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COLE DURHAM'S JUNIOR PARTNER

By Brett G. Scharffs

A few months after I arrived to teach at Brigham Young University (BYU) Law School in 1997, Cole Durham invited me to lunch. It was memorable for two reasons. First, it was perhaps the worst Chinese food I've ever eaten; the restaurant was owned by someone who lived in Cole's neighborhood church congregation, and he wanted to give them business. I remember the sweet and sour chicken was flavored with maple syrup. Second, it became one of the most important "crossroads" moments of my life; from that lunch came an invitation to join Cole in teaching his two BYU Law School law and religion seminars—one focused on law and religion in the United States, and one focused on international and comparative law and religion.

Like so many things Cole does, the courses were innovative. Each two-credit seminar met once a week, on consecutive days, at the same time, and students could enroll in one class or both. Each class required a twenty-page paper, but students taking both seminars could combine them into one forty-page paper. Many students used the combined papers to satisfy the Law School's "substantial writing" requirement to write a thirty-page mini thesis. Students completing their substantial writing must receive and respond to substantive professorial feedback on an advanced draft, which results in an unusually large number of student papers being published. Dozens upon dozens of student seminar papers have been published in the *BYU*

Law Review, as well as other law reviews, over the years, and several have won important writing prizes.

It took me a few years to realize that Cole may have had an ulterior motive in inviting me to co-teach the seminars. While I was in the classroom, he was often away at international conferences! He would come home with stories of what to me sounded like exotic adventures in far-off places. Early on in our teaching partnership, Cole returned from a conference in Spain, and I asked him to tell the class about the conference. Cole's explanation went something like this,

"Well, we talked about challenges facing religious freedom globally."

Abstract: Brett G. Scharffs reflects on his nearly 30 years as "junior partner" to W. Cole Durham, Jr. in their work as co-teachers of law and religion seminars at Brigham Young University (BYU) Law School; as leaders of BYU's International Center for Law and Religion Studies, founded in 2000; as co-authors of the field-making casebook *Law and Religion: National, International, and Comparative Perspectives* (3rd ed. forthcoming); as partners in developing law and religion courses and certificate training programs on religion and the rule of law throughout the world; as supporters of law and religion scholarship in Asia and elsewhere; and as president and board member, respectively, of the G20 Interfaith Forum (IF20).

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My response was something like, “And what is going to happen next as a consequence of the conference?”

Cole responded, “Well, I think we’ll keep talking about the challenges facing religious freedom globally.”

For me, this was an important moment in my education about the nature of the challenges we are facing. Religious freedom isn’t a problem that is going to be “solved” once and for all; rather, we face an ongoing challenge that existed long before we entered the stage and that will persist long after we have exited stage left. Our job is to endeavor to make a positive contribution, to play a part, or—as Elder Dieter F. Uchtdorf of the Quorum of the Twelve Apostles of The Church of Jesus Christ of Latter-day Saints put it when describing the problem of moving a grand piano—to “lift where we stand” (Uchtdorf 2008).

Creation of the International Center for Law and Religion Studies

Another important crossroads moment came a few years later when the creation of the International Center for Law and Religion Studies was in process of being approved, not only by BYU Law School but by the university’s governing board, comprised of leaders from its sponsoring institution, The Church of Jesus Christ of Latter-day Saints. Cole confided in me that other academic centers at major universities had floundered because they lacked professorial faculty who could take the baton from the founding director.

Church leaders were confident in Cole’s leadership, but they naturally worried about what came next. Cole told me he specifically pointed to me as the “next generation” of leadership that could follow in his footsteps. At the time, this didn’t seem all that remarkable to me; in hindsight, however, I realize I had only been teaching at BYU Law School for three years, and Cole really had no business placing that degree of confidence in me. But as he recounted it, this answer, along with pointing to others he had enlisted to work with him at the Center, such as Elizabeth Clark, was enough to get approval of the Center—a rare occurrence at BYU—across

the finish line. And so, on January 1, 2000, the International Center for Law and Religion Studies was born.

Teaching at Central European University

A third key moment in my partnership with Cole came in 2007, when Cole needed someone to step in to help teach his course on International Protection of Religious Freedom, which he had been teaching each spring for more than ten years as a Recurring Visiting Professor of Law at Central European University (CEU), in Budapest. Only later did I learn that Professor András Sajó, head of CEU’s Legal Studies Department and, later, a judge on the European Court of Human Rights (and, later still, a treasured friend), was skeptical of such a young and inexperienced professor filling in for Cole. CEU utilized visiting professors frequently, but they were grantees—people like Cole or Judge Aharon Barak, former president of the Israeli Supreme Court (whom I also had the privilege of getting to know, due to our overlapping teaching schedules). But Professor Sajó relented so that Cole could attend some other important conferences, and I spent a week teaching Cole’s class.

