



## TRANSCRIPT

### *Key Conversations with Phi Beta Kappa*

#### **Exploring the Muddled Middle with Cathleen Kaveny**

Scholar and author Cathleen Kaveny focuses on the relationship of law, religion, and morality. As the Darald and Juliet Libby Millennium Professor at Boston College, she has dual appointments in both the Theology Department and the Law School—the first to hold the joint appointment. Kaveny has devoted her career to exploring the connection between law and theology and explores the use of prophetic language and rhetoric in the past, and how we use it in today's society. In this important conversation, Professor Kaveny breaks down the polarizing sides of cancel culture, the benefits of being in the muddled middle and how nostalgia can be dangerous for society.

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Fred Lawrence: This podcast episode was generously funded by two anonymous donors. If you would like to support the podcast in similar ways, please contact Hadley Kelly at [hkelly@pbk.org](mailto:hkelly@pbk.org). Thanks for listening.

Hello and welcome to Key Conversations With Phi Beta Kappa. I'm Fred Lawrence, Secretary and CEO of the Phi Beta Kappa Society. Since 2018, we've welcomed leading thinkers, visionaries, and artists to our podcast. These individuals have shaped our collective understanding of some of today's most pressing and consequential matters, in addition to sharing stories with us about their scholarly and personal journeys. Many of our guests are Phi Beta Kappa Visiting Scholars who travel the country to our Phi Beta Kappa chapters, where they spend two days on campus and present free public lectures. We invite you to attend. For more information about Visiting Scholars' lectures, please visit [pbk.org](http://pbk.org).

Today, I'm delighted to welcome Professor Cathleen Kaveny. Cathleen Kaveny is the Darald and Juliet Libby Professor at Boston College, where she has dual appointments in the Law School and the Theology department. Professor Kaveny's work focuses on the intersection of law, religion, and ethics in a divided pluralistic society. Her books include *Law's Virtues: Fostering Autonomy and Solidarity in American Society*, 2012, *Prophecy Without Contempt: Religious Discourse in the Public Square* in 2016, and *Ethics at the Edges of Law: Christian Moralists and American Legal Thought* in 2018. In 2018-2019, she served as the Cary and Ann Maguire chair in Ethics and American History at the Kluge Center at the Library of Congress. And here at Phi Beta Kappa, Professor Kaveny is the 2023-2024 Carl F. Cranor Family Visiting Scholar. Welcome, Professor.

Cathleen Kaveny: Thank you very much. I'm delighted to be here and to have a chance to talk with you and to have a good conversation for Phi Beta Kappa listeners.

Fred Lawrence: So let me start with a question I am sure you are often asked, which is given your joint appointments at the law faculty and the theology faculty - and actually let me interject for a moment. You are the first person at Boston College to hold such a joint appointment, isn't that right?

Cathleen Kaveny: I am. I'm very fortunate that Father Leahy and my colleagues in the law school and the theology department thought it was worth the risk. So I'm very grateful.

Fred Lawrence: So, let's talk about that risk a little bit. How do you see the connection? Is it a natural fit? Is it two disparate areas of interest to you or some other way in which they connect?

Cathleen Kaveny: Well, I started seeing the connection very organically many, many years ago when I was an undergraduate at Princeton. I was a joint politics and religion bridge major working with people like Walter Murphy and Paul Ramsey and Jeffrey Stout, and what I became interested in initially was questions of ethics, so applied ethics, assisted suicide, abortion, just war theory, and the question initially for me was, well, if it's immoral or moral, should it be legal? How should we think about the relationship between morality and law?

As I began probing more deeply into both fields, however, it's not that that question became less important, but it became more contextualized, and what I realized was that both theology in the Christian tradition and in other traditions, and law in the American tradition and in other traditions, were actually that, traditions of inquiry with the past that we're drawing on past concepts in order to address contemporary issues. And I became interested in the broader question about what does it mean to reason with one eye toward the past and one eye toward the future? And that became the broader set of questions I think about in terms of both theology and law.

