Transcript

Welcome everyone, to the first seminar from the Trinity Term, Oxford. Islam and justice programme. My name is Jacob Williams. I am a deep field student in political theory, researching religious philosophical critiques of liberalism, and one of the conveners of the seminar series. So I'm going to introduce our speaker.

00:00:21 Speaker 1

Doctor Mohammed Fadel in a moment before doing that, I'm just going to say a few words about the wider purpose of this series and the intellectual contribution that we're hoping that they're going to.

00:00:30

Thank you.

00:00:31 Speaker 1

So it's hard to avoid noticing that Islam and Muslims are continuously in the spotlight in the western media. Often the very unfortunate reasons with accusations of sectarianism or hostility to liberal values becoming a backdrop to our daily lives. So those who defend the rights of Muslims in Western liberal.

00:00:51 Speaker 1

Democracies typically appeal to the discourse of anti Islamophobia and seem in many ways to be on the back foot politically or to be losing a public argument. So part of the motivation for these seminars.

00:01:05 Speaker 1

It's trying to understand this situation from the perspective of political philosophy, insofar as this discipline has the capacity to help us understand the theoretical commitments underlying the discourse on both sides of the public argument and hopefully shed some light on the adequacy of those theoretical commitment.

00:01:25 Speaker 1

So.

00:01:26 Speaker 1

We're going to be implicitly interrogating 2 positions that are often taken by public intellectuals in the West about the West relationship with Islam. In his excellent

empirical study of religious freedom in Muslim societies, the political scientist Daniel Philpott identifies a polarisation.

00:01:47 Speaker 1

Between an islamo pluralist and an islamo sceptic position.

00:01:51 Speaker 1

The Islamic pluralists hold that if Muslims have reservations about liberal values such as religious freedom, freedom of expression, or the complete equality of all citizens under the law, which typically would be taken to imply at least legal protections for apostasy, blasphemy, and proselytization, then these reservations.

00:02:12 Speaker 1

Derive from factors that are incidental or marginal to Islam itself, such as the malign impact of formal or neocolonialism, economical, social dislocation, or indeed, Islamophobia. The ideal typical form of islamo scepticism, on the other hand, holds the most.

00:02:29 Speaker 1

And reservations about liberalism are deeply rooted in the Islamic tradition itself, and indeed, at the centre of gravity. In this tradition is strikingly illiberal to the degree that if Muslims are to live in long term peace in western liberal societies, Islam will have to somehow be reformed. Now it's obvious some of the Wilder claims made by Islamic sceptics.

00:02:50 Speaker 1

Or.

00:02:50 Speaker 1

Also, the overwhelming majority of Muslims in liberal states not only live peacefully and law abidingly in most states, but are in many ways exemplary citizens contributing, for instance, a higher than average rates to civil society and charitable organisations. But this obvious fact does not automatically mean that every claim made by Islam and sceptics.

00:03:10 Speaker 1

Is false for. It may be that these good Muslim citizens still harbour deep reservations about liberalism as a moral ideal, even while they tolerate it as a compromise. In fact, many Muslim scholars, explicitly or implicitly argue that Muslim cooperation with liberalism is a pragmatic modus Vivendi, tolerable but not ideal.

00:03:30 Speaker 1

In other words, that Muslims should abide by the rules of the liberal game in the West, for reasons deriving from an implicit contract or agreement, or simply the pragmatic limits of what is politically possible, but that the moral political ideal is illiberal or non liberal. Some other form of Islamic governance that would at least qualify the liberal rights that I mentioned earlier.

00:03:51 Speaker 1

So if and in so far as Muslims who are committed to the Islamic intellectual traditions, teachings on political life are thereby committed to viewing liberalism as a mere modus Vivendi, there are certain very practical problems that seem to arise. For example, if an anti Islamophobia activist who subscribes to the modus Vivendi.

00:04:12 Speaker 1

You wishes to defend the liberal rights of Muslims, such as the rights to proselytise other communities.

00:04:21 Speaker 1

And they're asked by an imaginary islamo sceptic interrogator. But wouldn't you deny us equivalent rights if you were a majority?

00:04:30 Speaker 1

Or if this implicit contract were to break down, then what is the activist supposed to say? If they cannot truthfully answer with an unambiguous no to that question, they would not deny those rights. Reciprocally, then the Islamist sceptic can retort that in that case, from their point of view, they're quite warranted in containing Islam.

00:04:49 Speaker 1

IE taking proportionate measures to stop Muslims becoming too numerous or influential so that liberal rights can stably be protected, and that's surely one of the rationales, though not articulated, in such stark terms for the increasing state surveillance and harassment of Muslim communities in many Western countries over the last two.

00:05:08 Speaker 1

It's.

00:05:09 Speaker 1

The problem is, it's not immediately clear if this is a modus Vivendi from what shared moral vantage point, the anti Islamophobia activist and the Islamo sceptic pundit, because a modus Vivendi is not a shared moral vantage point.

00:05:24 Speaker 1

The activists can actually say that the rationale being offered for suppression is wrong.

00:05:29 Speaker 1

So Doctor Fadel will shortly be addressing us on this very question from within the commitments of the Islamic intellectual tradition itself can and should Muslims of neoliberalism as more than a modus Vivendi, but as a moral ideal. But this seminar series is not limited just to the relationship between Islam and liberalism. As the Christian theology and Nigel.

00:05:50 Speaker 1

Bigger pointed out in a 2012 debate here in Oxford with the Muslim thinker Timothy Winter to address the question of Islam's so-called compatibility with the West, we first have to ask not only which interpretation of Islam we're talking about, but also which interpretation.

00:06:04 Speaker 1

Of the web.

00:06:06 Speaker 1

A civilization as pluralistic and culturally and religiously diverse as the West is obviously not monolithically committed to 1 ideology, and certainly not in this age of populism and resurgent nationalism monolithically committed to liberalism. The notable 20th century philosopher Leo Strauss, who not coincidentally.

00:06:26 Speaker 1

Had a strong interest in certain strands of Muslim political.

00:06:29 Speaker 1

Thought identified the central problem in political philosophy as what he calls the theological political problem. In other words, the central problem for the philosopher is to identify the implications of our theological or anti theological commitments for the character of the best political regime. And clearly both the Islamic and the Western intellectual traditions.

