

## **When Islam is Not a Religion: Inside America's Fight For Religious Freedom**

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Location: Emerson Auditorium

### **Marie Griffith:**

Welcome to tonight's event sponsored by the John C. Danforth Center on Religion and Politics at Washington University in St. Louis. I'm Marie Griffith, the Center director, and it's great to see you all here. I want to start by thanking John Inazu for organizing this event tonight. I'll also note that it is being co-sponsored by the WashU Law Public Interest Law and Public Policy Speaker Series. We have a couple more events this semester to which I'd like to call your attention. Next Monday, Nov. 4, the Danforth Center is co-sponsoring with the Carver Project a public lecture between author Jemar Tisby and John Inazu on Tisby's acclaimed book *The Color of Compromise: The Truth About the American Church's Complicity in Racism*. So that's Nov. 4th at 7:30 in Wrighton Hall 300. And, on Nov. 13 in partnership with the department of Jewish, Islamic, and Middle Eastern studies, we will offer a special screening of the new documentary the Judge, that tells the story of the Palestinian judge Khaloud al-Faki, the first woman to be appointed as a judge on a religious court anywhere in the Middle East. The screening is at 6:00 on Nov. 13th in Hillman Hall and will be followed by a panel discussion featuring the film's director, Erika Cohn, as well as WashU faculty members Tazeen Ali and Nancy Reynolds moderated by postdoctoral research associate David Warren. Further information is available on the welcome table outside this room, and we hope you can join us for these events.

Tonight we are delighted and greatly honored to welcome religious liberty lawyer and scholar Asma Uddin. Asma Uddin is senior scholar and faculty at the Freedom Forum Institute Museum and a fellow with the Initiative on Security and Religious Freedom at the UCLA Berkley Center for International Relations. She's also a research fellow for Georgetown's Berkley Center for Religion, Peace, and World Affairs. She graduated from the University of Chicago Law School where she was a staff editor at the University of Chicago Law Review. Her areas of expertise include law and religion, international human rights law on religious freedom, and Islam and religious freedom. She just published this book, "When Islam is Not a Religion: Inside America's Fight for Religious Freedom," and I learned today that she's working on a new project titled "The Politics of Vulnerability and the Right to Religion and Religious Freedom." I'll just mention now that after tonight's event there will be a book signing. We'll have this book for sale and signing with Asma Uddin. Uddin previously served as council with Beckett, a nonprofit law firm specializing in US and international religious freedom cases, and as director of strategy for the Center for Islam and Religious Freedom, a nonprofit engaged in religious liberty in Muslim majority and Muslim minority contexts. She's also an expert advisor on religious liberty to the organization for Security and Cooperation in Europe, and a term member on the council of foreign relations. She's widely published by law reviews, university presses, and national and international newspapers, and she works for the protection of religious expression for people of all faiths in the US and abroad. She's worked on religious liberty cases at the US Supreme Court, federal appellate courts, and federal trial courts, defending

religious claimants as diverse as evangelicals, Sikhs, Muslims, Native Americans, Jews, Catholics, and the nation of Islam. Her legal academic and policy work focuses on freedom of expression such as religious garb, land use, access to religious materials in prison, rights of parochial schools, religious arbitration, and so forth.

Following Uddin's lecture will be a panel discussion with three Washington University scholars, and I will introduce them at that time. But first, Asma Uddin will speak about *When Islam is Not a Religion: Inside America's Fight for Religious Freedom*. Please join me in welcoming her now.

### **Asma Uddin:**

Thank you to the Danforth Center and to professors Marie Griffith and John Inazu for inviting me here to speak, and also to my panelists for joining me in the conversation, and to all of you for coming out. AS Prof. Griffith mentioned, I have a new book out. It's called "When Islam is Not a Religion: Inside America's Fight for Religious Freedom." The title may be confusing, maybe even bewildering, but so is the claim that gave rise to it. That claim is that Islam is not a religion; it is instead a dangerous political ideology, and therefore Muslims do not have rights under the First Amendment. This is, of course, absurd; there are almost 2 billion Muslims across the globe, encompassing tremendous diversity, including 7 million right here in America. Yet that doesn't stop some very prominent people from saying that the First Amendment doesn't apply to these people. And it's not just a claim that we see in the Twitter-verse, although we definitely see it there. We see it among lawmakers, we see it implemented into law, and we see it being argued in court. My book looks at these legal implications. It looks at the attack on the First Amendment and explains how this attack on Muslim affects all Americans, because a selective application of the law will always come back to bite us. If we cede power to the government to choose what it considers a religion and what it doesn't, who's to say what's allowed today won't be allowed tomorrow. Your religion, whatever it is, is at risk. I've been in this fight for religious freedom for a decade, and the principle that runs throughout my work is that everyone has a right to be wrong. Indeed, one of the hallmarks of religious liberty is that it protects people of all faiths, even if their beliefs seem unfounded, flawed, implausible, or downright silly. It's not that religious freedom requires relativism or indifference to truth; instead, it's based on an understanding of the religious quest, searching for answers to ultimate questions and living in accordance with one's authentic beliefs. That journey is different for everyone, both among religious communities and among members of the same community. We may think that another's belief is wrong, but again, the premise behind religious freedom is that people have the right to be wrong. It is a concept inherently rooted in human dignity, because what matters isn't whether your beliefs are acceptable to the majority. You don't have to earn your rights or prove yourself worthy of them. Simply by virtue of being a human, you have access to human rights, including the fundamental human right to religious liberty. And yet, in religious freedom discourse today, the principle of human dignity is sorely lacking. No one has a right to be wrong, it seems. They can only be right, and you, the beholder, get to decide what is right. In my own work, I have rejected the selective application of rights regardless of the particular religious group I am advocating for and regardless of how

popular or unpopular their religious beliefs and practices might be. But I have not seen a similar willingness on the part of many Americans to extend those same protections to Muslims. This is true not just of ordinary Americans but also of Americans in positions of power. And some of the same Americans who are most vocal in advocating for a robust vision of religious freedom fall silent when it comes to Muslims' rights, or explicitly advocate against them. Indeed, in question for a lot of Americans is whether Muslims are protected by religious liberty; in other words, they're questioning whether Muslims can access rights under the First Amendment and various statutes, such as the Religious Freedom Restoration Act and the Religious Land Use and Institutionalized Persons Act. Increasingly we hear arguments made both in the courts of law and the courts of public opinion that Islam is not a religion, that it is instead a dangerous political ideology hell-bent on taking over the United States and subverting fundamental human rights. Islam is an almost otherworldly bogeyman, a larger-than-life, all-encompassing swamp creature. And in the process of stopping it, its opponents run roughshod over the human rights of everyday human beings who happen to be Muslim. For these people—again, powerful, influential people—Muslims are somehow not human enough for human rights. So who are these opponents?

First, consider some general statistics on the rise of anti-Muslim sentiment. An August 2017 poll by the Anenburg public policy center at the University of Pennsylvania found that almost 1 in 5 Americans believe that under the US Constitution, American Muslims do not have the same rights as other American citizens. A 2016 survey by the Pew Research Center found that almost half of all US adults believe that some American Muslims are anti-American. This number includes 11% who think most or almost all American Muslims are anti-American. A 2015 poll by the Associated Press and the NRC Center for Public Affairs Research found that Americans favor protecting religious liberty for Christians over other faith groups, ranking Muslims as the least deserving of this right. 82% voted in favor of protecting religious liberty for Christians, while only 61% said the same for Muslims. The general climate of anti-Muslim bias correlates with a sharp rise in hate crimes. Anti-Muslim hate crimes are the fastest growing religious hate crimes, roughly doubling from 2014 to 2016. In 2017 hate crimes across the board rose by 17%; more than a thousand additional incidents than the year before. In addition to these hate crimes, more than 42% of Muslim children in grades K-12 have experienced some type of bullying because of their faith. The New America Foundation diligently tracks this information and stated visualization project. Its interactive map displays anti-Muslim activity by state divided by type of activity. So it could be anti-sharia legislation, mosque controversies, hate crimes, etc. The long list of hate incidents reported to the media in 2018 includes: in Kansas City, MO a man broke into a Muslim family's home, spray painted religious and racial slurs inside the home, and set the staircase on fire; in St. Augustine, FL a man attacked Muslim students with a stun gun and a knife. One of the officers reported that statements made by the defendant to the victims show that the assailant only committed the acts due to the victims' religion. In Livingston Parish, LA a man rammed his pickup truck through a store because he thought its owners were Muslim. In Carmel, CA a man was deliberately hit twice with a car while he was walking with his family; the family was recognizably Muslim because the women were wearing headscarves. IN New York, Muslim members of the NYPD found their lockers vandalized by colleagues who wrote anti-

Muslim messages including “FU Muslims” and spread feces on the lockers. And the list goes on.