Evidently, I did so with sufficient success that I was invited to co-teach the class with Cole, which I did annually until 2021, when the CEU Legal Studies Department was forced to move to Vienna for political reasons and the university stopped utilizing visiting professors in the same way. During those years, I also became good friends with a young legal studies professor, Renáta Uitz, Professor Sajó’s protégé, who later became head of department when he left to serve on the European Court of Human Rights.

Cole, András, Renáta and I fell into a pattern of organizing an annual conference at CEU during the time Cole and I were in Budapest, which became an early model for the Center’s regional conferences. Today, the Center holds ten or more of these regional conferences around the world each year. Our teaching in Budapest always took place in April or May, so I enjoyed teasing my students, who had just endured harsh

Central European winters, that in my experience it was always springtime in Budapest!

The Casebook—*Law and Religion: National, International, and Comparative Perspectives*

Another important output of Cole's and my teaching at CEU and BYU was the transformation of our piles of photocopied materials into a field-making casebook published by Aspen (Durham and Scharffs 2016),¹ then one of the big-three legal publishers. Casebooks for teaching law students subjects in the field of law and religion were few in number to begin with, but ours was the first to adopt the truly novel approach of integrating three distinct perspectives and giving them approximately equal space and attention:

- (1) US law, which focuses on major US Supreme Court First Amendment cases involving the Establishment Clause and Free Exercise Clause;
- (2) international law, which focuses largely on European Court of Human Rights jurisprudence but also UN and regional human rights instruments, institutions, practices, and procedures; and
- (3) comparative law, which focuses on illustrative cases from more than twenty countries around the world.

This casebook, now entering its third edition, has been or is in the process of being translated into more than a dozen languages and has become one of Cole's and my most important contributions to the growing field of international and comparative law and religion studies.

Associate Director Focusing on Asia

As an Associate Director of the Center, my work focused largely on Asia. There, together with Cole, and in partnership with the Institute for Global Engagement, we developed several one- to three-week certificate training programs, largely designed to teach the *Law and Religion*

casebook, first in China, and later in Vietnam, Laos, Myanmar, and other countries. For example, we were able to hold annual certificate training programs in China in person from 2010 to 2019, in partnership with major universities including the Peking University Law School, and virtually from 2020 to 2024.

Our certificate training program in Vietnam began in 2012 at the Hanoi campus of the University of Social Sciences and Humanities (USSH), a division of Vietnam National University (VNU), and continues today. This program has expanded into a major partnership with the Ho Chi Minh Academy of Politics and Law, with which we carry out regional training programs for provincial officials who work in religious affairs administration. A book compilation of presentations made at these programs by Cole, Dr. Đỗ Quang Hung, and me received a major national award in Vietnam in 2024.

In Myanmar, with Renáta Uitz, I was a visiting lecturer at the University of Yangon in 2013, and our Center was able to partner with major Buddhist, Catholic, and Protestant organizations to conduct a certificate training program on religion and the rule of law in Yangon and Mandalay six times between 2015 and 2021, when the military coup put a (hopefully temporary end) to our in-person work there.

In Indonesia, Cole and I have developed several important partnerships, including at Muhammadiyah University, where a conference on shari'a and human rights was later developed into a master's-level course on shari'a and human rights, which we co-organized annually from 2013 to 2023, and eventually expanded into a master's degree program in shari'a and human rights. A similar course on religion and human rights was established at Gadjarda University in 2014 and held annually since then. We often participate in person, or at least online. From these partnerships, and with the participation of the Oslo Coalition on Freedom of Religion and Belief, we helped develop *Shari'a and Human Rights: A Coursebook* (Kamali et al. 2022), which features chapters in both English and Bahasa Indonesia and is used in university courses

throughout Indonesia. Cole’s close professional relationships and friendships with Professors Lena Larsen and Tore Lindholm made these partnerships possible.

Our work together in the Asia-Pacific region involved many other dimensions, including extensive work in places as diverse as Nepal, India, Cambodia, Philippines, Australia, Korea, Japan, and various Pacific Island Countries, to name just a few. In recent years, we have held an annual regional conference in partnership with our colleagues at BYU–Hawaii that focuses each year on a different area within the Asia-Pacific region.

All of this is built on a foundation of work Cole and I did in Asia together. I think it fair to say that Cole began his law and religion career with a focus on Europe, specifically the emerging democracies in Eastern Europe after the fall of the Iron Curtain, but by the time I began teaching at BYU a decade later, his interests and vision had expanded globally to encompass Asia as well.

