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APPLYING DWORKIN'S LEGAL PHILOSOPHY *CONTRA* ISLAMIST IDEOLOGY: *SHARĪ'AH* AS A MATTER OF INTERPRETATION (*IJTIHĀD*) AND ETHICS (*ILM AL-AKHLĀQ*)

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Abstract: Observers of contemporary politics know that Islamic extremism presents 'the West' with a serious challenge of national and international security consequent to terrorist events of recent time. In addition to constabulary and military responses, there remains the more fundamental question about how to understand Islamist ideology and how counter-narratives might be framed in the interest of law and morality, especially in Muslim-minority nation-states. One of the central problems with Islamist ideology is a narrow and dogmatic conception of Islamic law. Tariq Ramadan is an example of a contemporary Islamic scholar concerned with Islamic reform. Ronald Dworkin is among the most prominent philosophers of law immersed in the Western legal tradition. Both scholars appreciate the linkage of law and morality, in which case the parameters of a counter-narrative to Islamist ideology may be found by juxtaposing some fundamentals of interpretation that each scholar presents in his work. This article attempts to show, through a comparative analysis of this kind, how and why the concept of law presented by Islamist ideology is flawed; and why the methods of Islamic jurisprudence require attention to Islamic ethics as well.

A. INTRODUCTION

'If we understand the nature of our legal argument better, we know better what kind of people we are.' (Ronald Dworkin[1])

'…Muslims remind their fellow citizens that one cannot simply get rid of older ethical traditions and replace them with a supposedly neutral rule of law or by impartial values formed in the free market.' (Tariq Ramadan[2])

Allah is our objective. The Prophet is our leader. The Qur'an is our law. Jihad is our way. Dying in the way of Allah is our highest hope. Allahu akbar! [God is the greatest!].[3]

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[1] Ronald Dworkin, *Law's Empire* (Fontana Paperbacks 1986) 11.
[2] Tariq Ramadan, 'Islam's Role in an Ethical Society' *The Guardian* (London, 23 February 2010).
[3] Federation of American Scientists, Intelligence Resource Program, 'Muslim Brothers Muslim Brotherhood,' 08 January 2002 <fas.org/irp/world/para/mb.htm> accessed 8 February 2017.

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Such is the mission statement of The Muslim Brotherhood (*al-Ikhwan al-Muslimeen*), founded in Egypt in 1928, and expanding its influence upon practicing Muslims into numerous countries since then. As recently as 2012, Egypt faced a constitutional struggle in the context of a revolution removing the regime of Hosni Mubarak, installing Mohamed Morsi of the Muslim Brotherhood as president, then removing him via a military intervention, ostensibly on behalf of secularist objectives. In the interim, Egyptians have had to determine the question of the place of *sharī'ah* in the formulation of Egyptian national law and public policy, insofar as Egypt considers itself a Muslim-majority nation-state and, historically, a ranking seat of Islamic knowledge.[4]

Such a mission statement has found its way, in any number of reiterations, into the discourse of other fundamentalist Islamic groups, including more recently the mission of the (self-declared) Islamic State of Iraq and the Levant/Syria ('ISIL', 'ISIS', or 'IS'), perhaps better denominated 'Daesh'—acronym for: *al-Dawla al-Islamyia fil Iraq wa'al Sham*).[5] Daesh's mission is clear: 'Daesh presents itself as an Islamic group seeking to revive the principles of true Islam through the achievement of the Islamic caliphate [*khilāfah*] system.'[6] Indeed, Daesh argues that, 'succession [to authority upon the earth] … is the purpose for which Allah sent His messengers and revealed His scriptures, and for which the swords of jihad were unsheathed.' In which case:

> [T]he reality of succession, which Allah created us for… is not simply kingship, subjugation, dominance, and rule. Rather, succession is to utilize all that for the purpose of compelling the people to do what the Sharia (Allah's law) requires of them concerning their interests in the hereafter and worldly life, which can only be achieved by carrying out the command of Allah, establishing His religion, and referring to His law for judgment.[7]

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[4] Zachary Lamb, 'Egypt's Muslim Brotherhood' (*Council on Foreign Relations*, 15 January 2014) <www.cfr.org/egypt/egypts-muslim-brotherhood/p23991> accessed 31 August 2016.

[5] See eg 'Islamic State, Daesh or Isis: the Dilemma of Naming the Extremists' *The Week* (London, 02 December 2015) <http://www.theweek.co.uk/isis/62422/islamic-state-daesh-or-isis-the-dilemma-of-naming-the-militants> accessed 31 August 2016; Tareq Osman, 'The Daesh Paradox and Political Disillusionment' (2004) Al Jazeera Centre for Studies.
<studies.aljazeera.net/en/dossiers/decipheringdaeshoriginsimpactandfuture/2014/12/2014123105425647136.html> accessed 31 August 2016.

[6] Osman (n 5).
<studies.aljazeera.net/en/dossiers/decipheringdaeshoriginsimpactandfuture/2014/12/2014123105425647136.html> accessed 31 August 2016.

[7] See eg 'ISIS Spokesman Declares Caliphate, Rebrands Group as 'Islamic State'' (*Jihadist Threat, SITE Intelligence Group*, 29 June 2014) <news.siteintelgroup.com/Jihadist-News/isis-spokesman-declares-caliphate-rebrands-group-as-islamic-state.html> accessed 31 August 2016.

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The current international security situation, involving 'militant' or 'extremist' Islamists such as Daesh, raises a fundamental question about the validity of a central tenet of the Islamist ideology: what is the place of *sharī'ah* in the adjudication of legal and/or moral issues related to the everyday conduct of both non-Muslims and practicing Muslims, whether in Muslim-minority or Muslim-majority countries, and even in the context of international relations, relative to a given conception of world order? This is especially so in liberal democracies, having a conception of public law that excludes appeal to religious textual authority such as is advanced by appeal to the Qur'ān, and the tradition of sayings and practices of the prophet Muhammad (a tradition known as *sunnah*). Both the Qur'ān and the *sunnah* are essential to a Muslim's ability to 'enjoin what is right and forbid what is wrong' (Qur'ān, *Āl'Imrān*, 110),[8] thus to be assured of his or her performance of 'righteous deeds' (Qur'ān, *An-Nūr*, 55)[9] that accord with the divine decree.