The rise in anti-Muslim sentiment and hate crimes, both rooted in the idea that Muslims are somehow less human or less deserving of human rights and religious liberty specifically, is happening at a time when religious liberty is one of the most important items on the Trump administration’s agenda. Even during the 2016 election, Republican candidate Ted Cruz called the election a “religious liberty election,” stating that religious liberty issues were front and center in determining who the next president would be. Candidate Trump promised on the campaign trail that “the first priority of my administration will be to preserve and protect our religious liberty.” And indeed, President Trump has kept his promise by offering expansive religious liberty protections. From opening the new Conscience and Religious Freedom Division at the Department of Health and Human Services to issuing broad religious liberty guidance and instituting the Religious Liberty Task Force at the Department of Justice. The department of education has also announced its desire to change rules that prohibit federal education funding for faith-based entities, and during the last two years the State Department twice held a multi day ministerial to advance religious freedom and issued the Potomac Declaration that reasserts the United States’ unwavering commitment to promoting and defending religious freedom. So on the one hand, we’ve seen major steps forward for religious liberty. But I can’t help but notice that the steps forward for religious liberty track the issues championed by particular groups such as conservative Christians. And right alongside them, there’s a growing climate of anti-Muslim sentiment and hate crimes, and the growing salience of the claim that Islam is not a religion and Muslims don’t deserve religious liberty. Even as Cruz and Trump were rallying for religious freedom on the campaign trail, they were proposing staunchly anti-Muslim measures. Trump promised to establish a database to track Muslims and suggested shutting down mosques, and Cruz advocated for surveiling Muslim neighborhoods. Other presidential candidates chimed in too. Ben Carson declared that a Muslim “absolutely could not be president,” and Rick Santorum said the US Constitution does not protect Muslims because “Islam is different from Christianity.” Consider also some of the Trump administration’s appointees and their positions on Islam. In 2016 former National Security advisor Michael Flynn told an Act for America Conference in Dallas, “Islam is a political ideology that hides behind the notion of it being a religion.” In 2017 then-White House aid Sebastian Gorca could not unequivocally state that Islam was a religion when asked by Steven Enskeep of NPR. Steve Bannon, the White House chief strategists who helped design and implement President Trump’s travel ban once mocked former president George W. Bush for stating that Islam is a religion of peace. According to Bannon, Islam is not a religion of peace; Islam is a religion of submission, by which he means submission to a nefarious agenda to take over the US. In May 2018, Fred Fleets was named Chief of Staff for President Trump’s National Security Council. Fleets is currently the president of the strongly anti-Muslim Center for Security Policy and has claimed that Muslim communities in America are susceptible to a “radical world view that wants to destroy modern society, create a global caliphate, and impose shaaria law on everyone on earth.” In 2018, BuzzFeed News reported that since 2015 Republican officials in 49 states have publicly attacked Islam, some even questioning its legitimacy as a religion. Here are some examples. In Oklahoma, State Representative John

Bennett in 2014 called Islam a “cancer” and met with Muslim constituents only after they filled out questionnaires asking whether they beat their wives. Bennett has also said that Islam is not even a religion, it is a social-political system that uses a deity to advance its agenda of global conquest. A Nebraska state senator proposed that Muslims be required to eat pork if they wish to enter the United States. A state senator in Rhode Island wrote that Muslim religion and philosophy is to murder, rape, and decapitate anyone who is a non-Muslim, and recommended that Syrian refugees be housed in camps. A South Dakota State Senator who was then running for the United States House questioned in an official press release whether the First Amendment applies to Muslims. A 2014 Republican Congressional Candidate and now Congressman from Georgia questioned the compatibility of Islam with the American Constitution and wrote in 2012 that “Islam would not qualify for First Amendment protections since it is a geopolitical system.”

So, a friend of mine who works with state legislatures to form bipartisan religious freedom caucuses affirms that BuzzFeed’s findings reflect the general trend. He told me, “On a surprising number of occasions, lawmakers raised with me their concerns about Islam. Some, I would say numbering between 7 and 10, raised with me the issue of whether we should be seeking to pass legislation banning shaaria law. I also had an equal number of lawmakers raise with me the question of if Islam is even a religion deserving First Amendment protection. I estimate that approximately 5 to 10% of state lawmakers hold to some version of the “Islam is not a religion” belief. None were known in advance to be bomb throwers, who I generally avoided at that point anyway.

This lopsided view of religious liberty has of course not gone unnoticed. The media has reported on the failure of many religious liberty advocates to demand coherence. In a 2015 piece titled “When Muslims are the Target, Prominent Religious Freedom Advocates Largely Go Quiet,” the Washington Post’s Michelle Borstein wrote about the relative silence from the religious liberty camp when Republican presidential candidates made shocking statement after statement denying Muslims their civil rights. Tom Gellerton of NPR also wrote a piece that year titled “Conservatives Call for Religious Freedom, But For Whom?” In April 2017 Peter Beinert wrote about the phenomenon for the Atlantic in a piece called “When Conservatives Oppose Religious Freedom.” Catherine Stewart asked that same question in an op-ed for the New York Times called “Whose Religious Liberty is It, Anyway?” And after the Supreme Court’s decision on the travel ban case, Michelle Borstein of the Washington Post considered the difference in the way that religious liberty advocates respond to the Masterpiece Cake Shop holding versus the travel ban decision. So on June 4, 2018 the court ruled in Masterpiece Cake Shop vs. Colorado Civil Rights commission, a case that involved Jack Phillips, a Christian baker who refused on religious grounds to bake a wedding cake for a gay couple. The court ruled 7-2 in favor of the Christian baker, holding that the Colorado Civil Rights commission, in reviewing the gay couple’s complaint against the baker, had treated religion with overt hostility, at one point even comparing Phillips to Nazis. This, the court held, was unacceptable; religion, under the US Constitution, cannot be treated with so much contempt. “The commission’s hostility was inconsistent with the First Amendment’s guarantee that our laws be applied in a manner that is neutral towards religion,” the court’s opinion read. And yet just three weeks later, the court’s majority utterly failed to comprehend the gravity of the

president's animus against Muslims. It upheld the travel ban despite evidence of prejudice far more egregious than the evidence in *Masterpiece*; the great importance of national security pushed the court to defer to the president almost completely. Justices Sotomayor and Ginsburg argued in their dissent, however, that extreme deference was unwarranted where the prejudice was so strong. National security was mere window dressing that, try as it might, could not conceal the obvious fact that the ban was steeped in "impermissible discriminatory animus against Islam and its followers." Regardless of whether one agrees with the dissent's view of the law, what is relevant here is how the public, and especially American Muslims, received the opinion, and how it understood the contrast between the two holdings. Again, Borstein of the *Washington Post* took to task the religious liberty groups that celebrated Phillips's win in *Masterpiece* but failed to decry the travel ban decision or say anything at all. Even if the religious liberty groups agreed with the outcome based on the law, why didn't they say anything about the overt anti-Muslim hostility that was necessarily wrapped up in the public discourse about the case? Even if the law required the justices to rule the way they did, there are avenues to change the law. Why didn't religious liberty advocates say anything about that? More recently, in February 2019, Alabama executed Dominic Ray, a Muslim death row inmate, without accommodating his request to have an imam in the room with him. The clergy permitted in the execution chamber were limited to the ones on staff, but the prison employed Christian clergy only. Ray challenged the prison's denial on religious liberty grounds; his case made it to the US Supreme Court, which ruled against him and permitted the prison to proceed without the imam. The decision shocked many Americans, leaving them wondering, in the words of the *New York Times* editorial board, "Is religious freedom for Christians only?" Or, as Borstein wrote in her piece, "The difference in response raises new questions about what precisely is meant by religious liberty in America today." Indeed, the very definition of religious liberty is the biggest question facing the First Amendment. Does it apply to all Americans equally?