00:06:51 Speaker 1

Contain diverse strands of thought about this issue.

00:06:54 Speaker 1

Whether from the standpoint of either tradition, the author is to be regarded as an enemy as a partner in a modus Vivendi alliance, or as a participant in an overlapping consensus on shared values.

00:07:06 Speaker 1

Will depend on which strand in each tradition. We emphasise the object of the series is to start to explore the implications of some of those various strands about the theological political problem. For the question of coexistence in.

00:07:19 Speaker 1

Justice. And so with that in mind, the subsequent seminar, which is the same time and place next week, will feature Doctor Raymond Harvey of the Cambridge Muslim College, addressing us on the topic of Islam and natural law. Natural law is the theological idea that, independent of specific revelation, whether that be the Quranic revelation or any other.

00:07:39 Speaker 1

Humans can access knowledge of at least some moral principles grounded in God's wisdom, but not dependent on reveal precepts. So Doctor Harvey will address as on whether and in what ways natural law might ground a shared moral standpoint between Muslims and non-muslim.

00:07:55 Speaker 1

And future seminars will address Islamic perspectives on the state as an institution. We're looking forward to Andrew March addressing us on Friday the 20th of June, and we'll also examine some of the practical problems for Muslim engagement in liberal politics and throughout the series. The guiding assumption is that there are no simple, often peg answers to these vital questions.

00:08:16 Speaker 1

But these issues of great importance to Muslims to the West, to humanity, would repay multiple lifetimes of systematic study.

00:08:24 Speaker 1

In the absence of multiple lifetimes, we have 5 seminars this term, and we hope that by the end we will at least have succeeded in formulating some of our intellectual challenges with more clarity and with the analytic rigour and precision in which Oxford specialises. So there's nowhere better to be reflecting on these questions than here at Oxford and here at the Middle East.

00:08:45 Speaker 1

At Saint Anthony's college. So I want to express our thanks and appreciation as well to the centre and to Rayhan Ismail, who sadly couldn't be here today. But we'll be here next time for their support.

00:08:55 Speaker 1

And so returning to the day's topic of liberalism, one important strand in the Western intellectual tradition. One solution, if you like to the theological political problem, is a particular type of liberalism that's called in the literature, political liberalism. Dr Fadel will shortly explain what this is in more detail. But in a nutshell, it holds that the state.

00:09:16 Speaker 1

Should in some sense be neutral between all religions or between religion and irreligion. So the question today is whether Muslims on the basis of the Islamic intellectual tradition, can view this neutrality as not just a pragmatic and acceptable compromise, but actually a moral ideal.

00:09:32 Speaker 1

I think that no one is better qualified to address this than Doctor Mohammed Fadel as a full professor of law at the University of Toronto. He is not only an expert on the traditional Islamic jurisprudence, especially on the Maliki school of Islamic law, but also a widely published scholar of political liberalism within the Western academic tradition. He's written numerous.

00:09:52 Speaker 1

Articles examining the relationship between Islamic jurisprudence and political liberalism, one of which you've hopefully read or at least glanced at.

00:10:01 Speaker 1

And he's also a noted public intellectual, having written policy papers for the Brookings Institution and other organisations on the challenges of witness pluralism in the Muslim majority world. So Doctor Fazal is gonna speak for about 40 minutes, and then the remainder of the session will consist of open discussion and questions until about 7:00 PM or whatever time we finish all of our questions.

00:10:21 Speaker 1

And we really encourage you to contribute any and all thoughts and ideas from any perspective. So we should learn from each other and have.

00:10:29 Speaker 1

A. A really valuable and open discourse. So without further ado, I'm gonna hand over to Doctor Fadel. Who's gonna address us on whether the the Islamic intellectual tradition is committed to political liberalism as more than a.

00:10:42

OK.

00:10:44 Speaker 2

OK. Thank you, Jacob for that theory. Generous introduction.

00:10:47 Speaker 2

You know, I'm not sure if I'm going to answer any of those questions, but I what I want to do is try to lay out in this presentation how we can think about them more systematically and maybe less intuitively and less polemically, right. So this slide starts off with.

00:11:05 Speaker 2

This set here, which I'm calling Rawlsian principles of justice roles, sets out in theory of justice certain principles of justice that he says that all people would agree to in in the original position, IE behind the veil of ignorance. There's a the liberty principle, and there's the.

00:11:25 Speaker 2

Just distribution principle with the liberty principle taking priority over just distribution, but it doesn't really matter, just important to understand that Ross has this idea that there are certain principles of justice that are essentially.

00:11:40 Speaker 2

Chaotic in the sense that any kind of justice constitution has to secure them right. And so the basic problem that he has that he tries to resolve in political liberalism is if you imagine a society organised around the the principles of justice that we can derive from.

00:12:00 Speaker 2

The original position is such a society, stable for the right reasons.

00:12:06 Speaker 2

And the answer he gives or the reason why this is a problem, is because the principles of justice themselves will produce.

00:12:15 Speaker 2

A Society of what he calls reasonable pluralism, meaning that you can't assume that the society underwritten by the principles of justice, will the source of its unity will be.

00:12:27 Speaker 2

Consensus about the good?

00:12:31 Speaker 2

The the principles of justice themselves are productive of a certain kind of pluralism.

00:12:37 Speaker 2

On the ultimate ends of the human being.

00:12:40 Speaker 2

Right, so there's this irreducible social fact of pluralism.

00:12:47 Speaker 2

That is produced by free institutions and traditionally in political philosophy. This is considered a source of instability.

00:12:55 Speaker 2

Because the assumption was that if you wanted to have a stable policy, the citizenry needed to be united in a certain conception of the good. But Rawls actually sort of says that's impossible without.

00:13:05 Speaker 2

To worship. So if you want to have a free society, you have to be able to tolerate pluralism. Now the problem is, how can you have stability in that context? So his answer?

00:13:17 Speaker 2

Just sort of briefly, is that the kinds of doctrines that will flourish in a free society are those doctrines that will be able to endorse the principles of justice?

00:13:28 Speaker 2

For their own reasons, IE reasons that are internally persuasive to them, but might might not be internally persuasive to other citizens. In other words, what he imagines is that there will be a pluralism of reasons supporting the principles of justice, all of which at the level of philosophy.

