Michele Storms:

Good evening, everyone. Hello, and thank you so much for coming. My name is Michele Storms, and it is really my pleasure to, through the Gates Public Service Law Program and in collaboration with our faculty and Law, Societies, and Justice here on campus, be able to begin our speaker series this afternoon.

This speaker series that we have through the Gates Public Service Law Program is a really unique opportunity to bring wonderful people from all around the globe, who are doing work involving public interest and public service touching on law, to our law school. Wow. [laughs] Apparently [laughs] everybody just got here.

[laughter]

Michele:

So I'm going to slow that comment down.

[laughter]

p>Man 1:

It said 133 on the signs.

Michele:

Oh, people were in room 133. I'm so sorry. OK. I wondered where everyone was. [laughs]

Please take a seat. We're just happy to have you here. Wonderful. Sorry about the room mix-up.

So, again, my name is Michele Storms. I'm the assistant dean for public service here at University of Washington Law School. And I also direct the Gates Public Service Law Program. And through that program, we have a speaker series that I'm very proud that we're able to have here at the law school, because we are able to bring in people from a wide variety of disciplines but whose work touches on law and public-interest, public-service concerns.

Tonight we're partnering with our law faculty and with the Department of Law, Societies, and Justice to bring Dr. Kathleen Cavanaugh from Galway, Ireland. Professor Louis Wolcher, who is a friend and colleague of hers, is going to introduce her. So I just want to very briefly let you know who he is.

He is one of our cherished faculty members. I am so delighted to get to work with him. He's been on this faculty since 1986, has practiced law at a firm in San Francisco, before coming to law school. Our students have recognized him on more than one occasion as teacher of the year, and he's also been the University of Washington's Distinguished Teaching Award in 2005.
We're very proud of his work. His research interests lie in the fields of philosophy of law, legal and political theory, and human rights. So it's very fitting that he would introduce our speaker, whose primary area is human rights. And please join me in welcoming Professor Louis Wolcher.

[applause]

**Louis Wolcher:**

Thank you, Michele, and good afternoon to everyone. The honor falls to me to be able to introduce our distinguished speaker this afternoon. Dr. Cavanaugh is currently a lecturer in international law on the faculty of law and also a director of graduate studies at the Irish Center for Human Rights in Galway.

She took her LLM from Queens University in Belfast and has a PhD in comparative politics from the London School of Economics.

On the academic side of things, Kathleen is a prolific scholar, a socio-legal scholar, I might add, in the field of human rights and especially nationalism, ethnic conflict, political violence, and laws of belligerent occupation.

She has a current book project with Oxford University Press on "Minority Rights in the Middle East" and is one of the smartest people I know. So I'm glad she's here.

On the human-rights-practice side of things, she has been the chair of the Executive Committee of Amnesty International in Ireland and a member of the International Policy Committee of Amnesty International. She's also undertaken numerous missions, some of which she's described to me in hair-raising detail, for Amnesty International in Northern Ireland, Israel, Palestine, and Iraq.

I might also add, finally, that she's a very good friend and colleague to the law school. In the last several years, she has sponsored both faculty members and students visiting this remarkable institution in Galway. And we are just delighted to be able to have her here and listen to what she has to say on the topic of Islam and the democratic project. So, without further ado, I give you Dr. Cavanaugh.

[applause]

**Kathleen Cavanaugh:**

Good afternoon. And given my topic, I should say "salaam alaikum" as well.

First thing, I want to say a couple of words of thanks of my own. Some of you may know that last year I was meant to come here, in April, and because Eyjafjallajökull decided to make himself known, I didn't have the chance--that's the Icelandic volcano--and it was postponed.

So a special thanks to Professor Wolcher, who has helped make sure that I am here; to Anita Ramasastry and Walter Walsh, who were with the center, I think, about two or three years ago, as scholars in residence, and who also helped to kind of form this link; and then to Michele Storms and to Ann Spangler, who were fabulous at organizing my arrival here and getting everything situated for me.

So, Islam and the democratic project. I want to explain to you a little bit of the backdrop of why I've chosen this topic and what to me is so important about talking about the questions of Islam now, particularly in this sociopolitical environment.
And the backdrop to my interest in it, firstly, as Professor Wolcher has said, I'm working on a book on the Middle East and minority rights. And I am not the minority-rights half of the book; I'm the Middle East half of the book.

And the one thing that I noticed, when you were engaging in the discourse, kind of doing a critical literature review about either questions related to "the" Middle East or questions related to the kind of human-rights intersection with the Middle East, is that you had to unpack so many of the narratives. You had to clear so much of the ground. You had to take away so much of the hegemonic discourse, in order to be able to actually look at what is it when we talk about the Middle East, as a construct, as opposed to what is it as a reality.

And when we talk about the interface between human rights, whatever those human rights happen to be--women's rights, international criminal law issues, issues related to minority rights--and the Middle East, you had to unpack many, many of the preconceptions that were there. And one of the biggest things that would come in between these two questions, for me, was this question of Islam.

At about the same time as I started to work on this project, there was the continuing fallout, post-9/11, that was not just about what was going on in the United States but very much what was going on in Europe.

And to look at the questions and the relationship between the two of those, I spent about two and a half years studying Islamic formulations of law.

And there, it was stunning to me to find that so much of what's in the public domain needed, really, to be raised, because, in the sense of really understanding Islam, we were understanding it not being an actor but being a discourse that was so diffuse, right?

And therefore, when we were into the public domain and looking at questions that were raised in the public domain, the first thing that struck me is that most people, when they use the term "Islam," have absolutely no idea what they're talking about. And I mean that not in a critical way, but in a way that says, "Islam is doing this." And Islam, not being a monolith and not being an actor, can't possibly do that.

