
**Educational Constitutionalism, Digital Learning Governance, and Institutional Inequality:
Comparative Legal Transformation in Finland and South Africa, 2020–2026**

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ABSTRACT

This annual review examines educational constitutionalism and digital learning governance through a comparative analysis of Finland and South Africa between 2020 and 2026. The article argues that education law has shifted from access-based rights discourse toward a broader governance framework involving digital infrastructure, institutional capacity, equality, administrative accountability, and socio-economic resilience. Finland and South Africa provide analytically significant comparative cases because both recognize education as a public responsibility, yet they differ sharply in welfare capacity, historical inequality, constitutional enforcement, and digital readiness. Finland’s governance model emphasizes universal welfare provision, municipal implementation, teacher professionalism, and digital inclusion within a high-trust institutional environment. South Africa’s model is shaped by transformative constitutionalism, judicial enforcement of socio-economic rights, historical inequality, and persistent infrastructure deficits. The findings show that digital education reform strengthens equality only when supported by institutional capacity, fiscal commitment, inclusive infrastructure, and accountable implementation. The article contributes to contemporary legal scholarship by conceptualizing educational constitutionalism as an institutional transformation process linking rights, governance capacity, public trust, social mobility, and democratic development.

Keywords: education law; digital learning; constitutional rights; comparative law; Finland; South Africa; institutional inequality; public policy; socio-economic rights; digital governance.

INTRODUCTION

Education law has become a central field of constitutional and governance transformation in the post-pandemic period. Between 2020 and 2026, the rapid expansion of digital learning, school closures, learning-loss debates, inequality concerns, artificial intelligence in education, and public-sector digital modernization transformed education from a traditional welfare service into a strategic governance domain. Education systems now determine not only individual opportunity but also democratic citizenship, labor-market adaptability, technological inclusion, and social resilience.

This article argues that contemporary education law must be understood through the concept of educational constitutionalism. Education rights are no longer limited to formal access to schools. They increasingly require effective institutional delivery, digital inclusion, quality assurance, non-discrimination, child protection, data governance, and equitable public financing. The right to education has therefore become a governance right: it depends on whether states possess the institutional capacity to deliver meaningful, inclusive, and future-oriented education.

Finland and South Africa provide analytically valuable comparative cases. Finland represents a high-capacity welfare-state model built on universalism, municipal implementation, professionalized teaching, and high public trust. South Africa represents a transformative constitutional model in which courts have repeatedly enforced socio-economic rights against the background of apartheid-era inequality, spatial exclusion, and unequal school infrastructure. Both jurisdictions illustrate that education law is central to democratic legitimacy, but they demonstrate different relationships between rights, institutions, and implementation.

The global context reinforces this argument. UNESCO, the World Bank, and OECD have documented substantial learning disruptions after COVID-19, with digital divides worsening inequality across income, geography, disability, and language groups. Educational governance after 2020 therefore became inseparable from digital infrastructure, household connectivity, teacher training, and administrative capacity. At the same time, education systems increasingly adopted digital platforms, learning analytics, and AI-assisted tools, raising questions concerning privacy, discrimination, procurement, and accountability.

Existing scholarship has made important contributions to education rights and governance. Sen (1999) conceptualizes education as a core capability enabling human freedom. Tomasevski (2001) developed the availability, accessibility, acceptability, and adaptability framework for the right to education. Liebenberg (2010) analyzes socio-economic rights as tools of transformative constitutionalism. Sahlberg (2021) emphasizes Finland's equity-oriented education governance. Spaul (2020) examines South Africa's deep learning inequalities and institutional constraints. Other scholars have analyzed pandemic-era education

disruption, digital exclusion, and the limits of remote learning governance.

However, contemporary literature remains limited in several respects. While previous scholarship emphasizes access and equality, it often underexamines digital governance and institutional capacity. Other legal scholars focus on constitutional enforcement but insufficiently connect court decisions to fiscal governance, administrative implementation, and technological infrastructure. Existing comparative scholarship also tends to contrast high-performing education systems with unequal systems descriptively rather than analytically explaining how governance structures mediate rights realization.

This article identifies five research gaps. First, a theoretical gap persists in conceptualizing education rights as institutional governance rights. Second, a comparative legal gap remains regarding how welfare-state and transformative constitutional systems operationalize education equality. Third, an institutional governance gap concerns how digital infrastructure, teacher capacity, and administrative coordination shape legal effectiveness. Fourth, an empirical gap concerns post-pandemic learning inequality and digital exclusion. Fifth, a policy gap remains concerning how digital education reforms can avoid reproducing structural inequality.

The novelty of this article lies in its integrated account of educational constitutionalism as a framework connecting law, institutional capacity, digital governance, equality, and socio-economic resilience. The article compares Finland and South Africa not simply as education systems but as constitutional governance models facing the same global digital transformation under radically different institutional conditions.

The analytical framework proceeds as follows: education rights require institutional capacity; institutional capacity shapes digital inclusion; digital inclusion affects educational equality; educational equality influences social mobility and democratic legitimacy. The research objective is to examine how Finland and South Africa transformed education governance between 2020 and 2026 and to evaluate what these developments reveal about law, institutional inequality, and public policy in contemporary digital societies.