00:13:48 Speaker 2

Of the truth are incommensurate in some sort of deep way, but that doesn't matter because the principles of justice are freestanding political idea. It's sufficient if a critical mass of the citizenry endorse the principles of justice, for reasons that they find subjectively, morally compelling.

00:14:07 Speaker 2

If that's true, if those two things are true, I substantial majority of our critical mass of the citizenry are belong to comprehensive doctrines that endorse the principles of

justice for moral reasons internal to their own doctrines. Then you've solved the problem of stability right? Because now.

00:14:28 Speaker 2

The the, the, the.

00:14:29 Speaker 2

Principles of justice will be supported by whatever configuration of adherent.

00:14:34 Speaker 2

Right.

00:14:35 Speaker 2

Are present in that society right, because they all endorse the principles of justice, right? That's how you get stability, which he calls overlapping consensus, right?

00:14:45 Speaker 2

So the overlapping consensus is the source of the stability of the principles of justice and what I want to emphasise here, because it's it's an easy way to misunderstand what walls means by that overlapping consensus. Overlapping consensus is not a lowest common denominator. It's not a polling exercise where you go out and you poll the citizenry.

00:15:06 Speaker 2

And find out their common beliefs. And then you sort of write a constitution based on that.

00:15:11 Speaker 2

Yeah, it's the opposite, actually. What? What he's trying to say is that a well Lord Society can only be stable if it's the case that right, the kinds of doctrines that flourish in the well ordered society.

00:15:25 Speaker 2

Despite the fact that they are incommensurable philosophically, nevertheless endorse the principles of justice, for reasons that are powerful.

00:15:32 Speaker 2

Compelling to the adherence of those different doctrine.

00:15:35 Speaker 2

OK, so that's free standing, political idea, conception of laws. Now, how does this really relate to actual different doctors? They could do this for every kind of doctrine that exists, but we're doing in the case of a slot, right. So this is what I'm calling a historical Islamic comprehensive doctors.

00:15:52 Speaker 2

So according to the schematic.

00:15:55 Speaker 2

Historical summer comprehensive doctors are only partially overlapping with principles of justice, right? So you find principles in Islamic doctrines that are consistent with the liberty principle that are consistent with norms of Fair distribution, but not wholly so, right? So it's neither wholly incompatible.

00:16:16 Speaker 2

Nor wholly compatible, right? It's partially over.

00:16:22 Speaker 2

Now, in contrast to that, you might have something like a liberal comprehensive, a liberal Islamic comprehensive doctrine. So this kind of represents the, you know, the great hope of white people. Sorry to, you know that you have the the Muslim reformer, whoever he's maybe he needs to call Martin Luther.

00:16:40 Speaker 2

Which is really stupid in my opinion, but imagine him. I don't know.

00:16:43 Speaker 2

Whoever your great.

00:16:44 Speaker 2

Sort of religious reformer. Image of that. The Muslim equivalent of that comes along and proof.

00:16:50 Speaker 2

He or he reinterprets Islam. So now we have a liberal Islamic comprehensive doctrine. Right now, this doctrine, this set of doctrines, as you would see, is completely overlapped with the rules and principles of justice. So that would be great.

00:17:09 Speaker 2

That would be great. The problem is this, it's overlapped with historical Islamic comments and doctrines is quite minimal.

00:17:21 Speaker 2

Because it sort of takes attack of do no interpretation. Let's say it doesn't concern itself with historical doctrines and so it's able to produce this liberal Islamic comprehensive doctrine, which is overlapping.

00:17:37 Speaker 2

From the Rawson perspective, but it may lack a certain degree of credibility.

00:17:43 Speaker 2

With respect to the Islamic tradition.

00:17:45 Speaker 2

Itself.

00:17:46 Speaker 2

Right. And this is kind of problematic for two reasons. One is internally from the Islamic perspective, it just might not be a very persuasive interpretation of Islam to the media. Muslim, if it doesn't, if it doesn't seem to come out of tradition itself and then closely related to this is Ross's observation.

00:18:07 Speaker 2

That reasonable comprehensive doctrines is by their very nature, because they are sort of interpretive projects aren't really amenable to radical change.

00:18:18 Speaker 2

They change slowly on the margins of their time, etcetera, etcetera, their continuity because they're they're presented tradition of of continual thought.

00:18:28 Speaker 2

So to the extent that liberal Islamic company as a doctrine represents a radical disruption from historical Islamic comprehensive doctrines, they could suffer from a plausibility problem.

00:18:40

Right.

00:18:41 Speaker 2

OK.

00:18:43 Speaker 2

Now this is compounded when you take into account the idea of comprehensive liberals.

00:18:49 Speaker 2

So this set here.

00:18:51 Speaker 2

Represents what Rawls calls comprehensive liberalism.

00:18:55 Speaker 2

Now Ross is very clear that political liberalism is a subset of comprehensive liberals, that liberalism, just like any other doctrine, can exist in a comprehensive way or exists in a comprehensive way insofar as it seeks to speak to every aspect of human life and has a conception.

00:19:15 Speaker 2

Of what? A good life.

00:19:16 Speaker 2

Is.

00:19:18 Speaker 2

Right.

00:19:18 Speaker 2

Now the problem laws identifies is that even comprehensive liberalism can be oppressive.

00:19:26 Speaker 2

From a political perspective.

00:19:29 Speaker 2

That in that respect it's not really different than any other comprehensive Dr or never a comprehensive Dr seeks to control the state and fuse power with its conception.

00:19:38 Speaker 2

Of the good.

00:19:39 Speaker 2

Then you have the problem of of oppression, right? That's equally true of liberalism as it is to religious doctrine as it is to utilitarianism as it is to Marxism.

00:19:49 Speaker 2

As it is to.

00:19:51 Speaker 2

There's the tilism. Whatever. Whatever it is that you.

00:19:53 Speaker 2

Want to think about right?

00:19:54 Speaker 2

And so political the the the restraints that political liberalism imposes on other doctrines also applies to liberalism itself.

00:20:02 Speaker 2

Right. So anyway, but the point here that I'm trying to say is that.

