

ISLAM AS THE INBORN RELIGION OF MANKIND:  
THE CONCEPT OF *FITRA* IN THE WORKS OF IBN ḤAZM<sup>1</sup>

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INTRODUCTION

A question much debated in religious communities is that of identity, of belonging: who belongs to the group, and how does one become a member of that group in case one was not born into it? According to Jewish law, for example, a Jew is someone who is born from a Jewish mother—regardless of the ethnic or religious background of the father—or someone who has entered the community through conversion. However, nowadays conversion to Judaism is often discouraged rather than encouraged. By contrast, Islam, which has much in common with Judaism on other points, is still a proselytizing religion that actively seeks converts, and those who were not born of a Muslim father, or a Muslim couple, but wish to join the Muslim community will find that the entry requirements are relatively easy to meet.

Conversion to Islam in past and present, both as an individual and as a group process has already been the topic of many scholarly articles and a number of books,<sup>2</sup> and it is therefore not this phenomenon that I shall deal with in the present contribution. Rather, I should like to address a topic which, though much discussed in Muslim sources, has received relatively little attention in modern scholarship,<sup>3</sup>

<sup>1</sup> Research for this paper was carried out during a stint as postdoctoral fellow at the Departamento de Estudios Árabes of the Consejo Superior de Investigaciones Científicas in Madrid (in 1997). Earlier versions were presented at the international workshop «Individual Piety and Society» (Istanbul, 3-5 July 1998), which formed part of the European Science Foundation's Programme «Individual and Society in the Mediterranean Muslim World» (team leader: Mercedes García-Arenal), and at the 33rd Annual Meeting of the Middle East Studies Association of North America, Washington, D.C., 1999. I greatly benefited from comments received during these two meetings.

<sup>2</sup> E.g., Bulliet, R. W., *Conversion to Islam in the Medieval Period. An Essay in Quantitative History*, Cambridge, Mass., 1979; Levtzion, N. (ed.), *Conversion to Islam*, New York, 1979 (with extensive bibliography); Gervers, M. and Jibran Bikhazi, R. (eds.), *Conversion and Continuity. Indigenous Christian Communities in Islamic Lands, Eighth to Eighteenth Centuries*, Toronto, 1990, and now García-Arenal, M. (ed.), *Conversion religieuse en Islam méditerranéen* (Paris, in press).

<sup>3</sup> Notable exceptions are Straface, A., «La *fitrah* come espressione di iman», *Oriente Moderno* n.s. XI (LXXII), 7-12 (1992), 69-86; Macdonald, D. B., «*Fiṭra*», *Et*<sup>2</sup>, II, 931-932; Mohammed, Y., «The Interpretations of *Fiṭrah*», *Islamic Studies* 34 (1995), 129-151; *id.*, *Fiṭrah: The Islamic Concept of Human Nature*, London, 1996; Gobillot, G., «L'épître du discours sur la *fiṭra* (*Risāla fi-*

viz. the wide-spread belief, rooted in the Koran and a number of exegetical *ḥadīths*, that literally *everyone* starts his life as a Muslim, and that it is his parents who give him his subsequent religious identity: if they are Muslims, they will continue to raise their child as a Muslim; if, on the other hand, they are unbelievers, they wean it away from its inborn Islam, bringing it up as a Jew, a Christian, a Zoroastrian, or a polytheist, as the case may be. Only through (re)conversion to Islam can such a person reconnect with his *fiṭra*, his inborn nature and natural disposition. The views I shall present here are those of the 5th/11th century *Zāhirī* scholar Ibn Ḥazm of Cordoba,<sup>4</sup> who addresses theological and legal aspects of the concept of *fiṭra* in several of his writings. After some introductory comments on the origins of the discussion, I shall first present Ibn Ḥazm's theological outlook, as reflected in his *Kitāb al-Fiṣal fi'l-milal wa'l-ahwā' wa'l-niḥal*. Subsequently, I shall discuss the legal implications of Ibn Ḥazm's understanding of *fiṭra*, as revealed in his code of *Zāhirī* legal opinion, *Al-Muḥallā bi'l-āthār*.

#### ORIGINS: FIṬRA IN KORAN AND SUNNA

The term *fiṭra* first occurs in the Koran, in *sūra* 30:30, which in Arabic reads as follows: *fa-aqim wajhaka li'l-dīni ḥanīfan fiṭrat Allāhi allatī faṭara al-nāsa 'alayhā, lā tabdīla li-khalqī'llāhi, dhālika'l-dīnu al-qayyimu wa-lākin akthara'l-nāsi lā ya'lamūna*, which may roughly be translated as «So set your face to the religion, as a man of pure faith; the *fiṭra* on which He has created mankind; there is no changing God's creation; that is the right religion, but most

*l-kalām 'alā-l-fiṭra*) de Taqī-l-Dīn Aḥmad ibn Taymīya (661/1262-728/1328). Présentation et traduction annotée», *Annales Islamologiques* XX (1984), 29-53; Wensinck, A. J., *The Muslim Creed. Its Genesis and Historical Development*, Cambridge, 1932 (repr. London 1965), 42-44; 190f.; 214 f.; Ess, J. van, *Zwischen Ḥadīṭ und Theologie. Studien zum Entstehen prädestinatianischer Überlieferung* [Studien zur Sprache, Geschichte und Kultur des islamischen Orients, Neue Folge, Band 7], Berlin, 1975, 101-114. For brief descriptions of the concept of *fiṭra* and its various interpretations, see Tritton, A. S., *Islam. Belief and Practices*, London, 1951, 179; Stieglecker, H., *Die Glaubenslehren des Islam*, Paderborn, Munich, Vienna, 1962, 78f.; Bouman, J., *Gott und Mensch im Koran. Eine Strukturform religiöser Anthropologie anhand des Beispiels Allah und Muhammad* [Impulse der Forschung, 22], Darmstadt, 1977, 189-191; Glassé, C., *The Concise Encyclopedia of Islam*, San Francisco, 1989, 127f.; Bowker, J. (ed.), *The Oxford Dictionary of World Religions*, Oxford, New York, 1997, 347.

<sup>4</sup> I am assuming that Ibn Ḥazm needs no further introduction here. Some basic publications on his life and works: *EP*<sup>2</sup>, III, 790-799, s.v. Ibn Ḥazm (R. Arnaldez); Asín Palacios, M., *Abenházam de Córdoba y su historia crítica de las ideas religiosas* (Madrid, 1927-1932), 5 vols., see vol. I; Abū Zahra, M., *Ibn Ḥazm, Ḥayātuh wa-'aṣruh - āra'uh wa-fiqhuh*, Cairo, n.d.; Chejne, A. G., *Ibn Hazm*, Chicago, 1982.

men understand not».<sup>5</sup> I have deliberately left the word *fiṭra* untranslated, for it is by no means unequivocal. However, since it is derived from the Arabic root *faṭara*, whose basic meaning in the Koran is «to create», *fiṭra* might best be translated as «a way of being created»,<sup>6</sup> but because this is rather vague, it leaves room for a wide variety of interpretations.<sup>7</sup> According to some, *fiṭra* meant: God's plan, or destiny. In this predestinarian view, everyone's fate has been decided by God from the very beginning, and it cannot be changed. Others took *fiṭra* to refer to a healthy physical condition, a state of perfection. Others again saw *fiṭra* as an inborn tendency, a natural disposition towards monotheism (*tawḥīd*), or even towards Islam itself. Indeed, the majority of Muslim thinkers, Ibn Ḥazm included, came to equate *fiṭra* with Islam, and hence to believe that everyone starts his life as a Muslim. They found corroboration for their interpretation in another passage from the Koran, viz. S. 7:172, in which God makes a covenant with the descendants of Adam, who unanimously and unwaveringly confirm that God is their Lord.