These textual sources are also central to all claims related to 'the leadership of the world and mastership of the earth for the *ummah* [all Muslims the world over]', this leadership and mastery entailing submission to Allah only in the context of a caliphate (*Al-Baqarah*, 30),[10] given the expectation that Muslims abandon nationalist quests and associated claims to nation-state sovereignty in favor of rule by *khalīfah*. Daesh claims:

> By Allah … if you [as Muslim] disbelieve in democracy, secularism, nationalism, as well as all the other garbage and ideas from the west, and rush to your religion and creed, then by Allah, you will own the earth, and the east and west will submit to you. This is the promise of Allah to you.[11]

The call to 'soldiers of the Islamic State', each as a strict monotheist (*mujahīd muwahhid*), is a call to loyalty (*walā*) and the performance of a collective duty (*wājib kifā'ī*), and thus unequivocally a call to the violence of militant *jihād* (struggle), to 'fierce battles' (*malahīm*), to filling the hearts of the unbeliever (*kufr*) and apostates (*murtaddīn*) with terror, and for the jihadist to act without fear or surrender: 'Raise this banner [of the unity of Allah, *tawhīd*] with strength. Water it with your blood. Raise it upon your corpses. Die under it, until you pass it on …' [12] This directive, especially if it permits suicide, euphemistically characterised as martyrdom, violates the Islamic principle that, as Ali Ahmad asserts, life is 'a trust

[8] *The Noble Qur'ān,* Sahih International, 3:10 <quran.com> accessed 08 February 2017.
[9] ibid 24:55.
[10] ibid 2:30.
[11] 'ISIS Spokesman Declares Caliphate, Rebrands Group as 'Islamic State'' (*Jihadist Threat, SITE Intelligence Group*, 29 June 2014) <news.siteintelgroup.com/Jihadist-News/isis-spokesman-declares-caliphate-rebrands-group-as-islamic-state.html> accessed 31 August 2016.
[12] ibid.

property to the individual, who does not own that life and so cannot determine whether to continue with it or terminate it at will'.[13] Here, the important legal and moral distinction that Ahmad takes into account between *jihād* (in the sense of a spiritual reform of self) and *qital* (in the sense of warfare, actual armed conflict) is lost in the rhetoric that is mistaken about both individual obligation and collective duty.[14]

However, such ideological rhetoric must be assessed, both as to its veracity and its application beyond the historical context of its origin, ie the socio-historical circumstances in which such a text may have had meaning for political conduct. To say this is not to dismiss its validity out of hand, but rather to recognize that such ideology is an expression of dogma; in which case, what presents itself as dogma is by no means compelling for either Muslim conduct in particular, or for the conduct of non-Muslims in the context of contemporary civil society, or the larger contemporary world order. There can be a legitimate invocation of Islamic law, ie what amounts to a reasonably defensible (better or best) interpretation adapted to present circumstances, thereby 'to peel the label of "Muslim" off the perpetrators' of an ideology. A legitimate invocation of Islamic law presupposes avoidance of dogma in the appropriation of the law. Such is the instruction of Tariq Ramadan.

B. CHALLENGING 'THE DOGMATIC MIND': TARIQ RAMADAN

It is important, as a matter of moral and legal deliberation relative to expressed missions of Islamic extremists, that there are voices of dissent in the Muslim world. One of the most informative is the 'Open Letter to Al-Baghdadi', issued in the spirit of 'rectifying advice' to Daesh leaders, consistent with 'the opinions of the overwhelming majority of Sunni scholars over the course of Islamic history'.[15] Indeed many such voices call for a reform (*islāh*, to be differentiated conceptually from 'revival') of Islam, so as to distinguish a reasonable commitment to Islamic faith from the varieties of 'fundamentalist' or 'traditionalist' Islamist ideologies. Tariq Ramadan is one contemporary scholar of Islamic studies who recognises the dilemma presented by contested narratives that issue, on the one hand, from Islamist ideology, and from 'Western/European liberal' political philosophy on the other.[16] Reasoning for a proper understanding of Islamic tradition in contrast to Islamist ideology, Ramadan argues for a conception of 'applied Islamic ethics' (ie 'useful' knowledge, *'ilman nāfi'an*)

[13] Ali Ahmad, 'The Role of Islamic Law in the Contemporary World Order' in Mashood A Baderin (ed) *International Law and Islamic Law* (Ashgate Publishing Ltd 2008) 55-69.
[14] ibid.
[15] Council on American Islamic Relations, 'Open Letter to Al-Baghdadi' (19 September 2014) <lettertobaghdadi.com> accessed 23 January 2017.
[16] See here, Tariq Ramadan, *Radical Reform: Islamic Ethics and Liberation* (OUP 2009).

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that considers the 'objectives' (*al-maqāsid*) of the *sharī'ah* in relation to the 'principles' or 'rules' (*al-ahkām*) that guide (but, therefore, also limit) the moral and legal deliberation that issues from an engaged intellect (*al-'aql*). To speak of 'objectives' here is to recognize that Islamic law has a teleological structure, the very concept of *maqāsid al-sharī'ah* underscoring the idea that Islamic law can only proceed meaningfully, by reference to its underlying purposes.

For Ramadan, the fact of contested narratives implies a need for sustained interpretation (*ijtihād*) in settings of legal and moral deliberation. He advances his perspective against what he calls 'the dogmatic mind', and seeks to advance the cause of Islamic ethics (*ilm al-akhlāq*).[17] This cause is to be contrasted to the more traditionalist commitment to law (*stricto sensu*) as *sharī'ah.* The latter is dominated by the methods of Islamic jurisprudence (*usul al-fiqh*) in resolving questions of individual practice and public policy by way of legal opinion (*fatwá*). Thus, for Ramadan, there is a place for Islamic ethics in the moral deliberations of contemporary liberal democratic society, in the same way one may argue for contributed perspectives from 'Jewish' or 'Christian' ethics (bearing in mind here the pluralism as well as the limitations that accompany such terms). Thus, Ramadan proposes:

> Let us agree on this: we live in pluralistic societies and pluralism is an unavoidable fact. We are equal citizens, but with different cultural and religious backgrounds. So, how can we, instead of being obsessed with potential "conflicts of identity" within communities, change that viewpoint to define and promote a common ethical framework, nurtured by the richness of diverse religious and cultural backgrounds? After all, a pluralistic society needs a strong and effective ethics of citizenship in order to face up to both its internal challenges (diversity, equal rights, racism, corruption, etc) and international challenges (economic crisis, global warming, migrations, etc).[18]

Ramadan's attention to *ilm al-akhlāq,* in the context of the fact of pluralism, advances the principle that:

> [A]n ethics of citizenship should itself reflect the diversity of the citizenship. For while we agree that no one has the right to impose their beliefs on another, we also

[17] Tariq Ramadan, 'The Dogmatic Mind' (31 October 2014) <tariqramadan.com/english/2009/12/29/the-dogmatic-mind/> accessed 24 August 2016.

[18] Tariq Ramadan, 'Islam's Role in an Ethical Society,' *The Guardian*, (23 February 2010) <www.theguardian.com/commentisfree/belief/2010/feb/23/ethics-citizenship-islam> accessed 01 September 2016.

> understand that our common life should be defined in such a way that it includes the contributions of all the religious and philosophical traditions within it.

