

Université de Montréal

**Children’s Right to “Proper Education” in Contemporary Iran:
A Critical Legal Essay with an Ethical and Empirical Approach
towards Improving Iranian Governance**

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Résumé

La recherche prend place dans le quotidien actuel de la sphère éducationnelle en Iran. Remarquons que l'Iran est État non occidental et islamique, mais ayant néanmoins adhéré au principe, plutôt occidental, de la *Convention internationale sur les droits de l'enfant*. Cette recherche s'insère dans une continuité de recherche au soutien des droits humains. Elle propose une voie d'*empowerment* aux groupes iraniens ouverts à la démocratie, mais aussi aux mouvements éducatifs soucieux des droits fondamentaux de la personne. Divisé en quatre chapitres, le questionnement hybride de la thèse conduit à un essai interdisciplinaire critique bénéficiant aux trois disciplines du droit, de la philosophie et de l'étude empirique. Face au système juridique international et iranien d'un point de vue juridique classique, le chapitre philosophique tend à répondre à la question de «*que pourrait-on considérer non seulement du droit à l'éducation, mais également du droit à une « éducation appropriée » fondée sur des motifs éthiques et philosophiques dans le sens où cela conviendrait mieux à la culture iranienne et aux habitudes sociales »*. Le chapitre empirique recherche donc "*Dans l'action en faveur des droits des enfants iraniens, que révèlent les représentations sociales iraniennes au sujet du fossé potentiel entre un concept idéal de «proper education» et la vie quotidienne des enfants? "*

À partir d'une approche philosophique— plus précisément d'une éthique de la vertu—, la thèse propose le concept d'«éducation appropriée» [*proper education*] comme approche critique des positions internationales et internes du droit à l'éducation de l'enfant. Y est présenté comme «éducation appropriée» un droit moral et juridique pour les enfants : ce droit relève alors de la catégorie *des droits au développement* qui servent le droit à *un avenir ouvert* et ainsi que le droit de s'épanouir pleinement. Le recours à ce concept propose ainsi conception du droit à l'éducation harmonisée au contexte iranien actuel. D'un point de vue empirique, à partir d'une

approche inductive typique de la *Human Rights Advocacy approach* et sur la base de quatre-vingts (80) entretiens auprès d'enfants et d'enseignants, sont observés et analysés les écarts entre le droit officiel et les façons dont ils sont vécus, mobilisés, pensés ou niés dans la sphère de l'éducation iranienne aujourd'hui. Enfin, l'essai juridique critique suggère que la gouvernance iranienne soit ouverte à une évolution vers une *autorité contractuelle moderne* dans le système éducatif pour être plus compatible avec les besoins psycho-émotionnels des enfants et en même temps pour d'appliquer des conseils politiques de l'éthique de la vertu à se déplacer vers une forme *libérale* de politiques éducatives qui promeuvent les vertus de *l'autonomie* et de *la tolérance*. Ils sont autant d'informations cruciales pour une gouvernance législative iranienne avisée, ancrée à une quête islamique de vertu tout autant qu'au bonheur des enfants.

MOTS CLEFS : Droits de l'enfant, droit à une éducation « appropriée », éthique de la vertu, défense des droits de l'Humain, essai interdisciplinaire et critique, système éducatif iranien, gouvernance législative islamique-iranienne

Abstract

The research takes place in the current daily life of the educational sphere in Iran. It should be noted that Iran is a non-Western and Islamic state, but nonetheless adhered to the rather Western principles of *the International Convention on the Rights of the Child*. This research is part of a continuity of research in support of human rights. It offers a path of empowerment to Iranian groups open to democracy, but also to educational movements concerned with the fundamental rights of the person. Divided into four chapters, the hybrid questioning of the thesis leads to a critical interdisciplinary essay benefiting the three disciplines of law, philosophy and empirical study. Facing the international and Iranian legal system from a classical legal view, the philosophical chapter tends to respond to the question of “*what could be considered not just the right to education, but the right to a “proper” education based in ethical and philosophical grounds in the sense that it would better suit Iranian culture and social habits than an allegedly “universal” [occidental] classical legal conception?*”. The empirical chapter, then, looks for the “*Iranian social representations of the children’s rights that reveal the gap between the ideal expressed concept of “proper education” and day-to-day life of children?*” with an advocative approach.

From a philosophical view —more precisely from virtue ethics stand point—the thesis proposes the concept of "right to proper education" as a critical approach to the international and internal positions of the right to education for children. "Proper education" is presented as a moral and legal right for children under the category of *developmental rights* which serves the right to an open future and the right to maximizing self-fulfillment. It is also a conception of the right to education harmonized with the current Iranian Islamic context. From an empirical standpoint, starting from a typical inductive approach of the *Human Rights Advocacy approach* and based on

more than eighty (80) interviews with children and teachers, the gaps between the official laws and the ways in which they are experienced, mobilized, thought of or denied in the sphere of today Iranian education, are observed and analyzed. Finally, the critical legal essay suggests the Iranian governance to be open to a shift toward a modern *contractual authority* in educational system to be more compatible with the psycho-emotional needs of children and at the same time to apply the virtue ethics political advice to move toward a *liberal* form of educational policies that promotes the virtues of *autonomy* and *toleration*. These are all crucial information for wise Iranian legislative governance rooted in an Islamic pursuit of virtues as well as the happiness of children.

KEYWORDS: Children’s right, “proper education”, virtue ethics, Human Rights Advocacy, interdisciplinary and critical essay, Iranian educational system, Iranian-Islamic legislative governance

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TO MY MOTHER

for being the most "proper" educator of my life

General Introduction

Le mot éducation a été parfois employé dans un sens très étendu pour désigner l'ensemble des influences que la nature ou les autres hommes peuvent exercer soit sur notre intelligence, soit sur notre volonté.
—Émile Durkheim¹

The day-to-day life of children in the school is not only a significant experience affecting their own current and future physical and mental health, but also is a day-to-day growing plant of the future health of their society, whether going to thrive in peace and happiness or become an infertile plant with anecdotes of failure and moral disasters.

Children have been historically considered the property of adults through thousands of years², as express the legal concept of the child “object of law”. They are now becoming “subject of law” and are the main concern of this inquiry, as full human beings whose fundamental rights deserve to be respected by their parents, their educators and above all by the state. However, respecting the rights of children in the school and by the educational system remains to be specifically investigated thorough this thesis. One must be aware of the fact that the school for the kids is not only a means of receiving their right to education: more importantly a significant part of their life is spent in this sphere where all their other rights are exposed to being respected or violated.

Therefore, one could connect the *children's rights in the sphere of school* and their *right to education* to a vaster consideration of the concept of “education” and consequently come up with a specific concept of “the right to proper education for the children”. This is what we have pursued in this interdisciplinary thesis with a non-standard approach from legal perspective, and with a

¹ Émile DURKHEIM, *Éducation et sociologie*, Édition électronique réalisée par Jean-Marie Tremblay, 1992, p. 4.

² Xu JIANG, Hanita KOSHER, Asher BEN-ARIEH et E. Scott HUEBNER, « Children's rights, school psychology, and well-being assessments », (2014) 117-1 *Soc. Indic. Res.* 179-193, 179.

rather « baroque » method of inquiry because of adaptation to the hybridity of building the problem across disciplinary borders (which will be explained further).

While considering the children as the subject of rights is a fairly recent phenomenon —since only a century ago in certain areas of the world and still non-existent elsewhere, and can be conceived as revealed through some movements like the *new sociology of childhood* in 1990s³—, the education of children in itself has been an ancient matter of concern for the philosophers and thinkers. Plato and Aristotle, founders of *Virtue Ethics*, had emphasised the essence of education in order to achieve human flourishing and achieving the full happiness (*eudemonia*) by the means of practical or moral wisdom.⁴ Even though the concept of rights had never been recognized for these ancient philosophers, the duty of educating children has been burdened on the shoulders of adults and the political society in their moral and political theory.

A similar concern about education has been existed among medieval Islamic authors and philosophers who tended to agree with Greek philosophers about the principles of virtue ethics. Avicenna and Farabi are two of the greatest Muslim thinkers whose writings on *Akhlaq* (i.e., the science of human soul that defines the methods of how to control and moderate its characteristics⁵) can be observed to be very much in common with Aristotle's and Plato's teachings about *the good humankind* and *the good life*.⁶ That is how the Islamic education also aims to improve virtuous

³ Michael KING, « The Child, Childhood and Children's Rights within Sociology », (2004) 15-2 *Kings Law J.* 273-299, 283.

See also: Ann QUENNERSTEDT et Mikael QUENNERSTEDT, « Researching children's rights in education: sociology of childhood encountering educational theory », (2014) 35-1 *Br. J. Sociol. Educ.* 115-132.

⁴ Julia ANNAS, « Virtue Ethics », *Oxf. Handb. Ethical Theory* 2007, DOI : 10.1093/oxfordhb/9780195325911.003.0019.

⁵ Mohd Nasir OMAR, *Christian and Muslim Ethics*, Dewan Bahasa dan Pustaka, 2003.

⁶ Charles E. BUTTERWORTH, « Medieval Islamic Philosophy and the Virtue of Ethics », (1987) 34-2 *Arabica* 221- 250.

characters that seeks the ultimate happiness of mankind while emphasising on developing the rationality as the means to become a morally autonomous person.⁷

However, the traditional form of education has been criticised since over a century ago, when the specialists of pedagogy suggested the concept of *liberating education* instead of imposing determined information to the memory of students. Olivier Reboul (1925-1992), member of the famous Frankfurt School, is one the founders of such movement. His well-known book *L'endoctrinement* (1977)⁸ defends the idea of educating children to liberate them and teach them to think, feel and act rather than using the authority of teacher to indoctrinate the thoughts to students.⁹

Furthermore, among contemporary theories of education, one could refer to a famous philosopher of education, Nel Noddings, who employs psychology and ethics in her theory of education. She affirms *care ethics* or *feminist ethics* (which could be considered a branch of virtue ethics) to develop the students' *moral character* and considers *Happiness* as the aim and also the method of education.¹⁰

On the other hand, while the basic right to education has been recognized in the *International Convention on the Rights of Children* (1989) arisen from a western and occidental context, one could ask for an adapted form of this universal right “properly” compatible with its own socio-cultural features when it is supposed to enter an eastern Islamic society. As Mauro Bussani states in his book, “*Comparison in legal development*”, the necessity of considering the cultural aspects

⁷ Sobhi RAYAN, « Islamic Philosophy of Education », (2012) 2-19 *Int. J. Humanit. Soc. Sci.* 150- 156.

⁸ Olivier REBOUL, *L'endoctrinement*, Presses Universitaires de France, 1977.

⁹ Alain KIMMEL, « Olivier Reboul, La Philosophie de l'éducation », *Revue internationale d'éducation de Sèvres [En ligne]* (avril , mis en ligne le 01 avril 2002), en ligne : <[http:// journals.openedition.org/ries/1820](http://journals.openedition.org/ries/1820) Ce>.

¹⁰ Nel NODDINGS, *Happiness and Education*, Cambridge, UNITED KINGDOM, Cambridge University Press, 2003, en ligne : <<http://ebookcentral.proquest.com/lib/umontreal-ebooks/detail.action?docID=218054>> (consulté le 1 mai 2018).

of the developing countries while criticising any legal change influenced by western laws without benefiting the appropriate comparative methods:

“Lessons from the past and the present show us how Western initiative targeting the transformation of others’ law often lacks the support of adequate comparative law means, as required to meet the basic needs of contextualisation for the solutions to be applied in the new or newly shaped setting.”¹¹

This could have been the reason why the Iran’s early approval of the *Convention of the Rights of Children* came with a reservation on the Islamic regulations but in actual implementation of children’s rights in this society, neither the internationally recognized rights are completely applied nor the truly Islamic cultural requirements.

Therefore, criticizing the traditional type of education and developing critically the occidental right to education to suit the oriental societies would lead us to look for a “proper education” for the Iranian children adapted to the Iranian/Islamic culture. This is where the core question of this thesis is formed. “*How can one help the Iranian governance improve the socio-legal status of children’s right to ‘proper’ education?*” An interdisciplinary research is developed to find answers.

This question is initially raised from an advocative approach of the researcher, whose goal is to contribute in the promotion of children’s rights in the Iranian educational sphere. To achieve this goal from an academic standpoint, an interdisciplinary research is planned that gets started from a legal discipline and then takes advantage of other fields of knowledge (philosophy and empirical study) to finally become capable of helping the Iranian governance by a critical legal essay.

The research plan calls for two sub-questions of which the first one looks for adding critical features to the classical universal right to education for children in order to be matched with the

¹¹ Mauro BUSSANI, « Geopolitics of Legal Reforms and the Role of Comparative Law », dans *Comparison in legal development*, Zurich, Schulthess, 2016, p. 234- 240 à la page 236.

socio-cultural context of Iranian society. Therefore the first minor question is: “*Facing the Iranian and International legal systems according to the rights of children, what could be considered not just the right to education, but the right to a “proper” education based in ethical and philosophical grounds in the sense that it would better suit Iranian culture and social habits than an allegedly “universal” [occidental] classical legal conception?*”

While responding to this minor question forms a mini-philosophical study in itself, it will need its own theoretical framework for which the theory of *Virtue Ethics* will be presented. There are mainly two reasons for choosing this ethical theory to frame to concept of “proper education”. First is because virtue ethics is highly connected to the Islamic ethics as a cultural and legal context of Iranian society and secondly because the theory of virtue focuses on the education as the means to achieve *the good life* as the aim of being. So one could benefit from the contribution of the virtue ethics (and care ethics as a branch of virtue ethics) in philosophy of education to conceive the “proper” education that includes all the rights of children compatible with their socio-cultural context.

Then the researcher turns to the second sub-question which calls for an empirical inquiry. “*In a course of action on behalf of Iranian children’s rights, what Iranian social representations of the latter reveal as a gap between the ideal expressed concept of “proper” education and the day-to-day life of children?*” By this second minor question, one is bound to enter a fairly sociological discipline to find out what is happening in the day-to-day life of children in the educational system of Iran.

The response to this latter question also requires its own theoretical framework and methodology. It is supposed to produce a totally different type of knowledge from the other parts of the research. While the theory of *social representation* describes well the empirical material that is gathered

through over eighty (80) interviews with the actors in the educational system of Iran (students, teachers and parents), the main approach of *Human Rights Advocacy* is used in analysing the data because the main goal of this thesis entails such advocative approach. So the researcher conducts a qualitative field research inspired from Kaufmann's method of comprehensive interview, yet, with a constant approach of advocating children's right in the field rather than the classical sociological approach of understanding a social phenomenon.

Following the plan of this interdisciplinary research, one comes back to the field of law but this time with a critical legal view that benefits from the responses to previous minor questions in order to help the Iranian legislator improve the condition of children's right to proper education.

Respecting the question of thesis and the applied methods to answer the question, the general outline of the presented thesis is described as below:

Chapter one, will be an introductory chapter that pictures the whole image of this thesis by describing its nature as an interdisciplinary legal study that seeks a contribution in the field of law by a critical legal essay rather than a classical thesis in the dominant paradigm of law faculties. Then it starts with a classical legal approach to the international law and Iranian legal system about the rights of children because it is supposed to make a dialogue between law as the host discipline and other fields of science.

Chapter two, forms a philosophical investigation on the children's right to education and seeks the conceptualization of a "proper education" for the specific field of Iran with its Islamic and virtue ethical cultural context. The aims of such "proper" education will be presented and some methods will be introduced that could help actualize this special right for the children in the process of education.

Chapter three, will be an empirical study in Iranian elementary educational sphere. A report from the observed social representations of children's rights in the primary schools will be stated and then by analysing the most prominent socially noted points of this field, we will look for the signs of the probable gap between the ideal concept of proper education and the actual life of kids in the schools. A biographical index will be offered to the reader of this part at the end of chapter three. It will help the audience of this research become familiar with the greatest possible information about the field inquiry, from the age and sex of the interviewees (who are called by fictive names) to the context and general content of the interviews.

Chapter four, will be the conclusive chapter that will form a critical legal essay using the results coming from the two previous chapters. This atypical form of legal writing will enrich the field of public law in an innovative way suggested by Jean Francois Gaudreault DesBiens called "l'essai en droit"¹². This is where the author of this law thesis will suggest actions to the Iranian governance at the light of all the steps of this intellectual adventure.

¹²Jean-François GAUDREULT-DES BIENS, « De l'essai en droit, ou du droit à l'essai dans la doctrine? », (2010) 65-2 *Rev. Interdiscip. Détudes Jurid.* 135- 177.

Chapter One:
Introductory Chapter

Introduction

As an introductory chapter, this chapter illustrates the whole picture of this thesis. We start by examining the nature of this law thesis which takes place in an interdisciplinary paradigm versus the classical approach to law. In an interdisciplinary approach, legal studies are not limited to the regulations, jurisprudence and doctrines of law, but ideas are also drawn from other fields of science and philosophy when the use of a hybrid question in our inquiry makes it necessary. It doesn't refute the classical approach; rather, it complements the classical paradigm.

The main question of this research is: *“How can one help the Iranian governance improve the socio-legal status of “children’s right to proper education”?”* This is a hybrid question because it is not possible to fully answer it without crossing disciplinary borders, and it supposes two sub-questions of different natures. The first sub-question is: *“Facing the Iranian and International legal systems according to the rights of children, what could be considered not just the right to education, but the right to a “proper” education based in ethical and philosophical grounds, in the sense that it would suit Iranian culture and social habits better than an allegedly “universal” [occidental] classical legal conception”?”* This calls for a philosophical study to formulate the nature of children’s right to “proper education” from an ethical point of view. Therefore, I take a philosophical position in chapter two and will provide an answer of a philosophical nature.

The second sub-question is: *“In a course of action on behalf of Iranian children’s rights, what Iranian social representations of the latter reveal as a gap between the ideal expressed concept of “proper education” and the day-to-day life of children?”* This second sub-question calls for an empirical approach that will be considered in chapter 3, and will produce an answer with the nature of experimental knowledge.

Responding to these two sub-questions will allow us to answer the main question by means of a dialog between two different disciplinary approaches. We will then formulate a new type of critical knowledge in law which can be called a “critical legal essay”.

In the first section of this chapter we will discuss interdisciplinarity in law as an alternative approach to the classical approach of legal studies. Then, because interdisciplinarity is necessarily a dialog between the classical approach to law and other fields of studies, we take a legal point of view in the second section of this chapter where we will examine international and Iranian legal systems to identify the formal sources of children’s rights. We will do so using classical methods of law that are generally taught in the first cycle of modern and occidental courses of legal study.

Section 1. Interdisciplinarity as an Alternative Approach to the Classical Approach of Legal Studies

Approaching children's issues from a human rights perspective is part of a shifting perception of the child supported by the worldwide implementation process of the United Nations (UN) *Convention on Rights of the Child (UN 1989)*. Researchers have also examined issues in educational settings from a rights perspective.¹³ It is this issue of children's rights in the educational setting that is the subject of this research project.

This research project takes place in an interdisciplinary paradigm. In fact, one could say that the researcher has been "dancing" (i.e. constantly moving) in a scene composed of several scholarly disciplines. The metaphor of "dance" is an expression used by Violaine Lemay when describing the act of an interdisciplinary researcher who puts his/her "feet" in different universes in a single dance presentation. Violaine states:

« L'expression «danse», en fait, réfère au mouvement de la pensée nécessaire pour qu'émerge la justesse du jugement : la pensée de qui est doté de jugement est plus mobile. Fondant d'abord l'univers social sur des «cités» et des «mondes» que distingue la référence à des «grandeurs politiques» caractéristiques, les auteurs illustrent l'incessant mouvement que suppose la construction d'une justification. [...] L'interdisciplinarité comme capacité de penser au-delà des disciplines [...] se présente comme l'habileté intuitive qui permet de passer adéquatement d'une raison disciplinaire à l'autre en s'adaptant au défi intellectuel propre à chaque nouveau rapprochement de savoirs.»¹⁴

¹³ A. QUENNERSTEDT et M. QUENNERSTEDT, préc., note 3, 115-116.

¹⁴Violaine LEMAY et Ida GIUGNATICO, « Et si on entrainait dans la danse de l'interdisciplinarité? », (2017) 6-1 *Interdiscip. TrajEthos* 5-10, 5-6.

In the current thesis, there are four big “movements” through a variety of knowledge. The first movement is toward classical approaches to law, the second toward philosophy and ethics, and the third toward one empirical field. The fourth movement is toward an interdisciplinary approach to law that combines the three previous movements into a critical legal essay. By moving across all these fields we can achieve our goal with none of the fields being fragmented from others because each is linked to the others like a chain. To achieve the goal of our project it will be inevitable that we take this unique interdisciplinary path.

The researcher will seek to understand how one could help Iranian governance improve the condition of children’s right to “proper education”, to which an atypical and “baroque” type of research has been applied that can best be described as an *interdisciplinary essay*.

By an interdisciplinary essay, we mean a type of writing which is different from a typical legal thesis; one that shakes the steady basis of the law and tries to present a critical point of view to the solidity of doctrinal law by moving from one discipline to another in order to apply adequate reasoning in response to reflective questions around the topic.

Likewise, in calling the legal contribution of this thesis an “essay,” one could refer to the article by Jean-François Gaudreault Desbiens «De l’essai en droit, ou du droit à l’essai dans la doctrine?» in which he suggests an atypical legal writing:

"[...]’usage de l’essai comme genre littéraire est périlleux dans le champ juridique, particulièrement en contexte civiliste, en ce que celui qui y a recours prend en quelque sorte le contre-pied de la doctrine en refusant le postulat de clôture normative du droit envisagé sous l’angle positiviste.... l’essai en droit est un vecteur de ce qui me paraît être une forme d’adoctrinement, si l’on me passe l’expression.¹⁵"

¹⁵J.-F. GAUDREAU-DES BIENS, préc., note 12, 139.

Therefore, in choosing the essay form we choose a perilous path. The interdisciplinary approach leads us to refute and be emancipated, from what Dean Gaudreault-Desbiens calls the “normative closure,” and allows us to explore external points of view. Nevertheless, the traditional classic, or “pure law” method, will be used to answer the implicit sub-question of the existing legal status around the topic of children’s rights. Indeed, it is the starting point of our inquiry. But a more philosophical method will permit us to cross disciplinary boundaries and adopt a more critical position regarding the recognized right of a child to education, a position that is unattainable with the classic legal approach. This new position will add critical content to the legal concept of a “child’s right to education”, and create a new concept designed to build a cultural compromise benefitting Iranian culture: the concept of “proper education”. It is then a kind of “adoctrinement” that could be called an “oriental adoctrinement facing occidental international law”. Then, a parallel empirical approach in the third chapter of the thesis addresses the second part of the main question regarding actual concrete conditions and to know what happens, “dans les faits”, with “right to proper education”.

One must be aware that none of these disciplinary parts could alone answer the central question of the thesis. One must also be aware that without the two sub-questions and their external answers (chapter two and chapter three), the *critical and interdisciplinary legal essay that will conclude this thesis* could not possibly be built.¹⁶ In this sense, the “vector” of this whole thesis with its

¹⁶ Jiri PRIBAN, « Sharing the paradigms? Critical legal studies and the sociology of law », dans Reza BANAKAR et Max TRAVERS (dir.), *An Introduction to Law and Social Theory*, Oxford, Hart, 2002, p. 119-133, en ligne : <<http://orca.cf.ac.uk/45767/>>.

repeated transgression of “normative closure” of classic law, proudly claims to be called “a legal essay” according to Gaudreault-Desbiens’s thought.¹⁷

1-1. Interdisciplinarity and Children’s Rights in Violaine Lemay’s Point of View

Because the writing of Violaine Lemay is constant in the background of this thesis, it is useful to present an introductory abstract of her work on interdisciplinarity and children’s right.

On Interdisciplinarity: All of Lemay’s writings are inseparable from interdisciplinarity, which for her, is the compulsory path one must take when one dares ask questions that cannot be confined to the limits of a single discipline. She summarizes her ideas in « *Critique de la raison disciplinaire* »¹⁸ where she portrays interdisciplinarity as criticism of the excesses of the dominant disciplinary reasoning. When a discipline so exclusively cultivates the path of specialization, when it refuses the slightest dialogue with foreign knowledge so that it becomes too used to routines and dogmas to maintain a healthy attitude of critical vigilance, the discipline becomes blind to problems that only an external approach can reveal. The expression of healthy criticism then takes the form of interdisciplinarity. In law, interdisciplinarity frequently criticizes a legal reasoning that has falls victim to mechanical application and reflexive gestures that are blind to their history and goals. That frequently leads to a decontextualization of the law that is blind to the necessary connection that a regulation must have with the culture, and using it merely to produce the effects expected by a legislator.

¹⁷ J.-F. GAUDREULT-DES BIENS, préc., note 12.

¹⁸ Violaine LEMAY, « Critique de la raison disciplinaire », dans V. LEMAY, Ida GIUGNATICO (dir.), Numéro spécial sur l’interdisciplinarité, *TrajEthos*, vol. 6, no. 1, 2017, pp. 11-28.

It will be understood, in this thesis, that interdisciplinarity allows the use of hybrid questioning that would not have been allowed by the classic legal approach to law. Interdisciplinarity allows for a philosophical criticism of the law. It also allows a philosophical criticism of an undisciplined and closed vision of law regarding the child that is so frequent in Western law, and which forgets its necessary adaptation to the context of Iranian culture.

*On the Impact of the Advent of the Child as a Subject of Law in Education: "Évaluation scolaire and justice sociale"*¹⁹. In 2000, Lemay published a pioneering book, halfway between law and the sciences of education. In this first book, she lays the foundation for a problem that she will continue to ponder in subsequent research. When a society like Quebec chooses, in a very avant-garde way in 1977²⁰, to view the child as a complete political citizen and as a subject of law, we face head-on the tradition of Aristotelian philosophy that the child is only half-citizen. We counter centuries of legal traditions in which the child is only an "object of right" that is taken into account by the law only to the degree necessary to ensure the rights which adults have placed on them, but not to actually give the child the rights. Millennial-old ancestral customs are also in effect, according to which children are under the absolute private jurisdiction of the patriarchy. The sociopolitical and juridical upheaval brought about by the arrival of the child as subject to the rule of law - especially when, in 1989, it becomes the subject of an international convention reaching record rates of ratification by the states - necessarily entails questioning of the educational sphere. What happens to traditional educational habits designed for children who are not citizens and do

¹⁹ Violaine LEMAY, *Évaluation scolaire et justice sociale: droit, éducation et société*, coll. École en mouvement, Saint-Laurent, ERPI, 2000.

²⁰ With *Youth Protection Act*, (1977) P-34.1.

not hold rights? Do some of those educational habits need to be harmonized with this new legal status of children?

Lemay's first publication was devoted to the analysis of a controversy that had never been decided before, that the emergence of children's rights in relation to the pedagogical traditions of evaluation is born in education. Some called for the abolition of certain practices, declaring them discriminatory and psychologically harmful for these most vulnerable persons. Others defended established habits in the name of the "necessary" power it gives to teachers. It was after this initial research that Lemay focused on the concept most important to this thesis, that of "contractual" authority, a concept she deploys for the first time in her doctoral thesis.²¹

One must be aware that this entire thesis is anchored to Lemay's premises. Our interdisciplinary choice is then a critical choice in itself, one that believes that any discipline, not only law, can insert itself in an arbitrary and "acritical" routine where the meeting with foreign knowledge becomes kind of an antidote. Our choice of children's law is filled with Lemay's assumption that social and cultural habits often implicitly refuse legal changes that will dramatically reduce adults' powers over children. This will be important to remember when it comes time to define "proper education" in Iranian law and culture.

²¹ Violaine LEMAY, *Un contrat pédagogique: l'entente sur mesures volontaires dans l'application de la Loi sur la protection de la jeunesse*, PhD Thesis, Montreal, Université de Montréal, 2005, en ligne : <papyrus.bib.umontreal.ca>.

1-2. The Nature of the Contribution of this Thesis in the Field of Law: The Contribution of “Doubt”

One famous American movement, called “Critical Legal Studies”, emerged mainly in the 1970s and was pioneering in its inclusion of critical movement into the field of formal law. It undermined legal formalism and established alternative methodology and concept of law. The current thesis belongs to this alternative movement.

Jiri Priban says “[t]he Critical Legal studies movement represents a radical critique of the rule of law and modern legal science which is theoretically, methodologically and historically often closed to the sociology of law and its paradigm.”²² In saying that, he was justifying a shared paradigm between Critical Legal Studies and Sociology of Law. This is the starting point to explain why and how this theory would apply to this thesis.

Using the ideas of Gaudreault DesBiens²³ as a starting point for being a critical legal jurist, and ultimately a creative and reflexive researcher, the author of this thesis questions the dominant paradigm of law faculty and opens her studies to other fields of knowledge. « Le droit n'est-il qu'un «donné» ou, au contraire, est-il un «construit » en constante évolution?»²⁴. If it is a construction, then it is required to first of all look at the legal phenomena of doubt, explains Gaudreault DesBien:

« Certes peut-on souhaiter une réintroduction du doute dans le procès de connaissance juridique, mais encore faut-il préciser de quel type de doute il s'agit. Qu'il suffise ici de dire que ce doute ne doit surtout pas être celui

²²J. PRIBAN, préc., note 16 à la page 120.

²³ Jean Francois Gaudreault DesBien, Dean of the Faculty of Law of the Université de Montréal, who for many years has worked specifically on Critical Legal Theories and has presented the thesis of “faire du droit” as an alternative method in legal essays.

²⁴Jean Francois GAUDREULT-DESBIEENS, « Identitarisation du Droit et Perspectivisme Epistemologique. Quelques Jalons Pour Une Saisie Juridique Complexe de L'identitaire », (2000) 13 *Can. J. Law Jurisprud.* 33-74, 79.

qui mène à un scepticisme inhibiteur d'action. Car le doute peut être constructif, il constitue, comme le dit René Sève, « la garantie de notre ouverture au monde, de notre capacité à évoluer avec lui et de nous adapter à lui. Et j'ajouterai, continue-t-il, que le doute est certainement aussi une garantie de notre capacité d'ouverture aux autres. »²⁵...Une épistémologie « ouverte » ne peut donc véritablement se concrétiser que si, dans l'optique de faciliter la saisie des mutations sociojuridiques, elle se constitue en épistémologie de la complexité. Cette épistémologie de la complexité, les juristes doivent s'efforcer de la faire progresser dans le champ du droit. »²⁶

We want to cultivate doubt in choosing the main question of this research project. A kind of doubt which is not a negative and skeptical movement producing inertia but is designed to be constructive with the promise of a positive change. This is how an open epistemology of law would be ideally described, as embracing scientific and social knowledge from other fields of studies in order to “import” their potentially fruitful critique into the normative closure of classic law.

This doubt is a way of looking at the legal concepts that questions the firm positions of positive law in law faculties, and allows the jurists to explore the field with open arms and to create new viewpoints by criticizing the dominant paradigm or even the rule of law. That is what Duncan Kennedy did with the concept of rights. Kennedy, who is known to be one of the main founders of the Critical Legal Studies movement, has criticised the position and the definition of rights and opened up a new look at legal conciseness and even traditional judgements.

“[I describe a] contexts for the loss of faith in rights, arranged as a kind of route for the progression of the virus. I begin with the role of rights “inside” legal reasoning, that is, with the way judges argue about the definition and

²⁵ R. Sève, « Douter c'est décider nature et caractère constructifs du doute » dans F. Terré, dir., *Le doute et le droit*, Paris, Dalloz, 1994, 119 at lap. 124. Dans ce sens, le doute, même cultivé, ne mène pas nécessairement au cynisme

²⁶ J. F. GAUDREAU-DESBIENS, préc., note 24, 71-74.

elaboration of rights that are clearly established by positive law. Doubts about this process suggest doubts about the constitutional rights that “straddle” the inside and the outside. And these lead in turn to doubts about popular rights discourse and fancy rights reconstruction projects in political philosophy.”²⁷

One may observe the similarity of the above approach to the approach taken in this thesis when the right to education as a formal right is criticised and a new definition of the right to education — the right to “proper education”— is drawn from field of philosophy. The implementation of this new concept is then investigated in the very real world of the elementary school. Furthermore, there is an overview of Critical Legal Studies and how it applies to this thesis.

1-2-1. The History of the Foundation of the Legal Criticism Movement to which this Thesis Belongs

Because this law thesis is part of legal criticism, it is useful to review how this kind of knowledge emerged in the field of modern law as an approach distinct from the classical legal approach.

In the words of Roberto Unger, one of the initiators of the first Conference of Critical Legal Studies on 1977²⁸: ““The critical legal studies movement has undermined the central ideas of modern legal thought and put another conception of law in their place. This conception implies a view of society and informs a practice of politics.”²⁹

²⁷Duncan KENNEDY, « The critique of rights in critical legal studies », (2002) 178 *Left Leg. Crit.* 216, 194.

²⁸ “The first annual Conference on Critical Legal Studies was held in the spring of 1977 which was established by a group of legal scholars including Roberto Mangaberia Unger, Mark Tushnet, Richard Abel, David Trubek, Duncan Kennedy, Morton Horwitz and Rand Rosenblatt. The CLS group defined itself as an anti-establishment tradition in legal scholarship attacking the mainstream liberal legal doctrine, teaching methods and social and political hierarchies entrenched in the existing legal system.” J. PRIBAN, préc., note 16 à la page 119.

²⁹ Roberto Mangabeira UNGER, « The Critical Legal Studies Movement », (1982) 96 *Harv. Law Rev.* 561-675, 563.

Therefore, passing over the modernity and postmodernism – which also inevitably occurred in the field of law- it could be assumed to be a concurrent with the emergence of Critical Legal Theories. Having a critical approach and suggesting alternative epistemology and methodology of law appears to be a reaction to the modern governance of law in society – the so called Rule of Law - which could be applicable to what Jean Francois Gaudreault DesBiens calls the “*fatigue du projet modern*”. “Quant à elle, l’idée de “postmodernité” tente de saisir en un mot une série de phénomènes qui semblent témoigner d’une “fatigue” du projet moderne. Dans un premier sens, cette idée procède de constats sociologiques faits à partir d’une observation de l’état des sociétés contemporaines. »³⁰ He comes to the conclusion that, despite face to face opposition, positive law as the representative of modernism in law and critical approaches as the reaction of postmodernism need to reconcile in a certain way because “ si la conception postmoderne de l’identité ne manque pas d’intérêt en tant que projet socio-philosophique, sa transposition juridique, elle, est plus problématique, du moins dans l’optique d’une juridicisation des phénomènes identitaires. »³¹

The critical views of modern and western concepts of law was described and named as “legal order” by Roberto Unger³², the famous founder of the critical legal movement, and was based on the four principles of indeterminacy, anti-formalism, contradiction and marginality. Actually, the

³⁰ Jean-François GAUDREULT-DESBIEENS, *Angoisse Identitaire Et Critique Du Droit. La « Critique Juridique Identitaire Américaine » Comme Objet Et Source De Réflexion Théorique (Identity, Anguish, and Legal Critique. « American Identity-Based Critique » as an Object and a Source of Theoretical Reflection)*, SSRN Scholarly Paper, ID 2516789, Rochester, NY, Social Science Research Network, 2003, p. 30, en ligne : <<https://papers.ssrn.com/abstract=2516789>>.

³¹*Id.*, p. 38.

³² R. M. UNGER, préc., note 29.

existence of such a legal order and all its provisions - being a doctrinal system and a form of reasoning which affects all the social behaviors - had been challenged by the critics.³³

The same thing happened regarding public international law. The modernist theories of international law were accused of being incapable of giving an adequate explanation of international law's authority and had to accept the opening ideas of a critical epistemology of the international law:

“[I]n response to the failures of early modernism and the marginality of the international law discipline, a New Stream of critical international legal scholarship has emerged. The New Stream's critical analysis of international law has demonstrated the incoherence of the liberal ethical basis of international law, international law's constraining intellectual structure, the indeterminacy of international legal argument, and the self-validating nature of international law's authority.”³⁴

It was, therefore, a gradually changing movement in the academic sphere of law that began questioning traditional legal formalism and to call for a more pragmatic consideration of political and sociological aspects of the concept of law as a human construction.³⁵ “CLS³⁶ was a response

³³David M. TRUBEK, « Where the Action Is: Critical Legal Studies and Empiricism », (1984) 36-1/2 *Stanford Law Rev.* 575-622, 577-578, DOI : 10.2307/1228692.

- For other critics on legal order see also:

-GORDON, « Historicism in Legal Scholarship », (1981) 90 *YALE LJ* 1017.

-Mark TUSHNET, « Legal Scholarship: Its Causes and Cure Symposium on Legal Scholarship: Its Nature and Purposes », (1980) 90 *Yale Law J.* 1205-1223.

-D. KENNEDY, « Toward an Historical Understanding of Legal Consciousness: The Case of Classic Legal Thought in America 1850–1940//Researches in Law and Sociology. 1980 », 3 *N* 3-24.

³⁴Nigel PURVIS, « Critical Legal Studies in Public International Law », (1991) 32 *Harv. Int. Law J.* 81-128, 127.

³⁵For a description of Critical Legal Study's claim to a broader field than Realism in defending pragmatism in law, See: Alan HUNT, « The Theory of Critical Legal Studies », (1986) 6 *Oxf. J. Leg. Stud.* 1-45.

³⁶Critical Legal Studies

to a deepening skepticism regarding the ability of Legal Positivism and "liberal legalism" to provide satisfactory analyses of law in a rapidly changing society."³⁷

One important critique of this movement was about legal education. "The main argument of the CLS critique of legal education is that law schools train students for hierarchy - first in school, then for the profession and practice of law."³⁸ Reformist ideas ranged from radical one that proposed a revolution in the law curriculums where the curriculum would consist of teaching a limited legal skills and practical skills while emphasizing larger social and political theories and analysis³⁹, to less radical recommendations that were more content related rather than form related. They suggest "trashing" the doctrine in the teaching process to show the indeterminacy of rules, and then destabilizing the traditional study of law.⁴⁰

The emergence of Critical Legal Studies (or "Crits") can be connected to two earlier movements in 20th century. The *Realism* which emerged around 1920s-30s and the *Law and Society Movement* that was formed around 1960s. While Realists "...had, of course, sounded a call for studies of the transformation of "law on the books" to "law in action", and they had suggested that such studies would reveal a gap between "paper rules" and the realities of implementative practice."⁴¹, the aim of the Law and Society movement was for a "more rigorous and formal interdisciplinary training

³⁷J. Stuart RUSSELL, « The Critical Legal Studies Challenge to Contemporary Mainstream Legal Philosophy », (1986) 18 *Ott. Law Rev.* 1-24.

³⁸ Carrie MENKEL-MEADOW, « Feminist Legal Theory, Critical Legal Studies, and Legal Education or "The Fem-Crits Go to Law School" », (1988) 38-1/2 *J. Leg. Educ.* 61-85.

³⁹ Duncan KENNEDY, *Legal education and the reproduction of hierarchy: A polemic against the system*, NYU Press, 2007.

⁴⁰ Mark G. KELMAN, « Trashing Critical Legal Studies Symposium », (1984) 36 *Stanford Law Rev.* 293-348.

⁴¹ G. Edward WHITE, « From realism to critical legal studies: A truncated intellectual history », (1986) 40 *SWLJ* 819, 831.

in law and sociology”⁴² to make a more open space for other disciplines to contribute in the law context.⁴³

However, other factors played a role in the attack against positivist social science (particularly positive law) and intellectually rooted critical theory. Among those factors was critical Marxist scholarship that affected the law by criticising economic groups that play a significant role in forming law when it is made for the interest of a special level of society. Other forms of discrimination-based critiques of specific social groups also took place and became a form of critical theory; these included Critical Feminist Theory in law⁴⁴, Critical Race Theory⁴⁵ and Gay Legal Theory. Gaudreault Desbiens calls these the “critique juridique identitaire américaine”.

« En réaction aux Critical Legal Studies, dont l’approche était jugée trop désincarnée et pessimiste, ces mouvements critiques ont préféré axer leurs recherches sur l’impact concret du droit étatique sur le statut social de certains groupes, lesquels, pour l’essentiel, ont été identifiés et circonscrits à partir de la variable identitaire. ... Parmi eux, on compte principalement la critique féministe du droit, la Critical Race Theory et la Gaylegal Theory, ... Toutefois, au-delà de leurs divergences, “Fem-Crits”, “Race-Crits”, “Gay-Crits” et autres partagent suffisamment de points communs sur les plans méthodologique, analytique ou idéologique pour former ensemble un grand mouvement que je désignerai sous l’appellation de critique juridique identitaire américaine.”⁴⁶

⁴² Robert B. YEGGE, « The Law and Society Association to Date », (1966) 1 *Law Soc Rev* 3, 3-4.

⁴³G. E. WHITE, préc., note 41, 830-831.

⁴⁴ Deborah L. RHODE, « Feminist critical theories », *Stanford Law Rev.* 1990.617-638.

⁴⁵Jean-François GAUDREULT-DES BIENS, « La Critical Race Theory ou le droit étatique comme outil utile, mais imparfait, de changement social », *Droit Société* 2001.2.581-612.

⁴⁶J.-F. GAUDREULT-DESBIEENS, préc., note 30, p. 14.

This brief review of the development of Critical Legal Studies can be used as a legal theoretical framework for the current thesis. The way Critical Legal Studies discusses interdisciplinary studies, especially the sociology of law, and how it relates to the empirical researches will further clarify the kind of knowledge what this thesis seeks to produce.

1-2-2. A Critical Legal Study Combining an Interdisciplinary Dialog with an Empirical Study

As outlined earlier in this section, Critical Legal Studies was, by nature and through its genealogy, the result of academia attacking the dominant paradigm of legal studies and finding an alternative paradigm that inevitably lay with interdisciplinary studies. The Law and Society movement was a clear invitation for such an improvement. Law and Society Review described its arrival as a reaction to "a growing need on the part of social scientists and lawyers for a forum in which to carry on an interdisciplinary dialogue." And suggested to have "a professional cadre who are able to move freely from their original disciplinary base into the related fields."⁴⁷

This is also the argument of Gaudreault Desbiens when he holds that the mission of Critical Legal Studies is to criticise the law in both teaching and practice as a part of a whole social system. Hence, to the mission of properly criticising other social phenomena in a system, the doors of other disciplines need to be open. It is here that interdisciplinary scholarship shows up:

« Si, comme Charles Taylor le disait, les facultés de droit sont bel et bien devenues des “centres dynamiques de la pensée sociale et politique” aux États-Unis, les divers mouvements de critique du droit apparus dans ce pays depuis une vingtaine d’années ne sont certainement pas étrangers à ce phénomène. Dès lors que l’on délaisse un tant soit peu l’analyse strictement positiviste du droit, on se rappelle à quel point le phénomène juridique est lié à d’autres phénomènes et conditionné par eux. C’est à ces ligatures, parfois surprenantes, que des mouvements comme le Law and Economics, le Law and Literature, le Law and Society ou les Critical Legal Studies se sont intéressés. »⁴⁸

⁴⁷Richard D. SCHWARTZ, « From the Editor [comments] », (1966) 1-1 *Law Soc. Rev.* 6-8, 6.

⁴⁸J.-F. GAUDREAU-DESBIENS, préc., note 30, p. 57-58.

Inevitably, therefore, the use of empirical studies in the field of legal research would be a consequence of such a paradigm; and what a socio-legal researcher does, in this sense, would be to actually observe and analyze the law from outside, which is a critical point of view to a legal problem. David Trubek discusses Critical Legal Studies to see if they correspond to empirical studies. He argues that CLS's method of research is empirical because it analyses the function and practice of law in the society rather than the structure of law.

“If we classify the Critical scholars according to criteria employed by the debate over legal scholarship, they clearly fall on the empirical side of the line. That is, if we define empirical legal studies as research on what the law “does” in society rather what the law "is", then Critical scholars are doing empirical search.... CLS follows this tradition: Analyzing the law from the outside, makes problematic the fundamental assumptions of the object study, and it examines the relationship between legal ideas and action.”⁴⁹

It can now be seen how Critical Legal Studies fits as a theoretical framework for this socio-legal and interdisciplinary thesis. However, the matter of methodology is still a concern because not only has CLS itself been criticized from a methodology point of view⁵⁰, but socio-legal research in general seems to not accurately match sociological methods. The sociology of law is, unfortunately, not a part of main stream of sociology and very few sociologist are interested in doing legal research. Therefore, a more interdisciplinary approach is needed to conduct a proper socio-legal study.⁵¹

⁴⁹D. M. TRUBEK, préc., note 33, 586-588.

⁵⁰Frank MUNGER et Carroll SERON, « Critical Legal Studies versus Critical Legal Theory: A Comment on Method Comment », (1984) 6 *Law Policy* 257-298.

⁵¹ Reza BANAKAR et Max TRAVERS, « conclusion: Law and Sociology », dans *An introduction to law and social theory*, Oxford, Hart, 2002, p. 345-352.

1-2-3. Critical Interdisciplinary Thesis in Law as « Faire du Droit »

After reviewing the idea of Critical Legal Studies and claiming it to be a fitting theory for the basis of the legal knowledge in this current thesis, we would like to come to the idea of Jean François Gaudreault DesBiens who defends the thesis of “faire du droit” through the use of “essai en droit”. He describes the legal essay as a genre of legal writing which seems to be different from a typical one, presenting the spirit of literature in the field of law and shaking the steady and firm bases of legal sources. Like we said earlier⁵², this type of legal writing produces a positive form of “adoctrination,” in the expression of Gaudreault-Desbiens, but supposes the perilous path leading to conceiving of law as a contingent process:

« ...Plutôt que d’insister sur la sécurité juridique en mettant l’accent sur la cohérence narrative interne des sources du droit, l’essai valorise en effet le doute et considère la réflexion, voire le jugement, en droit comme un processus fondamentalement interlocutoire et contingent...»⁵³

However, to have a critical point of view in the field of traditional legal academics, is a price to pay to open up a fluid stream amongst the solidity of doctrinal law. A critical and creative jurist would let the doors of interpretation and interaction open to the social science to realize what Jean Francois calls “faire du droit”, which is precisely what we intend to humbly do in this thesis:

« ... en l’occurrence celle voulant que « faire du droit » sous-tende une tentative de contribution à l’élaboration et à l’interprétation du droit étatique dans une perspective avant tout interne à celui-ci, ce qui,

⁵² See. Title 1-2 of this chapter.

⁵³J.-F. GAUDREAUULT-DES BIENS, préc., note 12, 139.

précisément, est susceptible de rendre cette activité intelligible pour la majorité des juristes. »⁵⁴

The present thesis also represents a critical interdisciplinary form of study which seems to be an alternative type of legal writing in the law faculty. We humbly claim to actualize the “faire du droit” as our way of doing this research by bringing sociology and philosophy to the assistance of doctrinal law and thereby realizing a new analysis of human rights. Whether we appropriately proceeded down this path remains to be judged by the original producer of this theory.

⁵⁴ *Id.*, 137.

Section 2. Children’s Rights in the International and Iranian Legal System as the Starting Point of this Research: Classical Legal Approach

As it has been mentioned earlier, this thesis starts with a classic legal approach to “children’s rights” since is to enrich the field of law as the targeted discipline of this interdisciplinary research. By exploring the legal definition of this main term of the project, we intend to determine what is meant by the “rights of children” when coming from legal field in general and how has this concept been confronted by internal legal system of Iran while also referring to the International *Convention on the rights of Child (1989)* as the main International document in this regard.