Now, it's bad enough when politicians argue that Islam is not a religion, but what is really scary for me is when this bogus argument moves from the political to the legal arena. That's what we're seeing in the US today, particularly in the Land Use context involving either the construction of mosques or Muslim cemeteries. Perhaps the best known example of this is the 2010 case challenging a county approval of building plans for a mosque in Murphersborough, TN. According to the mosque's opponents, Islam was not a religion, but rather a geopolitical system bent on instituting jihadist and sharia law on America. Because Islam is not a religion, the argument went, the mosque construction plans did not get to benefit from any of the county or federal laws that protect religious organizations. The Islamic Center Murphersborough case was unique in that the arguments were actually made in court, but in just about every other scenario where a local Muslim community is trying to build or expand a mosque, they are faced with strong public backlash, much of it centered on this idea that Islam is not a religion. My contacts at the Dept of Justice have confirmed that this argument comes up in pretty much all of their mosque or Muslim cemetery cases. This is also the story I heard from Dauu Al-diyab whose mosque in Columbia, TN was firebombed. It's what I heard from Aya Zaiyad who worked for years to push back against local opposition against a mosque in Montgomery, Alabama. It's what the Muslim community in Farmersville, TX faced when trying to build a

Muslim cemetery. In the Murpheysborough case, the judge permitted a six-day hearing in which the plaintiff's attorney literally put Islam on trial. The Department of Justice had to file an advocate's brief explaining that under the US Constitution and other federal laws it is uncontroverted that Islam is a religion and a mosque is a place of religious assembly. The argument that Islam is not a religion also undergirds efforts to prevent Muslim religious arbitration. Proponents call these measures anti-shaaria bills. They insist on the supposed threat of shaaria to American values, despite the fact that the American legal system has safeguards in place to resist excesses and abuses, the types of things that American Muslims, like all Americans, are opposed to. . For example, there must be voluntary participation from both parties; the arbitrator must be neutral; parties have a right to choose what law governs a dispute; once a process has begun it can be terminated if both parties consent; and a court must sign off on any decision for it to be legally binding. Judgments are also ultimately subject to the country's national law and public policy. These safeguards have worked, and shaaria arbitration has not raised problems in the US. Despite this, there is a powerful movement to ban it. Since 2010, 201 anti-shaaria law bills have been introduced in 43 states. In 2017 alone, 14 states introduced an anti-shaaria law bill, with Texas and Arkansas enacting the legislation. Idaho introduced a bill in 2018. These preposterous arguments and legal efforts aside, Muslims also face legal hurdles to religious liberty in more subtle forms. In 2010 Prof. Richard Shrader at the University of Virginia Law School argued that in today's politicized climate, the outcome of a case could be different merely if one switches out a Christian plaintiff for a Muslim one, with Christians more likely to win. As it turns out, empirical studies on judicial decision making support his conclusion. There is evidence that Muslims, more than any other religious group, face biased judges. Researches Gregory Sisk and Michael Hayes looked at all religious liberty cases, Muslim and otherwise, decided between 1996 and 2005, and found that Muslim claimants faced marked disadvantage. Compared to non-Muslims, Muslims are half as likely to win their religious liberty case in federal court. The number shrinks further when it's a Muslim prisoner bringing the case, with Muslim prisoners succeeding only a third as often as non-Muslim prisoners. So what might account for the Muslim disadvantage? Sisk and Hayes considered a number of theories. They looked at whether because prisoners bring most Muslim claims, the claims are largely frivolous. They also looked at whether the prisoner claims were treated differently for substantive differences or whether Muslim claims lost because they were bringing culture war claims that clash with a secular state. But Muslims don't bring culture war claims. Having considered then dismissed a number of explanations, Sisk and Hayes settled on their final explanation: Muslims are at a pronounced disadvantage because they are Muslim. The cases Sisk and Hayes examined involve a religious believer challenging some decision by the government, a decision that a public officer defends as necessary to American law and order. These types of cases trigger base stereotypes about Muslims or Islam; after all, a religious liberty claim by a Muslim puts Islam front and center. A judge may rule on the basis of these assumptions without even realizing it. The evidence shows that the wider fear and distrust of Islam and Muslims as a threat to American values and safety infects judges too. Even if judges might try to avoid the constant and negative news stream, Islam poses a particular challenge.

Beyond these examples, my book also looks at other limits on religious freedom, not just for Muslims but for religious minorities more broadly. I also spend my last chapter on today's culture wars, which have pitted religious freedom against sexual freedom. There, I assess how those culture wars intersect with Islamophobia. Now, you might be surprised when you get to that chapter to learn that I have actually litigated and otherwise advocated in support of various conservative Christian claims to religious freedom. I was part of the legal team supporting Hobby Lobby in its case at the US Supreme Court. For those of you who don't know what the case was about, it involved the Hobby Lobby craft stores that are owned by a fundamentalist Protestant family that objected to covering two forms of contraception in the employee health insurance required by the Affordable Care Act. The two drugs were the morning-after and the week-after pill, which the Hobby Lobby owners said constituted abortifacients and thus violated their religious beliefs against facilitating abortion. That I advocated on their behalf does not necessarily mean that I have any particular sympathy for their religious claim; instead, I recognized, quite simply, that religious liberty protects the right to be wrong. It's precisely that sort of consistency and integrity in my defense of the principle that has made conservative audiences receptive to my book and my plea for equal rights for Muslims. It's been an interesting journey so far on my book tour; with the reviews, whether it's in the Washington Post, the Economist, or Christianity Today, commenting in some way or another on my involvement in Hobby Lobby. Some folks on the left have scoffed at me; I've seen this comment on Facebook, "Oh, she supported the right-wingers in Hobby Lobby and now she wants them to be nice to her; good luck with that." But as cynical as they are, the fact is that it is working; the very fact that I was featured in Christianity Today is a testament to that. I have received kind emails from conservative readers; I have addressed the Heritage Foundation of the National Religious Broadcasters. When was the last time we saw these guys supporting Muslim's rights? But I tell them, "Look, I'm sticking up for you," even as I'm pointing out their hostility to Muslims, "and in return, I expect you to stick up for my community." I use the language of religious liberty to argue my case, and what I have seen is time and again is an opening, a receptivity to listen and be in conversation. Why do I think they're willing to listen, and to listen sincerely? Part of it is self interest: all of our rights are tied up together, so they can't really step on mine without stepping on their own. Part of it is a reverence for America's founding ideals: there's nothing more core to America than its tradition of religious freedom, as fraught as that process has been at times. And part of it is because I care to engage these folks and not dismiss them. Instead of dismissing their concerns as invalid or as mere pretext for bigotry, the oppression of women, and any number of other claims leveled at conservatives these days, I said, "I understand. Your claims are motivated by sincere religious beliefs, you are genuinely worried about your ability to live according to those beliefs, and you are not a bad person because you feel that way." This last piece of it, caring to engage rather and not dismiss, is the focus of my next stage of work. How is this model for civil dialogue and people learning to live with each other across deep difference? How can we peace build across culture war divide? How is religious liberty a critical tool in that peace building? Because if it's working to whatever extent in my work with conservatives, then I am optimistic and hopeful that it just might work in other contexts as well.



## Griffith:

Thank you so much, Asma. It is now my pleasure to introduce our panelists and moderator. I'm going to try to keep this brief for time's sake. Our first panelist is Tazeen Ali. Tazeen Ali has just joined us to become assistant professor of religion and politics at the John C. Danforth Center on Religion and Politics. Her research and teaching focuses on Islam in America, women's religious authority, and Islam, gender, and race. Her book in progress, *Rethinking Interpretative Authority: Gender, Race, and Scripture at the Women's Mosque of America*, analyzes how American Muslim women negotiate the Islamic tradition to cultivate religious authority and build gender equitable worship communities. Prof. Ali received her PhD in religious studies from Boston University in 2019. She was a visiting postgraduate student in Islamic Studies at the University of Edinburgh from 2017 to 2018. Prior to that she earned a graduate certificate in Women's, Gender, and Sexuality studies from Boston University, as well as a Master's degree in Islamic Studies right here at Washington University in St. Louis. She earned her bachelor's degree with honors in both religion and biology from Lehigh University.

