Chester C. Cole\(^1\)

June 4, 1824-October 4, 1913

Early Years

Chester C. Cole\(^2\), truly one of the greatest men to leave his handprint upon Drake University, was born on June 4, 1824 in Oxford, New York.\(^3\) He was born into a wealthy family who began his education early. Cole studied at the Oxford Academy until age eighteen.\(^4\) When he was expected to enter into the junior class at Union College, illness and a lack of immunity forced him to continue his education at home. At age twenty-two, when his health was significantly improved, he entered the law school at Harvard University. He was taught by some of the University’s best instructors and graduated in two years rather than three.\(^5\)

Career

After leaving Harvard, Cole moved to Frankfort, Kentucky, where he headed the legislative department of "The Commonwealth," one of Frankfort’s daily newspapers. He then relocated to Marion, Kentucky where he was admitted to the bar and began what would be a long, prosperous, and influential legal profession. In 1857, Cole felt the need to leave Kentucky.\(^6\) He felt, “intense feelings of being engendered in the hearts of the southern people against the Federal Government and because he was in full sympathy with the cause of the northerner.” Cole moved to Des Moines, Iowa in May of 1857. In February, 1864, he was appointed to serve

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\(^2\) Photo from Cowles Library Archives, Des Moines, IA, Drake University.


\(^5\) [File item Cowles Library Archives] Des Moines, IA: Drake University.

as a justice on the Iowa Supreme Court. The next autumn he was elected to the same office by an unprecedented majority, and reelected in 1870. Among other accomplishments on the court, Cole authored the landmark Clark v. Muscatine School Board opinion in 1868, which held racial segregation of public schools was unconstitutional under the Iowa Constitution—eighty-six years before the U.S. Supreme Court upheld that principle in Brown v. Board of Education. In 1869 Chester Cole became the Chief Justice of the Iowa Supreme Court. He also served several years as the editor of the Western Jurist, and played a critical role in shaping legal education in the state of Iowa. In 1876 Cole decided to retire from the court and return to the bar. He continued in the active practice of law until he was eighty-nine years of age. Justice Cole died in Des Moines, October 4, 1913.

Justice Cole’s Exceptional Civil Rights Law Legacy

In 1868, three years after the conclusion of the Civil War, the Iowa Supreme Court in Clark v. Board of Directors of the Muscatine Schools, held that racial segregation of the public schools was unconstitutional under the Natural Rights/Equality Clause of the Iowa Constitution’s Bill of Rights. In construing the Iowa Constitution to deny the school board the discretion to discriminate on the basis of race or color, Justice Cole spoke of our national goal of an American nationality, one harmonious people. Were the Court to sustain the school board’s policy of racial segregation, or nationality segregation, it would “sanction a plain violation of the spirit of our laws” and “would tend to perpetuate the national differences of our people and stimulate a constant strife, if not a war of races.” It was a courageous decision on April 14, 1868, preceding by 3 months the ratification of the 14th Amendment to the U.S. Constitution and by 7 months the November Presidential election, in which Ulysses S. Grant was elected President and in which Iowa voters passed the amendments to the Iowa Constitution deleting racial designations and granting blacks the right to vote.

Seven years later, in 1875, the Iowa Supreme Court, again in an opinion written by Justice Cole, unanimously reaffirmed the Clark v. Muscatine School Board precedent and extended its scope to apply not only to overt racial discrimination but also to covert discrimination. In Smith v. The Directors of Ind. Sch. Dist. of Keokuk, the Keokuk Schools admitted that the black boy who sought admission to its high school was qualified but claimed it could not admit him ostensibly

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8 Mrs. Cole is Dead. (1909, April 8) Times-Delphic.
9 [File item Cowles Library Archives] Des Moines, IA: Drake University; American Law School Review article
11 24 Iowa 266 (1868).
12 Id. at 276.
13 Id.
14 40 Iowa 518 (1875).
because the high school building was full and there were no available seats. Justice Cole affirmed the findings of the trial court that the black boy was refused admission on account of his race, and “that if he had been a white boy he would have been permitted to attend said high school and enjoy its benefits.”

Justice Cole held the case was governed by Clark v. Muscatine Schools holding “that a pupil may not be excluded from school because of his color, or required to attend a separate school for colored children.”

The Iowa Supreme Court’s holding in Clark stood virtually alone as other state supreme courts, even after the Civil War, followed the lead of the Massachusetts Supreme Court which upheld racial segregation of Boston’s public schools under the “separate but equal” rationale in Roberts v. The City of Boston in 1850. Clark preceded by 28 years the United States Supreme Court’s 1896 holding in Plessy v. Ferguson that upheld state-imposed racial segregation under the Federal Constitution and preceded, by 86 years!, the 1954 holding in Brown v. Board of Education of Topeka that finally struck down racial segregation in the public schools. The Iowa Supreme Court’s holding in Smith v. Keokuk Schools that the Iowa Constitution’s Equality Principle bars not only overt but also covert discrimination preceded by 13 years the United States Supreme Court’s similar holding in Yick Wo v. Hopkins in 1886.

