.

[85] Ibn Manẓūr, *Lisān* 2/328, 10/330, see also 11/181, 242, 12/185, 277; al-Zamakhsharī, *Al-fā'iq* 2/111; al-Qurṭubī, *Tafsīr* 1/25, 18/234; Ibn Kathīr, *Tafsīr* 4/405; al-Ṭabarī, *Tafsīr* 29/25.

[86] See Arazi, 'Les enfants', pp. 1–10; Ibn Manẓūr, *Lisān* 12/115, 15/270; Yāqūt, *Mu'jam al-buldān* 3/346; Ziyād b. Abīhi as a *da'iyy* and a son of a whore, see e.g. al-Ṭabarī, *Ta'rīkh* 3/225, 303, 330; Ya'qūbī, *Ta'rīkh* 2/248; Ibn al-Athīr, *Al-kāmil* 3/428, 5/76; Ibn 'Asākir, *Ta'rīkh* 37/452; Ibn Khallikān, *Wafayāt* 6/362; al-Haythamī, *Majma' al-zawā'id* 7/251; al-Ṭabarānī, *Al-mu'jam al-kabīr* 10/242.

[87] See e.g. al-Maghribī, *Al-mughrib* 1/289; al-Fayyūmī, *Al-miṣbāḥ* 1/131. Arazi, 'Les enfants', pp. 1–2 observed that the term was hardly used in pre-Islamic poetry.

[88] 'Abd al-Razzāq, *Al-muṣannaf* 7/422.

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associated with adoption (*tabannī*) in the Jāhiliyya.[89] When an adoptee was given the name of the adoptive father, it was not done to deceive the world around, but as a token of acceptance, perhaps as it is done in modern times. Therefore, the pejorative term *daʿiyy* was not appropriate to designate an adoptee, even though adoptees assumed patronyms taken from people other than their true fathers. Secondly, as far as I can tell, the term *daʿiyy* does not occur in the sources in the sense of 'adopted' except in connection with the quranic verses 33:4, 37. Before explaining how the Quran contributed to the development of this term, I would like to discuss a recent reconstruction of its history.

In his 'Les enfants adultérins' Arazi juxtaposes what he calls objective traditions about adoption (related to Zayd b. Ḥāritha) with pejorative uses of the term *daʿiyy.* He concludes that *daʿiyys* were tolerated in pre-Islamic times, but that their status dropped considerably following the advent of Islam. The term *daʿiyy*, he argues, had been neutral and became pejorative as a result of the poetry of Ḥassān b. Thābit.[90]

Arazi's conclusion is based on the premise that the term *daʿiyy* included adoptees, illegitimate children acknowledged by their fathers, and pretenders. However, judging from the examples that he adduces, Ḥassān's poetry in fact denounces not adoptees, but people with falsely claimed pedigrees, adulterous mothers, and illegitimate children. Ḥassān does not mean 'an adoptee' when he uses the term *daʿiyy*, because he conceives of it in its Jāhilī sense. I here suggest that adoptees were not subsumed under the term *daʿiyy* (pl. *adʿiyāʾ*) in the Jāhiliyya. The connection between adoptees and this term was made by the Quran. In other words *daʿiyy* was not a neutral term that became pejorative; it was a pejorative term that came to be applied to people of a neutral status, namely, to adoptees, by a process that will be described presently.

The equation between adoptees and the derogatory term *adʿiyāʾ* was made in Quran 33: 4–5 and 33: 37, perhaps on purpose. Banning the practice of adoption, these quranic verses stressed that aspect of it which could count as negative, namely, the use of a foreign patronym. There is no doubt that the term *adʿiyāʾ* in these verses refers to 'adoptees', because one of the adoptees is mentioned by name in 33: 37, that is, Zayd b. Ḥāritha, the Prophet's adopted son. The exegetes construed *adʿiyāʾ* in 33: 4 as 'adopted', because they had no doubt that this verse too referred to Zayd b. Ḥāritha. They glossed *adʿiyāʾakum* in 33: 4 with *man tabannaytumūhu*, 'those whom you have adopted'.[91] A remark such as 'the Arabs used to consider the *daʿiyy* of a man as his son' should not be taken as an independent statement of fact, but as a comment on Quran 33: 4–5. Precisely the same applies to the gloss '*daʿiyy* is someone who was adopted, as mentioned in the quranic verse; He did not make your adopted sons your [real] sons (33: 4)'.[92] Great confusion therefore arose regarding the term *daʿiyy*. By having this term applied to them, the adoptees were disparaged, which suited the quranic purpose of banning the practice of adoption. But another result also ensued: namely, the confusion of adoption with acknowledgement based on lies, and with false genealogical claims. The affair of Zayd became the confluence of adoption, which had been an accepted institution, and lies about pedigree, which had always been condemned. It is not uncommon to find the *ḥadīth*s condemning lies about pedigree being adduced as exegesis of Quran 33: 4–5.[93]