Such inclusiveness, Ramadan argues, is to proceed on the basis of 'critical debate'.[19] Thus, from his Islamic perspective, Ramadan argues further:

> [T]he Islamic presence should be perceived as positive, too. It is not undermining the Greco-Roman and Judeo-Christian ethical and cultural roots of Europe. Neither is it introducing dogmatism into the debate, as if spiritual and religious traditions automatically draw on authoritarian sources. They can operate within both the limits of the law and in the open public sphere. On the contrary, the Muslim presence can play a critical role in thinking about our future and shaping a new common narrative. It can help recall and revive some of the fundamental principles upon which the cultures of Europe are based… To put it another way, Muslims remind their fellow citizens that one cannot simply get rid of older ethical traditions and replace them with a supposedly neutral rule of law or by impartial values formed in the free market.[20]

Ramadan's concern for Islamic ethics in present context relates further to the Western philosophical assertion of moral universalism, such as that issued in Kant's moral philosophy, and which (along with other late modern philosophies of right, such as that of Hegel), has contributed to the West's colonial *mission civilisatrice*, this on the assumption of the superiority of Western rationality and associated moral valuations. Ramadan thus speaks to the problem of the *conception* of the universal in relation to its *appropriation* in human conduct, whether at the level of the individual or the public at large (and whether secular or religious):

> There are various ways of appropriating the universal, claiming to have a monopoly on it and then establishing a hierarchy of values, civilizations, and cultures. This sometimes involves forcing it on others without further ado… 'for their own good', of course. In the realm of the universal, the most natural, if not the least dangerous, attitude consists in reducing the range of possibilities to one's own point of view: my truth is everyone's Truth, and the truth for everyone, and the values that derive from it are, *a fortiori* universal. In that case, order is imposed from on high and Man adopts, for himself and with confidence, the viewpoint of God or the absolute. All religions or spiritualties run the risk of being distorted in this way: because we look down the

[19] ibid.
[20] ibid.

> mountain from the summit, we deny the very existence of the many slopes that constitute its very essence and give it its human perspective. If we attempt to use the common faculty of reason to elaborate a universal, the phenomenon is markedly different, but the outcome is the same…We can in fact start out from a thousand philosophical postulates and theses, and construct so many truth-systems that their very number signals their relativity…Even though we accept, in theory, that there are many hypotheses and many truths, there is a danger that, in practice, we will assume that our certainties and truths are exclusive. Or that we will pass a final judgment on those who seem to have taken a different path.[21]

Here, Ramadan identifies the problem of the dogmatic mind that issues from the assumption of monopoly on the truth, such dogmatism having been manifest in Western reason ('the cult of Reason that emerged from the French Revolution that had its moments of terror'), as well as in any religion that assumes itself to be a repository of a universally valid truth such as divine revelation vouchsafes. Such is the case with all 'dispositions of intellect' that do not account for 'the dogmatic temptation that colonizes the intellect'—whether grounded in reason or revelation. Thus is the case with the dogmatic mind of contemporary Islamist ideologists, such as that found in Daesh, the Muslim Brotherhood, and various assertions of Salafist Islam (such as that found in Saudi Arabia, following on the dogmatism of a Hanbali scholar, such as Ibn Taymiyah), and Shi'a Islam (such as that found in post-Shah Iran). Quite to the contrary of such dogmatic ideology, Ali Ahmad reminds us that Islam has had a tradition of 'scholastic pluralism' but this has been 'undermined and replaced either by autocratic authorities that stifle this intellectual freedom in order to suppress other authoritative views, or by intolerant extremists that abuse the freedom'.[22]

Notwithstanding, it is precisely because of the presence of the dogmatic mind in Islamist ideology that one must question the presuppositions that are present in the conception of law *qua sharī'ah*. Here one can turn to a philosophy of law that links law and morality in contraposition to legal positivism, even as Ramadan turns to Islamic ethics over the primacy of Islamic jurisprudence that grounds Islamist doctrines. Here it is proposed that the legal philosophy of Ronald Dworkin provides one avenue of thought by which the dogmatic mind of Islamist ideology may be engaged critically, as a common ground within the reformist Islamic thought of Tariq Ramadan.

[21] Ramadan (n 17).
[22] Ahmad (n 7) 59.

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C. THE LEGAL PHILOSOPHY OF RONALD DWORKIN

Dworkin is one of the twentieth century's most prominent legal and political philosophers, his reputation established in *Taking Rights Seriously* (1977), and enhanced most assuredly in *Law's Empire* (1986).[23] In both works, Dworkin engaged with legal positivism and its conception of the law. In particular, and most relevant for the purpose of juxtaposing Dworkin's legal theory to legal disputation in Islamic jurisprudence, is Dworkin's anti-positivist conception of what law is. Dworkin argued against the 'skeptical thesis', ie the claim often associated with theories of legal positivism that there cannot be 'right' answers to controversial legal questions, but only 'different' answers. [24] Dworkin insisted instead that, 'in most hard cases there are right answers to be hunted by reason and imagination'—with 'right' here being taken to denote a matter of thoughtful reasoning, and not a sort of 'demonstration' that has apodictic certainty or universal assent, or even a reasoning that presupposes a moral universalism.[25] Dworkin's views here link to Ramadan's appreciation of Islamic ethics in the context of an ethics of citizenship and, hence, in terms of the teleological nature of both law and ethics in relation to a given political society. For Dworkin, the relation between law and morality cannot be diminished or eliminated if one conceives of 'legal systems' as consisting not only in 'rules' of law, but also in 'principles' having moral grounding and probity:

> There is inevitably a moral dimension to an action at law, and so a standing risk of a distinct form of public injustice. A judge must decide not just who shall have what, but who has behaved well, who has met the responsibilities of citizenship, and who by design or greed or insensitivity has ignored his own responsibilities to others or exaggerated theirs to him. If this judgment is unfair, then the community has inflicted a moral injury on one of its members because it has stamped him in some degree or dimension an outlaw. The injury is gravest when an innocent person is convicted of a crime, but it is substantial enough when a plaintiff with a sound claim is turned away from court or a defendant leaves with an undeserved stigma.[26]

[23] Ronald Dworkin, *Taking Rights Seriously* (Duckworth 1977); Dworkin (n 1).
[24] See HLA Hart, *The Concept of Law* (OUP 1994); Ronald Dworkin, 'Hart's Postscript and the Character of Political Philosophy' (2004) 24(1) Oxford Journal of Legal Studies 1. See, more recently, Ronald Dworkin, *Justice for Hedgehogs* (Harvard University Press 2011).
[25] Dworkin (n 1) viii–ix. For an overview of legal positivism, see Jules L Coleman and Brian Leiter, 'Legal Positivism' in Dennis Patterson (ed), *A Companion to Philosophy of Law and Legal Theory* (2nd edn, Wiley-Blackwell 2010).
[26] Dworkin (n 1) 1–2.

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'Morality' in the foregoing statement speaks to the moral dimension of law in which positive right is related to positive duty, to expectations of reciprocity between citizens, such that the law must recognize and secure in the installation of a political morality. Sometimes, as Dworkin recognizes, citizens may, in the pursuit of individual interest, act out of ignorance or otherwise even exaggerate their personal responsibility under the law. Law recognizes the legitimacy of individual interest, of course; but there must be compatibility between individual interest and the public good that is secured by way of public justice.

