



Comparison of “Will” Concept in Education and Jurisprudence and Possible Challenges in the Educational System of Iran and England

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ARTICLE INFO	ABSTRACT
<p>Received: 26 August 2020 Revised: 04 November 2020 Accepted: 14 June 2021 Online: 15 June 2021</p>	<p>The acceptance of man as a creature with a "will" is endorsed by all educational and legal systems, although the same intellectual and ideological foundations do not support this agreement. The purpose of this study was to investigate the concept of will and its consequences in the educational and legal systems of Iran and England. The research method is qualitatively comparative using document and content analysis methods for collecting and analyzing data. The research findings showed that there are similarities between the educational and legal systems of Iran and England in terms of accepting the idea that "human beings have a will". Another finding of the study revealed that in Iran, religious will prevails over individual and social will, and in England, individual will prevails over social and religious will. The research findings also indicated the dominance of "Islamic ideology" in Iran and "ideology of liberalism" in England over the concept of will in both educational and legal systems. In addition, the findings showed that when the concept of will enters the behavioral domains, it can make a difference in the performance of both educational and legal systems.</p>
<p>KEYWORDS</p> <p>Educational System Legal System Islamic Ideology, Liberalism Will</p>	

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1. Introduction

The victory of the Islamic Revolution in Iran in the late 1970s caused fundamental changes in social systems, including educational and legal systems. The new political system, with the change of monarchy to the Islamic Republic, showed that the new political system emphasizes reconstruction of social foundations based on the framework of Islam. Thus, before other social systems, the Iran's educational system underwent changes in several dimensions such as school programs, extracurricular activities and the content of school textbooks (Rabiei, Fayyaz, Mahrouzade, Bakhtiari, & Khorsandi Taskooh, 2019). The common denominator of these reforms was the view of educational issues according to the Islam and rejection of other ideologies. This also happened in the Iran's judiciary system.

Until 1979 many of the Iran's judiciary laws were modeled on Western countries such as France, Britain, and the United States, many of them changed dramatically after the revolution (Banakar, & Ziaee, 2018). The legal system is based on providing specific frameworks between individuals. Through the enactment of clear laws, this system determines the "do's and don'ts" of behavior between individuals, individuals with social systems, individuals with government, and individuals with foreign systems. But two questions arise here: First, from what intellectual, philosophical and ideological sources these specific frameworks originate, and second, how these intellectual and ideological ideas are transmitted to individuals.

The general answer to the first question is that there is no single ideology for determining legal frameworks because ideologies are unable to predict human "changing needs." At the same time, of course, some ideologies have more dominance over social systems. In Iran, the legal system is mainly influenced by Islam (Ameri Seyahooei & Kazem Emadzadeh, 2016). There is a simple answer to the second question. The political system, mainly through the educational system, tries to teach the young generation - as future citizens - the legal behavioral frameworks. Therefore, there is an inseparable and reciprocal relationship among the political system, the legal system and educational system (Figure 1).

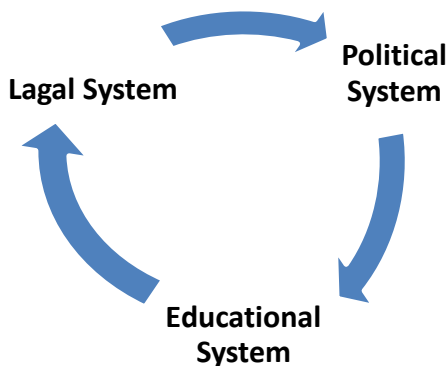


Figure 1: Interactive relationship of political, educational and legal systems

In the first stage, the political system uses power to influence educational system to determine contents of formal and non-formal programs and textbooks based on its ideological goals in order to raise a generation to which it ostensibly adheres within the framework of the law (Shrestha, Williams, Al-Samarrai, Van Geldermalsen, & Zaidi, 2019). In the second stage, the educational system undertakes two basic tasks: First, teaching the intellectual foundations of the political system to children and youth; and second, preparing manpower for the legal system (as Judge, lawyers, and police). In the third stage, the legal system, using human resources - which are the output of the educational system - enacts and supports laws that guarantee the survival and continuity of the political system. Thus it is observed that a rotational relationship arises between the three social systems.