00:20:07 Speaker 2

The plausibility of liberal Islamic comprehensive doctrines is further undermined.

00:20:13 Speaker 2

When you introduce comprehensive liberalism and it looks like liberal Islamic comprehensive doctrines, which is this set here, I wish I can have it two different colours, so it'd be clearer. It looks more to be a subset of comprehensive liberalism.

00:20:30 Speaker 2

Because only this part here.

00:20:33 Speaker 2

Is outside of the domain of comprehensive liberalism. Then it does have historical Osama comprehensive doctrines.

00:20:40 Speaker 2

Right.

00:20:42 Speaker 2

So.

00:20:43 Speaker 2

That's another reason why liberal Islamic companies and doctrines might have difficulty gaining possibility, right? I mean, that's kind of an empirical question. Not really, not

necessarily a theological and and no for purposes of this presentation, I assume the complete sincerity.

00:21:03 Speaker 2

Of advocates of liberal Islamic comprehensive.

00:21:06 Speaker 2

Doctor.

00:21:07 Speaker 2

So that's not. I'm not questioning their good faith or the good faith. And advocates of liberal, some companies and doctors. I'm just saying that from a sociological perspective, there's always going to be scepticism about their claims because.

00:21:20 Speaker 2

Of these reasons.

00:21:21 Speaker 2

Right.

00:21:23 Speaker 2

Now assume a well ordered society with a substantial Muslim minority that is growing. That's kind of what Jacob did in the introduction. The existence of such an authority could be viewed as threatening the stability of the well ordered regime. To the extent that individuals within this minority continue to adhere to historical Islamic comprehensive.

00:21:42 Speaker 2

Pockets.

00:21:44 Speaker 2

Because these historical doctors are only partially committed to roles in principles of justice.

00:21:51 Speaker 2

And to complicate matters, it is impossible to adjudicate in a conclusive fashion which is the 2 sets of comprehensive Islamic doctrines, IE the historical ones or the liberal Islamic comprehensive ones represents a better account of Islamic doctrine from the internal perspective of Islam.

00:22:11 Speaker 2

Because there's no Council, there's no Senate to issue an encyclical to say which one is correct.

00:22:18 Speaker 2

Now this theoretical problem could be moved if it could be conclusively determined that a vast majority of individual Muslims adhere to either comprehensive liberal Islamic doctrines, or simply comprehensive liberals. Now I I point out in another article that sociologically, there's a good reason to assume this is.

00:22:37 Speaker 2

To be true.

00:22:38 Speaker 2

Right, but you can't answer this empirical question short of some type of acquisition.

00:22:45 Speaker 2

A strategy that would not only violate the principles of justice, but would also be unlikely to elicit reliable responses from individual respondents regarding their principal Muslim commitments. Indeed, even posing the problem as one of an Islamic threat to civility creates strong incentives for Muslims to conceal their true doctrines. That's undermining.

00:23:06 Speaker 2

From an objective perspective, the credibility of those Muslims who adhere to liberal comprehensive doctrines, right?

00:23:12 Speaker 2

In such circumstances, there could be demands that even liberal comprehensive Muslims dropped the Islamically particular elements of their doctrines and simply become comprehensive liberals, right?

00:23:23 Speaker 2

So this slide should therefore suggests you have happy possibility that after the introduction of Islam into a well ordered society, when help from.

00:23:31 Speaker 2

Spending, rather than an overlapping consensus.

00:23:37 Speaker 2

So.

00:23:38 Speaker 2

This slide tries to develop what I call a walls in response to the problem. So this is where we sort of left off. We have historical Islamic components of doctrines that are only partially committed to laws and principles of justice. There are liberal Islamic comprehensive doctrines, but they suffer from a plausibility problem.

00:23:59 Speaker 2

But it would.

00:24:00 Speaker 2

Seem that the ideal answer would be to move the historical Islamic comprehensive doctrines slightly over to the right, so that the relative principles justice are now over overlap with historical Islamic comments and doctrines marginally interpreted.

00:24:19 Speaker 2

Right. And so this suggests upon another possibility, a solution to this problem, which I called revised historical Islamic Comprehensive.

00:24:30 Speaker 2

So the desiderata band would be not to produce a liberal Islam but produce but produce a set of revised historical doctrines that do in fact overlap substantially with the principles of justice.

00:24:47

OK.

00:24:49 Speaker 2

Now, because there is no principled reason compelling Muslims to adopt liberal Islamic comprehensive doctrines rather than adhering to historical doctor.

00:24:58 Speaker 2

We cannot solve the problem by assuming that overtime the Model 70 described in the previous slide will evolve.

00:25:05 Speaker 2

Into overlapping consensus.

00:25:08 Speaker 2

As Muslims gradually become liberal.

00:25:11 Speaker 2

Instead, we should assume that some indeterminate but nontrivial number of Muslims will continue to adhere to historical doctrines.

00:25:20 Speaker 2

So.

00:25:21 Speaker 2

What would it?

00:25:22 Speaker 2

Mean then to have a revised historical Islamic comprehensive doctrine as opposed to a liberal Islamic comprehensive.

00:25:30 Speaker 2

Now I've tried to work out what such a revised historical comprehensive Dr could look like. Now this is a conjectural account.

00:25:39 Speaker 2

However.

00:25:41 Speaker 2

I argue that my work showed is sufficiently grounded in historical conceptions of orthodoxy that adherence of historical doctrines ought to take us seriously as a sufficiently motivated Islamic account of liberal principles of justice.

00:25:57 Speaker 2

So that they could endorse in good faith.

00:26:00 Speaker 2

Part of this argument is to sort of recognise that not all Islamic commitments are equally normative, right? So it's important to identify whether commitment is theological, whether it is moral slash, ethical, or whether it is simply part of political ethics of Islam.

00:26:21 Speaker 2

Now I want to do here is just sort of look at your look at or or sort of suggest a method about how to work through Islamic commitments that are manifested in historical rules of Islamic law, right and how to.

00:26:37 Speaker 2

Judge them from the perspective of the laws and principles of justice.

00:26:42 Speaker 2

1st to determine whether they are.

00:26:45 Speaker 2

Compatible, incompatible and incompatible for what reason? And then after figuring out the source, the incompatibility to try to determine what possible moves can be made to resolve that problem.