Justice Cole was also a member of the Court that decided the landmark 1873 case of Coger v. The North West Union. Packet Co.. In Coger the Iowa Supreme Court affirmed a jury verdict for $250 damages for a biracial woman who was forcibly removed by the steamboat captain from the 1st class dining area reserved for whites. Again relying on the Natural Rights/Equality Clause of the Iowa Constitution, the Court held: “[T]he plaintiff was entitled to the same rights and privileges while upon defendant’s boat . . . which were possessed and exercised by white passengers. These rights and privileges rest upon the equality of all before the law, the very foundation principle of our government.” It wasn’t until 1964, 91 years later, that the United States Supreme Court upheld the 1964 Civil Rights Act’s prohibition of racial discrimination in public accommodations under private ownership.

In 1869, again during Justice Cole’s tenure on the Iowa Supreme Court, the Court let stand District Court Judge Francis Springer’s ruling that admitted Arabella Babb Mansfield to become the first woman lawyer in the nation. The Iowa Code stated that “any white male person” was eligible to be admitted to the Iowa Bar. Nonetheless, Judge Springer construed the Code so

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15 Id. at 519.
16 Id.
17 59 Mass. 198 (1850).
18 163 U.S. 537 (1896).
20 118 U.S. 356 (1886).
21 37 Iowa 145 (1873).
“the affirmative declaration that male persons may be admitted Is not a denial of the right of females.”  

The Iowa Supreme Court never reviewed Judge Springer’s ruling, and, in 1870, the Iowa Legislature struck the words “white male” from the statute governing licenses to practice law.  

The licensing of Arabella Mansfield proved to be another Equality First for the Iowa courts. In 1872, 3 years later, the United States Supreme Court, in *Bradwell v. Illinois*, upheld the decision of the Illinois Supreme Court that refused to grant a woman a license to practice law solely because of her gender. The United States Supreme Court held in *Bradwell* that the gender-based exclusion was constitutional as a reasonable judgment for the Illinois Legislature and Courts to make.  

The 19th century landmark Equality Decisions of Justice Cole and the Iowa Supreme Court have continuing vitality today. *Clark, Coger*, the licensing of Arabella Mansfield, and the earlier July 4, 1839 *In re Ralph* decision freeing a slave were relied upon by the Iowa Supreme Court in its unanimous 2009 decision in *Varnum v. Brien* striking down, under the Iowa Constitution’s Natural Rights/Equality Clause, the Iowa statutes that denied gays the right to marry. The Iowa Supreme Court has recognized that the Iowa Constitution provides it with the authority and independence to construe its provisions so as to grant Iowa residents greater protections than afforded them by United States Supreme Court decisions construing the Federal Constitution. The Iowa Court has done so not only in construing the Natural Rights/Equality Clause of its Bill of Rights, but also in providing Iowans with greater protection of their liberty interests against search and seizure by the police.  

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25 83 U.S. 130 (1872).  
26 1 Morris 1 (Iowa 1839). The slave Ralph had been allowed by his Missouri master to come to Iowa and work in the lead mines near Dubuque per a contract that Ralph was purchase his freedom by paying $500. After four years of work in Iowa Ralph’s master claimed Ralph had not paid the $500 and had him seized by bounty hunters. The Iowa Supreme Court held that Ralph was not a fugitive slave when he came to Iowa, and now, having lived for four years in “Free” Iowa, was a free man. Even if it were found that Ralph had defaulted on his payment, that would only be a basis for damages and would not deprive him of his freedom.  
27 763 N.W.2d 862, 876-878 (Iowa 2009), describing the Iowa courts’ historic commitment to progressive equality. Indeed, the Iowa Judicial Branch Building has a special second floor historical exhibit that, with pride, explains these landmark decisions.  
Imagine how much further the United States would be in its quest for freedom and equality had the United States Supreme Court followed the lead of Justice Cole and the Iowa Supreme Court in *Clark v. Muscatine Schools* rather than the “separate but equal” rationale of Justice Lelander Shaw in *Roberts v. City of Boston*.

### Founding Drake University Law School

In 1865, Cole and fellow lawyer George Wright, who went on to become a U.S. Senator, founded “The Iowa Law School” in Des Moines.\(^29\) Cole served the school as a law professor for ten years.\(^30\) During his tenure, the school was moved to Iowa City, which Cole writes was “against the interest and wishes of those who had organized the school and made it a success.”\(^31\)

Cole believed strongly that location in the state capital, where the legislature meets and the Supreme Court holds most sessions, afforded law students invaluable educational opportunities.\(^32\) In 1875 Cole and Wright founded “The Iowa College of Law” in Des Moines.\(^33\) Its first class was graduated in 1876.\(^34\) The school affiliated with Drake upon the university’s organization in 1881.\(^35\) Cole taught at the law school until 1906 and served as its Dean from 1892 until 1907.\(^36\) The first building on campus dedicated to law classes was Cole Hall, built in 1904.\(^37\)

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\(^{30}\) 2 Am. L. Sch. Rev. 129 1906-1911

\(^{31}\) Chester C. Cole, *The Iowa College of Law*, 9 W. Jurist 451, at 451 (1875)

\(^{32}\) *Id.*

\(^{33}\) 1 CHARLES BLANCHARD, *HISTORY OF DRAKE UNIVERSITY: BUILDING FOR THE CENTURIES* 93-95 (1931)

\(^{34}\) 2 Am. L. Sch. Rev. 129 1906-1911

\(^{35}\) *Id.*

\(^{36}\) *Id.*

\(^{37}\) Drake University [Cowles Library’s Archive Collection], Des Moines, IA: Drake University