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Foreward

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FOREWORD

Rodney D. Chrisman[†]

According to our mission statement, “Liberty University School of Law exists to equip future leaders in law with a superior legal education in fidelity to the Christian faith expressed through the Holy Scriptures.”¹ Liberty University Law Review fits within this mission to provide a superior legal education by affording a forum for intellectually rigorous thought and debate regarding important issues of law and policy. Certainly, a superior legal education involves learning how to do a myriad of things, including how to read and understand cases, statutes, and constitutions. It also involves developing the ability to craft arguments, conduct negotiations and trials, and counsel clients. Critically, a superior legal education includes acquiring the skills necessary to plan strategies for clients to accomplish their goals. Further, it incorporates the drafting of complaints and briefs, legal memoranda, and a multitude of other documents. A superior legal education is a far-ranging endeavor equipping students to be able to solve client problems and advocate for their clients in a variety of settings.

Crucial to all of these attributes, a superior legal education must include the ability to rigorously analyze and think through important issues of our time. However, merely stating the need to analyze and think through these issues alone is not enough because it begs the central question—by what standard? Are we to attempt to autonomously reason through these issues? No, we are Christians, and, therefore, we should seek to glorify the Lord God through these undertakings just as we should in all others.² We should submit to the Lord God in all things,³ loving Him not only with our hearts,

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¹ LIBERTY UNIV. SCH. OF L., *About Liberty University School of Law*, <https://www.liberty.edu/law/about/> (last visited May 8, 2024).

² See, e.g., 1 *Corinthians* 10:31; *Colossians* 3:23–24.

³ See, e.g., *John* 14:15; *Acts* 5:29; *James* 4:7; 2 *John* 1:6.

souls, and strengths but also *with our minds*.⁴ Our mission statement also addresses this central question by providing the standard—this superior legal education that we are endeavoring to provide and all the facets thereof must be “in fidelity to the Christian faith expressed through the Holy Scriptures.”⁵

Justice Oliver Wendell Holmes, Jr., though no friend to Christianity, was correct when he wrote in *The Path of the Law* that

[t]o an imagination of any scope the most far-reaching form of power is not money, it is the command of ideas. If you want great examples read Mr. Leslie Stephen’s “History of English Thought in the Eighteenth Century,” and see how a hundred years after his death the abstract speculations of Descartes had become a practical force controlling the conduct of men. Read the works of the great German jurists, and see how much more the world is governed [today] by Kant than by Bonaparte.⁶

Indeed, as Professor Jeffrey C. Tuomala makes clear in his article in this Symposium, our world is governed by the ideas of Kant and others like him. “Holmes was right—power belongs to those who command ideas, and Kant’s have been chief among them. [H]e holds sway today in the legal and popular culture and has infected even Christian thought.”⁷ As Richard Weaver entitled his classic book, *Ideas Have Consequences*.⁸

As God’s people, we should know this. It is incumbent upon us to wrestle with these ideas and seek to take them captive to the Lord Jesus Christ, as Paul says in 2 *Corinthians* 10:5. This duty illustrates why the topic of this Symposium is so important. What is education if not the propagation of thoughts and ideas? Truly, education goes beyond propagation of thoughts

⁴ See *Matthew* 22:37; *Mark* 12:30; *Luke* 10:27.

⁵ LIBERTY UNIV. SCH. OF L., *supra* note 1.

⁶ Oliver Wendell Holmes, *The Path of the Law*, 10 HARV. L. REV. 457, 478 (1897).

⁷ Jeffrey C. Tuomala, *Is Tax-Funded Education Constitutional?*, 18 LIBERTY U. L. REV. 1009, 1099 (2024).

⁸ RICHARD M. WEAVER, *IDEAS HAVE CONSEQUENCES* (1948).

and ideas to the *inculcation* of these thoughts and ideas into the hearts and minds of students. This is particularly concerning in K-12 education given that the hearts and minds of children are at stake. Thus, the importance of and need for a symposium like this one, where Christian scholars and educators can wrestle with the thoughts and ideas governing K-12 education and thereby advance toward the goal of taking those thoughts and ideas captive for Christ, is evident.

William A. Estrada's article contributes to this goal by providing a discussion of the history of parental rights and how this history has helped to give rise to the homeschooling movement in America as an alternative to public schools. Biblically, parents are entrusted with the privilege and the duty to raise their children in the "nurture and admonition of the Lord."⁹ This task is central to the jurisdiction of the family, and it should be an integral part of the life of the home, including the teaching of children when sitting in the house, walking in the way, lying down, and rising up.¹⁰ Mr. Estrada helpfully traces parental rights from their beginning with God as found in the Judaic and Christian worldviews through to the Greek philosophers and finally to the rights as identified by the U.S. Supreme Court. He then forcefully argues for strict scrutiny as the proper standard for protecting this important right. Finally, he concludes with a discussion of the history of homeschooling in the United States from its early and uncertain days facing skepticism from both the society and the courts to its now thankfully being embraced by the courts and large sections of American society.