[89] Cf above, p. 173. See also Arazi, 'Les enfants', pp. l2–13.
[90] Arazi, 'Les enfants', see especially pp. 14–32.
[91] Ibn al-Hāʾim, *Al-tibyān* 1/339; al-Shawkānī, *Fatḥ al-qadīr* 1/446; al-Ṭabarī, *Tafsīr* 21/119–120; al-Wāḥidī, *Al-wajīz* 2/858; see also the references in note 3.
[92] al-Bayḍāwī, *Tafsīr* 4/363; al-Rāzī, *Mukhtār al-ṣiḥāḥ* 1/86.
[93] E.g. Ibn Ḥajar al-ʿAsqalānī, *Fatḥ al-bārī* 12/55.

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The process described above helps make sense of a curious tradition which is otherwise incomprehensible. Alongside the usual story about Zayd b. Ḥāritha and the equation of *ad'iyā'* with adoptees, al-Ṭabarī quotes a tradition on the authority of Abū Kurayb–Ibn Abī Zā'ida–Ash'ath–'Āmir: 'Zayd is not one of the *ad'iyā'*' (*laysa fī al-ad'iyā' Zayd*).[94] This statement makes no sense at all, given that the verses are invariably connected with Zayd. The only way to understand it is, I think, as an attempt to dissociate Zayd, the beloved of the Prophet, from the pejorative connotations of the term *da'iyy*. This attempt is quite audacious, given that it is the Quran which attaches the label *ad'iyā'* to adoptees in general and to Zayd in particular.

Yet another vestige remains of the original distinction between adoptees and forgers of pedigrees, which became blurred by Quran 33:4, 37. Ibn al-'Arābī is quoted as saying, '*da'iyy* is one whose genealogy is dubious; it is also one who was adopted by another who called him his son even though he was the offspring of someone else', whereupon he duly adduces the example of Zayd and the Prophet. By the word 'also' (*ayḍan*) Ibn al-'Arabī clearly makes a distinction between a person who falsely claims a pedigree, and an adoptee.[95]

It is thus clear that the multiple uses of the root *d'w* cause confusion between adoption, acknowledgement of paternity and false genealogical claims. However, these three categories should be differentiated.

III. *Alternatives to adoption*

Legal adoption was prohibited by Islam and was indeed rarely practised. The few recorded cases of adoption were apparently based on laws or customs lying outside the Sharī'a. For example, the Egyptian scholar Ibn Suwayd (9/15th century) adopted a son when he lived in India. It is explicitly noted that he acted in this according to the local custom (*'alā qā'idat al-hind*) which overruled the islamic prohibition.[96] Aḥmad Ibn Ṭulūn is said to have been adopted by the Turkish *amīr* Ṭulūn, a *mamlūk* of the caliph Ma'mūn.[97] In addition, a few cases of adoption by women are reported, but the legal implications of such a procedure are not clear. The following are the cases that I found of adoption by women.

The mother of the poet 'Āmir b. al-Ṭufayl adopted the son of her husband's second wife. She used to call him 'my son' and protect him from his mother's wrath.[98]

The Companion Shuraḥbīl b. Ḥasana took his patronym, or rather matronym, from his mother Ḥasana, for there was no certainty about the identity of his father. According to certain versions, he was not a true, but an adopted son of Ḥasana.[99]

'Abd al-Raḥmān b. Ādam, a traditionist and an official under 'Ubaydallāh b. Ziyād, was a foundling adopted by a woman of Ḍubay'a called Umm Barthan. He was also known as Ibn Umm Barthan.[100]

[94] al-Ṭabarī, *Tafsīr* 21/120.

[95] Ibn Manẓūr, *Lisān* 14/261; *al-da'iyy al-muttaham fī nasabihi wa-huwa al-da'iyy wa-l-da'iyy ayḍan al-mutabannā alladhī tabannāhu rajul fa-d'āhu ibnahu wa-nasabuhu ilā ghayrihi*.