Fred Lawrence: I do want to come back to the path that took you there at Princeton and then at Yale. But first, let's go back even a little bit further. Tell me a little bit about your childhood. And I want, if you could, to do it with an eye towards the question, if I had told that little girl that you were going to wind up with a joint appointment at Boston College in law and theology, would she have said, "Yeah, that makes sense," or would she have said, "Oh no, that's never going to happen"?

Cathleen Kaveny: I think she would've been somewhat in the middle. I grew up in Cumberland, Rhode Island, my family very much values education. My dad was a principal of a junior high school in Seekonk, Massachusetts, and my mother was a homemaker and voracious reader and questioner. And I went to public schools, Cumberland High School, and my parents said, "Well, apply to college, wherever you'd like to go." And not that they could afford it on their own, but there was a tremendous amount of financial aid through Pell Grants and student loans available, and so I applied to a series of colleges and was fortunate enough to get into Princeton.

I thought I was going to be a doctor, like most people did when they went to college, but I found out that I was not the best at chemistry. That was not a topic that I really had a lot of affinity to and that I was drawn to the humanities, but humanities in a particular way. I mean, I liked literature, but I felt more compelled to address some of the broader normative questions, the questions of meaning in a more systematic way. And I love philosophy, but I also thought it was important to take into account a religious perspective because that was important to me, but I also knew it was important to many other people as well. So, I ended up finding myself drawn to particular professors in college, and that really shaped my decision to move forward in the way I did.

Fred Lawrence: You did go to Yale for both PhD and a JD. Did you have a thought of practicing law or was the thought by that point in your mind always towards academia?

Cathleen Kaveny: Well, I predicted that I would go into academia. I mean, if I were a betting woman, I would say, "Well, school has been very good to me. I think that's probably where I'll go." But I did view it as important to get some exposure toward the more practical aspects of law. So I clerked for actually the most amazing person in my own subfield I've ever met, the honorable John T. Noonan Jr. who was a judge on the Ninth Circuit Court of Appeals, and wrote these towering books on the development of legal doctrine, especially religious liberty, and the development of Catholic moral thought on issues such as contraception and usury. So I had an opportunity to work for him in San Francisco for a year. And then, I really learned law during the three years I spent as an associate in the health law group at Ropes & Gray, and I had a chance then really to see how lawyers think with a view towards serving clients, and how that is actually a bit different from the way academics think.

Fred Lawrence: So, talk to us a little bit about that. Ropes & Gray, of course, is one of the great and storied firms of Boston, now no longer just a Boston firm, but one of the great Boston firms, and that health law group obviously in Boston where health along with education is one of the major sectors of the entire economy there. So, you really were at the heart of an important part of the legal practice. But tell us what you mean when you say the way in which lawyers thought about these issues as opposed to academics.

Cathleen Kaveny: Well, I think as I was discerning my vocation, I did stumble into the best possible case for practicing in a big firm. I didn't realize this at the time, but the health law group at Ropes & Gray was, in a way, unique because it was client-based versus type-of-service-based. So if you're a litigator, you litigate for everyone. If you are a merger and acquisitions person, you merge and acquire everything. The clients change, but the task remains the same. Ropes represented, and still represents, the big Boston teaching hospitals, and did a range of services for those hospitals. So over the course of three years, I got exposed to patient care issues, to merger issues, to Medicare/Medicaid rate appeal issues, to a whole range of different types of legal practice that I don't think I would've gotten in another field, and as the years have gone on, I've become much more grateful for that experience because I see how unusual it was.

So I had the best case for becoming a practicing lawyer. Now, why didn't I? I think the excellent, excellent practicing lawyers have a mind that likes to solve other people's problems. They really enjoy someone coming to them saying, "I need help. Please help me solve this problem." And their minds like to dedicate themselves. They're brilliant and they dedicate themselves to solving those problems. I think an academic mind, and this is what I realized, likes to create its own problems. So, on some fundamental level, I like to think about what I like to think about, not what somebody is paying me to think about or needs me to think about as their attorney. So, that was the discernment, I think, that I made that said, "Okay, you want to make up your own problems. You want to frame them the way you think is best. You're really more of an academic than a practicing lawyer."