In post-Koranic Islamic literature, the concept of *fiṭra* is closely related to the question of whether children, either of Muslims or of unbelievers, will go to hell if they die before having reached the age of discernment, the age from which they can be held accountable for their deeds, including their choice of religion. This issue was much debated in Islam, had been, in fact, since the first century of that religion's existence.<sup>8</sup> What initially gave rise to the discussion seems to have been the view, held by the Azraqiyya sect within Khārijism,<sup>9</sup> that children

<sup>5</sup> Except in this particular case, I have used the translation by Mohammed Marmaduke Pickthall, *The Holy Koran. An Explanatory Translation*, New York, 1953. However, I have substituted the name Allāh with God.

<sup>6</sup> The basic meaning of the root *f-t-r* is to create, in most cases with reference to heaven and earth, having been created by God, as in *sūra* 6:14, 79; 12:101; 14:10; 21:56; 35:1; 39:46; 42:11. In some verses, God is referred to as the one who *faṭara* man; thus in S. 11:51; 36:22; 43:27 (created me); 17:51 (created you); 20:72 (created us). In other cases, the root has the meaning of being rent asunder (sky, etc.): S. 19:90; 42:5; 82:1; 73:18; and see also S. 67:3. The word *fiṭra* itself occurs only once: in S. 30:30.

<sup>7</sup> For a survey of the various opinions, see Ibn al-Jawzī, *Zād al-masīr fī 'ilm al-tafsīr* (Beirut, Damascus, 1404/1984), 9 vols., see VI, 300-302; Ibn Manẓūr, *Lisān al-'Arab*. Rearranged according to the alphabetical order of the words by Yūsuf Khayyāṭ and Nadīm Mar'ashlī (Beirut, n.d.), 3 vols., see II, 1109, s.v. *fiṭra*. For a discussion of different renderings in translations of the Koran, see Straface, «La *fiṭra*».

<sup>8</sup> For a survey of Muslim views on the fate of children, Muslim and non-Muslim, in the afterlife, with occasional reference to *fiṭra*, see Smith, J. I. and Haddad, Y. Y., *The Islamic Understanding of Death and Resurrection*, Albany, 1981, 168-182.

<sup>9</sup> On this sect, see *El*<sup>2</sup>, I, 810 f., s.v. Azāriqa (R. Rubinacci), and Shahrastānī, *Livre des religions et des sectes*, I. Traduction avec introduction et notes par Gimaret, D. et Monnot, G. [Collection UNESCO d'oeuvres représentatives, Série arabe], Louvain, 1986, 374-380. In a

who die before having reached the age of discernment must be considered unbelievers —since they have not consciously adopted Islam— and are therefore condemned to hell; this at a time when the general view seems to have been that as children cannot be held accountable for their deeds, they are innocent and therefore deserve to be saved, i.e., go to paradise.

According to Wensinck, it was presumably in reaction to the harsh view of the Azraqiyya that a number of prophetic traditions were coined to the effect that everyone who is born is born according to the *fiṭra*, and that it is his parents who make him a Jew, a Christian, a Zoroastrian, or a polytheist.<sup>10</sup> This tradition, of which there exist several different versions,<sup>11</sup> came to be widely interpreted as: everyone is born a Muslim, and then some are made into unbelievers by their parents. This means, of course, that the onus is on the parents, rather than on the child, whose inborn Islam, which is its natural disposition, is corrupted.

Of course this interpretation of the *fiṭra* texts had consequences for the legal issues involving very young children. In *furū'* books, the passages about *fiṭra* from the Koran and the Sunna may be encountered mainly in the chapters on *al-Janā'iz* (funeral rites), *al-Janīn* (the foetus), and *al-Laḳīṭ* (the foundling). As we shall see, this is also the case in Ibn Ḥazm's *Muḥallā*. But first let us turn to the theological discussion, which already touches upon certain of the legal implications to which we shall return presently.

different context (p. 117), Gimaret and Monnot translate the phrase '*alā'l-fiṭra*' as «dans l'état d'innocence native».

<sup>10</sup> Wensinck, *The Muslim Creed*, 44, 214.

<sup>11</sup> The traditions are conveniently gathered in *Kitāb al-qadar* of Muslim's *Ṣaḥīḥ*, under the heading *Bāb ma'nā kullī mawlūdīn yūladu 'alā'l-fiṭra, wa-ḥukm mawtā atfāl al-kuffār wa-atfāl al-muslimīn*. This section contains the following variants: (1) *mā min mawlūdīn illā yūladu 'alā'l-fiṭrati, fa-abawāhu yuhawwidānihi wa-yunaṣṣirānihi wa-yumajjisānihi, kamā tuntiju al-bahīmatu bahīmatan jam'ā'a, hal tuḥissūna fihā min jad'ā'a*; (2) *mā min mawlūdīn illā yūladu 'alā'l-fiṭrati, fa-abawāhu yuhawwidānihi wa-yunaṣṣirānihi wa-yusharrīkānihi*; (3) *man yūladu yūladu 'alā hādhihi'l-fiṭrati, fa-abawāhu yuhawwidānihi wa-yunaṣṣirānihi kamā tantijūna'l-ibilu fa-hal tajidūna fihā jad'ā'a, ḥattā takūnū antum tajda'ūnahā*; (4) *kullu insānin taliduhu ummuhu 'alā'l-fiṭrati wa-abawāhu ba'du yuhawwidānihi wa-yunaṣṣirānihi wa-yumajjisānihi, fa-in kānā muslimayn, fa-muslimun*; (5) *mā min mawlūdīn illā wa-huwa 'alā'l-milla*; (6) *mā min mawlūdīn illā 'alā hādhihi'l-milla, ḥattā yubayyina 'anhu lisānuhu*; (7) *laysa min mawlūdīn yūladu illā 'alā hādhihi'l-fiṭra ḥatta yu'abbira 'anhu lisānuhu*. See *Ṣaḥīḥ Muslim, bi-Sharḥ al-Imām Abī Zakariyyā' (...)* *al-Nūrī* (Beirut, 1415/1995), 18 parts in 9 vols., see XVI, 177-180. For an English translation (in which *fiṭra* is defined as man's true nature: Islam), see *Ṣaḥīḥ Muslim*, rendered into English by Ṣiddīqī, 'A.-Ḥ. (New Delhi, 1977), 4 parts in 2 vols., see IV, 1398f. For further references, see Wensinck, A. J., *A Handbook of Early Muhammadan Tradition, alphabetically arranged*, Leiden, 1927 (repr. 1960, 1971), 43, s.v. Child, Children.