Dworkin began *Law's Empire* with the complex proposition that:

> We live in and by the law. It makes us what we are…It is sword, shield, and menace…And we *argue* about what it has decreed, even the books that are supposed to record its commands and directions are silent; we act then as if law had muttered its doom, too low to be heard distinctly. We are subjects of law's empire, liegemen to its methods and ideals, bound in spirit while we debate what we must therefore do.[27]

Dworkin highlights the key controversy this proposition raises when he asks: 'What sense does this make? How can the law command when the law books are silent or unclear or unambiguous?'[28] The entirety of the book is his answer to this question, and Dworkin brings out the distinctiveness of his central thesis about the nature of law and legal reasoning by way of an investigation into that controlling proposition; namely:

> [L]egal reasoning is an exercise in constructive interpretation, that our law consists in the best justification of our legal practices as a whole, that it consists in the narrative story that makes of these practices the best they can be. The distinctive structure and constraints of legal argument emerge, on this view, only when we identify and distinguish the diverse and often competitive dimensions of political value, the different strands woven together in the complex judgment that one interpretation makes law's story better on the whole, all things considered, than any other can.[29]

By specifying legal interpretation as *constructive* in this sense, Dworkin commits us to a concept of law that is living, dynamic, and fluid. A correct proposition of law, Dworkin contends, is a statement of the best justification of the principles of political morality that ground those propositions, identified in the context of an ongoing legal and moral deliberation. This, Dworkin argues, accounts for the *emergence* (hence not automatically a given) of a distinctive structure of legal reasoning, a structure that cannot dispense with the

[27] ibid vii.
[28] ibid.
[29] ibid.

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constraints of context (such as are manifest in political value but surely not limited to such value). Such judgments of law are complex in their issuance, precisely because they are complex in the method of their adjudication. Dworkin would have us here recognise that this complexity is due to 'issues of fact, issues of law, and the twinned issues of political morality and fidelity'.[30] The main point here is that there can be *genuine* disagreement about the law.

Pertinent to the present context, is the *nature* of that legal disagreement. Legal disagreement, for Dworkin, is 'a "theoretical" disagreement about the law'; that is, a disagreement about the *grounds* of law, or the more basic facts that make it the case that legal content obtains. Such disagreement, he argues, includes, for instance, 'whether statute books and judicial decisions exhaust the pertinent grounds of law', or whether other, *normative* facts or principles make propositions of law true or false.[31] Given such theoretical disagreement, it is reasonable to ask, as Dworkin would have us ask: How would we ourselves judge who has the better of the argument? The question is fundamental to an ethics of citizenship, given that, as Dworkin observes: 'The general public seems mainly unaware of that problem; indeed it seems mainly unaware of theoretical disagreement about law'. Perhaps more surprising here, is Dworkin's assertion that Anglo-American 'jurisprudence has no plausible theory of theoretical disagreement in law'.[32] Clearly, it is pertinent to have some such understanding if one is to achieve a comprehensive understanding of legal reasoning, and perhaps to achieve justice through that reasoning.[33] Thus, Dworkin correctly points out:

> Most laymen assume that there is law in the books decisive of every issue that might come before a judge. The academic version of the plain-fact view denies this. The law may be silent on the issue in play, it insists, because no past institutional decision speaks to it either way. Perhaps no competent institution has ever decided [the question at issue]…Or the law may be silent because the pertinent institutional decision stipulated only vague guidelines…Then the judge has no option but to exercise a discretion to make new law by filling gaps where the law is silent and making it more precise where it is vague.[34]

[30] ibid 3.
[31] ibid 5.
[32] ibid 6.
[33] Indeed, Dworkin's thesis ultimately concludes that understanding theoretical disagreement in law paves the way for accessing the best answer to legal questions, from the standpoint of a substantive conception of justice and political morality. See further, ibid chs 6–7.
[34] ibid 8–9.

Dworkin clarifies the limitation of the above position: 'None of this qualifies the plain-fact view that law is always a matter of historical fact and never depends on morality'.[35] Yet precisely here we have a ground for theoretical disagreement, which requires care not to construe such disagreement as merely 'disguised politics', or as advancing a 'jurisprudential puzzle', the motivation of which is to 'obscure…the important social function of law as ideological force and witness'.[36] Here one must then consider what the 'reality' of the law (as the 'real' statute) *means*, ie 'a statement of what difference the statute makes to the legal rights of various people'.[37]

Dworkin's point is expressed by way of analogy, such as occurs in literary criticism: 'Just as literary critics need a working theory, or at least a style of interpretation in order to construct the poem behind the text, so judges need something like a theory of legislation to do this for statutes'.[38] One cannot gainsay Dworkin's emphatic point about the need for *theory* here, which means that judicial decision is not merely a matter of agreement about facts (ie about what the statutes say or what judicial decisions have been delivered hitherto). The focus here is on interpretation; and interpretation, if it is to be efficacious in relation to the *objectives* of law, cannot but reference principles of political morality, for such are fundamental to the formulation of law. If law is to be efficacious in relation to its objectives, then law functions teleologically in relation to those moral objectives.

In sum, Dworkin's position just described demonstrates (a) the importance of law's inextricable linkage to morality; (b) morality itself construed as a political morality linking individual right and duty to public justice; (c) the constancy of interpretation, which is not reducible to empirical facts about statutes and judicial decisions; and (d) the teleological character of law, given the role of principles and objectives guiding deliberation and judgment, all of which then contribute to a 'best constructive interpretation' of a given system of law.

Surely the same point applies to the case of Islamic jurisprudence, understood in terms of the doctrine of *maqāsid al-sharī'a*, ie the objectives of the law. The law (as *discovered* in the text of the Qur'ān and as *transmitted* in the *sunnah*) that is the *sharī'ah*, is given its true 'meaning' in precisely the sense noted above. *Sharī 'ah* is a *political* concept, having its *legal* and *moral* expression (as recognised by the classical Islamic sciences) even as it contributes to the constitution of a political order for the Muslim faithful. It follows that

[35] ibid 9.
[36] ibid 12.
[37] ibid 17.
[38] ibid.

to express what difference a particular divine decree or reasoned *fatwā* makes to the legal rights of Muslims in their individual conduct, both in relation to other Muslims and in relation to non-Muslims in any setting of civil society, interpretation is indispensable.

This is why Dworkin's theory of law translates commensurably with a reasonable construal of Islamic law. Indeed, Tariq Ramadan makes the same point in making the case for *ijtihād* in the contemporary setting of the Muslim self-understanding, despite a fundamentalist ideological position that often asserts, all too uncritically, that 'the gates of *ijtihād*' were long ago closed (ie some time relative to the 8th–10th centuries when the major schools (*madhâhib*) of Islamic jurisprudence were established). The *maqāsid* of the law are such as to promote virtues (*ma'rufat*) and prevent vices (*munkarat*), to enjoin good (*amr bil-ma'ruf*); but a good that is manifestly both individual, in the sense of the performance of pious actions (*salihat*) that lead to an 'enlightened' self, *al-nafs al-mutma'innah*, and collective (in the sense of the political solidarity that is the unity of the Muslim faithful, the *ummah*).