Fred Lawrence: So, let's talk about some of the things that you have written about and worked on as a scholar of law and theology now at a Jesuit institution, Boston College. It's inevitable, I suppose, that you would bring your insights to bear on the issues surrounding abortion rights, for example, the personal and political issues, the spiritual, the constitutional issues. I know one of your Visiting Scholar lectures this year for Phi Beta Kappa discusses religious liberty and freedom of conscience after the Dobbs case, the decision that overturned Roe against Wade in June of 2022. So, let me ask you two interrelated questions. First, how did you understand the interrelations among religious, personal, and constitutional questions about abortion rights prior to Dobbs? That is to say when we were still living under Roe against Wade. And then, what new questions now do you see are being raised after Dobbs?

Cathleen Kaveny: I suppose anybody when they think about abortion has a complicated set of responses, and I suppose I'm torn as well in some ways, and I feel like I finally, after 40 years of thinking about the issue, figured out why I am torn. And that is because, really, the act of abortion isn't like any other act. It's got analogies to certain acts, but it doesn't fully fit into any category. And one thing you could say as well, the pro-life side calls it an act of intentional killing, which is always wrong, and there's some truth to that. There's a life and the life is ended. The pro-choice side says, "Well, no, it's about bodily autonomy. The bodily autonomy of the woman." And there's some truth to that too. But very often exercising my bodily autonomy doesn't result in the death of another being. And then you have the whole additional question of, well, what is the status of this other being? What's the relationship between humanity and personhood?

So, over time, I began to see that the threat to addressing this issue in the United States wasn't the complicated ethical analysis that needed to happen, but was the underlying culture war framing of the issue, where people who disagreed with me, or with you, or with one, weren't just wrong, they were evil. They weren't just mistaken about something. They were minions of say the culture of death or they were opposed to the equality of women, and that kind of binary approach hid more commonalities than it revealed, and encouraged people to demonize one another.

So, over time, as I tried to kind of look at the issue of, well, what happened in the discussion after Roe, I began to focus more on how we talked about controversial issues. I think the issue has been radically reconfigured in the sense that we are returning issues to the states, and different states have obviously different takes on abortion, but we're not returning things to the way they were before Roe constitutionalized the issue in 1973. There's too much water under the bridge for that, and there's too much animosity. So, I am very worried about whether we can find a way to keep us all together as a nation in light of Dobbs.

Fred Lawrence: One of the students who heard you as a Visiting Scholar at Iowa State sent you a marvelous email that I just want to share where she said, "I really appreciated hearing you talk about the muddy middle, and the muddy middle being a tricky place to be right now in politics." She writes, "I personally identified with this issue and how cancel culture has impacted it. It was fascinating." So, talk to us a little bit about the muddy middle, either in terms of muddy middle on abortion and the post-Dobbs issue, or perhaps more broadly. What did you mean by the muddy middle, and is that something to aspire to and is it something that we can reclaim?

Cathleen Kaveny: Well, the muddy middle or the muddled middle, I think both phrases describe it, right? Well, the muddled middle I think are in a kind of a lonely place, even though there are a lot of people in the middle on lots of controversial issues because of our tendency in our current culture to frame things in a black or white or a morally dichotomous, the culture war framing, "Either you're fully with me or you're fully against me, and

therefore, my enemy." In an odd sort of way, I've discovered that people who find an affinity in culture war framing of an issue have more respect for people on the other side than they do for the muddled middle, right?

Because if I think this is the most important issue, say abortion, or it could be capital punishment, it could be any particular issue that's highly controversial and you are on the other side, well, you might be totally wrong, but at least you appreciate that this is the one true thing we should be arguing about and organizing our society on the basis of. Your opposition to me feeds my sense of identity that I am doing the right thing and opposing you.