Laurie Maffly-Kipp is our second panelist. She is the Archer Alexander Distinguished Professor at the John C. Danforth Center on Religion and Politics. She also serves as the director of the religious studies program at Washington University in St. Louis in Arts and Sciences. Prior to joining the Center, Prof. Maffly-Kipp taught for 24 years at UNC-Chapel Hill in Religious Studies as well as American Studies. She earned her BA from Amherst college in English and Religion and completed the PhD in American History at Yale. Prof. Maffly-Kipp's research and teaching focuses on African-American religions, Mormonism, religion on the Pacific borderlands of the Americas, and issues of intercultural contact. Her many publications include *Religion and Society in Frontier California*, where she explored the nature of Protestant spiritual practices in Gold Rush California, articles on Mormon-Protestant conflicts in the Pacific Islands, African Americans in Haiti and Africa, and Protestant outreach to Chinese immigrants in California, as well as several co-edited collections. Most recently, she authored *Setting Down the Sacred Past: African American Race Histories*, also *American Scriptures*, which is a Penguin Classics anthology of sacred texts, and *Women's Work*, a co-edited collection of writings by African American women historians. Currently she is working on a survey of Mormonism in American life that will be published by Basic Books. She is the recipient of numerous fellowships of grants, and her work in African American religion was honored with the James W. C. Pennington Award from the University of Heidelberg in 2014.

Tonight's moderator is John Inazu, the Sally D. Danforth Distinguished Professor of Law and Religion who holds a joint appointment in the WASHU law school and the John C. Danforth Center on Religion and Politics. He earned his PhD at UNC Chapel Hill and his JD and BSE at Duke University. He clerked for Judge Roger L. Wolman at the US Court of Appeals at the 8<sup>th</sup> circuit and served four years as an associate general council with the Department of the Air Force at the Pentagon. From 2014 to 2015 he was a senior fellow at the Institute for Advanced Studies in Culture at the University of Virginia. And in addition to his academic positions, Inazu serves as the executive director of the Carver Project. Prof. Inazu's scholarship focuses on the First Amendment freedoms of speech, assembly,

and religion, and related questions of legal and political theory. His first book, *Liberty's Refuge: The Forgotten Freedom of Assembly*, seeks to recover the role of assembly in American political and constitutional thought. His second book, *Confined Pluralism: Surviving and Thriving Through Deep Difference*, looks at legal and civil practices in a pluralistic society. He is the author of many other academic articles as well as writings for mainstream audiences in publications including USA Today, Los Angeles Times, and the Washington Post. So please join me now in welcoming our panelists and moderator to the stage.

### **John Inazu:**

Well, thanks everyone for coming out, and thanks to this panel and for the talk. We'll make this conversation—feel free to jump in and interrupt as well. I'd like to start, Tazeen and Laurie, if you'd like to offer some reflections on the talk we've just heard, and I'm looking forward to the different lenses and frames you'll give to this talk and context.

### **Tazeen Ali:**

Thank you John for organizing this panel, and thank you Asma for your wonderful talk. The narrative you advocate here for Muslim's religious freedoms is really powerful, and I'm especially appreciative of the way you weave in so many examples that are specifically involving the stories of people in discussions of Muslims interacting with the legal system, whether it's facing employment discrimination or anti-sharia legislation. Even your own family's story of building a Muslim community in Florida. I think these human stories make the case more compelling because it puts a face to who Muslims are and what's at stake when a whole religion is called into question, because they illuminate for a wider public who Muslims are. They're community members and neighbors, not a foreign entity. In Islamic Studies, one of the things I was reminded about as I was readed, especially about the anti-sharia legislation, was this desperate need for increased religious literacy in the US. I was struck by the fact that in the post-9/11 context, the word shaaria has become a household term. But it's almost always mistranslated as "Islamic law." This is something that those who specialize in Islamic legal theory are always really careful to differentiate between shaaria and fiqh, which is Islamic jurisprudence. I appreciated the way you started this conversation by identifying shaaria as a path to water. But shaaria is basically divine law based in the Quran and sunna, while jurisprudence, fiqh, is the human attempts to understanding shaaria in society, and the legal theory that's aimed at cultivating an ethical praxis and moral self in Muslims. Interestingly, it hasn't been considered throughout Islamic history as divine by lay Muslims or by legal scholars because it is recognized as a human interpretive activity that there's been a lot of diversity across region and across times among Muslims about what constitutes right legal practice. So for me part of what contributes to the fear and hostility in a lot of the anti-sharia debates that you talk about and discuss is the mistranslation to Islamic law, because people get this impression that it is somehow Islamic law, or shaaria, is somehow equivalent to the US legal system that has coercive powers through the mechanisms of the state. And so I wanted to talk a little bit to reflect on what American Muslims' relationships with shaaria is, and this is reflected in pre-modern legal venues as well. It's really

concerned with ritual practice. Jurisprudence is very much concerned with how to pray, and when to pray, and how to prepare properly for prayer in terms of ritual ablution, and then with things like marriage and divorce and death, birth, things like that. This is where American Muslims, and Muslims globally, engage with shaaria, at this level, and I think it's kind of ironic that the term shaaria seems to enter into the American Muslim lexicon as a result of this broader fixation in the US public discourse. I thought that might be relevant to this conversation.

**Laurie Maffly-Kipp:**

I also want to thank you and just echo some of Tazeen's points on the abundance of really interesting examples that you have drawn upon to take this case. As someone who studies history and sees this over a longer span and knows more about some other groups alongside Muslims, there's so much of this that echoes for me with other kinds of patterns in American history before this, and in other histories, actually. First of all, the idea of people defining religion as legitimate belief and practice and trying to make a distinction between what's legitimate and what's not goes back to the earliest cases of the early Christians, who argued with one another about who had the true faith. They accused each other of some of the same things that people get accused of today—they were either political and not really religious, they weren't theological enough, they were really just practicing sexual immorality and weren't sincere about their beliefs, they had nefarious motives. Throughout American history you see all kinds of people trying to make distinctions between what they want to call religion, which is the legitimate thing, and heresy, or superstition, or magic. Those are all bad things, generally, or sometimes politics, separating religion from politics is a way of saying your motives are not sincere, they're not sincerely religious. As if there's a way to separate out those two things in some ideal world. A lot of these patterns go way back. I thought a lot as I was reading about the case with Muslims of the earliest enslaved Africans who when missionaries—first the Church of England missionaries and later evangelical missionaries—wanted to go evangelize slaves in the 18<sup>th</sup> century, the way they observed the behavior of the slaves was to say, "They aren't religious at all, they're superstitious, they're doing these funny things." Because they didn't understand what they were seeing. Some of this, I think, does get back to Tazeen's point about the basic illiteracy of how other religions or other religious systems function. So, I'm, I think we all are big proponents of studying religion, that it's an important way to understand what's going on in the world around us. The only other point I would make off the bat is that what struck me in reading this was that it reinforces the point that religious liberty is not a destination, it's not a place we're going to reach, some nirvana of religious liberty where we all magically get along together, with enough understanding, or even with enough conversation, which I agree with you is obviously a critical thing. But in and of itself, it's a process of dialogue and negotiation over time. In the founding of the Constitution, the Founding Fathers never conceived of the kind of religious diversity that we see today. So some of what you see in the court cases that you've so helpfully spelled out, each new situation that comes along, people say, "Ugh, we've never thought of religion that way! We're going to have to renegotiate as best we can to try to come up with some kind of accommodation that can make sense of these new realities." So to see that as unfolding, and always a process of education and dialogue, I think is really valuable.