Clearly, attention to the objectives of the law immerse us in questions of moral principle, in contrast to a legal positivist focus on empirical facts. Dworkin engaged the concept of law, as elaborated by HLA Hart in his *The Concept of Law*; a project that, as a theory within the school of legal positivism, construes law as 'descriptive rather than a morally or ethically evaluative project'.[39] Here too, consistent with the extended arguments of his major works, Dworkin argues in contrast to Hart's descriptive view, that 'legal theory itself rests on moral and ethical judgments and convictions'; and it follows that a 'general theory about how valid law is to be identified, like Hart's own theory, is not a neutral description of legal practice, but an interpretation of it that aims not to describe but to justify it'.[40] This means that legal interpretation must make reference to the principles that 'best justify' the law.[41] And, if there *must* be such reference to principles, then the hermeneutic move is 'substantive, normative and engaged'—immersed and engaged 'as any of the contending opinions in the political battles that rage' about political ideals (eg equality, liberty, democracy, etc).[42] Where the reference is to moral principles, therefore, the hermeneutic move cannot be construed as merely 'meta-ethical', and thus merely descriptive of moral and political concepts. Legal philosophy such as Dworkin conceives it, is itself a

[39] Dworkin, 'Hart's Postscript' (n 24) 1.
[40] ibid 2.
[41] ibid.
[42] ibid 3.

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normative commitment, and enters the scene of public debate concerning the *substance* of public justice.

Dworkin's thesis translates in the context of Islamic law. Islamist ideologues believe that they may issue judgments (*fatāwā*) about what the *sharī'ah* requires of an individual Muslim's conduct. But they fail to do so properly, relative to principles guiding interpretation (*ijtihād*). When Islamic scholars issued their public letter to the leader of Daesh, for example, they corrected him on this major point:

> It is forbidden in Islam to issue *fatwas* without all the necessary learning requirements. Even then *fatwas* must follow Islamic legal theory as defined in the Classical texts. It is also forbidden to cite a portion of a verse from the Qur'ān—or part of a verse—to derive a ruling without looking at everything that the Qur'ān and *Hadith* teach related to that matter. In other words, there are strict subjective and objective prerequisites for *fatwas*, and one cannot 'cherry-pick' Qur'ānic verses for legal arguments without considering the entire Qur'ān and *Hadith*.[43]

In reminding him of this point about the nature of Islamic legal theory, the signatories of the Letter are not concerned merely with a description of what the law is (as represented by a given *fatwā*, or by a *fatwā* as contextualized by legal precedent, classical or contemporary). These Islamic scholars have entered the political domain of contested opinion in contraposition to that of the Islamists, their argument substantive, normative, and engaged precisely in the way in which Dworkin develops his position *contra* Hartian legal positivism. It is in this sense that one may argue that these scholars seek to offer the 'best constructive interpretation' of this major point of Islamic jurisprudential reasoning and practice.[44]

A traditionalist or fundamentalist, such as those found among supporters of Daesh, will likely hold that the gates of *ijtihād* (interpretation) were closed long ago, and remain closed to all further elucidation. By contrast, a contemporary reformist such as Ramadan insists on entering those gates in the interest of *adapting the law* to time and place. These are basic points of contestation that, according to Dworkin, a legal theory must be able to resolve. But, a 'best constructive interpretation' of the issue depends on a hermeneutic commitment that allows for novel insights and novel solutions to contemporary problems of law while accepting the authority of the tradition within the limits of both 'truth' and 'method'. Given the requirements of appropriation *and* adaptation, the tradition of Islamic jurisprudence

[43] 'Open Letter to Al-Baghdadi' (n 15).
[44] For Dworkin's thoughts on the 'best constructive interpretation' of the concept of law, see Dworkin, (n 1) chs 2–3.

provides reasonable guidance and even precedent; but the interpretive dimension of legality remains open to the sociopolitical context of changes in time and place. This can occur with reasonable efficacy only by appeal to principle, and not merely to the history of narration and transmitted tradition that an Islamic scholar receives as empirical facts. Dworkin's concept of legality—'Jurisprudence is an exercise in substantive political morality'[45]—requires that one abandon the narrow sense of law, such as Islamist ideologues advocate in their approach to the *sharī'ah,* and instead appropriate a concept of legality consistent with the unity of law and morality, such as promoted by Ramadan.[46]

Thus, Ramadan clarifies:

> '*Tajdîd*', as it was understood by the classical tradition of scholars and schools of law, is thus a renewal of the reading, understanding, and, consequently, the implementation of texts in the light of the various historical and cultural contexts in which Muslim communities or societies stand.[47]

The meaning of a text thus requires 'a constantly reformed approach of the understanding of texts (*tajdidiyyah*) and of the understanding of contexts (*islâhiyyah*)'.[48] Here, Ramadan distances himself from those who argue that, 'the status of the text alone determines its readers' mode of interpretation'.[49] Instead, and in part to avoid the issuance of dogma, Ramadan opines that, 'in the end, it is the mind and psyche of the reader interpreting it that projects its categories and the modalities of its interpretation onto the book'.[50] Hence, argues Ramadan, it is important to pay attention to the history of the classical tradition in what it instructs for the modern context, viz, that:

> [T]he great legal tradition of Islam…has never, since the beginning, linked the status of the Qur'an (as the 'eternal word of God') to the impossibility of historical and contextualized interpretation…[Human] intelligence alone can determine the contents of the timeless principle drawn from the text, while necessarily taking into account its relation to the social and historical context of its enunciation.[51]

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[45] Dworkin, 'Hart's Postscript' (n 24) 31.
[46] For Dworkin's concept of law as legality, see Dworkin (n 1) 90–93.
[47] Tariq Ramadan, 'Radical Reform: Ethics and Liberation (1/2)' (17 October 2007) <tariqramadan.com/arabic/2007/10/17/radical-reform-ethics-and-liberation-12/> accessed 18 August 2016.
[48] For Dworkin's application of his thesis to textualism in legal interpretation, see Ronald Dworkin, *A Matter of Principle* (Harvard University Press 1985) 54.
[49] Tariq Ramadan, 'Radical Reform: Ethics and Liberation (2/2)' (07 November 2007) <tariqramadan.com/english/radical-reform-ethics-and-liberation-22/> accessed 18 August 2016.
[50] ibid.
[51] ibid.