Understanding this relationship, there is another question: what happens if there is a conflict between the intellectual foundations of the education system and legal system. This is a serious question that needs further explanation. In fact, despite the interaction of the three systems, it must be acknowledged that the relationship of these systems is not limited to each other (Burrige, & Webb, 2006). For example, the educational system is influenced by the scientific system and its various fields of knowledge. In this case, the young generation may receive conflicting training and realize that different social systems have various expectations. The issue of "will" is one of the areas that could show this challenge between the two educational and legal systems of Iran.

Will is a topic of interest to scientists in sciences such as philosophy and religion, sociology, politics, psychology and law. In philosophy and religious sciences, the concept of will refers to the old subject of determinism (Sharifani, 2019). In sociology, this concept refers to the relationship of the individual to the group and the preference of individual or social tendencies over each other. In politics, the concept of will explains the relationship between the nation and the state in the sphere of power. In psychology, this concept refers to the development of decision-making power and in law, the expression of the ability to accept responsibility for behavior. The common denominator of all sciences regarding the concept of will is the acceptance of this principle that "man is a creature with will" (Hosseini Zargar, 2017). The difference between these sciences is because of their different foundations, principles, and laws. However, despite these similarities and differences, scientists use the findings of various sciences to explain the concept of will and its application. In this way, one can start from a macro system and reach a subsystem (Figure 2).

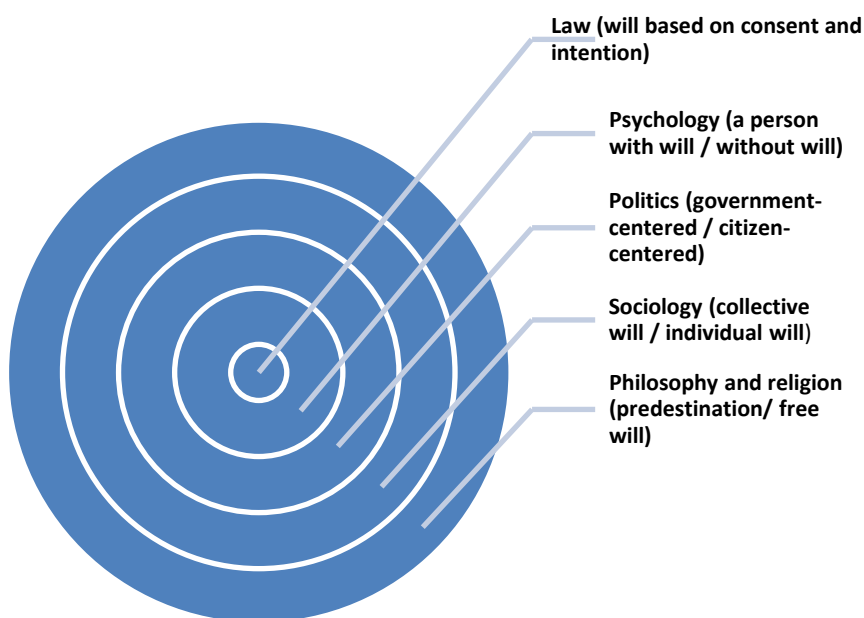


Figure 2: Explanation of relationship between epistemic systems according to position of will

According to Figure 2, philosophy and religion can be considered the largest system of thought that affects later systems. Philosophers and religious leaders throughout history have sought to answer the question of whether man has a will. History shows that different Islamic sects chose one between predestination and free will and presented several reasons from the