## IBN ḤAZM'S UNDERSTANDING OF FITRA: THEOLOGICAL CONSIDERATIONS

The term *fiṭra* is mentioned in *Kitāb al-Fiṣal* in different contexts. First of all, the *fiṭra* verse is adduced as one of many Koranic passages which prove, in Ibn Ḥazm's view, that God is the creator of all things.<sup>12</sup> The second reference to *fiṭra* occurs in Ibn Ḥazm's discussion of the nature of animals and the differences between them and other creatures, such as humans and *jinn*.<sup>13</sup> The argument here is that since only Muslim souls can enter paradise, and animals cannot be considered Muslims, they will not enter the Garden. To someone who may object that Ibn Ḥazm believes that the children of polytheists who die will go to paradise, although they are not Muslim souls either, Ibn Ḥazm retorts that on the contrary, these children *are* Muslims, as is proven by passages from the Koran and the Sunna that refer to the *fiṭra*. The longest discussion of the *fiṭra* issue that we encounter in *Kitāb al-Fiṣal* deals precisely with this point: the fate of children who die before they were able to choose the religion of Islam.<sup>14</sup> It is worth presenting his views at some length, since they provide the background for his legal discussions.<sup>15</sup>

Ibn Ḥazm says that there are different opinions concerning the *ḥukm*<sup>16</sup> of Muslim and polytheist children, male and female, who die before coming of age. The Azraqites say that the children of idolaters are in hell. Another group holds that on Resurrection Day, a fire will be prepared for these children, and they will be ordered to jump in; those of them who obey, will enter paradise, whereas those who refuse will go to hell. Yet another group tends to abstain from any judgement with regard to the fate of children. The majority of people, however, believe that these children go to paradise, and this view is shared by Ibn Ḥazm himself.

After thus summing up the existent views, Ibn Ḥazm opens the discussion with an attack on the Azraqiyya. These Khārijī sectarians, he says, support their view with the words that God, in the Koran, quotes as coming from the prophet Noah: «My Lord! Leave not one of the disbelievers in the land. If thou shouldst leave them, they will mislead Thy slaves and will beget none save lewd ingrates» (S. 71:26f.). They also base themselves on a tradition about the Prophet, according to which his wife Khadija asked him where the children are that she

<sup>12</sup> Ibn Ḥazm, *Kitāb al-Fiṣal fi'l-milal wa'l-ahwā' wa'l-niḥal* (Beirut, 1395/1975<sup>2</sup>), 5 parts in 3 vols., see III, 55; Asín, *Abenházam*, III, 290.

<sup>13</sup> *Fiṣal*, III, 130; summarized by Asín Palacios in *Abenházam*, IV, 49, n. 30.

<sup>14</sup> *Fiṣal*, IV, 72-79; Asín, *Abenházam*, IV, 236-246.

<sup>15</sup> What follows is a paraphrase with explanatory comments.

<sup>16</sup> The term *ḥukm* has many different meanings, among them rule, valuation, and *sharī'a* value, which comes close to legal status. See Ibn Rushd, *The Distinguished Jurist's Primer. Bidāyat al-Mujtahid*. Translated by Nyazee, I. A. K., reviewed by Abdul Rauf, M. (Reading, 1994-1996), 2 vols., see I, XLIII, n. 1.

had by him, and the Prophet replied that they were in paradise. Then Khadija wanted to know the fate of her children from her previous marriages, and the Prophet said: «In hell». She asked him once more, and he answered: «If you wish, I will make you hear their cries».

The Azraqites adduce another *ḥadīth*, according to which the mother who buries her daughter alive —a reference to a pre-Islamic practice— as well as the daughter herself, are in hell. In the eyes of the Azraqites, all these texts corroborate their belief that only people who have embraced Islam will be admitted to paradise, and they argue that if it is claimed that the children of the polytheist are in paradise, they must be believers, because only Muslim souls enter paradise. Now, if they are believers, they must be buried among the Muslims, and they should not be allowed to accept the religion of their fathers when they come of age, for this would be apostasy, unbelief, and abandoning Islam. Furthermore, the Muslims must be allowed to inherit from them, and they can then inherit from their Muslim relatives, all of which goes against the commonly accepted view that Muslims and non-Muslims cannot inherit from each other.<sup>17</sup>

According to Ibn Ḥazm, this is the only evidence that has been presented by the Azraqites, but none of it provides any support for their view. When Noah speaks about unbelievers whose offspring, too, will be unbelievers, he is not referring to *all* unbelievers, but only to those among his own people, for God says to him: «No one of your folk will believe save him who hath believed already» (S. 11:36). If the Azraqites had the slightest understanding, they would realise that what Noah fears is not that *every* unbeliever will engender unbelieving children, but that he is referring specifically to his own people. After all, the parents of Abraham and Muḥammad were polytheists, and yet they produced the best and most perfect of believers. The Azraqites themselves were Bedouin who were as ignorant as cattle, or worse. Moreover, it has been reliably transmitted that the Prophet said: «Are the best among you not the children of polytheists?». And were the most excellent among the *ṣaḥāba*, such as Ibn Abī Quḥāfa (i.e., the first caliph, Abū Bakr), ‘Umar b. al-Khaṭṭāb, Khadija, and others not themselves the children of unbelievers, asks Ibn Ḥazm. Did their parents produce anything but people of the purest faith? And the parents of the Azraqites themselves, such as the father of Nāfi‘ b. al-Azraq and others among

<sup>17</sup> See Ibn Rushd, *Bidāyat al-mujtahid wa-nihāyat al-muqtaṣid*, ed. Tāhā ‘Abd al-Ra’ūf Sa’d (Beirut, Cairo, 1409/1989), 2 vols., see II, 566f.; *Distinguished Jurist’s Primer*, II, 427, and Ibn Ḥazm’s legal work, *al-Muḥallā* (VIII, 337, n.° 1746). There are two editions of this work: *Al-Muḥallā bi’l-āthār*, ed. A. S. al-Bandārī (Beirut, 1408/1988), 12 vols., and *Al-Muḥallā*, ed. Shākir, A. M. (Cairo, 1351/1932), 11 vols.; I shall refer to the Bandārī edition throughout this article.

their *shaykhs*: were they not the children of polytheists? So how can they say that the children of the idolaters will not be saved? «But whomsoever God leads astray, no guide has he» (S. 7:186).

Ibn Ḥazm then discards the second proof-text adduced by the Azraqiyya: the *ḥadīth* about Khadija, he says, is corrupt and to be rejected, for no one worth anything has ever transmitted it. He then quotes in full the tradition, referred to earlier, about the woman who buries her daughter alive: «Salama b. Yazīd al-Ju'fī<sup>18</sup> said: My brother and I came to the Messenger of God, and we told him that our mother had died during the Jāhiliyya; she used to extend hospitality to guests and show compassion; will this work be of any use to her?», and he said, 'No'. We said, 'During the Jāhiliyya our mother buried a sister of ours who had not yet sinned'. And the Messenger of God said, 'Both the buried girl and the one who buried her are in hell, except if the one who did the burying understood Islam and converted'.»