Hence, Ramadan reminds us that, 'the debate [within this classical tradition] already involves the elaboration of an applied hermeneutics'. It follows, Ramadan will argue, that 'Muslim identity is not closed and confined within rigid, inflexible principles'.[52]

What the foregoing argument means—more to the point of differentiation with the methods of Islamist ideological discourse—is that there can be no reasonably defensible, 'literal' interpretation of the principal texts of the Islamic tradition. One must instead account for divine *intention*, relative to the fact that the text is given *in the language of men* (as Islamic tradition has stated without fail), in which case the task of human decipherment is not equal to the declared omniscience of Allah as to consequences of divine legislation that humans cannot know in their totality. Notwithstanding, given the objectives (*al-maqāsid*) of the *sharī'ah* (including here especially the objective of justice), in relation to the principles and rules (*al-ahkām*), a Muslim possessing a critical or 'enlightened' mind (expressed, as noted above, in the Arabic conception of soul as *al-nafs al-mutma'innah*), has the resources for deliberation and eventual judgment, the conclusion of which remains at the level of opinion and never that of an apodictic judgment.

The point of comparison that is especially salient in this respect is the *teleological* character of law that is common to both Dworkin and Ramadan—the latter reminding his contemporaries of the importance of attending to the principles that are central to the *maqāsid*. Muhammad (sometimes spelled 'Mohammed') Hashim Kamali, an exacting expositor of Islamic jurisprudence,[53] provides a succinct overview of this central component of the *sharī'ah* while bemoaning its neglect.[54] In passing here, but in the interest of linking Kamali's major points to Ramadan's Islamic reform strategy, one may note how Kamali reminds us that—*contra* the narrow view of the Islamist ideologues:

> The *Sharī'ah* generally is predicated on benefits [the word here is *masalih* (pl.), *maslahah* (sing.)] to the individual and the community, and its laws are designed so as to protect these benefits and to facilitate the improvement and perfection of the conditions of human life on earth…[This involves action designed to] eliminate prejudice, alleviate hardship and establish justice ['*adl*].[55]

In this sense, *maslahah* relates not merely to a strict compliance with legal dicta, but instead with the objective of *edification* of the individual (*tahdib al-fard*) in the interest of

[52]Tariq Ramadan, 'An Understanding of the Texts and the Context' (7 June 2016) <tariqramadan.com/english/an-understanding-of-the-text-and-the-context/> accessed 04 September 2016.
[53] See Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence* (3rd rev edn, The Islamic Texts Society 2003).
[54] Mohammad Hashim Kamali, 'Al-Maqasid al-Shari'ah' (1999) 38 Islamic Studies 193.
[55]ibid 1.

public benefit and public justice, hence the political and ethical significance of these concepts. There can be no judicious interpretation of *sharī'ah* without attending to the *maqāsid's* complexity, which includes analysis according to 'descending categories of importance', viz., what is 'essential' (*daruriyyah*), what is 'complementary' (*hajiyyah*), and what is 'desirable' or 'embellishment' (*tahsiniyyah*) in relation to 'life, intellect, faith, lineage and property'. Thus, Kamali highlights the teleological substance of Islamic law: 'The *Shari'ah*, on the whole, seeks, primarily, to protect and promote these values, and validates all measures necessary for their preservation and advancement'. [56]

The approach to interpretation characterised above, links Dworkin and Ramadan's hermeneutic strategy on the importance of coherence in any legal system. Thus, as Dworkin puts it in the context of the interdependence of law and morality: 'since a statute forms part of a larger intellectual system, the law as a whole, it should be constructed so as to make that larger system coherent *in principle*'.[57] This is so, even as one recognises that legal judgments are issued in a setting of disagreement, as proponents and detractors of one or another position engage in a disputation about what the law says, what the law intends, and what consequences should follow. In short, whatever the empirical factors at play, theoretical disagreement is *necessarily* present at the heart of contention; and such theoretical disagreement is not to be eliminated, given the nature of Islamic law as itself a *political* concept, eliciting questions of both theory and practice. Thus, what Dworkin says about theoretical disagreement holds also for the kind of disagreement that occurs in Islamic jurisprudence. For *sharī'ah* is centrally a *political concept*, intended to unite the individual's interest (justice for the individual) to that of the collective (public justice), as exemplified by the principles of the *maqāsid*. Such disagreement, it must be emphasized, is theoretical and not empirical:

> [W]hen members of particular communities who share practices and traditions make and dispute claims about *the best interpretation*—when they disagree, that is, about what some tradition or practice actually requires in concrete circumstances. These claims are often controversial, and the disagreement is genuine even though people use different criteria in forming or framing these *interpretations*; it is genuine because the *competing interpretations* are directed toward the same objects or *events of interpretation*.[58]

[56] ibid 2.
[57] Dworkin (n 1) 20.
[58] ibid 46 (emphasis added).

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Clearly, theoretical disagreement about the law occurs in the context of a prior (explicit or implicit) methodological commitment that cannot escape the fact of interpretation; that is, an extant 'interpretive attitude' that is *conditio sine qua non* to articulating competing meanings or interpretations of law. In other words, any articulation of the meaning of a law involves an iterative process of interpretive insight and resolution.[59]

On this point of view, propositions of law may be stipulated, questioned, and varied or modified in the context of competing interpretations, and one or another (either different or rival) moral valuation that speaks to the demands of justice, the latter always relative to concrete circumstances of judgment. Hence, Dworkin argues, 'if law is an interpretive concept, [and he clearly takes the premise here to be true as logically antecedent to the stated logical consequent, then] any jurisprudence worth having must be built on some view of what interpretation is'.[60] And, for Dworkin, insofar as interpretation is 'concerned with purpose not cause', it is especially salient to recognise that 'the purposes in play are not (fundamentally) those of some author but of the interpreter',[61] the latter to be understood in terms of the purposes of the law and not merely those of the interpreter *simpliciter*.

What is problematic in contemporary Islamist ideology is a failure of proponents to recognise, and to concede that their conception of the *sharī'ah* is fundamentally flawed. It is flawed insofar as the fact of the interpretive attitude is eschewed; and so long as adherents of this ideology do not concede their interpretations are but one rival conception among others, relative to the concrete circumstances of life in contemporary civil society. All reasonable interpretation requires a self-critical attitude that is consciously and explicitly aware of prejudices that are (positively construed) *part* of the interpretive comportment, and which are articulated in the process of all disclosures of a law's meaning. And here, as the contemporary philosophical hermeneutics of Hans-Georg Gadamer makes clear, such disclosure is therefore *productive* of meaning and not merely *reproductive* (such as is said to occur when one understands, and thus 'reproduces' authorial intent).[62]

Dworkin cites Gadamer's 'crucial point', which is 'that interpretation must *apply* an intention', such that horizons of consciousness are brought together in some meaningful production of meaning.[63] Dworkin gives the example of someone producing Shakespeare's *The Merchant of Venice*; one who is staging the play in contemporary time and has to 'find a

[59] ibid chs 1–3.
[60] ibid 50.
[61] ibid 52.
[62] Hans-Georg Gadamer, *Philosophical Hermeneutics* (David E Linge tr, University of California Press 1976).
[63] Dworkin (n 1) 55.

