



## Festschrift for Cole Durham: An Introduction

Elizabeth A. Clark

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# FESTSCHRIFT FOR COLE DURHAM: AN INTRODUCTION

By Elizabeth A. Clark 

Any Festschrift begs the question of why this person is worth honoring. Why Cole Durham? Some hint of the answer can be found in the breadth of articles and essays in this volume, all prompted by his life and work. Authors include both human rights advocates and academics and reflect a range of specialties: law, sociology, political science, foreign relations, and philosophy. This breadth mirrors some of the range of Cole’s activities, which he once described to me as stretching “from the sewers to the stars.” The sewers referenced some early work he had done on redistricting for a local city. But his vision of law and religion has always been in the stars. He jokes that the Brigham Young University (BYU) law school originally taught “horizon” classes but that students referred to his as far beyond the horizon, somewhere in the cosmos.

Cole’s vision of the deep issues underlying the field of law and religion has had significant impact in establishing the field of law and religion and shaping the way religious freedom is understood internationally. He obtained philosophy and law degrees at Harvard and many of his most important writings reflect his concern for the broad philosophical principles and problems shaping the field of law and religion—the plate tectonics of the history of religious freedom (Durham 1996), the importance of limited self-deference in the definition of religion (Durham and Sewell 2006), the role religious freedom can play in establishing a stable and

lasting peace (Durham and Clark 2015), or the reconciliation of religion and equality norms, to name only a few (Durham 2016). His earliest book on freedom of religion or belief was *Religious Liberty in the Western Philosophical Tradition* with Noel Reynolds (Reynolds and Durham 1996).

Cole’s work of scholarship that is most seminal in the field, however, is the article “A Comparative Framework for Analyzing Religious Liberty” (Durham 1996), which has been translated numerous times and excerpted in multiple casebooks. Looking at both the history of religious freedom and the question of the correlation between religious freedom and religion-state relations, the article has been often nicknamed “the loop” because of the distinctive loop figure that demonstrates how religion-state relations at both extremes—complete

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**Abstract:** This Editorial introduces the Festschrift issue dedicated to Professor W. Cole Durham, Jr., who has played a leading role globally in creating the field of comparative law and religion. Cole Durham has written field-defining scholarship and has been active in advocating for religious freedom around the globe. Cole has engaged in law reform work in over 50 countries and mentored others while helping establish and support key professional organizations in the field. Cole Durham’s commitment to the religious freedom of all has been fueled by a deep respect for the beliefs of others engendered by his faith as a member of The Church of Jesus Christ of Latter-day Saints.

**Keywords:** W. Cole Durham, Jr., law and religion, religious freedom, law reform, religion, comparative law, The Church of Jesus Christ of Latter-day Saints

identification and complete exclusion—are the greatest threats to religious freedom. I’ve had several major figures in the field tell me that reading this article is what launched their serious academic interest in religious freedom.

Cole started his career with a focus on comparative law, with a specific emphasis in rhetoric and in German criminal law, but from early on also expressed an interest in issues of law and religion. The fall of the Berlin Wall and his role as secretary for the American Society of Comparative Law opened doors in the former Soviet space. His academic interest in religious freedom and comparative law now became of enormous practical value as he worked with governments across the region in revising laws dealing with religion. The experience he gained and lessons he learned during this period were invaluable: the need to work collaboratively across faiths and countries, to approach the issues with humility, and the value of providing solid academic analysis.

For example, in 1992 the Russian Parliament was considering a new law on religions that aimed at restricting foreign religions from operating in Russia. The draft law was in its second of three readings required to be passed. Cole put together a 26-page legal analysis of the draft law, explaining what provisions were problematic under treaties to which Russia was a signatory and how they could be adapted to minimize the problems. The analysis was addressed to the Chairman of the religion committee of the Presidium of the Russian Supreme Soviet, a Russian Orthodox priest. The bill never reached its third reading as a result of the parliamentary crisis in October 1993 that led to President Yeltsin dissolving the Parliament and replacing it with the Federal Assembly.

Two years after Cole submitted his analysis, the Orthodox priest who had received the analysis served as an administrative chief of the Duma religion committee. In a meeting with leaders of Cole’s faith, The Church of Jesus Christ of Latter-day Saints, he not only remembered it, but commented that it was “the single most helpful thing that we had received with respect to that legislation to help us understand [it]” (Personal communication).