According to Ibn Ḥazm, the answer given by the Prophet, rather than proving that an innocent girl was condemned to hell, as is claimed by the Azraqiyya, implies that the girl —whose age is not specified— did in fact sin, even though her brothers believed otherwise. It is apparently about a girl that had already come of age when she was killed,<sup>19</sup> for if this tradition were about an innocent child, it would contradict the Koran, which condemns the burying alive of innocent girls in no uncertain terms; God says, «And when the girl that was buried alive is asked for what sin she was slain» (S. 81:8f.) which makes it clear that the girl referred to in this verse was without sin. The tradition quoted, then, cannot be used by the Azraqiyya in support of their view. Neither can they argue on the basis of the Prophet's words «they [i.e., the children of the polytheists] are of their fathers», for he said this with reference to their legal status and their genealogy, not their religion. This needs some clarification. In Ibn Ḥazm's view, young children who have not yet come of age share the *ḥukm* of their parents, but not their religion. This means that for practical purposes, children may be considered members of their parents' religious community, and are subjected to the laws of that community. This also means, for example, that they will be buried according to the practices of that community. This does not, however, affect the child's status as a believer and

<sup>18</sup> The chain of authorities via which the tradition reached Ibn Ḥazm is Yūsuf b. 'Abd al-Barr (see n. 51) - 'Abd al-Wārith b. Sufyān - Qāsim b. Aṣḥab - Bakr b. Ḥammād - Musaddid - al-Mu'tamar b. Sulaymān al-Tamīmī - Dāwud b. Abī Hind - 'Āmir al-Sha'bī - 'Alqama b. Qays - Salama b. Yazīd al-Ju'fī, who is a fairly obscure Companion. Ibn Ḥazm adds a number of variations on this tradition, with different *isnāds*.

<sup>19</sup> Ibn Ḥazm's literalist reading of the Koran allows him to come to such a conclusion, for strictly speaking, the word *maw'ūda* only indicates a female buried alive, without any age-limit.

his entitlement to paradise. It is for this reason that Ibn Ḥazm does not suggest anywhere that the bodies of young Jews, Christians, Zoroastrians or polytheists should be snatched from their respective communities and given a Muslim burial.

Ibn Ḥazm then returns to the Azraqites' statement that if the children of the polytheists are to be regarded as believers, one must pray over them, bequeath to them and inherit from them, and not allow them to take up the religion of their fathers once they have come of age, since this would be apostasy. He says: if we refrain from praying over them, this does not necessarily prove that these children are not believers, for after all, the martyrs who die in battle, and who are the most excellent among the believers, are not prayed over either.<sup>20</sup> The fact that the children of the unbelievers do not inherit from us and vice versa does not prove that they are not Muslims, for a slave can be an excellent believer, even if he does not inherit from us and we do not inherit from him. Besides, it is not always true that there is no mutual inheritance; in actual practice Muslims do at times take the capital of their unbelieving slaves at the latter's death, and many *fuqahā'* do award the unbeliever the capital of a slave of his who had converted to Islam and then died before he had been sold. Also, many *fuqahā'* do allow the Muslims to inherit the capital of the apostate if he died an unbeliever, or was executed for his apostasy. Thus Mu'ādh b. Jabal,<sup>21</sup> Masrūq b. al-Ajda',<sup>22</sup> Caliph Mu'āwiya b. Abī Sufyān and other *imāms*, allowed the Muslims to inherit from their unbelieving relatives when they died.

Also, the fact that we allow them to be buried in the graves of their fathers—rather than among the Muslims—and that we allow them to adopt the religion of their fathers when they come of age is because God has made it our duty to act thus, as is borne out by the tradition which has the Prophet saying: «Everyone who is born is born into the religion ('*alā'l-milla*) until his parents make him a Jew, a Christian, a Zoroastrian or an idolater», which shows that this is what in fact happens and that it is sanctioned by God and His Messenger. Now, we do not go against the rulings of God and do not ask Him to account for what He does, says Ibn Ḥazm. All this shows, then, that the Azraqiyya do not have a leg to stand on.

<sup>20</sup> A large number of legal scholars held that soldiers who die in combat with the unbelievers, and are therefore regarded as martyrs (*shuhadā'*), may be buried as they are found: their bodies are not washed, they are not wrapped in shrouds, and no funeral prayer is said over them. See for the different views on this issue Ibn Rushd, *Bidāyat al-mujtahid*, I, 406f./ *Distinguished Jurist's Primer*, I, 277. Ibn Ḥazm refers to this issue in *Muḥallā*, III, 336f., n.° 562.

<sup>21</sup> An important Companion of the Prophet who died in the year 17 or 18 (638 or 639 CE). See on him al-Dhahabī, *Siyar a'lām al-nubalā'*, ed. al-Arna'ūt, Sh. *et al.* (Beirut, 1981-1985), 25 vols., see I, 443-461, n.° 86.

<sup>22</sup> See on this *tābi'*, al-Dhahabī, *Siyar*, IV, 63-69 (n.° 17).



Ibn Ḥazm now turns to the ones who withhold judgement with regard to the children of the unbelievers. These people base themselves on a saying of the Prophet who, when asked about children who die, replied that God knows best what they would have done.<sup>23</sup> They also refer to what he said one day to ‘Ā’isha, mother of the believers. When a youth from among the sons of the Anṣār died, she said: «He is one of the birds of paradise», at which he replied that she had no way of knowing whether God does not intend to send certain people to hell.<sup>24</sup>

These two accounts, says Ibn Ḥazm, cannot serve this party as proof at all, seeing that the Prophet said these things before it was revealed to him that these children would in fact be in paradise. In both accounts, the Prophet is deliberately vague, and does not specify where those children are, since he had not yet been informed about this by God, and he refrains from unwarranted speculation.

There is a consensus that children will not be punished in the afterlife for sins they committed before their coming of age, such as killing, intercourse with a strange woman, wine-drinking, slander, or neglecting to perform the *ṣalāt* or to fast. Likewise, everyone agrees that God does not hold anyone accountable for things he did not do; rather, it has been reliably transmitted from the Prophet that if people intended to commit sins, but did not get around to it, this will not be registered against them. God would not punish children for things they did not do, but would have done, had they lived longer. There are no two people who disagree that a person who has come of age and dies, and would have fornicated had he but lived, will not be punished for fornication not actually committed. God has given the lie to those who think otherwise by saying «This day is each soul requited that which it hath earned» (S. 40:17), and His saying «Are ye rewarded aught save what ye did?» (S. 27:90). It is true, then, that no one is requited for something he hasn’t done, and has not even dreamed of doing. The saying of the Prophet «God knows best what they would have done» does not imply that they are unbelievers, nor that they will go to hell and will be punished for what they would have done had they lived but did not actually do, and therefore the people who withhold judgement cannot use either of these two accounts as proof, for no evidence has been reliably transmitted from the Prophet with regard to this issue.

Ibn Ḥazm then refutes the remaining opinions: Those who say that the children of the polytheists will share the painful punishment awaiting their parents are wrong, for God says: «Each soul earneth only on its own account, nor

<sup>23</sup> See Muslim, *Ṣaḥīḥ*, XVI, 178, 180f., n.<sup>os</sup> 2658/3, 2658/5, 2659, 2659/2, 2660 (*Qadar*).