So I've begun working in a number of different areas and critical legal projects, working with Islamic scholars, working with the Muslim community, and really trying to pare back this discourse--not just the discourse of what it is to work on questions related to Islam and Islamic law, but also what it means when we talk and serve up questions of international law, for example, because we need to start breaking it down.

In that way, I decided, instead of working on and talking about the book, which is on militant democracy, which I was meant to do, that I was going to talk in this forum about Islam and the democratic project.

So if you bear with me, what I hope to do at the very beginning is to kind of give you the "How did we get here?" and to talk, then, at the end, depending on time--and I hope Professor Wolcher will kind of look at me and tell me when my time's getting close to the end--to talk to you a little bit about Islam and what it actually means.

And I'm not sure that the transition between the first and the second is going to work perfectly, but I'm going to give it a go. OK? And hopefully, by the end, you'll have an understanding of what I have come to know, which is that this question can't be looked at in black-and-white terms. We have to look at it in gradations of gray. And if I make you more confused by the end, then clear, I've done my part.
Now, I am going to read some of this. And I'm going to do it because I have a tendency to go off on detours if I don't, but I promise not just to kind of keep it to the text, to comment otherwise.

OK. I must say that perhaps living at a distance from the place I very much call home--and I'm originally from New York City--I've been alarmed about the narratives that have seeped into both the political and, indeed, legal discourse post-9/11 in the United States.

I think September 11th has become one of those markers, a watershed moment, when, for so many reasons, things changed. I think, perhaps, it was initially a change that was most notable to people looking in, not those here.

At first, Americans didn't ask the question that they would later ask, which is "Why do they hate us so much?"

But what developed, and indeed very quickly, was what would be termed a War on Terror discourse, constructed by those who quite well knew how they wanted this story to unfold. And so very quickly, this fragile democracy was tested. And so very quickly, palpably, audibly, loudly, I think things shifted.

And then, in the elections of 2008, another moment--or at least a promise of change--and how long ago that, also, now seems.

I think there was a sense of needing in this country, and indeed in Europe, that something profound, perhaps, was missing, something we couldn't quite articulate. And as such a diverse sociopolitical space that is the United States, it was impossible to serve it up in one narrative.

And for a moment, I think, whatever the political colors or depths of understanding, there was this sense that in this country we were ready to move. And over the years since, as things unraveled, and whatever direction one's political instincts would articulate that unraveling, that sense we had--the outside we--that perhaps this fragile, fragile democracy was willing and beginning to reflect and capture part of itself again was beginning to fade.

A rather jarring hit came in the form of protest and rhetoric, and a form of what I call "illiberalism," in the public square, that sat so heavily, at least for me, that I opted to spend a bit of time here looking at the question of the construction of the other--in this case, the otherness of Islam.

As a New Yorker, I've witnessed--and perhaps endured, a better word--so much of the politics that have held the difficulties inflicted on my city in the aftermath of 9/11 hostage.

But there was something particularly unsettling about the rhetoric and very bitter and public sentiments expressed about the proposed building of the Cordoba Center. And for those of you who don't recognize Cordoba initially, this was supposedly the mosque that supposedly was about to be built right on or facing the former World Trade Center area.

This was not, as argued, a mosque to be built on, or even very near, where the World Trade Center once stood. The architecture itself is in the form of a honeycomb, disguises any notion of what we would remotely see as a mosque.

But even if the misinformation was true, even if it was a mosque to be built on the site, or close to, where the former World Trade Center once stood, my initial instincts was "So what? And?"

In fact, of course, as you know, or most should know, this is nowhere near it. It's two blocks away. And if you want to talk about what's actually facing the site of the former World Trade Center, you
have to go past a couple of McDonald's and Burger King before you get to it.

I couldn't help but thinking, if this was the city that David Dinkins referred to as "the great mosaic," do we not still believe in the principles of freedom here--freedom to worship, freedom to hold views that are contrary to our own, and to celebrate that diversity?

The answer, it seemed, at least to me, was found in those very angry faces and the bellicose individuals that were meeting the Muslim community outside of the proposed site of the Cordoba Center, which turned its focus and fury towards Muslim members of American civil society. These same members that were one day your neighbors, woke up next day imaged as the enemy.

So how did we get here? My argument is that we have emptied the content of what we would refer to time and time again as our democratic way of life. This discourse, the discourse which has captured the socio-legal landscape, is not about politics, at least not that which is in the exchange of ideas. It is, rather, a depoliticized, expert administration in the coordination of interests.

In this space, the only way to reinsert the public into the public square is by way of fear: a fear of the other, a fear of crime, a fear of godless sexual depravity, of excess state with its burden of high taxes and control, the fear of ecological catastrophe, as well as the fear of harassment. Political correctness is the exemplary liberal form of politics of fear.

Such a politics always relies on the manipulation of a paranoid multitude, the frightening rally of men and women. Such rallies, of course, are articulated differently, sometimes in the new spirit of prides and one cultural and historic identity, in nation and in flag.

But now even those with more moderate or mainstream views suggest that those who are different are guests who have to accommodate themselves to our cultural values that define the host society. If they fail to integrate, to become unidentifiable, then maybe they need to go back where they came from.

Progressive liberals are, of course, horrified by such populist racism. However, a closer look reveals how their multicultural tolerance and respect of differences share with those who oppose the otherness, either of domestic-born or immigrants.