People on the middle are seen as somehow being almost corrupt, as not knowing how to take a stand, as being a little bit too weak to participate in the debate. That's not how I see the middle. I see the middle as potentially truth tellers, as saying, "Well, yes, that argument is important, but there's this other argument on the other side that we have to pay attention to as well." And I think cancel culture actually harms the middle more than it harms either end. Because if you think about it, Donald Trump isn't going to be upset if the Democratic Party cancels him. Joe Biden isn't going to be upset if the Republicans cancel him. This is just taking political issues, but that applies to anything. But people who are in the middle and who are trying to maintain relationships with people on all sides, they're the ones vulnerable to cancellation because they're trying not to create a hermetically-sealed community.

Fred Lawrence: In my own work, I've described this as an effort towards vigorous civility. I think civility has gotten a bum wrap as being, as you say, the muddled or muddy, as this student thought it was, middle, but in fact is something much more powerful than that. And I have suggested that particularly on campuses in discussions of difficult issues, like abortion, like capital punishment, today of the events going on in Israel and Gaza, that you begin with a forced exercise of expressing shared views.

Let me move us to another one of your Visiting Scholar lectures where I just find the topic fascinating and I would love for you to share with us what you plan on doing about it. That is the connections between nostalgia and nationalism. What are you exploring in that lecture? And I know the topic of nostalgia, which always seems like a kind of a soft and gauzy view of the past that could make us all feel better, you have written and talked about the actual dangers of nostalgia. So, how are you addressing this in that lecture?

Cathleen Kaveny: Well, I'm hoping to try to problematize nostalgia. First of all, nostalgia, sitting around saying, "Oh, wasn't it great when we were little kids and we walked to school?" I'm not saying it's a harmful attitude or behavior, we all have that kind of sense of the past and wistfulness, I'm not inhuman and trying to eradicate that emotion. But nostalgia is a type of homesickness, actually, is what it meant, a kind of homesickness. Originally, it was homesickness for a particular place. So, it was originally pertained to military. A

military doctor invented the term pertaining to Swiss soldiers who were actually getting sick, physically sick, and even dying when they were away from their Swiss canton, so it was a kind of physical homesickness.

Over the 19th century, it became more of a metaphysical homesickness, pertaining more to time than physical location. We were looking for our home in a lost past. Now, that can be dangerous because you don't ever remember the past, first off, the way it fully was. You remember selective elements of the past. Secondly, you remember elements of the past that make you comfortable in a sense that may not even exist anymore. You remember yourself as a child being comfortable. You might not be so comfortable now in that situation. And third, it leaves out other people who you have to make a home with here and now.

So, one of the things I see about nostalgia and nationalism is a sense that we are creating more polarization by trying to go back to a simpler time that never existed actually, but a simpler time when we were more comfortable because there were fewer people who were less like us. So, I think it's very interesting, for example, the resonances that Donald Trump's slogan, "Make America great again," had with so many people. So, there's the sense of loss. There's the sense of the loss for the particular people who used to be at the center. Now they feel they're at the margins. And there's a sense of a lack of cohesiveness that the temptation is to remedy by going backward to a time that never existed, rather than trying to forge that cohesiveness in a new sense today.

Fred Lawrence: We talk about contemporary questions concerning the relationship between religious claims and public or civil life, but this isn't new, of course. It's at least as old as the prophets of the Hebrew Bible. Isaiah comes immediately to mind. But what do you mean by prophetic indictment and how does this relate to issues in today's culture?

Cathleen Kaveny: Well, when I started moving from thinking about the issues themselves, abortion, capital punishment, same-sex marriage, all the hot button issues, to thinking about the way we talked about them, to questions of rhetoric, I began to see that there were some people that were using what we would call a normal practical reasoning sort of discourse, policy discourse. "Well, here are the issues, here are the factors. Here are the risks." More policy-oriented. But that some of the activists were using language that was what Matthew Arnold called, the language of fire and strength. The prophetic language that we found in the Hebrew Bible, though the word of God or of transcendent moral norm over and against a wrong that happened in the society that needs to be urgently remedied. So, we had these two types of discourse, and it wasn't very clear how they related or where they came from, because frankly, we don't pay enough attention to rhetoric in our education, I think these days.

