

Transcript

Sacred and secular

Cole Durham

Cole Durham:

My name is Cole Durham. I'm the Director of the International Center for Law and Religion Studies at Brigham Young University in Utah in the United States.

Interviewer:

And how did you become involved with religious freedom issues?

Cole Durham:

This really goes back to my law school days. I started working on church state issues in one of the early courses that was taught in the United States and started as a young law professor, carried on. And I've been doing it for 36 years.

Interviewer:

You've worked with religious organisations around the world. What's important for religious organisations and their activities?

Cole Durham:

Well, I ultimately think that the most important thing to religious organisations is autonomy in their own affairs. Now, this can take a number of different forms. It can take the form of the need for flexible registration laws that allow religious organisations to incorporate or form associations.

It depends on the legal system in the different countries, but religious leaders really understand that without that, it's very hard for them to function. It's possible and there are some religious groups that conscientiously object to dealing with the state in that way, but for most groups, they want to be able to set up a legal entity.

They need that to be able to open a bank account, to rent facilities, to buy facilities, to have contracts. So this is really ground level of what religious groups need. Then, I think, in a more general sense, they need autonomy to define their own doctrine or live according to the doctrine as it's revealed or understood by them.

They need to-- and part of that will include how they're organised. Catholics have a pope. Protestants don't. This is not just an arbitrary organisational matter. It has deep history, has deep meaning. So as I've worked with religious freedom issues, I increasingly think that the autonomy issues or the right of a community to define itself and to be authentically itself is really one of the most critical aspects.

In the United States, we have free exercise of religion. We have non-establishment of religion. And people focus on that. But actually, the autonomy cases are older. There are a deeper strand. They go

back into the Middle Ages really. They are part of the church state history of every country in the West.

Oldest question of all is whether religious communities are autonomous, whether they can decide things according to their own light, and whether you respect the ecclesiastical structures that they have. This has really become a current issue, and, in recent times over the past two or three years, both in the US and in the European Court of Human Rights, we've had a series of cases about employment.

Can a religious group choose its own employees? This is actually an age old question but has very practical ramifications. So for example, we had the Hosanna Tabor case in the United States. My view, fortunately, the United States Supreme Court decided unanimously that a religious school could terminate a woman who had a disability.

She wanted to come back. They didn't. There was a little legal tassel. I won't go into details, but I think it's very important that the church is able to define its own employees. There are similar cases in Europe. I think the most difficult case was the case of a Catholic organist who was guilty of marital indiscretions and was terminated for that.

He maintained, well, this was a right of privacy. But he, after all, was playing the music and was an integral part of the mass and the church. It seems to me had a right to terminate him. Now, in that case, the European court said, Germany had weighed all the factors. I don't know what Germany would do if it had weighed more factors.

I don't know exactly how that would come out. I think the better cases, there were some other cases from the European court where one was a case involving a Mormon who was-- same kind of extra marital activity. He was terminated. He had been in charge of public affairs for the Mormon church for all of Europe. And the court there was pretty clear. This is someone who is very visible. It impairs the visibility of the church.

I think in these kind of cases one of the hardest things has to do not with the people who are the high level visible people but what about the employees? What about the janitor, the gardener? There is a tendency to think, oh, well, that doesn't matter as much. But I remember when one of these cases came up in the United States, I was at a conference, and someone from a Baptist school came up to me and said, I want you to know why we filed an amicus brief. It was in one of these cases.

He said, I went to a Baptist college. I'm sure a lot of people paid a lot of money to pay some professors so they would teach me, and I would become a good Baptist. But I was converted by the cook in the cafeteria. And that is something that doesn't show up on flow charts or employment descriptions, but religious leaders understand that religious impact doesn't necessarily flow in flow charts. And that's another reason why we really need, in my view, broad autonomy, even in places where people might think it shouldn't matter.