Qur'an and the behavior of the Prophet to support their view (Soleimani 2005). In the meantime, Shiite scholars have mainly considered human beings to have authority and will, although they also accept the lack of human will in some cases. In the second step, we deal with the sociological system. Sociologists examined the human will according to the relationship between the individual and society and were divided into two main groups. The group that considers the collective will to govern individual behavior and those who prefer the individual will (Schrans, 2018). The orientation of these two groups affected the political system and caused a group of politicians to consider the government as the axis and possessor of the main will. In contrast, some view the nation through the eyes of informed and decisive citizens (Butts, 1989; Etzioni, 1993). According to the second group, citizens are human beings with the will to change governments - through their own will - and the government is at their service. Psychologists also deal with two types of people. Those who have the will and people who rotate like puppets in the hands of others. Output of these different views lead to the formation of two conflicting legal systems: First, a system in which individuals have the will and are responsible for their obligations, contracts and promises; and a system that considers human beings to have no will and therefore there is no reward or punishment for their behavior.

It is obvious that the orientation of these epistemic systems affects social systems and their definition of the human will. This effect does not occur in a vacuum. Therefore, considering the social changes that have occurred in Iran during the last four decades, the purpose of this study was to investigate and compare the concept of will in the educational and legal systems of Iran and England. This issue is important in several ways: First, an attempt is made to provide a theoretical explanation of the concept of will and different epistemological interpretations of it in two different countries. The previous researches have been mainly limited to the study of the concept of will in one epistemological field (Alavi & Ejei 2013; Bigdeli, 2015; Mousavi Bojnourdi & Malihi, 2015). For example, the issue of the will has been studied separately by psychologists or jurists (Baumeister, 2007; Libet, 1999; Walters, 1995; Wegner, 2002). For this reason, the present researchers did not succeed in finding studies that have considered the subject as interdisciplinary. Second, in this study and from a comparative perspective, the similarities and differences related to the will have been examined. According to this goal, the sub-objectives of the research are:

1. Provide a theoretical analysis of the concept of will in different epistemological systems in each country
2. Identifying the similarities and differences between the two educational and legal systems of Iran and England according to theoretical analysis

2. Research Method

The method of the present study was qualitative comparative with non-emergent design (Lincoln & Guba, 1985). In the non-emergent design, the researcher first collects the data and then analyzes it (Strauss & Corbin, 2006). The research population includes all countries of the world and the research sample includes two countries, Iran and England. Purposeful sampling method was used to select two countries. The selection of Iran was made according to the researchers' familiarity with its educational-legal structure (School of Islam) and the selection of England was due to its leading position in legal and educational development (School of Liberalism). The data were collected through documentary method and analyzed in accordance with the rule of maximum diversity and principle of saturation. Although this type of research is not very popular, but influenced by the ideas of poststructuralists, it has again been considered by some researchers in recent years (Sweeting, 2007). The method of analysis is to review the texts and works related to the subject of research. For this purpose the content of books, articles and electronic resources were examined and analyzed (n = 54).

3. Findings

According to the two sub-objectives of research and data analysis, the results are divided into 4 parts. In the first stage a theoretical analysis of the concept of will in different epistemological systems is expressed. In the second and third stages, the concept of will in the educational and law systems is explained. The fourth section is dedicated to expressing similarities and differences between two countries.

First) Theoretical analysis of the concept of will

A) England

Historically, Western societies such as Britain have been largely influenced by the philosophical system of ancient Greece and the philosophical views of René Descartes, Francis Bacon, David Hume, and the Christian religious system (with a prominent

Protestant role) in shaping their social systems (Irwin, 2007). Philosophically, schools such as Realism and English philosophers emphasize the free will of man (Reese, 1999). The Protestant religious system has followed the same procedure, although Christian scholars have played a lesser role in explaining the concept of will (Alston, 1998). Thus, the philosophical structure paved the way for acceptance of the individual will in British society. Sociological schools in this country also emphasized the preference of the individual over the collective. The implications of this belief are evident in the three intellectual domains of politics, education, and law. In the field of politics, the emphasis is on role of "small state", in the field of education, the emphasis is on "individuality", and in the field of law, the emphasis is on "individual will and freedoms with minimal restrictions" (Figure 3).