00:26:59 Speaker 2

Now, because I argue that the rules of Islamic law that represent, generally speaking, the lowest order of normative commitments in Islam as a comprehensive doctrine, they should be viewed only as presumptive commitments. In other words, they are commitments that a Muslim is ready to.

00:27:19 Speaker 2

Revise given good reason.

00:27:22 Speaker 2

Unlike sort of core commitments, which have to do with.

00:27:25 Speaker 2

Theology, like the nature of God, the nature of prophecy, the nature of revelation, et cetera, which at least for an Orthodox perspective, cannot be abandoned without abandoning religion. For example, the idea that the put on is the speech of God.

00:27:41 Speaker 2

So what we want to try to do then is try to develop a.

00:27:44 Speaker 2

Method.

00:27:44 Speaker 2

Of.

00:27:45 Speaker 2

Interacting or working with the substance, the historical rules of Islamic law to try to figure out to what extent a Muslim community of those rules would be prepared to revise them because they conflict with the principles of justice.

00:27:59

OK.

00:28:01 Speaker 2

OK so.

00:28:03 Speaker 2

This circle here sort of represents the domain of legislation that would be permitted.

00:28:09 Speaker 2

In a well ordered society subject to the strictures of laws in public reason, right?

00:28:15 Speaker 2

Now Islamic public reason you could sort of just say that the fruits of Islamic public reason are found in the historical rules of Islamic law, right?

00:28:25 Speaker 2

Again.

00:28:26 Speaker 2

Partially overlap, but partially do not.

00:28:29 Speaker 2

And.

00:28:30 Speaker 2

It does so in two different ways. That historical summit law might have some sort of affirmative duties that go beyond what public reason would allow a state to impose on its citizens.

00:28:43 Speaker 2

And then it might be inconsistent with public reason in another in a negative way in that it's not public reason might permit people to do certain things.

00:28:52 Speaker 2

That rules and principles of justice would not permit.

00:28:57 Speaker 2

Likewise.

00:29:00 Speaker 2

Public roads in public reason might require citizens to do certain things that Islamic law would not require them to do likewise.

00:29:10 Speaker 2

Royalty publicly and might permit citizens to do certain things that it's not like public reason would not permit them. So the non overlapping areas break out into the following category.

00:29:23 Speaker 2

Conduct of public reason Islamic public reason requires but that laws and public reason prohibits.

00:29:30 Speaker 2

Conduct that is not like public housing permits, but that laws and public reason prohibits.

00:29:35 Speaker 2

Conduct the walls in public leasing requires, but the Islamic public reason prohibits conduct that laws in public reason permits, but that Islamic public reason prohibits.

00:29:47 Speaker 2

And then finally, there is this middle which is shared conceptions of public key.

00:29:53 Speaker 2

So what kind of strategies can we follow to affect or to pursue an overlapping consensus what I call certain principle reconciliation?

00:30:05 Speaker 2

Well, Ross talks about a duty of restraint right on the one hand, which means that you can think of it as a principle of charity, and the way citizens in a well ordered society interact with other citizens, and that they assume that other citizens.

00:30:24 Speaker 2

Adhere to the principles of justice for morally compelling reasons.

00:30:30 Speaker 2

And so they don't quickly jump and jump to the conclusion that citizens are are not sufficiently committed to the principles of justice. And so they interpret the activities of other citizens.

00:30:46 Speaker 2

Even in circumstances where they might be.

00:30:49 Speaker 2

Intention with the principles of justice in a way that is consistent with public reason, so you could take the example of a religiously traditional family, for example, that has a gender division of labour, and there is a certain hierarchy between the husband and the wife now.

00:31:09 Speaker 2

That sort of commitment to gender hierarchy within the family will be inconsistent with the principles of justice that requires equal equality of citizenship between men and women.

00:31:19 Speaker 2

But a Rawlsian citizen would not jump to the conclusion that citizens who have a religiously motivated hierarchical relationship within their marriage then reject political the political equality of men and women, right? So the same sort of thing should be extended to Muslims.

00:31:39 Speaker 2

Likewise, I would say there's an.

00:31:41 Speaker 2

Islamic duty of restraint.

00:31:43 Speaker 2

In that.

00:31:44 Speaker 2

Islamic law itself recognises certain certain principles of prudence. Certain other types of notions of affirming a trying to find a legal explanation for somebody else's kind of conduct in a way that doesn't require sort of condemning that other.

00:32:04 Speaker 2

Factors being outside of the legal order.

00:32:08 Speaker 2

OK.

00:32:09 Speaker 2

So.

00:32:11 Speaker 2

With these kinds of principles in mind, what kind of strategies can we pursue to try to find an overlapping consensus first, we can begin with overlapping political commitments. As I said, historical summit doctrines are not entirely I mean there is partial overlap between historical.

00:32:31 Speaker 2

Islamic commitments and roles and principles of justice. So it's important to emphasise those and to use those as kind of like a base from which we can expand the stack of overlapping political.

00:32:43 Speaker 2

Groups, but we.

00:32:44 Speaker 2

Should never fall into the trap of denying the.

00:32:48 Speaker 2

Distance of these shared political values.

00:32:54 Speaker 2

We don't want to ignore the fact that there are inconsistent commitments as well, but we should not deny the the fact of overlapping commit.

00:33:02 Speaker 2

Now, what do we how do we handle differences between historical Islamic commitments and roles in political commitments? Well, the first thing we have to do is ask is the difference of parent or Gen.

00:33:14 Speaker 2

Right. What do I mean?

00:33:16 Speaker 2

By a parent versus genuine right?

00:33:22 Speaker 2

Well, it could be that on the face of the rule, there is a stark contradiction, but that is 1.

00:33:30 Speaker 2

Pierces at to a deeper level. It turns out that the difference can be resolved quite easily, and I'll try to give some examples later on.

00:33:42 Speaker 2

But even if it's a genuine conflict, then we have to ask.

00:33:48 Speaker 2

Is the Islamic reason permissive or is Islamic rule permissive or mandatory?

00:33:55 Speaker 2

So there might be a historical Islamic rule that is inconsistent or intention with laws and principles of justice.