They need to keep others at a proper distance. "The other is OK. I respect them," the liberals say, "But they must not intrude too much on my space. The moment they do, they harass me. I fully support affirmative action, but I am in no way ready to listen or see or host their otherness."

What is increasingly emerging as the central human right in late-capitalist societies is the right not to be harassed, which is the right to be kept safe at a distance from the others. A terrorist whose deadly plans should be prevented belongs in Guantanamo, what the late Joan Fitzpatrick, borrowing from Harold Koh, referred to as a "rights-free zone."

A fundamentalist ideologist should be silenced because he spreads hatred. Such people are toxic subjects who disturb my peace.

As Žižek has argued, on today's market, we find a whole series of products deprived of their malignant property: coffee without caffeine, cream without fat, beer without alcohol, and the list goes on. What about virtual sex, or sex without sex?

The Colin Powell doctrine of warfare, with no casualties--on our side of course--as warfare without warfare. The contemporary redefinition of politics as the art of expert administration as politics without politics, or perhaps, as Hannah Arendt may argue, a politics emptied of freedom, a public
square emptied of its purpose.

This leads us to today's tolerant, liberal multiculturalism as an experience of the other deprived of its otherness, what I call the "decaffeinated other."

The mechanism of such neutralization was best formulated back in 1948 by Robert Brasillach, the French fascist intellectual who saw himself as a moderate antisemite and invented the formula of reasonable antisemitism.

"We grant ourselves permission to applaud Charlie Chaplin," he writes, "a half-Jew, at the movies; to admire Proust, a half Jew; to applaud Yehudi Menuhin, a Jew. We don't want to kill anybody. We don't want to organize any pogroms. But we also think the best way to hinder the always unpredictable actions of the instinctual antisemitism is to organize a reasonable antisemitism."

Is this same attitude not at work in the way we are dealing with the otherness of Islam? After righteously rejecting direct, populist racism as unreasonable and unacceptable for our democratic standard, there is a tacit endorsement of the reasonably racist protective measures of today's Brasillachs.

This vision of the detoxification of one's neighbors suggests a clear passage from direct racism to racism with a human face. In imaging the other, we create an otherness that can neither fit within nor outside of our citizen selves.

Our argument, of course, is that democracy must be militant. And yet we fail to see that it is the very measures we are trying to defend, the very democratic values that we're trying to defend, that have posed the greatest threat to democracy.

So if this is how we got here, how do we begin to re-narrate this story? Certainly, I would argue that the first step is to crack, or maybe to shatter, the hegemonic control of the narrative, to re-imagine the space of otherness and to capture a more forensic, dare I say enlightening, reading, to be intellectually inquisitive, to challenge, to make conversations uncomfortable.

Such an adventure, if applied to Islam, would reveal a discourse replete with contradistinctions, overlaps, and at times the ambient noise so wonderfully described by Ann Mayer in her book on Islam and human rights.

As Islam is not an actor, the various readings of Islam both depart and arrive at different interpretations of prophetic revelations. The struggle between what I will call textualist readings and that of contextualists move between a reading of Islam which is fixed and immutable to one that endeavors to read the text within a specific historic context.

Now, I'm not going to have time to give what I would normally do, which is a whole course on Islamic law and on questions related to Islamic formulations of principles. But I do want to go through, to try to get you to understand, to question, I suppose, when you hear someone describing Islam in a particular way. So bear with me for the next 15 or so minutes.

Although there is one Islam and the fundamental principles that define it are those to which all Muslims adhere, there are various and differentiated readings of scriptural sources. The important margin allows for evolution, transformation, and adaptation to various social and cultural environments. It gives rise to plural readings and respective and often distinct doctrinal and social attitudes.

Although the various tendencies within Islam spring from the same normative criteria, these
differentiated readings yield differentiated approaches to the interpretation and applicability of the norms and principles of Islam.

What we find when examining the first body of literature is that in this contested space, there are vibrant debates among Islamic scholars who move between that which is broadly labeled liberal and reformist school, to textualist or more scholastic traditionalist.

Tariq Ramadan, who is one of the, I think, most prominent and prolific writers on Islam, has a typology of what he refers to as major tendencies. And he talks about those being six, different tendencies amongst those for whom Islam is a reference point for their thinking, their discourse, and their engagement. These tendencies find narrative in studies that specifically relate to Islam, Islamic law, and human rights.

What emerges from this literature is that Islam and its relationship with democracy and human rights is neither fixed nor beyond interrogation. This is important to note, as so much of the literature is preoccupied with questions of Islam and human rights, a rubric that is not particularly informative.

As Mayer argues, some of these writings fail to distinguish between principles set forth in traditional Islamic sources and the historical patterns of interpreting these sources and the results of contemporary governments converting Islamic law into statutes and policies.

Additionally, writers often conflate ideals expressed within the different readings of Islam to the actual laws, legal institutions, and policies in Muslim countries, or read Islam as static, a point that you will refer to and I will refer to constantly.

The scriptural reference points for Islam are the Quran and the Sunnah. That these texts are the point of departure for any subsequent reading of Islam is not in dispute by any school of thought, nor are the three fundamental principles: the absolute oneness of God, the creator, that there can be no representation of him, and that the truth of his word is revealed in the Quran.

These principles are the axis within which different Islamic tendencies have emerged, forming the base of what is referred to as the Tajweed.

Whilst these schools may converge on explicit and uncontested core axes that are identifiable and accepted by the various trends or schools of thought, the various religious, political, and social expressions and actions suggest that Islam's textual references allow plural readings.

And it is in these very readings that we move away from these essential, uncontested cores that we tend to find this much more contested space.