[96] Ibn al-'Imād, *Shadharāt al-dhahab* 4/95; al-'Aydarūsī, *Al-nūr al-sāfir* 1/96. See also Bousquet, ''Āda'.

[97] Al-Dhahabī, *Siyar* 13/24; Ibn Kathīr, *Al-bidāya wa-l-nihāya* 11/45. A search in the digital *Encyclopaedia of Islam* yielded a few cases, most of them relating to Muslims in India, Persia, Anatolia and even China. It is not even certain that all these cases are indeed cases of adoption, as scholars confuse adoption with other practices. For instance, Muḥammad b. Abī Ḥudhayfa is defined as an adopted son of 'Uthmān (Levi Della Vida, ''Uthmān', p. 946). Muḥammad was not adopted by 'Uthmān but only raised by him because he was an orphan of the same descent-group; see Ibn Ḥajar al-'Asqalānī, *Isāba* (Cairo) 3/373.

[98] Al-Mufaḍḍal al-Ḍabbī, quoted by Santillana, *Istituzioni* 1/196 note 29.

[99] Ibn 'Abd al-Barr, *Istī'āb* (Cairo) 2/140; Ibn Ḥajar al-'Asqalānī, *Tahdhīb* 4/285.

[100] Al-Mizzī, *Tahdhīb al-kamāl* 16/505, 508; Ibn 'Asākir, *Ta'rīkh* 34/172.

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'Ā'isha is said to have adopted the Kūfan traditionist Masrūq b. al-Ajda' (*kānat 'Ā'isha qad tabannathu*).[101]

The scholar Ḥasan b. Qāsim al-Marrākushī (d. 749 A.H.) is also called Ibn Umm Qāsim, because he was adopted by a woman bearing that name. She was a scholar in her own right, related to the ruling dynasty (*min bayt al-sulṭān*).[102]

Apart from these few cases, it appears that Muslims generally adhered to the quranic prohibition, but that they found ways to get round it. The principal means are: (a) fraudulent acknowlegement of paternity (*Istilḥāq*); and (b) milk bonds.

Istilḥāq

According to Santillana, adoption, prohibited by Islam, 'took the form of acknowledgement, or avowal ("*iqrār*"), of paternity ("*istilḥāq*")'.[103] This means that a person who is not the progenitor of the child may legally acknowledge him as his own.

Islamic law appears to have taken measures to prevent lies in the matter of paternity (see above). Yet as long as there is nothing to refute an acknowledgement of paternity, the possibility that it is false is not taken into account.[104] The dual meaning of *istilḥāq* has been discussed above: it may refer to genuine fathers and sons, but also to false ones. In the latter case *istilḥāq* amounts to adoption in disguise. However, the difference between adoption and acknowledgement remains, in that the acknowledged person (*mustalḥaq*) is declared to be the begotten (not the adopted) son of the acknowledging person (*mustalḥiq*).

Istilḥāq became a legal device (*ḥīla*) used in order to add a complete stranger to the family. This was already done in the Jāhiliyya. The poet Suwayd, discussed above, was acknowledged by the second husband of his mother, although his progenitor was, no doubt, his mother's first husband. The *istilḥāq* of Ziyād would also be relevant to this discussion if Mu'āwiya lied about his father Abū Sufyān, as many people believed. In the same vein, the poet Nuṣayb, who was a client of 'Abd al-'Azīz b. Marwān, was invited to join the Marwānids by *istilḥāq.* Nuṣayb refused, because being a 'joined member' (*da'iyy lāḥiq*) was in his opinion more base than being a client (*mawlā*).[105] An anecdote told by the great Shāfi'ī scholar Abū Isḥāq al-Marwazī refers to an old and childless man who acknowledged as his own the son of his ex-wife, knowing that he was begotten by someone else.[106] The Ḥanbalī scholar al-Bahūtī allows *istilḥāq* of foundlings, being fully aware that it is based on fiction: 'if someone acknowledges a foundling to be his own, it should be accepted, because it is an acknowledgement of a child whose origin is not known (*majhūl al-nasab*), and who is acknowledged by someone who could indeed have been his father; no harm is done, nobody objects, no obvious fact refutes it ... it is for the welfare of the child who needs care, shelter and pedigree'.[107] Ibn Ḥajar al-'Asqalānī