METHODOLOGY

This article employs a comparative legal-governance methodology integrating constitutional analysis, education policy analysis, socio-legal interpretation, and institutional comparison. Finland and South Africa were selected because they represent contrasting but globally instructive models of educational constitutionalism. Finland illustrates a high-trust welfare governance model in which education equality is pursued through universal public provision, professional autonomy, municipal implementation, and strong digital readiness. South Africa illustrates a transformative constitutional model in which education rights are judicially enforceable but structurally constrained by historical inequality, uneven infrastructure, fiscal limits, and administrative fragmentation. This comparison enables analysis of how legal rights interact with institutional capacity, digital infrastructure, public finance, teacher

professionalism, and social inequality.

The analysis draws on constitutional provisions, education legislation, judicial decisions, government policy documents, UNESCO and OECD reports, World Bank education materials, national digital education strategies, and peer-reviewed scholarship from 2020–2026. The method combines doctrinal interpretation with comparative institutional synthesis, focusing on education rights, equality obligations, digital learning governance, public-sector implementation, school infrastructure, data protection, and social outcomes. Triangulation is achieved by comparing legal frameworks with institutional evidence, policy reports, learning-loss data, and scholarly assessments. The principal limitation is that post-pandemic education outcomes remain unevenly measured and digital reforms continue to evolve. Nevertheless, the comparative framework provides a coherent basis for assessing education law as a central field of institutional transformation.

Findings and Discussion

1. From Access to Effective Educational Capability

The first finding is that contemporary education law increasingly moves beyond formal access toward effective educational capability. Finland demonstrates this transition through universalist public provision, strong teacher education, inclusive support systems, and low levels of school stratification. Education equality is not primarily litigated because it is institutionally embedded within welfare governance and public trust.

South Africa illustrates a different pathway. The right to basic education is constitutionally enforceable and has been interpreted by courts as immediately realizable. Judicial decisions concerning textbooks, school infrastructure, sanitation, and access have transformed education rights into enforceable governance duties. Yet persistent inequality shows that constitutional recognition alone cannot overcome weak infrastructure, spatial inequality, and administrative incapacity.

The comparative evidence demonstrates that the right to education is meaningful only when it produces actual learning opportunities. Formal enrollment does not guarantee literacy, numeracy, digital competence, or social mobility. This supports capability-based theories of education rights, which emphasize substantive freedom rather than formal access.

The governance implication is significant. Education law must evaluate whether institutions deliver meaningful educational capability. Legal systems must therefore monitor learning quality, infrastructure adequacy, teacher support, inclusion, and digital access.

2. Digital Learning, Infrastructure, and Inequality

The second finding is that digital learning reforms can either reduce or deepen inequality depending on

institutional capacity. Finland entered the post-pandemic period with strong digital infrastructure, teacher competence, and household connectivity. Digital tools were more readily integrated into education because baseline welfare and infrastructure conditions were relatively equal.

South Africa faced far greater digital inequality. Remote learning exposed disparities in electricity, internet access, device availability, language support, and home learning environments. Digital education therefore risked reinforcing existing socio-economic inequality. The legal issue was not simply whether digital tools were available, but whether public institutions could ensure equitable conditions of use.

This comparison reveals that digital education policy must be rights-sensitive. Digital transformation cannot be treated as neutral innovation. It redistributes educational opportunity through infrastructure, affordability, design, language, accessibility, and data governance.

Previous scholarship on digital education often emphasizes innovation and efficiency. The comparative evidence suggests a more cautious conclusion: digital tools improve equality only when embedded within inclusive public infrastructure and accountable governance. Otherwise, digital education becomes a mechanism of stratification.

The policy implication is that states must treat broadband access, device provision, teacher training, digital accessibility, and child data protection as integral components of the right to education.

3. Institutional Capacity, Fiscal Governance, and Administrative Accountability

The third finding is that education rights depend heavily on administrative and fiscal capacity. Finland's education governance benefits from stable public funding, professionalized administration, and high levels of institutional trust. Municipal implementation allows local adaptation within a nationally coherent welfare framework.

South Africa's education governance is marked by uneven provincial capacity, infrastructure backlogs, procurement failures, and fiscal pressure. Courts have played an important role in compelling government action, but litigation often addresses failures after harms have occurred. Judicial enforcement is therefore necessary but insufficient.

This finding challenges court-centered accounts of socio-economic rights. Courts can define obligations and require remedies, but implementation depends on budgets, bureaucracies, procurement systems, monitoring, and political commitment. Education constitutionalism must therefore be understood as institutional constitutionalism.

The comparative evidence also shows that accountability systems must be multidimensional. Excessive centralization may weaken local responsiveness, while excessive decentralization may produce unequal implementation. Effective governance requires clear national standards, local capacity, transparent financing, and participatory oversight.

4. Data Governance, Child Rights, and Platformization of Education

The fourth finding is that education systems increasingly face platformization. Digital learning platforms collect student data, mediate classroom activity, shape pedagogical choices, and create dependencies on private providers. This raises legal concerns regarding privacy, procurement, algorithmic bias, child protection, and public accountability.