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conception of Shylock that will evoke, for a contemporary audience, the complex sense that the figure of a Jew had for Shakespeare and his audience'. 'His interpretation', argues Dworkin, 'must in some way unite two periods of 'consciousness,' by bringing Shakespeare's intentions forward into a very different culture located at the end of a very different history'.[64] The same goes for the interpretation of Islamic law: by parity of reason, any one today engaging the Qur'ānic text and/or the *sunnah*, cannot do so meaningfully except by working productively to unite two periods of consciousness; seeking to bring forward to the present a supposedly accessible 'divine intent' (as transmitted by a tradition of narration having its own problematic of reliability, hence the distinction of 'authentic/strong' and 'inauthentic/weak' *'ahādīth*), into a culture very different from that of (a) the historical period of the revelation itself; (b) the historical period of the standardization of the Qur'ānic script; and (c) the installation of prophetic tradition, keeping in mind that the different culture (eg that of contemporary Europe, or the USA, or India, etc) has a very different history, with an abundance of cultural artifacts and different, even rival, moral valuations. In short, one can make no sense of Islamic law in the absence of a productive engagement with these horizons of understanding, generating meaning for the contemporary setting of deliberation.

D. THE INEVITABILITY OF COMPETING INTERPRETATIONS

The foregoing commentary is enlightening as a philosophically grounded set of observations about legal interpretation. Narratives presented for our consideration as legal interpretation inevitably issue in political settings where these narratives are received as either different or rival points of view. It is in the latter case that one finds contestation of narratives. That is precisely what one finds in the contraposition of fundamentalist/traditionalist interpretations of Islamic law and those of reformists such as Ramadan. But, the operative assumption is that one or another rival interpretation may 'win out' as a reasonably defensible answer (the best constructive interpretation in the Dworkinian sense), to the moral and legal question at issue. How this may occur is an important consideration. Thus, Dworkin observes:

> [E]ach of the participants in a social practice must distinguish between trying to decide what other members of his community think the practice requires and trying to decide, for himself, what it really requires. Since these are different questions, the interpretive methods he uses to answer the latter question cannot be the methods of conversational interpretation, addressed to individuals one by one, that he would use

[64] ibid 56.

> to answer the former. A social scientist who offers to interpret the practice must make the same distinction. He can, if he wishes, undertake only to report the various opinions different individuals in the community have about what the practice demands. But that would not constitute an interpretation of the practice itself; if he undertakes that different project he must give up the methodological individuals and use the methods his subjects use in forming their own opinions…He must, that is, *join* the practice he proposes to understand; his conclusions are then not neutral reports about what the citizens…think but claims about [the given object of inquiry] *competitive* with theirs.[65]

This observation clarifies why it is important for reform-minded Islamic scholars such as Tariq Ramadan to speak to the issues being contested as matters of Islamic law and ethics. They are not only scholars of that tradition who make it the object of their studies; more importantly, they are also individual confessants to the faith, *within* which the tradition is meaningful *for them* according to methods of interpretation affecting their own words, thoughts, and deeds. Thus, Ramadan's efforts to advance a concept of *sharī'ah* in relation to an applied Islamic *ethics* (*ilm al-akhlāq*), in contrast to the more dominant practice of Islamic *jurisprudence* (*usul al-fiqh*), is for that very reason competitive with both the legal tradition narrowly construed, and Islamist ideology, in the sense in which the latter either misappropriate, or ignore that tradition, in moral and legal judgment.

Thus, it is one kind of analysis to characterize any number of opinions as to what is obligatory, permissible (recommended; not recommended), and forbidden, from the vantage of a survey of scholarly opinion. Yet it is quite another to offer an opinion designed to be competitive with others, insofar as it originates from one who is him/herself immersed in the religious practice to which a given moral or legal opinion applies. The moral philosopher Alasdair MacIntyre provided important instruction on this point in his *Whose Justice? Which Rationality?*.[66] According to MacIntyre, matters of law and ethics involve accounts of justice and of practical rationality. As he makes clear: 'each particular conception of justice requires, as its counterpart, some particular conception of practical rationality and vice versa'. Indeed, 'conceptions of justice and of practical rationality generally and characteristically confront us as closely related aspects of some larger, more or less well-articulated, overall view of human life and its place in nature'. More to the point, these 'overall views … make claims upon our

[65] ibid 64.
[66] Alasdair MacIntyre, *Whose Justice? Which Rationality?* (University of Notre Dame Press 1988).

rational allegiance'. [67] Thus, both secularist and religious appeals to rational allegiance involve competing conceptions of justice in settings of competing conceptions of practical reason—ie these conceptions are both tradition-constituted and tradition-constitutive and are thus meaningful only in this sense.

More specifically for present purposes, one must recognise that appeals to rational allegiance are unavoidably present in the disputations that we witness from so-called 'moderate' or 'progressive' Muslims, setting themselves against the interpretive positions of Islamist ideologues. But these disputations are meaningful first and foremost as contestations about justice and practical reason, as contestations about right and wrong, *within* the Islamic tradition. The efficacy of a moral or legal judgment is given under conditions of interpretation and contestation, but under conditions that one or another judgment may *prevail*, and that it not be considered merely as a *different* position. Judgments that are intended to 'apply' in contemporary concrete circumstances can be issued only in the context of one or another 'schema of practical reasoning' to which one is committed; and which one is prepared to defend as a matter of rational inquiry.

Hence contemporary Muslims, given their current religious affiliation as Sunni, Shi'a, Sufi, Salafist etc, may well ask themselves, in a given setting of concrete circumstances, how they are to respond to a given dispute about what is obligatory, permissible, or forbidden (understood here in the broader sense of what is ethical in the sense of *ilm al-akhlāq*, and not merely legal in the sense of *fiqh*). And the first point to consider here, as MacIntyre argues, is the initial answer, viz., 'that will depend upon who you are and how you understand yourself'.[68] The point is central to the problem of contested judgment and rational allegiance because one cannot presuppose as valid here:

> [W]hat is in fact not true, that there are standards of rationality, adequate for the evaluation of rival answers to such questions, equally available, at least in principle, to all persons, whatever tradition they may happen to find themselves in and whether or not they inhabit any tradition.[69]

Instead, MacIntyre proposes how a given problem may be resolved 'will vary not only with the historical, social, and cultural situation of the persons whose problems these are, but also

[67] ibid.
[68] ibid 393.
[69] ibid.

with the history of belief and attitude of each particular person up to the point at which he or she finds these problems inescapable'.[70]