[101] Al-Mizzī, *Tahdhīb al-kamāl* 27/456; Al-Dhahabī, *Siyar* 4/66–7; al-Baghdādī, *Ta'rīkh Baghdād* 13/234.
[102] Ibn Ḥajar al-'Asqalānī, *Al-durar* 2/138.
[103] Santillana, *istituzioni* 1/239.
[104] Shalabī, *Ahkām*, p. 703.
[105] Al-Iṣfahānī, *Aghānī* (ed. Būlāq) 1/134, quoted by Goldziher, p. 128 note 2.
[106] Ibn al-'Imād, *Shadharāt al-Dhahab* 1/356.
[107] Al Bahūtī, *Kashshāf al-qinā'* 4/235; in the same vein al-Sarakhsī, *Al-mabsūṭ* 10/213–14. Cf. Bousquet, *Précis* 1/159, who mentions that many families raised other people's children, but he does not specify the legal mechanisms by which this was done (for example, purported acknowledgement of paternity or mere custody). The term applied to mere custody in pre-Islamic times is '*nasha'a fī ḥijrihi*', 'he grew up in his care and protection', Lane s.v. *ḥjr*, or *rabbā*, to raise, as

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asserts that he knows traditions condemning the disavowal of children on the one hand, and false genealogical claims on the other, but that he never saw a tradition condemning acknowledgement of paternity even when it is known to be based on a fiction.[108] By this he in fact allows adoption, simply calling it acknowledgement of paternity. Reservation is voiced in connection with inheritance. According to 'Alī b. al-Ḥusayn, as quoted and interpreted by the lexicographer Ibn Manẓūr, an acknowledged person assumes the patronym taken from the acknowledging one, but he does not inherit from him, because he is not a biological son. Although using a derivative of *lwṭ* (see above), Ibn Manẓūr explicitly points out that he means here an acknowledgement which is based on fiction, not one which establishes genuine paternity.[109]

Milk bonds

Another alternative to adoption is the creation of milk bonds. Such bonds constituted a basis for co-operation and solidarity between people who were not otherwise related to one another.[110] Milk bonds involved not only the foster mother and child, but also all the other members of the foster mother's family. There are milk brothers and sisters, milk uncles and aunts, milk fathers, etc.[111] It seems that a 'son by milk' shared with a true son mainly the rules of behaviour in the presence of the women of the family and the restrictions on marriage with them; yet opinions differ as to whether or not a woman should veil herself in the presence of a milk-relation.[112] The ban on marriage with foster mothers and milk sisters is laid down in Quran 4:23, and it was extended to other milk-relations. A tradition is also ascribed to the Prophet to the effect that 'whatever is forbidden [with respect to marriage] by blood relationship is forbidden by milk relationship' (that is, milk sisters, etc. are forbidden just like true sisters, etc.).[113]

The Prophet himself in fact replaced adoption with milk bonds in the case of Sālim b. Abī Ḥudhayfa. After the ban on adoption had been revealed, Sālim's adoptive mother asked the Prophet to define the relationship between them so that their long-established intimacy would not be impaired. The Prophet suggested that she suckle him a few times, thus making him her foster son, forbidden to her in marriage and therefore permitted to her for free personal contact.[114] The Prophet's wife 'Ā'isha based herself on the precedent of Sālim when she wanted certain men to visit her without restrictions. She

'Uthmān raised Muḥammad b. Abī Ḥudhayfa, see note 97 above. The consequences of this practice in the Jāhiliyya are not clear.

[108] *... lam ara ḥadīthan fīhi al-tasrīḥ bi-l-wa'īd fī ḥaqq man istalḥaqa waladan laysa minhu*, Ibn Ḥajar al-'Asqalānī, *Al-talkhīṣ al-ḥabīr* 3/231.

[109] Ibn Manẓūr, *Lisān* 14/261: *al-mustalāṭ la yarithu wa-yud'ā lahu wa-yud'ā bihi ... la yarithu li-annahu laysa bi-walad ḥaqīqī*.

[110] Giladi, *Infants*, esp. pp. 27–8; Chelhod, '*Raḍā*'. For illustrations see e.g. Ibn Qāni', *Mu'jam al-ṣaḥāba* 1/262, ('Uthmān appeals to the Prophet on behalf of his milk brother); al-Ṭabarī, *Ta'rīkh* 2/171 (the Prophet grants the requests of his milk sister, see also Ibn Sa'd, *Ṭabaqāt* 1/114–15); ibid., 4/380 (the caliph refrains from arresting his milk brother even though he had a political reason to do so). Milk bonds did not, however, prevent Hārūn al-Rashīd from treating the Barmakids harshly.