<sup>24</sup> Cf. Muslim, *Ṣaḥīḥ*, XVI, 181, n.<sup>os</sup> 2662, 2662/1 (*Qadar*).

doth any laden bear another's load» (S. 6:164). People who say that a fire will be stoked for the children of the polytheists are equally wrong, for the account in which this story appears actually refers to the insane (*al-majānīn*) and to those adults whom the message of Islam has not reached.<sup>25</sup>

Since all these sayings are demonstrably false, says Ibn Ḥazm, we should take a look at what the *ḥukm* on this issue is according to the reliable texts. We found that God has said: «So set your face to the religion, as a man of pure faith; the *fiṭra* on which He has created mankind; there is no changing God's creation; that is the right religion, but most men understand not» (S. 30:30), and «Say: We believe in God and that which is revealed unto us and that which was revealed unto Abraham, and Ishmael, and Isaac, and Jacob, and the tribes, and that which Moses and Jesus received, and that which the Prophets received from their Lord. We make no distinction between any of them, and unto Him we have surrendered» (S. 2:136), and so on, until His words «(We take our) colour (*ṣibgha*) from God, and who is better than God at colouring. We are His worshippers» (S. 2:138). What God is saying is that He has created (*faṭara*) people as believers; this belief (*imān*), now, is the colour of God. God also says: «When thy Lord brought forth from the Children of Adam, from their reins, their seed, and made them testify of themselves, (saying): Am I not your Lord? They said: Yea, verily» (S. 7:172). It is certain, then, that all the souls created by God, humans, *jinn*, and angels alike, are conscious, discriminating believers. This being so, all of them are entitled to go to paradise for their belief, except for those who change this covenant, this *fiṭra*, and this «colour» and leave it for another and die in this other state. In other words: all are entitled to paradise except for those who, born *'alā'l-fiṭra*, as Muslims, adopt the faith of their fathers, e.g. Judaism or Christianity. We know for certain that young children do not alter any part of this compact, and therefore they are of the denizens of paradise. It has been reliably transmitted that the Prophet said: «Everyone who is born is born according to the *fiṭra* (or according to the *milla*, the religion), and then his parents make him a Jew, a Christian, a Zoroastrian, or a polytheist. Just as the beast comes out perfect: do you see in it any imperfection until you cut it?». This, now, is an explanation of the passages from the Koran just cited.

Ibn Ḥazm then cites a *ḥadīth qudsī*, in which God says: «I have created all my creatures as *ḥanīfs*, and the satans lead them away from their religion»<sup>26</sup>. It is certainly true that whoever dies before the satans have seduced him away from his religion, dies a *ḥanīf*. Also, God has reported the words Iblīs spoke to Him

<sup>25</sup> They are called by Asín Palacios «infielos negativos»; see *Abenházam*, IV, 245, n. 286.

<sup>26</sup> Muslim, *Ṣaḥīḥ*, XVII, 166, n.° 2865 (*Al-Janna*).

about his leading the people astray, and God said: «Lo! as for My slaves, thou hast no power over any of them save such of the froward as follow thee» (S. 15:42). Now, it is obvious that in order to be led astray, one has to believe first; the origin of everyone is belief, and every believer belongs to paradise.

Also, God has said: «Therefor I have warned you of the flaming Fire which only the most wretched creatures must endure, he who denieth and turneth away» (S. 92:14-16). Now, young children are not wretched creatures who deny and turn away, and it is certain, therefore, that they will not go to hell, for there is no abode other than paradise and hell. And if they do not go to hell, they are without a doubt in paradise. In Ibn Ḥazm's view, then, there is no in-between station like purgatory, or a special place for children. It has been reliably transmitted that the Prophet had a vision in which he saw Abraham who was in a splendid green garden which contained all kinds of flowers and comforts and beautiful children. The Prophet asked about all this, and was told that these are the children of man who died before coming of age. When he reported to his followers what he had seen, they asked him whether this included the children of the polytheists, and he affirmed that it did.

It has been established from the reliable and sound traditions that every child, whether of Muslim or polytheist parents, that has died before coming of age, is in paradise, and no one can challenge what is clear in the Koran and the traditions.

Ibn Ḥazm anticipates that people might object that he himself says that paradise and hell are the abodes of recompense,<sup>27</sup> and «there is no recompense for children». He dismisses this objection as follows: We stick to what the texts say, namely that hell is an abode of recompense alone, whereas paradise is an abode of recompense *and* grace; it is an abode of recompense for those who carried out pious works, and an abode of divine grace for those who did not act similarly. In other words: children are admitted to paradise because of God's grace, not as a reward for pious deeds.

Some people say that these children are the servants of the inhabitants of paradise. Now God mentions the eternally young children in more than one place in His book, as the servants of the people of paradise, and perhaps they are indeed these children. But God knows best.

As for the insane who do not attain sanity before they die: they were born into the religion (*'alā'l-milla*), as believing *ḥanīfs*; they did not alter or change their natural disposition, and therefore die as believers. Hence they will be in paradise.

<sup>27</sup> Cf. *Fiṣal*, III, 135; *Abenházam*, IV, 52.

Ibn Ḥazm was told by Aḥmad b. Muḥammad al-Ṭalamankī<sup>28</sup> that the Prophet said: among those who will be presented before God are a deaf person who has not heard anything, a simpleton, a senile person, and a man who has died in the *fatra*.<sup>29</sup> The deaf man will say to God that when Islam came, he did not hear; the simpleton will say that when Islam came, he did not understand, and the one who died in the *fatra* will say that no messenger has come to him. (What the fourth person said was forgotten at some point during the process of transmission.) God will then remind them of the obligation they had taken upon themselves (when they were asked to reply to the question «Am I not your Lord?», and they answered, «Yes, verily»), and will order that they be sent to hell. However, if they enter hell, they will find it cool and peaceful.<sup>30</sup>

Summarizing the above discussion about the children of the polytheists and other unbelievers, we may say that if they die before they were able to become acquainted with, and consciously to adopt, Islam, they are nevertheless to be regarded as believers, even if their parents adhere to another faith, since they have not (yet) renounced their natural disposition, which, according to Ibn Ḥazm, is to be equated with Islam. For this reason, they will go to paradise. The fact that young children of whatever background are to be regarded as Muslims had certain legal implications as well. It is to these that we now turn.

<sup>28</sup> The full *isnād* is al-Ṭalamankī - Muḥammad b. Aḥmad b. Yaḥyā b. al-Mufarrij al-Qādī - Muḥammad b. Ayyūb al-Samūt al-Barqī - Muḥammad b. 'Umar b. 'Abd al-Khāliq al-Bazzāz - Muḥammad b. al-Muthannā Abū Mūsā al-Zaman - Mu'ādh b. Hishām al-Dustuwāy - his father - Qatāda - al-Aswad b. Sarī' al-Tamīmī. On Abū 'Umar al-Ṭalamankī (d. 429/1038), see al-Dhahabī, *Siyar*, XVII, 566-569, n.º 374; id., *Tadhkirat al-ḥuffāz* (Hyderabad, 1968-1970), 4 vols., see III, 1099-1100, n.º 994. Cf. Fierro, M., «El proceso contra Abū 'Umar al-Ṭalamankī a través de su vida y de su obra», *Sharq al-Andalus*, 9 (1993), 93-127 and the contribution of E. Landau-Tasserón to this volume of *Al-Qantara*.

<sup>29</sup> The *fatra* is the period separating two prophets or two successive messengers, e.g., the period between Hūd and Šāliḥ, or between Jesus and Muḥammad. See *EI*<sup>2</sup>, II, 865, s.v. «*fatra*» (Ch. Pellat). The term *fatra* also has the meaning of lapse of revelation, an interval in the revelations received by Muḥammad; see Rubin, U., *The eye of the beholder: the life of Muḥammad as viewed by the early Muslims: a textual analysis* [Studies in late antiquity and early Islam, 5], Princeton, N. J., 1995, chapter 6. Interestingly, a *fatra* may be brought about by neglecting to observe the rules of personal hygiene (e.g., paring one's nails, cleaning one's teeth, clipping one's moustache) that are considered part of the primordial *fiṭra*; see Rubin, *The eye of the beholder*, 123: «negligence of these rules was believed to obstruct divine revelation». See on these rules of personal hygiene also Kister, M. J. «'Pare your nails': A study of an early tradition», *The Journal of the Ancient Near Eastern Society of Columbia University* 11 (1979), 63-70, repr. in Kister, M. J., *Society and religion from Jahiliyya to Islam*, Aldershot, 1990. I thank Dr. Gerard Wieggers for this reference.