For Muslims, the profession of faith, or Shahada, is guided by Sharia, literally translated as "the way." In its broadest interpretation, this concept suggests a path leading to the source. It determines how to be a Muslim, based on a normative reading of the scriptural sources.

For jurists and scholars of Islamic law, it forms the corpus of Islamic law, drawn primarily from the Quran and the Sunnah but also from the main and the secondary texts. The corpus of Sharia, as Ramadan has noted, is a human construction, and some aspects of it may evolve, just as human thought evolves.

And just as some aspects of the Quran and the Sunnah were revealed over time, this renewal is not a modification of those sources but a transformation of the mind and the eye that reads them, which are indeed naturally influenced by the new social, political, and scientific environments in which...
they live.

Mashood Baderin, who is somebody who has written extensively on al-fiqh, which is the form of Sharia that juristic scholars have developed, draws a distinction between Sharia and fiqh, indicating that while Sharia refers to the sources of the revealed law, which is textually immutable, the fiqh refers to the methods of law—that is, the understanding derived from and the application of the Sharia—which may change according to time and circumstance.

This elaboration was undertaken by the ulama, and the modes of understanding of Sharia in contemporary Islamic activism are largely reactions to the ulama's established position and the latter's defense and counterattack.

For both Baderin and Ramadan, Islamic law does not conform to any fixed narrative and cannot be said to exist apart from external influences. In terms of social commitment and political participation, this suggests that the sources of Islamic law, transformed by mind and eye, will reveal different readings and understanding, each shaped by the experience and sociopolitical backdrop of the reader.

This evolutive approach, which factors in human agency, represents one of the many readings or tendencies among those for whom Islam is the reference point for their thinking, their discourse, and their engagement.

Although it is possible to identify major trends or schools of thought within Islam, the multiplicity of readings provides for many more detours and points of departure, some of which are specific to a region or to a state.

Such an extensive review is beyond the scope of what I'm going to do here, so I'm going to limit my review to some of the major trends or readings identified by the scholars.

I'll begin to look at the developments and the methods of Islamic law, which is fiqh, and how these have been read into the different orientations towards fiqh. These varied approaches interface with rights and concepts and practices in markedly different ways.

And the reason this is important, just to go off-text for a moment, is that many times you're going to hear terminology put into the public domain: the issues related to jihad, for example, the issues related to women's rights, or questions related to penalties. And there, when it's projected, the question then becomes "Is this the only way to read it?"

And within the Muslim community, you're having such vibrant debates, among both Muslim jurists and members of the Muslim civil society that are trying to capture and recapture some of these normative trends that have started to develop.

With the death of the prophet and the expansion of Islam, the [intelligible 26:13] between what is provided for by the textual sources or prophetic traditions and the new and emerging situations and challenges give rise to the concept of ijtihad, or "legal reasoning."

Now, it's not agreed whether or not this should be opened. Many scholars have said no, these kinds of reasonings were closed in the ninth century. But yet, now, to try to bring in this corpus of law to a much more contemporaneous situation, this reintroduction of this question of ijtihad has been put back into the discourse.

This concept was traced to a conversation between the prophet and one of his companions, in which the prophet asked his companion, Jabal, who had been dispatched to serve as a judge in
Yemen, how he would decide cases in the absence of guidance from the Quran or the Sunnah.

He is reported to have replied, "I will exert my own reasoning." As the prophet was reported to have been satisfied with the answer, this concept was adopted and, through this concept, other methods were developed and applied.

This allows jurists to apply an evolutive approach to the texts and traditions. Thus, while the revealed sources of Islamic law--that is, Sharia and al-fiqh--was completed with the demise of the prophet, the evolved methods of Islamic law were to be the vehicle by which jurists would transport the Sharia into the future.

As Islam's influence spread outside of Arabia, attracting adherents drawn from diverse cultures, the number of legal schools of reasoning also flourished. By the end of the third century, the number of these schools was significantly reduced. Many of these schools had disappeared or had merged together.

Whilst accepted that the Quran and the Sunnah were the primary scriptural texts from which all other reasoning would flow, the varied cultural circumstances linked to where these schools were developed impacted respective interpretations of these scriptural references.

The sheer volume of interpretation of text that would flow from these divergent sources of interpretations necessitated a system of centrality and control, which would emerge in the middle eighth and ninth century. Legal treaties would emerge, divided into two aspects of Islamic law, religious worship and social relations, which would then become the official material sources of Islamic law.

By the end of the 10th century, it was argued that most of the legal questions that required interrogation had been completed. And by the 13th century, the process of inquiry through ijtihad had transformed to one of conformism, through taqlid, where all legal questions were argued to be answered. Thus, it was to argue that Islam, at that time period, was frozen.

It is from this point of departure that we can understand the tendencies or orientation towards fiqh, which would emerge legal reasoning and which still exist today.

As Lapidus, a writer on this question, historically wrote, "The corpus of theo-legal writings that would emerge would serve to organize Muslim societies and gain primacy in Muslim consciousness."

The Sharia, as noted, referred not only to a detailed set of legal rulings, but more generally represents the general moral and legal mandates of Islam, with fiqh representing the temporality of Sharia understanding.

And as al-Fado has argued, observance of fiqh rulings are necessary to ensure a perfect and successful society.

However, it is in the orientations towards fiqh where we find the diversity amongst Muslims. Some take reference points which originate in reasoning frozen in the 10th century.