Accordingly, one must inevitably move from the abstract and general to the concrete and particular of an individual's determinative response to his or her moral/legal problem. Here we confront the problem of 'self-recognition' and 'self-knowledge' that is at center of MacIntyre's claim that an initial response to a question under contention will depend on who that individual understands him- or herself to be. And so, all practicing Muslims aware of the debates about Islamist ideology cannot but undergo a self-examination, accounting for a 'presupposed scheme of belief',[71] relative to the contested claims. But to do this is 'to enter into dialogue with some tradition of inquiry'[72] and thereby to become something/someone other than who one now is. Thus, in the setting of contemporary Muslim-minority nation-states in particular, such as one finds in Europe and the USA, where a Muslim is unavoidably immersed in competing traditions (liberal democracy and its public law, on the one hand, and Islamic legal tradition, on the other hand), s/he 'has to learn how to test dialectically the theses proposed to him or her by each competing tradition, while also drawing upon these same theses in order to test dialectically those convictions and responses which he or she has brought to the encounter'.[73] This is part and parcel of how the individual is 'educated into self-knowledge', which is dynamic in the context of what MacIntyre has called 'a scene of radical conflict'.[74]

To expect something else, in the sense of a universally valid rationality, is to misunderstand the task of self-examination, as well as the fact of rival conceptions of justice and practical rationality. This was indeed the point of Tariq Ramadan's objection to the dogmatic mind, insofar as it misappropriates the universal, assuming one is to be found. Thus, MacIntyre argues:

> There is no way to engage with or to evaluate rationally the theses advanced in contemporary form by some particular tradition except in terms which are framed with an eye to the specific character and history of that tradition on the one hand and the specific character and history of the particular individual or individuals on the other.[75]

[70] ibid.
[71] ibid 394.
[72] ibid 395.
[73] ibid 398.
[74] ibid 1.
[75] ibid 398.

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Islamic scholars such as Tariq Ramadan understand this, which is why the argument being advanced involves *counter*-'narratives' to Islamist ideologies, the narratives being grounded in the Islamic legal and moral tradition with attention to *ilm al-akhlāq* and the *maqāsid al-sharī'ah* along with what has been contributed by *usul al-fiqh*.

Following Dworkin, in contrast to the philosophy of legal positivism, the contestation of narratives does not leave us with an encounter with merely different narratives. Dworkin conceives of the interpretive attitude in terms of an interpretive stage, in which an individual 'settles on some general justification for the main elements of the practice identified [at the pre-interpretive stage]' followed by a 'postinterpretive or reforming stage, at which he adjusts his sense of what the practice 'really' requires so as to better serve the justification he accepts at the interpretive stage'.[76] The same process can apply to a Muslim seeking clarification and justification about his or her practices as governed by the *sharī'ah* in the context of contested traditions. But, important for one such as Ramadan, individual reform such as is expected in the concept of an enlightened soul (*al-nafs al-mutma'innah*), means that attention to justification on the grounds of the Islamic legal tradition alone is insufficient, and one must attend to the consequences for practice according to which law and morality are linked. Unavoidably, rival conceptions of law and morality are involved here at the base of contention, both of which are worked out in an individual's interpretive attitude to his or her participation in civil society.

Ramadan examines the problem of what it means to be a Muslim in Western society, in order to conceive of a 'Western Islam', a narrative which counters the Islamist ideology now all too visible in Europe, and one that is carried out in terrorist acts perpetrated by groups such as Daesh.[77] Anyone who is non-Muslim, and an observer of the scene of Islamic extremism, can have some opinion about what seems right or wrong from the perspective of a liberal democratic interpretive attitude. But s/he cannot have the same understanding or commitment to reform such as a practicing Muslim can have. Ramadan understands this: 'My conviction…is that the movement toward reform, which was once intrinsic to the juridical compass of Islam, can take place effectively only from within'.[78] Thus, Ramadan continues:

> [F]or me it is not a question of relativizing the universal principles of Islam in order to give the impression that we are integrating ourselves into the rational order. In my

[76] Dworkin (n 1) 66.
[77] See Tariq Ramadan, *Western Muslims and the Future of Islam* (OUP 2004); Tariq Ramadan, *To Be a European Muslim: A Study of the Islamic Sources in the Light of the European Context* (The Islamic Foundation 1999).
[78] Ramadan, *Western Muslims and the Future of Islam* (n 77) 4.

> view, the issue is to find out how the Islamic universal accepts and respects pluralism and the belief of the Other.[79]

He argues, further:

> [I]t is in the very name of the universality of my principles that my conscience is summoned to respect diversity and the relative…Western citizens of the Muslim faith must think for themselves, develop theses appropriate to their situation, and put forward new and concrete ideas.[80]

In the same way as Dworkin speaks of a concept of 'law as integrity', having its own interpretive attitude of integration involving law and morality, Ramadan conceives of the *sharī'ah* as a way of understanding that teaches Muslims 'to integrate everything that is not against an established principle and to consider it as [their] own'.[81] Islam's 'true universality', Ramadan reminds us, consists in this principle of integrating the good, from wherever it may come, which has made it possible for Muslims to settle in, and make their own, without contradiction, almost all the cultures of the countries in which they have established themselves.[82]

Thus, if one were to position oneself as a Muslim against the narrative of the Islamist ideology, especially in the setting of Muslim-minority countries in Europe, the USA, Canada, and Australia; one may very well argue for an integration of faith, science, and ethics, as does Ramadan:

> Thus, human reason finds itself between two books, each of which, as an object of study, determines and imposes specific methodologies. From the revealed Book we must extrapolate and organize a grammar, a typology of rules, or the content of the credo. From the book of nature, we must discover the laws, functions, and logical patterns of organization, which give birth to medicine, chemistry, and physics. Ethics is the light that allows a "faithful" reading of the two books: it requires understanding of the laws, as well as respect for their balance.[83]

E. CONCLUSION

In conclusion, it is clear from our juxtaposition of Dworkin and Ramadan, that a proper intellectual response to Islamist ideology involves attention to the linkages of law and

[79] ibid 4–5.
[80] ibid 6.
[81] ibid 54. For Dworkin's 'law as integrity,' see chiefly, Dworkin (n 1) ch 7.
[82] Ramadan, *Western Muslims and the Future of Islam* (n 77).
[83] ibid 60.

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morality, and necessarily to matters of ongoing interpretation (*ijtihād*). Thus, Ramadan makes it clear that Islamic ethics—again, in the classical but renovative sense of *ilm al-akhlāq*—is the source of knowledge that can mediate between the Islamic legal tradition and contemporary sources of knowledge that emanate from the modern sciences and the Western tradition of political thought. As such, it can contribute to a Muslim's integration into the liberal democracies that conceive of civil society according to one or another tradition of political philosophy that invites, but does not mandate, a commitment to law, while avoiding an exclusionary dogma or false universality. In this way, the contestation of narratives about the *sharī'ah* can contribute to a reform of contemporary Islam; and one that allows for the Islamic legal tradition, without privileging it for a too-narrow conception of Islamic law. It follows, that by appreciating the linkage of law and morality—and thus understanding law *qua* a function of its *moral* purposes in the way vouchsafed by legal scholars such as Dworkin, and Islamic scholars such as Ramadan—our debates can be efficacious in respect of realizing the goals of a common universality, while also recognizing, and making room for, the plurality, diversity, and relativity of points of view, notwithstanding differences and contested narratives.