Michael Farris's article also considers parental rights and their protections in the courts, something to which much of Mr. Farris's distinguished career has been dedicated. His article begins by noting the risks posed by the current grounding of parental rights in substantive due process owing in particular to Justice Clarence Thomas's hostility toward the doctrine as demonstrated by his recent assertion that "any substantive

⁹ *Ephesians* 6:4 (King James).

¹⁰ *Deuteronomy* 6:7.

due process decision is ‘demonstrably erroneous.’¹¹ Mr. Farris helpfully points out that parental rights flow from parental responsibilities, and, accordingly, the civil government’s authority (or jurisdiction) is not triggered unless those parental responsibilities have been breached. He recognizes that there appears to be unanimous support for parental rights as a protected liberty interest. Given this desire to protect parental rights and the risk involved in grounding parental rights in substantive due process, he argues that substantive due process should be abandoned as the foundation for parental rights and that procedural due process should be adopted instead, because this would provide a more certain footing for parental rights in future cases.

Professor Rena M. Lindevaldsen’s article likewise recognizes the biblical responsibility that parents have to educate their children. Her article points out that, while this responsibility can be delegated, it cannot be abdicated. Further, any actions taken pursuant to such a delegation must be consistent with the values of the parents making such delegation. Professor Lindevaldsen makes clear that not only have the public schools failed in this respect by teaching from a worldview that is antithetical to biblical values and the values of many, if not most, parents in America, they have also failed in a very practical way by providing an education that results in truly abysmal outcomes by any reasonable measure. In light of these realities and other issues, Professor Lindevaldsen contends that public funding of K-12 education should be ended immediately. However, this is not cause for despair! As her article explains, there are already in operation a variety of alternatives to public K-12 education that provide better educational outcomes for students and are far more consistent with biblical notions of parental responsibilities and the rights arising therefrom. In light of this, one wonders why there is such a strong commitment to the public school system. While there are undoubtedly many factors that contribute to this commitment, Professor Lindevaldsen may have identified the central one—

¹¹ Michael Farris, *Rethinking Parental Rights: It’s Time to Move to Procedural Due Process*, 18 LIBERTY U. L. REV. 909, 914 (2024) (quoting *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 332 (2022) (Thomas, J., concurring) (quoting *Ramos v. Louisiana*, 140 S. Ct. 1390, 1424 (2020))).

what we actually see is more about an ideological struggle over the hearts and minds of our children than it is about educational outcomes. Her discussion of the current clashes in our public schools makes this quite clear. Considering all of these issues, her conclusion that “now is the time to end publicly funded K-12 education”¹² seems to be one that all Christians should at least consider.

Professor Jeffrey C. Tuomala’s article also argues that tax-funded education, such as our current K-12 public school system, should be ended, specifically asserting that it is an “unconstitutional establishment of religion in violation of the First Amendment”¹³ and is outside the biblical jurisdiction of the civil government. Professor Tuomala points out that the U.S. Supreme Court has never defined religion, leading to a schizophrenia of sorts in its Establishment and Free Exercise Clause jurisprudence. Professor Tuomala looks to the founding era and the Virginia controversy regarding the establishment of religion, which provided the historical setting that ultimately shaped the principles that underlie and found expression in the First Amendment. The foundational principle upon which religious liberty is based was articulated by Thomas Jefferson in the *Virginia Statute for Establishing Religious Freedom*, where he wrote that “Almighty God hath created the mind free.”¹⁴ Further, the foundational definition of religion was provided by James Madison and George Mason in the *Virginia Declaration of Rights*, which defines religion as “[t]he duty which we owe to our Creator and the manner of discharging it.”¹⁵ Professor Tuomala’s article asserts that this foundational principle and the related foundational definition of religion should guide our understanding of the First Amendment’s religion clauses, which would ameliorate the U.S. Supreme

¹² Rena M. Lindevaldsen, *Sacrificing Our Children at the Altar of Modern K-12 Public Education*, 18 LIBERTY U. L. REV. 959, 1007 (2024).

¹³ Tuomala, *supra* note 7, at 1119.

¹⁴ *Id.* at 1019 (quoting STATUTE FOR ESTABLISHING RELIGIOUS FREEDOM (1786)).

¹⁵ *Id.* at 1019 (quoting THE VIRGINIA DECLARATION OF RIGHTS, § 16 (1776), *reprinted in* SOURCES OF OUR LIBERTIES: DOCUMENTARY ORIGINS OF INDIVIDUAL LIBERTIES IN THE UNITED STATES CONSTITUTION AND BILL OF RIGHTS 311–12 (Richard Perry ed., 1978)).