Whilst other schools believe that the gate of legal reasoning was never fully closed, and that as Islamic law was constructed by its founding jurists, it should become possible to think about reconstructing certain aspects of Sharia, provided that such reconstruction is based on the same fundamental sources of Islam and is firmly consistent with essential moral and religious precepts.
Such diversity in past, the departure from the axis of Islam rejects the notion of Islam as either a monolith or an actor. The human agency and the construction of Islamic law much again be factored in to whether certain rights-based concepts are included or excluded from political discourse.

The various readings of the Quran are revealed in the very schools of thought among Muslims. There are a number of typologies that endeavor to capture these trends.

It is perhaps best to understand these less as fixed points but rather as trends or tendencies that exist along a continuum, between two distinct points of departure, which would include the mediated scholastic traditionalism, the literalist Salafi orientation, as well as Sufism, and at the opposite end the contextualists, sometimes referred to as the rational reformists.

Even as we begin to broad groupings, it is necessary to note that while they converge closer to one or the other end of the spectrum, they are distinct, and there are some parts of the historical formation of each school that may give rise to movement.

I've endeavored to chart the various schools of thought along three points, around which we provide a rather simplified taxonomy. At the point closest to the textual end of the scale comprises schools that adopt a scholastic or literalist approach, where all authority is derived solely from the texts and established law.

The classical school, or the scholastic traditionalism, forms the basis of interpretation for both classic Sunni and classical Sharia schools and falls under this umbrella.

These schools tend to draw on the writings of scholars that lived between the 8th and 11th century and reflect a culture in which a particular classic jurist lived at the times the ruling were made. In these schools, the texts are often read in a specific way that is distinct to that particular school.

The textualist or literalist jurists of the earlier ninth century proposed that Islamic law be inferred from the Hadith without resorting to reason. Where there are contradiction among the Hadith's reports and where they cannot be solved by means of isnad, or comparison, the contradictions are to let stand, as textualists refuse to define the law by their own preference.

The system of validation of the Hadith offered through the process of isnad, which are the citations, has had two effects.

Firstly, it made possible to record and validate the rulings of jurists. But this has, concomitantly, led to taqlid, or legal conformism, which has in practice often assumed a blind imitation or a conservatism, leaving no space for ijtihad, or the interpretation, in the absence of legal reference.

This mediated approach reads the source texts of Islam as static and immoderate, unable to adapt or change and dialog with changing socioeconomic or political backdrops.

There are two additional textualist trends that merit note. These schools of thought share the literalist approach to the texts of scholastic schools but differ in a few significant ways.

Both literalism and political-literalist Salafi schools, there is the necessity of reference to and on the authenticity of the texts quoted to justify a certain attitude or action, whether in the area of religious practice, dress code, or social behavior.

However, both reject the mediated approach of the scholastic tradition and believe that the scripts must be interpreted in an immediate way, without scholarly conclaves.
The political literalists differ from the literalists, as they have moved their engagement from one of isolation to political activism, which takes from the reformists the engagement in the public sphere but grafts this onto the literalist approach that rejects any endeavor to modernize the literal word of the texts. And this would be very indicative of the Taliban, for example.

Scholastic traditionalism is found in the four schools of Sunni Islam. These include the Sharia, Hanafi, Maliki, and Hanbali. It is also found in the Jafari school, which is most associated with Shia Islam.

The fatwas, or time and space-bound rulings of early jurists, are taken rather more seriously in this school due to the more hierarchical structure of Shia Islam, which is ruled by imams. But they are also more flexible in that the imams have considerable power to consider the context of a decision, which has been lacking in Sunni Islam historically.

Adherents to this approach include the Barelwis, the Deobandis, the al-Sunnah, the Tabligh-i Jamaat, and the Taliban. Ramadan's typology distills several other textualists, and these are found be it from Saudi Arabia, Jordan, Egypt, and Syria.

At the midpoint is the reformist-conservative trend, which sits roughly between the textualists and the contextualists. This approach seeks a renewal of Sharia to allow for the formation of new fiqh, which would allow it to respond contemporaneously to changing sociopolitical contexts.

While the reformist-conservatives believe that the text cannot be bypassed, this approach adopts an internal dynamic between the text and reason, which endeavors to respond to a changing sociopolitical and economic environment. For those of you in the States that read on Sharia, this would be primarily that espoused by people like Abdullahi An-Na'im at Emory University.

Some of the earlier contemporary writings of the contextualists, or what sometimes is referred to as a liberal or rational-reformist approach, emerged during the colonial period. It's strongly influenced by science and technology as well as the concepts like democracy that have flowed from the West. It prefers the separation of religion from the ordering of public and political life.

Here the orientation is one of clear division between reason and text. Here the Quran and the Sunnah are drawn on for guidance in matters of worship, but it is reason that is the reference point for matters related to inter-human relations.

As Tariq Ramadan has noted, with social evolution in mind, many rationalists believe that the Quran and the Sunnah cannot be the point of reference when it comes to the norms of behavior and that it is applied reason that now must set the criteria for social conduct. Therefore, it is in the individual that must decide which aspects of the Islamic corpus is critical to being a Muslim and what is open to change.

Underpinning rationalist-reformism is the idea of self-determination, in relation to the self, the self to other, and the self to the collective. This could apply equally to someone living in a secular Western context as well as someone living in accordance to the more traditional tendencies, provided that they accord the other a similar right to religious autonomy.

This approach appears contemporaneously, as I said, in the work of Abdullahi An-Na'im, Abdolkarim Soroush, amongst others.

An-Na'im suggests a methodological approach which revisits the process of nasks and which favor the prophetic Mecca over Medina readings. The Mecca readings are seen to be much more open than the Medina readings. This applied approach endeavors to engage the text through reason rather
than placing reason above the textual sources.