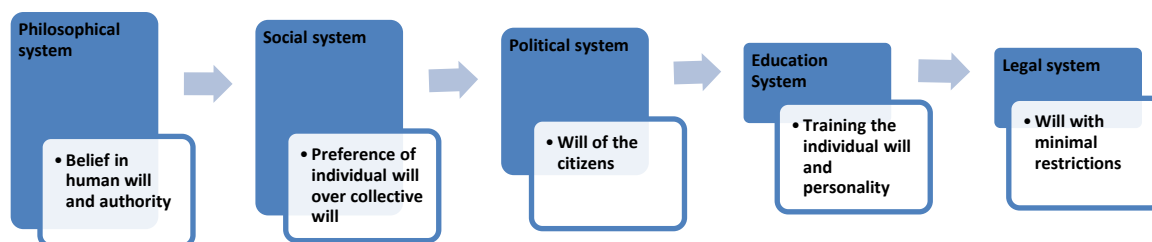


Figure 3: Theoretical explanation of the place of will in social systems of England

B) Iran

From a historical perspective, Iran’s society has a multi-layered identity that is mainly influenced by three cultures: Iranian, Islamic and Western (Shaygan, 2002). However, considering the important role of present political system of country, it should be said that the two Iranian and Western elements play a very small role in shaping and developing both education and legal systems. For this reason, philosophically, the social system of Iran is influenced by the school of Islam - especially Shiism and Umayyad jurisprudence – nowadays. According to the Shiite school, man has a will and authority,

but this will is not very large and man must move within the framework of religion. Thus, in Iran's social system, both individual will and collective will are subject to religious will. According to religious will, human actions are formed in five states. In the first case, his will is free (halal affairs). In the second case, he will never have the will to do certain things (forbidden things). In the other three cases, he has a relative will. Thus, the individual will in relation to the political, educational and legal system is formed in the form of these five states. In the political system, he is subject to the Islamic ruler. The ruler can enter into various contracts with individuals (commercial, legal, economic, etc.) and cancel them unilaterally whenever he wishes (Writers Group, 2001). In the educational system, the concept of will is subject to the frameworks set by the government, and finally it must be acknowledged that in the legal system, the human will is determined according to the five forms of religious behavior (Figure 4).

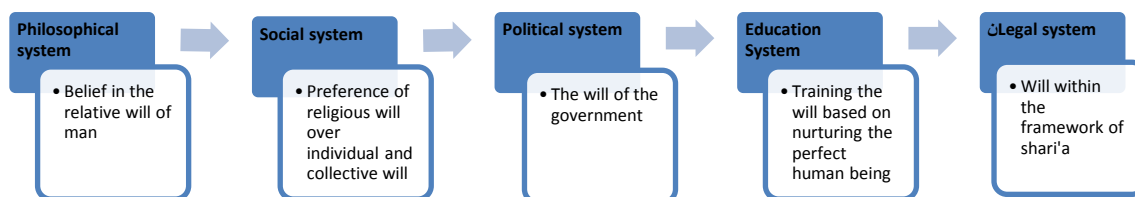


Figure 4: Theoretical explanation of the position of will in Iran's social systems

Second) Concept of will in the educational system

According to what was said in the previous step, it is necessary to pay attention to the role of individuals and their will in educational system. Naturally, this "will" can be discussed from various aspects. Some of these aspects are: How to manage the educational system, how to hire principals and teachers, how to compile textbooks, and the role of learners and parents.

A) England

The education system in the England is run non-central, and the power and will of the Department of Education is largely limited to supervision of schools' performance with minimal involvement (Turner, 2005). In terms of how to hire principals and teachers, the main role is played by organizations such as municipalities, teachers' councils, parents' associations and school founders. Textbooks are published by the private sector with a variety of content and the will of the central government is not enforced. The teaching method is also student-centered, learners' active will and the interactive role of parents with the school (Desforges, & Abouchaar, 2003). In terms of curriculum content, the emphasis is on nurturing and strengthening students' will, valuing individual decisions, preferring individual will over collective will, and teaching citizenship rights to apply individual will in life (Kerr, 2003). All these aspects indicate the existence of a social system that is based on the maximum will and responsibility of individuals.

