Professors: Recognizing right to education won't end inequality

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It may come as a surprise, but the U.S. Constitution does not guarantee a right to education. A pair of University of Kansas professors has authored an article arguing that even if such a right were nationally recognized, it wouldn't be enough to end the ongoing struggles for educational equality in America.

Richard E. Levy, J.B. Smith Distinguished Professor of Constitutional Law, and Derrick Darby, professor of philosophy and affiliate faculty member in the School of Law, recently published "Slaying the Inequality Villain in School Finance: Is the Right to Education the Silver Bullet?" For decades, school districts across the country have struggled to come up with ways to provide an equal education for all students. Even though the Constitution doesn't guarantee a right to education, more than 40 state constitutions do make a provision for providing education for citizens.

Some school finance litigation has focused on the idea that, if a right to education were recognized, funding could be equalized, which would go a long way toward solving inequality problems. That is an oversimplification of a complex problem, the authors say.

"We're skeptical, but we think it could be part of a larger solution," Levy said. "The precise relationship between funding and educational outcomes is not perfectly clear."

Darby points out that one needs to look beyond resources to address the

problem. For example, students who live in low-income households or violent neighborhoods, or have parents with a low education level, are not likely to achieve the same educational outcomes of students from opposite backgrounds, even if their schools have equal resources.

School funding litigation has also tended to focus on equal protection issues. Even if the federal and state constitutions don't guarantee a right to education, they do make clear that if education is provided, it must be provided equally to all. While the intention is good, the problem with this approach has been too often people think equal money will result in equal outcomes such as test scores, grades and graduation rates. To more thoroughly address inequality, educational outcomes, instead of input, should be a focus.

"My own personal philosophy is complex problems require complex solutions," Darby said. "However, complex solutions are often not popular from a policy standpoint. When we look at disparities in educational outcomes we find that there are many complex factors that play a role, not all of which can be addressed simply by throwing money at the problem."

"Equal protection does not protect against inadequate funding," Levy added.

Until the focus shifts to promoting equal outcomes instead of equal funding, recognizing a right to education cannot be the silver bullet that slays the villain of educational inequality, the authors wrote. Achieving this goal is further complicated by the fact that educational inequality is not solely the fault of the educational system.

Such a problem of both law and philosophy is a prime example of the importance of collaborating across traditional disciplines to find potential solutions. Levy, a constitutional law scholar, and Darby, a

philosopher and rights expert, began working together on the project after Darby won a Keeler Intra-University Professorship at KU, providing him the chance to study with faculty from another school. Darby's research for the project was supported by a grant from the Spencer Foundation devoted to philosophy in educational policy and practice. Both were interested in the problem of school inequality and knew it could not be addressed by one school of thought alone.

"Cross-school collaboration is vital for dealing with increasingly complex social problems, such as social inequality," Darby said. "In our case, we aimed to combine the philosopher's attention to matters of ethics and justice in thinking about the reasons we have for doing something about educational inequality with the lawyer's attention to the current state of the law and what it takes to operationalize certain normative values in law and public policy."

Provided by University of Kansas

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