Abdolkarim Soroush's point of departure, however, seeks to construct a meta-religious artifice that has at least some extra-religious, epistemological dimensions. Soroush argues that as justice is at the foundation of religious precepts for believers, justice endeavors to secure and preserve rights, regulate power, ensuring equality before the law, then surely it follows that these rules must be implemented through these principles.

For Soroush, justice is a value that belongs to a meta-religious category and, as such, it cannot be religious. It is religion that has to be just.

The various tendencies within Islam and the diverse and often contrasting approaches to interpretation and implementation of Islamic law negate any notion of a singular Muslim view or engagement on matters related to social commitment and political participation.

Just where the tendency of a particular school or trend falls on the continuum between textualism and contextualism reflects, to a large degree, the potential for what Baderin refers to as "a dialogical approach" when applying universal human-rights law with Muslim states.

This is but a brief reading of the Islamic sources. For those of you who don't have the background in this, I realize it's putting a lot of information forward, but in many ways, it's not meant to clarify but rather to confuse.

The black-and-white so often presented when we refer to Islam is best placed in gradations of gray. The concepts and debates that accompany prophetic revelations and scriptural sources of Islam are as complex and diverse as its global Muslim audience.

That there are those who adopt a particular reading of Islam for political ends is no more or less unique to the Muslim community than the global political actors here and elsewhere who seize international law, and even domestic law, as a vehicle for political ends, in both cases depopulating the text from its original meaning and context.

We are most certainly in a clash, but not one of civilizations, but rather one of what it is to mean when we say we want to protect our way of life.

Like Arendt, I believe that we must speak about freedoms, not democracy. And to ensure that these remain, we have to repopulate the public square, fracture that discourse, and, for me, to revive that very old Quaker call so long dormant--that is, to speak truth to power. Thank you.

[applause]

Professor Wolcher:

Wonderful, thank you. I'm sure there are questions. We'd be willing to take some questions from the floor. Thank you.

[audience question]

Kathleen:

I try to touch that a little bit by talking about the politics of fear. I think there are two things maybe to answer that question in two different ways. When I use the term fragile democracy that's not a pejorative term. It is to I think accurately represent what the United States is, yeah.
And unlike Europe and other places, the United States hadn't been tested in that way before, at least contemporaneously. And I think that what did happen very soon after the attacks of 9/11 is that there was a control over the narrative. And the narrative was setting the United States at least in foreign policy terms in a particular direction.

And much like some of the discourse I have seen in other places, those who didn't kind of buy onto this, graft onto this, were somehow seen as not either being sympathetic enough to the enormous impact of this emotionally to the United States.

Or as it became very clear that we were going to have interventions in Afghanistan that they weren't supporting the troops, that any articulation in the public square of dissent was dissent against those people that were very vulnerable, our troops, our nation, our way, our country.

It is not unique to the United States but I think that there was a fear. And when I talk about fear I do mean that creation of fear. And so speaking out meant firstly going on a limb because there was so much uncertainty of how things were going to unfold. But also it took a brave soul to say we need to understand why. Can you imagine in the aftermath saying we can't just attack. We need to pull back and start to re question why this happened.

Now as I hope even in the very condensed amount of time that I had or a very condensed text about Islam, to argue that this was about Islam, this was about the clash of civilizations actually coming to the fore, I think would be a profound misreading. And I don't think those people who drove the planes into the respective buildings represented the Moslem community, right.

But there are certainly reasons why those who did control this discourse could attract so many adherents that were willing to do this, because of US foreign policy and foreign policies of other state actors in Europe.

But can you imagine stepping back and saying we need to understand this. At the same time we are still feeling very vulnerable about what happened. And again having lived so long in countries that actually had long term protracted social conflict including Northern Ireland, it was very rare to have people step outside of that box. It took enormous courage to do it. And I think we are only now in the United States starting to come out of it.

And that's when I was talking about the kind of distance between 9/11 and then the elections of 2008. And for the outside community looking in, it wasn't a pejorative thing; it wasn't a critique of the United States. It was really like you can do it, right.

And then you started to see the turn again to something else. And I don't know what that something else is. But there has been a space in which you had the chance to critique and now it seems to me also there is the self-censorship starting to creep back in again.

So understandable, certainly not unique. But I think there is all of those kinds of questions people don't like to ask when they feel it's themselves that had been the most violated at the time.

I am sorry. I am taking the role of the chair. Sorry, go.

[audience question]

Kathleen:

It is a very good question. That's an excellent question. I think it is hard. And that's not kind of easy answer to your question. I do think it is hard.
I think the only thing that one can do, and it is if you have the time and the kind of curiosity, is once you start reading either on Islam or you read on questions related to foreign policy or on critical social movements or any of that. The more you read the more confused you become, right.

Because the synergy starts to populate that space again the more voices you have in there. And so it is an exercise for the individual. But I also think that besides bringing this idea of gradations of gray which is much more of a concept but just making it more real. I think people have to be willing to ask the questions to make.

And I always say this to my students that you make dinner time uncomfortable, right. Because it is easier for people just to stay with the same narrative. They don't want to say something. They don't want to ask the questions that make things uncomfortable here.

But they have to. Because I don't think there is anyone in this room, whatever your political colors are, that can honestly say to me now that you actually feel safer than you did before this war on terror started. And I don't mean the terror obviously but the war on terrorism in this discourse. It is not possible to do that.

And in large part it is because some of the policies that have gone into place refuse to accept that there is transitorial literature how you import or export democracy has failed, right. It is a much more complex answer on the ground that you need to give.