B) Iran

In a process mainly opposite to that of England, in Iran the educational system is centrally managed in all its aspects and the role of individual will is weak. The Ministry of Education determines the macro and micro policies in such a way that even many extracurricular activities of students have a precept aspect and all teachers and students at different levels are obliged to implement it (Mosapour Miyandehi, Peyronaziri, & Galyan Moghaddam, 2019). Principals and teachers are hired by the government and parents and students have no role or will in it. The selection of school principals follows a legal process based on the orders of superiors. Textbook content is the same for all students across the country and teachers have no role in determining it (Science Applications International Corporation, 2007). In the teaching-learning process, the teachers have an active role and the will of the students submits to the will of the teacher. Although efforts are made to strengthen the will of learners, in practice, there is very little opportunity for practical realization of the will of students and their parents. The student's relationship with the teacher, the teacher with the principal, and the principal

with superiors is based on acceptance and obedience. Thus, in Iran's educational system, the individual will is mainly obedient to the social will and the social will in its entirety is subject to the political and religious will.

Third) Concept of will in the judiciary system

Before examining the concept of will in the judiciary system of the two countries, it should be clearly pointed out that although the concept of will in the educational system is not necessarily the same as its legal meaning and interpretation, there is no difference in essence between these definitions. In fact, regardless of which of the epistemological areas we discuss the concept of will (politics, law, psychology, education or sociology), its nature presupposes a fundamental concept, namely, the "acceptance of the existence of the human will in choice and doing things" (Alizadeh, 2010). Thus the legal and educational basis of the will is the same and similar. With regard to this point, we examine the concept of will in selected countries:

A) England

Historically, eighteenth-century philosophers such as Jacques Jean Rousseau, Kant, and Hume valued the human will morally and believed that individuals were equal and free. Accordingly, we are confronted with the idea of individualism; the concept by which a person's life belongs to him. This life is his property and does not belong to God, society, or government and he can treat it as he pleases (Schafer, 1983). The theory of individualism is linked to that of the English philosopher Thomas Hobbes and the Scottish economist Adam Smith. Human rights treaties and conventions, as well as their emphasis on individualism and humanism instead of collectivism in the West, are one of the reasons for accepting the rule of will in countries like England. Individualists believe that the purpose of legal rules is to ensure individual freedom and respect for human rights and personality (Katozian, 1998). Accordingly, the only basis and source of legal rules is the will of the individual (Rafiei Moghadam, 2011). In fact, the principle of the rule of will is a philosophical principle that recognizes that the will of the individual is self-respecting and individuals can make any commitment of their own free will. These obligations are the source of the effect in practice and its influence does not need to be

specified by the legislator (Katozian, 2003). Therefore, contracts that are concluded voluntarily are necessarily considered fair and any obstacle by the legislator in the way of its implementation is considered unfair (Safaei, 1976). Indeed, when two equal wills with equal conditions agree, this agreement must be respected by the legislator, or if a person with a will voluntarily commits himself without pressure, this commitment can be valid. Base on this, the English legal system, according to the principle of "maximum use of the individual will in affairs", allows minimal interference of religious, political, cultural and social systems in the formulation and enactment of laws.

B) Iran

The rule of will is a modern concept that the Iranian legal system has been familiar with since the constitutional period (1905-1911) (Tahan Nazif & Ehsani, 2017). When this concept was first introduced, jurists talked a lot about its compliance with jurisprudential standards, although they never dealt with its philosophical and intellectual basis (Mohammadi & Fallah, 2015). The principle of the sovereignty of the will is rooted in the view of voluntaristic agency, which is philosophically formulated in the philosophy of Descartes and Kant. The main conflict between the principle of will derived from the thoughts of Western philosophers and the Islamic view of this principle goes back to the position of man. From a religious point of view, the world belongs to God. Many jurists, considered the legitimacy of any kind of contract in the will of the Shari'a and not in the will of man (Amid Zanjani, 1991; Jafari Langroudi, 2013). Therefore, in Islamic jurisprudence, it is difficult to accept that any kind of contract is based on the innate and carnal will of man and independent of the will and permission of the Shari'a. In fact, the power of human will is defined within the limits and frameworks of religion. Therefore, the behavior, will, decisions, contracts and obligations of individuals should be accepted or rejected based on the view of Shari'a and the type of ruling (obligatory, forbidden, recommended, disliked, permissible) (Emami, 2008).

Fourth) Similarities and differences

Phenomena such as the growth of information and communication technologies and globalization have increased the similarity of societies. However, one can still see differences influenced by factors such as religion, politics and culture. Analysis of the data shows few similarities between educational and legal systems of Iran and England. The most important of these similarities are:

- Influence of changes and developments in the modern world: This means that during the last one hundred years, both countries have witnessed constant changes in educational and legal laws. In the meantime, England has played mainly the role of innovator and pioneer and Iran has played the role of emulator.
- Acceptance of human will and authority: Regardless of different ideological foundations, acceptance of human willpower is emphasized by policymakers and legislators in both countries. Meanwhile, the historical record of the study of the dimensions of will by jurists in Iran is more than in England.
- Emphasis on the priority of society's interests in social law: Emphasis on the preference of collective interests over individual interests and the reduction of willpower is the common point of both Iran and England societies. However, this emphasis is minimal level in England and maximal degree in Iran.
- Emphasis on the priority of individual interests in private law: The emphasis on the protection of personal interests and rights is the common point of both Iran and England. Of course, this emphasis is broad in England and limited in Iran.

In terms of differences between the educational and legal systems of the two countries, many things should be noted:

- In Iran, the school of Islam, and in England, the school of liberalism (or its advanced form, neoliberalism) determine the philosophical foundations and general orientations of the two educational and legal systems.

- In both the educational and legal systems of Iran, social will is preferred to individual will, while both are subject to religious will.
- In England, individual will takes precedence over social will, and religious will does not play a decisive role in principle.
- In Iran, the will of the individual in all educational and legal fields (social and private) is subject to the will of the ruler of religious government or Shari'a (Velayat-e-Faqih). In the England, government is subject to the collective will of citizens in the decision-making process for commitments and contracts.
- In England, the education system seeks to strengthen and nurture the will of learners to act as aware and active citizens, while in Iran the goal of the education system is to nurture the will of students to act as faithful citizens.
- In England's legal system, the concept of will arises from the idea of humanism, and in Iran it is based on action within the sphere of divine influence and religious frameworks.

The existence of these similarities and differences between the two countries at first seems quite natural. The importance of these differences becomes apparent when we realize that the England education and legal systems - as a leading country - has often been considered as a "model" by policymakers of international organizations and countries around the world - including Iran- (Judicial Office International Team, 2016; Safaei, 2012). In Iran, on the one hand, children and young people are introduced to concepts such as will, the right to self-determination, and citizenship rights with primary intellectual and ideological sources base on humanism and liberalism. On the other hand, the legal system of the country demands that schools be able to raise law-abiding citizens. At the same time, this legal system has not been able to resolve philosophical and ideological conflicts governing concepts such as will and issues such as international obligations, freedom of association, puberty, divorce, inheritance, retribution, and citizenship according to life in new era (Azari & Tabatabai Hesari, 2017; Islami & Kamalvand, 2014; Nouri, 2017; Shokri, 2008). In this case, the Iranian student is caught in a conflict between two intellectual poles. Here is an example to make the point clearer:

Although the principle of sovereignty of the will is explicitly stated in Article 10 of the Iranian Civil Code, in practice this principle is limited to such matters as conflicts with public order, good morals or Shari'a (Article 6 of the Code of Civil Procedure and Article 975 of the Civil Code). Thus, the Iranian legal system is currently influenced by both the traditional and jurisprudential system and the Roman-German system (Bigdeli, 2015). Therefore, from one side, the view of Iranian jurists in drafting and approving laws is based on Islamic rules - and especially Imami jurisprudence - and on the other side, it is influenced by international legal rules. Most Iranian jurists who have spoken about the principle of the rule of will have accepted that this principle stems from the humanist philosophy and individualistic thoughts of eighteenth-century Europe (Katozian, 2003). At the same time, they have tried to defend this principle by invoking the principles of Islam, while this principle seems to be in serious opposition to the Islamic jurisprudential tradition. Therefore, there seems to have been an important mix in the interpretation of concepts such as will, law, and public order - and their conformity with Islamic law and the common worldview of them - in the Iran's legal system. This mix is due to Iranian jurists' insistence to make unity between Western standards and Islamic jurisprudence (Bigdeli 2015). In fact, the will based on individualism now forms the basis of many civil laws of countries and still has many followers (Katozian, 2010). According to this will, man is his legislator and this has created the rule of will. Liberal individualism involves the recognition of a variety of freedoms such as freedom of association, freedom of belief, political freedom, freedom of expression, and freedom of access to information (Novin, 2011). As individualism places a higher existential and moral value on the individual in relation to society, it supports freedom. Thus, the freedom of the individual should not be the victim of laws, regulations and etiquettes that protect the society (Alavi Yazdi & Babazadeh, 2010). While in religious societies, many of these freedoms can be ignored under the pretext of opposing social or religious rights.

4. Conclusion

The principle of the rule of will in the modern world means to base the human will on the authority of legal acts. On the contrary, in Islamic jurisprudence, actions and behavior are

religious matters that must be done with the permission of Shari'a. Iran's education system, in line with the changes of the modern world, has made one of its goals to cultivate an informed and active citizenship - who defend and are familiar with their citizenship rights. At the same time, technological advances, globalization, and social change have created new problems for social systems - and especially the educational and legal systems. These new issues also require new education and rules. The young generation affected by these developments is looking for new solutions to re-examine old issues. For example, puberty is one of their concerns. Marriage and divorce have taken on new educational and legal dimensions that were unimaginable in the past. Inheritance is also an educational and legal challenge, especially when it comes to equality between men and women. Social freedoms - in the form of civil rights - also affect individuals' relationship with governments and again require new education and legislation. Taqiyya, as a method of behavior in Shia, needs to explain and separate its educational and legal boundaries with moral problems such as lying and cheating. In all these cases, the educational and legal systems are interdependent. The education system must align itself with the laws of the legal system. The legal system needs an active education system that can train its future manpower. Both of these systems should not neglect to understand the new developments in society.

The findings show that in the England education system, the main role is played by the will of the individual. Also, the legal system serves the individual will with maximum effort. In this case, there is no conflict between school education and the legal realities of society. These two systems actually serve each other. On the contrary, the findings of this study show that the Iran's educational system mainly plays a passive and influential role in the political system. The Iran's legal system is also in conflict between the Islamic jurisprudence system and the world system. Extremists of individual will, social will, and religious will, can each create many problems for both Iran educational and legal systems. Balancing these three wills is the main condition for resolving the conflict between the two educational and legal systems. The extreme emphasis on individual will is in conflict with the political structure, cultural realities, and historical facts of Iran. In many cases, due to lack of education, individual will has led to selfishness, destruction of security and disregard for the rights of all. Iran's educational system needs changes through which it can train the young generation to be active, progressive, and at

the same time moral and patriotic. Iran's history also shows that the extreme emphasis on social will is a tool to ignore citizenship rights. Iran's legal system needs reforms based on which it can seriously defend individual rights. Religious will has always been pleasing to people who are predominantly religious. However, excesses in the exercise of religious will can both weaken the social will and destroy the individual will. The cooperation of the educational system and the legal system with the religious system can be a good opportunity to create a "dynamic jurisprudence" in the Islamic Republic of Iran.

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