<sup>30</sup> See also *Fiṣal*, III, 131.

<sup>31</sup> On some legal implications of the concept of *fiṭra*, see Mohamed, Y., *Fitrah: The Islamic Concept*, 122-132. Yasien Mohamed does not discuss Ibn Ḥazm's views, however.

LEGAL IMPLICATIONS: FITRA IN THE MUḤALLĀ<sup>31</sup>

Let us now look at Ibn Ḥazm's main legal work, the *Muḥallā*. Although the *fiṭra* tradition is quoted also in another context, viz. in the discussion of quasi-intentional homicide,<sup>32</sup> I am concerned here only with cases involving children; cases in which parents have not yet had, or have not taken, the opportunity to influence their child, i.e., to raise it according to their own religion (Islam, Judaism, Christianity, Zoroastrianism, polytheism). In other words, I shall concentrate on the status of the stillborn child or miscarried (or aborted) foetus; the child of non-Muslim parents that has fallen into captivity; the child whose paternity cannot be established with certainty, and the foundling.

The first issue that interests us here is the status of the foetus, which is discussed in the chapter entitled *al-Janā'iz*. It is widely believed that it is only after a four-month presence in the womb that a foetus can be considered a human being, a person, for it is after four months that life is breathed into it and it is endowed with a soul.<sup>33</sup> What, now, should be done if a child is stillborn, or miscarried? Should prayer be said over it, or not; in other words: should it be treated as a deceased *Muslim*, or not?

According to Ibn Ḥazm, this is certainly commendable (*mustaḥabb*), like the prayer over every child that was born, be it alive or stillborn, whether it cried at the moment of birth (*istahalla*)—a sign of life— or not; although as long as the child has not come of age (*balagha*), prayer over it is not obligatory (*fard*). However, it is certainly a pious deed, and has not been forbidden, as is held by many other jurists.<sup>34</sup> Admittedly, says Ibn Ḥazm, the Prophet did not pray over his dead son, Ibrāhīm, but this omission (*tark*) does not constitute a prohibition (*nahy*).

As for the argument that stillborn children, too, are to be prayed over—which was apparently the minority view among the religious scholars: Ibn Ḥazm quotes with approval several reports and traditions that endorse his opinion. Especially relevant here is a tradition going back to Ibn Shihāb al-Zuhri, who says that everyone who is born must be prayed over when he dies, even if

<sup>32</sup> Ibn Ḥazm states here that as long as the identity of a killer is not known, and it cannot be established whether he was a Muslim or an unbeliever, the first possibility should be assumed, for in fact everyone is associated with Islam (*maḥmūlūn 'alā'l-Islām*), since everyone is born into that religion. Ibn Ḥazm quotes the *fiṭra*-verse plus one of the relevant *ḥadīths*. See *Muḥallā*, X, 283f., n.° 2028.

<sup>33</sup> See Rogers, Th., «The Islamic ethics of abortion in the Traditional Islamic Sources», *Muslim World* 89 (1999), 122-129.

<sup>34</sup> The different points of view are surveyed by Ibn Rushd in his *Bidāya*, I, 407f. / *Distinguished Jurist's Primer*, I, 277f.

he was born from an illicit union,<sup>35</sup> for he was born according to the *fiṭra* of Islam, and thus, it is implied, deserves to be treated with the respect due to any Muslim. Ibn Shihāb supported his view with the tradition that has the Prophet saying that «everyone who is born is born according to the *fiṭra*».<sup>36</sup>

The status of the foetus is further discussed by Ibn Ḥazm in the chapter entitled *Aḥkām al-Janīn*. The reason why it is important to establish whether a foetus must be considered a Muslim or otherwise is that in case of a miscarriage caused by a third party, the amount of damages to be paid by the responsible party may depend of the status of the foetus. Ibn Ḥazm quotes S. 4:92 of the Koran, in which God says: «if any slays a believer *by error*, then let him set free a believing slave, and bloodwit is to be paid to his family unless they forgo it as a freewill offering». Furthermore, he adduces a *hadīth qudsī* in which God says: «I have created all my servants as *ḥanīfs*»,<sup>37</sup> which according to Ibn Ḥazm means Muslims, as we have already seen above. After quoting the *fiṭra* verse (S. 30:30), Ibn Ḥazm cites the tradition of the Prophet saying «Everyone who is born is born according to this religious community (*milla*)»,<sup>38</sup> i.e., Islam. This means, basically, that the foetus must be considered a Muslim, at least if it has been in the womb for over four months, for, as was mentioned earlier, it is at four months that it becomes a person. Therefore, if someone *unintentionally* causes a woman to miscarry *before* four months of her pregnancy have passed, no expiation (*kaffāra*) has to be made by the guilty party, since it was a mere inanimate foetus that was lost, not a living child. But if the event took place *after* the four-month period had passed, and the foetus had actually been moving (this having been testified by four midwives), then the appropriate expiation should be made, in this case the release of a male or female slave—or the payment of their equivalent price— by the guilty party, for it is a living child, a believer, that has been killed.

The situation is different in the case of a *deliberate* miscarriage (what we would call abortion), provoked either by a third party or by the pregnant woman herself. Here, it is no mere *kaffāra* that is required, but retaliation (*qawad*), for a believing soul—in other words: a Muslim— has *deliberately* been killed, and

<sup>35</sup> Arabic: *li-ghayyatin*; see Kazimirski, A. de B., *Dictionnaire arabe-français* (Paris, 1860; repr. Beirut, n.d.), 2 vols., see II, 519 s.v. *ghawā* > *ghayya*: *huwa li-ghayyatin, waladu ghayyatin*: enfant naturel, de hasard ou adultérin. The editor of the *Muḥallā* derives *li-ghayya* from *alghā*, and as a result cannot make sense of the passage.

<sup>36</sup> For al-Zuhri's tradition, see *Ṣaḥīḥ al-Bukhārī*, ed. 'Abd al-'Azīz b. Bāz (n.p., 1411/1991), 8 parts in 4 vols., plus index volume, see II, 119, n.º 1358 (*Janā'iz*).

<sup>37</sup> See n. 26.

<sup>38</sup> See n. 11.

this requires «a soul for a soul», unless the family accept bloodwit. Needless to say, this does not apply if the abortion took place within the first four months of the pregnancy, when the foetus cannot yet be considered a person. Although, as has been suggested,<sup>39</sup> this view may reflect a humanitarian concern on the part of Ibn Ḥazm for women wishing to terminate unwanted pregnancies, I believe that in the final analysis his attitude was conditioned by his Zāhirī approach.

Since Ibn Ḥazm believes that every new-born is born according to the *fiṭra*, and must be regarded as a Muslim, it should come as no surprise that in his view, the damages to be paid for the miscarried child of a *dhimmī* woman are the same as those to be awarded a Muslim woman who loses her child.<sup>40</sup> He criticizes the views of the other legal schools, who subscribe to the opinion that the non-Muslim woman should be given less, stating that their view is based on *qiyās*—reasoning by analogy—a method which is rejected by the Zāhirī school.<sup>41</sup>

We have seen above that Ibn Ḥazm does not expect the deceased child of non-Muslim parents to have a Muslim funeral, for the fact that it lived and is buried according to the practices of its parents' community does not affect its status as a believer. However, he seems to make an exception for non-Muslim children that die in captivity: they should be buried among the Muslims and prayed over, provided they have not yet come of age.<sup>42</sup> Whether or not the parents (or one of them) are with them in captivity is immaterial. However, if the child had fallen into Muslim hands after coming of age, it is no longer considered a Muslim. Once again, the *fiṭra* verse and tradition are adduced here in support of Ibn Ḥazm's view.