And people need to deal with the fact they can't get this 10 second talking head to say this is what it means. I almost think I want if we could subvert Fox News. We go a long way at changing this discourse because there you have a 10 second talking head that says this is what it's about. You can't give those answers.

And I think even currently the President has had a difficult time because he is seen as too academic. Again now this isn't a pro Barack Obama but how can you not answer these things in more than a sentence, because they are just so diverse and challenging. But I suppose it is just to keep reading, keep learning yourself and not accept anybody's answer as the answer.

[audience question]

**Kathleen:**

Well, firstly I would disagree with you on one thing that you said. And that is that well, let me back up and talk about the reason why Tariq Ramadan is in here. I don't agree with you quite frankly that he doesn't have content. I think he does have content but in this particular fora since this isn't a lecture on Islamic law.

I wanted to talk a little bit about kind of more of a populist writer on Islamic law trying to bring to an audience that isn't versed in it. The differentiations in the readings. And I think Tariq Ramadan does that very well. I also think he serves an enormous purpose in the public square.

Yeah I am not sure. We could disagree on that. In terms of the question of Islamic law my continuing to try to trace this.

One of the things that I am doing in the book is precisely that which is just kind of de-exceptionalizing the exceptional case and taking Islam out of the content completely because I don't look at this. I look at the relationship between groups and sites of power.

I agree with you. But you cannot get away from that discourse that marries these two things
together. And you cannot get away with a huge bulk of work in which Islamic law is introduced.

You simply can't wish it away because intellectually we think it doesn't have a purpose. People keep writing on this question. And the interface that I work on which is the interface between international law and Islamic law has this body in it.

And simply because, we know, through the kind of historical social formation of it, that it's not a particularly useful thing, doesn't help when people continue to use it.

And so, for my purposes, I still need to go through those foundational points. And, if anything, just to say, we're not on solid ground in either place, either in Islamic law or on international law. So, when we compete those, we do lots of ground clearing exercises. Apart from that, I don't disagree, except, perhaps, with Ramadan.

Man 2:

Going back to it, from my much more periphery and superficial knowledge of Islam, what I've learned casually, was that there is some, a very real difference between Islamic thought, broadly, and Christian European thought about the role of the state. And that it is fundamental to Islam that the government is, the state is religious. And you've suggested that that's not?

Kathleen:

No. I mean, look, in terms of the fact that there isn't a higher authority than God, this is where he gets kicked off, and I think that there are two things. There is, firstly, the kind of concept, and the second is the applied of the concept. And that, the applied of the concept is that you have Muslims that are living in states that are not Islamic states, it's like, I can just, put it that way.

And, for this group of individuals, the biggest push is how to be a Muslim in these areas. And in some ways, the way that I think, and this is something that I'm writing on at the moment, in some ways, the way to do that has been through forms of legal [51:41 inaudible], that you actually have tribunals that are using Sharia in deciding family law cases and personal cases.

But, it is a challenge. It is a challenge for Muslims that are living outside of these contacts. How can they still be a good Muslim, living, and also, a British citizen, for example, or an Irish citizen? And trying to balance both of those things is not impossible, but it does bring up complexities. But, it's not a requirement that a Muslim has to live in the state, it's more of whether or not they can be a good Muslim wherever they live.

And those things being inextricably linked, I think, has brought so much of the controversy about Muslim communities, that are trying to implement and find a path, if you will, to be able to express themselves in society, without it seeing, in contradiction to democratic terms. And I think those two things can exist under specific spaces.

And, it's also depending on how they're reading, what it is to be a good Muslim. For somebody like, An-Na'im, these things, as I said, don't even interface. We don't even have to deal with that, it's about our own personal self. And the social and the political space are something else.

For others, all of those things converge. So, it depends on who it is, where it is they're talking about, and how much they're willing to engage in, perhaps, a different formulation in reading.

[audience question]
Kathleen:

I think, I mean, thank you. Yeah, I don't even think that this course is that advanced, to be honest.

I mean, I think that, I suppose, yes, and that would be one of the many things I would want to talk to people about if they want to talk about this kind of question of space issues, with regard to Islam or any belief, and how much we have to unpack, how we tie these to wider issues.

But to be honest, when you look at this question of manifestation of religion in the public sphere, it's quite unfortunate, her phone is ringing at the moment, [laughter] manifestation of religion in the public sphere, the discourse you have, well, at least if I can limit it to Europe for the moment, because it's where it's really been raw over the last five years.

The discourse that you have is not about the kind of relationships, if you will. It is about whether or not the identity is being challenged by these groups that are coming into their space, and so it tends to be a one way dialogue. And whether or not, in order to be part, and this, in a way, goes to your question, in order to be part of this civil society, you have to stop manifesting yourself in a different way, from that civil society.

And in Europe, it came to a particular head during the drafting of the European Constitution, where there was going to be a reference to religion, and the reference to religion was going to be much more of a Judeo-Christian reference to religion.

And there the debate and the discourse wasn't about anything more simplistically, than the fact is, that if you do that, you're defining those that don't fit under that umbrella, as being something other than our citizens.

And, I suppose in the other kind of, very raw, that's been ongoing now for almost 15 years, is the EUS session for Turkey. And there, when you go through all of the economics, and you unpack all of those things, and I just had a PhD student that did this, the kind of unspoken elephant in the room, is that Europe is not ready to adopt this huge Muslim population, as it sees itself.

And I suppose my theme for this, really, isn't about how we make them understand, I think we do, I think there's, you know, far more complex conversations to have, but, mainly in the discourse, it's much more simplistic. It's about how you construct otherness.