And so, as I started to study this, I realized that the language of prophetic indictment is actually as American as apple pie. If you go back to the Puritans, you get these fire and

brimstone sermons. Sinners in the hands of an angry God. Jonathan Edwards is a famous one. As time went on, the religious framing of these issues might have ebbed, but the fiery language stayed the same. And so, you could see this in arguments over the Civil War, although they did bring in God quite a bit on both sides of the issue of slavery. This prophetic language is used in questions of war and peace. It was used by people like Martin Luther King over civil rights. It's just a thread that runs through American political and moral discourse.

What I found was interesting about it was the Puritans loved it. The Puritans thought this was just great having these sermons, it didn't tear them apart. And so I started thinking, well, why? Why is it tearing us apart? And what I realized was that the Puritan preachers were indicting people, they were functioning like prosecutors, for violations of a covenant that everyone agreed on. So, everybody agreed, or at least they weren't going to outwardly disagree that you shouldn't be getting drunk, you shouldn't be missing services. Everybody agreed that this was the right way to behave, and some people were falling short. Where prophetic discourse gets really problematic is when it's used to indict people for behavior the indictor thinks should be against the law, but isn't already against the law, because nobody likes being charged for a violation of the law that hasn't been passed yet.

So, I don't think it's the best language for moving social consensus. It's the best language for indicting people for violating a social consensus that exists.

Fred Lawrence: Cathy, one of my favorite questions on Key Conversations is to ask you to help me and our members build our reading lists. We've been talking about a wide range of issues that you're involved in, and I wonder if you have a couple of suggestions of books, both for those of our listeners for whom some of these issues are new and would look for a port of entry, a way of beginning to think about some of these issues, and then maybe a suggestion or two for people with a fair amount of background, but would like to take these issues further.

Cathleen Kaveny: Sure. I think a good place to start if you're thinking about nationalism is Benedict Anderson's book *Imagined Communities: Reflections on the Origin and Spread of Nationalism*. So, what is nationalism? How do we think about it? And that also, his notion of imagined communities, fits nicely with my notion of nostalgia as something important. Another book that I am waiting for is Professor Loretta Ross at Smith College who's proposing the question, what if instead of calling people out, we called them in? And I think that she's just fascinating and she's got a book that's supposed to be coming out, I think in the next year, but there are several articles about her talking about call-in culture. And you could just Google her name and find several articles about what she's thinking about in terms of moving from not a culture of not challenging wrongdoing, but doing it in a way that can help us move forward.



Fred Lawrence: We have been so delighted to have you as a Visiting Scholar this year and look forward to more lectures and visits that you'll be doing on our campuses. I'm grateful to you for your role. I'm not going to call it the muddled middle. I think you're probing for the aspirational middle, and the need to regain that place, not where we all agree, but where we find a way to meet and discuss, and to build community together. I'm delighted to have you as part of the Phi Beta Kappa family in this, and thank you so much for sitting down with us today on Key Conversations with Phi Beta Kappa.

Cathleen Kaveny: I'm delighted to have been here. Thank you very much.

Fred Lawrence: This podcast is produced by Phantom Center Media & Entertainment. Kojin Tashiro is lead producer and mixed this episode. Michelle Baker is the editor. Hadley Kelly is the Phi Beta Kappa producer on our show. Our theme song is Back to Back by Yan Perchuk. To learn more about the work of the Phi Beta Kappa Society and our Visiting Scholar program, please visit [pbk.org](http://pbk.org). Thanks for listening. I'm Fred Lawrence, until next time.

**CITATION:**

Lawrence, Fred, host. "Exploring the Muddled Middle with Cathleen Kaveny" *Key Conversations with Phi Beta Kappa*, The Phi Beta Kappa Society, December 4, 2023. [www.pbk.org](http://www.pbk.org).

Produced by:

