**Citation:**

Derrick Darby& Richard E. Levy, *Slaying the Inequality Villain in School Finance: Is the Right to Education the Silver Bullet?*, 20 KAN. J. L. & PUB. POL’Y 351 (2011).

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**Abstract:**

This article, part of a symposium on Educational Reform in the 21st Century, considers the relationship between the recognition of a right to education and the amelioration of educational inequalities. As currently understood and implemented, the right to education is focused on the question of funding, and assumes a correlation between funding and educational achievement. This relationship, however, is a complex one, and educational achievement is influenced by numerous factors, many of which are extrinsic to the educational system or funding for it. Thus, legal and philosophical debates about the recognition, nature, and content of a right to education must acknowledge that addressing disparities or inadequacies in educational funding will not necessarily secure improved educational outcomes.

As currently understood, the right to education cannot be the silver bullet for which many may have hoped, because it focuses on educational inputs (resources) rather than educational outcomes (achievement). Indeed, the focus in educational policy circles has increasingly shifted from educational inputs to educational outcomes. We believe that parties and courts involved in school finance litigation may also begin to rely on outcomes in assessing whether states are satisfying their constitutional obligations regarding the right to education. Such an outcomes-based approach may hold promise as a means to bridge the gap between our aspirations concerning the right to education and the realities of persistent and substantial educational inequalities. At the same time, however, we must recognize that the educational system alone is not responsible for educational inequalities, which means that education reform alone cannot completely solve this problem. Although a new wave of outcomes-based litigation may help to address the problem, it is a partial solution at best.

Our argument unfolds in several steps. We begin with a review of the history of school finance litigation, highlighting the “equity” and “adequacy” aspects of the right to education. We then discuss how “equality” and “adequacy” theories factor into opposing philosophical conceptions of a just distribution of educational resources and opportunities, and consequently inform opposing conceptions of the right to education. We observe that a critical - yet largely unanswered - empirical question is whether the recognition of a right to education (whatever its content) will improve educational outcomes. After considering social scientific literature on the racial achievement gap, we argue that recognizing a right to education cannot be the silver bullet to slay the villain of educational inequality. Nevertheless, adequate and equitable funding remains the basis for school finance litigation, so litigants and courts must find a way to link funding with improving educational outcomes. We predict that school finance litigation will increasingly draw on the tools for assessing educational outcomes developed by education experts and policymakers as the basis for evaluating constitutional violations and remedies, and outline what such a new wave of school finance litigation might look like.