00:34:04 Speaker 2

But the solution could be very easy insofar as the Islamic was not mandatory for a solid perspective. It's a merely permissive rule, and so therefore it's not really a real conflict.

00:34:16 Speaker 2

Up.

00:34:18 Speaker 2

Now, if the conflict is genuine, I if it's a mandatory rule.

00:34:26 Speaker 2

Of Islam can be reasonably accommodated as voluntary conduct within a well ordered society.

00:34:32 Speaker 2

I mean a simple example in historical somic law prayer is obligatory, right? And there were ways of punishing people who did not pray. OK, so clearly that is not consistent with laws and principles of justice being of religion in particular.

00:34:49

And.

00:34:51 Speaker 2

These Muslims voluntarily pray because under a sense of obligation that's clearly compatible within the principles of justice as voluntary conduct.

00:35:03 Speaker 2

Then finally, it's possible that it could be obligatory conduct from the perspective of Islamic law.

00:35:12 Speaker 2

But it could be understood as something of very, very, very low normative weight. You could have very, very low normative weighting in the Islamic conception of the good, in which case Muslims would voluntarily.

00:35:28 Speaker 2

For the abandon it in order to obtain the higher order benefits that publicly that the principles.

00:35:36 Speaker 2

Justice secure. And there's a actually a jurisprudential principle and sudden effect that affirms this, it says, which basically says just because you can't get everything doesn't mean you abandon everything, right. If you can get most of what you need, that's good enough, right.

00:35:57 Speaker 2

OK.

00:35:58 Speaker 2

So this is sort of.

00:36:00 Speaker 2

The.

00:36:00 Speaker 2

General scheme or the strategy that I think we should follow, let me illustrate this with some examples. Jacob, how much?

00:36:08 Speaker 2

Time do I have left?

00:36:10 Speaker 1

We're not really pressed for time, so take as long.

00:36:12 Speaker 1

As you need to.

00:36:12 Speaker 2

OK.

00:36:13 Speaker 2

OK, great. OK. So we'll start off with overlapping political commitments. I think the easiest thing to find is due process not treating people fairly in court, right and so or in in, in politics generally, so.

00:36:27 Speaker 2

From perspective of Sunni political theory, government exists to further the welfare of the governed. There's a sharp distinction between the private welfare of individuals right and the public duties of agents. Agents don't have agents only have duties. They pursue the business of the public. They can't use their power to pursue their own.

00:36:47 Speaker 2

Interest.

00:36:49 Speaker 2

The rights of individuals cannot be infringed by the state without due process of law.

00:36:55 Speaker 2

Individuals are subject to the law legally and legally, autonomous with respect to the state and others, so this is very important in that the state cannot exercise your rights. Likewise, other people cannot exercise your rights for you. You are an autonomous actor in Islamic law with the freedom to pursue all your legal interests, right?

00:37:17 Speaker 2

A very narrow scope of self help, right? So individuals are not titled to take their own. Take the law into their own hands, but have to have to use the public institutions of justice to vindicate their rights when when they are being violent.

00:37:32 Speaker 2

Judicial proceedings require notice to the parties and opportunity for them to be heard. They have to have the right to impeach other parties evidence.

00:37:40 Speaker 2

Judges must be neutral. Have.

00:37:42 Speaker 2

No stake in the outcome of.

00:37:43 Speaker 2

The case and will only on.

00:37:45 Speaker 2

The basis of evidence presented in court.

Government agents are liable for their illegal conduct.

And.

Government the government is empowered to take private property for the public interest, but upon fair compensation, and only for public purposes.

OK.

Islamic law historically also has commitments to privacy, integrity of the body. Yes, Islamic law criminalises illicit sexual conduct, but at the same time it provides extremely high evidentiary bars preventing the prosecution of these crimes.

Right. So in fact, you have jurists say that.

The aim behind these rules is to protect privacy, not to convict people for illicit sexual activity.

Some other interesting principles with respect to reproductive freedom. There's a heuristic principle. Women are the trustees of their wombs, meaning that women are taken at their word with respect to what happens to their bodies with respect to pregnancy, etcetera. So.

Just to make sure we understand where I'm coming from on this, if you think about the question of abortion.

It would be theologically very controversial to say that a foetus is not protected life. I mean whether or not the human being has a question, but.

The there's there's.

You know it's it's a not it's.

Not a non entity as.

Such but politically speaking, Islamic law gave women control over what happened.

That their bodies.

So that it was not a subject of third party intervention, right?

Again, here another example, legal or relevance of virginity to marriage contracts, even where stipulated.

No legal obligation for mothers to nurse their children and no interest spousal toward immunity. And so these are all, I think, very important kinds of substantive commitments that reinforce sort of the individuality of, of persons, particularly women.

So now we're going.

To move to divergences and political preference.

So I'm going to start off with what I call the apparent conflicts that aren't really conflicts, so there are lots of historical rules that assume that appear to be in conflict with the principles of justice.

But would turn out to be in conformity with them if we just revise certain obsolete historical assumptions.

For example, if you read historical works of Maliki law, they provide discriminatory rules for the emancipation of minor children.

00:40:31 Speaker 2

So a boy becomes an adult with the onset of physical puberty, and girls only become adults after they consummate their first marriage.

00:40:42 Speaker 2

No matter how old they are, when that happens. Right? OK. So that's clearly a facially discriminatory rule, right? But when you look behind the rule, what you discover is that the basis for it is an obsolete empirical assumption about capacities.

00:41:00 Speaker 2

Of boys and girls.

00:41:02 Speaker 2

So the assumption is that boys from a very young age become sort of socially responsible because.

00:41:10 Speaker 2

They're in the marketplace more or less every single day of their lives, so they gain experience and how to be responsible for property, whereas girls never get that.

00:41:22 Speaker 2

Education, not practical education until they are married and responsible for their own household.

00:41:29 Speaker 2

So.

00:41:31 Speaker 2

That's an empirical difference that is contingent on a certain kind of sociology, and presumably is of no relevance in most states where you have mandatory public education for both boys and girls. And by the way, in fact, by as far as I know and by by the 18th century Morocco, they had already abandoned this discriminatory.

00:41:58 Speaker 2

There's also if you look at Islamic law again.

00:42:02 Speaker 2

The father is given a right to contract finding marriages for his minor children, whether boys or girls.

00:42:10 Speaker 2

So this is, you know, contrary to any sort of, you know, rules of the level or society. Again, this seems to be, at least in my opinion, an empirical difference, not a principal difference because it was based on the assumption that the father and securing a marriage for the minor children is acting to further the welfare of the children.

00:42:34 Speaker 2

So once circumstances in society change for lots of reasons, greater affluence, greater complexity, you have a lot to describe it and.

00:42:44 Speaker 2

The importance of marriage for the future of the child is not nearly as great as it was, let's say, in an agrarian society. Then it's no longer the case that minor marriages further the welfare of the children, so therefore it would also be islamically prohibited or a good case that it's islamically prohibited.

00:43:04 Speaker 2

Would be great. OK, so that would be another kind of apparent contradiction. That is not a genuine 1.

00:43:12 Speaker 2

OK, now let's move to the next set permissive Islamic rules that are inconsistent with public reason.

00:43:19 Speaker 2

These are private rights that would be, or could be inconsistent with public reason such as slavery, religion, and then a husband's disciplinary power over his wife. He's all historical rules, no reason to contest the fact that they exist as part of historic Islamic Dr.

00:43:37 Speaker 2

However, it ought to be particularly easy to reconcile about prohibitions of slavery, pledging at least slavery with historical Islamic law.

00:43:50 Speaker 2

In fact, each one of these represent historically disfavored practises.

00:43:55 Speaker 2

With respect to the law of slavery, there was a legal maxim that the law giver looks forward to freedom.

00:44:06 Speaker 2

Likewise, the Islamic marriage contract often contains robust protections for a wife against the possibility that her husband could take a second wife.

00:44:15 Speaker 2

In addition to the fact that it was considered morally disfavored.

00:44:20 Speaker 2

And in the case of a husband's power to discipline his wife.

00:44:25 Speaker 2

Without getting into all the details, Maliki, Maliki procedural will effectively.

00:44:31 Speaker 2

Assumed that any exercise of this prerogative was actually unlawful abuse, not permitted discipline.

00:44:38 Speaker 2

Likewise, other legal doctrines held husbands liable to their wives in cases of abuse. In addition to giving wives a right of judicial divorce.

00:44:49 Speaker 2

Since in none of these cases is a Muslim with traditional commitments under a moral duty to exercise any of these rights.

00:44:56 Speaker 2

There is no principled objection to compliance with public rules prohibiting this kind of behaviour.

00:45:02 Speaker 2

With the important caveat, namely that they are justified along the lines of public reason, not theological doctrines such as polygamy offends God.

00:45:12 Speaker 2

Or something like that.

00:45:15 Speaker 2

OK.

00:45:17 Speaker 2

Now what about mounted mandatory Islamic pools that are consistent with public reason, but only if they involve state action, at least arguably.

00:45:24 Speaker 2

So an example of this could be Islamic inheritance law.

00:45:28 Speaker 2

It's on the inheritance law. It would be inconsistent with public reason because it enshrines a certain kind of gender discrimination or gender distinctions.

00:45:38 Speaker 2

Whatever however.

00:45:40 Speaker 2

Free exercise values, meaning the right to exercise one's religion, which is also a value protected by the principles of justice, should justify the recognition of a Muslim testators wish to distribute assets in conformity with Islamic.

00:45:56 Speaker 2

Law.

00:45:57 Speaker 2

At least in circumstances where it doesn't leave a beneficiary in, you know a popper or something like that is otherwise unconscionable.

00:46:07

Right.

00:46:10 Speaker 2

Another important example is salute penalties. Hadoop penalties are scriptural penalties that impose corporal punishment on the defendant, including death. Right now they're these are inconsistent because they have no justification other than Islamic perfectionist.

00:46:30 Speaker 2

Values, however, and then these are also problematic because at least historically speaking, Muslim jurists claimed that.

00:46:40 Speaker 2

Muslims had no jurisdiction over these rules.

00:46:44 Speaker 2

That these were crimes that God defined and God defined the penalties and there and complying with them is a duty that we owe to our creator. So we have no sovereignty over these over these parts.

00:47:00 Speaker 2

However, there is a I mean I've suggested that there's a possible theological twist to these rules because these rules are justified purely on theological grounds. Many Muslim jurists, including Malik.

00:47:14 Speaker 2

Understood them.

00:47:16 Speaker 2

As being religiously motivated, not really part of criminal law, meaning that the primary purpose of these penalties was to or to give the Sinner an opportunity to purchase soul of the sin of the of the of of what he committed, right?

00:47:36 Speaker 2

So that requires that one essentially sort of submit to the penalty for the freely. That's why for example.

00:47:46 Speaker 2

According to that, the penalty for adultery did not apply to non-Muslims.

00:47:51 Speaker 2

Because.

00:47:52 Speaker 2

They would not get any of the religious benefit of repentance insofar as they were Muslim.

00:48:00 Speaker 2

OK.

00:48:02 Speaker 2

Now mandatory rules of public reason may conflict with.

00:48:04 Speaker 2

Islamic public reason.

00:48:07 Speaker 2

Commit physical education, right? So let's say that. I mean, I think where I grew up, I'm sure it's the same in the United Kingdom, there is public education, it's generally Coed is I think it's called the UK, although I think you have single sex public schools too. But any case just assume coated schools and as part of that.

00:48:21

So yeah.

00:48:27 Speaker 2

Coat school you have Coed physical.

00:48:29 Speaker 2

Education. OK, now from the perspective of a Muslim committed to historical Islamic comprehensive doctrines, Coed physical, physical and class would be problematic because it would entail the insufficient degree of covering in the presence of members of the opposite sex. This is true for both Muslim boys.

00:48:46 Speaker 2

And Muslim girls.

00:48:49 Speaker 2

Here it seems that the political value at stake, at least from the perspective of the weather society, is not promoting a specific mode of dress or male female interaction, but rather promoting physical health.

00:49:02 Speaker 2

Accordingly, it would appear that public reason could accommodate the needs of traditional Muslim citizens, consistent with the principles of justice. So in some cases we can speak about a duty to accommodate.

00:49:15 Speaker 2

Because the Muslim objection has nothing to do with the public value, namely pursuing good physical health, they just want to pursue it in a way that is consistent with.

00:49:24 Speaker 2

Their own religious.

00:49:25 Speaker 2

Values and so that should seem to be amenable to an accommodation or, you know, subject to all the limits on what a reasonable accommodation is, right? If it can be done

with consistent with the rights of others, consistently with, with the budget, budgetary constraints, etcetera, etcetera. But it it in no way undermines principles of.

00:49:45 Speaker 2

Of political justice.

00:49:48 Speaker 2

And you could do this either having it by having single sex physical process which was actually what happened in my high school. You know, we have the boys separate from the girls for for present or by having different uniforms.

00:50:02 Speaker 2

OK.

00:50:04 Speaker 2

Now there are permissive rules of public reason that conflict with Islamic public reason.

00:50:09 Speaker 2

For example, public reason permits conduct that Islamic public reason could legitimately, even if not necessarily prescribed, such as public expressions of sexual autonomy.

00:50:19 Speaker 2

Public reason would permit Muslims to hold moral views. At least I argue that Muslims should be allowed to hold moral views that reject sexual autonomy.

00:50:30 Speaker 2

The Muslims should have the right to teach their moral views to the, to the, to their own community and to others, and to criticise others.

00:50:38 Speaker 2

As being involved.

00:50:39 Speaker 2

Right. Even if they were, even as they recognise their rights as citizens to pursue that conduct.

00:50:46 Speaker 2

Now this seems to me a really crucial point, because there is a doctrine a really fundamental doctrine in Islam known as the obligation to command good, forbid wrong.

00:50:57 Speaker 2

And so.

00:50:59 Speaker 2

That obligation is satisfied if Muslims are permitted to object to a world if they are not required to suppress it.

00:51:09 Speaker 2

But they are required at a minimum, to dislike it in their hearts.

00:51:15 Speaker 2

Right.

00:51:16 Speaker 2

Which entails a you need to be able to teach it to people. That is wrong.

00:51:22 Speaker 2

So I understand that this may be a source of tension in some Western societies that there's a pressure on religious groups to.

00:51:33 Speaker 2

I guess.

00:51:34 Speaker 2

Cease. I guess you know, maybe maybe the vice versa. Normalise.

00:51:39 Speaker 2

Non heterosexual intimacy that would be a deep problem. And I also would say that public reason does not permit a state to demand that.

00:51:51 Speaker 2

Public reason would require.

00:51:53 Speaker 2

Religious groups who object to non heterosexual intimacy to respect the rights of others to engage in that, but it doesn't give them the right to force them to change their doctors. At least that's the view that I would I would take.

00:52:09 Speaker 2

OK.

00:52:11 Speaker 2

Now finally we get to this last category.

00:52:14 Speaker 2

Mandatory Sonic tools that are repugnant to public reason, right? I think here the clear example is capital punishment for.

00:52:20 Speaker 2

Apostasy.

00:52:23 Speaker 2

Now, unlike the head penalty for adultery, for example, apostle apostle has no rational benefit from the application of the penalty. This is truly a penalty.

00:52:33 Speaker 2

It's a punishment, right? The apostate is not getting redeemed by being put to death for his apostasy. He's being punished for the apostasy.

00:52:43 Speaker 2

At the same time, some schools of law, like the high nephews, for example, suggest that apostasy really is a political crime. It's not a sin. I mean, it is a sin, but it's not the the sin is not what's being public punished, because the pun, the play, the time plays for the punishment of sin is the next World, right.

00:53:02 Speaker 2

So it's taking place is a punishment for a political crime.

00:53:07 Speaker 2

So here is a place where you would have to have some kind of reinterpretation right? And the argument that I would make is to build on.

00:53:17 Speaker 2

The arguments of the Hanafi is that apostasy is a political crime, not a religious crime, and so it was intended to protect the integrity of Muslims of the Muslim community from the threat that apostates.

00:53:31 Speaker 2

We have on society because the assumption was that the apostate was armed.

00:53:38 Speaker 2

That the apostate was now switching sides in a situation of an existential battle.

00:53:44 Speaker 2

Right. And if you look at early, have a few texts, oftentimes the fact pattern includes somebody abandoning the Muslim camp and going over to the Byzantines.

00:53:56 Speaker 2

Right.

00:53:58 Speaker 2

And so there is a strong sense here of of, of, of switching sides in the middle of war or something to that.

00:54:04 Speaker 2

Effect, right? So.

00:54:07 Speaker 2

The argument is that.

00:54:10 Speaker 2

In a modern liberal state, the state protects Muslims.

00:54:15 Speaker 2

And insofar as the state protects Muslims, even if the apostate is hostile, the state will not permit that apostate to harm the Muslim community in the politically significant way that the punishment for apostasy came into existence to prevent OK.

00:54:36 Speaker 2

Now to conclude.

00:54:38 Speaker 2

The introduction of historical summit comprehensive doctrines could transform an overlapping consensus into a mode for them. They, at least theoretically liberal Islamic companies of doctrines may lack objective additional credibility sufficient to solve the problem, at least as a practical matter. Even if they solve the problem theoretically.

00:54:57 Speaker 2

Therefore, revised historical Islamic comprehensive doctrines is the optimal political solution because.

00:55:04 Speaker 2

They're just much more likely to be plausible and be viewed as plausible, right? So here it's not sufficient to be. Just one must be seen to be just.

00:55:13 Speaker 2

Too, so to speak.

00:55:14 Speaker 2

And laws in conjuncture who share political values, therefore, is the most effective strategy to.

00:55:20 Speaker 2

Reach the solution. Thank you.

00:55:22

Thank you.

00:55:27 Speaker 1

Fantastic. Yeah. Thank you for an incredibly enlightening.

00:55:30 Speaker 1

Thank you so much for your time for addressing us again and we look forward to speaking with you.

00:55:36 Speaker 1

In the future, thank you again.

00:55:38 Speaker 2

My pleasure. OK, take care. Good luck.

00:55:39 Speaker 1

Take care. Thank you for coming, everyone. And the next session on Islam and natural law is here. At the same time next week on Monday, 5:00 PM with Doctor Raymond Harvey. He's coming in person from Cambridge, which would be a really interesting discussion.