From Associate Director to Director of the Center

In 2015, James R. Rasband, who had been serving as Dean of BYU Law School, was pressed into service as University Academic Vice President under BYU President Kevin Worthen, who had been the prior Law School Dean. A Dean search was instituted, and I thought long and hard about whether I should be a candidate. For a variety of reasons, I believed the Law School was at an important inflection point, and I decided to become a candidate. This was, I think, a bracing moment for both Cole and me because it created a potential succession uncertainty in what had long been a fairly stable set of understandings. Fortunately, I was not selected to become Dean, and Cole and Dean Rasband asked me to step into the role as Director of the Center. And so, on April 1, 2016, Gordon Smith became the Dean of the Law School, I became Director of the Center, and

Cole took on his new role as Founding Director of the Center.

As I like to tell people, for twenty years, I was Cole’s Junior Partner, and then I became Director of the Center and everything changed: now I am Cole’s Junior Partner.

One of my primary goals as Director of the Center has been to keep Cole as actively involved with the Center as he would like to be. Fortunately for us, that has constituted a high degree of involvement. Over his nearly fifty-year career, the wisdom and learning Cole has accumulated and the networks of relationships he has developed are unique and mind boggling.

At the time I became Director, I did not realize how close Cole was to retiring from teaching. Since retiring in 2019, he has focused much of his energy on the G20 Interfaith Forum (IF20), which he helped found in 2014 and currently leads, together with Katherine Marshall from

COLE, THE VISIONARY, SAW MORE THAN A DECADE AGO WHAT MANY OF US ARE ONLY BEGINNING TO APPRECIATE TODAY

Georgetown University’s Berkley Center for Religion, Peace, and World Affairs. Along with Cole and Katherine, I have served as one of the three members of the IF20 Board of Directors. Another of my primary goals as Director of the Center has been to provide support, both intellectual and financial, to the IF20, which Cole and I both see as playing an important complementary role to the Center’s work.

The Center focuses specifically on law and religion, in particular on freedom of religion or belief for all people in all places. The IF20 focuses more on law and society, the good religion does, and the intersection between religion and governmental policymaking. What Cole realized is that government leaders are unlikely to value religious freedom if they don’t value religion. The valuing of religion could have been taken for granted twenty-five years ago, when the Center was founded, but can no longer be taken for granted today. Again, Cole, the visionary, saw more than a decade ago what many of us are only beginning to appreciate today.

About a year after I became director of the Center, a close personal friend of both Cole’s and

mine saw me at an event. He said something like, “You know, I’ve noticed two things since you became Director of the Center.”

I asked, “Really, what are they?”

He answered, “Well, first, Cole looks five years younger!” Then there was awkward silence.

“And the other?” I ventured.

“Well, maybe there is just one,” he said, turning away.

Later that evening, looking in the mirror, I thought, “You know, I think he had a point.”

An Image in My Mind

A few years ago, Bill Atkin, who for years served as associate general counsel over international affairs for The Church of Jesus Christ of Latter-day Saints, and who has been one of Cole’s closest friends and partners, recounted an image he had seen on a long-haul flight. The cabin was dark, and it was the middle of the night. Bill had been sleeping, but he awakened to see one light shining down on an oversized man with bear-claw hands, hunched over a tiny laptop keyboard, in economy class, typing away, probably preparing a presentation or finishing a paper.

Bill said his mind was taken to a scripture that the Church’s Founder and Prophet Joseph Smith received as revelation while he was a prisoner in the cold confines of the ironically named “Liberty Jail,” during the devastatingly cold winter of 1839, at a time when the Latter-day Saints were being driven out of the US state of Missouri. In a letter written to Church

members, which was later canonized as part of the Church’s *Doctrine and Covenants* ([1876] 2013), Joseph wrote:

Therefore, that we should waste and wear out our lives in bringing to light all the hidden things of darkness, wherein we know them; and they are truly manifest from heaven—

These should then be attended to with great earnestness.

Let no man count them as small things; for there is much which lieth in futurity, ... which depends upon these things.

You know, brethren, that a very large ship is benefited very much by a very small helm in the time of a storm, by being kept workways with the wind and the waves. (*Doctrine and Covenants* 123:13–16)

Bill noted that what he saw in that dark airplane cabin was a consecrated servant of Jesus Christ “wasting and wearing out his life” in the service of God and man. I found this image deeply moving, not least because I, too, have had a similar experience on a similar long-haul flight, in the middle of the night, watching Cole hunched over a keyboard, clickety-clack, hard at work. ❖

About the Author

Brett G. Scharffs is Rex E. Lee Chair and Professor of Law at J. Reuben Clark Law School and Director of the Law School’s International Center for Law and Religion Studies. He has written more than 100 articles and book chapters, and has made over 300 scholarly presentations in 30 countries. His field-creating casebook, *Law and Religion: National, International, and Comparative Perspectives* (co-authored with his colleague W. Cole Durham, Jr.) was published by Wolters Kluwer in 2009, with a second edition published in 2019 and a third edition forthcoming (2027).

Note

1. The casebook’s first edition was published in 2016, with a second edition published in 2019 and a third edition forthcoming (2027).

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