And I've seen it happen in Northern Ireland with the otherness of the communities. The otherness, now, in Europe certainly is the otherness of Islam, and even comparatively speaking, we're now starting to talk about Muslim community members as being suspect communities. Again, very reminiscent of the Northern Ireland days.

But, yeah, I agree with you. But, I think that's so far, a conversation I'll from having at the moment.

[audience question]

Kathleen:

Oh dear. I suppose two things, both the gentleman in the back and you've mentioned the writers that I chose to focus on.

I suppose coming on An-Na'im, I think less Soroush to be honest, but An-Na'im, in terms of those who are kind of battling over the discourse, An-Na'im is considered much more West, not a critical engager in the East.
Soroush, I'm not sure. He's actually gone well beyond just constraining his comments to, you know, his historical baggage of being from Iran.

In terms of the engagement of Muslims and non-Muslims, I think part of what I was trying to say here, was that I have absolutely no difficulty imagining that you can have what has been now, seemingly referred to in such pejorative terms as a multi-cultural society.

But I think that, in order to do that, some of the discourse that we construct about how that actually works in our Democratic project has to be unpacked.

When I labeled this, "Islam and the Democratic Project, "I think that we need to take apart what we believe to be essential to the underpinnings of what it is to live in a Democratic State. And there, I don't believe that legal pluralism is a threat to the Democratic State, nor do I think having religion in the public square, in the manifestation of religion in the public square, is a threat to the Democratic State.

But, I think there are those that construct this discourse that do. And I think there are lots of backdrops to why all of a sudden we're constructing the otherness of Islam. And if we were to remove those things, I don't think this kind of metaphorical clash would be happening. But it is.

And so one of the things I've tried to do and, this just goes back to a project that I'm working on which we have Islamic scholars together with international scholars, is to try to just break things down. My world isn't about trying to build things up. I don't want to be the lawyer, I don't want to solve the problem; but I certainly want to have each of ourselves question how it is that we got here.

And I think once we start to do that - and this isn't idealistic at all because I've worked in too many places that have shattered any illusion of idealism for me, but I do think it is possible for us because in this project that we've done now over a two and a half year period between Princeton Theological Society, the IBA Global Institute and the University of Toronto, we are doing that.

And we are trying to find some way of articulating the otherness in a way that doesn't make it the otherness. And do I think we can do it? Yes. But I do believe that means we have to be willing to be confused more than clear on how we approach things.

[audience question]

Kathleen:

Well, I think there are two things and two different projects. I mean, one of things and this goes back to what the gentleman had said, when you look at actually how each state, say for example you're talking about states in which ostensibly are using their Islamic States or they use Islam as points of departure for control. They're definitely using it for control. It's about a power question, an apart issue.

So, when we, when I've done auditing of states in the Middle East and looked at relationships for example with minority rights or particular groups, you remove this question of Islam because that's not what it is about.

But it is certainly a reading of Islam that allows an articulation of why these things are happening to these particular groups that both for their internal audience but also when it gets up to the international level to say "this is our reading of how we look at these things."
So, I don't think it's possible to talk about projects in this, sort of, construct sense. The reason I looked at the actual readings in this particular paper was simply to say to an audience, that was can't say Islam and just leave it there, because within the Islamic project, if I can put it this way, you have different schools of thought, and within those schools of thought, you have different debates and you have different arguments amongst scholars of what these texts actually mean.

And where you get this articulation that it's monolithic comes from what I've called one of the ends of it, the textualist end of it. And yet you have others who are pulling it more towards the contextualist end and there's a lot in between those.

And so I just want people, particularly in an audience that isn't familiar with Islamic discourse to understand that part of it. But that's not to say that when I look at relationships between groups in the ground and those states that ostensibly use Islamic formulations as control, that I use Islam to explain it. I don't.

But I do try to bring an understanding of the fact that this is used because the texts are open for it to be used in certain ways. But it always is to me about looking at questions of sites of power and how those powers are actually keeping a hold on the groups themselves.

I'm not sure if that answers your question, but I think it's two different projects and two different reasons for articulating it in this way.

**Louis:**

OK, one final question.

[audience question]

**Kathleen:**

I actually don't think -- I know we had this conversation at lunch -- it's not the Middle East though. I think that the discourse is diffused. I mean, I think if you would ask individuals in this room their view on Islam, their view isn't necessarily shaped and formed by Wahhabism in Saudi Arabia. It's shaped and formed by the perception they have of what Islam means to its practitioners.

And there wouldn't be this geographic knowledge that in some places, you have people that are Muslim and worship and that there is this diversity and then other places they don't. I don't think it's that sophisticated.

And also I think, even within the Middle East, what you're calling...The Middle East is a construct and when we talk about the Middle East, at least in our book, we have everything from the Comoros Islands to Iran. In that kind of construct, there isn't one single articulation of what Islam would be within the countries either. You do actually have to look on how it's practiced, at least state practice.

So, it's not just the Middle East, why people have this view of Islam. It's not.

And certainly in Europe, it is very much constructed about people that are living within the state that are looking to exercise autonomy from being integrated to being diverse, and that's their point of departure for understanding what Islam means.

So I think it depends on who you're speaking with, where they are, but it's not as simple as just the Middle East. We actually need to break it down even further than that.
Louis:

Well, this has been one of the most interesting and stimulating talks and conversations that I've heard in a long time on a topic that has incredible importance in our world. I'd like to tell you all that we have a reception in 115 and we can talk more informally amongst one another there and have a drink and eat something.

[laughter]

Louis:

So you're welcome to come to that at Room 115 just down the hall and we'll continue the conversation. I'd like to thank Professor Cavanaugh for a wonderful presentation.

[applause]