<sup>39</sup> See Rogers, Th., «The Islamic ethics», 128: «It should be remembered that this medical man lived after the great advances in science and medicine of the ninth century of the common Era—abortion would have been a good deal safer for the mother. Ibn Ḥazm also lived most of his young life in close association with women, as he states in his *Tawq al-Ḥamāmah*, and it is perhaps due to experience with seeing the women deal with unwanted pregnancies that his analysis reflects the possibility of the woman's own choice in the matter». Although Ibn Ḥazm wrote some tracts on medical matters (see the list of his works in Chejne, *Ibn Ḥazm*, 301-313), I would hesitate to call him a «medical man».

<sup>40</sup> Or perhaps it will come as a surprise to those who accept Goldziher's statements about Ibn Ḥazm's «fanatical enmity against everything non-Islamic» and his «personal fanaticism against followers of other religions»; see his *The Zāhirīs. Their doctrine and their history* (Leiden, 1971) 56, 60, and the caveat in my *Muslim Writers on Judaism and the Hebrew Bible. From Ibn Rabban to Ibn Ḥazm*, Leiden, 1996, 254f.

<sup>41</sup> The various opinions are reviewed in brief by Ibn Rushd, *Bidāya*, II, 656 / *Distinguished Jurist's Primer*, II, 502.

<sup>42</sup> *Muḥallā*, III, 368, n.º 583. See also Ibn Rushd, *Bidāya*, I, 408 / *Distinguished Jurist's Primer*, I, 278f.

The same texts are quoted also in the chapter entitled *Aḥkām al-Qiyāfa*, which deals with physiognomy as a method to establish the paternity of a child in case of doubt.<sup>43</sup> The cases discussed under this heading deal with the offspring of a woman who has had intercourse with two (or more) men during the same period, so that paternity cannot be established with certainty. Ibn Ḥazm discusses several methods to settle the matter in case both the men involved claim paternity. One is casting lots: the one on whom the lot falls is considered the father, and the child will be attached to his lineage. Another method is physiognomy (*qiyāfa*). In this case, an expert is called in to decide on the basis of physical characteristics who the father is. A similarity in the shape of the feet may clinch the matter. However, all this applies only in cases where both claimants are Muslims: if one of them is an unbeliever, then the child will be given to the Muslim and attached to his genealogy, without any lots being cast, and presumably without applying physiognomy. The justification provided by Ibn Ḥazm for this opinion is *sūra* 30:30, in combination with the tradition «Everyone who is born is born according to the *fiṭra* (or the *milla*), until his parents turn him into a Jew, a Christian, a Zoroastrian or a polytheist». He adds that it is not allowed to remove the child from the *fiṭra* it was born into, unless it is absolutely clear that the child was fathered by an unbeliever.<sup>44</sup>

Finally, reference to the concept of *fiṭra* is made in the chapter of the *Muḥallā* dealing with the legal status of the foundling (*laqīt, manbūdh*).<sup>45</sup> In the opening statement of this chapter, Ibn Ḥazm says that if an abandoned child is found, the one who encountered it is obliged to take care of it, since God has said to the believers: «Help one another to piety and godfearing; do not help each other to sin and enmity» (Koran, S. 5:2), and also: «whoso gives life to a soul, shall be as if he had given life to mankind altogether» (S. 5:32). There is no greater sin, says Ibn Ḥazm, than to abandon a soul which has been born into Islam (*nisma mawlūda 'alā'l-Islām*), an innocent child, which will die of hunger or cold, or will be devoured by the dogs if left to its own devices; whoever acts thus, i.e., finds an abandoned child and does not take it in, is guilty of willful murder. «Whosoever does not show mercy with his fellow-men, God will not show mercy to him», says a sound tradition.<sup>46</sup>

<sup>43</sup> *Muḥallā*, IX, 339-344, n.º 1941.

<sup>44</sup> *Muḥallā*, IX, 344, n.º 1941.

<sup>45</sup> *Muḥallā*, VII, 132-136, n.ºs 1384-87.

<sup>46</sup> Muslim, *Ṣaḥīḥ*, XV, 65, n.º 2319 (*Faḍā'il*).



In the course of the discussion, Ibn Ḥazm deals with the question what is to be done if someone comes to claim the foundling as his child. He states that if the claimant is a Muslim, he should be believed unless there are clear indications that he is lying, but if the claimant is an unbeliever, the child should not be handed over to him, for in doing so, the child will be removed from the religion that is naturally his, as is stated in the traditions that confirm that everyone is created according to the *fiṭra* and as a *ḥanīf*, i.e., as a Muslim. In this case, then, as in that of children of doubtful paternity, Ibn Ḥazm would deprive the biological parents of their child if they were *dhimmīs* in order to avoid that it be raised in a religion other than its inborn one: Islam.

Ibn Ḥazm is not the only one to hold such views; a disciple of Mālik's, Ashhab b. 'Abd al-'Azīz,<sup>47</sup> says that a foundling is to be considered a Muslim, whatever the circumstances. Although unlike Ibn Ḥazm, he does not appeal to the concept of *fiṭra*, it may have been at the back of his mind. In any case, we see how the *fiṭra* issue can be used as a means to limit the rights of the non-Muslim communities.<sup>48</sup>

Such views are in sharp contrast with those of some other scholars, who hold that efforts should be made to establish to what religious community the foundling, or rather his parents, belonged. Thus Mālik's disciple, Ibn al-Qāsim (d. 191/806),<sup>49</sup> held that if a child is found abandoned in a town with a mixed population, made up of Jews, Christians, and Muslims, the child should be raised according to the religion of the community that forms the majority in that town. If items of Jewish clothing are found on the child, it is presumed to be Jewish, in the case of Christian clothing, it is considered a Christian. Only if none of this applies, and his identity cannot be established, is it a Muslim, unless the majority of the town's population adhere to a religion other than Islam.<sup>50</sup>

<sup>47</sup> See on him Qādī 'Iyād, *Tarīb al-Madārik wa-taqrīb al-masālik li-ma'rifat a'lām madhhab Mālik*, ed. Aḥmad Bakīr Maḥmūd (Beirut, 1387/1967), 4 parts in 2 vols., see II, 447-453.

<sup>48</sup> It seems that in 19th century Yemen, the *fiṭra* issue was invoked in order to justify the forced conversion of Jewish orphans: rather than letting these children be raised by Jews, who would deprive them of their inborn religion, the authorities had them adopted by Muslims; see Eraqi-Klorman, B.-Z., «The Forced Conversion of Orphans in Yemen to Islam - The Jewish Response and Muslim Behavior» [Hebrew], *Pe'amin* 62 (1995), 83.

<sup>49</sup> See on him Qādī 'Iyād, *Tarīb al-Madārik*, II, 433-447; *EI*<sup>2</sup>, III, 817 s.v. Ibn al-Qāsim (Schacht, J.).