[111] See e.g. Ibn Ḥajar al-'Asqalānī, *Al-iṣāba* (Beirut) 1/99, 277; al-Baghdādī, *Ta'rīkh Baghdād* 12/62; al-Dhahabī, *Siyar* 1/150, 4/288, 7/50; al-Ṭabarī, *Ta'rīkh* 1/454.

[112] Ibn al-'Adīm, *Bughyat al-talab* 2/767; Ibn Ḥanbal, *Masā'il* 1/465; Ibn Ḥajar al-'Asqalānī, *Al-iṣāba* (Beirut) 1/99; al-Zamakhsharī, *Al-fā'iq* 1/243; *Al-mawsū'a al-fiqhiyya* 1/184.

[113] Abū Nu'aym al-Iṣbahānī, *Ḥilyat al-awliyā'* 3/91, 4/365–6; al-Qurṭubī, *Tafsīr* 5/111; Ibn Rajab, *Jāmi'* 1/412–13; al-Sarakhsī, *Al-mabsūṭ* 4/200; Ibn Kathīr, *Tafsīr* 3/467; Ibn Kathīr, *al-bidāya wa-l-nihāya* 2/273; *Al-mawsū'a al-fiqhiyya* 1/184; Ibn Manẓūr, *Lisān* 4/472; Ibn Abī Ya'lā, *Ṭabaqāt al-ḥanābila* 2/103; al-Ṭabarī, *Ta'rīkh* 2/216.

[114] Al-Shāfi'ī, *Al-umm* 5/28; al-Zurqānī, *Sharḥ al-Zurqānī* 3/315–16. The case of Sālim is discussed in detail in Mitter, 'Unconditional manumission'.

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sent these men to her sister to be suckled. In this manner she turned them into her own milk brothers, and could therefore freely meet with them. The other wives of the Prophet, as well as most of the jurists, objected to her practice.[115]

Milk bonds seem to have been socially important, but as far as I can tell they have no legal consequences (except the restrictions on marriage). Acknowledgement of paternity, even when feigned, established a legal parent–child relationship between the acknowledging person and the acknowledged one.

Conclusion

Adoption, acknowledgement of paternity, and false genealogical claims were distinct practices. The first of these was not associated with shame, whereas the other two were the subject of scorn and ridicule.

Adoption was practised in pre-Islamic times but it was not widespread. It was different from modern adoption in the Western world in that the adoptees were not legally the equals of biological sons. Acknowledgement of paternity was often resorted to in the Jāhiliyya and the acknowledged were the legal equals of biological sons, although sometimes they were ridiculed on account of their being illegitimate. Forged genealogies were common in both Jāhiliyya and Islam. Islam condemns the forgery of genealogies, restricts acknowledgement of paternity and prohibits adoption. Nevertheless, Muslims continued to forge genealogies, and they also found ways to circumvent the ban on adoption.

The distinction between adoption, acknowledgement of paternity, and false genealogical claims became blurred in the Muslim sources and in the scholarly literature. There are several reasons to account for this fact. First, adoptees and pretenders to genealogies have in common the use of a patronym taken from a stranger. Secondly, adoption and acknowledgement of paternity have in common the use of the verb *idda'ā*, albeit in different constructions and with differing meanings. Thirdly, adoption and acknowledgement which is based on fiction are similar in that they are means of introducing a stranger into the family. Finally, the Quran applied to adoptees the pejorative term *ad'iyā'*, which had been used before to denote pretenders and to denounce them. The confusion between the three practices is therefore understandable, but it may now be removed.

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[115] Al-Qurṭubī, *Tafsīr* 5/111, (including the *ḥadīth yuḥarram min al-riḍā'a mā yuḥarram min al-nasab*); Ibn Kathīr, *Tafsīr* 1/284; al-Shāfi'ī, *Al-umm* 5/28–29; al-Shāfi'ī, *Musnad* 1/307; Mālik b. Anas, *Al-muwaṭṭa'* 2/605; al-Zurqānī, *Sharḥ al-zurqānī* 3/314–7; al-Kāsānī, *Badā'i'* 4/5, see also Giladi, *Infants*, pp. 27–8.

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