**Inazu:**

Laurie, it strikes me that another through line in some of the historical examples and the American story is the concern of a loss of social control. The Anglicans weren't so sure about the Baptists, the Baptists weren't sure about the Quakers, and then we get the Catholics, and the Mormons, and the Jews, and now we have with Islam, this concern that we're going to lose control of the social order. It seems that part of the story, or the backstory here today, Asma, is this lack of empathy from a conservative Christian segment of the population that is concerned with loss of control. I wonder if you might talk about that dimension of this, so not so much from Islam, but what is the frame of—you tell stories in your book of people who will come up to you in your talks and say, "Well, okay, maybe there's some harm to Muslims today, but the real persecution is against Christians in this country." What goes into that mindset and how does that factor into the story?

**Uddin:**

Sure, that has something to do with this next project that Prof. Griffith mentioned—the Politics of Vulnerability and the Threat to Religious Freedom. I sort of touch on this in the last chapter of the book, and I hope the second book will pick up where the first one ends. It's something where I was thinking through this and talking with people who themselves are conservative but are on the same side as me with this idea of religious freedom for all. This is necessarily tied up with the US culture wars. So often when we think about the relationship between conservative Christians and Muslims, we think it always has to do with terrorism, concerns about violence, maybe even religious competition, this epic worldly battle between Christianity and Islam. All of these are important components of this conversation—the question about race, for instance. But the piece of it that I think is often overlooked and that I hope to look at more in my next project is how does the US culture wars, the feeling of being under siege, the fear, the anxiety, the way you phrase it—the loss of control, that a lot of conservatives are feeling in a drastically changing America. And I think that encapsulated this for a lot of conservatives was the *Bergafel v. Hodges*, the US Supreme Court case that said there's a constitutional right to same-sex marriage. I think that in many ways was, "Wow, our country is changing in extremely drastic ways, ways that we can't recognize our country as what we thought it was." I think often that feeling of alarm, and feeling of being under siege, is mocked in our political and popular discourse—just, wow, a lot of people used to being entitled are complaining about losing their entitlement. Or, why are you talking about persecution when there are all these minorities struggling for their rights? The two issues just don't compare. My view is what happens if we just validate that sense of persecution, and we just say, "We understand. We understand what you're feeling as legitimate and not something that just needs to be dismissed and mocked." What happens then, if that can be a starting point? The other thing I'm noticing is the strange phenomenon of complaining about the threat of secularism, the threat to religion, the threat most recently explained in a speech by Bill Barr and another speech by Sec. Pompeo, the threat to Christian morality, the threat to Judeo-Christian values. They're both complaining about the threat to religion, but they're specifically making sure that that religion is defined in very specific, Christian terms. You

see that even in legal and policy advocacy. You see, for instance, a number of challenges against accommodations for Muslims in public schools coming from conservative Christian groups whose mission statements say that they've been organized to fight against secularism, and yet their actual actions are that they're fighting against religious accommodations for Muslims. How do you square that? How do you square your desire to protect religion and your fight against religion? And the first step is the fact that, in their minds, Islam is not a religion. So it's easy to make sense of that contradiction. But it's also—Muslims are championed by the left, they're championed by the same people who are coming after "us," so there's this phenomenon where Muslims are the friend of the enemy so they're also the enemy. So much of the response to this book, whether it be on social media or in these public speaking engagements that I was telling you about, the National British Broadcast for instance, are like, "You complain about Muslims and how they're treated by the media, but if you go to Google and put in 'Christians' you see all these articles mocking Christians, but if you put in 'Muslim' you're gonna see all these great stories about Muslims, these positive stories." I see that on social media—"Okay, maybe there are some issues Muslims are facing, but by far Christians are the persecuted group. Just look at what the elite media is doing to Christians." So I feel like, what do we do to stop this competing victimhood, what someone once termed the "victim Olympics"? If we can address these issues, maybe a lot of the hostility that comes from this vulnerability might be addressed.

**Inazu:**

Tazeen, this is not the first time that people have made the charge that Islam is not a religion. Could you fill in some of the historical context for us there?

**Ali:**

Sure. So, I think that anti-Muslim hostility really dates back to the founding of the United States. Specifically, scholars of Islam in the US locate the earliest hostilities and anxieties about Muslim presence in the US to 1788 and discussions on the ratification of the constitution, particularly on Article 6, which stipulates that no religious test should be required for public office. This was used as a basis for fear mongering by anti-Federalists to say that if this clause is included then, God forbid, a Catholic or a Muslim might one day occupy the presidency. This dates back. Really, when we think about Islamophobia, which is what this claim of Islam not being a religion is rooted in, there are a few different levels of that. On one level, there's the anti-Muslim bigotry we see on the ground, and there are so many harrowing instances that you recall in the book, Asma, that are really powerful to see all in list form and in writing. But it also operates at the state level as a way to control and discipline American Muslims; the United States has actively been engaged in the systematic production of Islamophobia since the early 20<sup>th</sup> century through FBI surveillance, police surveillance, harassment, violence. FBI manual in the 1930s actually portrayed Nation of Islam members as primitive, violent, and not really Muslims but rather using the masquerade of religion to promote their hateful ideology. So they were racialized by the state and conceived as political others that threatened the white Christian majority. What's interesting is that in the FBI's propaganda campaigns about the

Nation of Islam not really being a religion, not really being Islamic, they drew a distinction between this real, authentic Islam that was located in the Middle East versus what black Muslims in the US were doing. But at that time in the 1930s there were a lot of restrictions on immigration from non-European countries. So in the 1960s, when those immigration laws were reversed and there was the first influx of Muslim immigrants from the Arab world and from South Asia, those Muslim immigrants too were readily conceived also as enemies of the state, and a lot of recent scholarship has attended to this phenomenon. People like Sylvester Johnson and Edward Curtis write about how by that point American Muslim practices, as diverse as they were, were already so entrenched into the anti-Black state framework of surveillance. All this is to say that Islamophobia can't really be understood without seeing it as continuous with the legacy of, and the contemporary manifestations of, anti-Blackness. So if you're not looking at it in the case of these specific court cases, in a broader historical sense it's kind of hard to conceive of religious freedom in the US for Muslim minorities on the level of the state because in practice these communities have always been subjected to state sanction, surveillance, and violence, and in the post-9/11 context that's only been exacerbated.

**Inazu:**

Asma, one of the puzzles for me—not too much of a puzzle for me, because I think I understand some of the politics—but at least a conceptual puzzle, is why wouldn't conservative Christians move more toward especially conservative Muslims who would share some of their own values in the American political context. And then to ask a second but related question, how firm—you mentioned earlier that Muslims are embraced by the left right now. How firm of a friendship is that, or is that a contingent relationship? What are the tensions? You mentioned in your book someone saying people seem worried about a creeping shaaria, but the real concern is a creeping liberalism into Islam. As Islam, particularly immigrants coming to this country from Muslim countries, try to negotiate both a conservatism on the one hand and an uneasy liberalism on the other hand, how do you see those two sectors relating?