Court's current confusion regarding these clauses and would also naturally lead to the conclusion that tax-funded education is unconstitutional.

The reader may here object that Jefferson and Madison later became some of the most ardent advocates for systems of public education. This historical curiosity is not overlooked by Professor Tuomala. Quite to the contrary, he carefully considers it and the ideas that have given rise to it. He notes that these ideas still animate the First Amendment jurisprudence of the U.S. Supreme Court today. Professor Tuomala presents these ideas as two competing worldviews: one consistent with orthodox Christian belief and the other based upon a bifurcated view of reality promoted by thinkers such as Thomas Aquinas and Immanuel Kant that falsely divides reality between the secular and religious. This has led to a strange situation where “[t]he Supreme Court, and most Americans [including Jefferson and Madison], vacillate between the diametrically opposed principles that the state has no power to establish an orthodoxy of opinion and that the most important function of state government is to inculcate values through public schools.”¹⁶ Professor Tuomala ends his article with a refutation of this bifurcated and unbiblical view of reality followed by a thoroughly biblical analysis of the issue. Rather than a bifurcation, he argues that the proper analysis should focus on the jurisdictional lines that the Bible draws between the civil government and religion, which is consistent not only with orthodox Christian doctrine but also with the foundational principles and definition undergirding the First Amendment. Under this analysis, the civil government has no proper authority to either establish or fund schools.

If, as Professors Lindevaldsen and Tuomala argue, tax-funded schools are unconstitutional and outside of the jurisdiction of the civil government, where might we look for the education of our children? The articles written by Professor Lindevaldsen, Mr. Estrada, and Mr. Farris all, to one degree or another, suggest that homeschools are an option. Mr. David Goodwin, who is the President of the Association of Classical Christian Schools and the headmaster of a Classical Christian school, would suggest Classical Christian schools as another alternative. Mr. Goodwin's article, however, goes deeper than that to the heart of what education should actually be, an

¹⁶ *Id.* at 1012.

important concept expressed by the Greek work *paideia*. Instead of just suggesting Classical Christian schools as an alternative, he presents the case for the return to the Western Christian Paideia, an approach to education, and indeed training for life, that gave birth to Western Civilization in general and to the concomitant liberties that are much discussed in this Symposium. Mr. Goodwin traces through history how the Western Christian Paideia was deliberately undermined and eventually replaced by those opposed to its fundamental goals and presuppositions. He argues that control over education must be taken from the civil government and returned to parents, families, and churches, and that Christ must once again be made the cornerstone of the education, or paideia, provided to our children.

King Randall is the Founder of Life Preparatory School for Boys, a school that presents yet another alternative to the tax-funded public school system. The remarks that he gave at the Symposium, an adaptation of which is included here as the last written piece in this Symposium edition, describes his program and the impacts that it has made in the lives of troubled young men in Albany, Georgia, along with some of the lessons that he and his team have learned along the way. These troubled young men were being failed by the public schools, but King Randall's program has seen marked success in equipping these young men with the skills and capabilities they need to lead productive and fulfilling lives. His remarks are a welcome contribution to the discussion contained in this Symposium, adding real-world "context and a sense of pragmatism to the scholarly debate surrounding the future of American education."¹⁷

As the pieces in this Symposium demonstrate, there truly is a battle being waged for the hearts and minds of our children in the American education system. This Symposium has done much to address the thoughts and ideas that animate that battle, and it has provided both Christian analysis of these thoughts and ideas and Christian alternatives to our current tax-funded public school system. This is sorely needed. To hearken back to Oliver Wendell Holmes's quote, we do not want ourselves or our children to be

¹⁷ Preface, *Building Our Future*, 18 LIBERTY U. L. REV. 1141, 1143–44 (2024).

governed by a tyrant such as Bonaparte, and that is well and good.¹⁸ But to achieve that kind of freedom from physical tyranny, our minds must be free from the tyranny of the anti-Christian thought of men like Kant, Hume, Marx, Singer, and Holmes, whose thought now dominates our public education system. Rather, our minds and the minds of our children must be in submission to the Lord Jesus Christ, for as Jesus said, whom the Son has made free is free indeed,¹⁹ and, as Paul wrote to the Corinthians, “where the Spirit of the Lord is, there is liberty.”²⁰ May the Lord use the works in this Symposium to help “proclaim liberty to the captives”²¹ of our current educational system and to further His Kingdom in the realm of education and beyond.



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¹⁸ See *supra* note 6 and accompanying text.

¹⁹ *John* 8:36.

²⁰ *2 Corinthians* 3:17 (New Am. Standard).

²¹ *Isaiah* 61:1 (New Am. Standard).