Cole’s engagement in law reform efforts continued to grow during his period of service on the Organization for Security and Cooperation’s Advisory Panel on Freedom of Religion or Belief from 1997 to 2013. He served as chair of the legislation sub-committee and then as co-chair of the Panel. He not only was the primary drafter of several analyses of draft legislation but also helped prepare two different official guidelines: *Guidelines for Review of Legislation Pertaining to Freedom of Religion or Belief (2004)* and *Guidelines on the Legal Personality of Religion or Belief Communities (2014)*. These remain the most specific and helpful articulations of the rights of religious organizations and the potential pitfalls of legislation governing them. Cole’s expertise in working with draft legislation has been a benefit to countries throughout the world; he has been called on to analyze legislation of over 50 countries on six continents for the U.S. State Department, USAID, the International Center for Not-for-Profit Law, foreign governments, and international NGOs. Most notable among these is his work over many years on legislative revisions with the Vietnamese government and his work supporting constitutional drafting in Iraq, which continues through his service on the International Advisory Board of Iraq’s National Democratic Institute.

Finally, Cole’s career has also had lasting impact through his efforts to build up and support law and religion scholars and scholarship throughout the world. Cole has not only had a lengthy career as a professor at BYU’s J. Reuben Clark Law School, where he received a university-level named professorship, but has also taught at the University of Vienna and was a Recurring Visiting Professor of Law at Central European University for many years. In these roles, Cole has been a generous and thoughtful mentor to countless students. He is the founding director of the International Center for Law and Religion Studies at BYU, which has grown from a Center of two to a team of ten with extensive publications, conferences sponsored, and law reform projects.

Cole has also been extremely active and played leadership roles in professional organizations, including the Law and Religion

Section of the American Association of Law Schools, the International Academy of Comparative Law, the American Society for Comparative Law, the International Center for Not-for-Profit Law (where he also served as Chairman of the Board), and the OSCE Advisory Panel for Freedom of Religion or Belief. Cole has also served actively on advisory boards for a wide-ranging group of religious freedom and scholarly organizations: the Article 18 Alliance, the International Religious Liberty Association, the Oslo Coalition for Freedom of Religion or Belief, the Religious Liberty Council of the National Council of Churches of Christ in the USA, and programs or centers at Columbia, Baylor, and DePaul

universities as well as ones in Nepal and Malaysia. It's hard to think of a place in the world where Cole is not known and highly regarded. He has worked across the world, from Argentina to Kazakhstan and Ethiopia to Indonesia.

As he has worked abroad, Cole has sought to support and encourage local scholarship and expertise and in so doing has actively created the international field of comparative law and religion studies. Together with Silvio Ferrari of the University of Milan, Cole founded the International Consortium for Law and Religion, the first world-wide organization for law and religion scholars, and served as its second president. Cole has also been instrumental in founding regional organizations for law and religion experts, particularly the Latin American Consortium for Religious Freedom and the African Consortium for Law and Religion Studies. He serves as the Co-Editor-in-Chief of the *Oxford Journal of Law and Religion*, which he also helped found.

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But a list of accomplishments falls short of explaining why he has been so phenomenally successful and effective in both his scholarship, law reform, coalition building, in articulating and defending religious freedom, and in building so many lasting friendships across cultures and ideological and faith backgrounds. Cole commands respect across the board and wins friends more than anything because of his moral stature. He embodies the Biblical admonition to be “wise as serpents and harmless as doves” (*King James Bible [1769] 2026*, Matthew 10:16). Anyone who knows him knows that his intellectual gifts are matched by his humility and generosity of spirit.

A deeply religious man himself, Cole has been effective in religious freedom advocacy because it is immediately apparent that he is not engaged in special pleading but truly cares about the religious (and non-religious) commitments of all. For him, this comes from a vision of the eternal importance of individual moral agency and deep respect for the religious choices of others. In an address to the over 30,000 students at BYU, a university sponsored by The Church of Jesus Christ of Latter-day Saints, he chose to explain the profound importance of moral agency in the Church's doctrine and the need for its members to both defend and respect the religious beliefs and practices of those of other faiths (Durham 2001).

Cole talks the talk and walks the walk. I've been privileged to work closely with him at the International Center for Law and Religion Studies at BYU for 26 years and, like so many scholars and people of faith across the world, remain in his debt. ❖

## About the Author

**Elizabeth A. Clark** is associate director, International Center for Law and Religion Studies, Brigham Young University. She has worked with Prof. W. Cole Durham, Jr. since the founding of the Center in 2000. Professor Clark attempts to carry on his legacy, serving on OSCE Advisory boards dealing with freedom of religion or belief, speaking at over 100 conferences including OSCE and UN events, writing extensively on law and religion issues, and engaging in law reform projects in over a dozen countries.

## ORCID

Elizabeth A. Clark  <http://orcid.org/0000-0003-1237-3181>

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