In this legal section, a classical and descriptive legal approach has been taken in order to describe the situation of the rights of children, firstly in the international law – specifically in *Convention on the Rights of Child*- and then in the Iranian legal system. Therefore, the method of this part of the research is a dominant method of law faculty which is the method of Kelsen.

This traditional legal method which is basically used in the legal studies, emphasizes on the rules of law as the social norms which are initiated by the authority forces. It believes that the existence of law is aside from being it just or unjust. Kelsen says: “The function of the science of law is not the evaluation of its subject, but its value-free description”⁵⁵. It can also be observed in the Stanford Encyclopedia of Philosophy, revealing how Kelsenianism as determined common sense and dominant occidental thought:

“The fact that a policy would be just, wise, efficient, or prudent is never sufficient reason for thinking that it is actually the law, and the fact that it is unjust, unwise, inefficient or imprudent is never sufficient reason for

⁵⁵Hans KELSEN, *Pure theory of law*, Univ of California Press, 1967, p. 68.

doubting it. According to positivism, law is a matter of what has been posited (ordered, decided, practiced, tolerated, etc.); ...”⁵⁶

This approach is exactly what has been followed in the legal parts of this thesis as we were in charge of presenting the legal status of children’s rights in Iran as well as the international legal documents which are also approved by the Iran’s authorities as a source of law in their legal cases. As we are not in the position of a critical view to the legal system of Iran in this section, so we act in the dominant paradigm of modern law faculties.

The Kelsenian method, historically called “legal positivism” because of the links made with natural sciences in the first part of 20th century— links that are nowadays strongly criticized and largely viewed as obsolete⁵⁷— suggests the legal hierarchy with the base of “basic norm” saying that “[t]he original constitution must be obeyed.” And then all the levels of legal rules and regulations are linked to each other as a chain of authority. Moreover, law is a normative *system*: “Law is not, as it is sometimes said, a rule. It is a set of rules having the kind of unity we understand by a system”⁵⁸.

The hierarchical form of law is also a matter of concern in Iranian legal system, as it has been followed by the legal regulations on the rights of children from the constitutional law which is the basic norm of the legal system and then the other legislations such as civil law, criminal law, criminal procedural law and some specialized law concerning the rights of disabled people, etc. The international *Convention on the Rights of the Child* has also been approved by Iran’s legal system with a reservation in cases of contradiction with Islamic regulations.

⁵⁶ Leslie GREEN, « Legal Positivism », dans *The Stanford Encyclopedia of Philosophy*, Edward N. Zalta.

⁵⁷ See :Violaine LEMAY et Michelle CUMYN, « La recherche et l’enseignement en faculté de droit: le cœur juridique et la périphérie interdisciplinaire d’une discipline éprouvée », *Nouv. Chantiers Doctrine Jurid.* 2016.39- 94.

⁵⁸Hans KELSEN, *General theory of law and state*, Routledge, 2017, p. 3.

2-1. Children's Rights in the International Convention on the Rights of Child

Being stated in *Geneva Declaration of the Rights of the Child in 1924*, that "men and women of all nations, recognize that mankind owes to the Child the best that it has to give" it has been accepted and declared that the child must receive special care and attention⁵⁹, and following the *Declaration of the Rights of the Child (1959)*⁶⁰ which expands and amplifies the theme of Article 25(2) of *Universal Declaration of Human Rights (1948)*: "Motherhood and Childhood are entitled to special care and assistance."; the *Convention on the Rights of the Child (1989)* is now the most important document in international law to be referred and relied on regarding the children's rights legal protection.⁶¹

It has been agreed by the states who signed this convention that "Recalling that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance[...]Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness,

⁵⁹LEAGUE OF NATIONS, *Geneva Declaration of the Rights of the Child*, (26 Septembre 1924) :

By the present Declaration of the Rights of the Child, commonly known as "Declaration of Geneva," men and women of all nations, recognizing that mankind owes to the Child the best that it has to give, declare and accept it as their duty that, beyond and above all considerations of race, nationality or creed:

- The child must be given the means requisite for its normal development, both materially and spiritually;
- The child that is hungry must be fed; the child that is sick must be nursed; the child that is backward must be helped; the delinquent child must be reclaimed; and the orphan and the waif must be sheltered and succored;
- The child must be the first to receive relief in times of distress;
- The child must be put in a position to earn a livelihood, and must be protected against every form of exploitation;
- The child must be brought up in the consciousness that its talents must be devoted to the service of fellow men.

⁶⁰ Declaration of the Rights of the Child (1959), G.A. res. 1386 (XIV), 14 U.N. GAOR Supp. (No. 16) at 19, U.N. Doc. A/4354. Available at: <http://www.cirp.org/library/ethics/UN-declaration/>

⁶¹ Convention on the Rights of the Child, Adopted and opened for signature, ratification and accession by General Assembly, resolution 44/25 of 20 November 1989, entry into force 2 September 1990, in accordance with article 49.

love and understanding...Considering that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity,”⁶² the states are responsible for the rights stated in this document to be respected in their own country and also to help improving these rights in developing countries.

What is coming below is a list of rights recognized for the children in the CRC⁶³ (1989) which are needed to have in mind in the whole current project as a part of clarifying framework of the concept of “children’s rights”:

a. The age of childhood which has been stated as 18 in the convention but still is left open for the local regulations to be different. ⁶⁴

b. The best interest of child for which there is not a single clear definition but is one of the most important topics of the convention to be considered in all the conditions. ⁶⁵

c. The right to live and development which is the most fundamental right of every human being and has been stated for the children as vulnerable persons in this case. ⁶⁶

⁶² Preamble of The Convention on the Rights of the Child (1989)

⁶³ Convention on the Rights of Child

⁶⁴ Article 1 states: “For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.” to read more: Juliette GOLDMAN et C. RONKEN, « The concept of childhood », *Proj. AXIS Child Sex. Abuse Qld. Sel. Res. Pap.* 2000.30.

⁶⁵ Article 3 states: “1.In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.” to read more: Joan B. KELLY, « The Best Interests of the Child », 35-4 *Fam. Court Rev.* 377-387, DOI : 10.1111/j.174-1617.1997.tb00480.x.

⁶⁶ Article 6 states: “1.States Parties recognize that every child has the inherent right to life. 2. States Parties shall ensure to the maximum extent possible the survival and development of the child.” to read more: Michael HOLZAPFEL, « The Right to Live, the Right to Choose, and the Unborn Victims of Violence Act », (2001) 18 *J Contemp Health Pol* 431.

-Helga KUHSE, Peter SINGER et Peter SINGER, *Should the baby live?: The problem of handicapped infants*, 138, Oxford University Press Oxford, 1985.

d. The right to identity which reserves for all the children to know their origin (their real parents in case of born out of wedlock and so on) and to be registered with name and nationality.⁶⁷ The right of the child to live with parents is also reserved in the convention as long as they are known and wherever they live.

e. The right to express his/her own views which is known as *the right of the child to be heard* and is given to the children who are able to form their ideas as the right to decide about their issues regarding their age and maturity.⁶⁸ This right gets complete with the next article of convention regarding the freedom of expression for the child in all the ways and forms⁶⁹, as well as the right to access to information to reserve the children's right to achieve their full flourishing. This right has been a point of attention especially nowadays in the age of information.⁷⁰

⁶⁷ Article 7 states: "1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, and the right to know and be cared for by his or her parents."

to read more: George STEWARD, « Interpreting the Child's Right to Identity in the UN Convention on the Rights of the Child », (1992) 26 *Fam LQ* 221.

⁶⁸ Article 12 states: "1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child."

To read more: Marie-Francoise LUCKER-BABEL, « The Right of the Child to Express Views and to Be Heard: An Attempt to Interpret Article 12 of the UN Convention on the Rights of the Child », (1995) 3 *Int. J. Child. Rights* 391-404.

⁶⁹ Article 13 states: "1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice."
to read more: Colin M. MACLEOD, « A Liberal Theory of Freedom of Expression for Children Symposium: Do Children Have the Same First Amendment Rights as Adults », (2004) 79 *Chic.-Kent Law Rev.* 55-82.

⁷⁰ Sarah L. HOLLOWAY et Gill VALENTINE, *Cyberkids: Children in the information age*, Psychology Press, 2003.
-Catherine J. ROSS, « An Emerging Right for Mature Minors to Receive Information Symposium: Existing and Emerging Constitutional Rights of Children: Commentary », (1999) 2 *Univ. Pa. J. Const. Law* 223-275.

f. Freedom of thought, conscience and religion which could be discussed under the right to receive neutral education although it reserves the right for the parents to teach their religion to their kids.⁷¹

g. Freedom of association and assembly which could be a complementary right for the children's right to express their views and fulfill their social participation.⁷²

h. The right to have respected privacy, honour and reputation which will protect the child's physical and intellectual being from all kind of attacks and interferences.⁷³

i. The right to be protected from violence, abuse, neglect or mal treatment⁷⁴ which is so significant in the convention that in another article the child's right to be protected from cruel treatment or punishment⁷⁵ is also been mentioned.

⁷¹ Article 14 states: "1. States Parties shall respect the right of the child to freedom of thought, conscience and religion."

to read more: Anat SCOLNICOV, « The child's right to religious freedom and formation of identity », (2007) 15-2 *Int. J. Child. Rights* 251.

⁷²Article 15 mentions: "1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly."

⁷³ Article 16 states: "1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation. 2. The child has the right to the protection of the law against such interference or attacks." a related article would be : John QUIGLEY, « Child Pornography and the Right to Privacy », (1991) 43 *Fla. Law Rev.* 347-404.

⁷⁴Article 19 states: "1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child." Refer to: Dante CICHETTI et Vicki CARLSON, *Child maltreatment: Theory and research on the causes and consequences of child abuse and neglect*, Cambridge University Press, 1989.

⁷⁵ Article 37 states: "States Parties shall ensure that: "(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment..."

j. The right to health and medical treatment⁷⁶ which also brings up the topic of the children's right to medical consent⁷⁷ that is kind of decision making for the children to go under medical treatment or not. While some countries have neglected such a right for the kids (Iran, India, France, etc.) some others determine a specific age for the child to decide about her/his treatment (15 in Denmark, 14-16 in Australia).⁷⁸

k. The right to education⁷⁹ which is the central right considered in this thesis and will be discussed in details. However, this right has been stated in the convention in details as well, in the sense that the aim of the provided education is insisted to be consistent with the provisions of the convention.

Children's rights to schooling and education must follow the three principles of the CRC:

a) Provision: schools and education should be easily and readily accessible to all children and provide them with opportunities for development. b) Protection: schools and education must be protected havens for children, which should be free of physical, mental or any other danger. c) Participation: schools and the educational system need to assure a variety of

⁷⁶ Article 24 states: "1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services."

⁷⁷ Refer to: Walter WADLINGTON, « Medical decision making for and by children: tensions between parent, state, and child », *U Ill Rev* 1994.311.

⁷⁸ Olga Cvejić JANČIĆ, « Rights of the Child in a Changing World », dans *The Rights of the Child in a Changing World*, Springer, 2016, p. 1–36.

⁷⁹ Article 28 and 29 state: "1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity... primary education compulsory and available free to all; Encourage the development of different forms of secondary education... to encourage regular attendance at schools and the reduction of drop-out rates... to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention. that the education of the child shall be directed to:

(a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;
(b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;...(d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;(e) The development of respect for the natural environment.

participation and self-determination rights, such as freedom of association, protection of privacy, freedom to express opinions, and freedom of thought, conscience, and religion.⁸⁰

l. The right to rest and leisure⁸¹. This is also a kind of neglected right for the children which needs more attention especially in the educational environment. This issue is also discussed more in detail in this thesis.

m. The right to be protected from economic exploitation which connects to the children's labour issue that provides unpleasant condition for the children.⁸² Iran also is one of the countries that faces the problem of *street children* and *labour children*.

n. The right to be protected from sexual exploitation and sexual abuse. This right includes the right to be protected against porn activities or child marriage too which is now a big concern of children rights activists around the world.⁸³

⁸⁰ X. JIANG, H. KOSHER, A. BEN-ARIEH et E. S. HUEBNER, préc., note 2, 181.

⁸¹ Article 31 states: "1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts." Refer to: Edward CASTRONOVA, « The right to play », (2004) 49 *NYL Sch Rev* 185, 185.

And refer to: Mary S. RIVKIN, *The great outdoors: Restoring children's right to play outside.*, ERIC, 1995.

⁸² Article 32 states: "1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development." To read more: Ben WHITE, « Globalization and the child labor problem », (1996) 8-6 *J. Int. Dev. J. Dev. Stud. Assoc.* 829-839.

⁸³ Article 34 states: "States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse."

Refer to: Brian CORBY, *Child abuse*, McGraw-Hill International, 2006.

-Susanne Louis B. MIKHAIL, « Child marriage and child prostitution: Two forms of sexual exploitation », (2002) 10-1 *Gend. Dev.* 43-49.

o. The rights of disabled child⁸⁴ and the rights of minorities⁸⁵ which could be discussed also under the equal rights to access to all opportunities for the children.

Having listed most of the rights stated in the *Convention on the Rights of Children* above, it is good to know that every state party is supposed to send regularly a national report of children's rights condition of its own according to which it seems that most countries have taken their international obligations seriously, although the lives of many children still are in a threatening condition. Poverty is the most pronounced problem in implementation of children's rights.⁸⁶

However, the *UN Convention* seems to be a beginning point in the protecting the rights of children although it has had a lot of significant effects. The almost universal ratification is a major accomplishment while the regional investments in its wake is significant such as "*African Charter on the Rights and Welfare of the Child 1990*"⁸⁷ and "*European Convention on the Exercise of Children's Rights 1996*"⁸⁸. Though, still "the future of children's rights requires us to build upon the Convention by concentrating on neglected groups of children, by revising, reforming and

⁸⁴ Article 23 states: "1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community."

Refer to: Roslie LEVINSON, « The Right to a Minimally Adequate Education for Learning Disabled Children », (1977) 12 *Val UL Rev* 253.

-Sarah MEPHAM, « Disabled children: The right to feel safe », (2010) 16-1 *Child Care Pract.* 19–34.

⁸⁵Article 30 states: "In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language."

- James S. COLEMAN, « Equality of educational opportunity. », 1966.

-Tove SKUTNABB-KANGAS, « Multilingualism and the education of minority children », *Policy Pract. Biling. Educ. Extending Found.* 1995.40–62.

⁸⁶O. C. JANČIĆ, préc., note 77.

⁸⁷ The African Charter on the Rights and Welfare of the Child, with a Preamble and 48 articles, was adopted on July 11, 1990, and entered into force on November 29, 1999.

⁸⁸ The European Convention on the Exercise of Children's Rights (ECECR) stresses in the Preamble the aim of promoting the rights and "best interests" of children. It was opened for signature on January 25, 1996, and entered into force on July 1, 2000.

innovating the rights with which we wish to endow children, and by strengthening implementation mechanisms.”⁸⁹

Studying the most important international documents on the rights of children, which has also been ratified by the state of Iran, now we could imagine the legal status of children and their legally recognized rights by the highest level of traditional hierarchy of legal authorities. This is useful in our process of conceiving the main concern of this thesis, “the right to proper education”, because following the recognized and ratified principles of this international Convention will help the Iranian governance to include all the rights of children in the sphere of schools and therefore become capable of respecting the “children’s right to proper education”.

⁸⁹Michael FREEMAN, « The future of children’s rights », (2000) 14-4 *Child. Soc.* 277-293, DOI : 10.1111/j.1099-0860.2000.tb00183.x.

2-2. Children's Rights in the Iranian Legal System

Iran has signed the *Convention on the Rights of the Child* on September 5, 1991 and it has been ratified on July 13, 1994 with some reservations and conditions stating that if any provision of the Convention contradicts Iran's internal law or Islamic regulations, the latter would override the Convention.⁹⁰ At that time, some states like Germany, Ireland, Sweden, Finland and Norway objected the conditional joining of Iran to the Convention because they believed that this will cause some conflicts with nature and aims of the Convention.⁹¹ According to article 21 of the Convention on treaties (Vienna 1969) in case of parties' objection, the reserved and conditions will be ineffectual⁹², but Iran seems to keep its commitment to the Convention with the mentioned reservation. Nevertheless, being criticized internally and internationally, and having difficulties in implementation of the Convention, Iran has tried to adjust its legal system according to its international obligations.

Searching the Iranian legal system for the legal documents and legislations on children's rights, we could find the "*Protecting Children and Adolescents Code (16 December 2002)*"⁹³ as the most important code which contains 9 articles stating the essence of protecting kids from all kinds of abuse, harassment and violence. There are also some short legislations on *providing the facilities for children and youth education* as well as predicting *specific criminal procedure and courts for*

⁹⁰. « UNICEF Iran (Islamic Republic of) - UNICEF in Iran - Convention on the Rights of the Child », en ligne : <https://www.unicef.org/iran/children_9305.html> (consulté le 12 décembre 2018).

⁹¹. Hossein MEHRPOUR, *Interbational Human Rights System*, Ettela'at, 2004, p. 148.

⁹². *Vienna Convention on the Law of Treaties*, (23 mai 1969), United Nations., article 21.

⁹³. "Protecting Children and Adolescents Code" (16 December 2002),Iran, available at: <http://rc.majlis.ir/fa/law/show/93849>

the children (which will be discussed below). The other regulations about the children's rights are fragmented into other general laws such as civil or criminal codes.

Here is a summary of codifications on the rights recognised for the children in Iranian legal system. The benefit of this survey for our research project is that any critical view to a legal system needs an initial observation of the classical legal condition of the children's rights. So in this section, one could get familiar with the legal context of Iran regarding the rights of children in which the sociological study of this thesis will be made; the fact that how the child is defined and what rights are recognized for him/he in Iranian legal system.

2-2-1. The Definition and the Age of Childhood

The child in legal terms is the one who is not physically and psychologically mature enough to get involved in a fully social life. In Iran, the concept of childhood is not a clear matter and has been a matter of discussion.⁹⁴ According to Iranian legal system which is following the Shi'i regulations (Sharia'), childhood is the duration of being just born from the mother until the age of puberty. The Article 49(1) of the former criminal code of Iran states that the child is the one who has not reached the age of puberty while the new Islamic Criminal Code of Iran (2013) determines the puberty age for the girls 9 and for the boys 15 lunar years.⁹⁵ Although puberty has been mentioned in Iran's legal documents as the end of childhood and is the age of getting liable for all one's actions (civil and criminal)⁹⁶, it has been and is still being a challenge among the academics and

⁹⁴ Masoumeh MODAVVAR, « The problematic of children's rights in Iran and in the world », (2017) 1-13 *Philos. Child* 77-88, 77-78.

⁹⁵ Lunar years is the basic year of the Islamic calendar which is slightly shorter than a solar year.

⁹⁶ MOOSAVI TARASI, MEHDI, KARIMPOUR, M. TAGHI, « Children's rights before and after birth: Iran's and international law », 1-12 *J. Leg. Stud.* 1-11, 2-3.

social activist because as a natural-physical-psychological event it is hardly acceptable to find a strict age for the puberty as a border of childhood.

Considering the fact that the age of maturity in Iran is a matter of challenge and discussion, the different regulations and procedures have been existed over time. It could also be discussed and categorized as different legal ages for civil, political, criminal and personal affairs. Here we will try to provide a survey over this issue in Iranian legal system.

2-2-1-1. The Age of Qualification for Civil Affairs

As it will be discussed more preciously bellow, the main criteria in Iran's legal documents for a person to terminate the childhood period and to be recognized as an adult, is *puberty*, which is not a fixed and determined age but as it is based on sharia's rules, it has not been changed over time even facing all the critics. The Civil Code of Iran (Article 1210) states that the age of 15 lunar years for boys and 9 lunar years for girls are assumed as a puberty age unless it has happened earlier.⁹⁷

Yet, for a person to be qualified to have control and full autonomy on his/her financial affairs (property, contracts, etc.), his/her rationality also needs to be proved. Rationality here means the capability of person to understand the value of money and property and to distinguish between what regards to his financial interest and what is against. The civil procedure of Iran practically has agreed on the age of 18 and it has been accepted and followed by all the financial institutes, banks and notaries.⁹⁸

⁹⁷ Civil Code of Iran (amended 1982), article 1210.

⁹⁸ Mahdi SHAHIDI, *Civil law- contracts and commitments*, Majd, 2001, p. 247.

There is also a possibility for a child to have some financial affairs like accepting the gifts and money as his own property and to sign a contract to work if he/she is interested. The condition in these cases is that it must be permitted by parents regarding the best interest of child while the child's rationality has to be proved too.⁹⁹ However, according to the labor law of Iran, it is forbidden to employ the kids under 15 years old. It is also not allowed to employ the adolescents of 15-18 for tough jobs which are dangerous for their physical, moral or mental health (Labor Law of Iran, Article 79, 82 & 83)¹⁰⁰.

2-2-1-2. The Age of Qualification for Marriage

In 2010, according to the UN statement, 158 countries have determined the age of 18 years and 29 countries under 18 years old as the least age of marriage. While some countries like Saudi Arabia and Sudan never declared such an age, Iran is the second country (after Geena) which has stated the lowest age of marriage as 13 for the girls and 15 for the boys; still it is possible for the kids under these age to marry with the permission of court which is based on the consent of parents or legal warden of the kid and the child's best interest.¹⁰¹

On 1934, Iran's civil code stated that the marriage is forbidden for the girls of under 15 and the boys of under 18 years old.¹⁰² Then the amendment of the "law of marriage" on 1937 imposed a sanction of 6 months to 2 years of jail for whoever overstep this regulation. If this marriage caused any injury or eternal illness for the girl, the penalty would go from 5 to 10 years of jail with tough

⁹⁹Khosrow DAKANI, « The age of financial rationality in Iran », (2003) 46 *J. Lawyers Bar*, 25-27.

¹⁰⁰ Mohammad Ali BAHMANI QAJAR, « The labor law of Iran and the fundamental right to work », (2010) 279-280 *J. Polit. Econ. Stud.*, 132-133.

¹⁰¹ Kameel AHMADI, « The essence of review and increase the age of marriage in Iranian laws », 2-13 *J. Leg. Stud.* 233-251, 245-246.

¹⁰² Civil Code of Iran (1934), Article 1041

conditions.¹⁰³ The *code of protecting the family* on 1974 increased the age of marriage for the girls to 18 and for the boys to 20 years old and the court permission according to the interest of child would only apply to the girls of over 15. This was all the regulations before the Islamic revolution of Iran on 1979 what made the legislators to adjust the laws according to sharia (Islamic regulation).

On 1982, article 1041 of civil law was detected as a conflict with Islamic regulations and therefore, it was modified with alternating the term of “puberty” with any specific age. Finally on July 2002, this article was totally modified as: “The marriage contract of the girl under the age of 13 and the boy under the age of 15 solar years, is subject to the permission of legal warden with the condition of her/his best interest recognized by the court.”

Accordingly, this article allows the marriage of a 13 year old girl with no condition which could be considered as a “child marriage” regarding the social, psychological and physical criteria. This is while “The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (1979) states that the betrothal and marriage of a child shall have no legal effect (Article 16(2)) and the Convention on the Rights of the Child (1989) defines a child as anyone under the age of 18 years.”¹⁰⁴

On the other hand, based on the civil code of Iran and the legal procedure, the age of 18 has been determined as the age of qualified for any property possession and intervention. This has been followed by all the financial institution, banks and notaries.¹⁰⁵ This makes it even more illogical to accept that in a person who is not legally eligible to intervene in his/her financial affairs is

¹⁰³ Amendement on mariage code (1937), Article 3

¹⁰⁴ ANNIE BUNTING, « Stages of Development: Marriage of Girls and Teens as an International Human Rights Issue », (2005) 14-1 *Soc. Leg. Stud.* 17-38, 20.

¹⁰⁵ SHOKRI, « The legal consideration on the age of marriage for the girls », (2008) 40 *Women Funct. Stud.* 131-156.

considered qualified to get married, while marriage needs all the financial, mental, psychological, physical maturity. The kids of 13 or 15 years old are still in a primary or secondary students who need the protection and support of parents to survive. This is what the critics have argued and still makes it a challenging subject for the legislators to be reviewed.

2-2-1-3. The Age of Qualification for Voting

It seems that the age of voting in different countries depends on the political atmosphere to be determined. For the revolutionary nations in which the excitation of youth is welcome, the voting age is usually kept lower than the conservative states. This is what happened in Iran. Before the Islamic revolution, the minimum age for voting for the parliament was 20 and for the senate was 25 year old, while this was decreased to the age of 16 after the revolution.

This age was still a matter of challenge during the time since the revolution 1979. It was changing between 15 and 16 a few times and finally after the remarkable presidential election of 1997 and 2001 , the parliament decided to increase to age of political maturity to be qualified for voting to up to 18. This age seems to be very common worldwide and indicates that the legislators believe in the age of 18 as a minimum social maturity for the citizens.

2-2-1-4. The Age of Criminal Liability

The age of criminal liability is the age before which the kids are free of criminal responsibility for what they commit and they cannot be subject of criminal sentences. In the former Islamic criminal code of Iran (Article 49) the only criteria for a person to receive the burden of criminal responsibility was the *puberty* which is only determined in the Civil code of Iran as 9 for girls and 15 for boys and the kids of this age were considered completely responsible as an adult which

seems to be unrealistic, unfair and subject to lots of critics regarding the scientific facts, socio-psychological elements and even international commitments of Iran.¹⁰⁶

The recently approved Criminal act (2013) is more convenient to the rights of children in which there seems to be, firstly, no distinguish between the girls and boys in the sense of criminal liability age and secondly the penalties are set in order to discipline and educate the kids regarding their age and committed crime.¹⁰⁷

The new Act has divided the childhood into 4 periods: from birth to 9 years old which is free of responsibility, from 9 to 12, from 12 to 15 and from 15 to 18. The kids of 9 to 15 receive the educative treatments with the responsibility of parents or a legal wardens and only the kids between 9 and 12 could be sent to the educative center (where the young committers have to stay for a determined period). For the ones between 15 and 18 they could receive financial penalty, going to the educative center or free public services. These are all about the crimes what are not categorized in the Islamic law. Therefore, it still is a matter of challenge about the crimes what have been predicted in sharia'. In this case, again the puberty is the key criteria and is assumed as 9 for girls and 15 for boys.¹⁰⁸

The only thing is that the boys of 12 to 15 who have not experienced puberty are subject to the conviction of "written warning and official obligation not to repeat the crime" or "staying in the educative centers for a period of 3 months to one year".¹⁰⁹ And generally the ones under 18 who have already attained puberty and have committed a crime eligible for a sharia' punishment, "if

¹⁰⁶ Masood HAIDARI et Jalaladdin GHIASI, « The puberty criteria for the criminal responsibility in Sharia' and Iran's law », (2013) 9-32 *Investig. Shatria Islam. Law* 87-104, 100-104.

¹⁰⁷ Diba ROOZBEHANI, « The age of criminal responsibility in the new criminal Act », *Secure Home* 2015, en ligne: <<http://www.khanehamn.org/archives/8426>>.

¹⁰⁸ Islamic Criminal Act of Iran, 2013, Article 88-89.

¹⁰⁹ Islamic Criminal Act, Article 88(2)

they do not have a comprehension of the obscene nature of their act or their maturity is a matter of doubt”, they get the above educative penalties; at most a financial punishment or staying in the educative center up to 5 years.¹¹⁰ This is already an opening window for the judges to practically have more just convictions for the persons of under 18.

The only criminal legislation in Iran which has mentioned the age of 18 for the kids to be protected from abuse and violence is the “law of protecting children and adolescents” approved on 2002. In this act, the term of “child abuse” has been used for the first time in Iranian legal acts and the age of 18 has been determined to extent the border of protection for the kids who have suffered from any physical, psychological and moral abuse or injury. It has been also recognized as a crime in this Act *to prevent the child from access to education and to be the subject of bargain or crime commitment.*¹¹¹

2-2-2.The Recognized Rights for the Children

The constitutional law of Iran as the basic transcript of the legal system has stated the general order and foundation of rights for children especially the *free public education for all* and has also mentioned protecting the *rights of pregnant mothers and orphan kids*. This provides a context to protect the children and adolescents in the range of different law and codification of Iran. The rights of children in Iran have been fragmented in a variety of laws such as civil law, criminal law, the law of protecting the family, the law of protecting the orphan kids and women, the law of providing education facilities for children and adolescents and finally the law of protecting the

¹¹⁰ Islamic Criminal Act, Article 91

¹¹¹ Hamzeh ZEINALI, « The innovations of the law of protecting the children and adolescents and the challenges forehead », (2003) 2-7 *Soc. Welf. Q.* 59-92, 89-92.

children and adolescents. Below, we would categorize the considered rights in different legal documents as “children facing their civil rights” and “facing the criminal incidents”.

2-2-2-1. Children’s Civil and Fundamental Rights

Regarding Iran’s legal system, children benefit from fundamental and civil rights since the birth (or even before the birth) like the right to live, right to identity and parentage, custody and care; and they continuously have the right to health, education, freedom and entertainment which come with their growth and development process. Below, these rights are discussed through the legal documents of Iran.

2-2-2-2-1-1. Child’s birth and living

a. Right to Live

The constitution of Iran has regulated about special care for pregnant mothers and has obliged the government to protect the mothers in pregnancy and custody as well as the unguarded children (orphan children).¹¹² Furthermore, according to the criminal code, the physical punishments (Had or Ghasas which are Islamic penalties) of pregnant mothers are postponed to after giving birth (Art.443). In addition to protect the pregnant mother, this is aimed to protect the right of fetus to live. Abortion is also banned according to the article 716 of the same code to protect the right of fetus to live.

b. Right to Identity

The first and the most important right of the child after birth is that his/her birth get registered and to be given an identity (given name and family name) so that he/she will be recognized and benefit

¹¹² Constitution of Iran, Art 21

from all the rights as a human and as a citizen of the state. This is a crucial right for all the children and especially for the children who are born out of wedlock.¹¹³

In Iran it is obligatory to register the birth of the child and a penalty has been predicted for the ones who break this law. Article 15 of “law of identity registration” states this obligation and the article 16 determines the persons who are obliged to do this registration. The kids who are born out of wedlock also must be registered by the natural father according to the unifying conviction of the Supreme Court.

c. Right to Custody

According to article 1168 of civil code, “custody is the right and the duty of parents” and “any of the parents should not avoid to fulfill their duty of custody during the time in which they are responsible for” (art.1172). The court has the authority to give the custody of the child to other guardians if the physical or mental health of the kids is in danger because of ineligibility or carelessness of parents in taking care of the child. (Art.1173) In case of separation of parents, mother has the priority of taking care of the kid up to 2 years old (7 years old for girls) and after this age the father has to keep the kid. In case of disagreement between the parents, the court will make a decision regarding the best interest of child.¹¹⁴ In case of both parents’ decease, the grandfather (father of father) has to take care of the child and if he is not alive, the court will determine a person to take care of the kid.

The custody comes with following tasks and rights: 1- to keep the child and take care of him/her 2- to breastfeed the kid 3- providing the expenses of life of the kid 4- upbringing, cultivating and

¹¹³ Mehdi TARESI et M.Taghi KARIMPOUR, « Considering the right of child before and after birth », (2017) 12 *J. Leg. Stud.*, 5-7.

¹¹⁴ Atefeh ABBASI, « A comparative study of Iran’s law with the convention of children’s rights », (2010) 53 *J. Fam. Law Fiq’h* 90-113, 108.

educating the child which includes the duty to provide the right to education for the kid and also the right to punishment for the parent 5-the right of each parents and the grandfather to visit the kid¹¹⁵.

d. Right to Citizenship

As a social rule, every child takes the citizenship of a states just after the birth. Iran's citizenship applies to peoples in three ways: 1- The land or the blood system 2- Marriage 3- Obtaining Iranian citizenship.

According to article 976 of Civil Code Iranian citizenship comes in the following conditions: "1- ...2- the persons with Iranian father are Iranian citizens whether born in Iran or not. 3- The persons who are born in Iran and their parents are not known. 4- The persons born in Iran from foreigner parents from whom one is born in Iran. 5-..."

Iran's legal system does not talk about citizenship of the children born out of wedlock but it seems that they could go under the 3rd category of article 976 as mentioned above. Yet, there seem to be another legal gap in Iran's citizenship rules. As article 976 states, the Iranian citizenship will be applied to the persons who are born from Iranian fathers, therefore, a child who is born abroad from an Iranian mother and a father with no citizenship, may remain without a citizenship which is in contrast with convention of children's rights. This could be subject to modification in Iran's legal system.

¹¹⁵ Nasrollah EBRAHIMI, « The Iran's legal institution in protecting the kids », (2003) 31 *Figh'h Fam. Law* 56-100, 59-70.

2-2-2-1-2. Child's Upbringing and Improvement

According to article 1104 of civil code of Iran "the wife and husband have to cooperate in protecting the family foundations and in upbringing their kid". This task of the parent (and the legal guardians in case of parents decease) comes with some rights for the child to be respected in order to have a normal and healthy childhood. Furthermore, the state has the responsibility to respect children's basic rights such as right to prompt medical treatment, education, freedom and so on. Below, I will briefly talk about some of these children's rights in Iranian legal system.

a. Right to Live With Parent

This right is recognized for the child in Iran's legal system under the right to custody as it has been discussed above. The duty of parents to keep and take care of their kids is the other side of respecting the child's right to live with parents. Besides, in case of parent's separation or divorce the right to visit them regularly is reserved for the child. However, if the parents are recognized as not legitimate to take care of child properly and they put the kids' mental and physical health in danger, the court will decide to separate the child and give the responsibility of taking care of him/her to a legitimate person or institute.¹¹⁶

b. Right to Health

The right to health of the child, make both parents and the states responsible in some aspects. The parents are supposed to provide a healthy environment and food for the kid to ensure his/her mental and physical health as it has been mentioned in custody regulations above. The states is also

¹¹⁶ Civil Code of Iran, Articles 1168, 1172, 1173

responsible for providing the necessary medical care and insurance for all the citizens including the children. These rights are reserved in different legislations of Iran as below.

The constitution of Iran states (Art.29): Article 29: “It is a public right to enjoy social security and have benefits with respect to retirement, unemployment, old age, workers’ compensation, lack of guardianship, and destitution. In case of accidents and emergencies, everyone has the right to health and medical treatments through insurance or other means.” The “Iran’s development programs”¹¹⁷ also have reserved the right to health by obliging the government to provide the facilities to prevent and treatment of the illnesses and injuries and insuring the healthy environment and food for all the people by founding the specialized “council of health and food security” in the ministry of health and medical services. These laws and some other legislations contain the right of children to access to health, medical treatment and insurance services.¹¹⁸

According to the “law of public insurance of medical services” which was approved in 1995, the government is obliged to cover all the applying people for this insurance including the governmental employees, the villagers, the destitute people and so on.¹¹⁹ “The executive regulations of schools” has also some provisions on contagious illnesses at school, regular medical check-up for students every year and obligatory “accident insurance” for the students which are applicable in all the schools in Iran.¹²⁰

¹¹⁷ Iran’s developmental programs No 4(2005-2009) & 5(2010-2014)

¹¹⁸ Look at:

The law of preventing the sexual and contagious illnesses (1941)

The law of social insurance (1975)

The law of instructor and tasks of ministry of health and medical services (1988)

The law of organizing health and medical treatment (2002)

¹¹⁹Mahmood ABBASI, Raheleh REZAI et Ghazaleh DEGHANI, « The concept and the status of right to health in Iran’s legal system », (2014) 30 *J. Med. Law* 183-199.

¹²⁰ Executive regulations of school (2000), Articles 57- 62.

c. Right to Access to Information

Regarding the article 17 of convention on children's rights about right the access of child to mass media, information and books, the constitution of Iran and the "solutions and strategies to improve the activities of IRIB¹²¹" try to reserve these rights for the citizens.

Although the children's right in this case is not mentioned explicitly, the right to access to information for the kids is recognized by the esprit of legal regulations, Iran's approval of the convention of children's rights and some other different legislations.¹²² The content of part 5 of the Article 17 of the convention that concerns the moral and well-being of children is absolutely a concern of Iran's state too, as there is already a severe filtration on the content of Internet, Book publication and even social media even for the adults. The final content restriction for kids would be the task of parents or legal guardians.

d. Privacy

Article 25 of Iran's constitution recognizes the right to privacy by stating that "It is forbidden to inspect letters and to confiscate them, to disclose telephone conversations, to disclose telegraphic and telex communications, to censor them and to stop their delivery. It is forbidden to wiretap conversations. All forms of inspection are forbidden except according to law." Which could be applicable to the children too. However, the children are considered as immature and incapable of

¹²¹ Islamic Republic of Iran Broadcasting

¹²² Also look at:

The regulations on the production, import and distribution of child's toys (1998)

The law of increasing the penalties for illegal activist in media (2000)

The policies to improve the leisure time of girls and women (2002)

The national foundation of computer games statute (2006)

The law of Computer crimes (2009)

distinguishing the right and wrong, therefore the parents have the right to have control on their affairs and they could break the child's right to privacy if they find it necessary for his/her well-being or according to the "best interest of child" which is definable very conservatively according to Islamic rules.¹²³

e. Freedom of Expression and Thought

The same argumentation to neglect the right to privacy is applicable for the freedom of thought and expression for the children. Although freedom of thought and expression to explore the way of happiness and perfection are respectable regarding the Islamic rules and the constitutional law also obliges the state to provide the political, religious and social liberties (restricted to the law and Sharia' provisions), The right of parents to upbringing the kids according to his/her best interests will overpass the kids' absolute freedom.¹²⁴

f. Freedom of Assembly and Association

The rights to association, assembly and peaceful gathering are recognized in Iran's constitution if they are not against the law, Islam and Iran's independence and freedom according articles 26 and 27. While this principle is applicable to the children as well, the right to association has been respected in educational regulations, for the children specifically. Articles 18-21 of "executive regulations of schools" mention the provisions for students' association at school.

¹²³ Kobra POURABDOLLAH, Forough HOSEINI et Mahdi SAYYAR, « The extent of parents' right to upbringing the kid », (2013) 60 *Women's Funct. Stud.* 217-224.

¹²⁴*Id.*, 222-232.

g. Right to Education

The right to education in Iran's legal system has been basically recognized in the constitution. Article 3 states free education in all the levels as one of the government's tasks and article 30 clarifies that: "The government is responsible for providing the means for free public education for everyone up to the end of high school. It must expand free higher education until when the nation reaches self-sufficiency."

Although parliamentary legislations in this case have started since 1943, the law of providing facilities for education of Iranian children and youth (1974) is the most complete regulation on children's education right in Iran. Article 2 of this law states the duty of parents to register the child for elementary and secondary education while it is declared as mandatory and if they refuse to do so, the education ministry will take care of child's registration according to the registration office statistics.¹²⁵

The law of protecting children and adolescents also predicts sanctions for the parents who refuse to provide education for their children intentionally; besides, this conviction against the refusal parents might end up to recognize them as not eligible to take care of their kid and get deprived from their right to keep the child.¹²⁶

¹²⁵ Refer to:

- Mohammad ASADI NEJAD, Ebadallah ROSTAMI et Fatemeh MORADI, « The children's right to education in Human rights and Iranian legal documents », (2015) 62 *Figh'h Fam. Law* 173-194.
- Mohammad MANSOORI BOROJENI, *Children's General Primary Education: a study of Iran and US legal system according to human rights provisions*, Mater thesis of public law, Tehran, Shahid Beheshti University, 2011.

¹²⁶ "Protecting Children and Adolescents Code" (2002), Art.4: "Any kind of physical or mental abuse, harassment or torture of children, intentional neglecting their mental or physical health or preventing them from education is forbidden and the perpetrator will stay for 3 to 6 months jail and/or up to 10 million Rials financial penalty."

The executive regulations of schools has also been approved by the supreme council of education on August 10, 2000 to regulate the internal disciplines of schools. According to this legal document, the public schools have to register all the applying students without any discrimination and condition (Article30). The schools' directors are obliged to check the amount of studies, homework and examinations regularly and make a balance to prevent student's exhaustion. The school should be a happy and pleasant place for the kids according to this law (Article98).

The prohibition of any kind of body punishment or any acting against student's reputation (Article77) and the necessity of encouraging the students with appreciation letter or other kinds of encouragement (Articles 71-73) are some other parts of this regulation which are remarkable regarding the children's rights convention.

The other remarkable part of this law could be the rules of clothing which states the Islamic condition for the student's outwear. This is where the girls have to put on hijab as an obligatory outwear of school in all the levels starting from the elementary school(Article 65-67) which is a matter of criticism at least for the girls of under 9 (who do not have to wear hijab even according to Islamic rules.). The separation of girls and boys schools is also a default model of schooling in Iran.

2-2-2-2. Children's Rights Facing Criminal System

The age of criminal liability for the kids in Iran's legal system has been discussed earlier in this chapter, yet the following sections will talk about the liability of children as well as specified criminal procedure for kids and also the children as victims in criminal incidents.

2-2-2-2-1. Criminal Liability of Children

Despite considering childhood as one of the eliminating factors of criminal liability in Iran's legal system, the childhood is not directly and explicitly mentioned or defined in criminal code. "The immature persons do not have criminal liability. The age of maturity (puberty) is 9 for girls and 15 for boys. The educative treatments stated in this law are applicable to immature persons."(Article 146-147-148 of Criminal Code 2013) Therefore, even the kids of under the age of puberty could be subject to some criminal convictions if they are recognized rational enough to distinguish between good and bad. So they are not completely eliminated from criminal liability.¹²⁷

However, the criminal law states in general that the people of under 18 (the age of childhood regarding the convention of children's rights) who are physically mature, will only get the educative convictions if they are not recognized rational or mature.¹²⁸ This will let the hands of judges open to decide more relatively to the convention of children's rights, although the discernment of maturity and rationality of the children under 18 still remains a subjective decision.

2-2-2-2-2. Criminal Procedure for Children

The rights mentioned in article 37 and 40 of the convention of children's rights are all recognized for all the people in the constitutional law of Iran (Art 32 – 39): the prohibition of arresting unlawfully, respecting human dignity, the right to make objection to the court's conviction, the right to access the neutral and just court and having prompt and fast procedure, the principle of legality of crimes and penalties, the principle of innocence, the principle of access to lawyer and interpreter during the procedure, the prohibition of any kind of torture and to be compelled to

¹²⁷ A. ABBASI, préc., note 113, 100.

¹²⁸ Criminal Code of Iran, Article 91

testify against oneself, etc.¹²⁹ Yet, the law of criminal procedure of Iran has stated some especial conditions and rights in the legal procedure for children.

1- Specified courts for considering and investigation the children's cases¹³⁰ 2- The process of investigation and prosecution has to be done by the court directly and not the judicial officers¹³¹ 3- The option of providing the "character file" for every child¹³² 4- Summons of the child before the court in accompany of his/her parents or legal guardians¹³³ 5- Access to legal consultant and providing lawyer for the child¹³⁴ 6- The secrecy of courts session¹³⁵ 7- The possibility of reduction of punishment after the conviction regarding the child's condition and progress¹³⁶

These are some procedural rights considered for children in legal system of Iran which are aimed to prevent the child's repeating the criminal acts with respecting his/her dignity and reputation, avoiding the kid's physical or psychological harms and applying the reduced punitive convictions

¹²⁹ **Article 32:** No one can be arrested except in accordance with the rule and the procedures that are set by the law. In the case of arrest, the charge and the reason for the arrest must be immediately conveyed and communicated to the defendant in writing. The preliminary file must be submitted to qualified judicial authorities within twenty-four hours and the preliminaries for the trial must be set as quickly as possible. Anyone who deviates from this principle will be penalized in accordance with law. **Article 34:** Seeking justice is the indisputable right of every individual. Anyone may have access to the qualified courts for this purpose. All members of the nation have the right of access to such courts. No one can be prevented from referring to courts to which they have a legal right of recourse. **Article 35:** In all courts of law, the opposing parties to a dispute have the right to choose an attorney for themselves. If they cannot afford to hire an attorney, they should be provided with the means to do so. **Article 36:** The ratification and execution of a sentence may only be carried out through a qualified court and must be in accordance with law. **Article 37:** Innocence is presumed. The law does not consider anyone guilty unless the person's guilt is proven at a qualified court. **Article 38:** Torture, of any kind, in order to obtain confession or information is forbidden. It is not permissible to force someone to testify, confess, or swear an oath. Such a testimony, confession, or oath is worthless. Anyone who deviates from this article shall be sentenced in accordance with law. **Article 39:** All forms of violation against the honor and dignity of any person who is legally arrested, detained, imprisoned, or sent into exile is prohibited and is subject to prosecution.

¹³⁰ The unifying conviction No 16236, on 19 November 2000

¹³¹ The criminal prosecution law, Art.221

¹³² Ibid, Art.222

¹³³ Ibid, Art.223

¹³⁴ Ibid, Art.220

¹³⁵ Ibid, Art.225

¹³⁶ Ibid, Art.229

for the children which have tried to consider the convention of children's rights. However, there are still some critics to this system by which the academics in faculties of law are trying to help out the legislators to improve the procedural law of kids.¹³⁷

2-2-2-2-3. Victim or Criminal Children

The criminal protection from children against any kind of physical or psychological violence, abuse or injury, negligence or inattention, maltreatment or exploitation what has been stated in the convention of children's rights, has been also a subject of legislation in Iran's legal system.

The criminal code of Iran following the convention of children's rights, has criminalized murder, mayhem, hurting, etc. against the child, kidnapping and hiding the newborns, violence against children's reputation in public sphere, leaving the kid unattended, avoiding to give back the child to the legal guardians or parents, marriage of the girls of under age and forcing the children to do beggary (Art. 619, 631, 633, 646, 713).

The "law of protecting children and adolescents" (2003) is also trying to protect the persons under 18 years in many ways. Any kind of harassment or haring the children what causes physical, psychological or moral injury in them, any kind of bargaining, exploitation or involving them in illegal acts like smuggling, also any kind of physical or psychological hurting or torturing and neglecting the physical and mental health of the children or preventing them from getting educated is subject to prosecution according to this law.¹³⁸ Children trafficking especially with pornographic

¹³⁷ Leila SADAT ASADI, « The criminal procedure of children in Iran's law », (2004) 45 *J. Judic. Stud.* 103-123.

¹³⁸ "Protecting Children and Adolescents Code", 2002, Art.1-4.

aims, sexual exploitation or tough works is also criminalized in Iran's legal system; as well as any sexual abuse or involving them in drug smuggling.¹³⁹

- **The Distinction between “Child Abuse” and “Punishment”**

While the “law of protecting the children and adolescents” tries to extend its borders to all the crimes against the children and even it recognizes “child abuse” as a public crime which does not need a private claim to start prosecution¹⁴⁰, the subject of Art.1179 of civil law has been excluded totally from this law¹⁴¹. Article 1179 gives the right to the parents to punish their kids – in order to moral and spiritual educating them and only limited to the a customary punishment-.¹⁴² Therefore, a clarification of customary punishment needs to be done in order to prevent neglecting children's rights to their physical integrity.

Legally, the parents, the legal guardians (father and grandfather) and the spouses who have adopted a child with the permission on the court are the only people who have the right to punish the child. So step-parents, relatives, teacher, principle, etc. are excluded from this law and in case of any harmful punishment, they are subject to criminal liability before the court.

Although the punishing acts of parents and legal guardians are not given as criminal act, it will be considered as semi-intentional if any of these punishments causes murder or injury and if it has

¹³⁹ Look at the following laws:

The law of protecting orphan kids (1974)

The law of illegal activist in media(1993)

The law of combating human trafficking (2004)

The law of approving the convention of prohibiting and immediate action to eliminate to worst children labors and its amendment (2004)

¹⁴⁰“Protecting Children and Adolescents Code”, Article.5

¹⁴¹ Ibid, Art .7

¹⁴² Civil Code of Iran (1935), Art.1179

not been with the criminal intention and their act has not been normally killing. If the punishment has been with the intention of killing, it will be considered as intended murder. The legislator has also given the authority to the court to determine eligible guardians for the child in case the parents or legal guardians of the kid have been recognized as not eligible or not caring about his/her health.¹⁴³

2-2-3. The Rights of Children with Disability

The mental and physical disabled children seem to be legally protected regarding the legal legislations although there are tons of difficulties in practicing their rights because of the shortage of facilities and social developments in Iran. They are normally equal with others in all the rights but their need to get special care and attention is a matter of problem in developing countries like Iran.

Approving the law of “*protecting the rights of disabled persons*” on May 5, 2004 and joining the “*International Convention on the rights of persons with disabilities*” in 2008, Iran has tried to predict the protecting conditions for disabled people including children and adults.¹⁴⁴

Unfortunately, in the “law of protecting the rights of disabled persons”, the disabled children are not directly mentioned but normally all the provisions are applicable to children as well, such as receiving treatment services, skill training and education, getting special equipment, accessing to sport, entertainment and transport services with half price, provided with insurance, etc.¹⁴⁵ The “Executive Regulations of school” also has facility provision for the children with especial body

¹⁴³Aref KHALILI, Alireza MIRKAMALI et Ali BAGHERI, « The distinction between child abuse and parental punishment: a legal and figh’ perspective », (2017) 35 *J. Figh’ Fundam. Law Stud.* 5-27.

¹⁴⁴ Mohammad Mahdi MEQDADI, « Protecting the persons with disabilities », (2016) 13 *Relig. Law* 205-241.

¹⁴⁵ The law of protecting the persons with disabilities, 2004

condition in taking their exams (by providing extra time, especial questionnaires and so on).¹⁴⁶ The rights of children with mental disabilities are also totally included in these cases, meanwhile they are not eligible to have control on their financial affairs and need to be under a legal protector.¹⁴⁷

Even if this is not a really inclusive legislation regarding all the internationally recognized rights for the children with disabilities, it seems to be a valuable attempt by the Iranian state in order to facilitate the life for the disabled citizens; while the act of executives remains questionable.¹⁴⁸

2-2-4. The Rights of Children out of Wedlock

Article 1167 of civil code of Iran recognizes the child who is born out of wedlock as the legal child of his/her natural parents. However, this kid would not benefit from ordinary rights what every kids has upon his/her parent. As this seems to be obviously neglecting the fundamental rights of these children, the jurisprudence has tried to help out in this regard. According to the unification conviction of supreme court of Iran: “The child who is born out of a legitimate sexual relationship is recognized as the customary child of the father and consequently the natural father has the duty to provide the child with official identification and according to the article 884 as a natural father must fulfill all his duties about educating and providing the expenses of child’s life. However, this child is deprived of the parents’ inheritance.”¹⁴⁹ This conviction is applicable as a legal source in all the courts thereafter.

Thus, these natural children who are not born in a legal marriage relationship have the equal rights with other children unless the right to inheritance and the father does not have authority on these

¹⁴⁶ Executive regulations of schools (2000), Article 51(3).

¹⁴⁷ Mostafa ASLAN, « The legal status of mental disabled children in Iran », (2004) 24-25 *Espec. Educ.* 9-12.

¹⁴⁸ Fariba IRAN et Mohammad KAMALI, « A survey on the rights of children with disabilities », (2003) 7 *Soc. Welf. Q.* 93-110.

¹⁴⁹ The Unification Conviction of Supreme Court of Iran, June 28, 1997

children's property unlike the legitimate children. Some sanctions have been predicted for the parents who fail from providing the natural rights like right to identification, custody and financial support for the child. The kids who are left behind and their parents are not found will be kept in either governmental or private protecting institutions.¹⁵⁰

2-2-5. The Best Interest of Child

As the *Convention on the Rights of Children* affirms that “the best interest of the child” should be considered in all the affairs and treatments related to the child, this term is also a criteria to be considered regarding law and sharia for the legal guardians of the child.

Although the term of “the best interest of child” has been used in Iranian codifications, it remains a vague concept since there is no specified criteria in this regard. Yet, in legal jurisprudence and also in sharia' sources it could be found some detailed elements in order to define the best interest of child. This is what Nourbakhsh and Parsapour have tried to do by categorizing the criteria in forming the best interest of child in Iran's legal system. They have mentioned 1.age 2.sex 3.emotional care 4.care, protection and safety of the child 5.preservation of the family environment and maintaining relations 6.the child's views 7.the child's right to education 8.situation of vulnerability as the foundations of child's interest in Iran's jurisprudence.¹⁵¹

¹⁵⁰ Jamshid JAFARPOUR, « The rights of illegitimate children regarding the Convention children's rights and Imam khomeini's views of sharia' », (2005) 28-29 *Matin Res. J.* 83-100.

¹⁵¹ Mohammad Bagher PARSAPOUR et Sousan NOURBAKSH, « The criteria for evaluation the best interest of child in sharia', Iran's law and the convention of children's rights », (2015) 2-3 *Islam West Law Comp. Stud.* 1-28.

2-2-6. The Rights of Minority Children

Iran is a vast country with a variety of cultural, linguistic and religious minorities. The constitution of Iran in article 12 and 13 states the official religion as bellow:

“The official religion of Iran is Islam and the Twelver Ja‘fari school of [shi‘ī] religion. This principle shall remain eternally unchangeable. Other Islamic schools of thought, such as the Hanafi, Shafi‘i, Maliki, Hanbali, and Zaydi, are deserving of total respect and their followers are free to perform their own religious practices, religious education, and personal matters.”, while “Zoroastrian, Jewish, and Christian Iranians are considered as the only recognized religious minorities. They may exercise their religious ceremonies within the limits of the law. They are free to exercise matters of personal status and religious education and they follow their own rituals.”

All Iranian Muslims are required to treat the non-Muslim individuals with good conduct, in fairness and Islamic justice, and must respect their human rights according to article 14.

The rights of linguistic minorities are also mentioned in article 15 of constitution: “Persian is the official and common language and script of the people of Iran... However, use of regional and ethnic languages in the press, the mass media, and the teaching of their literature at schools, alongside the Persian language, is freely permitted.”

Although these rights are legally reserved for the recognized minorities in Iran, it seems that minority people have difficulties to fulfill all their rights because of conservative pattern of the state in practice.

This section includes the description of the law from the main and classic point of view. It forms what we usually call, referring to the implicit common sense in modern law faculties, “the law of”. But in the current thesis, it is not the final word, on the contrary, it is solely the very beginning.

While this part, being a classic legal study, just describes the formal legal status of children in Iran, the main aim of this thesis is to take a critical position in order to improve the condition of children's right in the educational system of Iran. Therefore, facing this legal system, we could now move to the other fields of knowledge, philosophy and empirical study, to finally become capable of writing a critical legal essay on the "children's right to proper education" in this very specific part of the world. So we start with the classic method in the law discipline, then we move to the other fields to be able to criticize the solidity of actual field by an interdisciplinary study and finally go back again to the law with a critical essay in this discipline.

2-3. Children's Rights in the Islamic Culture

What have been discussed earlier about children's rights in Iran's legal system are considered basically Islamic because all the regulations and legislations of Iran must be checked with Islamic rules by the guardian council of parliament and no regulation is approved if it has any conflict with the Islamic provisions. However, the basic considerations of Islam on children's rights will be resumed briefly to make a preview of the importance of childhood period in Islamic context.

Muslim jurists consider four primary sources of jurisprudence (*usul ul-fiqh*) in their reasoning which are: Quran (words of God as revealed to the Prophet Mohammad), the Sunnah of the Prophet (Mohammad's words, deeds, and customs and for the Shi'i sect there is also Sunnah of the Imams, whom the Shia's believe were the divinely-inspired descendants of Mohammad), Ijma (consensus among Muslim jurists on a particular issue), and Qiyas (reasoning by analogy). Therefore, all what is coming bellow, are from these sources, especially the first two ones (Quran and Sunnah).¹⁵²

2-3-1. The Status of Child in Islam

The value of marriage and family is so central in Islam that it has been said through the prophet Mohammad that whoever refuse to follow my tradition of marriage is not considered as my follower (Muslim). In this regard, the children are totally subject of attention and care as they are considered as sacred beings from the first moment of creation (creation of fetus).¹⁵³ Quran has

¹⁵² These sources could be different among different sects of Islam. For example Shi'i sect believes in Quran and Sunnah as basic rules for sharia' and the two last (Ijma and Qyas) are auxiliary sources just in case the other sources are not clear enough.

¹⁵³ See the Constitution of the Islamic Republic of Iran, Art. 10, which explicitly emphasizes the centrality of the family: "The family being the fundamental unit of the Islamic society, all laws, regulations, and programs which pertain to it shall facilitate the establishment of the family. They shall safeguard the sanctity of the family and the stability of family relationships, based on Islamic laws and moral concepts." In this regard, the Quran states:

-As for the unbelievers, neither their riches nor their children shall in the least save them from Allah's wrath. Quran 3:10.

blamed the people of pre-Islam for killing their kids (Especially girls):“And slay not your children for fear of poverty: We will provide for you and them; surely the slaying of them is a grievous sin” (Q.17:31).

Each child is considered as a gift for the parents and brings blessings and God’s compassion to the house. So Muslims are advised to take the best care of their children and to fulfill their duties upon them (these duties will be discussed further.) Prophet Mohammad is well known for his especial attention to the kids. He used to play with his two grand-sons (Hassan and Hossein), putting them on his legs and kissing them. It has been said that once the prophet Mohammad was praying in the Mosque while lots of people were praying with him. It took a while and he did not get up from sajdeh (A part of praying while Muslims put their front head on the ground and pray). Later on people found out that his grand-son was sitting on his back and he did not want to disturb the kid’s playing.¹⁵⁴

2-3-2.The Age of Childhood

As it has been mentioned in Iran’s legal system, Islam considers the puberty as the end of childhood. Yet, different kind of puberty have been recognized in Islamic views such as marriage puberty (physical), rational puberty (to understand the good and bad¹⁵⁵) and the highest puberty (to be capable of having control over his/her property). However, generally the age of 9 for the

-Men are tempted by the lure of women and offspringThese are the comforts of this life. Quran 3:14.

-Believers, do not betray Allah and the Apostle, nor knowingly violate your trust. Know that your children and your worldly goods are but a temptation, and that Allah's reward is great. Quran 8:28.

¹⁵⁴ Mahin KARIMI, *The education in Iran’s legal system: The status of child in Islam*, Master thesis, Tehran, Islamic Azad University, 2010.

¹⁵⁵ Quran states the kids of certain age have to ask for permission while they want to enter the room of their parents. This age is called the kids’ rational puberty.

girls and 15 for the boys are pre-assumed as the age of puberty for the kids regarding Islamic jurists.

Imam Sadeq (the sixth grand-son of prophet Mohammad) who has been known as the founder of Shi'i sect, states that "the child should play during the first 7 years of his/her age, should learn how to write and read during the second 7 years and should learn the rules of Islamic life (the good and bad) during the third 7 years of his/her life."¹⁵⁶

Regarding Islamic studies the childhood can be divided into three periods: 1- From birthday to 7 year old, during which the child has no criminal liability and has no sense of good and bad. 2- From 7 to the puberty age, during which the jurists have different ideas for the kid being liable or not but generally children are liable in these age if they have reached the rational puberty. 3- From puberty and on, when the person is recognized as an adult and is liable for all his/her acts.¹⁵⁷

2-3-3. The Rights of Child upon the Parents

children's rights in Islam, yet in general they could be classified into material rights and spiritual rights. The material rights the right to live, the right to breastfeed (nurture), the right to have a good name and get identity, and the financial rights; while the spiritual rights are in 3 types: 1- Guidance rights such as praying for the kid to get into the right direction of life and way of thinking; 2- Education rights like teaching the experience and knowledge to the child and advising him/her through learning to become a responsible person 3- psychological rights such as love and compassion to the child, respect and care about his/her life¹⁵⁸.

¹⁵⁶ KOLAINI, « Osoul al Kaafi », 6, 46-47.

¹⁵⁷ M. KARIMI, préc., note 153, p. 54-56.

¹⁵⁸ Javad IRAVANI et Mahdi EBADI, « A comparative study of children's rights in the convention of children's rights and Quran », (2012) 11 *Quran Sci. J.* 65-86, 69.

There are lots of evidences along with these rights in Sunnah (the acts and sayings of Prophet and Imams). We are going to mention some of them below:

- Prophet Mohammad: Be proud of your kids (give them confidence) and treat them well.
- Imam Ali: The right of children upon his/her parents are: to give him/her a good name, to educate him/her well, and to teach him/her the Quran.
- Imam Ali: Educate your children consistent to the moral of their own time period and not regarding your own time because they are created for a different time period than yours.

The protection of child's rights starts from being fetus while the abortion is forbidden and the mother has been advised to eat Halal food and take care of her spirituality. Then from the birth, the kid has the right to be protected and have guardian, food, cloth and shelter which have to be provided by father (In case the father is dead, then the grandfather and close relatives.). During infancy it is duty of mother to take care of the child and to feed him/her.¹⁵⁹ "Mothers shall suckle their children two years completely for such as desire to fulfill the suckling. It is for father to provide them and cloth them honourably."(Q.2, 223)

In addition, the child has a right to have guardian over his/her properties and interests. The guardian who takes care of financial matters is normally the father or whoever he appoints and this guardianship will continue until the kid reaches the age of maturity of financial matters (puberty or later). Quran also explicitly discusses the inheritance rights of children.¹⁶⁰

Another right of children upon their parents is to be provided with education. Throughout the history of Islam, the education and edification of children has been considered to be a central

¹⁵⁹ Maryam ELAHI, « The Rights of the Child under Islamic Law: Prohibition of the Child Soldier », (1987) 19 *Columbia Hum. Rights Law Rev.* 259-280.

¹⁶⁰ Quran. 4; 9-10. Qura.4; 11.

parental duty. This duty includes helping children to recite the Qur'an, teaching them to pray, ensuring the regular performance of daily prayers by age 10, and teaching them Islamic moral and ethical principles like honesty, brotherhood, equality and equity.¹⁶¹

In line with the duty of parents to educate and discipline their kids, it comes their right to punish them. Studying the Islamic sources, one could find that body punishment has not been absolutely forbidden and it is even permitted to punish the kid if he/she has committed a great sin or criminal act. On the other hand, the body punishment of child has been negated. There is a story of a man who came to the seventh Imam of Shi'i (Imam Kazem) and complained about his child while he told him: "Do not hit your child and to discipline (educate) him just be in sulk with him, but be careful not to sulk for too long and reconcile your relationship soon." It has been said that the prophet and Imams never used body punishment in their acts; therefore, it could be concluded that the other methods of corrections are advised regarding Islamic teachings although the limited body punishment is also seem to be permitted.¹⁶²

This Islamic point of view to the rights of children helps us better understand the legal and cultural status of children in Iran because Iranian legal system is highly inspired by Islamic law (Figh'h) and the socio-cultural context of this country is also affected by the Islamic thoughts and teachings. Therefore, considering Islam's view about the children is an important element in realizing, analyzing and criticizing the children's right to proper education in Iran as the aim of this thesis.

¹⁶¹ Avner GILADI, « Nurture and Protection of Children in Islam: Perspectives From Islamic Sources: Islamic Texts Command Affection, Care, and Education », (2014) 38-4 *Child Abuse Negl.* 585-592.

¹⁶² A. KHALILI, A. MIRKAMALI et A. BAGHERI, préc., note 142, 14-18.

Conclusion of Chapter One

In the first chapter of this thesis, we addressed the question of “children’s right to proper education” using the central question as a starting point. We showed that the main question is a hybrid in terms of disciplinary boundaries, and because of two sub-questions that call for different knowledge, each in a different way, one has to choose an interdisciplinary approach in this law thesis.

The nature of this legal knowledge, therefore, will not be the classical form of knowledge used in modern faculties of law, but it will be interdisciplinary. And it is possible to combine those two different fields (philosophy and sociology for sub-questions 1 and 2) into a law thesis by choosing the literary form of the essay; an innovative, recent and critical new path in legal knowledge to which Gaudreault-Desbiens has contributed much.¹⁶³ Therefore, the final discussion of this thesis will be in the form a critical legal essay.

The path of research started in the second section of this chapter with a classical legal view to the rights of children in the international and Iranian legal systems. The *Convention on the Rights of Children (1989)* was presented as the main universal document of this field, and then the Iranian regulations (the definition and the age of childhood, civil and fundamental rights of children, children’s rights facing the criminal system, etc.) were studied.

An overview to Islamic studies regarding the status of children in Islam (the age of childhood and the rights of children upon their parents) was also presented. The Iranian legal system refers to Islamic sources (Figh’h as the Islamic rules and principles) as one of its most important resources, and even Iran’s approval of the *Convention on the Rights of Children* was with a reserve on the

¹⁶³ J.-F. GAUDREAU-DES BIENS, préc., note 12.

Islamic regulations. Therefore, it is helpful to observe the Islamic approach to the rights of children.

The age of childhood is one of the points considered controversial in Iranian legal system because of a contradiction with the international *Convention on the Rights of Child*. While regarding the international obligation of Iran the age of childhood must be considered 18 for all the persons, the Islamic criteria for a person to be considered as an adult is Puberty (a natural physical phenomenon) and usually stated to be 9 for girls and 15 for boys. This brings up also a discriminating view as to the status of children before the law regarding their gender. The Iranian legal system, following Islamic rules, is affected by this approach to the children's affairs; however, the most recent regulations in the criminal field of law (Criminal Code, 2013) show that progress is being made by designating 18 years old as a solid age for recognizing a child regardless of his/her gender.

Nevertheless, a critical point of view to this legal condition of the child in Iran is the aim of this thesis that will be given only at the end of this thesis after gathering sufficient evidences through an interdisciplinary dialogue between law, philosophy and empirical study.

**Chapter two:
Philosophy as a Critical Anchorage to the “Right to Proper
Education”**

Introduction

To best understand this chapter, one should think of it as a small philosophical thesis in itself. It is dedicated to the search of a response to the first sub-question from the central research question. This first sub-question is: “*Facing the Iranian and International legal systems according to the rights of children, what could be considered not just the right to education, but the right to a “proper” education based in ethical and philosophical grounds in the sense that it would suit Iranian culture and social habits better than an allegedly “universal” [occidental] classical legal conception?*”

While we have analyzed the International and Iranian legal systems in the previous chapter, the current chapter is to reply mainly to the latter part of this question, that is: “*to conceive ‘the content of proper education’ as the addition of critical content based on ethical and philosophical grounds.*”

We will first discuss a theoretical framework that consists of a number of philosophical theories that the nature of our response to the question would fit in. The main theory of our theoretical framework is *Virtue Ethics*, and *Care Ethics* is a minor theory and we will clarify why these theories are useful for the purpose of this thesis. We also explain the ways in which *Islamic ethics* are connected to the *Theory of Virtue*, and is a contextual culture in the Islamic society of Iran.

The current study’s methodological path is discussed in the second section that outlines the philosophical steps that we must pass through as we answer the question of this chapter. Then, in the third section, we go through the philosophical arguments to show that although the “children’s right to proper education” is not explicitly mentioned in the International legal documents, it should be recognized as a moral and legal right for children because the legal recognition of this

right could empower rights-holders (or their parents and/or guardians) to access this legal right and claim a proper education. To empower these human rights subjects is the advocative aim of this thesis.

In the fourth and last section, we talk about the aims of “proper education” and propose methods for an alternative model of education that could act as an example for implementation of “proper education” across Iran. This is actually the most explicit part of responding to the question of this chapter.

Section 1. Virtue Ethics as the Theoretical Framework for a “Proper Education”

Our approach to the first sub-question of this thesis – that is in the academic fields of philosophy and ethics – is as a knowledge that comes in the form of moral philosophy, from which we have chosen *virtue ethics* (as well as *care ethics*, as a minor branch of virtue ethics) as the theoretical framework. We chose these theories mainly because they seemed highly attached to the field of education in many ways. Below, we explain why we consider virtue ethics to be the main practical solution for a proper education that will develop the moral character of students.

Another reason for choosing virtue ethics to conceive the right to a “proper education” for children in Iran is that it is easily applicable in Islamic cultures, such as that of Iran. The Medieval ethics of Islam are very similar to the ethics of ancient Greece, and many Iranian-Islamic philosophers have been seriously inspired by virtue ethics.

In the following section, we briefly describe *virtue ethics* and *care ethics* as they relate to education. We also explain why we use these moral philosophies as a theoretical framework for this particular study, followed by a short introduction of Islamic ethics as a virtue-based ethics.

1-1. Virtue Ethics and Education

Virtue ethics is one of the three major moral philosophies (Deontology, Utilitarianism and virtue ethics) that, despite the two others that emphasise moral action, its focus is on the moral character or moral subject.¹⁶⁴ Virtue ethics began in ancient Greece by Socrates, Plato and Aristotle, and it was even used during the Middle Ages. However, since industrialization it was put aside. Then, in the 20th century, it came back into popularity thanks to the famous article by Elizabeth Anscombe,

¹⁶⁴ Fateme BOSTANI, *Virtue Ethics and the State*, Master Thesis, Tehran, Allameh Tabatabaai, 2011, p. 12-15.

“Modern Moral Philosophy” (1958). The main claim of modern virtue ethics philosophers was that, because the other theories of ethics were unable to prevent universal human disasters like World Wars I & II, we would be better off with virtue ethics that try to educate moral characters instead of providing moral rules.

The key point of Anscombe’s 1958 article was that integrating psychology into ethics makes us realize that it is rational to avoid actions that are unjust or unfair in certain circumstances.¹⁶⁵ This is what Aristotle would have called *phronesis*, or “practical wisdom,” which is the idea that one cannot be morally virtuous without being also practically wise, and there cannot be practical wisdom without moral virtue.¹⁶⁶

Virtue ethics comes with three principle components that are; *virtue*, *phronesis* and *eudemonia* (happiness or well-being). While *virtue* is a disposition or character trait embedded in a person that directs their moral actions in certain ways¹⁶⁷, it is different from a habit in that a virtuous person acts through an intellectual capacity for moral reasoning of practical wisdom called *phronesis*. The aim or goal of *phronesis* is to achieve *eudemonia* that means *happiness or well-being*.

¹⁶⁵ ANSCOMBE, G.E.M, « Modern moral philosophy », (1958) 124 *Orig. Publ. Philos.*

“In this article she seems strongly drawn to some such radical thesis in observing that contemporary philosophers would do well to suspend enquiry into notions of moral rightness and obligation - given their source in a divine law conception of ethics which no longer enjoys widespread modern currency - in default of further clarification of the psychologically grounded vocabulary of received aretaic usage. It seems implied by Anscombe's discussion, not just that we need to make sense of notions of 'intention', 'character' and 'virtue' before we can do the same for ideas of moral obligation - but that not much real sense can be made of notions of moral obligation in conditions of contemporary secularism.” (Virtue Ethics and Moral Education, edited by David Carr, and Jan Steutel, Routledge, 1999. P.9)

¹⁶⁶ David CARR et Jan STEUETEL, *Virtue Ethics and Moral Education*, Routledge, 1999, p. 10.

¹⁶⁷ Rosalind HURSTHOUSE et Glen PETTIGROVE, « Virtue Ethics », dans *The Stanford Encyclopedia of Philosophy*, Winter 2018 Edition.

It is through education that people can obtain the ability of *practical reasoning* and thus become *virtuous*. For Aristotle, then, the first stage of education is to cultivate students' moral virtues through practical training and habituation.¹⁶⁸

“The soul of the student must first have been cultivated by means of habits ... like [the] earth which is to nourish the seed ... The character then must somehow be there already with a kinship to excellence.”¹⁶⁹

The second key in this education is that such a cultivation would work better in an intimate parental or educational environment of love, encouragement and support. In such an environment, parents and teachers take control of their modeling role for students as mechanism of *exemplification*. The third and most important point in virtue ethics education is the establishment of students' practical wisdom, which is a particular form of deliberation and reasoning that needs to be internalized in childhood by practicing moral discussions and/or including special curricula such as art, literature and geometry.¹⁷⁰ The method and content of proper education will be discussed in better detail in this chapter's final section.

¹⁶⁸ Joel KUPPERMAN, « Virtue, character and moral dispositions », dans *virtue ethics and moral education*, Routledge, 2005 à la page 206.

¹⁶⁹ ARISTOTLE, « Nicomachean Ethics (Ethica Nicomachea) », dans *The Complete Works of Aristotle: The Revised Oxford Translation*, 2, Princeton: Princeton University Press, 1984, p. 1101b 23-27, 30-32 à la page 3032.

¹⁷⁰ David CARR, « Character education as the cultivation of virtue », dans *the handbook of character education*, Nucci Larry P., Narvaez, Darsia, Routledge, 2008 aux pages 114-115.

1-2. Care Ethics and Education

Care theory was developed over the last few decades, mainly in the fields of psychology and philosophy. The specialists of care theory argue that our emotional responses to our own ethical interests should be based on the latter ones. This theory began with Carol Gilligan's famous work, "In a different voice"¹⁷¹, that was written from psychological point of view. Gilligan's work was later developed by Nel Noddings from a philosophical and educational perspective.¹⁷² Noddings' approach has since been identified as the first axis of the development of ethics of care from an ethical and philosophical standpoint.

Gilligan's work is very important for the development of ethics of care from a psychosocial point of view. However, from an ethical and philosophical look, there are two other lines of research that have made also important contributions to ethics of care. The first line of study considers the dimensions of care as a constitutive structure of man¹⁷³, whilst the second line of study considers healthy activity as a practice endowed with its own internal morality that finds its true meaning in caring for care¹⁷⁴. Even though ethics of care has been very successful, there are still some valid criticisms. The most coherent criticism is that care on its own cannot provide an ethical-normative criterion.

Gilligan based her theory of moral development on the concepts of *relation* and *response*; explaining that an ethical moral path increases one's capacity of to respond with care to the needs of others. Although she argues that men can and should also employ the voice of care, experts in

¹⁷¹ Carol GILLIGAN, *In a different voice*, Cambridge, Harvard University Press, 1982.

¹⁷² Nel NODDINGS, « Caring and moral education », dans *Handbook of moral and character education*, Larry P. Nucci and Darcia Narvaez, Routledge, 2008 aux pages 161-174.

¹⁷³ W. T. REICH, « Organizer. Contemporary Ethics of Care », (1995) 2 *Bioeth. Encycl.*

¹⁷⁴ Henk TEN HAVE et David CLARK, « The ethics of palliative care: European perspectives », 2002.

the ethics of care assert that the history of moral philosophy is more consistent with masculinized concepts of virtue such as courage, justice and autonomy whilst castigating feminized virtues like care, sympathy and compassion.¹⁷⁵ Gilligan states:

“A feminist ethic of care begins with connection, theorized as primary and seen as fundamental in human life. People live in connection with one another; [...] From this standpoint, the conception of a separate self appears intrinsically problematic, conjuring up the image of rational man, acting out a relationship with the inner and outer world. Such autonomy, rather than being the bedrock for solving psychological and moral problems itself becomes the problem, signifying a disconnection from emotions and a blindness to relationships which set the stage for psychological and political trouble.”¹⁷⁶

The traits of care and altruism which are the central points of care ethics, and could also be considered as their highest virtues; in that they can incline people to the self-flourishing and the social and communicational well-being.¹⁷⁷ It is no wonder then that care ethics have at times been referred to as a branch of virtue ethics because, not only is its basic phenomenon (i.e., care) a known virtue of virtue ethics, but it is also the method by which care ethics contributes to educational theories is very similar to the methodologies of virtue ethics, such as; modeling, practicing and dialogue. As Nodding concludes,

“Moral education from the perspective of care theory concentrates on the construction of a moral climate for education. A moral education is one that is morally justified in social structure, curriculum content, pedagogy,

¹⁷⁵ For studying care ethics and its issues see: Peter ALLMARK, « Can there be an ethics of care? », (1995) 21 *J. Med. Ethics* 19-24.

¹⁷⁶ Carol GILLIGAN, « Hearing the Difference: Theorizing Connection », dans *Contemporary Feminist Theory: A Text/Reader*, M. Rogers, Boston, MA: McGraw-Hill, 1998.

¹⁷⁷ Raja HALWANI, « Care Ethics and Virtue Ethics: Care as a primary virtue », (2003) 18-3 *Hypatia*.

and approved human interactions. It provides an educational climate in which it is both desirable and possible to be good. Within such a structure, we provide an education designed to produce moral people through modeling, dialogue, practice, and confirmation.”¹⁷⁸

The care ethics contribution to moral education focuses more on developing a better *moral environment* rather than on the virtues and vices of the students. It does pay attention to the development of virtues, of course, but its main concern is with establishing a climate in which caring relationships could will flourish.

1-3. Virtue Ethics and Islamic Ethics

By analyzing the Islamic ethical scholars, it can be easily argued that there is a tendency towards virtue ethics in the writings of Islamic thinkers that is closely connected to the writings of the Greek philosophers, Aristotle and Plato. Islamic thinkers consider Islam to be a virtuous religion that is organized to lead human beings to ultimate happiness.¹⁷⁹ They tend to agree with Aristotle that, in order to obtain true happiness, we must understand all the various aspects of humankind; including all of our deficiencies and needs. According to this theory, only God knows everything about human beings, so only God can show us how to achieve true happiness.¹⁸⁰

Therefore, Islamic philosophers have written a lot on the “*Akhlaq*”, which is defined as the science of human soul ruled by God that leads human beings to the end of happiness.¹⁸¹ Overall, “they

¹⁷⁸ N. NODDINGS, préc., note 171 à la page 172.

¹⁷⁹ C. E. BUTTERWORTH, préc., note 6, 233.

¹⁸⁰ Mohsen JOSHANLOO, « A comparison of Western and Islamic conceptions of happiness », (2013) 14-6 *J. Happiness Stud.* 1857- 1874, 1866.

¹⁸¹ Many Muslim philosophers have written about “*Akhlaq*”, such as al-Ghazali (d.1111), Fakhruddin al-Razi (d.1209), al-Tusi (d. 1274), al-Dawani (d.1502), Ibn Miskawayh (d. 1030), al-Farabi (d. 950), Avicenna (d.1037), etc.

defined ethics or *ilm al-akhlaq* as the science of the human soul which defines the characteristics and qualities of the soul as well as the methods of how to control and moderate them.”¹⁸²

Avicenna (Ibn-Sina) is one of the most well-known Islamic thinkers who provides a theory on “the goal of man” in *Book 10* of his series on *Metaphysics*. His theory asserts that, “the best of men is the one whose soul has become an intellect in fact and who has acquired the practical moral habits. More importantly, the best of these individuals is the one who is capable of becoming a prophet”¹⁸³. This is what proponents of the ethics of virtue assert as a necessary component of a moral character capable of acting in a way consistent with the process known as *practical reasoning*. Indeed, becoming a morally virtuous person is the main goal of both *Islamic ethics* and *virtue ethics*. Thus, these theories are well suited for marriage in the current study’s theoretical framework for conceiving a “proper education” in Iran.

Farabi, another great Muslim thinker, sets out his philosophical reflections on the order of universe in the context of a virtuous religion (like Islam) and political science¹⁸⁴. He argues that a virtuous ruler must set forth their prescribed theories and actions in the form of a religion that helps citizens attain ultimate happiness. However, “Farabi explains that the standard by which to judge any group of opinions and actions is the truth as reached through philosophical investigation... [So for him] virtue is knowledge or, at the very least, the pursuit of knowledge.”¹⁸⁵ It could be understood from Farabi’s theory that practical wisdom (i.e., one of the main concepts of virtue ethics) is the best and ideal guide for achieving truly moral actions and/or opinions.¹⁸⁶

¹⁸² M. N. OMAR, préc., note 5, p. 6.

¹⁸³ C. E. BUTTERWORTH, préc., note 6, 238.

¹⁸⁴ His Books of *Religion (1968)* and *Attainment of Happiness (1969a)* are two examples.

¹⁸⁵ C. E. BUTTERWORTH, préc., note 6, 234.

¹⁸⁶ Charles E. BUTTERWORTH, « Ethics in medieval Islamic philosophy », *J. Relig. Ethics* 1983.224- 239, 229.

Indeed, the Islamic concept of *Akhlaq* refers very often to the Western virtue ethics theory. As the prophet Muhammad said, “Among the greatest number of people who enter paradise are of the pious and the virtuous.” The significance of moral character in Islam is also reinforced by the quotation, “Nothing is heavier on the scale than having the good character,” once again by the prophet Muhammad.

Achieving this virtuous character, however, is a matter of education and practice. Ibn Miskawayh, another great Islamic writer, asserts that attaining such a virtuous character for a person is also a lifelong process,

“The analysis of Miskawayh’s idea on the cultivation of virtue discovers that virtue is not a matter of instruction only. For him, the emphasis should be on training and constant practice. Virtue is the result of the regular subordination of the irrational to the rational soul. It means that one keep on doing good deeds if he is at the stage of rationality.”¹⁸⁷

This quotation is another example of the connections between Islamic teachings and the ethics of virtue, in which education is key to improving moral rationality and gaining the mental capacity to apply practical wisdom. Following all of these steps can theoretically lead an individual and/or community to attaining the ideal of eudemonia.

Therefore, analyzing the relationship between virtue ethics and Islamic ethics in the cultural context of Iranian society will help us to better understand the concept of “proper education” as an adopted concept of human rights-based education for Iranian children. Our analysis will also explain why this relationship justifies why virtue ethics as a philosophical standpoint is needed in

¹⁸⁷ Adibah Binti Abdul RAHIM, « Understanding Islamic ethics and its significance on the character building », (2013) 3-6 *Int. J. Soc. Sci. Humanity* 508, 512.

the current study to answer the special question of how to attain a “proper education” for an Islamic improving society like Iran.

Section 2. Methodological Philosophical Steps towards Recognizing the “Right to Proper Education”

Chapter one described the theoretical and methodological positionality of the current thesis in the field of law. Chapter two, meanwhile, addresses our first sub-question, that is: “*How do we define and operationalize the human right, not just to an “education”, but to a truly “proper education” in the context of an Iranian culture and social habits, from both ethical and philosophical perspectives?*” It calls explicitly for a move toward philosophy. In this section, we propose a new approach to the children’s rights to education that will provide them with critical and contextual content to it; an approach that we call a “proper education”.

Since many have demonstrated that the law is a social construct based on the considerations of other fields of human science, to take a critical look at any part of this construction calls for an investigation of its foundational fields as well. In this thesis, then, to claim the institution of a new children’s right to Iran’s legal systems, we must also justify its philosophical basis. As Jerome J. Shestak states,

“...understanding the philosophic foundations of the law helps one devise a translation formula that will permit men and women to speak to each other across the gulfs of creed and dogma, a necessary exercise for universal recognition of international law principles. What then is the segment of philosophy examined when delving into human rights? The answer is that human rights are a set of moral principles and their justification lies in the province of moral philosophy.”¹⁸⁸

Hence, we start from the very basic question of whether children ought to be rights holders or not? To address this question, we conduct a review of the extant literature in the *philosophy of rights*.

¹⁸⁸Jerome J. SHESTACK, « The philosophic foundations of human rights », (1998) 20-2 *Hum. Rights Q.* 201-234, 202.

The significance of starting from this very basic question is that we need to ensure that our argumentations are fully justified and logical at every step. If the surveyed literature supports the idea that children ought to be rights holders, the following steps would be to impose the appropriate duties to political and social institutions. This finding would also erase any lingering doubt about whether children are “full human beings”.

The next step is to search the philosophical academic attempts to recognize the rights of children in order to identify which rights category we could conceive our consideration of “proper education”. This is where a distinguish of moral and legal rights are taken because the domain of moral rights are more extended in this case and will be the foundation from which we justify children’s right to a “proper education” even in the extent of the *International Convention on the Rights of Children*’s regulations and expressions.

The current study then linked the area of ethics with that of moral philosophy; not only because the rights of children could easily invoke the moral duties of adults, but also because one of the main approaches in ethics emphasized specifically on the concept of “education”. Contemporary moral philosophy has recognized education as the only way to improve people’s moral character among which the children are the most merited ones to be invested on. Thus, by reviewing what the great authors have said in this specific field, we demonstrate that the aims and methods of many alternative modes of education have already been analyzed by many pedagogues and educations philosophers. However, in the context of Iran, this still needs to be recognized in the field of law in order to persuasively and legally defend such a right for children.

Thus far, we have demonstrated why the philosophical method was key for this thesis. Indeed, the philosophical method is simply about following reason from one step to the next, until its end:

“The main thing about philosophy is that it does not really, unlike science, enter new grounds. Everything philosophy is concerned with is already known to man, it is in the words of Plato and Socrates, hidden knowledge, temporarily forgotten, but teased out of amnesia, through pointed questions and reflection.”¹⁸⁹

However, one could not deny the fact that we only have utilized the achievements of philosophers in this critical part of the current thesis. Thus, in this chapter, we explore the philosophical foundations of children’s rights through the philosophical literature in this field and then describe the path of reasoning to justify the legal right of Iranian children to a “proper education”. We also define the features of a proper education, as an alternative to the current typical “right to education”.

Then we investigate moral philosophy, among which *virtue ethics* and *care ethics* provide us very clear support for the task of character education during childhood. As a consequence of mixing the science of education with the psychology and ethics, Nel Noddings is one of our main references as she has a numerous academic works on the aims, methods and features of a “proper education.”

In sum, the philosophical method aids in the investigation of philosophical sources – especially ethics sources – in order to support the argument for the “children’s right to proper education”.

¹⁸⁹ Timothy C. LORD, « RG Collingwood, An Essay on Philosophical Method Reviewed by », (2006) 26-4 *Philos. Rev.* 246-248, 246.’

Section 3. From the Typical “Right to Education” toward Recognizing the Morally Adapted “Right to Proper Education”: A Philosophical Study

This section, starts the philosophical path through the recognition of the “right to proper education”. The philosophical process to attain this purpose examines the debates on the matter of children’s eligibility for holding rights and then explores the types of rights that should be granted to them. Finally, among all the rights of children, the specific subject of this inquiry which is the “right to a proper education” will be discussed to be a moral and legal right that should be predicted from a right philosophy standpoint.

2-1. Children as Rights Holders: A Matter of Debate

The idea of children’s rights has been the subject of many different kinds of philosophical debate and criticism. There has also been a philosophical debate about what kinds of rights children ought to have, if they are found to be worthy of any rights at all. These debates are closely tied to two other philosophical questions: 1) “What is childhood?” and 2) “How could the assumed rights of children be related to the rights and responsibilities of adults?”

While it remains unclear whether the answers to these questions will have any impact on the actual lived experiences of Iran’s children, we can and must still believe that the status of childhood will be improved if we finally, “take children’s rights more seriously.”¹⁹⁰ To do so, we must go further of the rhetoric of legal documents and tease out the moral argument for the recognition of children’s rights.

What does it mean to “have” a right? There are two competing theories that have been extensively debated without either gaining supremacy over the other. In one camp is the *will* or *choice theory*

¹⁹⁰ FREEMAN, MICHAEL D. A., « Taking Children’s Rights More Seriously, » (1992) 6-1 *Int. J. Law Fam.* 52-71.

(Hart 1973; Sumner 1987; Steiner 1994), whilst in the opposing camp is *the welfare or interest theory* (MacCormick 1982; Raz 1984; Kramer 1998). The will theory sees a right as the protected exercise of choice. Under this theory, having a right to something means that you have some degree of control over others' free will. Someone violates your right by acting contrary to your will regarding your right's object. Thus, according to this theory, for children to have the right to proper education, they would also have the option of either enforcing the duty of some other people to provide them with said education, or discharging them from the responsibility of doing so.

The *interest theory* sees a right as the protection of an interest of enough importance to impose on others certain duties that enable rights-holders to enjoy the interest in question. Someone violates another's right by not doing the duty to provide his interest. Therefore, for Iran's children to gain the right to a proper education, children must have an interest in being properly educated which is so important that others are under an enforceable duty to provide them with an education.¹⁹¹

While the will theory would recognize the rights of the adults who are capable of making choices, children are not considered as rights holders because they do not have the full capacity to make choices.¹⁹² Will theorists would instead emphasize the obligations of adults over children. Hart, for example, recognizes the moral duty of adult respecting the children as well as animals, but ultimately concludes that children cannot be rights holders themselves. However, Hart later modified his theory by accepting that rights could be recognized for children while the choices ought to be made by their representatives.¹⁹³

¹⁹¹ David William ARCHARD, « Children's Rights », dans Edward N. ZALTA (dir.), *The Stanford Encyclopedia of Philosophy*, Summer 2016, Metaphysics Research Lab, Stanford University, 2016, en ligne : <<https://plato.stanford.edu/archives/sum2016/entries/rights-children/>> (consulté le 14 mai 2018).

¹⁹²H. L. A. HART, « Are There Any Natural Rights? », (1955) 64-2 *Philos. Rev.* 175-191, DOI : 10.2307/2182586.

¹⁹³ Mohammad HASHEMI et Mojtaba HEMMATI, « Children's welfare rights: an international and fundamental analysis », (2011) 6 *J. Leg. Investig.* 253-280.

Swinging between the will and interest theories, McCormick determines that interest theory is the most coherent regarding children's rights. He finds that will theory fails in explaining the rights of children as a test case because, as he argues, the assumption that people are the best judges of what is good for them and whether to have a thing or to not have it, cannot be extended to children; especially young children.¹⁹⁴

Conversely, O' Neill is another philosopher who argues for the obligation of adults rather than children's rights. She presents her argument below,

“Children's fundamental rights are best grounded by embedding them in a wider account of fundamental obligations, which can also be used to justify positive rights and obligations. We can perhaps go further to make a secure ethical basis of children's positive rights if we do not try to base them on claims about fundamental rights.... [I offer] (in the first instance) an account of the construction not of rights but of obligations. I shall develop a view of obligations that is (broadly) Kantian, indeed more strictly so than numerous accounts of rights that are labeled Kantian. This account of obligations offers, I believe, a fruitful alternative to theories of fundamental rights in all contexts.”¹⁹⁵

However, it seems that by recognizing the obligatory duties of adults to children in effect recognizes the rights of children by assuming that every duty is in accordance with ensuring a right. Thus, we could use the will theory with an emphasis on the obligations rather than the rights, with the addendum that each duty is in accordance with a predetermined right.¹⁹⁶ Therefore, the will theory can be easily tweaked to ensure that children are recognized as right holders. This

¹⁹⁴ NEIL MACCORMICK, « Children's Rights : A Test-Case for Theories of Right », (1976) 62-3 *ARSP Arch. Für Rechts- Sozialphilosophie Arch. Philos. Law Soc. Philos.* 305-317.

¹⁹⁵ Onora O'NEILL, « Children's Rights and Children's Lives », (1988) 98-3 *Ethics* 445-463.

¹⁹⁶ D. W. ARCHARD, préc., note 190.

conclusion begs our next research question: If children are worthy of having rights, which rights should they have? We consider the possible answers to this question in the next section.

2-2. What Rights Children Have If They Have Any?

In this section, we discuss the two ideas expressed by Fienberg and O’Neill as they provide a useful method of rights classification. Next, we consider the arguments made by Freeman.

Feinberg distinguishes between rights that belong only to adults (e.g., liberty rights, rights to choice, public speech, practice a religion, freedom of association, etc.), rights that are common to both adults and children (e.g., welfare rights such as health, physical integrity, privacy, etc.), and rights that children alone possess (e.g., protection rights which provide protection for children because the condition of childhood requires such a support). Fienberg also recognizes some rights for the children that give them the opportunity to become the people that they want to be in adulthood. He calls these rights the “right-in-trust” and the “right to an open future.”¹⁹⁷ This is where Feinberg employs the language of maximization, stating that, “[Education] should send [the child] out into the adult world with as many open opportunities as possible, thus maximising his chances for self-fulfillment”.¹⁹⁸

Feinberg's idea of ‘rights-in-trust’ or “right to an open future” is very close to Eekelaar’s idea of “developmental interests” in addition to the “basic interests” of children that make them entitled to fulfill their basic rights to physical, emotional and intellectual care. The developmental rights

¹⁹⁷ Dena S. DAVIS, « Child’s right to an open future. (letters) », *The Hastings Center Report* 32-5 (2002), p. 6.

¹⁹⁸ *Id.* à la page 135.

are the rights of a child to develop their potential so that they enter adulthood without disadvantage.¹⁹⁹

In this thesis, we are going to benefit further from the concepts of “developmental rights” and the “right to an open future” by discussing children’s rights to a proper education. However, first we must review O’Neill’s arguments regarding children’s rights.

As mentioned before, O’Neill insists on the obligations of the adult rather than the rights of children, but what remains interesting is that she distinguishes between “perfect obligations” and “imperfect obligations.” Perfect obligations are obligations that we owe to children, like to be kind and considerate in dealing with children, to care for them, and to put ourselves out in ways that differ from those in which we must put ourselves out for adults. When these obligations are universal, then they are correlative with universal fundamental rights of the children. Fundamental obligations that are not universal (i.e., owed to all others) and would be called incomplete or imperfect obligations, in that they are considered in abstraction from social and institutional contexts.²⁰⁰ O’Neill does not consider the imperfect obligations as counterparts to some rights which is still subject to criticism²⁰¹ yet she considers the *positive rights*²⁰² of the children over special agents as matching with such imperfect obligations.

O’Neill ‘s imperfect obligations are traditionally thought to comprise matters such as help, care or consideration, and the development of talents, to whose specific enactment others have no right, but which agents are obliged to provide for some others in some form.”²⁰³ This is where it is a

¹⁹⁹ John EEKELAAR, « The Emergence of Children’s Rights », (1986) 6 *Oxf. J. Leg. Stud.* 161-182.

²⁰⁰ O. O’NEILL, préc., note 194.

²⁰¹ C. A. J. COADY, « Theory, Rights and Children: A Comment on O’Neill and Campbell », (1992) 6 *Int. J. Law Fam.* 43-51.

²⁰² Positive rights are the rights that need to be promoted and actively protected (by government or the duty holders).

²⁰³ O. O’NEILL, préc., note 194, 457.

matter of question whether we could count the right to “proper education” for children as an imperfect obligation for adults or a positive right for children, to be respected by the state generally and in the education systems specifically. As O’Neill states,

“Unless children receive both physical care and adequate socialization, they will not survive; if they merely survive they may not become competent agents: without education and instruction appropriate to their society they will lack capacities to act that are needed to function in the specific contexts available to them.”²⁰⁴

We must also consider Freeman’s theory of “Liberal Paternalism”²⁰⁵ for children’s rights. He believes that we must recognize the integrity of the child and their decision-making capacities, but at the same time be aware of the dangers of absolute liberation. He accepts the Rawlsian principles of justice that state the importance of equal liberty and opportunity in the conception of the social contract²⁰⁶ while defending some necessary interventions into children’s lives (as human beings with less actual knowledge and capabilities) to protect them against their own potentially irrational actions. However, he insists that the concept of “irrational” must be strictly defined due to its subjective nature, and even to recognizes the right of children to “do wrong” (i.e., make mistakes): “Someone may have the right to do something that is wrong for him to do.”²⁰⁷

Thus, for Freeman to take children’s rights more seriously requires us to take seriously nurturance and self-determination through which a system of compulsory education would be justifiable while

²⁰⁴ *Id.*

²⁰⁵ Michael FREEMAN, *The rights and wrongs of children*, Pinter Pub Limited, 1983.

²⁰⁶ For more details on Rawls Theory of Justice, see:

John RAWLS, *A Theory of Justice*, Harvard University Press, 2009.

²⁰⁷ Ronald DWORKIN, *Taking Rights Seriously*, Bloomsbury academic, 2013.

the goal and the content of that education would be very different from those conventionally stipulated.²⁰⁸ Thus, here we are again provided with more support for the concept of “proper education” as a right for children.

2-3. The Right to “Proper Education”: Both Legal and Moral

In this section we analyze whether “proper” education should be considered a moral and/or a legal right for children. Although quite basic, the distinction between these two concepts (i.e., moral vs. legal rights) probably gains to be recalled in the context of the current interdisciplinary work.

Moral Rights are believed to exist independently of legal systems and governments. In the *Declaration of Independence*, the then President of the United States Thomas Jefferson’s three examples are the moral rights to “life, liberty and the pursuit of happiness.”²⁰⁹ He claimed that governments exist in order to secure these rights, even if they might sometimes fail to do so.

Legal Rights, on the other hand, depend on legal systems and governments that are expected to enact those systems in a way that protects their citizens’ moral rights. Local governments can also elect to grant additional rights. For example, the US government denied women’s legal right to vote until 1920, and it was not until 1971 that 18-year-old women were also granted the legal right to vote.

Whether legal rights can be conceptually discussed in relation to moral rights has long been a matter of debate among rights philosophers. While Hohfeld (1919) never mentioned moral rights in his works, other rights philosophers such as Hart and Bentham wrote their theory of legal rights

²⁰⁸ FREEMAN, MICHAEL D. A., préc., note 189, 67-69.

²⁰⁹ « The Declaration of Independence », *National Archives* (July 4, 1776), en ligne: <<https://www.archives.gov/founding-docs/declaration>>.

in comparison, or by also analysing moral rights. However, in the end they argue that moral rights are conceptual nonsense.²¹⁰ Still, Hart recognizes at least one natural (i.e., moral) right as the equal right of all men to be free.²¹¹ Conversely, Bentham argued that at times, people call a right a moral one when what they mean to say is that it is so important that it ought to be a legal right.²¹²

Mill argues that moral and legal rights are closely connected. He writes: “When we call anything a person’s right, we mean that he has a valid claim on society to protect him in the possession of it, either by the force of law, or by that of education and opinion.”²¹³ Therefore, the claim of people over society to respect all aspects of their well-being could be either legally recognized, or remain a moral tendency that could eventually become institutionalized through law.

Joseph Raz also argues that the core concept of a right is shared by both law and morality, and he tries to use moral rights as a model for a general theory of legal rights.²¹⁴ This theory provides practical reasoning that legal rights should be based on moral ones.

Nevertheless, the claim of this project is that the moral right to a “proper education” (as defined in this thesis) is also a legal right in terms of the UN *Convention on the Rights of Children (1989)*. Even if this claim is not accepted as legal common sense, it could at least be accepted as moral common sense. This is because a “proper education” is a significant moral right of children that

²¹⁰ Kenneth CAMPBELL, « Legal Rights », dans Edward N. ZALTA (dir.), *The Stanford Encyclopedia of Philosophy*, Winter 2017, Metaphysics Research Lab, Stanford University, 2017, en ligne : <<https://plato.stanford.edu/archives/win2017/entries/legal-rights/>> (consulté le 17 mai 2018).

²¹¹ H. L. A. HART, préc., note 191.

J. RAZ, « Hart on Moral Rights and Legal Duties Review Article », (1984) 4 *Oxf. J. Leg. Stud.* 123-131.

²¹² H. L. A. HART, *Natural Rights: Bentham and John Stuart Mill*, Oxford University Press, 1982, en ligne : <<http://www.oxfordscholarship.com/view/10.1093/acprof:oso/9780198254683.001.0001/acprof-9780198254683-chapter-5>>.

²¹³ MILL, J.S., « Utilitarianism », dans *Collected Works of J. S. Mill*, Robson, 10, 1969 à la page 250.

²¹⁴ J. RAZ, « Legal Rights », (1984) 4 *Oxf. J. Leg. Stud.* 1-21.

For more details on Raz opinion, See also: Joseph RAZ, *The Morality of Freedom*, Clarendon Press, 1986.

puts them in the difficult situation of needing the state and society (e.g., institutions and individuals) to respect this right to their best possible abilities.

The UN *Convention on the Rights of Children* states in its preamble that, “the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding. Considering that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity...”²¹⁵

The right to education is also subject to articles 28 and 29 that state that, other than being compulsory and freely available for all the children²¹⁶, contently and methodologically directed

“(a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;

(b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;

(d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;”²¹⁷

²¹⁵ Convention on the rights of the child (1989), United Nations, preamble.

²¹⁶ Art28. Convention on CR

²¹⁷ Art.29. Convention on Children's Rights

This shows that the Convention recognizes education in broad terms, and besides emphasizing on provisions to provide the “best interest of child” and the “right of the child to be heard” recognizes children’s rights in a very wide sense.

These provisions could be considered vast enough to include what we call “proper education” because the Convention does not limit its scope to simply recognizing the right to education. The Convention also dictates standards on the aims, methods and content of education in a way that is consistent with the best interests of children, in a way that provides for the development of their moral character and protects their flourishing. However, this right is reserved for children as a moral right too due to the ethical and philosophical arguments provided earlier in this chapter.²¹⁸

Thus, we have demonstrated that children’s right to a “proper education” has both a legal and a moral nature, and so now we can examine the main potential advantage of the critical alternative conceptualization of children’s education rights that we propose here. As we have already shown, this right has an occidental “legal” concept, fully circumscribed by its “positive” nature, but since it also has as a complementary moral part, it can be adapted to the specific moral standpoints of any state, province or country such as Iran.

²¹⁸ Developmental rights and the imperfect right to proper education, etc.

Section 4. “Proper Education” as an Alternative Mode of Education to Suit Iranian Social Ideal

In the previous section, we discussed the nature of children’s right to education in terms of the philosophy of law as it relates to what we call the “right to a proper education” in the current thesis. We provide here a short literature review of the philosophy and ethics of education and to demonstrate which intellectual path our reflection on “proper education” could be located. First, we consider the significance of character development through education as a path to happiness and well-being for children. Next, we provide a general discussion of an alternative mode of education, and finally, we end by analyzing some examples of aims and methods that could determine a mode of “proper education”.

4-1. “Proper Education” Linked to Character Education

Here, we discuss a psychological perspective of education that leads us to character education, with the assistance of *virtue ethics* and *care ethics* as its strongest contributors. The significance of psychology in fostering human well-being through children’s education has been the focus point of many philosophers and psychologists. One cannot deny that psychology plays a key role in the ways in which we deal with individuals and society as a whole, including the education of children to promote their moral development. Glover – disappointed by the results of humanity’s self-destruction through war and other social disasters – argues that psychology provides us with hope for positive change:

“... But politics is not the whole story. We have experienced the results of technology in the service of the destructive side of human psychology. Something needs to be done about this fatal combination. The means for

expressing cruelty and carrying out mass killing have been fully developed. It is too late to stop the technology. It is to the psychology that we should now turn.”²¹⁹

This is where psychology can come to the assistance of education in that it can, for example, prevent possible future socio-moral disasters. This is also why *virtue ethics* were developed in the 20th century, because some philosophers claimed that modern moral theories failed to immunize human society against moral disasters like the world wars, etc. These theorists, including Elisabeth Anscomb and McIntyre, assert that the key role must be found in the moral character of human beings rather than the imperative of moral theories, such as Kantian deontology and Utilitarianism.²²⁰

While character is a significant element in education and moral improvement, there are no unique definitions of it to our knowledge. However, it could generally be described as “an individual’s set of psychological characteristics that affect that person’s ability and inclination to function morally.” This is what Marvin W. Berkowitz, a professor of character education, argues. He also remarks that the sources of character development such as family (especially parents), school, peers, community (including the media), religion, and biology are also contributors.²²¹

Philosophers of education and moral theorists, then, are concerned with character development and moral character that begin long before the child’s birth. However, childhood is the most important time period to educate a moral character, which is consistent with the universally recognized human rights values. This moral education could either be direct, including some

²¹⁹Jonathan GLOVER, *Humanity: a moral history of the 20th century*, Second, New Haven and London, Yale University Press, 2012, p. 414.

²²⁰Bostani, Fateme (2011) *Virtue Ethics and the State*, Master thesis, Allameh Tabatabaiee University, Tehran, Iran.

²²¹Marvin W. BERKOWITZ, « The science of character education. », dans *Bringing in a new era in character education*, coll. 508, Hoover Press : Damon, 2002, p. 43-64 aux pages 43-63.

instruction of children and a curriculum that emphasizes the special values that is to inform the children's behavior by practicing through the time or it can be indirect by, for example, enhancing the student's judgment through the indirect instruction that reinforces democratic values and stimulates higher levels of thinking in kids gradually.²²² The latter method is what Dewey and Kohlberg recommend in order to reform the education system.

Some philosophers like Berkowitz have experimented with a variety of character aspects to be developed over time, and he claims that some characteristics like self-control, guilt and perspective-taking are developed in childhood (i.e., between infancy and adolescence).²²³ Some other philosophers like Kohlberg and Dewey's theories, on the other hand, have had a practical influence on the methods of developing such moral characteristics. Dewey asserted that democratic values should be taught to children throughout every level of their education.

“I believe that the moral education centers on the school as a mode of social life, that the best and the deepest moral training in precisely that which one gets through having to enter into proper relations with others in a unity of work and thought.”²²⁴

Therefore, in his experimental school, students learn the value of hard work, cooperation, responsibility and caring by being involved in the very fundamental processes of school life.²²⁵

Lawrence Kohlberg later extended Dewey's approach in a way that has greatly influenced the development of a cognitive-developmental theory of moral education. He worked on children's moral reasoning and found six successive stages of moral reasoning and judgment, with each becoming increasingly more adept than its preceding stage at resolving justice and moral

²²² Jacque S BENNINGA, « Moral and character education in the elementary school: an introduction », dans *Moral, Character and Civic Education in the elementary school*, Columbia University press, 1991, p. 3-20 aux pages 3-20.

²²³M. W. BERKOWITZ, préc., note 220 aux pages 51-53.

²²⁴John DEWEY et SMALL, A. W, *My pedagogic creed*, coll. 25, E.L. Kellogg & Company, 1897, p. 6.

²²⁵ John DEWEY et Evelyn DEWEY, *The Schools of Tomorrow*, New York: EP Dutton & Co, 1962.

dilemmas. Through this proposed educational environment and method, Kohlberg also tried to make it possible to practically bring about student's moral maturity.²²⁶ However, despite the fact that these theories value an educational approach to child development, it remains important to be aware of the fact that the children's characters are complex and should be treated as a whole and treating children's characters as a whole is not possible unless by indirectly developing their morality and reasoning, rather than teaching the values directly.²²⁷ This is where Nel Noddings says:

“We will not find the solution to problems of violence, alienation, ignorance, and unhappiness in increasing our security apparatus, imposing more tests, punishing schools for their failure to produce 100 percent proficiency, or demanding that teachers be knowledgeable in “the subjects they teach.” Instead, we must allow teachers and students to interact as whole persons, and we must develop policies that treat the school as a whole community. The future of both our children and our democracy depend on our moving in this direction.”²²⁸

4-2. “Proper Education”: A Broad Genealogy Anchored in Modern Revolution

The way we conceive it, a chronological study of the concept of a “proper education” could go all the way back to the 1760s when Jean-Jacques Rousseau wrote his significant book on the education called “*Émile ou de l'éducation*”²²⁹. This book is regarded by some as the first philosophy of education in Western culture that describes a system of education that enables individuals in a

²²⁶Lawrence KOHLBERG, *Essays on moral development: The philosophy of moral development*, San Francisco." U.: Harper & Row, 1981.

²²⁷ Alfie KOHN, « How Not to Teach Values: A Critical Look at Character Education », (1997) 78-6 *PHI DELTA KAPPAN* 429-439, 12.

²²⁸Nel NODDINGS, « What Does It Mean to Educate the Whole Child? », (2005) 63-1 *Educ. Leadersh.* 8-13, 8.

²²⁹ Jean-Jacques ROUSSEAU, *Émile, ou De l'éducation*, chez Jean Néaulme Librairie, 1762.

corrupt society to retain their innate goodness. The very first sentence of Rousseau's book asserts that, "coming from the hand of the Author of all things, everything is good; in the hands of man, everything degenerates."²³⁰ Here, Rousseau illustrates how to educate a natural man to become a good citizen through the novelistic book of Emile. In this regard, it should be said that Rousseau manifests a rejection of traditional morality and instead suggests a liberated morality based on natural feelings and compassion as opposed to rational self-love.

Later in the 20th century, many philosophers and pedagogy specialists promoted ideas on alternative modes of education with the aim of liberating children's minds. For instance, Olivier Reboul (1925-1992) argued that schools should provide children with the tools to think, feel and act rather than transferring static information to their memories. In "La Philosophie de l'éducation" he defines education as, « l'ensemble des processus et des procédés qui permettent à tout enfant humain d'accéder progressivement à la culture, l'accès à la culture étant ce qui distingue l'homme de l'animal. »²³¹

Furthermore, in his famous book, *L'endoctrinement* (1977)²³², Reboul defends an idea that refuses to indoctrinate the thoughts of students through the process of teaching.²³³ He affirms that the education cannot be distinguished from the values it teaches, and no education/teaching happens in the contextual vacuum. He denounces indoctrination as it is a method of using the power of teaching to impose upon others, rather than teaching a doctrine. Thus, his answer to the question

²³⁰ Jean-Jacques ROUSSEAU, *Emile OR Concerning Education*, TRANSLATED BY ELEANOR WORTHINGTON, Boston, D. C. HEATH & COMPANY, 1889, p. 11.

²³¹ In: A. KIMMEL, préc., note 9 à la page 1.

²³² O. REBOUL, préc., note 8.

²³³ Guy AVANZINI, « Reboul (Olivier). — L'endoctrinement », (1978) 43 *Rev. Fr. Pédagogie* 97-99.

of how to educate according to values without indoctrination is “[to teach] what unites and what liberates.”²³⁴

The idea of liberating education has been proposed by other theorists as well, such as Paulo Freire (1921- 1997), who was a Brazilian pedagogue who brought up the idea of “problem-posing education” in contrast to “banking education”. In *Pedagogy of Oppressed*²³⁵, Freire states that education suffers from a “narrative sickness,” in which teachers narrate the subject material to students and the relationship between the teacher and students is monological. This monological relationship is the basis of Freire’s “banking model”. According to him, there are authoritarian (e.g., manipulative or domesticating), laissez-faire (i.e., spontaneous), and liberating (i.e., radical democratic) approaches to education. The first and third approaches are, in general terms, to “banking education” and “problem-posing education” respectively. Freire promotes liberating education because it makes a dialogue between the teacher and students.²³⁶

The other approach is that of Nel Noddings. She mentions in the introduction of her book “Happiness and Education” that when she told people about what she was writing, that most of the reactions people had were a kind of puzzlement. Many responded by saying something like, “but they don’t go together.” Unfortunately, this is the common sense and public understanding of education, while Noddings herself – as a philosopher of education – suggests that “happiness” should be the primary aim of education and that a good education should promote individual and

²³⁴ A. KIMMEL, préc., note 9 à la page 3.

²³⁵ Paulo FREIRE, *Pedagogy of the Oppressed*, 1972.

²³⁶ Peter ROBERTS, « Structure, Direction and Rigour in Liberating Education », (1996) 22-3 *Oxf. Rev. Educ.* 295-316, 299.

collective happiness.²³⁷ This could be understood as a gap between the *educations* in common sense and the *proper education* in a moral sense, that also act as the foundation of the philosophy of education in this regard too.

Meanwhile, a search for the common sense of a “proper education” can be found in a remix of a 1979 Pink Floyd music video. This is a famous song that protests the educational system in the UK²³⁸. One could say that the most children of the 1980s have lived their entire lives knowing this song. Even the name of this song matches the concern of current thesis is interesting. When we hear or sing, “we don’t need no education, we don’t need no thought control,” we are likely to consider the idea that the education to which all children have a right, is not the kind of education that makes a system of slavery and an assured mass of students who hate school. Rather, it should be a liberating environment that helps children self-flourishing and love themselves and their fellow man. This liberating environment is what we refer to as a “proper education” in this project.

As a specialist in the field, Noddings has suggested some aims and methods to educate children in a way that prepares them for the world that is both desirable and enables them to be good.²³⁹ Her ideas about happiness and education, as well as some other notes regarding the content and method of proper education for the children, will be discussed in the following section.

²³⁷ Nel NODDINGS, *Happiness and Education*, Cambridge, UNITED KINGDOM, Cambridge University Press, 2003, p. 1-5, en ligne: <<http://ebookcentral.proquest.com/lib/umontreal-ebooks/detail.action?docID=218054>> (consulté le 1 mai 2018).

²³⁸ "Proper Education" is a remix of the 1979 song "Another Brick in the Wall, Part II" by Pink Floyd that was released in the United States on 1 January 2007. These two music videos are accessible on YouTube.

²³⁹ Nel NODDINGS, *Caring: A Relational Approach to Ethics and Moral Education*, Berkeley, UNITED STATES, University of California Press, 2013, en ligne : <<http://ebookcentral.proquest.com/lib/umontreal-ebooks/detail.action?docID=1342614>> (consulté le 24 mai 2018).

4-3. “Proper Education”: Aims and Methods

In educational theories, it is common to talk about the aims and goals of education and schooling.²⁴⁰ Educational systems try to justify their methods and curricula that they teach to students. However, the aims appear to be more than their stated goals. While the goals determine why certain document or curricula has been taught, the aim would address the question of what each course or lesson is supposed to accomplish for students.²⁴¹

4-3-1. Aims

It is such a significant point to have an AIM-TALK in education to the degree that it has been a concern throughout human history. Aristotle, for example, used it to ask the question of *what purpose human beings seek, and what serves their aims?* The Aristotelian view would propose *human flourishing* or *eudemonia* (by possessing the virtues through the exercise of practical wisdom) as the aim of human existence, and suggests that education is the only path to achieve it because we do not naturally possess these features, and that is why we need education.²⁴²

²⁴⁰ “One has to distinguish between the education and schooling as the education could happen in other ways rather than just schooling and in schooling other things might happen rather than education.” D.C. PHILLIPS et Harvey SIEGEL, « Philosophy of Education », dans Edward N. ZALTA (dir.), *The Stanford Encyclopedia of Philosophy*, Winter 2015, Metaphysics Research Lab, Stanford University, 2015, en ligne : <<https://plato.stanford.edu/archives/win2015/entries/education-philosophy/>> (consulté le 22 mai 2018).

²⁴¹Nel NODDINGS, « Aims of education », dans *Happiness and education*, Cambridge, UNITED KINGDOM, Cambridge University Press, 2003 aux pages 74-94.

²⁴²D. CARR, préc., note 169 à la page 105.

Some other concepts have also been considered throughout the history of education, such as; self-love²⁴³, self-identity and self-control²⁴⁴, self-worth²⁴⁵, self-sufficiency, autonomy²⁴⁶ and happiness as the aims for providing a spectacular education. These concepts could all be categorized under self-flourishing, as mentioned by Aristotle. He considers that the love of the self is needed in order to enrich people's capacity of being, but so too is the love of the other for the sake of others to improve the virtue of caring in themselves and society overall.

Meanwhile, some external and social aspects of human beings are also a matter of study. Plato had two great aims in his mind for education. First, he perceived it as a benefit to the individual and improvement of the soul, and second, he saw it as a benefit of the state as he argued that children should be tested to identify their latent talents and interests, and to calibrate their education so that it is compatible with their nature.²⁴⁷

The latter theory is also proposed by Dewey as the essence of childhood education. He takes into account children's individual talent and interests, and aims his dynamic and flexible educational system at the development of a democratic community/state rather than an idealistic and hierarchical state, like that of Plato.²⁴⁸

²⁴³Marcia HOMIAK, « Moral Character », dans Edward N. ZALTA (dir.), *The Stanford Encyclopedia of Philosophy*, Fall 2016, Metaphysics Research Lab, Stanford University, 2016, en ligne : <<https://plato.stanford.edu/archives/fall2016/entries/moral-character/>> (consulté le 22 mai 2018).

²⁴⁴ Daniel K LAPSLEY, « Moral self-identity as the aim of education », dans *Handbook of moral and character education*, Larry P. Nucci and Darcia Narvaez, Routledge, 2014, p. 30-52.

²⁴⁵Thomas LICKONA, « An Integrated Approach to character development in the elementary school classroom », dans *Moral, Character and Civic Education in the elementary school*, Columbia University press, 1991, p. 67-83.

²⁴⁶ Jack CRITTENDEN et Peter LEVINE, « Civic Education », dans Edward N. ZALTA (dir.), *The Stanford Encyclopedia of Philosophy*, Winter 2016, Metaphysics Research Lab, Stanford University, 2016, en ligne : <<https://plato.stanford.edu/archives/win2016/entries/civic-education/>> (consulté le 22 mai 2018).

²⁴⁷ N. NODDINGS, préc., note 240 à la page 79.

²⁴⁸John DEWEY, *Democracy and Education*, the Pennsylvania State University electronic draft, 2001.

“We cannot better Plato’s conviction that an individual is happy and society well organized when each individual engages in those activities for which he has a natural equipment, nor his conviction that it is the primary office of education to discover this equipment to its possessor and train him for its effective use.”²⁴⁹

Therefore, by using *virtue ethics* as our theoretical framework in this chapter, we conclude that, for us, “self-flourishing” and “well-being” are the major aims of a “proper education,” which implicates a particular method and content.

For example, Noddings, who claims that happiness should be considered the purpose of life, and therefore it should also be the major aim of education. This means that the educational environments for children should be happy places because people always learn better when they are happy. Thus, she also argues that *playing* directly contributes to learning, and that all teachers, especially those in elementary schools, should be aware of the educational power of play.²⁵⁰ This information is directly applicable to the methods of “proper education,” because as we mentioned earlier, an intimate and happy environment is a necessary condition for a moral education regarding the ethics of virtue.

As previously mentioned, another aim of education that contemporary philosophical authors have mentioned is the goal to provide children with their right to “an open future.”²⁵¹ Daniel M. Weinstock in his article, “Une philosophie politique de l'école”, suggests a theory of education that respects children’s right to an open future. After criticizing two other models of schooling

²⁴⁹*Id.*, p. 95.

²⁵⁰Nel NODDINGS, « Happiness in schools and classrooms », dans *Happiness and education*, Cambridge, UNITED KINGDOM, Cambridge University Press, 2003, p. 240-261. See also: Trisha MAYNARD et Jane WATERS, *Exploring outdoor play in the early years*, UK, McGraw-Hill Education, 2014, en ligne : <<http://public.eblib.com/choice/publicfullrecord.aspx?p=1707198>> (consulté le 14 février 2018).

²⁵¹ Daniel WEINSTOCK, « Une philosophie politique de l'école », (2008) 36-2 *Éducation Francoph.* 31- 46.

known as family school and citizen school, he concludes that a type of school that respects children's basic right to an open future is one which promotes their autonomy.

« À quoi ressemblerait alors une école qui respecterait cette contrainte normative que représente le droit des enfants à un avenir ouvert? Il me semble qu'elle aurait comme principale finalité de promouvoir l'autonomie des enfants, c'est-à-dire leur capacité à concevoir pour eux-mêmes une conception de la vie bonne et à tenter de la mener à bien. Il est important de noter que l'autonomie, telle que je l'entends ici, n'est pas une autonomie *substantielle* selon laquelle seules des vies d'indépendance par rapport aux traditions et aux modes de vie hautement hiérarchisés ont de la valeur. Elle est *procédurale* : il s'agit d'outiller les enfants pour qu'ils puissent faire des choix sur une gamme aussi large que possible d'options étant donné la société dans laquelle ils vivent (Dworkin, 1988). »²⁵²

As we have also identified children's "right to proper education" that includes the "right to an open future" earlier in this text, such an aim would apply to our methods for achieving a "proper education" for Iran's children, and will lead to the development of culturally specific methods of schooling. It is also noticeable that "autonomy" is considered a political virtue for citizens in a virtuous society that aims for the self-flourishment of its members. Moreover, the virtuous state has is tasked with the development of such a virtue, especially in the early education process.²⁵³ This notion will be useful in our final discussion of this thesis, when we recommend improvements to Iran's educational governance.

²⁵² *Id.*, 42.

²⁵³ F. BOSTANI, préc., note 163, p. 71- 73.

4-3-2. Methods

While from the natural philosophical and theological view of Aristotle, the only way that human beings can reach an appropriate understanding of themselves as individuals and as social phenomena is through narrative forms of history, religion, imaginative literature, sports, mathematics, and so on.²⁵⁴ Some modern scientific theories have also seriously contributed to the methods and content of moral education. Triune Ethics Theory (TET) is such a theory, and it is derived from psychology, evolutionary theory and the neurosciences that, with a scientific experimentation of the limbic system, explains individual differences in moral functioning.²⁵⁵

What follows are some examples of educational methods that have been practiced, or are still being used, to implement an alternative mode of education; what could be called a “proper education”:

1- The Integrated Ethical Education model is a model of education that promotes many ideas of leading educational philosophers and scientists. It suggests a step by step model of education that starts with establishing a caring relationship with the students, as well as creating a climate that supports moral character development and continues to teach students ethical critical thinking skills and fosters student self-authorship and self-regulation.²⁵⁶

2- The “Child Development Project (CDP)” that took place during three consecutive time periods (1980-1989, 1988-1991 and finally 1991-1995) involved a large number of elementary schools in

²⁵⁴ D. K. LAPSLEY, préc., note 243 à la page 45.

²⁵⁵ Darsia NARVAEZ, « Human Flourishing and Moral Development: Cognitive and Neurological Perspective of virtue Development », dans *Handbook of moral and character education*, Larry P. Nucci and Darcia Narvaez, Routledge, 2014, p. 310-327.

²⁵⁶ *Id.* aux pages 316-320.

US and, despite positive results, it was discontinued. However, some of the affected schools have maintained parts of the programming in their systems, as they found it fruitful and effective.²⁵⁷

“Caring school and classroom communities have the following characteristics: Students are able to demonstrate autonomy, self-direction, and influence teacher decisions. Students interact positively with one another, collaborating and discussing course content and classroom policies. Students are coached on social skills. Teachers exhibit warmth towards and acceptance of students, providing support and positive modeling. The teacher provides multiple opportunities for students to help one another. A well-structured environment for teaching character has these characteristics.”²⁵⁸

3- The Relay Graduate School of Education offers a course on the “Character Education” in which they base their education methods on the theory by Dr. Seligman from University of Pennsylvania and Dr. Chris Peterson from University of Michigan. Their theory identifies 24 character traits as strengths²⁵⁹ that every human being needs in order to help themselves and others flourish. They introduce flourishing and well-being as the major aim of education and use some specific methods to achieve these aims. A key purpose of these methods is to know the significance of *constructive responses* during “micro-moments” (i.e., the remembered moments that create meaning for

²⁵⁷ Victor A BATTISTICH, « The Child Development Project: Creating Caring School Communities », dans *Handbook of moral and character education*, Larry P. Nucci and Darcia Narvaez, Routledge, 2008, p. 328-351.

²⁵⁸ D SOLOMON, M.S. WATSON et V.A. BATTISTICH, « Teaching and school effects on moral/prosocial development », dans *Handbook for research on teaching*, V. Richardson, Washington, D.C, American Educational Research Association, 2002, p. 566–633.

²⁵⁹ These 24 character strengths are: appreciation of beauty and excellence, bravery, creativity, curiosity, fairness, forgiveness, gratitude, honesty, hope, humility, wisdom, kindness, leadership, love, love of learning, perseverance, perspective, prudence, self-regulation, social intelligence, spirituality, teamwork and zest. <http://www.viacharacter.org/character-strengths>

people).²⁶⁰ So the teachers who react to their students' micro-moments with a positive and constructive response can help them to build a positive character.

The other method that they suggest using is having *dual purpose activities* in classrooms that, in addition to working on academic skill and/or knowledge, help students improve on their character strengths. For example, the activities that include both teamwork and mathematics, or the “Play it Fair! Toolkit” for teaching human rights to children through gaming.²⁶¹

4- Amnesty International is another International organization that provides a plan to make schools around the world what they call, “Human Rights Friendly.” They focus on four major areas of schools that are: *governance* (i.e., the way the schools are run), *relationship* (i.e., how members of the school community interact), *curriculum* (i.e., how Human Rights are taught and learned) and *environment* (i.e., the setting in which learning happens). Proponents of this organization suggest every activist who likes to participate in this movement should start by assessing their own school's environment, and then make plans of action to make it Human Rights Friendly. They have also released guides for students, teachers, administrators and families to help them contribute to this change.²⁶²

²⁶⁰“Daniel Kahneman who won a Nobel prize in 2002 for applying psychological research and decision making to the world of economics, basically showed that our memories of experiences are based on tiny moments, generally only a few seconds long. And our brains sort these moments into three categories, good, bad, neutral. But we don't remember the neutral. We remember the good, and of course we remember the bad. And he says we make meaning by combining these moments or bits of remembered experience.” Coursera / [Teaching Character and Creating Positive Classrooms/](https://www.coursera.org/learn/teaching-character/lecture/RFsa8/micro-moment-triangle)
<https://www.coursera.org/learn/teaching-character/lecture/RFsa8/micro-moment-triangle>

²⁶¹ This one has been introduced by an organization in Montreal called EQUITAS, International Center for Human Rights Education. Accessible at: <https://equitas.org/tools-for-education/play-it-fair-toolkit/>

²⁶² See : Make Your School Human Rights Friendly, a certificated course in edX, available at: <https://courses.edx.org/courses/course-v1:AmnestyInternationalX+Rights4x+2T2019/course/>

A Human Rights Friendly School also satisfies children's right to a "proper education." This is because it is also type of education that aims for the maximum level of human flourishing, moral reasoning and character development in students, whilst also providing them with a happy environment that fosters care and responsibility in the young members of its community.

These aims and methods have been identified and even practiced by many theorists of education, and although they have come up with some positive results, the reason why these programs have been discontinued still remains to be studied. Do political or economic concerns influence the implementation of such programs, or is it still the common sense of education in society that resists against these changes in educational systems (i.e., sociocultural inertia)²⁶³?

From this review of education, aims and methods, let us return our discussion to Weinstock's concept of, "autonomie procédurale" of the child in his model of a school that respects their basic right to open futures. Again, Weinstock says that:

« Il est important de noter que l'autonomie, telle que je l'entends ici, n'est pas une autonomie *substantielle* selon laquelle seules des vies d'indépendance par rapport aux traditions et aux modes de vie hautement hiérarchisés ont de la valeur. Elle est *procédurale* : il s'agit d'outiller les enfants pour qu'ils puissent faire des choix sur une gamme aussi large que possible d'options étant donné la société dans laquelle ils vivent (Dworkin, 1988). »²⁶⁴

We can observe that Weinstock's model shows the ways in which the, "occidental concept of autonomy" can be adapted to other social moral traditions by becoming "procedural" instead of

²⁶³ V. LEMAY, préc., note 19.

²⁶⁴ D. WEINSTOCK, préc., note 250, 42.

“substantial”, in which only occidental hierarchies and independence from virtue ethics, such the ones of Catholicism or Islam, has value. This model shows that it is possible to follow this intellectual path for the “right to a proper education” that is “procedural” in terms of ethical choices, instead of limited to “substantial content.”

Conclusion of Chapter Two

This chapter has centered on the first sub-question of this thesis that is *“Facing the Iranian and International legal systems according to the rights of children, what could be considered not just the right to education, but the right to a “proper” education based in ethical and philosophical grounds in the sense that it would better suit Iranian culture and social habits better than an allegedly “universal” [occidental] classical legal conception”?*” Through the philosophical analysis we provide in Chapter two, we demonstrate what can be understood as a short, autonomous philosophical study in and of itself. We argue that the conceptual content of the “right to proper education” that better suits Iranian culture is: a) embedded in virtue ethic of Islam; b) is both a legal and a moral right; c) is more procedural than substantive according to Weinstock’s view that leads the students toward an open future; and, d) is aimed to flourish children’s moral character.

This survey has been needed because we believe that even though “the right to proper education” is not mentioned in such specific terms in international legal documents, this right could be considered as a combination of many other legally defined rights of children that are recognized in international and Iran’s internal legislation. Also, although the right to education is recognized by Iran’s government as a basic right for children, the respect of some other rights will contribute to children’s right to a “proper education”, such as the right; to participation in decision-making, to be heard, to play and joy, to grow in a secure and happy environment, to well-being and finally, the right to an open future.

It is through philosophical study that we could present our conceptualization of the “right to proper education,” that we have abstracted from several theories regarding moral and legal right for

children under the category of *developmental rights*; that serve children's rights to an open future and the right to maximizing self-fulfillment. If adults have a duty to protect the important interests of children, it logically follows that they must also recognize "the right to a proper education" for children.

Finally, it was ethics – virtue ethics and care ethics- that helped us to compose the necessary elements of a "proper education". While *character education* has been recognized as a means toward the aim of *eudemonia* or self-flourishing, a developmental education for children has proved to be necessary in an intimate and happy environment. This will contribute to the improvement of children's virtue of care for their community, their moral self-regulation and also an autonomous character development that coalesce to enable aging youth fulfill their right to an open future.

Moreover, socio-contextual understanding of the concept of "proper education" calls for consistency with the cultural features of an Islamic country like Iran. As asserted by Souheil S. Alfatlawi, as a well-known specialist of juridical relationships between occidental and oriental cultures, it is a basic role for juridical Islamic culture to conciliate between occidental and Islamic values:

« What has been borrowed from occidental rights does not differ, in general, from general principles of Islamic Sharia. The latter has known how to integrate among occidental norms the ones that goes on harmony with Arabo-Islamic culture and values ».²⁶⁵

²⁶⁵ Souheil S ALFATLAWI, *Introduction à l'étude de la science juridique*, 2e édition, Bagdad, Librairie al Dhakira, 2009, p. 50.

By looking at the Islamic ethics that are the moral basis for Islamic laws, we have concluded that the Islamic moral philosophy is highly connected to the Western theory of virtue that is our theoretical framework for understanding the concept of “proper education”. Thus, the concept of “proper education” is the result of such a conciliation of occidental rights to education, and also Islamic concerns regarding the development of a moral character to achieve the goal of “ultimate happiness.” This concept protects the common core of the right and provides an ethical and cultural outline that will retrofit the progressive openness of modern Iranian society to promote and protect children’s right to benefit from *the good life*.

Chapter Three.

“Children’s Right to Proper Education” through an Empirical Study in Iranian Elementary Schools

Introduction

This chapter responds to the second sub-question, which is: “*In a course of action on behalf of Iranian children’s rights, what Iranian social representations of the latter reveal the gap between the ideal expressed concept of ‘proper education’ and the day-to-day life of children?*” As long as an ideal, by its nature, is not to be achieved but to be pursued, the aim of this empirical part is to observe scientifically the “gap” between the actual conditions of children’s rights in the educational system of Iran in comparison to the concept of “proper education” expresses ideally.

As our aim is to “observe facts” in this chapter which can be seen as a mini-empirical or human sciences thesis in itself. One shall probably add here a mini one but also one from a rather neophyte human sciences researcher. That is probably the “dramatic” side of interdisciplinary research: to have the duty to act sometimes as a specialist when you are obviously not. Given that this part is said so, it needs to have its own theoretical framework and methodology. One has to say what kind of empirical knowledge is going to be built to answer our second sub-question and by which experiments we thought it could be properly aimed. Thus, the first section will explain the nature of knowledge that it produces in terms of *social representations*, as the start point to observe facts of educational system of Iran through the actors thinking revealed in interviews. Secondly, the *Human Rights Advocacy Approach* will be presented as a theoretical movement suited to the specific goal of this inquiry. One must be aware that we are not acting like regular sociologist, but like a human rights activist who aims to discover the actual condition of children’s rights in educational system.

In the second section, we will talk about the methods of this experimental inquiry which is in general a qualitative research inspired by Kaufmann’s method and by the goal of *Human Right*

Advocacy. This empirical part actually starts with a sociological inspiration from Comprehensive interview method, which Kaufmann offers as a new way to comprehend and justify the social phenomenon. But at the end, we confess to be perplexed. The field aims at all the time to take an advocative position of a jurist, who wants to know about the status of the rights, rather than the sociologist, who wants to understand a social phenomenon. But one thing is certain: we want to observe the facts from a hoped scientific position and that is what we share with Kaufmann's sociology. The facts in this part are observed for the interest of the author for children's right condition.

The third section includes a description of the social representations of human rights in the field of Iranian educational system. It presents the interviews with the teachers and students, from which those representations are extracted, as the principle substance to be analyzed in order to find facts needed for this inquiry. The most important qualitative results will appear in the fourth section. Finally, the fifth section will reveal what the whole experiment of the field tells about the nature of the gap one has to observe in this chapter.

Section 1. Theoretical Framework

Facing a sub-question such ours²⁶⁶, one must look for social representations who will reveal a gap between what we considered “idealistic” in the previous chapter and what happens in contemporary Iranian schools. When we say, “*in a course of action on behalf of Iranian children’s rights*”, we are acting as a human rights activist whose concern is to defend the rights of targeted people. This could be considered a Human Rights Advocacy approach which was kind of an inevitable approach for the researcher of the current thesis. Then the latter part of question (*what Iranian social representations of the latter reveal the gap between the ideal expressed concept of “proper education” and the day-to-day life of children?*) requires an observation of the daily life of children in the field which will be gathered through their talks and narration of their experience in the school life. So, the material to be used in this part of research are *social representations* of human rights concept in elementary schools of Iran.

Coming from a developing country which is also known as a challenging place regarding the respect of human rights norms, and having a specific interest in playing a possible role to improve the condition of human rights in her country as a former human rights journalist, the researcher ended up taking the risk of starting an experimental research on the rights of children in Iran.

From an obsolete epistemological position, we felt that an academic researcher should avoid normative commitment to insure that inquiry without any prejudgment and bias position. However, since epistemological revolution of the 20th century one now knows that any knowledge is built because of a goal, because of a project. “On ne connaît jamais que dans un but”, explains Ernst

²⁶⁶ “In a course of action on behalf of Iranian children’s rights, what Iranian social representations of the latter reveal the gap between the ideal expressed concept of “proper education” and the day-to-day life of children?”

Von Glasersfeld.²⁶⁷ Saying that does not mean that the typical objective task of the scientist is abandoned, rather it means having a goal is an integral part of any scientific action. In that sense, being advocative for human rights is not a problem if it makes a proper relationship to the facts: producing science for rights instead of for sociological goals doesn't mean producing a bad science such as an apologetic biased analyse of interviews.

Clearly, the motivation behind choosing such an academic impulse was rather a personal concern. The aim to work on such a risky project – from a security and political aspects which will be explained more later on- was always to criticize and to suggest the possible ways of improving the condition of children 's rights while describing what is actually happening in the sphere of elementary schools in case of their right to “proper education”. Therefore, the general inclusive approach in this thesis would have not been detachable from a human rights advocate's point of view. It is true that we are not a “human Rights Watch” representative, as long as the process of this thesis is not to produce a judgment in the name of a judiciary instance, but it is also true that we have followed the method and style of the organizations and NGOs like Human Rights Watch and Amnesty International to produce this empirical part of the thesis. To understand the content of the interviews and the motivations that lead them, it is surely useful to keep that image in mind. A bit like a forensic scientists who want to produce science for judicial system, we wanted to produce social science for legal knowledge. The main reason for such a claim is that we try to perform modifying ideas for the policymakers of Iran to improve the status of children's right to education by looking critically at the facts of this field. We mean that the researcher is “deeply

²⁶⁷ Ernst VON GLASERSFELD, « Constructivisme radical et enseignement », (2001) 1-2 *Can. J. Sci. Math. Technol. Educ.* 211- 222.

concerned about the social problem” (i.e. lack of respect of children’s right) and that produce science in order to provide “a catalyst policy proposals” or “other action to ameliorate” this lack:

“Advocacy research is one kind of descriptive policy research, carried out by people who are deeply concerned about certain social problems, such as poverty or rape. Their studies seek to measure social problems with a view to heightening public awareness of them and providing a catalyst to policy proposals and other action to ameliorate the problem in question. Occasionally, advocacy research studies bend their research methods in order to inflate the magnitude of the social problem described, and thereby enhance the case for public action to address the issue.”²⁶⁸

However, the methodological and even theoretical defects are very common among human rights researches. Risk of falling into the trap of apologetic analyse is high. It is known that those researches are usually produced by human rights activists with a tendency of skipping the methodology and theoretical framework issues in their projects. They are mainly activists, secondly methodologist and then, the high temptation to cut the round turners in producing data “seem” to only support their goal. But this is dishonest discourse because it says something that is false: that science support their goal. So that is the main epistemological and methodological duty of the current thesis: to analyse facts of the interviews with a sufficient scientific attitude.

There are numbers of critics applying to these kind of research projects from producing *ad hoc* data to have limitations like frequent use of subjective indicators and focus the most on the rights bearer rather than duty bearer, etc.²⁶⁹ However, there are still academicians who continue holding

²⁶⁸ « advocacy research | Encyclopedia.com », en ligne : <<https://www.encyclopedia.com/social-sciences/dictionaries-thesauruses-pictures-and-press-releases/advocacy-research>> (consulté le 6 septembre 2018).

²⁶⁹Sakiko FUKUDA-PARR, Terra LAWSON-REMER et Susan RANDOLPH, « An Index of Economic and Social Rights Fulfillment: Concept and Methodology », (2009) 8-3 *J. Hum. Rights* 195-221, DOI : 10.1080/14754830903110194.

human rights advocacy approach and try to sort out their projects with scientific and reliable methodology and framework. We try to act similarly to these scholars as much as possible.²⁷⁰

²⁷⁰ One example of such scholars is “*Human Rights Methodology Lab*” to which this thesis claims to be resembled and tries to apply the recognised methods by this group.

“The Human Rights Methodology Lab is a joint initiative of the Columbia Law School Human Rights Institute (HRI), Human Rights Watch, and the Center for Human Rights and Global Justice at NYU School of Law (CHRGJ). CHRGJ, Human Rights Watch, and HRI are uniquely suited to build the methodologies needed to address complex human rights violations.”*

According to the information they give on their website, the lab connects theory and practice in the interdisciplinary and advocacy-oriented human rights researches. Scholars and activists join together and bring out the knowledge of human right advocacy by theorizing thorough the fact-finding method. This is what actually the nature of a human right research deserves.

“The Lab brings together leading human rights practitioners with experts from diverse disciplines to discuss concrete human rights research problems in order to build knowledge about, and encourage discussion of, innovation in human rights research methodologies. ... [The lab] focuses on an investigation that requires a multidisciplinary approach to generate the data and information most needed to effectively conduct advocacy.”**

They arrange workshops and training classes in order to teach the methods of monitoring and producing knowledge on human rights issues around the world. They also provide investigation handbooks and guidelines which suggests the different methods of gathering data according to the type of human rights researches ** as well as referring to the articles and books on which they found their scholar base.***

* Who We Are, About the Lab : A Collaborative Space For Innovating Human Rights Research, available at:

<https://www.humanrightsmethodologylab.org/about.html>

**Kristin REED et Ausrá PADSKOCIMAITE, *The Right Toolkit: Applying Research Methods in the Service of Human Rights*, UC Berkeley, Human Rights Center, 2012.

-Lund-London Guidelines on International Human Rights Fact-Finding, International Bar Association’s Human Rights Institute and the Raoul Wallenberg Institute, 2009.

***Books Such as:

-Dermot GROOME et Richard GOLDSTONE, *The handbook of human rights investigation: A comprehensive guide to the investigation and documentation of violent human rights abuses*, D. Groome, 2011.

- Fons COOMANS, Fred GRÜNFELD et Menno T. KAMMINGA, « Methods of Human Rights Research: A Primer », (2010) 32-1 *Hum. Rights Q.* 179- 186.

- Philip ALSTON et Sarah KNUCKEY, *The Transformation of Human Rights Fact-finding*, Oxford University Press, 2016.

Articles such as:

-Molly K. LAND, « Participatory Fact-Finding: Developing New Directions for Human Rights Investigations Through New Technologies », dans *the future of human rights fact-finding*, Philip Alston & Sarah Knuckey, Oxford University Press, 2015, en ligne : <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2559233> (consulté le 8 février 2019).

- Margaret L. SATTERTHWAITE et Justin SIMEONE, « An Emerging Fact-Finding Discipline? A Conceptual Roadmap for Social Science Methods in Human Rights Advocacy », dans *the future of human rights fact-finding*, Philip Altson & Sarah Knuckey, Oxford University Press, 2015.

1-1. Social Representations Theory: The Material of Empirical Observation

This section is an introduction to Social Representations theory. As we have realised a research by interviews, we present here the theoretical nature of the material we collected. More considerations on Human Right Advocacy approach are presented further.

We talked to the members of educational sphere in Iran (students, teachers and parents) about their daily story of school and its attachments. Our main aim and desire were, first of all, to give them a chance to be heard. So their voices have been used as the material of this research to be observed through the interviews. But what are “voices” from a scientific point of view? What can be learned from such a material? Here, we do join usefully the movement of “social representations” to answer. That is why we decided to look for “social representations of human rights” in schools of Iran.

The recent popularity of the idea that individual minds are as social products has gone along with the correlative notion that social groups should be assigned as cognitive attributes.²⁷¹ Then social groups’ representations seem to become believed as existing social elements in the contemporary researches.

Moscovici, who is known for having developed this social representation theory, defines them as below:

“By social representation we mean a set of concepts, statements and explanations originating in daily life in the course of inter-individual communications. They are equivalent in our society of the myths and

²⁷¹ROM HARRÉ, « Some Reflections on the Concept of “Social Representation” », (1984) 51-4 *Soc. Res.* 927-938, 927.

belief systems in traditional societies; they might even be said to be the contemporary version of common sense.”²⁷²

In considering the common senses, the social representation paradigm gives priority to content rather than to process. “As a consequence of giving priority to content, social representation researchers investigate specific meaning systems in groups and societies, i.e., how people perceive, think about, imagine and explain socially relevant phenomena, objects and events.”²⁷³

Initially the social representation theory claimed to tackle the problem of how scientific knowledge becomes integrated in the everyday thinking of people in modern societies but the very broad understanding of this continues to the present day. A social representation can be about any social or cultural fact, be it economy, gender roles, eating, and etc. Research projects, then, redefined the original concept of social representations.²⁷⁴

Moscovici explains that social representations are the fruits of social cognition paradigm:

“When we study social representations, what we are studying are human beings asking questions and looking for answers, human beings who think, not just handle information or act in a certain way. What we are studying, to be precise, are men’s efforts to understand, not their purposeful activity; this is the essence of social cognition.”²⁷⁵

One says that Moscovici owes the concept of social representation to Durkheim. But he claims that he has taken this theory up again and updated as a contemporary phenomenon.²⁷⁶ While

²⁷² Serge MOSCOVICI, « On social representations », dans *Social cognition: Perspectives on everyday understanding*, Fogas, Joseph P., London, Academic Press, 1981, p. 181-209 à la page 181.

²⁷³ Wolfgang WAGNER, « The social representation paradigm », (1996) 35-3 *Jpn. J. Exp. Soc. Psychol.* 247-255, 248.

²⁷⁴ Wolfgang WAGNER, « Social representations and beyond: Brute facts, symbolic coping and domesticated worlds », (1998) 4-3 *Cult. Psychol.* 297-329, 399-300.

²⁷⁵ S. MOSCOVICI, préc, note 306 à la page 182.

²⁷⁶ Serge MOSCOVICI, « Notes towards a description of social representations », (1988) 18-3 *Eur. J. Soc. Psychol.* 211-250, 220.

collective representations (suggested by Durkheim) are an explanatory term designating a general class of knowledge and beliefs (science, myths, religion, etc.), from our point of view they constitute phenomena that must be described and explained. They are essential for understanding “social” cognition. Social representations are linked with a special way of acquiring and communicating knowledge, a way that creates realities and common sense. It was then Moscovici’s purpose in substituting “social” for Durkheim’s “collective” to emphasize this difference.²⁷⁷

Moscovici continues to explain that there are three ways in which representations can become social depending on the relation between group and members. 1) Hegemonic representations: this can be shared by all the members of a highly structured group, a party, city or nation, without having been produced by the group. 2) Emancipated representations: these are the outgrowth of the circulation of knowledge and ideas belonging to subgroups that are in more or less close contact. 3) Polemical representations; these are generated in the course of social conflict, social controversy, and society as a whole does not share them.²⁷⁸

“In learning about the world in which we live we take on particular ‘presentations’ of that world and re-interpret them to fit with what we know ‘already’. That is, we take on ‘presentations’ and re-present them. In this process the social representation may be confirmed or perhaps re-articulated or re-enacted in various ways. Social representations, therefore, come to constitute our realities.”²⁷⁹

An example would come from the representation of genetic engineering by society. This is clearly significant for those who suffer from genetically transmitted diseases. Legislative decisions

²⁷⁷ S. MOSCOVICI, préc., note 271 à la page 186.

²⁷⁸ S. MOSCOVICI, préc., note 275, 221.

²⁷⁹ Caroline HOWARTH, « A social representation is not a quiet thing: Exploring the critical potential of social representations theory », (2006) 45-1 *Br. J. Soc. Psychol.* 65-86, 69.

affecting potential offspring are based upon reactions to the social representation of genetic engineering which dominates. This example shows that the representation does not have to be about people—it can be about a scientific process. Moreover, it shows again that social representations held by a few powerful (legislators) can have tremendously significant effects for those who may have no effective route to influence the presentations.²⁸⁰

By the way, to apply social representation to this research as a theoretical framework, we have considered the elementary schools in Iran as the “society” or “substantive area” in which we have explored for the human rights social representations. Then, as this society contains special members or elements such as students, teachers and even parents, we have observed them and interviewed with them about human rights, as the school’s social representatives.

This helped this thesis to criticize the existing human rights order in Iran’s society or to suggest new ideas in this regard based on the gathered data. As noticed earlier, Howarth’s article shows that the social representations theory is a modern theory of social change as well as a theory of social knowledge. Hence, it would, one may think, provide a way to criticize the social order and so provide an explicitly critical account of unequal social relations. That is to say, one would hope to find a social psychology of power at the heart of social representations theory.²⁸¹

Wagner makes four categories in researches that are made in this field. They could have divergent uses of the term social representation²⁸²:

The super-weak version: in this version the term of social representation is used to denote any system of attitude, beliefs and values without taking their discursive production into account. So, mental representations are shared by nominal and not natural groups.

²⁸⁰ Glynis BREAKWELL, « Social representations and social identity », (1993) 2-3 *Pap. Soc. Represent.* 198-217, 6.

²⁸¹ C. HOWARTH, préc., note 278, 73.

²⁸² W. WAGNER, préc., note 273, 322.

The weak version: it accepts that social representations are an outcome of discursive processes. Therefore, they are mental representations of an object which might even be shared by the members of natural, that is, reflexive groups.

The strong version: it subscribes to social representations being socially constructed phenomena which exists in the minds of the people as well as in their talk and action. A representation is constructed and constructive. Action is not separate from other mental expressions as talk.

The super strong version: in addition to the view of the strong version, the super strong version accepts that a full-blown social representation includes also the objects which would not exist socially before they are represented and representation is enacted.

This research might not be eligible to be the super strong one, but it has been tried to reach the strong version because we have also observed the acts of representatives in addition to their talk.

The observation of talks and acts of actors in the educational system of Iran will provide us the way that the concept of children's right to education has been shaped in their minds and how the condition of their rights is socially represented in this society.

1-2. this Critical Legal Study as part of Human Rights Advocacy Movement

One of the most important goals of a human rights research, especially when it is made by human rights activists, is to improve the public awareness and advocacy. While advocacy is defined in one term as a means of citizens, either individuals or campaigns, to participate in decision making by government and other powerful bodies²⁸³; at the same time, it goes beyond engaging only the citizens and includes all the social issues and human rights activists.

Advocacy has been defined in different fields or works. Social Works present it as “the act of directly representing, defending, intervening, supporting, or recommending a course of action on behalf of one or more individuals, groups, or communities with the goal of securing or retaining social justice”²⁸⁴. It has been also defined by the social work scholars because they believe “[t]he social work profession considers client advocacy as ethical responsibility and a primary function of social work practice”²⁸⁵. The encyclopedia of social work considers the role of advocate in social issues like the social worker and then defines the Social work advocacy as “the exclusive and mutual representation of a client(s) or a cause in a forum, attempting to influence decision making systematically in an unjust or unresponsive system(s).”²⁸⁶ Therefore, human rights advocacy either is to support a policy by persuading those with power to support a policy in international or national level or exercising power to influence a political action which could be actualized by national or

²⁸³ Refer to: *Manual for Facilitators of Advocacy Training Sessions*, Washington Office on Latin America, 2001.

²⁸⁴ Robin S. MAMA, « Social Work and the United Nations », dans encyclopedia of Social Works, Online, en ligne : <10.1093/acrefore/9780199975839.013.1143>.

²⁸⁵ Pat LITZELFELNER et Christopher G. PETR, « Case Advocacy in Child Welfare », (1997) 42-4 *Soc. Work* 392-402, 393.

²⁸⁶ Robert L. SCHNEIDER, Lori LESTER et Julia OCHIENG, « Advocacy », *Encycl. Soc. Work* 2013, DOI : 10.1093/acrefore/9780199975839.013.10.

- Robert L SCHNEIDER et Lori LESTER, *Social work advocacy: a new framework for action*, Belmont, CA.; Brooks/Cole, 2001.

international organizations such as United Nations and other regional human right organizations. UN bodies, charter-based mechanisms and treaty-based mechanisms, and specialized agencies, including special reporters are some international mechanisms for human rights advocacy and monitoring. Although the object of advocacy is to engage the individuals and groups in decision making and policies affecting them, achieving such a goal typically occurs over time and gradually.²⁸⁷ However, this is the task of human rights activists to play their role, no matter how long it takes to achieve the final fruit.

There are two types of advocacy including case advocacy and class advocacy/policy advocacy. While case advocacy works directly with the clients and tries to advocate on behalf of the oppressed and vulnerable people in the community, the class advocacy refers to the actions that seek changes in the environment through the social policy. However, these two types could work as communicative approaches. Where case advocacy could provide the information of field to enrich the ground of any public and social activity, the class advocacy in return comes with critical information on laws, policies and potential gaps to help the client of case advocacy.²⁸⁸

This human rights-oriented thesis is classified as a tool of class/policy advocacy because it aims to support the children's rights in a specific environment not directly but through an academic approach to pursue the policy makers to improve the status of children's rights to "proper education". A human rights research would also be considered as a tool for human right advocacy as Reich says:

²⁸⁷ What is international human rights advocacy? Consulted on 06 September 2018 at:

<http://www.endvawnow.org/en/articles/848-what-is-international-human-rights-advocacy.html>

²⁸⁸Tina MASCHI, *Applying a Human Rights Approach to Social Work Research and Evaluation: A Rights Research Manifesto*, Shirley Gatenio Gabel, New York, Springer, 2016.

“The use of research and evaluation can be a powerful advocacy tool, because it provides agency administrators and public policy-makers evidence on which to base their decisions and the general public data-driven research to base their opinions.”²⁸⁹

Policy advocacy, still, as an action-oriented activity appears to be consistent the most with the human rights research approaches such as the current thesis. Therefore, one must be aware that Human Rights Advocacy is not only a research field that perfectly fits to the field part of the current thesis but can also describe this whole law research project.

1-2-1. Human Rights Advocacy Representatives: from Judicial Instances to Doctoral Researchers

Numerous national and international organizations and groups are known to be presenting human rights advocacy. From specific organizations like Committee for the Protection of Journalists²⁹⁰, Doctors Without Borders / Médecins sans Frontières²⁹¹, International Educational Development - Humanitarian Law Project (IED HLP)²⁹², The National Network for Immigrant and Refugee Rights (NNIRR)²⁹³ and MADRE as a Women's advocacy and support organization²⁹⁴, to very

²⁸⁹ M. REISCH, « Legislative advocacy to empower oppressed and vulnerable groups », dans *Social workers desk reference*, A. R. Roberts & G. L. Greene, Oxford University Press, 2009, p. 545-550.

²⁹⁰ <https://cpj.org/>

²⁹¹ <https://www.doctorswithoutborders.org/>

²⁹² <http://hlp.home.igc.org/>

²⁹³ <http://www.nnirr.org/drupal/>

²⁹⁴ <https://www.madre.org/>

broader subjected organizations like Amnesty International²⁹⁵ and Human Rights Watch²⁹⁶, the non-governmental organizations that advocate on behalf of victims of human rights violations.²⁹⁷

Human Rights Watch, created in 1978 as Helsinki Watch, became arguably the world's most influential human rights non-governmental organization (NGO). "... In common with Amnesty International most other serious human rights advocacy groups, however, Human Rights Watch derives its influence primarily from carefully vetted research; publication of those results; and advocacy with public officials, the media and the public at large."²⁹⁸

The objective of HRW²⁹⁹ as it is mentioned in the organization's website is generally to protect human rights of people around the world and to stand with victims and activists to bring the offenders to justice. They publish research reports on violations of international human rights accepted under Universal Declaration of Human Rights. Researchers conduct fact-finding³⁰⁰ missions to investigate the violating situations and have documented and reported various violations and abuses by staying in touch with victims and making files about public and individuals. The archive of Human Rights Watch reports has been moved to the Columbia University³⁰¹ as it considers to be a huge record of reports and researches of human rights status around the world.

²⁹⁵ <https://www.amnestyusa.org/>

²⁹⁶ <https://www.hrw.org/>

²⁹⁷ International Advocacy Groups and Non-Governmental Organizations (NGO's), consulted on September 2018 at: <http://www.guidetoaction.org/intlgrps.html>

²⁹⁸ E CLAUDE et Jr WELCH, « Human Rights Watch », dans Encyclopedia of Human Rights, 1, De David P Forsythe, en ligne : <<https://books.google.ca>>.

²⁹⁹ Human Rights Watch

³⁰⁰ Will be discussed later on in this chapter as a method of human rights advocacy

³⁰¹ Human Rights Watch Archives, available at: https://library.columbia.edu/locations/chrdr/archive_collections/hrw.html

This thesis humbly claims to act at least theoretically as a Human Rights Watch research because of the common objectives and methods of research. Yet, there will be an objection of non-academic approach of HRW reports for which a search is needed for the academicians who have acted in this path and with this method. Human Rights Methodology Lab is an example.³⁰²

1-2-2. Empowerment as a Human Rights Advocacy Theory

Human rights advocates as a kind of social workers would get the assistance of theories to make the fundamentals of their research projects more firmly as well as to facilitate the understanding of human's behavior in the society. One of the theories that looks like consistent with the human rights investigators who intend to make a change in the real world of right holders (being kids, women or any vulnerable group of humans) is the Empowerment Theory and Practice.³⁰³ “The purpose of empowerment theory is to increase the personal, interpersonal, and political power of oppressed and marginalized populations for individual and collective transformation for action.”³⁰⁴

Being used cross-disciplinary and broadly in researches, there seems not to be a unified definition of this term. However, as a general definition, it could be defined as:

“A multi-dimensional social process that helps people gain control over their own lives. It is a process that fosters power (that is, the capacity to implement) in people, for use in their own lives, their communities, and in their society, by acting on issues that they define as important.”³⁰⁵

³⁰² Refer to footnote 5, p....

³⁰³ Refer to: Judith A. B. LEE, *The Empowerment Approach to Social Work Practice*, Columbia University Press, 2001.

³⁰⁴ T. MASCHI, préc., note 287, p. 39.

³⁰⁵ Nanette PAGE et Cheryl E. CZUBA, « Empowerment: What Is It? », (1999) 37-5 *J. Ext.*, en ligne : <<https://www.joe.org/joe/1999october/comm1.php/comm2.php>> (consulté le 10 février 2019).

The definition of empowerment has also been used to connect research, theory, and practice. There are programs like PEP (People Empowerment People) built on theory of critical adult education developed by Friere (1970), Horton (1989), and others which provides opportunities and resources for people to improve experiences and skills while they also gain control over their lives.³⁰⁶ This is somehow the theoretical view of Human Rights Advocacy researchers who seek empowering and strengthening people by releasing their reports and investigations on the facts of human rights status of their community. Producing knowledge in order to support and empower the ordinary people to increase their role in policy decision making is what a Human Right Advocate might search for, as this thesis would like to do so as well.

³⁰⁶ *Id.*

Section 2. Methodology

In conducting our interviews as the main substance of this field inquiry, we were inspired by Kaufmann's method because it suits well the jurist who is a beginner in sociology. The junior researcher, armed only with her reflexivity, can offset a lot of lack of training. Kaufmann's *comprehensive interview approach* is not new with the proposed research tool (interviews), but the way he explains scientific value of the interview is useful because it does not involve much technical and financial means (a student, a tape recorder, and time). The sample is easy to build and easy to maintain; just ask broad questions to people and let them guide us to their favorite or familiar topics of reflection. So, applied to the context of this research means letting the school actors talk where they want, after giving the starting subject, will reveal the structure of their representations of human rights in the school sphere. Thus, the beginner author did not have to fear a lack of control.

While Kaufmann's approach was chosen to organize the relation to the field and the interview, it may be useful to recall again that the purpose of the empirical inquiry is not a classic sociological goal: the interviews were not conducted in order to understand a social phenomenon, but to carry out an investigation whose mode is known to jurists, i.e., an advocative approach.

Therefore, in this mini-sociological thesis that this chapter wants to look like, our scientific goal has switched from the usual sociologic goal (to understand a social phenomenon in observing the facts) to another goal which resembles the goals of an international penal trial: look for the actual empirical or concrete state of the rights in daily life of children and decide whether there is a gap between the ideal condition and what is discovered in the field by listening to these people.

Therefore, this field inquiry could be an example of fact-finding project as a central method in human rights advocacy researches³⁰⁷, regarding the main intention in this thesis to find out what is happening the elementary schools of Iran regarding the condition of children's right to "proper education". This is usually what the national and international organizations do when they initiate a project to investigate the facts about human rights violations in their designated field.

However, the application of Kaufmann's method in this thesis will be also explained below in order to clarify the whole process of the experimental part.

2-1 Research Considerations Related to Human Rights Advocacy

During the redaction of this thesis, wherever we have criticised the actual facts that have been observed as a non-respectful right of the children and wherever we have taken a position to support a specific type of attitude toward the protection of children's right, we have been undeniably in the position of a human rights advocate. However, one could justify this advocating reaction by referring to the theoretical part of this thesis in which the moral and philosophical basis of these advocated rights have been extensively defined.

Fact finders who act under the Human Rights Advocacy approach have developed researches with a wide use of interdisciplinary tools as well as qualitative and quantitative methods of social science. However, social science claims to be different from the human rights advocacy researches because it believes that "Whereas social scientists seek to explain empirical observations and develop corresponding theories according to agreed-upon ways of knowing, human rights

³⁰⁷ Diane F. ORENTLICHER, « Bearing Witness: The Art and Science of Human Rights Fact-Finding », (1990) 3 *Harv. Hum. Rights J.* 83-136, 83.

investigators desire to marshal facts they ‘find’ about normatively-defined human rights violations in order to generate social, legal, and political change in the real world as expeditiously as possible.”³⁰⁸ However, in practice it seems that social science and human rights advocacy fact-finding share a lot of similarities and these differences are less pronounced.

“In sum, by relaxing strict distinctions between social science and human rights, it is possible to identify at least three common objectives. First, both social science researchers and human rights investigators seek to identify valid facts amidst difficult social, economic, and political circumstances. Second, both communities engage in inferential processes—‘using observations from the world to learn about other unobserved facts. Third, both social science researchers and human rights investigators seek to relate findings to broader policy and scholarly debates.”³⁰⁹

Fact-finding is recognized as a significant methodological approach in human rights advocacy researches. It is used in both UN bodies and non-governmental organizations. United Nations fact-finding missions have been sent to troubled areas over the past 50 years to discover the facts and gather information. The “Declaration on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security”³¹⁰, adopted by General Assembly on 9 December 1991, defines fact-finding missions as a tool of investigation in potentially explosive situations. While this mechanism both prevents disputes and is a method of dispute resolution by

³⁰⁸Paul GREASY, « Introduction – ‘Responsibility to the Story’ », (2010) 2-2 *J. Hum. Rights Pract.* 177-190, DOI : 10.1093/jhuman/huq008.

³⁰⁹ M. L. SATTERTHWAITTE et J. SIMEONE, préc., note 269.

³¹⁰ Declaration on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security, A/RES/46/59, 67th plenary meeting, 9 December 1991, available at: <http://www.un.org/documents/ga/res/46/a46r059.htm>

UN organizations³¹¹, many non-governmental organizations like Human Rights Watch and Amnesty International use it to gather information and produce documentations of human rights facts occurring around the world.

“NGOs have built their prestige and influence on their ability to investigate, document, and publicize violations of human rights and humanitarian law. Given the significance of human rights fact-finding in international affairs, *the manner in which NGOs credibly produce and shape documentary evidence and the constraints and challenges they face in doing so are important issues.*”³¹²

The way that NGOs may deal with some structural issues of fact-finding missions—such as reliability and sources of gathered information, the boundaries and the purpose of the mission, the authority of fact-finders, members and finances, etc.—will affect the reliability and the place of such fact-finding by the rest of the world.³¹³

2-1-1. A Non-Official Side with a Free Type of Interview

It is common in fact-finding projects to clarify the condition of process in advance. For example, it could be stipulated that agreement will be made with the government of designated country of research, or what would be the method of inquiry in detail. For this project, the agreement with the government was not the case because the researcher was not in the situation to have an official relationship with the authorities of the field. An effort was made to start with an official agreement but soon we discovered that it would take a long and tough way to achieve such a permission if it

³¹¹ Jachec-Neale AGNIESZKA, « Fact-finding », dans Max Planck Encyclopedia of Public International Law, Rudiger Wofrum, Oxford University Press.

³¹² Bruce P. MONTGOMERY, « Fact-finding by human rights non-governmental organizations: challenges, strategies, and the shaping of archival evidence », (2004) 58 *Archivaria*, 1.

³¹³ David WEISSBRODT et James MCCARTHY, « Fact-Finding by International Nongovernmental Human Rights Organizations », (1981) 22 *Va. J. Int. Law* 1-90, 41-51.

could ever happen. It has been said that “The greatest difficulty faced by human rights researchers is government secrecy, intimidation, and disinformation. The facts surrounding these investigations are frequently a matter of dispute and denial largely because those responsible for committing violations do so in a shroud of secrecy.”³¹⁴ Consequently, for the individual researcher of this project—as an international student—it was almost impossible to follow this path. Therefore, to actualize this project one had to conduct it on the non-official side with a free type of interviews with individuals in the site.

2-1-2. Concerns with Native Region as Choice of Field Area: Precautions Taken

The project took place as an on-site visit. The researcher travelled to the field of study, where she had lived the whole life—and the observation and investigation were made directly in the site. This is despite many fact-finding research projects that are made outside of the field, for which the only means of information was available abroad.³¹⁵ Obviously, in the case current project, an on-site visit would have resulted in more reliable evidence.

Establishing credible evidence is another concern of human rights researchers who are engaged in the fact-finding projects. “To overcome fact-finding difficulties, human rights NGOs employ specific methodologies to establish credible evidence of human rights violations. These data are derived through a variety of fact-finding techniques and rely on a wide range of oral and written sources.”³¹⁶

³¹⁴B. P. MONTGOMERY, préc., note 311, 28.

³¹⁵D. WEISSBRODT et J. MCCARTHY, préc., note 312, 71.

³¹⁶ B. P. MONTGOMERY, préc., note 311, 32.

Aware as we were of these difficulties, we then looked for the tool that would lend credible evidence of a gap between the “right to proper education” and what analyses of interviews would reveal. We found that Kaufmann’s model of comprehensive interviewing would be a correct way to assure credible evidence. So, in this project, the main source of data was supposed to be the interviews with the children, parents, and teachers. So, we started with a *direct* and *oral* type of evidence; however, subsequently we had to make part of our interviews on the paper as written interviews with some teachers in order to have faster access to the information. Therefore, the data in this project are basically direct information taken from the oral interviews; although later on, while we were trying to interpret the data in our final step, we used written sources of data such as academic articles related to the subject, journalistic interviews with some executors and the legal documents and legislations of the country.

Having explained how human rights advocacy would have been the inclusive approach of this inquiry and particularly acting with a method of fact-finding as the most of human rights advocacy organizations do, we sought to expose the details of methods taken in different parts of this thesis, including the legal, philosophical, and, finally, the sociological method.

2-2. The Process of Qualitative Research according to Kaufmann

As previously stated, the method taken in the experimental inquiry has been inspired from the guide entitled, “*L’entretien compréhensif*”³¹⁷, written by Jean-Claude Kaufmann. It may be better to confess that the main reason was that our supervisor proposed us to pursue this study was that all her qualitative researches were based on Kaufmann’s work. Accordingly, most sociological researches obey a standard method of inquires in which the researcher starts with a hypothesis and, with the experiment, confirms or rejects his hypothesis. Kaufmann’s particularity is to present qualitative research based on semi-directional interviews as proceeding differently. Instead of “confirming or not” a hypothesis, the researcher slowly builds the hypothesis on what he calls “a reverse mode”:

« Dans le modèle classique, une hypothèse est avancée, puis testée par un protocole d'enquête. Ce dernier doit donc être particulièrement rigoureux, car il joue le rôle de garantie de la validité des résultats. Dans le cadre des méthodes qualitatives produisant une théorie fondée sur les faits, ce test (outre qu'il est techniquement souvent impossible) n'a pas lieu d'être, puisque le terrain est déjà la contrainte initiale, que les hypothèses lancées ne sont pas formelles mais issues elles-mêmes de l'observation : l'ordre des phases est renversé »³¹⁸

The credibility of the results in this method, then, depends on the creativity and reflexivity of the researcher rather than the validity of the tools that one might have used during an ordinary experimental research. This is how Lemay and Roy say in explanation of their method in their sociological inquiry which they present in the book, “Le contrat conjugal”:

³¹⁷Jean-Claude KAUFMANN, *L’entretien compréhensif*, Paris, Nathan, 1996.

³¹⁸*Id.*, p. 26.

« L'indicateur de validité scientifique ne réside plus dans un protocole irréprochable, mais dans une production méticuleuse de résultats. La fiabilité scientifique ne s'infère plus de la qualité des instruments utilisés, mais du travail de réflexivité, de compréhension et de construction scientifique de recherche. Tel un artisan, ce dernier doit s'assurer d'enchâsser le matériau empirique à l'intérieur d'une œuvre théorique qui fais sens. Cette méthode s'inscrit donc dans le mouvement de la construction sociale de « la réalité ». »³¹⁹

a. Method of Sampling in Qualitative Research

With the qualitative research tool of semi-directional interviews, the researcher enters the field as soon as possible. He has no more than an impression that “there is something to be explored”³²⁰. For the beginner author, it was appealing and precious, because there was no complex and long circumstances to prepare. On the field, one simply starts to gather data through interviews for which one chooses informative persons rather than a representative sample and talks to the interviewees with a flexible grid of a questionnaire to be able to improve it along with the research process. The process of data collection continues until the stage at which the researcher feels that no new information is given anymore. This stage is called “saturation of data”³²¹.

³¹⁹Alain ROY et Violaine LEMAY, *Le contrat conjugal: pour l'amour ou pour la guerre?:[étude empirique des représentations professionnelles du contrat conjugal chez les juristes et les psychothérapeutes]*, Éditions Thémis, 2009.

³²⁰ Olivier MAULINI, Kaufmann, J.-C. (1996). *L'entretien compréhensif*, Paris: Nathan, 3 septembre 2006.

³²¹ *Id.*

b. Method of Interviewing

There are two important notes in the method of Kaufmann: first is the evaluative process of the work which needs a constant reflection from the researcher. Kaufmann calls this point, “Le regard sur soi”. Since one does not enter the field with a designated hypothesis and even runs the interviews with a flexible grid and one has to determine the moment when the process gets to the saturation stage, so it is inevitable always to have a general view of what has been done and where one is standing. “Le chercheur doit donc continuellement avoir un regard porté sur l’économie générale de l’avancée des travaux.”³²²

The second important feature of comprehensive interviews is what Kaufman calls “empathie”. It is only by means of empathy that the interviewer could augment the quality of interview and gain the most useful information possible, because one of the greatest difficulties in realization of a qualitative interview lies in the fact that the interviewee does not really make contact with the subject or with the project at all, so one cannot express oneself when he/she is not really engaged in the story.

« ...c'est l'informateur qui est en vedette, et il doit le comprendre à l'attitude de celui qui est en face de lui, faite d'écoute attentive, de concentration montrant l'importance accordée à l'entretien, d'extrême intérêt pour les opinions exprimées, y compris les plus anodines ou étranges, de sympathie manifeste pour la personne interrogée. »³²³

Therefore, the role of the interviewer is such a key role in order to make an emphatic atmosphere while listening carefully to the interviewee and reacting in a way that he/she feels having been

³²²J.-C. KAUFMANN, préc., note 316, p. 39.

³²³ *Id.*, p. 51.

understood. « L'empathie est un instrument pour entrer dans le monde de l'informateur. »³²⁴
Kaufman says. This was very applicable to this project, especially when the interviewer was talking to the children as the informative sources. The interviewer needed to make them talk because the kids seem to have nothing to say in the beginning or even do not get the idea of the interview at all. The researcher has tried to enter their world and give them hints to the subject about what they could express themselves. This is Kaufman's advice to the researcher:

« Car pour s'engager il doit lui-même exprimer idées et émotions (sans trop développer bien sûr, ce n'est pas lui la vedette) ; s'il ne dit rien, l'autre n'aura pas de repères et ne pourra avancer. Il est donc possible et même conseillé de ne pas se limiter à poser des questions : de rire, de s'esclaffer, de complimenter, de livrer brièvement sa propre opinion, d'expliquer un aspect des hypothèses, d'analyser en direct ce que vient de dire l'informateur, voire de le critiquer et de manifester son désaccord. Empathie rime avec sympathie, et l'enquêteur doit avant tout être aimable, positif, ouvert à tout ce que dit son vis-à-vis. »³²⁵

That's how we've chosen to direct our field: with no more than a few criteria defined to choose who would be interviewees, until saturation, and looking for a proper interview attitude based on constant consciousness of the overall process and an empathic posture.

³²⁴*Id.*, p. 54.

³²⁵ *Id.*, p. 53.

2-2-1. Description of Our Research Gestures

a. Access to the Field: How we coped

While the decision to work on a subject related to human rights in Iran was a critical decision, making a field investigation with a human rights advocacy approach was an additional risk, in terms of personal security and access to the field. Iran, a challenging country in the case of human rights, is naturally very sensitive about any activity in this field, especially if happening outside the country. Nevertheless, the probable risks of this sphere were intentionally taken because the sincere goal of this project was strictly scientific inquiry with a global aim of helping the designated country (Iran) to improve its condition in human rights as a means of improving in any other aspect of development.

We even received from our supervision and from “Bureau de l'éthique” of University of Montreal a suggestion to do the field research in a few countries in the neighbourhood of Iran in the Middle East in order to avoid mentioning the name of a specific country: they feared for the author and wanted to keep the thesis on the safe side. Afghanistan and Iraq were among the countries designated for field work. Some efforts were even made to find connections in these countries to help us actualize the plan. However, finally we found it more unsecure than what it was predicted in the beginning, for a female researcher to travel solely to these two countries and we assumed it was also not very precise methodologically to conceal the names of the countries. Thus, the focus of the research plan was kept to only one country: Iran.

After finalizing the research proposal by the faculty and passing the “examen de synthèse”, the researcher traveled to Iran and very optimistically tried to start the field inquiry from the official process of doing such projects in Iran. One had to go to the Ministry of Education of Iran where

researchers usually apply for the permission to go to the schools to actualize their projects by interviewing the kids or by observation in the field. However, it was found that the application of this project would not go through the same process as did all other internal projects. The people in charge of such permission sent the application to the Security Division to get special consideration because this project was going to run with a student from a foreign university. The responsible staff of the Security Division advised in person to withdraw the application because it would take a long and complicated process to get approved as it was not a common application. When we tried to explain the simplicity and sincerity of our plan as a thesis subject, the responsible staff suggested us to do the project in a non-official side. They suggested to do the interviews with individuals —kids, teachers and parents—in a personal way and not by going officially as a researcher to the schools, so no permission would be necessary from the Ministry of Education or the Security Division.

Taking to the idea of realizing the plan of interviewing in a non-official way, we started as an individual and independent researcher. It was the only option because otherwise we would not have had access to the field and this project would never would have happened.

In sum, it would have been impossible to receive the official safe-conduct to the field from public authorities. We then had to cope with opportunities that were ours: friends, families, etc. However, this scenario change not only did not seem to have a dramatic influence on the quality of our gathered material, but also it seems to give us better opportunities to have more credible data, because:

- The official public certificate would have limited us to one or two specific schools in Tehran, while having conducted our interviews on the non-official side, we had the chance to choose our sample from different areas and even different cities. And we did. We talked

to the children in parks and amusement centers who were from different schools including public and private. Our interviewees were also from two different cities including Tehran and Qom.

- Conducting the interviews under the official certificate of the government would have a probable influence on the willing of our interviewees to cooperate with us. They might have felt like this is an official survey that will be controlled by the governmental institutions—especially because of its subject (human rights). So the teachers might have feared telling us the truth because of possible tracking about the information they give us on the condition of children’s rights in the school, and the students might have pretended to have a better condition in the school because of the fear of being heard by the schools’ principals and the possibility of getting unpleasant consequences. So, when we assured everybody that this is a free interview in which your personal information will not be reported anywhere and it is unrelated to any governmental institution, the interviewees had a more relieved spirit to cooperate honestly.

Therefore, we believe that doing the interviews as a non-official type made it an even more comfortable atmosphere for us and the interviewees to gather the data.

b. Sampling: How we did it

The process of sampling in this project was simply finding the available children and teachers in the field (Iran) who are ideally from different levels of schooling quality. As Kaufmann mentions in his book “L’entretien compréhensif”, the sampling in this method is different from the standard method of interviewing, which leads more toward quantitative researches rather than to qualitative.

« La constitution de l'échantillon est à juste titre une des pièces maîtresses de l'entretien standardisé : il doit être soit représentatif ou s'approchant de

la représentativité, soit défini autour de catégories précises. Dans l'entretien compréhensif, ces corrélations sont rarement utilisées et font seulement fonction d'indices, le matériau étant le point de départ d'une nouvelle enquête, d'une investigation en profondeur révélant la complexité des architectures conceptuelles singulières. La constitution de l'échantillon devient alors un élément technique moins important. Ce qui ne signifie pas qu'il puisse être formé n'importe comment. »³²⁶

Therefore, in this research project, the first and the most important criteria in selecting the children was to find them in age groups from 7 to 13 (the age of elementary school students) and from different types of schools (public or private) and also from different parts of the city (a higher level of economy to parts of the city less affluent economically or socially). The researcher also traveled to a small city (Qom), close to the capital city of Tehran, in order to not limit the data diversity to the students of capital city, who seemed to be in a better condition.

The effort to make a variety of informative interviewees has been made, then, to avoid a unified sample of data; because as Kaufman gives a warning, in qualitative research with a comprehensive method of interview one should be aware that the error of mal diversifying the sample.³²⁷

The interviewees have been selected generally by two means: first, by going simply to the parks and libraries where children would have been found easily and usually with their parents; and second, by means of personal connections in two elementary schools (one girls' school and one boys' school). Actually, the interviewer was introduced to the directors of these two schools through a friend of hers, so the director accepted to cooperate with in this project and let the interviewer talk to the children and teachers just to the extent that it would not bother the school's

³²⁶*Id.*, p. 40-41.

³²⁷*Id.*, p. 42.

schedule or timing of classes. So, the students were usually found when they were not in class at that moment, for example, when they had their free time and were playing in the yard or if a teacher were absent and the students were basically free.

Talking to the children who had their fun time in the parks or libraries was similar. The kids should have not been bothered at all and it was one of the most difficult parts of the inquiry because interviewing kids is a big project by itself. They don't want to sit down. They want to keep playing and running. They don't want to follow the questions and instead liked to express their own feelings about the school (which was what we wanted to know, of course). So, first the interviewer had to make friends with the kids and involve them in what was going to be done. They had to understand what was meant when the interviewer asks them about their rights or human rights—the most difficult concepts for them to understand. Thus, trying to give examples was a method to put them in the atmosphere of what we were talking about. The interviewer also had to ask them to talk about their experiences at school, with their friends, teachers, and other school staff, and among these memories we found the goal of the interviews.

The other difficulty was that the kids—especially the boys under 10 years of age—have a high tendency to move around. It was almost impossible to interview without interruption. They would go, run, and play and one had to follow them to ask some small questions in between.

The interview with the teachers was made also in two ways: first, in the schools (the two schools where we had a chance to enter) while they had finished their classes and had a short time to give us an interview, and second, by distributing questionnaires among the teachers of two schools. So, parts of the interviews were written and not oral interviews. This is because finding teachers who had free time to have an interview with us was difficult. They seemed to be more comfortable to take their time at home or any spare time they got, to fill out the questionnaire. An interview with

an Afghan teacher was also made. This teacher was working in Iran in the school of refugee children and the interview was through WhatsApp (online interview).

In sum, the interviewer has talked to 87 interviewees, including: 32 boy students (11 interviews in the parks and 21 in the school area), 29 girl students (8 interviews in the library and 21 in the school area), 23 teachers (6 oral interviews and 17 written interviews with questionnaire) in addition to interviewing with 2 parents (2 mothers) and one female children's rights activist in an NGO. The number of interviewees was determined by the availability of the interviewees and the researcher's time restriction, supported by Kaufmann's saturation of data, in the sense that the researcher continues the observation and interviews until he/she feels that it does not add anything to the information already gathered.

« Au cours de l'enquête, chaque hypothèse appelle de nouvelles informations qui peuvent ou non amener de nouvelles questions. Le modèle « sature » quand la construction théorique se « durcit », c'est-à-dire que les observations s'accumulent en confirmant ce qui est attendu plutôt qu'en produisant de l'inconnu. On ne parvient à ce degré de stabilité qu'en recherchant activement les zones d'incertitude à combler. »³²⁸

Thus, we continued gathering the data regarding all these factors until we realized that additional interviews would only generate approval on the general understanding and hypothesis of the field. It should also be mentioned that the data are the result of field investigation in the summer of 2016 and winter of 2017 during two trips to Iran.

³²⁸ O. MAULINI, préc., note 319.

c. Interviews: How and why we had questions

The implementation of interviews was the next step in the project. The questionnaires were already made for a semi-structured type of interview. As Kaufmann states in his method, the grid of the interviews should be prepared before and the logic of questions must be clear for the researcher. However, the interviewer should be flexible in posing the questions and run the interview as it helps the interviewee to express more information. «Non pas poser une question pour poser une question, mais trouver la meilleure, à chaque instant du déroulement de l'entretien. La meilleure question n'est pas donnée par la grille : elle est à trouver à partir de ce qui vient d'être dit par l'informateur. »³²⁹

Therefore, in the oral interviews, especially with the children, one should have been very flexible and continue with semi-structured interviews in which the skill of empathy with the interviewees was the main method to follow. The students usually felt intimate with the interviewer and expressed complaints about their unpleasant experiences at school or even felt proud to describe their pleasant experiences. One must confess that the first impression in the field after talking to the kids was very positive about the schools' sphere in Iran. We found the children happy and confident enough to easily make a connection with the interviewer as a researcher. However, the interviewing with children should also be considered as the most difficult part of the field work in this project.

The written interviews with the teacher should be categorized as structured interviews, although we had posed open-ended questions to some extent in order to let the teachers express their feelings and thoughts.

³²⁹ J.-C. KAUFMANN, préc., note 316, p. 48.

Let us now explain a bit about the logic of the questions that were posed in the interviews. The questionnaire for the interview with children were made to gather data with three main questions in mind: 1-Did the children know about their rights or the concept of human rights at all? 2- Are children's rights respected in the sphere of school? 3-Are the concept and rules of human rights been taught in the schools? We conceived those three questions as a good beginning to know the nature, depth, and magnitude of the gap between ideals of children's right to education and their actual life in the school because their answer would represent the children's thinking about the concept of human rights and also would give us a picture of children's rights condition in the sphere of schools.

The questions had started with asking the children about their daily schedule at school. By means of this question, we wanted to know what is happening in their daily life in the educational sphere and also to let the kids remember their good and bad experiences in the school, which will be a source for us to observe if their rights are respected in the school. Then we asked them about the concept of rights and if they are familiar with children's rights or human rights in general. Next, we tried to understand the students' relationship with the teachers and staff, and the role of the teacher in internalizing human rights in the process of education. "What would be your teacher's reaction if you struggled with your friends?" was a question in this regard. Finally, we asked the kids if they have any role in decision making in the school or in the classroom, by which we intended to observe their right to participation and decision making in educational system.

The aim in the interviews with teachers was to investigate on the status of those rights relating to the education's ideals that previous chapter revealed. Did teachers know about the rights of children? Did they try to respect children's rights in their teaching and during their contact with the children (implicitly, are they familiar with or practitioners of "proper education")? Did the

teachers agree that human rights were taught in the schools? And, in general, what “human rights” are meant for them all?

For this purpose, we started the interview with teachers by asking them about their definition of the child and childhood and their understanding of the rights of the child. Then we questioned about their method of teaching and managing the class in order to respect the children’s right to “proper education” in their act as the teachers with a key role in child’s character improvement. Finally, we asked the teachers if they agreed to teach human rights to children, and if so, how?

The purpose of interviews with the parents was almost the same as with the teachers, unless it was intended to gather information from parents as social representations of children’s rights in the school, i.e., how did they think about the rights of children in school and how they evaluated the operation of Iranian school in educating their children.

Therefore, we asked the same questions as we did in the case of teachers about their understanding of children’s rights and their agreement to have human rights taught to their children in the school. In addition, we asked the parents if they considered the rights of their kids respected in the school and what would be the effect of a “human rights–oriented education” on their children?

After a detailed explanation about the sampling, interviews, and questions made in this field inquiry, we should also state the ethical aspects of this project, presented in the following section.

d. Biographical Index

We also produced a complete index of all the interviewees of the field with the most possible information about the age, sex, the condition in which the interview has been conducted and also a general view to the content of what has been expressed by the interviewee. We must indicate

that we will use this means to help the reader to cross read: when we read a verbatim, with the factitive name used, we can then go see in the biographical index and find out more about the person speaking through the interview analysis. It makes the reading more enjoyable and more alive, because instead of treating people as "numbers", we have people in flesh and blood, who look like us and can be better imagined. It also helps making a live context for the used verbatim during the text. This biographical index will be presented at the end of chapter three.

2-2-2. Ethical Reflection

The University of Montreal, like many other research institution and organizations in Canada, seeks to reserve the rights and dignity of human being during the researches that are implemented under the name of the University. Therefore, for any experimental inquiry, the researcher needs to apply for an ethics certificate from the University, which is to ensure the respect of human rights and the dignity of people involved in the project. *Politique sur la recherche avec des êtres humains* (last modification on 1 2014-06-09) states in its Préambule:

« L'Université de Montréal (ci-après « l'Université ») s'est donné la mission de promouvoir l'avancement des connaissances et l'excellence de la recherche en conformité avec les plus hauts standards scientifiques et éthiques. Pour ce faire, elle fait la promotion d'une conduite responsable en recherche. Elle veille notamment au respect de la dignité humaine et à la protection des droits des personnes dans ses activités de recherche avec des êtres humains. À cet effet, l'Université adopte les principes et les règles qui font l'objet de la présente politique. Pour les mettre en œuvre, le Conseil de l'Université (« le Conseil ») crée des instances décisionnelles indépendantes en matière d'éthique de la recherche. »³³⁰

³³⁰*Politique sur la recherche avec des êtres humains*, Université de Montréal, last modification 2014, p. 1.

Accordingly, an ethics certificate had to be received for the current thesis in order to run the experimental part of the project respecting the regulations provided by the “Comité Plurifacultaire d’éthique de la recherche”.

« L’Université fonde sa Politique sur la recherche avec les êtres humains sur les principes directeurs suivants, tels qu’ils sont définis dans l’EPTC :
le respect de la personne; la préoccupation pour le bien-être; la justice. »³³¹

The researcher was asked to send the Committee of Ethics of the research a description of the subject of project and to fill the form of demand for the certificate of ethics, in addition to provide some documents related to the research including: 1- the questions of interviews, 2- the letter of invitation to the directors of the school who were going to ask for cooperation in the project, and 3- the letter of invitation to parents and teachers to cooperate in the project, and 4- the consent letter for all the participants including parents’ consent for interviewing with their kids and also to be interviewed themselves and also the teacher’s consent to be interviewed.

We explained briefly in the letters of invitation and consent letter the subject and purpose of the project, their mode of participation in the project, the risks and inconveniences, the advantages and benefits, as well as the confidentiality of the data gathered, and their right to withdraw their information and consent any time before the publishing of the analysis of data in the PhD thesis.

The committee also asked the researcher to do the same process in Iran in order to receive such an ethical certification for the project, but in fact there is no such office or procedure in Iran, so we were exempted in this regard. However, all the required documents have been submitted in both

³³¹ *Id.*, p. 2.

English and Persian languages, because the project was supposed to be realized in Iran and in the Persian language.

At a certain time during the project, when we had decided to extend the domain of the field to some other countries like Iraq and Afghanistan, we had to update the ethics certificate with new documents about the new fields. Although the ethical permission to actualize the project in Afghanistan and Iraq was also received, finally the travel to those two countries was canceled due to security questions, and the project field stayed focused on Iran as the only country of the investigation project.

2-2-3. General Issues and Difficulties that Could Affect the Results

During the process of experimental investigation that had to be done in this thesis, we confronted many difficulties and issues, some of which might be considered normal, while some would have been evitable.

a. Security Issue

The first and the most important issue that one had to face during this project was security. From the very beginning there was some hesitation even to choose such a subject for the thesis. However, there was faith in telling the researcher that as, an Iranian student, her intuition is nothing but to help the people of her country. This fear also was eliminated later when a Professor of Human Rights from Shahid Beheshti University in Iran came to our faculty in Montreal and had a speech in a gathering event. Professor Reza Islami, who has also gained his PhD in law in the University of Montreal, had an encouraging approach regarding the subject of this project: to continue with a calm spirit. He mentioned that all the critical research projects taking place currently in Iran in their faculty and in other universities are experiencing no problems.

However, when we learned that we must run the interviews in a non-official way and as an individual researcher, accessing the information and interviewees was not as easy, because one had to find the interviewees through connections, which was a difficult step.

Nonetheless, we believe that this difficulty did not really affect the quality of data, as we succeeded finally to talk to many people (87 interviewees) which were among an acceptable variety of sorts and levels. So, one could say that we faced the issue of security, but it did not change the result of our inquiry dramatically.

b. The Initial Nativity in the World of Experimental Project

One must confess that in having the first direct contact with an experimental project, the researcher was very uninformative about how to run a field inquiry. We had to start reading and learning about the field of sociology, qualitative research, and Kaufmann's method like a beginner and consequently, it took a lot of time. Analysing the gathered data was another big issue that we had to face, being an amateur in this field. So many books and articles have been read on the method of analysing qualitative researches which have never been quoted or referenced in the body of a thesis. They were reviewed only to understand what one needs to do in this field. Finally, the help and advices of the professor and director of thesis, Violaine Lemay, was a clue for overcoming this difficulty.

However, even if it took more time than expected to form the experimental part of the thesis—it was as difficult as turning one's skin from being a jurist to becoming a sociologist—we have tried our best to do the process as scientifically as possible, so again, we believe that it did not significantly change the result of inquiry.

c. The Difficulty of Interviewing with Children

The other most crucial issue that we had to face was the difficulty of interviewing the children. The condition was a little better in the case of kids over 10 years of age, but for those under age 10, it was almost impossible to run an interview with them quietly and without any incident. Due to timing—either because the children could not bear a long interview, or because of the school schedule—the interviewer could not take a lot of time to run the interviews. She usually had to have group interviews composed of two students or more, which had its own benefits and problems. The benefit was that children would talk more easily when in presence of their friends. It gives them the feeling of an intimate atmosphere. But the difficulty of such interviews is that the kids start chattering together and they might decide at once to get up and leave the interview altogether. It is very difficult to control kids when they are together. For example, once we had a group of six boys playing in the park, which ended up finding them one by one at the corners of the park just to finish the interview questions. The interviewer never forced any kid to start or even to continue the conversation/interview, though. Being personally a very kid-friendly individual, the interviewer made a friendly and intimate relationship with almost all interviewees. That is why she could remember almost all of them even now, after 2 years or so.

However, one could say we did face the issue of interviewing the children, but we would not consider it as an element that changed the results of the inquiry dramatically.

Section 3. Social Representations of the Good Life in the Elementary Schools of Iran

As the question of this research requires us to observe and study the thought and the act of human beings in the designated field of inquiry, so the applicable theory of social representations have been explained.

The practice of what we have looked for, in this inquiry as the social representations of children's right to "proper education", has been described in this chapter like a report from all the interviews. We have classified the talks and sometimes the acts of interviewees in several notions which could represent the general idea of children's rights/human rights in the sphere of elementary schools of Iran.

However, an analysis of these gathered data will be presented in the next section which will be a more critical and abstract view to the observed social representations of what could also be called as "the good life"³³² instead of the less accessible concept of human rights for the children.

3-1. Kids' Discourses

The interviewer has talked to 61 students of the range of 7 to 13 years old. Below we try to categorize the data collected from the interviews with 32 boys and 29 girls who are either going to public or private schools. They have talked about what they do at the school, their relationship with the school staff specially the teacher, and finally about their idea of children's rights and human rights.

³³² "The good life" or "la vie bonne" as a concept of a moral desirable form of life according to the teachings of ancient Greek philosophers and Islamic authors.

3-1-1. The Daily life of Children in the School

Studying: Regarding the interviews, for most kids going to school is “to study”:

Asking the question of “what do you do at school?” one common answer is “studying”. It has been repeated 9 times in boys’ answers and 8 times in girls’ answers. While girls talk very generally about it by saying that “we study” or “we learn good things from our teacher”; boys say detailed sentences about it by saying “the first course is always mathematics”, “the teacher checks the homework and examines us about the previous lessons”, “sometimes we have exams” or “the teacher teaches new lessons” and some of them simply and generally say “we study”.

Although “studying” seems to be the first answer they are likely to say confronting the question of what they do at school; the kids like to talk more about having fun and playing which comes next.

Having Fun: In contrast to the term of “studying”, kids talk about their break times. Usually, they say “We have break times” right after they say, “We study”. Then they give more details like eating snacks and playing. A 10 years old boy says:

“Usually we have mathematics at the first course, then we have breaks during which we go to the forest and mountain...” He studies in a private school which is close to a hill and woods. Kids can go the forest during the breaks. He excitedly continues: “sometimes we cancel a course and we go to the mountains!” They should go with their teacher or with her/his permission.³³³ “I play with my friends. Once we started digging a hole in the mountain pretending that we are looking for treasures.”

³³³ See also: section 4.6 in chapter 3.

Running is the most popular physical activity that almost all the students including girls and boys mention as an activity that they do or like to do in the breaks. Games such as hide and seek, playing with water and running after each other or jumping over each other's backs are some games named by kids. They mostly complain that they are not free to run in the yard and they believe that it is not fair for a kid to be banned from running and playing. An 8 years old girl says: "we are not allowed to run after each other in the yard. We only could walk or sit on the bench to play mental games."³³⁴ Some of them are more inventive and try to make alternative games like playing chess or to invent new games.

Basically, the kids receive milk 2 times a week. This is for all the schools including public and private schools. In some private schools the students are also provided with food either breakfast or lunch. 6 students from private schools mentioned that they get food at school. In public schools they get milk regularly and in especial occasions like when there is party or ceremony at school they get snacks and sweets.

Creative, Social and Cultural Activities: The next common answer about their activities at school is "creative, social or cultural activities". These activities which seem to be parallel to regular studies, take place under the supervision of a teacher who is called "trainer" or "socio-cultural trainer" and is responsible for all cultural, religious, social events and activities in the school. Usually, students have one course per week with "the trainer" and do extra activities other than regular classes.

Morning programs which include physical exercise, sing-song, reading Quran, performance, etc. are one of the most common programs that must be done every morning before going to class.

³³⁴ See also section 4.4 in chapter 3.

This program is basically prepared by students under supervision and arrangement of “The socio-cultural trainer”. Upraising the flag, arranging exhibition from students’ handcraft and religious or social parties and ceremonies are some activities in which the student participate and help the trainer. They also name some other activities like art courses such as painting, pottery, and photography, Quran and creativity courses, out of school activities like swimming, camping, and meeting with book publishers, etc.³³⁵

Discipline: Discipline is another piece of the puzzle of children’s view about the school. First of all they must make lines before going to class. An 11 years old boy says: “I am an agent in the line. I have to watch students while they are standing in the line.”

The girls make fun about lining up in the morning. It seems that it is not very serious for them. “It’s the same thing in all the schools. We line up in the morning. We do exercise and we don’t!” she laughs. “Only the younger student from grade one and two do the exercises seriously.”

An 8 years old girl mentions that if students don’t respect the schools’ rules, they cannot become “Yavar³³⁶”. “Who is a Yavar?” we asked. “Yavar is a monitor in the yard. Yavars watch us not to drink water with hands and not to run after each other. They don’t let us go to the classroom during the breaks,” she replies. In response to our question of “How are the Yavars selected?” she says, “Some of the good students of third grade and higher are selected and get a sign on their cloth that says they are Yavar.”

Students are evaluated by their discipline during the year. One of the most important marks in their transcript is the discipline mark and it will be considered so as the student will be accepted to a

³³⁵ See also section No4.5.

³³⁶. Yavar in Farsi means “assistant” and in this case means someone who helps the school municipal or the director in discipline making at the school

new school or not. The students know that they get a decrease in their discipline mark as a punishment if they disobey the rules. This is what both girls and boys mention as a serious sanction at school.

Supervision and Security: The other phenomenon which takes part in building a concept of school for students is the way the kids are supervised. Kids are under control of school staff and this has improved by improvement of technology. For example, some schools are equipped by cameras and it seems that it has become an element more for threatening kids to be observed rather than teachers.

The boys mention the camera to be controlled. A 10 years old boy says: “If we go to school early and the school staff are not there yet, so we start playing...but there were cameras in the school and we were not aware of this...so they came to the classroom and let us know that we had been seen by the camera.” The other boy says: “Sometimes if we run a lot in the yard and they would have seen us in the camera, they come to the classroom and give us a warning!”

While the cameras and being observed in all the times are more prominent in boys’ views, the girls are less attentive about that. An 8-year-old girl mentions a device hanging from the ceiling as a camera, but her friend corrects her that it might not be a camera, or she doubts if it works at all. Anyways, it seems that they have been sometimes threatened by their teacher that they could have been observed by cameras.

Some students from a private school express that the director is in a permanent contact with the parents. The parents are informed of whatever they do at school so if they do something wrong they let the parents know right away by text messaging. They also mention that this works

sometimes as a facility for the student because if a student has left his book at home, the parent would be informed and bring him the book right away.

There are also some students who are responsible for supervising the kids during the breaks and while standing in the queue. They watch out the students to obey the rules. They also don't let the students to go back to the classroom during the break time for which it seems that the kids are not well convinced because they usually complain about this rule.

In case of doing outdoor activities like camping or swimming, the kids are observed by the school staff. An 8 years old boy says: "we can go to the mountains only with the teacher or with his permission...but he just leaves us free there."

Relationship with Classmates, Teacher and School's Staff: The kids have been asked about their relationship with their teacher, school staff and other students. The most and first answer is "good" which is very general and when we asked them to be more precise, the girls seem to be more sensitive in this case. While boys evaluate most the teachers as nice and kind except sometimes that they blame the students in case of issues they make; the girls believe that some teachers are very nice and friendly but some of them are more serious. One of them believes that they pretend to be serious while the other one says: "my teacher is medium: not easy going and not very tough."

A 10 years old girl says: "they say they wouldn't treat the kids differently but I'm not sure!" She thinks that the teachers are more intimate with the good students. Her friend tries to justify that by saying: "it's normal. They like the student who study more. Everybody likes the one who gets the best score in the exam. But it's only in studies not in any other case." Confirming her sayings, the

other girl says: “Normally teachers make more fun with the good students, we don’t get upset and we are good together.”

An 11 years old girl mentions that all the students are afraid of the director but the other one says: “all the teachers are friendly with me. I like them and they are also good to me; for example, we went to visit our previous teacher to see if she needs help.” This probably shows that the girls pay more attention to the communication with the teachers.

3-1-2. The Concept of Children’s Rights/ Human Rights for Kids

The concept of children’s rights is rather abstract to be present in usual kids’ discourse. We knew that. So, if we were aiming to know about the gap between a certain ideal of education to fulfill a critical part of the regular content of child’s right to education, we decided to tackle large topics around education.

Kids’ social representations of their rights (What They Know): Asking kids if they have heard about “children’s rights” comes with different answers. Some of them simply say “no” and they seem to be ignorant about such a term. Some of them have heard this term but they do not have a clear idea about it. A 9 years old girl says: “Kids have some rights in the family.” “Do you know what it means?” we asked. “I don’t really know; I have just heard the adults should not ignore children’s rights.” A 9 years old boy says: “No, I’ve not heard this term, but my teacher always used to play with us. Even while teaching he mixed teaching with playing.” It seems that he has a vague idea of children’s rights. However, he remembers his teacher as someone who tried to respect children’s rights. Another boy of 10 years old age says: “it means something which is mine!” but when we ask him to make some examples he is not able to give one. “You have right

to talk and play.” We give him a hint. “Only in the breaks; not in the class though!” It seems that he is not aware of his rights and what he recognises are only rules of the school.

Some kids relate the concept of rights to the concept of “being good person” and “the religious advices”. A 12 years old boy declares that he had never heard about people’s rights but when we tell him that he might have heard something through his teacher or the books, he mentions that: “I guess we had something in our “Divine Gifts” book about fraud in bargaining.” The “Divine Gifts” is part of the curriculum in the elementary education in Iran in which the kids learn about basics of Islam and morality.³³⁷

In response to our question that “Have your teacher ever talked to you about the people’s rights”, an 8 years old girl said: “Yes, God doesn’t like people to fight. Because the evil like it and the god will get upset.” A 7 years old girl also thinks that being an honest and just person is related to the concept of people’s rights. She says: “If we are cruel to people, then God will get upset and won’t give us anything anymore.”

Besides the kids who seem be ignorant about their rights and some who have a vague or mixed idea about children’s rights, we had some interviewees with rather a good level of knowledge in this case. Four girls of the age 9-12 replied to our question as follows:

Interviewer- Ok, my other question is if you have ever heard about children’s rights? What rights the kids have or not?

Ameneh- They have the right to do anything but maybe some people don’t give them the right to do... they say you are just a kid and you can’t. But they don’t know that some kids might be older than their age ... they underestimate the kids ... for example we do a very important work but

³³⁷ See also section 4.17 in chapter 3..

when we want to reveal it they say that no you are not capable of that. You are still kids... how do you know that I am not capable... This might be my talent.

Sana-like the right in lining up [the queues] ... for example we had our compositions and were supposed to read them. We lined up to read them one by one. But one student used to go out of the queue. The teacher said that you must respect the right of others... the one who is the first person in line she has been faster than you and she has some rights you must respect.

Samin- We had something in the Literature book in grade 4 about UNICEF and children's rights. For example, the kids have right to take part in different activities. Like they have right to know how this table is made.

While younger boys (the age of 7-10) usually are not familiar with the concept of children's rights or people's rights, the girls in this age seem to be more aware and conscious in this case. Some girl students of first grade started to make a list of rights they think they have. "The right to spend our money; the other kids at school shouldn't take our money; we have right to go to cinema, right to play jumping rope, swing and slide."

Some 8 years old girls from the second grade also try to explain about their rights. One of them says: "For example we have the right to study so we can become a doctor or scientist when we grow up." Her friend continues: "We have right to play too. We have right to play dangerous games, too but they don't let us." "What if you or your friend gets hurt?" we ask. "No...to some extent that nobody gets hurts." She modifies her answer.

In a group interview with 6 girls of the age 9, they showed a rather good knowledge of their right and respecting other's rights. This is interesting because in interviews with the boys up to 9 years

old, they are mostly either ignorant about the rights or have vague or misunderstood ideas. The following conversation is part our interview:

Mina- I have just heard that the adults should not ignore children's rights.

Interviewer- And what are their rights which should not be ignored?

Mina- For example someone gave the kids some money, but the adults would take the money from them...Or like kids should play but the adults don't let them and force them to sit down.

Tanya- To ride bicycle...

Ana- We had in our social science a story in which there was an ugly boy, but our teacher said all the people are God's creatures, so they are equal.

Maryam- for example if someone is working, it is a fault if his boss doesn't pay him.

Soodabeh- If someone is working, the boss must not ignore his right.

These are the sayings of the girls who are only in the third grade. It shows that not only they have idea about their rights and people's rights, but also they have some skills of dispute resolution. They seek peace and they know how to prevent struggles. We will discuss the role of teacher and curriculum in this understanding in one of the following sections.

They seem to know what "rights" means, while some others think that as a student in an average social level, their rights are already respected, and this is only an issue for the kids with disrespected rights.

Ameneh- well the kids in my level they almost have everything. So, they don't need to search for their rights but some kids who are in lower level

they are more likely to know their rights....I think my rights are respected. As I have the right to go and visit a historical place, the other kids with a low financial level they also have right to go and visit it. So, everybody must help in a way so that they can do this too.

This is a conversation of me and 2 boys of grade 6 which impressed me because of their level of social understanding. They even have their own analysis of poverty and illiteracy!

Interviewer- have you ever heard about children's rights? what does it mean?

Ahmad- It is more for the poor children. The kids who are in the street.

Hamid- The kids in the street must be helped by the municipality and so on...the municipality doesn't care.

Ahmad- They should not stay derelict. There are some people who have hundreds of kids and they send them to work in the streets. These people must be arrested, and those kids must be gathered in an institute and teach them to study...Then the illiteracy could be eradicated. We still have some illiteracy...

So, observing the way Iranian kids think and refer to children's right through interviews reveals, as we expected, that they are not really aware of them and rather ignorant of their legal content. Kids' social representations of the latter link them to more to the moral and Islamic teachings that they receive from their teacher or parents. Even when they refer to their textbooks for a human rights concept, they usually recall it linked to a moral and religion concept of *the good life* or *the good man*.

Teacher's or Curriculum's Role (How They Have Learnt): It has a level of importance to know that from where the kids have heard or learnt about the concept of Human Rights including their

own rights, the others' rights, the concept of peace and the dispute resolutions. Therefore, we asked two types of question in our interviews. Did they have learnt or heard anything about human rights through their books or teachers? What is the reaction of their teacher in case of fight between the students? This question has meant to find the role of teacher in understanding the concept of "peace".

Some of the kids refer to their curriculum about either Human Rights, Children's Rights or some religious concepts about respecting human beings. It has been repeated as many as 10 times in boys' interviews and 3 times in girls' that they have some lessons in the social science book, literature book and the "Divine gifts" in this regard. They mention that they have in the books some subjects regarding equality, privacy, neighbours' rights, UNICEF, UNESCO, children's rights and so on.

A 9 years old girl, the students of 3rd grade says: "We had in our social science book a story about an ugly boy, but our teacher said all the people are God's creatures, so they are equal." Another girl of 10 years age mentions: "We had something in the Literature book in grade 4 about UNICEF and children's rights. For example, the kids have right to take part in different activities. Like they have right to know how this table is made." A boy of the same age says: "Yes...Yes... there is in the social science book about the people's rights. The rules of neighbourhood are written... and it is written that we shouldn't harm the public playing stuff, or we shouldn't put the garbage in front of other's house. We shouldn't harm their rights." Two boys of 12 years of age also replied me as follows:

Interviewer. Have you had anything in your textbooks about other's rights or may be have heard from your teacher?

Hamid- We had in the social science book last year. It was telling that the people in higher level should not oppress the others.

Ahmad- The people in lower levels must be helped and the others who are in higher levels who are capable in respect of knowledge and money they must help the other people.

Ahmad- All must be in the same level.

Hamid- Yeah... all the people in different levels must be treated the same.

Ahmad- Yeah... one might be in a very poor area but is more intelligent than one in a rich area... so they must be equal.

The other concept which seems to be taught in their textbooks is Privacy.
3 boys of 11-12 told me:

Interviewer- Have your teacher talked to you about respecting people's rights? Or have you had it in your textbooks?

Armin- Very much so.

Arash- Very much.

Ali- We had it in our social science this year.

Interviewer- What was it?

Arash and Armin- Like "privacy"

Interviewer- What is "privacy"?

Ali- Everybody has a border in which we cannot enter or get curious about it without permission.

Interviewer- What for example?

Arash- For example your bag.

Armin- For example not to ask what your father's job is.

Arash- Or what is your car?

Ali- Or where do you live?

Those elements reveal a bit of Iranian social norms, here, because the Canadian children, for example, are not really taught not to ask about the type of car of their parents or about the place they live. Notion of “privacy” have here an Iranian specificity linked to the virtue of being not “curious” and, may be, modesty in showing material possessions.

The other important element in learning about human rights would be the teacher, her/his habits of teaching, her/his reactions to children’s behavior. As we mentioned earlier, we asked the kids about the reaction of teacher in case there is a fight or struggle among the students. Asking the kids if they ever had fight with their friends and classmates, the answer was almost always “yes”. In this case only the reaction of kids and their teacher was different. While some kids would have hit, increased the voice or complained to the teacher, there were some other students who emphasised on being nice to the other one and not hit even if they hit and not to insult even if they insult. They try to talk to each other and solve the problem.

Regarding the interviews, 3 types of reactions could be found among the teachers’ reactions to students’ fights. The first type of reaction is “No reaction” or “No interference”. For example, a 10 years boy said: “Sometimes the teacher doesn’t care and wouldn’t interfere because he believes when he is teaching and the kids are making fight or struggle they will lose the chance to learn, so it is up to them.” A 7 years old girl said that if they have fight in the yard the teacher would say it is not her business, the director assistant must take care of it.

The second type is “to punish” the fighting students or the ones who are making troubles. This is very common in boys’ schools maybe because the boys usually have more serious struggles or dangerous fights to some extent that they have invented some ways to play or fight in hidden. A 10-year-old boy says: “ The other students will stand in front of us and make wall so that nobody

could see us, but they saw us once and we both got a hit on the neck (he laughs)...I had to make a fingerprint promise. It means that if I do it once more and I go to the director's office, it will be the end and I will be fired from the school."

Kicking the students out of the classroom, sending them to the director's office, blaming them, decreasing the "Discipline mark", giving lots of homework, excluding from the exam, giving warning and taking promise not to repeat their behavior and finally informing the parents about what has happened at the school are the other punishments which the kids receive when they have fight with each other.

The third and the last kind of reaction that the teachers perform would be "trying to make peace and take advantage of this moment to teach them the kids the dispute resolution and the concept of peace." This seems to be more common at girls' schools. The students mention that when they fight, the teacher would separate them and try to talk to them and ask them for explanations. Some of the students' replies to the question of "what the reaction of your teacher would be if you have a fight?" follows:

- The teacher would say don't fight. God created us to be friends.
- The teacher will ask for explanation and find out whose fault it has been.
- I had a struggle with my friend ... I didn't want to be friend with her anymore and wanted to get separated (she laughs) the teacher said I am wondering if you are a couple who now want to be separated? Do you want to go to court? (The teacher laughs and makes fun)
- I explain to the teacher and she will talk to my friend.
- She says why did you take your friend's stuff? You had to ask her for permission.

- Our teacher would say you have to be friends, otherwise you have nobody here and you will have bad memories.
- The teacher would give advice to the kids.”

Freedoms and Limits of Students: As a part of our interviews, we asked the students about their freedoms and limits (generally the rules of school) and their idea about the rules; if they find them fair or not.

One could sort the limits into three categories: Physical movement limit, health and security limits and discipline-behavior rules. Physical limits majorly include the rules which does not let the students run freely in the yard or corridors, going out of class without permission and being totally free when they go camping. The most students don't like being banned from running and playing physical games and as it has been said earlier they expect being more free to run and play as their right; while a few of them think that it is a wise rule because it keeps them more safe in a crowded school. (They seem to be well justified.)

Some other limits are related to their security and health which does not let the kids come with certain foods that considers as unhealthy or junk food, prevent the kids to drink water with hands, fighting or hitting the others, come with dangerous stuff or toys, etc. The kids understand the reason of these rules, but they still seem to be likely to do it. In the two following conversation you will see that the kids say, “It's forbidden but we still do it.”

The third type of limits are the rules like being on time at the class, not to talk or play during the class, not to chew gum, dressing up nicely every day, not to shout or scream, not to insult or saying bad words and finally not to come with tablet or cellphone to the school.

Students' Association: In addition to the freedoms which are provided for the students, they have been asked if they have any participation in decision making at the school; if they have been asked for their opinion in different cases and also if they have any student association at the school.

Some students simply say “No” and they do not really remember the case for which they have had any role in decision making. Some others say the teacher or the school staff ask them for their idea or help in extra activities like decorating the classrooms, playing games and so on. A 12-year-old boy says: “The social trainer of school would consult us about camping and having some fun programs. We used to give suggestions.”

The girls of 3rd grade and less say that they have almost no role in decision making unless in decorating the classrooms, but the students of higher grades could become member of association.

3-2. Teachers' Discourses

We have interviewed 23 teachers of elementary school being private or public, either teaching boys or girls. Only a few of them have been interviewed orally and the rest have filled the research questionnaire. It is also noticeable that only 2 of them have been male and the rest are female.

The data are sorted as the teachers vs. children's rights “in words” and “in practice” to have an idea that how the teachers talk about the children's rights and how they practically act in their method of educating the kids.

3-2-1. Teachers vs. Children's Rights “in Words” (What They Declare)

The Concept of Childhood: The question is “how do you define the child? Who do you consider as a kid?” and the answer to this question is supposed to show their idea of the concept of childhood.

Some of the interviewees just use a term of age to define the childhood. Five teachers mention an age in their definition. While some of them mention the age of 18 and refer to the international law to consider the human being under this age as a child, some others make a distinction between childhood and adolescence, so they consider the ones under 10 as child. There are also 2 interviewees who believe that the age of childhood is different between girls and boys. A teacher of 3rd grade says: “There is not a solid age for the childhood. The kids might not be at the same social age of their real age! Some seem to be younger than their real age because of too much attention which they receive from their family and some are older than their age because of social and familial problems. I would say generally girls are kid under 9 and they will have a big change after that but boys experience this change later.” Another teacher considers girls childhood age as 12 and the boys as the age of puberty (15 years old).

The others used some other criteria to define a child. They describe his\her characteristics as “full of energy, full of excitement, full of imagination and motivation, full of happiness, living in the present time, innocent creatures, and full of honesty”. Among these it could be said that the two last description are kind of religious based definitions (same as the age criteria which have been said to be 9 for girls) and the rest are more psychological, like the teacher who said: “The child means me. I compare the kids with my own childhood to understand them better.”

Finally, some teachers mentioned the needs of kids and their minor conditions like: “someone who has not discover his surrounding completely yet.”, “who is in the beginning of learning”, “the time in which the kids’ characteristic are built” and “someone who takes knowledge of his surrounding through the others’ treatments.” These teachers have noticed the role of adults in building the childhood period and the need of kids to be guided and protected.

Children's Rights: The teachers are been asked what they know about children's rights; "what are the kids' rights in your idea?" while only one interviewee has been really honest to confess that she is not aware of children's rights (but is interested to know about it), the others have mentioned a list of rights which seem to be in a good level of awareness at least about the kids' basic rights.

"I have no information in this case at all, but I like to know either as a human being or a Muslim I need to know these rights to respect them better... I think in our society it is not only us —the teachers or the ones who are engaged in this field- who are not aware of children's rights, but also The concept of children's rights does not exist in our society to be respected because we are ignorant about it totally." This is what a teacher of second grade in a public school says, while some others seem to be familiar with the questioned concept like this: "A child has the right to live and obtain his/her basic needs like having a home, food, clothing, hygienic services, education, playing, tranquility, happiness, etc. The right to security is a natural right for the kids and they have to spend their childhood in a full mode like a child, otherwise disaffects of that will be revealed in their adulthood."

The very fundamental rights have been mentioned. Right to live, right to have name, identity and nationality, right to health, right to have food and home, right to be secure, right to equality, right to essential facilities to live, etc.

While some others which could be ranged as the second level of rights are also named by the teachers. Right to have facilities for welfare, entertainment and education, right to education, right to talk and express their opinion, right to choose, right to participate in activities, right to live with their family fulfilled with love and peace, right to be happy, right to play, right to be understood, etc.

Besides, some teachers believe that kids' activities must be under teacher or parent's control and the kids only could decide in cases in which they have a good understanding and not more. (It is not mentioned in what cases the kids have a good understanding and to what extent THOUGH!) They seem to be more cautious in replying the question of kids' rights.

Teachers have been asked "what does it mean to recognize children's rights?" Some of them just have listed a few rights for kids but those who have well understood the question give three different answers:

First and the most common answer is that they believe to recognize the kids' rights means to protect them to obtain their rights because they are not as capable as the adult, so they need protection. "As the kid does not have a comprehension to know his/her rights, therefore he/she needs to get protection from some sources like the children's rights protecting centres". This teacher does not mention a clear institution or association though. However other teachers put the responsibility of protecting the kids on the shoulders of parents, teachers and official who work in this field. "The kids are not capable of achieving their rights by themselves, so it's the responsibility of the officials, managers and activists of the society to protect these rights."

The second group, they think that the kids must be understood regarding their condition and situation. "It means to consider the situation of children according their condition and physical status. I don't believe that it is necessary to let them know their rights though."

And finally, some of the teachers affirm on the term of "limits" by which they mean to recognize the rights for kids is to recognize the limits of adults' treatments to the children and the limits what the children must obey. A teacher believes, "To recognize the rights of kid means that the kid has to know what rights he has got in order to utilize them to enjoy all his opportunities and at the

same time to recognize his limit.” “It means to determine a limit for treating a child” a teacher says while another teacher just says that “They should learn to obey the law too!” These are probably the ones who had been very cautious in listing the rights for kids as we said earlier.

Some teachers believe that as Islam has the best recipe for everything, it is also the same in the case of kids and their rights. Therefore, as we asked them what source or basis they believe in for the children’s rights, they mention the Islam’s rules. Some other teachers think that it is the morality that makes them to respect the kids’ rights.

In summary, all three of Islam, law and morality have been mentioned as the basis of children’s rights in the interviewees’ view but it seems that there is a belief in teachers that Islam could protect children’s rights and promote this concept.

Teaching Human Rights to Kids: First the teachers have been asked if they agree that the kids know about their rights or not. Some are against. They think that it is not necessary for them to know about their rights and in some cases it could be even annoying for them. They believe that because the children do not have a full comprehension capability, so they are not capable of well understanding their rights, therefore they should not be told about it.

It is also a concern for some teachers that by knowing their rights, there will be a kingdom of children! A teacher of the third grade says: “I think if we tell the kids a lot about their rights, and if we tell them that you are right all the time, we will have the kingdom of children. They will be then the children who decide. This is not very good because the n the parents will lose their authority.” It seems that this teacher is mixing the concept of “having right” with the concept of “being right” which leads to a mal conclusion.

The other category of replies to this question includes the ones who have been agreed that kids should be aware of their rights, while they think that it gives them self-confidence and help them protect themselves and their rights. “The kids have to know their rights and must be educated about them for example in they could be taught a course “life skills”. It gives them self-confidence and helps them defend themselves.”

These teachers still believe that there is a limit about that. They think that it must be said in practice and not explicitly. “I think we have to talk to the kids about their rights and let them know what right they have, but it must not be only in theory but also should be educated practically.” And, kids must obey rules besides knowing their rights.

The question of “teaching human rights to kids at the school” have been generally answered positively. The most teachers think that it must be implicitly taught; either thorough movies, games, activities, stories or in practice and by giving them more freedom.

In this regard, some teachers have said that if we respect the children’s and help they progress in a proper way, they will learn how to respect human rights automatically. “Most kids learn better through the games and activities rather than teaching the theory. Respecting kids’ rights also internalizes this concept in the children.” as One of the teachers believes.

The teachers also have mentioned that learning and respecting human rights in families are in priority. If the families are ignorant about human rights and children’s rights, it will not be so efficient to teach it at the schools. “Teaching human rights is a good idea in case these right become as culture in the society and the kids could match their taught with their seen.” This is what a teacher said as she had believed that teaching human rights must be kind of conceptualizing and it will be more efficient. Here comes another example of this kind:

“Before the kid enters the school, the family must learn what the rights are and how they must be respected. If I (as parent) have respected my kid’s rights during first 6 years of his life, so I can expect his rights to be respected in the school. One would say 80 to 85% of the rights has to be respected in the families first. The problem is within our families. They don’t know the rights. They think it’s the money they receive at the end of month. 80-90% of people will say it’s the monthly salary when you ask about the rights! We don’t recognize the right of each other. Not for me as a mother or for my child or for my husband. We don’t know about it.”

What this teacher says about the salary comes from the point that in Farsi the same word is used for the concept of “rights” and the “salary”. She wants to show the level of ignorance of people about this concept!

3-2-2. Teachers vs. Children’s Rights “in Practice” (What They Do in Fact)

Knowing what the teachers think about children’s rights and teaching it to the kids, we have asked them what they do in practice and how they treat the children at school. This could open a new window to see how the kids’ rights are respected at the schools especially because the teachers have confirmed that teaching human rights to the children must be more in practice rather than in words.

Freedom and Limits: The teachers have been asked about the freedom vs forbidden they provide in the classrooms. The red lines which should not be passed by the students are usually the rules of classroom made by the teacher or sometimes both teacher and students. For example, coming late to the class, talking without permission and not respecting others’ turn in the line are named

by teachers as forbidden for the students. Some mal treatments are also not allowed in the class like annoying or insulting other kids or interrupting the other kids while they are talking. These seem to be in a moral level rather than a discipline level like respecting the class rules.

The reaction to overpass the limits is normally getting punished by the teacher. We have asked the teachers then what they would do as punishment?

Emphasizing on the point that there will be no body punishment or hitting in their class, the types of their reaction are as follow:

1- Some teachers involve the students in making rules and punishments. They think that it is going to be more efficient if the kids have a role in their own affairs. For example, a teacher of grade 3 said:

“It depends. Sometimes I let the other students to decide. We talk in the beginning of the year and we decide about the rules. So, if one has not respected a rule, I will make notes in my notebook every day. For the first time or the second time we vote for the “forgiveness”. We write the word “forgiveness” on the board and then we talk about its meaning and synonyms. Then we vote.

But when it continues and repeated then we cannot forgive, so I ask the students to decide about the penalty. They write their different ideas on the blackboard and they vote for it.” She also mentions: “some days in each year I let the students to punish me, to let them taste the act of punishing... for example they make me to write 100 questions and to circle the difficult words and so on... so I will also taste how it likes when a kid is punished.”

2- The other type of punishment is excluding the students from their favorite activities or bonus. Loosing stars (bonus points), excluding from gifts and presents, excluding from favorite activities are some reactions the teachers have as a punishment. This method could be called as negative

punishment (vs. positive punishment which comes in next type) and the teachers who have such a reaction say that this method is based on children's psychology.

3- The third type of punishment seems to be more personal and more positive in the sense that the teacher will react with an "action" and not just exclusion. The teachers say that they would talk loudly to kids and look at them in a especial way to make them feel guilty, warning the students or giving extra homework to do, sitting alone on a bench and make them think about what they have done, are also some other punishments that teachers have named.

Despite the rules that should not be over passed by the students, the teachers say that they give some freedoms to the kids. Some teachers try to let the kids participate in activities and ruling the class, the same as what they do in punishments. For example, a teacher of the first grade says that she consults with the children about their educational activities. "I ask the kids' opinions and try not to impose my own opinion." Right to ask and get the answer, right to play and make noise, right to sit wherever they like every day, etc. are the freedom that some teachers believe in and provide for their students.

Another teacher with a similar point of view affirms that she talks about the rights to the students gives them the chance to make decision for their activities at the class:

"Atoosa. We always talk in the beginning of the year (me and my students) that each of us have some rights. You have rights and me too. And whenever a right is not respected the other one must be punished.

Interviewer. So, you talk to your students about their rights.

Atoosa. One hundred percent. I talk about what rights you have and what rights you don't have. For example, you have the right to ask me whenever

you don't understand the studies. You don't leave the class unless you understand, and you learn everything. Or you don't have the right to come to the class after me. You have the right to tell me if you have any problem with your friend and I will help to solve the problem as much as I can. It is better that you solve it yourself though, but you don't have the right to insult your friend even if he/she insulted you.

Interviewer. It seems that you have a democracy in your class. Do you ask the students' idea in all the issues?

Atoosa. One hundred percent. For example, we want to play today. We had an exam today, so we decide to have nothing the rest of the day and we just play. Even my teaching is with singing and playing. I make photos and I sing songs. So that the idea of lesson will take place in kid's minds."

Although there are some teachers (who seem to be in minority in our interviews) who confess that they do not know about children's rights and they do not think so that they respect them in their classrooms because they are totally ignorant in this case.

A teacher of second grade says: "Even the families and the school directors and staff are not aware of children's rights! How could they respect them then?!" Some other teachers who have replied vaguely to our questions seem to be included in this category because many of them have just said: "yes, we try to respect the kids' rights." Or "Yes, I respect their rights to some extent that is possible." A teacher also has mentioned that the rights of children cannot be fully respected because of populated public schools and the lack of facilities." These group of teachers do not have a very optimistic view in the case of kids' rights status in schools.

Habits of Teaching and of Ruling the Class: Teachers in the interviews mostly believe that human rights should be taught implicitly and in practice. Therefore, it will be important to see what their own practice is and what they do in their classrooms. We have asked them to explain

their method of ruling and managing the class and what they would do in order to promote kids' creativity and their right to flourish.

While there is only one teacher among our interviewees who says "I use my authority to rule the class", the other answers are different, but all are in the same direction: active communication with students.

Teachers talked often of collaborative method. Some teachers state that they make the rules of the class in the beginning of the year, all together with the students. "Then if anyone disrespects the rules, either the students or the teacher, has to be punished. And we decide about the punishment by talking and voting too." A teacher of 3rd grad said:

"I make the rules in the beginning and I try to respect them myself." "We have five rules in the class and we try to treat each other respecting those rules." and "The best method is to use the kids themselves. Everybody is the agent of oneself." These are some examples of teachers' sayings.

Telling stories about the disciplines, giving rewards, making groups of students (more active students in the same group with more calm students) are some other method which is named by teachers. "My class has two parts: first teaching and then group games... this makes the kids more silent and cooperative in the first part."

Their ways of how to discover students' talents and how to promote them, has also been in question. Many different teaching behaviors have been mentioned which they all seem to be based on extra activities of kids at the school or at home. Some teachers try to be creative in their own method of teaching and to involve the students in making questions and participating in the discussions, so they achieve a level of cognition about the kids' interests, talents and concerns. "In teaching the lessons, I just paint something on the blackboard, and I let them talk about it and make

questions. Regarding the students' point of view, I discover their personality." A teacher says. "I let them free to play and be active in the class, so they know their talents through the activities." "I let them talk about their opinion." Telling stories, singing songs, performances, making handcraft and exhibition from their own handmade stuff, group activities and games, painting, etc. are some other activities what the teacher do in order to discover the kids' talent and to improve it.

While some teachers decide to be more explicit and they talk to the parents about the kids' talents or talking to the kids and discuss educational and moral issues with them directly, some others consider the psychological method to empower the kids' personality and to help them flourish their capacities.

"I make them believe their capabilities." "I help them improve self-consciousness and self-confidence. Encouraging the kids and rewarding them for what they do well will help them believe in themselves." "I try to treat them equally while considering their differences. Every student must be evaluated individually and be compared with his/herself not the others. This is a principle in elementary education in Iran." "Giving some responsibilities to every student will help them improve their self-confidence and believe in their abilities."

These are some notions that the teachers have mentioned as what they do to promote kids' self-flourishing and it shows that they are aware of psychological points about treating the kids to some extent and even if they are not familiar with the concept of children's rights, at least they have a knowledge of children's psychology and education methods.

Section 4. The First Emergent Results Extracted from the Field

Having observed the social representations of children's rights in the educational sphere of our field, we will now extract the most important and visible results of these social representations. Twenty results will be presented in this section in types which will help us to analyse the Iranian sociopolitical condition of children's right to "proper education".

To attain these results, we have assembled, our gathered data (the teachers', students', and parents' discourses and the observed acts and policies of the schools) and made different categories regarding their common points. So, when we found an outstanding subject to be mentioned by a few interviewees, for example, we looked for more details and information in order to analyse such a condition in our field of inquiry and this could have become one of our extracted results. However, the more abstract conclusions of the field will appear to the researcher by putting together all twenty results that will be introduced in the next section.

4-1. “You Have Rights” Is Not “You Are Right!”: Inaccessibility to the Concept of Rights

After class, at the end of the morning, we interviewed Atoosa. Everything in her behavior and in her speech suggested a creative and dedicated teacher. She said she is very interested in cooperative approaches of teaching, which means creating a space for the autonomy of the child. Queried expressly about the rights of the child, she stated this, which says a lot: "If we tell them ‘you're right’ all the time, we will have the kingdom of children." (Interview #67, Atoosa). With this answer, Atoosa, revealed two associations of crucial ideas: 1) First, she associates talking about children's rights with the common sense expression of “you’re right”, meaning “your behavior is legitimate”; 2) Then, when Atoosa refers to “the kingdom of children”, it reveals the presence, inside the Iranian culture, of a common social phenomenon that is already observed in Quebec. Let’s discuss this.

1) Amalgam between children’s rights and the contemporary deficit of teaching limits in parental education (child’s kingdom)

It is certain that the child does not necessarily want what a “proper educator” should allow him to do. We could suppose that a child does not have the ability to define what is good for him or to act in a completely reasonable way. However, one of the ways of receiving the concept of the right of the child in a society in which the concept is new is to associate it respect for the will of a child who says I have the right to. We saw it in Quebec with the advent of the first Youth Protection Act in 1979. People refused to talk about children’s rights to their kids because they were afraid of seeing them stop obeying³³⁸. This innovative legislation was keen to promote new children’s

³³⁸ To see the process of integrating the children’s protection in Quebec’s law, see:

-Jean TREPANIER, « What Did Quebec Not Want - Opposition to the Adoption of the Youth Criminal Justice Act in Quebec The Youth Criminal Justice Act », (2004) 46 *Can. J. Criminol. Crim. Justice* 273-300.

fundamental rights. For example, having centered the PhD thesis on this legislation, Violaine Lemay recalls that at the beginning, Québec public administration was publishing posters with a child saying, “Now, I have my rights”. Strong protest then emerged from everywhere because a child’s first reflex is to use it to refuse to obey when obedience was needed. Years after, the youth protection field now fully distinguishes the protection of fundamental human rights, the protection any human being deserves no matter of the age, and the childish desire to act against parental reason³³⁹. From a psychological perspective, it is known that a child needs clear and consistent parental limits to feel affectively safe³⁴⁰. But it must be clearly and strongly said that the subject of child’s right is a totally different matter: it is about protection against violence and inhuman treatment that any human deserves, no matter of age. That has nothing to do with the problem of the child-kingdom, which means the child on whom no limits are imposed and who sees his desires transformed into dictates for his parents. The problem certainly exists, because many parents fail to impose a minimal necessary limits on children: this is the problem of the child-kingdom.³⁴¹ However, this problem has absolutely nothing to do with the birth of a modern desire to protect children from violence aimed at countering the rights of the child within their legal meaning.

In sum, one can be aware of the existence of a potential amalgam or confusion phenomenon in contemporary Iran, like Quebec. It then should help to explain clearly that the contemporary problem of the kingdom of spoiled children is a problem of inconsistent education, not a problem

-Denise LEMIEUX, « Les enfants perdus et retrouvés: la recherche sur les enfants au Québec », (1995) 36-2 *Rech. Sociographiques* 327-352.

³³⁹ Violaine LEMAY, Un contrat pédagogique. L’entente sur mesures volontaires dans la Loi sur la protection de la jeunesse », Faculté des études supérieures, Programme de doctorat en droit, Université de Montréal, 2004.

³⁴⁰ Thomas J. DISHON et Robert J. MCMAHON, « Parental monitoring and the prevention of child and adolescent problem behavior: A conceptual and empirical formulation », (1998) 1-1 *Clin. Child Fam. Psychol. Rev.* 61- 75.

³⁴¹ Emmanuel de BECKER, Isabelle LESCALIER-GROSJEAN et Edith TILMANS-OSTYN, « La « famille – enfant-roi » et la thérapie familiale, Abstract », (2005) no 34-1 *Cah. Crit. Thérapie Fam. Prat. Réseaux* 13-34, DOI : 10.3917/ctf.034.0013.

coming from the protection of international law against cruelty and unhuman violence toward the child.

The expression of a desire experienced as legitimate by the child, often expressed in everyday language by the “right to”, and the reference to the law as defined by the positive/classical legal approach has nothing to do with the current research object. Let’s now see how Atoosa, the teacher, despite several current language confusions, adopts an attitude that seem to reduce the gap between the ethical ideal of proper education and daily education.

2) Atoosa’s “proper teaching”? Despites Words, respect to the Child as a human being

As said above, it is very important to distinguish between the following two phenomena, the modern will to protect children against cruelty and violence, recognized as contrary to human rights (children's rights in the sense of the Convention on the Rights of Children), and the problem of taking on childish desires.

A child’s humanity must be recognized as the whole person and it refuses for him what is completely forbidden for all human beings because it is atrociously violent, unjust, or degrading. To grant the child the fundamental rights of the child is to refuse to see him reduced to slavery, forced labor or any inhuman violence, such rape or pedophilia. It is to know the same rights as older humans against genocide, torture, etc.

Once these current common-sense conceptual confusions have been identified, as attested by the language used by Atoosa, we must then observe the useful nuance that this teacher brings. Clearly, by her choice of teaching gestures and by acting with children, this teacher is probably the teacher most inclined to respect the humanity of her students. However, adopting pedagogical behavior that, in fact, respects the rights of children does not mean that “they speak explicitly about their

rights”. Wouldn’t this be an interesting path to “proper education”: respecting the humanity of the child in the acts instead of talking about it in an intellectual way that historically pleases Occident? Isn’t it a potential path of critical renewal?

Promoting the autonomy of children, protecting their freedom of expression, respecting their need for freedom and creating the conditions necessary for their growth (playing, moving, talking, etc.) does not mean training them to conceal intellectually what they enjoy: law schools are given the task of teaching this type of design, not primary schools. Protecting the rights of children means allowing children to access their rights—not waiting for them to understand what only adults can understand. Another teacher expressed this when she said, “It is not necessary for the kids to know about their rights; it could even be annoying for them.”(Arezo, interview #86)

4-2. “Children’s Rights Are for the Poor Kids, Not for Me!”: Paradoxical Well Understanding of Children’s Rights

Ahmad and Hamid were 13 years old in the 6th grade of a private school. Yet this private school was in a lower economic level part of the city, Tehran, where the students could easily face the kids working in the street and their many other social difficulties. We asked Ahmad and Hamid if they had ever heard about children’s rights and their answer was shocking to us: “It is more for the poor children, they replied; the kids who are in the street.” We were astonished hearing that. Were they conscious about their relative “privileged” situation as schoolchildren while others, less lucky, are forced into work early or left to themselves on the street? His friend Hamid completed Ahmad’s idea right away, confirming our first intuition. “The kids in the street must be helped by the municipality and other [organisations].” (Interviewees #7, #8)

This attitude, which we observe here, surely illustrates those children who feel privileged to have the chance of going to school and not working during the years of childhood. But at the same time, it reveals an aspect very important to the theme of the current thesis: they seem to be fully aware of two legal aspects of children’s rights: 1- the right to education and having basic facilities for all kids, and 2- the responsibility of the state and other governmental organizations to vulnerable children.

1) Basic Rights for All of the Kids

It has been proven by these children that not only are they aware of children’s rights in their own lives (in that they seem to feel privileged and have all of their rights respected), but they also realize the essence of respecting the same rights for all kids in the society. Our interview with Ameneh, an 11-year-old girl who also attends a private school, is another example in this regard:

Interviewer: Do you know what rights you have?

Ameneh: Well, the kids in my level they have almost everything. So, they don't need to search for their rights, but some kids who are in the lower level are more likely to know their rights.

Interviewer: What do you mean by lower level?

Ameneh: Lower financial level or lower life quality.

Interviewer: Can you better explain this to me? So, you think all your rights are respected in your level and the lower level children's rights need to be respected, too?

Ameneh: Yes, I think my rights are respected, because I have the right to visit an historical place, while the other kids with a low financial level also have the right to visit it. So, everybody must help in a way, so that they can do this, too. (Ameneh, 11-year-old girl, Interviewee #55)

What Ameneh calls the right of the children in lower financial level is exactly mentioned in the convention of children's rights. Article 31(2) states: "States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity." And as all the children are equal in having such a right, Ameneh (Interviewee #55) feels privileged to benefit from such a right and believes that the poor children also should be provided access to these facilities. The same thing applies to the right to education, which is the concern of Ahmad (Interviewee #7) about the kids in the street.

2) The Responsibility of the State

Ahmad showed a very high level of social understanding by saying, "They should not remain derelict. There are some people who have hundreds of kids and they send them to work in the streets. These people must be arrested and those kids have to be gathered in an institute and be

taught to study.” “And they say why the poor people are getting more and more... because the municipality doesn’t care!” Hamid continued. (Interviewee #7, #8)

Talking about the duty of the municipality and the concern of these children that the abusers of the kids must be arrested, are some points showing the same approach as the convention of children’s rights, which addresses the states and governments being the correct protectors and appropriate developers of their minor age citizens. One could see that the most articles of the Convention starts with the phrase “the state shall ...”³⁴²

This is also a sign that these children as citizens of a developing society have been involved or at least have heard more often the criticisms against the state and the lack of responsibility about its tasks—believing that children are a shiny mirror who reflect what they see and what they hear through their community.³⁴³

Being impressed by the wise approach of these kids, we realized that kids in a society like Iran, seeing very closely the situation of disrespecting kids’ rights and even some extreme scenes of abusing the children in the streets, makes them have a clearer idea about the right to education (and other basic rights) rather than the kids in more developed areas who feel forced and compelled to go to school. Does this lead us to the conclusion that letting children face the reality of the injustice in the world and sometimes letting them be aware even of unpleasant facts around them, could help

³⁴² Article 2(1). *States Parties* shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

³⁴³ For an example of a critical article about the condition of vulnerable children in Iran, see: Emad-o-din BAGHI, « The Typology of neglected rights of children in Iran », (2005) 16 *J. Soc. Welf.* 293-328.

them feel better about their own condition? This idea would be the opposite of a children's kingdom—what comes from the concerns of parents if kids had known about their rights.

This could also be included in the right of kids to access information and media (Art. 13 CRC) to be informed of what happens all over the world as part of a “proper education”. Children can understand and analyse their own condition of benefiting from their rights, especially in this age of information and communications.³⁴⁴

These kids' understanding is interesting and rather paradoxical, because the legal content is probably not taught to them with those abstract and university legal words. It may show an important fact when it's time to think about intercultural relations in international regulations problems between East and West. Maybe there is a kind of basic human wisdom expressed by adherence to children's rights treaties. Basic wisdom doesn't need occidental or oriental formal language to be well understood, as the kids' social representations expressed above seem to reveal. Then, one can think of this as secondarily translated and embodied in either the occidental or oriental context: they can then become “right to proper education” for the country for which it is intended and as this thesis conceives them.

³⁴⁴ See also: Jon KATZ, « The rights of kids in the digital age », (1996) 4-7 *Wired* 120-123.

4-3. Children's Expression of Human Rights Linked to Islamic Concepts

“All the people are God's creatures, so they are equal.” This was Ana's reply to the question about human rights. Ana is a 10-year-old girl who is tiny physically but wise and sage when she starts talking (Ana, Interview #34). Other girls of very young ages also had the same point of view when it came to the question of human rights, children's rights and the concept of peace. “The God does not like people to fight; this is what the evil likes and God will get upset!” (Nazanin, 8-year-old girl, Interview #42). “[In case of struggle between the students], the teacher would say, don't fight! Be friends. God created you to be friends.” (Leila, 8-year-old girl, interview #41) “God created us to be friends and not to fight.” (Mina, 9-year-old girl, Interview #35).

It seems that the concept of respecting human rights is linked to the concept of “being a good person”, which always refers to their religious training. They reflect respecting others' rights with a religious attitude: “If we do cruel things to others, God won't like us anymore. [This is people's rights.]” (Saba, 7-year-old girl, Interview # 44).

Associating the children's representation of human rights with religious conceptions is not surprising in an Islamic educational system. Knowing that the kids begin Islamic training from the very first levels of education, they are likely to present an Islamic-religious representation of their knowledge and treatment.

The Quran is taught in primary school from the first grade. The students learn how to read the Quran (although it is in Arabic and not their own language, so they do not understand the meaning unless there is a translation) and some moral lessons from Quranic stories. Another book for the kids' religious training starts in the second grade and is called “Divine Gifts”. It contains basic rules of Islam and moral stories from Islamic characters such as the prophet Mohammad, the Shi'i

Imams (the Prophet's family and descendants) and other Abrahamic religions' prophets. This is in addition to teaching the moral and social values, which usually come in a religious story.

Other than this very explicit Islamic education for the kids from the first grade of primary school, all other books of the curriculum are also based and planned with Islamic aims and visions. The introduction of every book in the curriculum states, "This book is based on the general program of the Islamic Republic of Iran to make flourish the *divine nature* of the human being regarding the five phenomena of knowledge, thought, faith, morality, and action."³⁴⁵

Having all these contexts in mind and going back to the interview question about respecting people's rights, it could be stated that for a lot of kids in Iran, the humanity and its related concepts, still comes up with an Islamic-based teachings that they have received. The children's right to learn about the peace, friendship and humanity (Art 29(d) CRC)³⁴⁶ seems to be respected with this method but with a religious based approach.

The teachers, therefore, easily have a chance to present a religious characteristic in their teaching and training. "We pray every morning in the class before we start studying," Nasrin says. He is going to a private school in a religious area. (Nasrin, 9-year-old girl, Interview #59) Her teacher has planned to have praying time every day and this is a very welcome manner at the schools of Iran.

Among the interviewed teachers, there were some (a minatory amount) teachers who stated Islam as the base of rights what they recognize for the children. "The right to live freely and calmly,

³⁴⁵ This is an example phrase from the "Literature book of 3rd grade".

³⁴⁶ Article 29: 1. States Parties agree that the education of the child shall be directed to: (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;

being happy in the family, right to health and other god's gifts, right to have facilities for amusement, education, health, security, etc. These are based on Islam which also includes law and morality.”(Narges, first grade teacher, Interview # 73) “Islam has imaged the highest rights for the kids including being respected, being loved and treated nicely, providing the basic needs, emotional needs and a socio-moral education.” (Marzieh, 3rd grade teacher, Interview # 85)

The Islamic attitude of these teachers could also be impressed by the Islamic regulation of the country. It is obvious that the legal, judicial and legislation system of Iran has an implicit effect on the people's unconscious and conscious knowledge about every regulation and ruling. So, in reaction to the question of “What would you think the basis of children's rights is?”, the teachers in a religious context would reply as this: “Islam has the best rules for the human beings including the kids.” (Hanieh, 3rd grade teacher, Interview #78) or “Islam has recognized the rights for the kids the same as the adults.”(Mandana, second grade teacher, Interview # 75)

Despite all these, it should not be neglected that for many others of the interviewees, either being religious or non-religious, have mentioned the morality or the children's psychology as the basis of respecting kid's rights and their method for the best educating results. This could be a sign to show a gap between Islamic framework of the education for children in Iran and the “proper education”, theoretically and practically, in the social representation of teachers and parents. ³⁴⁷

³⁴⁷.To see the challenge of Modernity and Islam in Iran see:

- Farzin VAHDAT, « Religious modernity in Iran: Dilemmas of Islamic democracy in the discourse of Mohammad Khatami », (2005) 25-3 *Comp. Stud. South Asia Afr. Middle East* 650-664.

To see one point of view about the Islamic education in Iran and its effects:

-M. Mobin SHORISH, « The Islamic Revolution and Education in Iran », (1988) 32-1 *Comp. Educ. Rev.* 58-75.

4-4. Right to Play and Run: A Crucial Right Coming from a Natural Need

Talking to the students of primary schools and asking them to tell us about the school's rules and their rights, gave us the impression that the most actual need, that the kids are screaming for and complain about it as a disrespecting of their natural right, is the right to run and play. This was so often repeated in our interviews that we could not ignore this concern of the children.

While this was obvious in interviewing the boys and girls of 7 years old because they did not even let me finish the interviews and just ran away and started playing, some other students just complained about not being allowed to run and play during the breaks. Saba and Tina, 7-year-old girls of a public school said: "We are not allowed to run like a train" "I don't like this rule that does not let us run after each other" (interviews #44, 46). Saeedeh and Solmaz, the girls of 8 years old have the same complain: "We cannot run in the yard, we can sit on the bench and talk or play thoughtful games"(Interview #40) "The Yavars³⁴⁸ watch us not to drink water with hand and not to run"(Interview #40). Some other students also have the same concern, although they seem to be more justified about it, like they know that running fast might hurt the other kids, but they still mention this as an unpleasant limit. (Interviews #33, 34, 41)

While the girls seem to be passive in this case and just complaining, the boys show that the right to play and run is much more crucial for them to the extent that they do it despite the rules of schools and the punishment what they know would be inevitable!

Arsalan, an 8 years old boy of a public school says:

"We should not run in break time, but we do so, and we get punishment. I hate this rule which does not let us run and play. I don't know why they

³⁴⁸ The monitors in the yard who are selected among the older students to watch out the younger ones.

don't let us run. We have camera and they hit us. I hate this!" (Interview #28)

"If the assistant principle is not there, we run." (Mahmood, 13 years old, interview #29) "If come to the school and the school staff were not there yet, we used to play and run. We did not know that there is camera. They came to the class and gave us a warning." (Farshid, 9 years old, Interview #31)

The kids seem to be not well justified about this rule at the school and they do not find it logical and consistent with their need to play. Hasan, 10 years old boy, who is very savvy, creative and smart, said this with a critical view about the school rules: "We have lots of forbidden things, but we do all of them. We are not supposed to run, we must sit. But we like to run. We always say between us: "The break time is the time to have fun..." (Interview #30) And then Majid adds with the same tone: "I don't like the rule which bans running and playing. It's true that they must take care of us, but we still have the right to play and be free!" (Majid, 12 years old, interview #5) Malek agrees too: "I don't like the rule which restrict our running and playing. The kids' rights mean they are free to do what makes them happy when they grow up, so they don't get depressed. This is our right." (Malek, 12 years old, interview #23)

Having heard these complains from many kids of the primary school age, we were invoked to investigate this need as a key right for the kids at the schools and we would discuss this through three aspects reasoning the right to play and physical movement as a Children's rights which has to be taken seriously.

1- Legal Approach:

-The UN Convention of Children's Rights: Article 31 states the right to play and having leisure time as a protected right for the children: "States Parties recognize the right of the child to rest and

leisure, to engage in play and recreational activities appropriate to the age of the child...” (Art 31 (1) CRC).

-The right to play in Iranian legal system: although the right to play is not mentioned explicitly in Iranian legal documents, the education’s chart of aims and goals includes the improvement of mental and physical health of kids. The “executive regulation of schools”³⁴⁹ states that the school should be a happy and encouraging place and the directors should have a control on the balance of homework, exams and the amusing activities to prevent the students’ exhaustion.³⁵⁰

2- Psychological Approach:

Dealing with creativity and learning, stress response systems, attachment, emotion regulation, pleasure and enjoyment are some significant elements that make “playing” vital for the children’s physical and mental health. “For children, play is simply about having fun, messing around and being with friends. It also represents ‘ordinary magic’: for many children, play is just something that happens, but it has the potential for the emergence of magical properties, to support survival and enhance well-being.”³⁵¹

The simple right of having body movement and playing which seems luxury for the adults is a crucial need for the kids to improve their self-protection and participating in everyday life; in addition to the effects that the play has on the quality of learning in students which has been experienced by the teachers as well as scholar researchers.

3- Pedagogical Approach:

³⁴⁹ Approved on 2000 in the supreme council of education of Iran.

³⁵⁰ *Supra not 302*, Article 98

³⁵¹ Stuart LESTER et Wendy RUSSELL, *Children’s Right to Play: An Examination of the Importance of Play in the Lives of Children Worldwide. Working Papers in Early Childhood Development, No. 57.*, ERIC, 2010, p. 26.

It is a pedagogical approach to consider the role of playing in school's schedule and its effect on students learning, but still it is a pedagogical option to base an educational model on the children's nature of body movement, playing and curiosity.

Montessori's educational model is an alternative to the classic model of education which has started 1907 by her first school in Italy³⁵² and is still well-known in many countries.³⁵³

Robert Biswas in his article on the "manipulating happiness: Maria Montessori" discusses psychological research as it relates to choice-related topics such as perceived personal control and autonomy toward happiness. "I interviewed a single 4-year-old Montessori student, Ella. When I asked her 'what makes you happy at school?' she answered, 'Everything!' When I pressed her for specifics, she was able to articulate a list of three happiness-producing aspects of her Montessori curriculum: playing, hot lunch, and work....Work' is the name that the Montessori students and teachers give to a wide range of educational activities, from feeding and playing with classroom animals to washing dishes to manipulating shape and color blocks."³⁵⁴

We are not intended here to discuss the details of Montessori's educational model³⁵⁵ but we are just mentioning this successful alternative method as an example of how the freedom of movement and choice for the children works in benefit of happiness in the school and it is a proof for our suggestion of being the playing as a crucial right for children psychologically, physically and pedagogically.

³⁵² "Casa dei Bambini," which has been translated into English by many to mean The Children's House, but as Jane Martin points out, should have been translated as The Children's Home. (Jane Roland MARTIN, *The schoolhome*, Harvard University Press, 1995.)

³⁵³ See also: Barbara THAYER-BACON, « Maria Montessori, John Dewey, and William H. Kilpatrick », (2012) 28-1 *Educ. Cult.* 3-20.

³⁵⁴ Robert BISWAS-DIENER, « Manipulating happiness: Maria Montessori », (2011) 1-2 *Int. J. Wellbeing*.

³⁵⁵ Maria MONTESSORI, *The Montessori Method*, Translated by Anne Everett George, New York, Frederick A. Stokes Company, 1912.

Having said that, we still remember that that human rights for any human, no matter of age, is rather a protection against serious violence or inhuman treatment than a steppingstone to perfection. Like famous legal theorist Lon Fuller explains in *Morality of Law*³⁵⁶, rights belong to the morality of duty, needed by humans to avoid falling in the traps of inhumanity: they act like safeguards against it, adding negative sanctions to reinforce the move. But evolving towards the ideal of respecting the different needs of children (to move, to run), supposes a switch to another morality: the morality of aspiration. The main consequence of this notion is the inadequacy of the negative sanction, cruel to ones unable to achieve summits. Only positive sanctions from state order are then appropriate to support this effort (public price awards, medals of Honor, etc.). Legislative current habits are not used to it, but they should learn to, explains Fuller.

In the current thesis, it leads then to a new path of reflection: if a certain ethical/critical content is added to “child’s right to education” and the ideal form of education leads to an added morality of aspiration —towards more respect of the child’s freedom of move or towards more attention to Islam’s preferred cultural virtues, it then leads to seek of positive reinforcement of the “good” and the “virtuous” education actors in a coherent public governance.

³⁵⁶Lon Luvois FULLER, *The Morality of Law*, Yale University Press, 1969.

4-5. Happiness as the Aim and Method of the “Proper Education”

Hasan, a 10 year old boy, very active and polite, talked to us about what they usually do at the school and when it came to the question of “have you ever heard about children’s rights?” he just had a moment of silence and said: “No, but I remember one of my teachers who used to play with us even while teaching; she used to mix teaching with playing.” (Hasan, Interview #30)

For Hasan, the term of “children’s rights” is attached to his feeling about the education and the method what he recalls as a happy and pleasant method of teaching. This is while he states that he does not know what “children’s rights” means. This pattern of sense exists also in the teachers verbatim. Elham, a teacher of 2nd grade, in response to our question of “do you think the children’s rights are respected in your classroom?” said “of course! My students have the right to leisure and cooperation in educational activities.” (Interview #84) or when Diba replied:

“Yes, the kids in my class have the right to choose the method of teaching and even the subject of the course. At the end of each class we decide together what to do in the next session and what to talk about.”(Interview #82)

To link the expression of happiness through the students and the respecting of their rights, therefore, could be evaluated as a *link between happiness and their right to education*. This is what has been tried to conclude in every sentence of this thesis as the children’s right to “proper education”. However, the happiness is a vast term that needs to be defined and described more in details. Referring to what we mentioned in the interviews above, one significant element of happiness in education would lie in the way teaching is conducted or the way the class is ruled. Regarding our interviews, we could inventory three types of education behavior that seem to better

harmonize with the concept of proper education the current thesis proposes. Will refer them to as three types of observed teacher individual approaches:

1- Cooperative approach: to involve the children in decision making in the class to respect their right to be heard.³⁵⁷ (Article 12 CRC)

2- Creative approach: to let the students discover their talents and improve it in respecting the children's right to flourish and achieve their fullest potential.³⁵⁸ (Article 29 CRC)

3- Playful approach: to leave an open sphere for the children's desire to play and have fun in respect of their right to rest and leisure.³⁵⁹ (Article 31 CRC)

Therefore, the "proper education" as it is suggested here as an added critical content to the pure legal content of right for children shows up here, even in the social representation of students and teachers of our own interviewees with the named elements above, confirming the idea of happiness as the aim and the method of education.

³⁵⁷Michael FREEMAN, « The right to be heard », (1998) 22-4 *Adopt. Foster.* 50-59.

-Gerison LANSDOWN, Shane R. JIMERSON et Reza SHAHROOZI, « Children's rights and school psychology: Children's right to participation », (2014) 52-1 *J. Sch. Psychol.* 3-12, DOI : 10.1016/j.jsp.2013.12.006.

³⁵⁸Ginamarie SCOTT, Lyle E. LERITZ et Michael D. MUMFORD, « Types of creativity training: Approaches and their effectiveness », (2004) 38-3 *J. Creat. Behav.* 149-179.

³⁵⁹Judith E. KIEFF et Renee Michelet CASBERGUE, *Playful learning and teaching: Integrating play into preschool and primary programs*, Allyn and Bacon, 2000.

-Marjaana KANGAS, « Creative and playful learning: Learning through game co-creation and games in a playful learning environment », (2010) 5-1 *Think. Ski. Creat.* 1-15.

-Benjamin Kline HUNNICUTT, « Leisure and play in Plato's teaching and philosophy of learning », (1990) 12-2 *Leis. Sci.* 211-227.

4-6. Under the Security Cameras: Imposing the Sense of Being Controlled All the Time

Farshid, 9 years old boy from a public school, told us a story of being caught on the camera at the school which led us to this section. “We used to play and run in the back yard in the morning before the principle comes to the school”, he said, “and we didn’t know that there is camera. They came to the class and told us that [we have been caught on the camera and gave us a warning.]” (Interview #31) He was one of the students who were complaining about the cameras in the school what seemed to be more a threatening device for them rather than being protective! “They see us in camera and give us warning [about our treatments].” Mahmood said as a 13 years old boy in a public school who feels insecure in the presence of cameras. (Interview #29)

The cameras as the technological symbols at the school could become a challenging point acting toward restricting children’s rights rather that saving them. The philosophy of installing such a device in every area of the school including the classrooms, the corridors, the backyard and the washroom salon should be to have a means of observing all the spots of the school to prevent any accident or any action against children’s safety and security. As it has been used in other countries for the security purposes and has worked very successfully.³⁶⁰ In the classrooms it could also be a way of having control on teachers acting to the kids in order to make sure they treat the students respecting their rights and even to control the violence in the classrooms.³⁶¹

³⁶⁰ Atsushi ITO, Tomoyuki OHTA et Shinji INOUE, *Security system for children on school route, Autonomous Decentralized Systems, 2009. ISADS’09. International Symposium on*, IEEE, 2009, p. 1-6.

³⁶¹ Marcus NIETO, *Security and Crime Prevention Strategies in California Public Schools.*, California State Library, Sacramento. California Research Bureau, 1999.

Having all these benefits at the Iranian primary schools, it seems that for the kids who should feel secure at the school, these cameras are making an unsecure and unpleasant environment being “right restrictors” and “right threatening” of the students according to the students’ verbatim.

The younger students seem to be more in the danger of feeling insecurity and frightening environment at the school as Arsalan, an 8 years old boy in a public school said with a strong antipathy: “I don’t know why they don’t let us run. We have camera and they hit us. I hate this.”(Interview #28) Or when Atena reminded the saying of the director as a threatening warning: “The director said be aware that I have a camera in every classroom!” (Atena, 7 years old, interview #49)

Feeling unsecure and uncomfortable could be clearly considered as a conflict with what we called “proper education” because one of the most basic elements of a moral, caring and rights respecting school is a safe and secure, intimate and pleasant environment for the children. Knowing that the application of technology in order to ensure the security of student at the schools is supposed as a positive characteristic of Iranian elementary schools, the issue of how it has been utilised and for what purpose, remains to be considered. When a security appliance gives the insecure feeling to the kids, something must be wrong, either legally, culturally or socially.³⁶²

All this reflection about cameras may not avoid the actual omnipresent privacy problems surrounding new communications technology nowadays. If humans have rights to privacy, what about children? It may not be in the Iranian culture to refer to it spontaneously, but one may ask where the limit between needed safety oversight and abusive denial of privacy for children is,

³⁶² An Example for a study in Iran on the importance of feeling secure at the school, see:
-M HOSEINKHANI et K MORADIANI, « The effect of security at the school on the tolerance of the students », (2013) 39 *New Educ. Thoughts* 103-122.

particularly in spaces like bathrooms and locker rooms. The question is mainly: what protection their specific vulnerability raises? Does it call for a total lack of privacy in a culture where modesty is such central? One doesn't have to answer it here, may be, but surely the question is worth asking.

4-7. Disputes around the Students' Association: A Precocity of the Desire for Democracy

Talking to the students over 10 years old, we found it common in schools of Iran to have “student association”. This discovery impresses me as a good democratic practice in the primary schools.

“We have student association. There is a voting day. The members try to do some activities for the students.” (Ameneh, 11 years old, private school, interview #55)

We also noticed this in Masoud's interview who is the social trainer of a private school. He is very active and creative in children's social and psychological training.

“We had an election day and voting program for the student association for which the students were very active and exited. It was just like a real election and the students voted regarding the candidates plan and I think they had proper choices. This is the result of trusting the children and letting them perform their capacity of understanding.” Masoud says. (Interview #66)

However, this modern and democratic exercise for the kids seemed to be defective rather than effective. The students like the idea of being able to participate in decision making about their own issues, yet they do not believe it as a real working system. “We have a student association, but it does not work. It is ridiculous!” Sina says as an 11 years old boy in a public school who looks very negatively at this association. He cannot take it seriously because he had not seen any visible and noticeable activity through that. (Interview #32)

Ali, a 12 years old boy, also from a public school, had the same attitude: “We have a student association and I have been a member.... Well, they ask our opinion, but they don't necessarily

act regarding our idea!” He mentions. (Interview #3) This shows that for the students, the association is like a show for the school managers and is a very formal body without a real democratic esprit. They do not find it efficient because basically the students’ idea and opinion never are taken seriously by the director, principle or even the teacher. Does it mean that it’s then non worthy to note? We don’t think so. Rather, we think that these activities express something important relating to contemporary youth rights and desires: it expresses their want of democratic processes.

Comparing the “student association” and “student parliament”³⁶³ in Iran’s educational program with the idea of Dewey and Kohlberg about real involvement of students in ruling the schools³⁶⁴, it seems that there is a long distance between when the theorists of education really believe that the idea and opinion of children matters- towards their own well-being and the educational system’s well-functioning- and when the executives just play the democratic model without having an efficient result. However, the existence of such democratic institution is admirable in its place.

The right to form and express their idea regarding their own affairs is reserved for the children in the Children’s Rights Convention³⁶⁵ and it seems to be previewed in educational system of Iran³⁶⁶

³⁶³ “Students parliament” is a non-profit organisation which was established on 2000 after the approval of Prime Council of Education of Iran and by 4 million votes of students. The aim of such an organization is to involve the students in decision making about their own issues and improving the students’ social and cultural activities.

³⁶⁴ As described in the proper education section referring to: J. S. BENNINGA, préc., note 221.

And also: J. DEWEY, préc., note 247.

³⁶⁵ . Article 12: 1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child. Article 15:1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.

³⁶⁶ “Improving the esprit of cooperation and getting involved in group activities” and “improving the esprit of responsibility and having active role in social-cultural and religious activities” are some of the official aims of Education in Iran.(Mahdi NEKOUII, *Human Rights Education in Schools*, Master Thesis, Tehran, Tarbiat Modarres University, 2009.)

too as it has been tried to happen in the schools officially as the students' association, but still there is a lot to do in order to realize the idea of real participation of children in decision making because of lacking the basic structure and the theoretical justification for the schools staff. This is maybe a subject to educate the educators "properly".

4-8. Physical Punishment: An Inertia toward Traditional Education

One of the most difficult moment, if not shocking for the child's rights advocate the author has never stopped to be within this field, was the one where information began to reveal school problems that are officially not supposed to be. It began with more innocuous problems, for example with what little Mojgan dared to whisper. "The teachers make more fun and intimate relation with the good students. They say we don't treat differently but I am not sure!" Mojgan said, with a little hesitation to say it loud. She is an 11-year-old girl and studies in a public school. (Interview #61) She complains about the different treatment of teacher with different students while her friend considers this very normal. "It is normal that everybody likes more the student who studies more. We have an exam every month and everybody likes the one who gets the best score!" (Sana, interview #60)³⁶⁷

While this might be considered as normal reaction of the teachers, it still could be problem making in psychological levels for the students to be treated differently in the same class. But since the second half of 20th century, sociology of education has illustrated, in various ways, that while the teachers claim to be fair and treating all the students equally, they usually do have preferences and affinities with certain children among others: a human phenomenon that is probably unavoidable, but can be certainly controlled to a certain degree. The legal question of its possible links to prohibited discrimination, in certain country, has been fully studied by Violaine Lemay's *Évaluation scolaire et justice sociale*, in 2000, but we do not investigate this path here, as long as Iranian and Canadian laws are very different on that subject and, furthermore, the very question of

³⁶⁷ Evaluating the students' improvement with the test scores is what Nel Noddings mentions as a false method of evaluating the progress of children towards the aims of education. To see her critical views, look at: N. NODDINGS, préc., note 249.

discrimination is differently received from occident to other parts of the world. On the other hand, the question of physical violence is obviously the same in both countries concerned here: from a legal point of view, it is strictly forbidden in both areas.

Despite most of the people with children's rights concerns would probably call all the discrimination what happens in the classrooms to the students as a soft form of violence against children's rights. But when it extends to the boarder of physical violence – hitting the students at the school— anyone would probably look at it as a clear infringement of those rights, particularly when the state laws prohibit them clearly. So, when gathered material showed pieces of evidence of such a violence, the advocating investigation of that field turned a critical point.

The law of prohibition of physical punishment in Iran goes back to 100 years ago while one of the approvals of the Science Ministry on 1912 stated: “Corporal punishment is prohibited in all the schools.”

A more recent legislation on this case is the approval of Iran's Ministry of Education on 2001 as below:

Art.74. The student's negligence in doing his/her duties is considered as a contravention. (The teacher or the trainer has get informed about the student's situation before any punishment in order to resolve the problem.)

Art.75. The punishment must be as such as attracting the students' attention and should be based on the scientific methods...

Art.76. The punishments methods in case of not working the other pedagogical methods could be as below:

- 1- Oral warning in private;
- 2- Oral warning in presence of other students;
- 3- Changing student's classroom while informing the parents;
- 4- Writing warning and informing the parents;
- 5- Excluding the students from coming to the school for a short time (mostly 3 days);
- 6- Transferring the student to another school.

“The basic rule of education in Iran is ‘not to punish (body punishment) at all’. And it is repeated in the school policies too. But you cannot say that it is what happens in all the classrooms and by all the teachers.” Salman mentions this concern as a high experienced teacher, around 50 years old, who have taught both in public and private schools for years.(Interview #64) This is how a rule has been neglected as it is not established as a culture or at least is not been sanctioned effectually. This is while we heard several times in the interviews that the kids are been hit either by the teachers or principals:

- “The teacher would hit the students if they have fight with each other.” (Mazyar, 10 years old boy, interview #25)

-“They blame, shout, hit, etc. if we do something forbidden.” (Mahdi, 8 years old boy, interview #26)

-“The principle assistant is tough to us. They punish. They hit.”(Arsalan, 8 years old boy, interview #28)

- “In public school they do body punishment a lot; they used to make our hands bloody, but here it is never like that, the teacher never does so.” (Ahmad, 13 years old boy, interview #8, in describing public schools as poorer and less caring environment comparing to private schools.)

-“If we have fought the teacher would either reduce the discipline mark or hit the hands with a ruler.” (Maryam, 9 years old girl, interview # 33)And so on.

We do not intend to explain how the physical punishment affects the process of education in a misleading way, though scientific results in Northern Countries having respected their international engagement in prohibiting any corporal punishment is astonishingly clear and positive: decrease of youth problem behavior such suicidal, youth crimes and quitting school.³⁶⁸

This point is clear for the educational activists since long time ago. The problem here is to see how this rule which has established since 100 years ago in Iran, still is being broken by the teachers and apparently there is no serious reaction and sanction against this violation. One can then talk of an evidence of strong social resistance to the social change that Iranian seeks —respect of the right of the child to be protected against the physical violence from which any human must be shield. It leads here to Lemay’s social inertia concept.

Violaine Lemay, is an interdisciplinarity theorist, but she is also a children’s rights researcher. She observed such a social resistance to the new children’s right too. In her paper, entitled “Représentations de l’enfant par le droit: quel impact sur les représentations des enfants devant les tribunaux?”³⁶⁹she mentioned such a time gap between legal establishment and social-cultural

³⁶⁸ F. Chris CURRAN et James KITCHIN, « Estimating the relationship between corporal punishment use and school suspensions: Longitudinal evidence from the Civil Rights Data Collection », (2018) 93-2 *Peabody J. Educ.* 139- 160.

³⁶⁹ V. LEMAY, Représentations de l’enfant par le droit: quel impact sur la représentations des enfants devant les tribunaux?” dans : ‘V. LEMAY, B. MOORE et C. BIDEAU-CAYRE (dir.), préc., note 20, p. 6-8.

establishment of rules for the kids. One would think easily, as a jurist, that social changes spontaneously appear with the only adoption of a legislation, but it rarely appears like this. Lemay explains that temporality sociology of law showed that laws usually takes as long time to change a social habit that these habits took to establish. This situation would explain a lot of paradoxical situations in youth protection administration nowadays, for example in Canadian, criminals convicted of pedophilia with ridiculously short sentences (often in terms of month) and receiving a prison treatment a lot more comfortable (with psychological services, fitness equipment, high quality television, etc.) that the one received by their young victims officially “protected” by the administration. This situation would be only the effect of social habits anchored in the idea that a “child” is not a “person” worthy as an adult: crime against them are not to be punished strongly and conditions of their habitat do not have to be as good as adult’s one.

Lemay then explains that the same phenomenon appeared the same way in the long path to Canada’s women rights. Specialists in the Law and Women field such as Michelle Boivin recall that path to equality has not been made instantly and social resistances like this appeared for decades in Canadian Supreme court’s jurisprudence. Accepting to recognize fundamental rights to a new category of human —from Afro-American people to women, then to children— is always a question of time and fighting. In the current case, one can clearly observe such a resistance. A huge resistance: when the law is obviously ignored and probably left without state sanctions, like the kids’ words can lead us to think, it shows not only resistance in finding ways to misinterpret the law, like Lemay observes in Canada, but resistance to law itself.

Here the gap between the right to “proper education” and the Iranian daily school life appears to be sadly wide and rather deep.

4-9. Gender Disparities in Dispute Resolution: Thinking of Gender Dimension of the “Proper Education”

With a gender theme in the context of this Islamic culture, the author is aware of entering a rather slippery terrain. On the other hand, choosing a field research in Iran would be uncomplete avoiding such a theme, as long as gender dimension is highly present in Iranian culture. Let us look for gender oriented questions that can be called as “Iranian cultural features” rather than being called the “improper occidental policies”.

While asking the kids if they had ever fight or struggles with their friend and what their reaction would be, we found it noticeable that the girls met had a better capability of dispute resolution while the boys are more likely to continue the struggle or just being null about such a case. The girls had ideas how to prevent struggles, how to solve the problem and even how to teach the concept of peace to their friends.

“We should not struggle for the sitting spot; we can make it by turn. One day I sit here and the other day you could sit.” Ana, a 10-year-old girl says very wisely to prevent occurring struggles between her and her friend. (Interview #34) “We could just ignore and forgive the friends’ mistake” Mina says as her friend Soodabeh confirms right away “We could forgive our friend even if she makes a mistake”. (Mina, 9 years old, Interview #35, Soodabeh, 10 years old, Interview #36) And finally Maryam who tries to teach her classmate how to respect her rights: “If I take my friend’s pencil only with her permission, she will also learn to do so.” (Maryam, 9 years old girl, Interview #33)

This kind of approach to the concept of peace between the kids was super interesting for us because as jurists we would find the root of dispute resolution – a very common and significant legal

concept world wide – in this early ages in the school and as we found it more common between the girls rather than boys, we have a high tendency to consider this as a feminine potential. This is where one could refer to the feminine ethics while knowing that in elementary schools in Iran the teachers are mostly female, our presumption of the role of feminine education in human rights improvement could become stronger.³⁷⁰

The moment in which the students have a struggle with each other could be a very advantageous moment to teach them how to resolve the issues and try to seek the concept of peace. Here are some examples of the kids' (the girls') verbatim about how the teacher encourage them to prevent fighting or how to solve the problem:

-“The teacher says you should be friends otherwise you will only have bad memories from school.” (Tanya, 10 years old, interview #38)

-“The teacher says do not hit someone even if she hits you.” (Saba, 7 years old, interview #44)

-“The teacher said if you have a struggle, explain to me what has happened then I will tell you whose fault it is”. (Mona, 7 years old, interview #43)

-“Our teacher makes it fun when we have fight and tries to make peace.” (Atena, 7 years old, interview #49)

The importance of the concept of peace especially in the Middle East makes us consider the effect of theory of feminine ethics in the kids' education more seriously.³⁷¹ It might be a key method to

³⁷⁰ Refer to: N. NODDINGS, *préc.*, note 238.

³⁷¹ Referring to the “Proper Education” section, the caring education method (which comes from the caring ethics or feminist theory of ethics) would be a very probable method in improving the concept of peace and empathy in children's character.

improve human rights lifestyle in this part of the world. While observing the feminine characteristic of peaceful resolutions in the educational sphere of Iran, why couldn't we employ this ethical and educational approach in proving the "proper education" for the children of this territory?

4-10. “Everything Is Forbidden at School, but We Still Do!”: The Common Refusal of the Legitimacy of School Authority/Regulation

Hasan is a 10 years old boy who talks very confidently and seems to be very creative and active at the school. He stopped playing football to give us a time for the interview. We found him a smart student who likes going to school but at the same time he has critical view about the rules of school. “I hate all the rules. Because they are made falsely. For example, in the breaks we need to have fun and they say no.” He complains about the rule which does not make sense to him.

“We have lots of forbidden things, but we do all of them. We are not supposed to run, we must sit. But we like to run. We always say between us: the break time is the time to have fun.” (Interview #30)

The fact that the kids are not well justified about the “rules” of school – let’s say “the law” in their own understanding and context- is a repeated fact in our interviews. Not only they find the rules unfair, they have an unwritten formula between themselves to break these rules and disobey them. “Everything is forbidden at the school, but we still do it!” Arash (interview #2) says as a very naughty and active student coming back from the school. He is a monitor himself at the school but does not believe that all rules must be respected or maybe he finds them too much by saying “everything is forbidden”!

It seems that being unhappy about the rules, make the kids not to respect them either by doing the forbidden things stealthily or accepting the consequences meaning to get punished. This is obvious when Farshid says to me: “It is forbidden to come with chips and snack, but we used to take and eat stealthily.” (Interview #31) or Omid when he talks about what is forbidden at their school and the students keep doing it. “...like playing and going to the mountain secretly” (Interview #27) Arsalan, an 8 years old boy, also seems to be negligent about the rules while he knows the

consequences. “We do all the forbidden things...We should not run in rest time, but we do, and we get punished [as a consequence].”(Interview #28)

They have a more tendency to overpass the laws rather than respecting them. They are not well justified so they find them unfair because it is not according to their sense of fairness. It would be interesting to discuss two aspects of this reaction as below:

First; the relation between the “proper education” and the concept of “law” for the kids. Does this education help the kids to learn how to respect the law or the opposite, it makes them familiar to the concept of disobedience? One could consider this method —imposing tough rules what does not make sense to the kids— as a misleading education rather than preparing the children to respect the rule of law in the future.³⁷²

Second; considering the kids as a symbol of the whole society, we could observe the attitude of people against the laws which they find unfair. The concept of civil disobedience for example or the reason why people do not respect the law and how it could be resolved by well justifying or well education or by people’s participation in law-making.³⁷³

In sum, observing such a tendency for disobedience in the elementary schools reveals the obvious gap between the ideal proper education- that would provide a pleasant space for children and understandable rules to follow- and the actual daily life of kids in which the interior pressure makes them react in a way to the their violated right to proper education.

³⁷² This is where the method of Dewey to involve the students in ruling the school would work, because the children understand the reason and the function of rules and the concept of law would make more sense to them. See:

J. DEWEY, préc., note 247.

³⁷³ To read more about dissilience of law, see:

Richard A. WASSERSTROM, « Disobeying the law », (1961) 58-21 *J. Philos.* 641-653.

4-11. Public Schools vs Private Schools in Iran: A Matter of Concern for Educational Justice

“Yes, [there is a big difference between public and private schools]... the method is totally different. Here [in private schools], the teachers care more. In public school when you don’t have your book they don’t care, they teach and go... but here if you don’t have your book with you, the teacher tells you to call your mother to bring it for you. In public school they do body punishment a lot; they used to make our hands bloody, but here it is never like that, the teacher never does so. The other thing is the studies. There (in public schools) they work less with the students. Here in private school we have lots of extra courses.”

Ahmad says to us as a 13 years boy who had studied 5 years in a public school and now at the end of the elementary education, his parents decided to send him to a private school. (Interview #8)

In Iran’s educational system there is a variety of school types³⁷⁴ which makes a concern for the parents every year to decide where to send their kid for a more appropriate education. Among all these types, the public vs. private schools are the most challenging competitors because they do

³⁷⁴ . **Public schools**; the schools which are financed by government totally and they are supposed to provide the education service free of charge. However, they still charge the parents for some expenses.

Private schools (non-profit schools), which are financially independent from the government and the parents have to pay the whole expenses. These schools have different tuition fees regarding the services they provide and most of them are usually not affordable for the middle class people and under.

Shahed schools, which are especial schools for veterans’ families. They provide a high quality of education and facilities and are financed by the government. They also charge the parents for some expenses and according to the degree of sacrifice what the family has provided for the regime.

Especial talents schools, which accept the students who pass a national entrance exam and provide a very high quality of education. They are financed by the government and also charge the parents regarding their financial condition.

Pioneer governmental schools, which are financed by the government and the parents both. The tuition fee is less than that of private schools but the education quality is usually higher. The students have to pass an entrance exam to be eligible for the registration.

not ask for an entrance exam. So, they accept the largest amount of students unconditionally. Still the big gap between the quality of education and the facility they provide is a matter of discussion as Ahmad said.

Salman, as an experienced primary teacher sees this gap between the public and private schools from another point of view:

“I would say the public schools and private schools are widely different. I wish one day the public school would have the same facilities to offer, so the good students would all go to the public schools. Because the private schools are now just a place to keep the kids away from the family who don’t really care about the kids and these schools have not a solid discipline. I would say most parents who have problems and issues send their kids to private schools just to get rid of them, maybe only a minimum percentage of the parents really believe that the private schools are better for education. The problem is that unfortunately the public schools do not have the necessary facilities to offer, although they are much better in policies and discipline and education quality.” (Interview #63)

The different services and education quality and even the different treatment to the kids are important regarding the public policy and the right of the kids to access to a “proper education in the sense of this thesis.” This becomes a more considerable issue while the students feel not to have a free will or free choice to receive the “proper education” regarding the financial status. The Public schools are not offering adequate facilities while the private schools are not affordable. The challenge of social and financial discrimination endangers the equality of opportunity while according to the teachers and students’ verbatim, none of the public or private schools offer the “proper education” for the kids.

In order of children's right to proper education, such a situation is critical. The aim of such a field is to investigate, in a pure Human Rights Advocacy attitude, and discover the empirical state of children's right in Iranian school system. Here, we observed social representations that let us fear a rather critical situation. Like many other parts of the world, private schools are more expensive, benefit of more equipment, human resources, facilities and technical devices and, often, are chosen by rich parents that don't have time to "spare" with children. But if what one teacher have said is just a bit true, in Iran, the usual lack of resources of public schools may result in an unacceptable increase of physical violence against children where there is a global social climate of high resistance to the idea of the child as a full human being deserving to be protected against it.

This is how a kind of discriminating situation could be observed in accessing their minimum rights in the educational sphere so the students' and teachers' social representations reveal a gap between the ideal equal accessing to "proper education" and the actual difficulties of public schools that are affordable and accessible for the most children of this field.

4-12. “Kids’ Rights Are Not Respected at Home, How Do You Expect It to Be Respected at School?!”: The Problem of Violence against Children

Mahdi was an 8 years old boy in a private school. We found him alone in a classroom, seemed to be sad because the director had an argument with him and had kept him in the yard for a while. He was about to cry. He has the feeling that if everybody hits him for any reason, he should have the right to hit too. His discourse well illustrates what the literature of youth protection calls the vicious circle of violence, the one being hit naturally procuring hitting after: “They blame, shout, hit, etc. if we do something forbidden... Sometimes I also hit the other kids just to make fun.” He had not heard about children’s rights. “They punish me by mistake. I say it wasn’t my fault, but they don’t listen. My mother also hits me.” he said. (Interview #26)

Rastin, a 7 years old boy also mentioned tough treatments to him at home: “Once I did not do my homework, so my father hit me.” (Interview #14) These little kids have no idea about their rights neither at home nor at the school. This is what Atoosa, a teacher of 3rd grade at the same school mentioned exactly as a social issue. She said:

“Before the kid enters the school, the family must learn what the rights are and how they must be respected. If I (as parent) have respected my kid’s rights during the first 6 years of his life, so I can expect his rights to be respected in the school... I would say 80 to 85% of the rights has to be respected in the families first. The problem is within our families. They don’t know the rights. They think it’s the money they receive at the end of month.³⁷⁵ 80-90% of people will say it’s the monthly salary when you ask about the rights! We don’t recognize the right of each other. Not for me as

³⁷⁵ . In Farsi “salary” and the “rights” have the same word in vocabulary. It is called “hoqouq”. So, it is a common mistake regarding this teacher’s view to mix these two words for the ignorant people.

a mother or for my child or for my husband. We don't know about it.”
(Atoosa, Interview #67)

The lack of knowledge about effects of violent education on children seems to be common in Iran's society and makes people having vague idea about protecting themselves and their kids from being harmed. They seem to be not enough aware about the children's rights that should shield children from brutal adults' behaviors. Shirin says, as a 31-year-old mother who is very concerned about psychological situation of his son at the school: “Honestly speaking I am not familiar with [my son's] rights. I am an educated mother, but I don't know my kids' rights. All we do for him is because of our responsibility and regarding our emotions.” (Interview #62)

How a social environment could be expected of respecting rights in such an ignorant climate, is a matter of doubt. Of course, some rights are been respected naturally and morally as people's faith to be nice to each other but protecting rights from a juridical point of view needs a certain level of education and informing in the addressed community. But, like Mehrnaz mentions, being unaware of the rights gives the feeling that “rights do not exist at all!” Mehrnaz is a teacher of second grade and she even extends her finding to the whole society. “I am not aware of kids' rights and it is not only me. Not the teachers nor the society or the schools are not aware of children's right. In fact, in our society such a thing called children's right does not exist! We are not aware. We do not have the knowledge in order to respect them.”

Is it planned in anyways to educate people regarding children's right in a society like Iran with a huge young population? Is this not what the UNESCO had planned in the 1995's to specify a decade³⁷⁶ on teaching human rights to the people around the world? Iran had also some programs

³⁷⁶ United Nations Decade for Human Rights Education (1995-2004): Pursuant to a suggestion of the World Conference, the United Nations General Assembly, in its resolution 49/184 of 23 December 1994, proclaimed the 10-year period beginning on 1 January 1995 the United Nations Decade for Human Rights Education, and welcomed the

in this regard during this decade but how much it would have been worked and effective is a serious question.³⁷⁷

This is the concern of parents while they think of their kids' rights at the school and they find the teachers and school staff ignorant about it. "I think [respecting children's rights] needs to become as a culture...first the teachers have to be taught about it. Only then they could teach it to the kids." Ala says as a mother of 3 kids who is very careful in treating her kids and believes that the rights of her daughter is not really respected in the school. (Interview #62)

The priority of family to the school, the essence of informing parents and teachers about children's rights and finally the spread of concept of rights in the whole society is what could hopefully make the social context more appropriate and ready for what we expect as a children's rights respecting society. "The school is effective on respecting children's rights only if the families and the society talk the same language as the schools. These elements have to work all together." (Narges, female teacher of first grade, interview #73)

In sum, in Iran like in many countries that have engaged in the New York Convention, reflection on children's rights leads to those disturbing sociologic facts:

1-Physical violence that is usually defined as a criminal assault for an adult, remains a criminal assault no matter the age of the person; but only Northern Europe countries respected their

Plan of Action for the Decade contained in the report of the Secretary-General. <https://www.ohchr.org/EN/Issues/Education/Training/Pages/Decade.aspx>

³⁷⁷ Iran had started a project of human rights education in schools with the international human rights commissary what aimed to: 1) studying the condition of human rights in Iran's schools 2) translating the proper and related sources to teach human rights 3) presenting workshops for the executives 4) studying travels to some expert countries. These 2 latter happened on 2005. (M. NEKOUIL, préc., note 365.)

engagement related to this. Many other countries made just a half move, prohibited such violence only in school context;

2- In Iran, law's prohibition of corporal punishment seems to be not respected (in proportions that cannot be known from such a qualitative field), expressing probably a high social resistance about children's right;

3- As the content of the interviews can lead us to think, the social habit of not talking explicitly of children's rights (may be because of the confusion with "spoiled child kingdom"³⁷⁸, even in the socio-economical class of educated people such as school teacher, is not to help the situation.

4-Human long habits of "jungle law", where violence seems natural if you're the strongest, is clearly difficult to stop. Laws are obviously not enough to block social inertia of violence power against children. One then must add general public education to it and probably education for state legislators themselves.

³⁷⁸ *Supra*, on the problem of confusion between children's rights and the child kingdom, section 4-1

4-13. An Islamic Approach in Recognizing the Age of Childhood: Gender Differentiation

“I would say the girls are kid under the age of 9. It might be different for the boys. But the girls usually have a great change after 9 and become wiser and patient.” This is what Farideh believes as a teacher of 3rd grade when we ask her about the age of childhood. She thinks the age of childhood does not depend only on the kids’ birth date. “It happens sometimes that the kids become mature confronting social difficulties and some kids seem to be less comprehensive than it is normal for their age. This depends on their social and familial condition.” Farideh continues. (Interview #68)

Although she is speaking from a psychological point of view but as a teacher who is also a student of law, it is hard to accept such a consideration. Yet, this is a kind of common belief in an Islamic-traditional society in which the discrimination of boys and girls still exists. As it is also an Islamic principle that the age of maturity is 9 for the girls and 15 for the boys. Arezoo, the teacher of 4th grade, also distinguishes between the childhood for the boys and girls. She considers the boys as kid until the puberty and the girls up to 12 years old. (Interview #86)

The vague and uncertain definitions what we received about the childhood period in our interviews leads us to discuss that the age of 18 is not really accepted or very clear for the adults as a solid age. While Ala, the mother of a 7 years old girl, also believes that the age of childhood is different for the kids depending on the circumstances, she states finally the age of 13-15 years old to be considered as kid. (Interview #63) Ala seems to be an educated and attentive mother but still does not mention the legal age.

There are some teachers who indicate the age of 18 as the legal age referring to international law (Solmaz, interviews #40 & Elham, interview #84), yet there are some other teachers with a consideration of childhood age up to 10 years old (Diba & Mojdeh, Interviews #81, #82). Are these not the sign that there is a social tendency in this society to reduce the age of childhood and so the news what are being heard about the criminal judgments against the young persons under 18 in Iran are not very unexpected?

In this regard, the legal age in the Iranian legislation, Islamic Law and International law could be a matter of discussion and compare. However, the role of education and legal informing the society about the children's rights should not be denied as the Article 42 of CRC states: "States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike."

We have discussed the age of childhood regarding Iran's legal system as well as Islamic point of view earlier in the legal section. Comparing to the international law what states the age of 18 under which every human being is considered as child and will be covered by special legal protection, the Islamic jurists consider the puberty as the end of childhood and therefore they assume the age of 9 for the girls and 15 for the boys as the end of childhood. Iranian legal system also follows Islamic point of view although recently the legal protection of the persons under 18 has increased in criminal law. However, one of the reasons that Iran ratified the convention on children's rights with a reservation of not having conflict with Islam, is the problem of determining the age of childhood.³⁷⁹

³⁷⁹ Refer to the age of childhood section 2-3-2 in the first chapter.

This might be an explanation for the common sense of childhood age in Iranian-Islamic society. It shows that the Islamic regulations not only have affected the legal considerations about the children issues but also have an inevitable influence on the social representations of children's rights with a gender differentiation approach. Although this notion is not compatible with the international rules about the age of childhood (18 years old) but it could be considered maybe as a cultural specification in conceiving the "proper education" for such an Islamic society.

4-14. The Public Policy's Deficiency Regarding Children's Rights Protection

“You have an organization for “promoting the consumption of egg”; what do you have for the *children's rights*?!” This is how Mastaneh as a children's rights activist, complains to Iran's government. (Interview#87) She presents some workshops every month to inform people about the kids' psychology and their rights. No matter who is attending the workshop (students, housewives, lawyers, etc.) she tries to attract their attention to the importance of children's status in Iran's society and all what could everybody does in this regard.

Their NGO is very active and effective in children's rights issues including psychological, physical, educational and legal supports of the kids in need. “We have suggested the government to consider an organization for the kids in level of a ministry. This is how the children are important and need to be cared for especially in our country.” Mastaneh says very apprehensively. (Interview#87)

Iran has signed the Convention of children's rights and has approved it in the parliament. In addition, there is a national institution called “National Reference of the convention on the rights of children” to deal with the children's rights issues and to organize the aims of convention and provide annual reports. This organization is a reference for the reports from the people or NGOs wherever they face any child abuse or exploitation. However, the question is what makes an expert children's rights activist like Mastaneh, feel like that there is no institution responsible for the children's issues?