**Uddin:**

Yeah, so first on the question of the alliance between conservatives and Muslims. Just as a pre-note, I don't actually talk in the book about what I think are the better alliances. I'm not a political strategist. I understand these alliances are complex. My point there is really just to tease out some of the weaknesses and the problems I see in the way that the question of political coalitions are being thought through in the Muslim community by the left and the right when they decide to make these decisions about whether or not to work for or against Muslims. You were talking about religious literacy, but I think legal literacy, the basic idea of how religious liberty works and why we should all care, because the fact is that all our rights are tied up together—I think there needs to be a better and clearer understanding of that in this ongoing conversation between liberals, conservatives, and Muslims. Why isn't there an alliance? There used to be one, up until George W. Bush, Muslims in America uniformly voted Republican, and it was only with the foreign policy decisions by George W. Bush that there was a massive shift to the Democratic party. Now,

it's really hard to find someone who publically would admit to being a Republican; there are definitely Muslim Republicans, but they're rare, and even more rare is for them to talk about it. I think—what happened? There's a number of different theories I offer in the book. I think again it goes back to this idea of feeling under attack. Brian Grim is a researcher formerly of the Pew Research Center, who has a study that looks at correlations between when a government starts to restrict religious freedom, that increases social hostilities towards religious groups. in the US context, that would mean that as the government is restricting their religious freedom, which is what many conservative Christians feel with the various litigations happening with the contraception mandate, with same sex marriage and the conflict there with religious beliefs, etc. This shows up in social hostility towards minorities, and in this case, Muslims are one of the victims of that. I also, as earlier I pointed out, that entire alliance, the way they've worked, many of the vocal, public champions of Muslim rights are the same people who are very vocally against conservative Christian rights. There's a lumping in the imagination and the approach. And of course, Muslims are not without fault here; I think because of those alliances, because of the funding that many large Muslim civic groups get, they tend to fall into line with the same topic points that are conservative. And to my community's defense, it's also because the most vocal and egregious attacks on the community do come, unfortunately, from conservatives. But of course, as you pointed out, that alliance between Muslims and the left is not without its own complications, and I think we're increasingly beginning to see that. I sort of point to that in the book. This is not something that's without conditions: we're going to protect you if you're also going to along with the rest of our agenda. So for traditional Muslims who might have a different idea of sexual freedom and gender equality, or a progressive vision of gender equality, this is going to raise some thorny questions. So, in the book, I'm not really telling anyone this is how you should decide, I'm simply saying here are a couple of things you should think about when thinking through that issue. I think what's interesting is the conversations I've had after this book, where a number of other groups, like people from the LDS community, the Church of Jesus Christ of Latter-day Saints, people from the 7<sup>th</sup> day Adventist church, and others say, "We understand what you're talking about, because we also feel like we're political orphans." Many Mormons are conservative, but they aren't really liked by a lot of conservatives, so they feel like they're left out in the cold. People from the 7<sup>th</sup> Day Adventist Church are like, "On some issues we agree with Democrats, on others we agree with Republicans, so we feel torn." So I think that question of complexity, and the fact that you can't very easily—I don't think the Muslim community is unique in that it can't easily find authentic connections.

**Inazu:**

Yeah, you mentioned the Mormons, and Laurie, I was struck, I was thinking during some of this dialogue about 2012 and Romney and looking at some religious conservatives who were distancing themselves from Romney, and I was thinking, he's probably your guy if you're going to bet on a horse here. Can you talk about some of the tensions between Mormonism and conservative Christians in that context?

**Maffly-Kipp:**

Yeah, it was fascinating to see how that played out in Romney's candidacy, that conservative evangelicals historically have been very anti-Mormon. When I was living in North Carolina, I used to see the Southern Baptist guy with a sign out in front of the Mormon temple all the time protesting the fact that it existed at all. There's a long history to that kind of persecution. On the other hand, Mormons over the 20<sup>th</sup> century have tried at various points in time to make common cause, political cause, with conservative evangelicals, because they do come out sharing a lot of the same kinds of values if it comes down to questions of politics and family values, things like that. They've sort of, in recent years, found ways to work together strategically; I think it's like what you're saying, Asma, where if you can find these common values, you can put in the background a lot of your disagreements. And that does happen, but I think the politics surrounding Romney's candidacy really brought that out. I also wanted, if I may, to say something else—I'm glad you raised the issue of gender politics here, because I think that you do see this in the LDS church. The difference, and this is more a question for you, maybe, the difference that I would see is that within the context of the Church of Jesus Christ of Latter-day Saints, is there is a significant minority of members of the LDS church who are not happy with the Church's stance on gender politics. So, there are movements within that movement. However, there's still a hierarchy, and a bureaucracy that makes the decisions. That's not quite analogous to the situation with Islam, to have a central authority like that who really speaks on behalf of the community. It would be an interesting question: who would the Muslims go talk to, presumably they'd go talk to church leadership, but if Mormons wanted to go talk to Muslims, how would they know who to talk to? That's really an open-ended kind of question about dialogue.

**Uddin:**

About gender issues?

**Maffly-Kipp:**

Take that as an example of the kind of issue that would come up. But in finding partners, even conservative evangelicals are fairly—there's no central organization, there's no one central organization. In the Muslim community, wouldn't there be lots of disagreements over who you would talk to in the first place, or which voices one would listen to? It's more of a practical question, actually.

**Uddin:**

I think it depends on what the purpose of the dialogue is, right? If it's some sort of bigger community interfaith project that's going to be presented as the National Interfaith Alliance, then yeah, it depends, there's a large number of Muslim civic organizations that they can go to and find the leadership there. If it's about local partnerships, I think people like Tazeen are a great person to talk to; we have so many amazing female scholars who are up and coming who are really wrestling with the question of gender and Islam, and finding plenty of support in the traditional Islamic scholarship for a much broader vision



of gender equality. It really just depends on who you go to, and there are always going to be people talking about that that isn't the proper—even in part of my comments, I've talked about in the book how there's a disconnect between some of the big Muslim advocacy organizations and the positions they're taking. Partly that could be a function of maybe they don't understand the issues, or it's a product of who's funding them, and there's a disconnect between what these groups are doing and what the average Muslim living in the American suburb might feel regarding these issues. I think there's always going to be a question of authority and how authentic that authority and that alliance is, but I think you can begin to carve out some spaces.

**Inazu:**

We're going to, in a few moments, be turning to your questions, so be thinking of what you want to ask anyone on the panel except for me. But one of the things you were talking about earlier is how complicated and nuanced inner-religious dialogue is with all of these traditions we're talking about, and how there is no one representation. You have a great line in your book when you say you were just tired, when you were visibly identifiable as Muslim, you were tired of being asked to represent 1 billion people when someone asked you a question. There's not just a lack of understanding, but sometimes a laziness that forgets nuance. One of the things I really appreciate about your book is it's not only clearly written, but it's nuanced; it's nuanced on the legal analysis but it's also nuanced on the faith part as well. I'm curious before we go to the audience questions, based on the initial engagement you've had with the book in the past few months of talking to people around the country, where are you most pessimistic and where are you most optimistic?

**Uddin:**

Okay, well the optimistic part is easy, because I sort of already talked about that. I get these amazing reader emails, a lot of them are conservatives, who are like, "We cracked open the book and we knew from the first page that it wasn't the usual defense of Muslim rights through a very anti-conservative lens. I kept reading, and there were so many important things I understood, and you opened my eyes..." That's been amazing, just connecting with average Americans. But also, the openings I've had—the person who invited me to speak at this National Religious Broadcaster's Meeting for their leadership, and I'll be at their convention in February, which should be interesting—the person who invited me is actually senior council for ACLJ, which is Jay Sekulow's group, and he's just this really smart, thoughtful guy, and the fact that he invited me to speak to them and that after I spoke so many people came up to me afterwards and were so grateful and kind in their response to my remarks, I was interviewed by the Christian post and they wrote a great piece...that was just cool. I felt like this is authentic, I connected with these people, and there's this kindness that sometimes gets missed in this constant conversation about how people are against each other. So that's the optimism. And I think, pessimism—well, I shared this earlier in your class, but it was an interesting experience—I was asked to speak by a large organization that I'll leave unnamed. I was invited by their employee resource group for people of faith to come and give a talk on religious freedom. I don't know exactly what it was titled, but it had the word "religious freedom" in it. And there

was this huge outcry for the employee resource group for LGBT employees. “Why is this company sponsoring a talk on religious freedom? Religious freedom as a term is triggering for us, all we think of is all the people who use religious biases to act against us to oppress us, to marginalize us. Ultimately the talk got “postponed,” I don’t know if it’s going to happen. But that was really discouraging, because it showed me what religious freedom has become. That was less of a Muslim issue, in that case—in fact the question that was asked by the LGBT group was “What does Islamophobia have to do with religious freedom?” Which, to me, was both crazy, but also really sad that that question would even be asked. But it’s because religious freedom at this point has just become basically understood as an agenda against the rights of women and LGBT individuals. So that’s not so much dealing with Muslims, but I think that definitely what we’ve talked about a lot today is the fact that because of that culture war and because of the way religious freedom has become politicized, religious minorities have lost out. It’s not just Muslims. I’ve heard Hindu activists and others say the entire religious freedom conversation has been hijacked by this conversation on LGBT rights. Who does that leave to hang out to dry? Those of us dealing with actual prejudice and discrimination and hate crimes, because our issues just aren’t on the radar, they’re just not as important. All the religious freedom conversation energy is being taken up by this other question. So I think that’s probably the pessimism.

**Inazu:**

What questions do you all have for the panel?

**Audience:**

Hi. My name is Chris Parr, I teach religious studies at Webster University here in St. Louis. Having heard this subject discussed from a political and a legal angle, I’d like to hear a little bit more of a religious critique of what’s going on. So, with short time, I’ll just throw a Molotov cocktail. The problem with both Christianity and Islam, particularly historically, in terms of the competition between them, is that they both tend very strongly to be exclusivist religions: the Hebraic God requires allegiance, and one is expected as a believer to express allegiance to God. What you’re really always talking about tonight is competitions between disputant centers of exclusivist faith, of faith which is not only not happy to have people who are wrong, but people who hold alternatives to whatever is regarded as the orthodoxy. I would like to hear a little discussion of the way in which religions themselves can critique their tendency towards exclusivism. Christianity has done this through its history and the First Amendment represents an example of that, and Islam has done it also culturally around the world, but there’s a reason we’re not talking about one other major geopolitical system, which is Buddhism, because Buddhism as a religion—and there are a few exceptions—it doesn’t tend to claim exclusivist commitment, and Christianity and Islam both do, and that’s a religious category.

**Uddin:**

Well, just on the question of Buddhism, when I talked earlier about these various conservative Christian groups who are fighting religious accommodations, I should also

note that they're not just fighting religious accommodations for Muslims, but they're also fighting them for Hindus and Buddhists. You know, there are various claims of why are meditation practices being instituted in public schools, because this is actually establishing Buddhism. So I think there is some competition there. It just happens to be that the Muslim question is the one that's the biggest because it's such a hot topic right now in terms of geopolitics. It's also the one numerically that has the second largest number of adherents, it's going to be the second largest religion in America—they were projecting 2050, but probably now they're saying 2043, Islam will be the second largest religion in America. So I think numerically, that sense of urgency is there, and also just the contentious role with everything that's going on with global politics, global terrorism, everything else. But there is concern about Buddhism as well. And then, I think for me, I'll be interested in hearing more from the religion scholars about mining the religion itself for solutions to this. For me, I try to keep it laser-focused on the legal question of religious freedom. For me, it's really nice if we can all get along and if we can find these interfaith solutions to peace and harmony, but at the end of the day, our legal rights don't require you to like me. For you to be able to not get in the way of my rights and protect my rights, that has nothing to do with you liking me or thinking I'm correct—going back to the right or be wrong. So I try to incorporate the element of personal experience, but at the end of the day I hope that the legal question is very distinct from that.

### **Maffly-Kipp:**

I would just add to that that there are a couple different strands of this that probably need to be teased out. One is exclusivism in terms of believing that yours is the one true faith. That doesn't necessarily mean that you can't live in a society with other people around you who also claim to have one true faith. In early Christianity, this came up; what are we going to render unto Caesar, and what about the Christian community? What is the common good? And when we talk about the common good, are we talking about a diverse society or are we talking about the religious community? Now, in the U.S. I think there's been a general agreement that we are pluralistic. We are a diverse people, so the question I think has been framed more around are we going to let one of those exclusive religious groups control society at large. And people make various claims to do that—one of the things that the Catholic church was accused of in the 19<sup>th</sup> century and the Mormon church has been accused of several times is wanting a theocracy, where the church itself controlled society. But that isn't necessarily the case, even with religions that are exclusivist in their claims.

### **INazu:**

I said I wouldn't talk or answer questions, but I'm a lawyer, so I can't help myself here. I actually think it would be a mistake, and it has been a mistake in this country, when we have shied away from the exclusivism and pretended that we actually don't have these deep disagreements. Pluralism in the 1990s, it was kind of a Kumbaya moment where we're all holding hands and pretending like we're gonna be able to get along. And we do need to aim for civic friendship of a kind, but these differences are real, and they go all the way down, and they really matter. And there's a sense in which the people who hold

exclusive and comprehensive beliefs about the world are not going away. They're going to be here. And if we suppress that difference, or pretend like it doesn't exist, we're going to set ourselves up for greater problems to come.

**Audience:**

My name is Dr. Sali Bouyaden. My concern is that from today's talk, you are saying that Islam is not a religion. However, it is the second biggest followers in the Islamic faith. 1.4 billion people. This is the divine religion, we call it. Under the umbrella of Abrahamic faith, there are three religions—Judaism, their prophet was Moses. The book descended from heaven in the Torah. Then, Christianity came, and Christ was the person who propagated Christianity. And he had the Bible. Then Muhammad, about 1400 years ago, that was a divine religion—the Quran descended on him, which is a total way of life. It has shaaria the jurisprudence—

**Inazu:**

So, let me just jump in. You don't have to worry: everyone up here agrees that Islam is a religion. And in fact, the real purpose—

**Audience:**

But why is it not being recognized in the political sense in the United States? Whereas it is recognized all over the world?

**Inazu:**

It is constitutionally, legally, and politically, in most places, it is absolutely recognized as a religion. I think the point of the book and the provocative title is to point out that there are arguments now claiming, sometimes disingenuously and sometimes in an uninformed way that Islam is not a religion. But there's not a serious debate in law or religion or on this platform about whether Islam is a religion.

**Audience:**

So why are we afraid today?

**Inazu:**

Pardon?

**Audience:**

Why are we so afraid that we are discussing this when it is already said?

**Inazu:**

Well, because, politics is a real thing, and there are people out there making these claims. I think the importance of the book and the claim is to say—there are two versions of this argument. One, Islam is not a religion. Two, Islam is a religion of hate and does not deserve protection. Both of those arguments are being made by political constituencies in this country today. And those are important arguments to be aware of, to respond to, and to make sure that the law responds to as well. I think that's what all of us are working to do.

**Uddin:**

Just to chime in, I do think his question is a valid one. I do think there's an emerging threat. And I do make this point to connect not just the political rhetoric but to show how it's impacting legal rights. There was a case in Murpheysborough where it was explicitly argued that Islam is not a religion. Islam was put on a six-day trial, and the judge allowed it to go forward, this line of really outrageous questioning, for six days. Things like, putting county commissioners on the stand and asking questions like, "Do you think a religion that oppresses women is actually a religion? Do you think that a religion whose founder has sex with a six-year-old girl is a religion?" This was actually allowed to be asked in court. So, I don't think it's something that is super far-fetched, because it actually has happened. Even in the aftermath, if you want to get global, in the aftermath of the Christ Church shootings, a senator from Australia put out an official statement on official letterhead that while the Muslims may have been victims in this case, they are not blameless, because Islam is the religious equivalent of fascism. So that talking point immediately struck me, because I was connecting all the dots in the US, and all the different people, including people in the White House, who have made this claim. So I was like, this is an international talking point. In fact, just a few days after my book came out, the Western Conservative Summit in Colorado, the founder, the president of the summit, got up and in his keynote, he actually said, "While we all know Muslims and we might like them, the fact is that Islam is not a religion and it doesn't get the same protection in the First Amendment." So I think this is definitely something that is not just a fringe political talking point. I think there's lots of people saying it. They're putting it out in official press releases, on official letterhead, and there are legal impacts. There's been 43 states that have proposed these so-called anti-sharia laws. Some of them have been enacted, but ultimately the aim of this movement is to not really enact the laws so much as it is about spreading widespread fear and distrust of Muslims. And the entire argument of the movement is that sharia, or Islamic law as it's understood, is actually just this big political doctrine. Which is another way, as I see it, of saying that Islam is not a religion, because if the entire corpus of religious law is political, that's another way of saying that, right? And if you talk to the Department of Justice, they will tell you that actual attempts to build cemeteries and houses of worship are consistently challenged on this basis. So that's what the book does, it takes you through the different places where this impacts our legal arguments, and the fact that you have to kind of look beneath the surface sometimes.

**Audience:**

Hi, thank you very much. Prof. Uddin, my question actually ties really nicely with what you talked about. I see Christianity being weaponized in a political sense with the Hobby Lobby decision and various other decisions, and I wonder if they see Islam being politicized, fundamentalist Christians do, because they are politicizing Christianity so much in terms of giving corporations rights to discriminate against individuals based on their personal religious beliefs. So I wonder if the view of Islam weaponizing their religion is because of their own tactics in Christianity, if that makes sense.

**Uddin:**

I don't know if their own politicization is what's making them think of Islam as a political tool. I think if you look at what they're actually saying, there tends to be these blinders they put on. You know, at the same time as advocating that Christianity should be implemented into policy in varying degrees, a lot of the same people are the ones who are also saying that Islam is not a religion because it has political theology. So they say, "We can have political theology without losing our religion status, but Islam cannot have political theology without losing its religion status." I just see hypocrisy there; I'm not sure if their own politicization is what's making them take this kind of position, except to the extent that as the rise of religious freedom claims has come up and as religious freedom has become this big rallying cry and there's an attempt to shore up those rights, I see that that's happening at the same time as making sure that all this work we're doing to protect religious freedom in this really broad sense, we want to make sure that it's not benefitting Muslims. That's what Richard Sherber was getting at, the professor at UVA. He was saying that there's going to be a point where these rights have to be shared with groups that are despised and feared. He predicted that Christians will just stop advocating for those protections because they're afraid of them extending to Muslims. But I think that's what it is: like, we want to have a really robust religious freedom, one that protects our interest, but we want to make sure that none of this work is protecting the rights of Muslims. And I think that a really clear example of that was this Morning Consult Poll that found that white evangelicals are least likely—they looked at the Masterpiece Cake Shop scenario where a religious baker is refusing to make a wedding cake for a gay couple, and they asked these white evangelicals, "Would you protect this right for the following religious groups?" And they were least likely to protect that right for Muslims. So it's not that they don't think it's a religious freedom issue, they just want to make sure that their fight on that front is not protecting Muslims.

**Ali:**

And just to add to that, I wonder to what extent that's a representation of hypocrisy on the part of the conservative right when they deploy religious arguments to infringe upon LGBTQ rights and the rights of women but then would not extend the same freedom to Muslims. It reminds me going back to a broader discussion on the relationship between the modern nation state and the protection of minorities more broadly. I'm thinking specifically of Saba Mahmood's work on the secularization of Egypt, talking about Baha'ii and Coptic Christian minorities, but her conclusions also apply to western democracies. She argues that the nation-state apparatus in its disavowal of religion and relegating it to

the private sphere, it gets to make these claims of neutrality but never actually delivers on their promise of religious equality, because religious equality is always necessarily determined by the norms of the religious majority. So it almost seems like in the case of the U.S., it's not so much a hypocrisy when the conservative Christian right doesn't extend those religious liberties to Muslims, but really their conception of liberty was never meant to be afforded to minorities in the first place. So going back to an earlier point we talked about alliances between—you talked about how pre-9/11 most American Muslims voted Republican, so there are a lot of these moral similarities on views on abortion and views on LGBTQ rights. But I will say in recent months and years, there is this almost alarming sense of new alliances being formed between American Muslims and very conservative Christian right views. I'm thinking specifically of the newly minted Commission on Unalienable Rights founded by Mike Pompeo back in July. This is a commission that's supposed to advise Trump in some unofficial capacity about scaling back on the definition of human rights, which basically translates into going back on reproductive rights for women. Although it's not meant to officially deal with domestic issues like abortion, notably all of its members are very strong advocates against abortion. I think in American Muslim communities specifically, especially over the course of the last few months, they've been grappling with the fact that one of their most prominent leaders, Hamsa Yousef, is on this commission, and they feel betrayed that, and confused and grappling with, how to deal with one of their Muslim leaders, under this umbrella of a shared Abrahamic morality, thinking that abortion is wrong and should be restricted, and scaling back on LGBTQ rights, how an American Muslim leader could align themselves with this administration and the scaling back of human rights. So sometimes it seems like a lot of these alliances—I totally agree with your point on the need for conversation and dialogue, and I think interfaith alliances can be so fruitful and a force for social good, but sometimes it seems like they're not being done for the right reasons, in the service of protecting religious liberty if it necessarily involves infringing on other minority rights, like LGBT rights or women's rights.

**Uddin:**

Yeah, I mean, you're touching on a huge, the big debate, the thing that religious freedom has become swallowed up by, this question on discrimination or gender rights or LGBT rights and religion. This idea of the unalienable rights, it's an argument for those of us who saw the briefing in the Masterpiece Cake Shop case—there are these rights to non-discrimination, but the unalienable right to religious freedom supercedes that. It's trying to create this hierarchy. I think that's an ongoing conversation; it's one that's extremely heated, extremely detailed, and lots of competing proposals as to how best to negotiate that. From my personal conversations with Sheiq Hamsah, the Muslims scholar who's part of the conversation, I think he's aware of the nuances. Yes, he is more socially conservative, but I think he understands the complexities of the space that he's in. Not that I'm defending his joining the commission, I'm just pointing that out.

**Inazu:**

We have lapsed into some generalities, it's very difficult to avoid doing that, about what Muslims think about this, or what the right is being hypocritical in doing, when in fact we're talking about millions of people in all of these camps, some of whom might be hypocritical and cynical and others who might be very sincere in their defense. One of the thoughts that struck me as we were talking Hobby Lobby, though, is there's an analog here in that some conservative Christians make the claim that Islam is not a religion is seeing a similar charge against them. This really sharpened around the time of Hobby Lobby, when people would say, "These are 'religious liberty claims,'" in scare quotes. Which is quite different than saying, "This religious liberty claim should be defeated by this government interest." But to put into question the entire claim itself, analogous to saying, "That's not religion, this isn't religious freedom." These fights are complex—

**Maffly-Kipp:**

And that gets back to what I was saying at the beginning, where you try to delegitimize other religious traditions by saying, no, that's really something else. That's really about politics, or that's really about sexuality. These things are always interconnected in all kinds of ways.

**Inazu:**

We have time for one more question.

**Audience:**

I am a broadcast journalist from Pakistan. That is the only state that was created under the name of Islam, and still, we are 70 years old but we have movements of certain people demanding that the law should be more Islamic. We have a Constitution in accordance with Islamic laws. So if you cannot decide in a state that is 70 years old with what intensity do you need Islamic law, how can you decide in a non-Muslim state with what intensity you need shaaria there, and I'm talking about the United States. One of the criticisms is that the shaaria is not updated, the law is not updated. If you are examining a rape case they would ask for testimony when the medical examination is available. That's what we face criticism in Pakistan as well. I just want to know what Muslims want to achieve here in the United States in terms of jurisprudence and shaaria law. Thank you.

**Uddin:**

Well, I think that the relevance of the shaaria question is primarily how it's used in private arbitration. So, the ability, and some of the issues Tazeen laid out about questions of marriage, divorce, inheritance—to be able to figure out the precise arrangements for those things in accordance with Islamic tradition, and to be able to take that to a panel that understands that tradition and is able to negotiate among people's rights on the basis of that tradition. That's simply it. Sometimes, even some of the cases I talk about in the book, some of them are very pro-women. There's lots of—you know, *mahr*, dowries for women that are available to them under Islamic contract upon divorce that an American court



might not understand, they might say, hey, this is actually discriminatory towards the man because you got him to sign up for all kinds of things that are actually permitted to Muslim women under traditional Islamic law that would just be considered incredibly progressive to the point of being anti-men. These things are taken to these secular courts, they don't understand the background, they don't understand the shared premises and traditions that led to the negotiation of these provisions, so they're not able to enforce that. So you need the role of the arbitrator who has the necessary understanding to be able to figure out these rights. So, for me, that's almost the full scope of how I see shaaria as a legal issue playing out for American Muslims. Beyond that, it's these broader moral precepts that guide us in our actions, private and public.

**Griffith:**

I think we'll have to leave it there. I want to invite all of you to continue this fascinating conversation out at our reception. Buy a book, get it signed, and please join me in thanking once more our great panel and distinguished speaker.

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