Finland’s strong data protection culture and EU legal environment provide safeguards through GDPR-based protections, public procurement rules, and institutional accountability. However, even high-capacity systems face challenges in supervising educational technology vendors and AI-enabled learning tools.

South Africa faces greater risks because digital education procurement may occur under conditions of unequal bargaining power, limited oversight, and urgent infrastructure need. If poorly regulated, educational technology may increase dependency on private platforms while weakening public control over student data.

The comparative evidence demonstrates that digital education governance requires integration between education law, data protection law, procurement law, child rights, and administrative accountability. Education platforms are not merely teaching tools; they are governance infrastructures.

The policy implication is that governments must require transparency, child-centered design, data minimization, public auditability, and accountability in educational technology procurement.

Table 1. Comparative Matrix of Contemporary Legal Governance and Institutional Transformation

| Variable | Case 1: Finland | Case 2: South Africa | Empirical/Le gal Evidence | Analytical Interpretati on |
|-----------------------------|---|--|--|---|
| Constitutional Model | Welfare-state education equality | Transformative constitutional right to basic education | Finnish education legislation; South African Constitution | Rights operate through different institutional pathways |
| Governance Capacity | High municipal and professional capacity | Uneven provincial and administrative capacity | Teacher training and local implementation; infrastructure litigation | Capacity mediates rights realization |
| Digital Readiness | Strong connectivity and digital inclusion | Significant digital divide | OECD and UNESCO education reports | Digital learning reflects existing inequality |
| Judicial Role | Limited | Active | South African | Courts |

| | | | | |
|--------------------------------|---|--|--|--|
| | litigation due to institutional trust | judicial enforcement | education rights cases | matter most where administration fails |
| Fiscal Governance | Stable public investment | Budget constraints and backlogs | Public education financing patterns | Funding shapes constitutional effectiveness |
| Teacher Professionalism | Strong autonomy and high training standards | Uneven teacher support and resource distribution | Teacher education systems | Professional capacity affects learning equality |
| Platform Governance | Stronger data protection safeguards | Higher procurement and privacy risks | GDPR framework; emerging edtech governance | Digital education requires data accountability |
| Equality Outcome | Broadly inclusive system | Persistent structural inequality | Learning outcome disparities | Formal rights require material support |
| Democratic Legitimacy | High trust in public education | Rights-based accountability under strain | Public trust and litigation patterns | Legitimacy depends on delivery credibility |
| Global Implication | Model of welfare-based education governance | Model of rights-based transformative litigation | Comparative education law scholarship | Both reveal limits and strengths of legal governance |

The table demonstrates that educational constitutionalism operates through different institutional mechanisms. Finland shows how rights may be realized through welfare capacity and professional trust, while South Africa shows how courts can activate constitutional obligations under conditions of structural inequality. The deeper comparative insight is that legal rights require institutional infrastructures capable of translating constitutional promises into actual learning capability.

Theoretical Propositions

Proposition 1: Education rights are institutional capability rights.

The right to education requires not only access to schooling but effective institutional delivery of meaningful learning opportunities.

Proposition 2: Digital learning deepens equality only when supported by inclusive infrastructure.

Connectivity, devices, teacher training, language access, and disability inclusion are legal conditions of

digital educational justice.

Proposition 3: Courts can constitutionalize education duties but cannot substitute for administrative capacity.

Judicial enforcement is most effective when connected to budgets, monitoring, procurement reform, and institutional accountability.

Proposition 4: Educational technology requires public-law governance.

Digital platforms in education must be regulated through privacy, procurement, child rights, transparency, and auditability standards.

CONCLUSION

This article examined educational constitutionalism and digital learning governance in Finland and South Africa between 2020 and 2026. The central conclusion is that education law has moved beyond access-based rights toward institutional governance of educational capability. The right to education is increasingly shaped by digital infrastructure, administrative capacity, fiscal governance, data protection, and public trust.

The comparison demonstrates that Finland and South Africa represent distinct legal-governance trajectories. Finland illustrates how welfare capacity, teacher professionalism, and public trust can embed education equality institutionally. South Africa illustrates how transformative constitutionalism and judicial enforcement can activate rights under conditions of structural inequality, but also how weak implementation capacity limits legal effectiveness.

The theoretical contribution of this article is the concept of educational constitutionalism as institutional capability governance. This framework explains why education rights require not only legal recognition but material, administrative, and digital infrastructures.

The policy implications are substantial. States must treat digital access, teacher capacity, infrastructure, child data protection, and inclusive design as components of education rights. Courts, legislatures, ministries, municipalities, schools, and technology providers must operate within an integrated accountability framework.

This article is limited by the evolving nature of post-pandemic education data and by its focus on two jurisdictions. Future research should compare digital education governance in Latin America, East Asia, and low-income countries, particularly where platformization and inequality intersect.

Ultimately, the future of education law will depend on whether states can transform constitutional promises into inclusive learning capability. In digital societies, educational justice requires not only schools, but institutions capable of governing technology, equality, and public trust.

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