<sup>50</sup> In *Al-Mudawwana al-kubrā* (Cairo, 1323/1905, repr. Beirut, n.d.), 6 vols., see III, 337f., Saḥnūn asks Ibn al-Qāsim about a foundling who has been taken in by a Muslim, but is claimed by a Christian as his son. If the child is granted to this Christian, will it be considered a Christian or a Muslim? Ibn al-Qāsim replies that if the child comprehended Islam, and converted, then he is a Muslim, but if he does not comprehend it, he belongs to the religion of this father.

Ibn al-Qāsim's view is quoted, apparently with approval, by Ibn Ḥazm's Mālikī counterpart, the jurist Ibn 'Abd al-Barr (d. 463/1070),<sup>51</sup> who devotes numerous pages of his *Kitāb al-Istidhkār* and *Kitāb al-Tamhīd* to a discussion of the *fiṭra*-traditions.<sup>52</sup> It is interesting to compare the views of Ibn 'Abd al-Barr with those of his Zāhirī contemporary. Unlike Ibn Ḥazm, Ibn 'Abd al-Barr does not subscribe to the view that *fiṭra* equals Islam; in fact, he refutes this view. In his opinion, it is inconceivable that *fiṭra* means Islam, because *islām* and *īmān* are profession with the tongue, conviction of the heart, and actions with the limbs, as everyone knows. Now, a child just born is not capable of any of this, let alone a foetus. Ibn 'Abd al-Barr does not believe that everyone is born '*alā*'-*Islām*, but rather '*alā*'-*salāma*, in a state of perfection, devoid of both good and evil, of belief and unbelief, in a neutral state, but with the potential to become a Muslim. Whether a child will turn out to be a believer or not depends on the education he receives from his parents.<sup>53</sup>

Although we can see echoes of Ibn 'Abd al-Barr's ideas in later works, e.g. in *Al-Jāmi' li-Aḥkām al-Qur'ān*, the *tafsīr* of his fellow-Andalusī Abū 'Abd Allāh Muḥammad b. Aḥmad al-Anṣārī, better known as al-Qurṭubī (d. 668/1269 or 671/1272), it was the view of Ibn Ḥazm that became the more widely accepted one. But however one interprets the term *fiṭra*, whether as Islam or as a neutral, innocent state, it is a far cry from the Christian concept of original sin, according to which all men are in a sinful state from birth as a result of Adam's fall.

#### ABSTRACT

This article deals with the views of Ibn Ḥazm of Cordoba (d. 456/1064) on the concept of *fiṭra*, which occurs in the Koran (Sura 30:30) and in a number of exegetical traditions. Ibn Ḥazm takes these texts to mean that literally everyone is born as a Muslim,

<sup>51</sup> On this man, who is called by Ibn Ḥazm *ṣāhibunā*, see Qādī 'Iyāq, *Tarīb al-Madārik*, III-IV, 808-810; al-Dhahabī, *Siyar*, XVIII, 153-163, n.º 85; *id.*, *Tadhkira*, III, 1128-1132 (n.º 1013); *ET*<sup>2</sup>, III, 674, s.v. Ibn 'Abd al-Barr (Pellat, Ch.). According to al-Dhahabī, Ibn 'Abd al-Barr adhered to Zāhirism for a considerable period of time at the beginning of his career, and then opted for Mālikism, although with a strong tendency towards Shāfi'ism. I propose to discuss the relations between Ibn Ḥazm and Ibn 'Abd al-Barr elsewhere.

<sup>52</sup> Ibn 'Abd al-Barr, *Al-Istidhkār al-jāmi' li-madhāhib fuqahā' al-amṣār wa-'ulamā' al-aqṭār*, ed. Qal'ajī, 'Abd al-Mu'tī (Damascus, Beirut, 1414/1993), 30 vols., see VIII, 370-416; XXII, 155-162; *id.*, *Al-Tamhīd li-mā fi'l-Muwaṭṭa' min al-ma'āni wa'l-asānid*, ed. A'rāb, S. A. (n.p., 1407-1987), 26 vols., see XVIII, 57-97. See on Ibn 'Abd al-Barr's views Mohamed, Y., «The Interpretations of *Fiṭrah*», 134f., and *Fiṭrah: The Islamic Concept*, 38-41.

<sup>53</sup> Ibn 'Abd al-Barr, *Tamhīd*, XVIII, 70f., 77; *id.*, *Istidhkār*, VIII, 379, 383.

including polytheists and other unbelievers, and that they will be considered believers until they come of age. It is at this point that they have to choose between reaffirming their covenant with God, or —if they are of non-Muslim descent— to renounce their inborn religion and stick to that of their parents. This choice will, of course, affect their fate in the afterlife. Ibn Ḥazm's belief that all children up till the age of discernment must be considered believers —and are therefore entitled to paradise should they die before that age— had certain legal implications as well, and here we can see his Zāhirī principles at play. Ibn Ḥazm shows a tendency to award custody of non-Muslim children to Muslims so as to avoid that they are disconnected from their inborn Islam. We see this in the case of foundlings and children of doubtful paternity. Although in general he does not require that the bodies of deceased non-Muslim children (who are after all considered believers) be handed over for Muslim burial, he does rule that a child of non-Muslim parents that has fallen into captivity be given a Muslim burial. Although at first glance, these rulings seem to confirm Goldziher's statements about Ibn Ḥazm's «personal fanaticism against followers of other religions», we also see that in his view, the damages to be paid for the miscarried foetus of a non-Muslim woman are equal to those to be awarded a Muslim woman who loses her child in this way.

#### RESUMEN

Este artículo estudia la visión que Ibn Ḥazm de Córdoba (m. 456/1064) tenía del concepto de *fiṭra*, que aparece en el Corán (azora XXX, aleya 30) y en algunas tradiciones exegéticas. Basándose en este texto, Ibn Ḥazm afirma que todos los seres humanos nacen musulmanes, incluso los idólatras y otras clases de infieles, y que todos han de ser considerados musulmanes hasta que alcancen la mayoría de edad. En ese momento de sus vidas han de elegir entre reafirmar su fe y, si no son hijos de musulmanes, de elegir entre la religión en la que han nacido o renunciar a ella. Su decisión afectará a su destino en el Más Allá. La creencia de Ibn Ḥazm de que todos los niños son musulmanes hasta la edad en que puedan discernir y, por tanto, de que en caso de que mueran niños irán al Paraíso, tiene también implicaciones legales y, a través de ellas, se puede observar cómo actúan los principios zāhiríes. Ibn Ḥazm muestra una tendencia a otorgar a los musulmanes la custodia de niños no musulmanes, así como a evitar que los nacidos musulmanes queden desvinculados de su religión. Ese es el caso de los niños expósitos o cuya paternidad es dudosa. Aunque, en general, no requiere que los niños no musulmanes fallecidos, que en el fondo son considerados creyentes, sean enterrados de acuerdo con el rito islámico, ordena que un niño, cuyos padres no sean musulmanes y hayan sido hechos cautivos, reciba un entierro musulmán. Aunque, a primera vista, estas normas parezcan confirmar las afirmaciones de Goldziher sobre «el fanatis-

mo personal contra los seguidores de otras religiones» de Ibn Ḥazm, se observa también que, según su punto de vista, la indemnización que se debía pagar por la lesión del feto de una mujer no musulmana era igual al que le correspondía a una musulmana que hubiese perdido su hijo en las mismas circunstancias.