“The national reference of the child?! It is just a room in the building of ministry of justice. Whenever we go there for a problem, there seems to be nobody doing anything serious.”(Mastaneh, Interview#87)

One would tend to relate this reaction of Mastaneh as a children's rights activist to a common reaction what was received from the people about this thesis project. The first feedback what we got from almost everybody when they would hear that one is going to work on the children's rights in Iran, was like "oh! But there are no children's rights in Iran!"

The paradox appears when formally the legal system of Iran looks protective in case of children issues in many aspects and also the actual condition of children at the schools seems to be acceptable regarding the children's fundamental rights, while the common sense of children's rights in the society focuses on the neglected and abused children whom people see working in the streets every day or are mentioned in the media and news as victims. One could explain such a paradox with two hypotheses:

1. The lack of transparency in publishing the statistics about the real condition of children's rights in the society, makes people feel like that they do not have a free access to information, so they do not have a clear idea about what is going on around them. This brings the atmosphere of insecurity and untrustworthy to the legal and political system.

2. The lack of prompt and solid sanctions to protect the victim children or finding some convictions unfair about the children's crimes, might provoke an unsecure feeling of public atmosphere about the legal protection of kids.

Therefore, the social representation of children's rights in Iran's society seems to be like "there is not such a thing as children's rights" either because of non-efficiency of justice system or not having a full and free access to the social information in this case which both remain to be considered and resolved.

4-15. Early Sexual Abuse Experience at School: An Obvious Need for Security and Education

Shirin is a 31-year-old mom who is very concerned about psychological health of her son. She talked to us about the sexual abuse at the school what affected her son's physical and mental health and felt sorry that she did not have enough knowledge and experience to prevent such an incident.

“Shirin: When my son was at the first grade he had a problem and the director never cared. When we changed his school to a private one, the director used to know all the students very well one by one. He realized that my son must have a psychological problem even at home... then we investigated and found out the problem. Could I say this too?

Interviewer: Sure.

Shirin: when he was at the first grade some of the higher students made him to pull down his pants in the washroom in front of them... and after that they used to annoy him by threatening him that they would tell his father about this and so on.... My son was very nervous and annoyed .He passed a hard time with panic attacks.... Nobody realized this until the director noticed that he has a problem what he doesn't talk about it. I talked to my son and I tried to help him to take over that.... It was difficult for the kid...

Interviewer: Don't you think that it was much better if it was taught to him in advance at school?

Shirin: yes, but it was not taught at school and I also did not have the experience and I didn't know that I had to tell him and talk to him about his privacy and so on... later on I talked to a consultant and she told me that this has be explained for the kid before he goes to school... No, we don't have this education in our schools at all, especially in the public

schools! ... It's recently getting started in some private schools and just for girls.... It's new." (Interview #62)

Child sexual abuse in Iran's schools is not deniable as it might exist in other countries too, but what makes it different and considerable for a social or legal researcher is the public will to increase the children's awareness of such a danger by educating the kids, the parents and even teachers. Although many scholar researches have been done in this field³⁸⁰, they are not usually published in Iran as official documents for everybody to access.

One noticeable example of the public (political?) resistance of Iranian society is when the *Incheon Declaration* adopted at the World Education Forum in May 2015 and UNESCO was entrusted to lead and coordinate the Education 2030 agenda with its partners.³⁸¹ As it came the moment in Iran to consider "*The Education 2030 Framework for Action*"³⁸² in the parliament, there was a huge negative reaction in media because they thought by approving this document, the sexual education in schools will get started and this was presented as a catastrophe in an Islamic society.³⁸³

Although this was kind of a political game led by the anti-government party but what makes it sociologically interesting is that they touched the public sensitivity about the children's sexual awareness and education. Even if the children's rights activist has been already trying to awaken the public society about this danger against their kids, only very recently people are making a

³⁸⁰ The scholar papers usually are found in foreign websites and journals, such as:

-Saeed MOMTAZI et Richard A. RAWSON, « Substance abuse among Iranian high school students », (2010) 23-3 *Curr. Opin. Psychiatry* 221.

-Mohammad Reza MOHAMMADI, Hadi ZARAFSHAN et Ali KHALEGHI, « Child Abuse in Iran: a systematic review and meta-analysis », (2014) 9-3 *Iran. J. Psychiatry* 118.

³⁸¹ « Leading Education 2030 », *UNESCO* (9 mars 2013), en ligne : <<https://en.unesco.org/education2030-sdg4>>.

³⁸² « Incheon Declaration: Education 2030: Towards inclusive and equitable quality education and lifelong learning for all - UNESCO Digital Library », en ligne : <<https://unesdoc.unesco.org/ark:/48223/pf0000233813>> (consulté le 12 février 2019).

³⁸³ many conservative media who are active against the government, such as: <https://www.tasnimnews.com/fa/news/1395/11/03/1302832>

movement to protect the sexual education for the kids either by families or schools, especially on social media such as Twitter and Facebook.³⁸⁴

³⁸⁴ They have recently invented the **#sexual-education-for-children** on social media and try to act as social movement to protect the young generation from the sexual abuse

4-16. “I [Should] Have the Right Not to Go to School!”: The Children’s Expression of Disgust and the Extent of the Right to Do Wrong

We talked to Arash, an 11 years old boy in a park when he was coming back from school. While he seemed to be very active, a bit disobedient and talking with a sense of humor, he was also a monitor in the school during the students’ lining up before going to classes. His first answer to our question of “what rights do you think you have?” was that “I have right not to go to school!” (Interview #2) what sounds an irrational answer to the adults. We would like to take this as an example of what children would like to do and seems to be wrong from adults’ point of view.

The protection of children against their irrational actions seems to be a duty for the adults but as Freeman argues in his article of “taking children’s rights more seriously”, what is to be regarded as “irrational” must be strictly confined.³⁸⁵ The right to do wrong has been a philosophical subject of argument and although it seems paradoxical at the first look, it actually depends on “one’s interpretation of having a right and doing wrong”³⁸⁶ Therefore, we need to have tolerance facing the mistakes as Dworkin observes: “someone may have the right to do something that is wrong for him to do.”³⁸⁷

For a child to say, “I have a right not to go to school”, then, the two notion of “having right” and “not going to school” must be considered. The child’s right to decision making about his own affairs has been clearly accepted from the Convention’s point of view but is “not going to school” considered as a wrong/mistake or an irrational action what is going to hurt the child’s mental/personal health? Freeman argues that the extent of irrational actions must be tested by

³⁸⁵ Michael FREEMAN, « Taking Children’s Rights More Seriously », (1992) 6-1 *Int. J. Law Fam.* 52–71.

³⁸⁶ Gerhard ØVERLAND, « The right to do wrong », (2007) 26-4 *Law Philos.* 377-404.

³⁸⁷R. DWORKIN, préc., note 206, p. 188-189.

answering to the question of “if the child would have been grown up and would have been in the situation of decision making, he would have done the same thing what we do for him?” which means that we should put our own desires and taste aside and judge the wrong and right regarding a rational neutral human being’s view.³⁸⁸ Therefore, the things like “not going to school” or taking drugs or psychotropic pills would be included in irrational decisions what gives the adults the right to intervene children’s free will.

Arash, the boy whom we talked to, did not really mean that he would not go to school if he had a choice, because we found him later a responsible student in the school whom the director trusts enough to ask him to watch the other students in the queue. So, what made him to claim “not to go to school” as his right? He said “I have the right to be free and be happy. I have the right to run and play. There are limits though.”(Interview#2) One would analyse his desire to have choice over going to school or not, as a normal reaction of a kid because he does not find the school environment a happy place. Psychologically looking at this issue, one could say that giving more freedom and open environment at the schools worth it because it decreases the threat of student’s hating the school. This is what Noddings calls both the aim and the method of education: HAPPINESS!³⁸⁹

³⁸⁸M. FREEMAN, préc., note 384, 68.

³⁸⁹ N. NODDINGS, préc., note 10.

4-17. Freedom of Religion and Freedom from Religion: Signs of Religious-Based Education in Iran

One of the first noticeable features of Iran's educational system is its being religious (Islamic). As soon as you enter the Iranian elementary educational environment, you face the signs of Islamic training in the schools:

1- The boys' and girls' schools are separated from the first grade.

2- The girls are supposed to wear hijab when going to school and to wear it during the hours inside the school. This even applies for girls under age 9, by whom hijab is not compulsorily worn under Islamic regulations.

3- In every school there is a prayer room and the students perform the regular prayers at school—and prayers are compulsory in some schools and optional in others. “Every Tuesday, we pray before going to class... and after we finish the studies, at the end of the day, we go to the prayer room and pray together. It's not compulsory, though.” (Noora, 11-year-old girl, interviewee #56)

4- Islamic training is an official part of curriculum, and includes Quran studies and Religious studies, which are called “the divine gifts”. These studies are in addition to other parts of the curriculum, such as social science and literature, have been provided to match with the *National Islamic program of education*. “The main aim of this course is to train faithful, responsible, alert citizens who are also privately and socially skilful, engaged to moral and *religious values* and finally desired to their Iranian-Islamic identity.” (The Introduction of the Social Studies book for the 3rd grade of elementary school.)

The *Law of Aims and Tasks of the Ministry of Education* (February 14, 1988) states the first aim of education is “improving the basic beliefs and spiritual aspects of the students regarding the

principles of Islam and Shi'i religion.”, while more specifically *the document of aims of elementary education* (May 18, 2000) starts with this phrase: “In accordance with the main goal of education and in order to lead the all-aspects fulfilment of students based on Islamic rules...”.

The Islamic oriented education in Iran, then, is undeniable. This social fact could be observed from two aspects in the eyes of a jurist researcher:

1) The Freedom of Religion: The Right to Be Different

While Islam is the official religion in Iran and is taught in all the education levels, what are the status and rights of other religions in this atmosphere? The Constitution of Iran recognizes some specified religions such as Jewish, Christianity, and Zoroastrianism, so they can practice their religion and act according to the rules of their own personal affairs.³⁹⁰ The *law of aims and tasks of the Ministry of Education* also states that “the other recognized religions are free to provide their own religious books and teach them as a part of curriculum under the provision of this ministry.” (Article 1(2), approved in 1988)

So, legally speaking, the freedom of religious education in the schools has been reserved for specific religions (although not every religion); however, the actual execution of this freedom remains to be studied.

2) The Freedom from Religion: The Right to Not Be Religious

The totally religious environment of the educational system in Iran brings up this question: what happens to the real right of Iranian students to choose any spiritual approach (either religious or not, either Islamic or from other religions)? If we still accept Islam as the official religion of Iran,

³⁹⁰ Constitution of Iran, Article 13.

is it still possible to avoid such a totalitarian approach in the educational system, which limits the freedom of conscience and autonomy of children to have a free choice for their own lives and the path of well-being? The answer is “yes”, according to scholarly research that has compared the educational system of Iran with that of the U.S in this regard.³⁹¹

³⁹¹ Mansouri, Mohammad, Elementary education for children: studying the legal system of Iran and U.S in perspective of human rights, master thesis of public law, Shahid Beheshti University, Tehran, 2011.

4-18. Need for Separation and Support of Handicapped Children: An Obvious Part of the Right to “Proper Education”

“We don’t have such a thing! My son had a classmate who used to take lots of pills and used to hit the other students!” Shirin said as a mother of a 10-year-old boy who used to go to a public school. She mentioned her idea of the essence of separating the kids with special condition as well as complaining about the fact that his son usually gets bored and does not receive his “proper education” because the teacher must put more time for the less clever students. (Shirin, 31-year-old mom, interview #62)

It might seem normal that a wide range of student with different scale of intelligence and capabilities sit in the same classroom especially in a public school, yet what we would like to discuss here is the question of children’s right to receive their best and “proper education”. Here come a few points to mention:

1- The first point is the idea of educating different kids differently. This has been concerned even by Plato who believed that everybody must get educated regarding his/her special interest and talent³⁹². Do all the student have to sit in the same class and receive the same education and consequently the school become a machine of producing the same products? Although this might sound too idealistic to educate every single student with his/her own unique and right method of education, but at least a more open and flexible system of education might work toward this ideal pattern. Not being exactly Platonic educators yet to be open to create new models of liberal schooling.³⁹³

³⁹² Refer to: J. DEWEY, préc., note 247.

³⁹³ Alternative methods like what Montessori did. Refer to: M. MONTESSORI, préc., note 354.

2- The second and the less idealistic point about this fact is that an efficient education system could at least separate the children with especial need to care. The essence of availability of education for disabled children³⁹⁴ does not reduce the need of children with psychological difficulties to especial care and education. As the autistic children nowadays receive more attention (In Iran, at least in Tehran as the capital city, there are special schools and centers for the autistic children although they are apparently not enough), there is a need for a filtration of the kids with especial psychological condition, otherwise the right of other students as well as their own rights would be in danger.

An education which considers the talent discovery of children from very early years, would lead them through a better improvement either by improving special talents or special needs to care. This needs a change in the minds of policy makers or education theorist of an improving country like Iran to be open to the new and alternative methods of schooling.³⁹⁵

³⁹⁴ The law of protecting disabled persons (2004) makes the state responsible for providing facilities for the education of disabled persons, as well as the article 23 of Convention on the rights of children what addresses the states to reserve the right of physical and mental disabled children to benefit a full and decent life which includes education.

³⁹⁵N. NODDINGS, *préc.*, note 249.

4-19. “The Society Is Not Aware of Children’s Rights”: The Common Belief of People about Lack of Respect for Children’s Rights

From the very first moments when this thesis started, a very common reaction of surrounding people hearing about this subject was to ignore the existence of such a concept in Iran. Being in the position of the researcher we were neutral in this case and were just looking for anything interesting about this in the field but when the interviews were started officially and got the same response from the parents and teachers, then we began to look at it as a social understanding or “social representation”.

Shirin, the mother of 11 years old boy told me with a certainty: “We don’t really have “recognition of children’s rights” in our society”. (Shirin, parent, interview #62). This was also what Ala believed about her daughter’s rights: “I don’t think that my daughter’s rights are respected in the school...there are bad treatments and bad talking... but if you ask me about flourishing the talents, I don’t think so they do it for her at the school”. (Ala, parent, Interview #63)

Farideh was a very dedicated and wise teacher who was also studying law besides working as a teacher. Although she was trying to fulfill her duty of being a “proper” teacher- in the meaning that we seek in this thesis- she confessed that the rights of her students cannot be fully respected because there are too many kids in a single classroom and not enough facilities.

“I believe the kids’ rights are not really protected in my classroom because they do not have only the right to study; they need to get improved in all aspects. and because of the big amount of students in the class we cannot provide them all their rights.” (Farideh, teacher of 3rd grade, interview #68)

The other teacher who was really honest in confessing her ignorance about children’s rights confirmed the same idea that this concept is not really understood in the society: “I have no idea

about children's rights, and it is not only me. I would say the society is not aware of that.” (Mehrnaz, teacher of 2nd grade, Interview #76) Arezoo, teacher of the 4th grade, also believed that in general children's rights are not respected. “Unfortunately, the children's rights are not respected in the families even if there are laws in this regard. The parents do not take care of children's right to tranquility and happiness.[Psychological rights]” (Arezoo, teacher of 4th grade, Interview #86)

Finally, when we talked to Mastaneh, a children's rights activist whose talking was of course more evidence based, the common belief of people about violence against children's rights became more meaningful. “There are many types of discriminations in our educational system: religious, linguistic and gender discriminations....we receive many reports on sexual abuse of children.” (Mastaneh, children's rights activist, interview #87)

It seems that people come to a common sense either through their own experience – like what parents tell stories about their children in the school, the teachers who see the obstacles of respecting children's rights in action (For example what Farideh expressed) and the human rights activists who face the violence closely- or the other people who just hear the bad news about children's rights violation from time to time. For us as observers, this is a social phenomenon beside other observed points which could come to a more abstract conclusion.

4-20. The Desire to Improve Human Rights Awareness: Teachers and Parents Agree to Teach Human Rights to Children

Aside from the very first negative reactions that was received about the status and the existence of children's rights in Iran³⁹⁶, there was another common sense to observe which showed the desire to change the current condition. One of our questions in the interviews was if the parents or teachers agree that human rights been taught in the school to the kids or not. One can say that almost everyone replied positively, either by mentioning some conditions or unconditional.

Shirin who had the experience of his son being abused sexually in the school seemed to be really for this idea, because she did not know herself how to teach such a thing to his son or even she seemed to be ignorant in some levels herself.

“I think the appropriate way is exactly to teach these matters [children's rights] at the school. Because firstly they know how to teach and to tell this in a good and appropriate way. Secondly, all the kids will get this idea and understand it in the same way then. It won't be like everyone has a different understanding of the rights regarding what their parents say.”
(Shirin, parent, interview #62)

Mahla whom we consider as an example of a teacher of “proper education” who has a cooperative method of teaching and ruling the class and tries to be a proper example for the students morally too, is a teacher of lower economic level areas of the city and faces the children's rights violence very often. She has no doubt that the kids must know about their rights at least not to keep silence when they get abused. She says:

³⁹⁶ See section4.19 in this chapter.

“Human rights have to be taught at the school. The kids must know their rights. The kids must know that nobody has the right to hit them or abuse them or send them to streets to work.” (Mahla, teacher of 4th grade, interview #69)

Farideh also mentioned that being aware of their rights they become more capable of protecting themselves and respecting others.

“I am hundred percent agree to the idea of teaching human rights to children. Everybody should know about his/her rights from childhood through the adulthood. Many social issues are the consequence of unawareness.” (Farideh, teacher of 3rd grade, interview #68)

Some other teachers suggested human rights teaching to the kids indirectly for example through the story telling, showing movies, playing game, etc. (Interview #63, #64, #70, #71, #76, #77, #78, #79, #81, #83) They all agree that children been taught about human rights either directly in the schoolbooks, indirectly by teachers’ and staff’s action or using the pedagogical aid tools.

The point we were attracted to is that there is a desire to learn about human rights and a tendency to change the condition of which they are not happy. They see the potential context even if they do not have the actual tool. Does it need to be changed only systematically throughout the public policy of educational system or are they also able to play a role in their own classroom as a part of this society? This is a matter of thinking for us as a researcher and for them as social actors.

Section 5. The Paradoxical Condition of Human Rights in Educational Sphere of Iran: The Final Finding of Empirical Inquiry

As the aim of this chapter calls us to respond to the question of this part which is: *“In a course of action on behalf of Iranian children’s rights, what Iranian social representations of the latter reveal the gap between the ideal expressed concept of “proper education” and the day-to-day life of children?”*. We make a short discussion in this section in order to point out the empirical finding of this qualitative part of research throughout the social representations of children’s rights in the elementary schools of Iran or the contextual concept of *the good life* for the actors of this Islamic field. The answer supposedly reveals the gap between the day to day life of children and the ideally respected status of their “right to proper education”.

A considerable point regarding the experimental results of this research is that one should be aware of the inclusive concept of “proper education” which is as vast as encompassing all the rights of children in relation to their right to education. Therefore, one had to observe all the rights of children in the educational system in order to evaluate the condition of right to “proper education” in a field.

The extracted results –the twenty analysed experiments in section 4 of this chapter- contain a diversity of issues by which we have confronted the concept of children’s rights in an Islamic and improving country in the case of respecting “children’s right to proper education”. These points show us that in Iran as a society which has tried to adapt an occidental concept of human right to its Nationalist-Islamic culture, a challenging and paradoxical sphere could be observed based on our investigation. While there are some extraordinary actions and reactions were noted toward a democratic and human rights-oriented sphere in the schools, some other results signify an unpleasant condition regarding the respect of rights of children.

The sections No.4-2 (the children's well understanding of the concept of children's right), No.4-7 (students' association and precocity of the desire for democracy), No.4-9 (gender disparities in dispute resolution: the girls' capability of dispute resolution) and No.4-20 (The desire to improve human rights awareness: teachers and parents agree to teach human rights to children) are the ones that reveal a high tendency toward a human rights respective environment in the elementary education of Iranian society.

These social representations indicate, first of all, the Iranian children's potential in comprehension of such a complicated social phenomenon (human rights issues and the need for its improvement in the society), maybe because they face the actual unjust condition of many children of the society around them so they inevitably become capable of thinking and acting toward a better condition of rights for the other kids and for themselves.

There is another indication of tendency for a democratic and human rights improvement in this society which is the adult's (teachers and parents) desire for a human rights improvement in the educational process of the kids. They have a positive view about teaching human rights to their children probably because they have the experience of living in an unaware and ignorant society about human rights (section No.4-19), so they understand the need for a change which could be started from the elementary schools.

On the other hand, a big part of these social representations are the indicators of an unacceptable condition of "children's right to proper education". It starts from the inaccessibility to the concept of children's right for many teachers and parents because they might think that respecting the rights of children will end up to the children's kingdom (section No.4-1). Therefore, the children's rights violations begin from the families and continue to be normal part of traditional education method in the schools (section No.4-12). So the children show an impression of disgust about the school

environment (section No.4-16) where they feel to be controlled and physically punished all the time (section No.4-6 and No.4-8) rather than being a happy and secure place to be free to fulfill their basic needs (sections No.4-4 and No.4-15). This path ends up unavoidably to an unacceptable position of school authority for the children (section No.4-10) and therefore less educational effect on them because they do not find the school environment and method convenient with their needs.

The social representations of human rights in Iranian educational system also say that this revealed gap between the ideal condition of children's right and the actual status of children in the school, is under the influence of general educational policies in this Islamic country either when the Islamic rules are taken without the necessary contextual adaptation (sections No.4-13 and No.4-17) or when the general public policies of this country are not in favor of fulfilling the rights of all the children to the proper education (sections No.4-11 and No.4-18). So, the governance of children's rights protection in our field of inquiry seems to be seriously in deficit according to the observed social representations (section No.4-14).

Conclusion of Chapter Three

This chapter is the empirical part of this thesis. It aimed to reveal the social representations of Iranian actors in search of the nature and the depth of the unavoidable gap between actual daily life of children in the Iranian elementary schools and the ideal concept of the children's "right to proper education" —as long as between facts and ideal, by nature, there must be a gap. Knowing the nature of the latter is not without benefits: it shows the direction that we chose to follow ideals that are dear to us.

So, this empirical part, ran on a qualitative sociological mode, but with the specific tone of a human rights activist, started in the first section by explaining that the theoretical nature of the material gathered through interviews, was *social representations*. Social representations of the Iranian school scene (teachers, parents, child, sometimes even activist related to the area) have been observed and analysed in search of clues about the gap between life facts and ideals presented in chapter three. We sure had not only common sociological goals like understanding such a thing like social phenomenon for themselves, but rather joining it to the goal of advocating the right holders of the investigated field through the approach of *human rights advocacy*: social representations and social phenomenon to be known, but only for the sake of children's rights

In the second section, the methodological notions were discussed. While this qualitative research was inspired by Kaufmann's comprehensive interview method regarding the sampling and the methods of interviewing, the advocative aim of the researcher never let her remain a pure sociologist in this path, so the questions sometimes were affected by the human rights advocative approach that was looking for the facts of the field and intended to discover the children's rights violations in the sphere of elementary schools.

The third section presented a report from of the interviews with the teachers and students which could be considered the social representations of human rights or *the good life* in the primary schools of Islamic Iranian society. They show the children's thinking about the concept of human rights and their understanding and recounted way of being treated in the school. The talks of teachers have also been categorized in order to see how they understand the rights of children and how they act in their classrooms in relation to the kids. These narrations usually reveal the gap between the theory and the action (what they pretend to know and what they really act). However, a more advocative view has been taken only in the fourth section.

In the fourth section, we have presented twenty results extracted from the gathered data, which finally permitted to answer the second sub-question of the current thesis. Each of them is a block of the bridge towards the path of the ethical virtue of children's right to education with this little critical content added by this thesis to adapt to Islamic culture and its tend for its specific virtue ethics.

The twenty extracted results are as follow: The general inaccessibility to the concept of children's rights in the society in general and even among the teachers (sections 4-1 & 4-19), while there was an observation of a paradoxical well-understanding of kids about children's rights (section 4-2). The children's social representation of rights linked to the Islamic concept (section 4-3) and an Islamic approach in recognizing the age of childhood (section 4-13), as well as the religion-based education (section 4-17) in this society shows a high cultural relationship between the right to education and Islamic concepts. Some other results such as the children's scream to achieve their right to play and run (section 4-4), their call for happiness as the aim and method of education in order to fulfill their right to proper education implicitly (section 4-5), their complain about being controlled all the time under the security cameras (section 4-6), the presence of physical

punishment in school and at home despite the legal prohibition (sections 4-8 & 4-12), the students' expression of disgust about the school (section 4-16) and their tendency to break the rules (section 4-10), the discrimination in access to the proper education because of lacking the necessary conditions in the public schools rather than private ones (section 4-11), the existence of early sexual abuse in the primary school (section 4-15) and the need for proper facilities for the children with special needs (section 4-18), they all show a big gap between the ideal status of children's ethical-legal-Islamic right to "proper education" and their actual social condition. However, some results such as the high desire of this society to improve the condition of human rights (section 4-20) and starting the exercise of democracy even from the primary schools (section 4-7) and also a feminine approach to spread the concept of peace (section 4-9) reveal an open window for moving toward improving the condition of children's rights in general and specifically in the educational system.

The final finding of this empirical part, therefore, shows the existing deficiency of public policies in Iranian society regarding the fulfillment of children's right to proper education. However, the need for a paradigm shift in looking to the children's issue in Iranian governance is both recognized and desired among the actors of educational sphere in current investigation. What to do, from the point of view of an informed Iranian legislative governance legitimately keen to support the specific virtue ethics of Islam while respecting its international commitments on the right of the child, will be the very specific subject of the next chapter.

Index to Chapter 3: Biographical Index of the Interviewees

As the basic material used by the researcher of a project, the data is not only the verbatim of the interviewees but also the whole atmosphere in which the interview has been made. One could not deny the impact of the condition of the interview, the character of the interviewees and all the anecdotes and stories around an interview on what remains in the hands of researcher as the data. Likewise, for the audience of such an experimental research it would also be beneficial to be aware of the most possible information about the context and condition of the interviews. Therefore, in this index, we have tried to let the reader be in direct contact with the experience of the interviewer.

The interviewer, in this research project, has been succeeded to make as many as 87 interviews in the field of elementary schools of Iran. The interviewees consist of 61 students (32 boys and 29 girls), 2 parents (2 mothers), 23 teachers (6 oral interviews and 17 questioners) and one children's rights activist. They are, then, categorized into 6 groups as it could be seen in the following pages. To keep the identity of interviewees anonymous, we gave every individual a fictive name and put them in order of numbers just to be able to refer to the number of the interview among the text of the thesis. So it will be easy for the reader each time he/she sees a name and verbatim, to look for the interviewee in the biographical index and will get familiar with all the available details about that interview.

The interviewer, then, has described in each of the following numbers, the age, the gender, the condition of interview, a short report of the content of the interview and finally if there has been a special anecdote in each case.

By offering such an index, we meant to present all our basic material utilized in the experimental part of this thesis so that one could observe, analyse and evaluate where the results and conclusions of this thesis are coming from.

Group 1: Children

1- Armin

Gender: boy

Age: 12 years old

Condition of interview:

I met Armin in a park close to an elementary school. So Usually after the school's closing time, many students would pass through this park to go home. Armin was with his two friends, walking, jogging, running and playing around. Their mother also accompanied them but with a certain distance to let them be free to play. I approached them and talked about my project and asked their mothers for a permission to have a short interview with their kids. They accepted with pleasure. The kids were also excited to see what the interview would look like. I started with talking to Armin but very soon I found out that all three of them like to intervene in responding the questions, so I made a group interview with all three of them (**Armin, Arash and Ali**). Armin seemed to be the most smart and hyper active among his friends. He was talking with a sense of humor all the time and used to make everyone laugh. That is why sometimes I could not really realize if his response is real or he just wants to make joke especially when he seemed to be exaggerating.

Content of interview:

Armin is going to a public school and told me that he is a monitor in the queue to check up the other students before going to classrooms. So he must have been evaluated as a good and trustable student. He said that he does not have any problem with teacher or school's staff. He was also a member of students' association. However, he seemed to seek more freedom and happiness as he was a very active boy. He said that he has never heard about the term of "children's rights". The only thing they had in their books was the right to "privacy" for which he gave me a full explanation! However, he believed that the kids must have right to play and run in the school yard. And then continued while laughing at the same time "Hitting and playing the games which is not allowed are good! We do them in hidden for example behind the bushes" (it is good because we feel free, feeling free is good)".

Anecdotes: φ

2- Arash

Gender: boy

Age: 11 years old

Condition of interview:

Arash was among three boys that I interviewed as a group in the park close to the elementary school. So the condition of interview was the same as the interview with Armin (No.#1). He had a very similar character to Armin which was being super active and a high sense of humor which seems to be a considered as an appreciated capability among the boys of that age.

Content of interview:

Arash was also a monitor in the school to observe the students while they queue to go to the classrooms. He was very confident and dared to say that he should have right not to go to school! When I asked them about the rules of school, he said, with a sense of humor, “everything is forbidden but we still do.” He said that he have heard the term of “children’s rights” but does not know the meaning. In his idea he, as a child, has “the right to not going to school, the right to be free, to be free to be happy and play”. He said that his teacher is very cool but some other teachers would hit the students as a punishment.

Anecdotes:φ

3-Ali

Gender: boy

Age: 12 years old

Condition of interview:

Ali was also amongst three interviewed kids in the park together as a group interview. So he was a friend of Armin and Arash and the condition was generally the same as interview #1 and #2. The difference was in the character of Ali. He was a bit shy so he did not really talk a lot unless I would addressed him directly. He was very polite and quiet despite the super activities of his friends. His physic was also smaller than his friends.

Content of interview:

Ali does not complain from the school as much as the others. He is quiet and keeps confirming what other friends say. He has not heard about children's rights but he explains me the concept of privacy as a right of other people which should be respected. When I ask about the school's rules, he says: "To make fun of each other is forbidden!". It seems that he is justified about it and do not disagree. He just mentions maybe because he has been a victim of such an immoral attitude from other students or because it is a common advice of the teacher

Anecdotes:φ

4- Matin**Gender:** boy**Age:** 10 years old**Condition of interview:**

Matin was also coming back from school. His mother had picked him up and they were on the way going home which was almost very far from the school. They lived in a lower area of the city but they could not find a school for Matin he had to come to this school despite the long distance. The mother accepted to wait a few minutes for me to run the interview with her son, even though she seemed to be tired. Matin was the only child of family and I could see his low level of self-confidence. He was very polite, cute and nice; however, was not a very informative interviewee for me.

Content of interview:

Matin was very quiet and did not talk so much. He answered my question very shortly and did not have desire to explain. He said that he has never heard about children's rights and did not have any idea about it either. Matin obviously was not aware of his rights and could not talk about it.

Anecdote:

Maybe this interview was not very efficient because Matin's mother was standing behind and was hearing us. Matin was not feeling very comfortable and me neither, otherwise I could probably make a more intimate environment for him to talk. However, I had to end the interview very soon because the mother wanted to home as soon as possible.

5-Majid

Gender: boy

Age: 12 years old

Condition of interview:

I met Majid as the first student in a private school where I could get in through my connections with the director. It seemed that Majid is one of the best students in the class with good scores and good manner. He was wearing glasses and was talking very politely and decently.

Content of interview:

Majid was an understanding boy who seemed to be justified about the rules of school, however, he complained about the rules that banned him from having enough physical activities. He said: "I don't like the rule which bans running and playing. It's true that they must take care of us but we still have right to play and be free!". When I asked him about the term of children's rights, he mentioned what they had in their curriculum in this regard: "We had about UNICEF and UNESCO in our book but I don't remember what it was about!" it seemed that the real aim of this teaching has not been attained as he did not a clear mind about what have been taught regarding the rights and the supporting organization. One could say the attempt to teach the concept of rights has not been efficient maybe because the method has not been appropriate.

Anecdote:

I had to manage the time of interview to be as short as possible. Because he wanted to go back to the glass.

6- Afshin

Gender: boy

Age: 10 years old

Condition of interview:

Afshin was also one the boy I talked to in a private school. He seemed to be a bit super active and careless. However, he did not very talkative with me in the interview and answered the questions very shortly.

Content of interview:

He doesn't know about his right because he has never heard about it or had never been informed in anyways but as he knows something about the rights of neighbours and his knowledge is through the social science book, it shows that teaching the right to children could be efficient if it is something touchable and understandable for the kids. So maybe instead of very formal taught about UNICEF and UNESCO, speaking very simply about the daily communications with other people like neighbours, classmates and so on would be a better method of teaching the concept of rights.

Anecdote:φ

7- Ahmad

Gender: boy

Age: 13 years old

Condition of interview:

I talked to Ahmad and his friend Hamid at the same time as a group interview. As I was running these interviews in a school, I should have been careful about the timing and should have been fast so talking to the students two by two was more efficient. Ahmad was wearing glasses. Seemed to be very smart and active student. He talked confidently and had his own idea on any issue. I found him very informative for my inquiry.

Content of interview:

Ahmad has been student in public school for five years and then he changed his school to a private one. He thinks that there is wide difference between public and private school and evaluates the quality of private school so much higher. He has a good understanding of social elements. He thinks the problem of public school is the huge population which makes it difficult to manage.

When I asked him about children's rights, he said very confidently: "It is more for the poor kids. We do not have a problem. We have families, food and we go to school. For us, it is our duty to respect other people's rights. All the people should have facility to be in the same level." He feels being privileged and thinks that "children's right" is something for the more vulnerable kids. He is aware of the basic rights of the children to education and so on, so he believes that it must be provided for poor children who lack the facilities. He believes in the principle of "social equality" which is a high level of social understanding for his age

Anecdote:φ

8- Hamid

Gender: boy

Age: 13 years old

Condition of interview:

As I interviewed Hamid and Ahmad in a same group, so the condition was the same for Hamid too. Hamid looked to be vary social and active student as Ahmad was. For many responses that Ahmad used to provide, Hamid seemed to have an additional explanation.

Content of interview:

Hamid also talked about the poor kids whom rights are disrespected. He is aware that there must be an authority to take care of children's rights. This is interesting and shows that he understands the relationship between the state and the citizens by saying: "Municipality has to take care of poor people. The rights of kids should not be disrespected." Regarding the rights of people he said: "We had in the social book las year. It was telling that the people in higher lever should not oppress the others. The people in lower levels have to be helped out and the others who are in higher levels who are capable in respect of knowledge and money they have to help the other people. All has to

be in the same level.” It seems that his main concern is social equality when he hears about human rights. Maybe because he lives in a lower financial level area of the city and he sees the inequality very often.

However, he also seeks more freedom for themselves in the school too. He is also aware of moral treatments “Do not make fun of some kids, one has to tell them he is a kid like you!”

Anecdote:φ

9- Kamyar

Gender: boy

Age: 12 years old

Condition of interview:

Kamyar was also a student of a private school. He said that he has a good relationship with the teachers and especially with the social trainer. He was responsible for uprising the flag every morning. Despite other student whom I talked to, Kamyar was not very excited about the interview and was talking reluctantly. I felt like that he is not very happy in the school.

Content of interview:

Kamyar talked to me about the rules of school and the different types of teachers’ attitude. “One of the teachers is like tough and doesn’t let kids go out because he thinks it embarrassing for him in front of others. For example once one of students was not feeling good and wanted to vomit but he didn’t let him go out. But the other teacher is nice and he says if you need to go out you don’t need to ask for permission just go.” He does not talk directly about the rights of children and states that has never heard about it. However, some unjust treatments in the school bothers him. He also mentions the student’s association that is a way for listening to students’ opinions and suggestions.

Anecdote:φ

10- Sina

Gender: boy

Age: 12 years old

Condition of interview:

Like some other interviews that I made, the interview with Sina was also together with his friend Soheil whom I will talk about in interview No.11. They study in a private school. Sina is very petit physically and looks to be very calm and quiet. He seems to be a happy student with a good relationship with teachers and other comrades.

Content of interview:

Sina talk s about the creative activities that they have in the school, like photography, hand craft activities and writing stories. About the children’s rights, he mentions the right to play and having spare times. And about the human rights in general when I ask, he tells that Privacy is a right that must be respected. They have learnt about this in their books.

Anecdote: φ

11- Soheil**Gender:** Boy**Age:** 12 years old**Condition of interview:**

I talked to Soheil together with his friend Sina (#10). He is a bit shy and speaks less than his friend. He replied to the questions very shortly. That is maybe because the short time of interview did not let him to become more intimate to express himself more freely.

Content of interview:

Soheil also talks about the extra activities that they have like a “future talks”. They have a favorite social trainer in the school whom almost all the students talked about. He talks about their future and what they want to decide to do. Soheil knows that he has a right to study and also a right to play and entertainment. He wants a balance between them. It shows how logical and reasonable the kids in this age could be. “We have right to have studying and entertainment parallel!” he says.

Anecdote: φ

12- Hamed

Gender: boy

Age: 13 years old

Condition of interview:

Hamed is an average student in a private school. He does not talk very much and responses shortly to the questions. Therefore, I did not have an informative interview with him.

Content of Interview:

Hamed is a monitor of the corridor and he likes it because it gives him a sense of authority. He is not happy very with the teacher as he is not very young and they cannot have intimate relationship. He has not heard about human rights or children's rights but believes that the kids have right to be free. Hamed like many other students of his age seeks more freedom especially freedom to run and play in the school yard.

Anecdote: we had a very short interview.

13- Sadra

Gender: boy

Age: 12 years old

Condition of interview:

I talked to Sadra in a private school. He was a small boy physically and has a difficulty while talking. He looks to be a little bit shy.

Content of interview:

Sadra does not dare to talk very demanding about his rights. He tries to be fair and makes a balance between the relationship of teachers and students. "Children's rights means that kids should not be very noisy and the teachers should not hit the kids." so puts the rights and duties together which shows a good understanding level for his age. When I ask him about respecting the other people's rights he says: "Respecting others' rights means for example not to write from the friend's hand in the exam. This is disrespecting his rights."

Anecdote:φ

14- Rastin

Gender: Boy

Age: 7 years old

Condition of interview:

There were a few little boys playing in the school yard. It seemed that their teacher have let them free for the last hour of the school. I approached them and tried to talk to them. It was impossible to ask them to sit down to make a formal interview. They were all running, moving around and playing all the time and I was trying to ask them some questions at the same time. These young boys seem to be too ignorant about the concept of interview and the subject of my questions at all. I just had to ask them varieties of questions in order to receive some information.

Rastin was one of those little boy of the first grade. He was also very small physically and very cute while talking.

Content of interview:

Rastin was so active that did not want to stop playing even for a minute for running the interview. Regarding this highly desire to ply and run, he said that he would use any opportunity to come out of the class and play. He said "We tell a lie to teacher that our parents are out, so we come out and play!" He had never heard about children's rights but when I asked him if he has even been punished, he said "Once I did not do my homework so my father hit me." He got body punishment at home even though at the school his teacher seemed to be nice to them.

Anecdote: he did not let me finish the interview because he was distracted by other kids and wanted to play.

15- Milad

Gender: boy

Age: 8 years old

Condition of interview:

The condition is the same as interview #14. Milad is also running and playing while responding to my questions. He is not really capable of understanding the concept of my interview and its subject.

Content of interview:

In answering my questions he just starts telling me stories about the teacher and the older students who have been aggressive to him! It seems that he just remembers aggressive experiences from the school environment. He also remembers: "Once I did not do my homework so my father hit me but my teacher didn't!"

Anecdote: He did not let me finish the interview and ran to play with friends.

16- AmirAli

Gender: boy

Age: 7 years old

Condition of interview:

The same condition as was explained in Interview No #14. Amirali did not talk a lot. Just a few sentences. He was playing.

Content of interview:

I asked him if he has any idea what the children's rights would mean to him and he said: "Children's right mean getting permission to go drink water." He confuses the concept of right and duty. Maybe he is very young to distinguish. His idea of the school is more to obey rather than having rights.

Anecdote: It was not a complete interview. I just could gather a few sentences from him.

17- Saeed

Gender: Boy

Age: 7 years old

Condition of interview:

The same condition as in interview #14.

Content of interview:φ

Anecdote: He was so active that I could not even get a sentence of him! Impossible interview!

18- Kambiz

Gender: boy

Age: 8 years old

Condition of interview:

The same condition as in mentioned in interview #14. Kambiz talked the most among all the kids who were playing in the yard but he did not talk related to my questions. He was rather talking with other kids.

Content of interview:

Kambiz had a stronger body comparing with his friends. So while they were playing all together he was acting like he is the boss. He says to a friend: "I am older than you I can talk more!" The tendency of having more rights if they are older. Could show the concept of this idea for the kids that "the older, the more powerful". The obedience system is not based on a reasonable factor. The basis of democracy could be built here in the primary schools by teaching the equality to the students!

Anecdote: he found his teacher in the yard and offered him some snacks. The kind and intimate relationship they has was interesting for me. I had to end my questions at that moment.

19- Hosein

Gender: boy

Age: 7 years old

Condition of interview:

The same condition as in interview #14. Hosein looks to be a bit careless.

Content of interview:

Hosein had never heard about children's rights and when I asked him if he has even been punished in the school he said: "I hit the other kids so I have been punished a lot. We have to stand up on one leg in the yard!"

Anecdote:φ

20- Moeen

Gender: boy

Age: 7 years old

Condition of interview:

The same condition as in interview #14. Moeen like other boys of this age whom I talked to from interview 14 to 19 was playing in the yard and running.

Content of interview:

Moeen also did not talk about children's rights and did not have any idea about it. However, mentioned some activities that they have in the school. "We do sport with music." Which seems to be a sign of having good sense about education and school environment despite one other student who just talked about the aggressive memories.

Anecdote:φ

21- Amir

Gender: boy

Age: 10 years old

Condition of interview:

I talked to Amir in a small room in the school during the break time. He seemed to be an average student, not very smart and sometimes trouble making. However, he believes that some other students are trouble maker and bother him and then he has to react. He does not talk very critical about the rules of school.

Content of interview:

Amir says that he has been hit on his neck many times by the school director or principle assistant but he says this with a smile, like it is something normal and funny. He does not have any idea about children's rights but remembers something about the rights of others in their social science book. "We shouldn't harm the public sphere stuff or we shouldn't put the garbage in front of other's house. We shouldn't harm their rights." He also remembers a moral rule that says: "whatever you do to others, it will come back to you!"

Anecdote:φ

22- Siamak

Gender: boy

Age: 10 years old

Condition of interview:

Siamak was also the student of a private school. He seemed to be very active and was very curious to talk me. He waited a long time behind the door and was volunteer to have an interview.

Content of interview:

Although Siamak was very excited to talk to me but actually he was not a very informative interviewee. He talked about their daily schedules at school and also extra activities that they have. I asked him if he has ever been punished and he said: "Once assistant principle hit me but very smoothly." He had not heard about children's rights but had a vague sense about respecting the rights of people. "The teacher has told us about the bosses who do not pay the employees and it is not good." Despite not very informative about children's rights , however, *the role of teacher in passing the concept of rights and respecting them is critical*. He mentions a story what the teacher has been told.

Anecdote:φ

23- Malek

Gender: boy

Age: 12 years old

Condition of interview:

Malek and Hatam (The interviewee #24) were two Afghan students going to a private school in Iran. They were very polite and quiet. I have to confess that I was impressed by these two Afghan students. They were both very mature and were talking with a very good comprehension of children's rights. I assume that these 2 Afghan student feel more gratitude about being student of a private school and even having education. Afghan people usually have difficult life in Iran as an immigrant nation. They have been treated with discrimination sometimes and had to work hard to survive. For me, it is the effect of their family and social life to become more mature than the other boys of their age!

Content of interview:

Malek mentions the most common demand of children whom I interviewed: the right to play and have physical activity. He said: "We have to respect the rules of school but I don't like the rule which restrict our running and playing." He also has an understanding of the right to an open future and he knows that this relies in having a good childhood. "The kids' rights means they are free to do what makes them happy so when they grow up, they don't get depressed. This is his right." Malek also remembers a moral advice from the teacher about respecting other people's rights. "The teacher says: don't blame a kid in front of others. Do it in private!"

Anecdote:φ

24- Hatam

Gender: boy

Age: 12 years old

Condition of interview:

The condition was the same as the interview #23 because I made the interview with both of them together as a group interview. Hatam was also a very polite boy who were talking maturely.

Content of interview:

I asked Hatam if the teacher treats them he same as others in the class. Because a Afghan students they are considered as foreigners and might be in the risk of discriminations in the school but he

denied any kind of discrimination and said that they are treated as Iranian students. He was aware of basic rights of children especially the right to education. “Kids’ right means they have to be educated so they can stand on their own feet when they grow up.”

Anecdote:φ

25- Mazyar

Gender: boy

Age: 10 years old

Condition of interview:

Mazyar is a student of private school. He talks very slowly and very reluctantly. I received very short responses for my questions. He likes bringing cellphone to the school and mentions that it is forbidden.

Content of interview:

Mazyar seems to be ignorant about the rights of children. He thinks that it is something like the rules and regulations of school. “Children’s right means the kid has a limit in his activities.” He is also not happy about the rule that limits his running activity in the school. He told me that the reaction of teacher is tough in case the students have fight with each other. “The teacher would hit the students if they have fight with each other.” I assume that his idea about the school environment is not as a happy place for children rather is a limit for their happiness.

Anecdote:φ

26- Mahdi

Gender: boy

Age: 8 years old

Condition of interview:

I found Mahdi sitting alone in a classroom and very depressed. He said that he had an argument with the principle assistant and therefore was kept in the yard as a punishment. He was very quiet

and sounded to be too sad for his age. I tried to make an intimate relationship with him so that he could express himself better. He was about to cry but after our talking he seemed to feel better.

Content of interview:

Mahdi was not really aware of his own rights and the concept of children's rights in general. The only thing he talked about in detail was his complains about the treatment of school staff with him. He said "They blame, shout, hit, etc. if we do something forbidden... They punished me by mistake. I said it wasn't my fault but they don't listen. My mother also hits me." He seems to be a vulnerable kid psychologically and the school staff are not aware. "Sometimes I hit the other kids just to make fun."

Anecdote:φ

27- Omid

Gender: boy

Age: 9 years old

Condition of interview:

I talked to Omid in a playing center in a very religious city called Qom which is close to the capital city, Tehran. The interviews No 27 to 32 have been made in the same playing center in Qom. The kids were playing soccer or other games and the parents were walking around. I asked the kids to give me a few minutes to have an interview with them. They were very excited first to talk to me. I started a group interview with 6 of them. After a while they could not bear the sitting condition and wanted to go and continue playing. So I had to let them go. But I went around and asked them my final questions while they were playing.

Omid was the only one among the 6 boys who was going to a private school with an alternative method of schooling which let the students free basically and do not force them to obey the rules.

Content of interview:

Omid was very happy about the school environment and talks about it with passion and excitement. He has never heard about children's rights though and does not talk about it. "We go to mountain and forest.....We get food at school. There is no hitting neither blaming or shouting....they just

say study as much as you can. No punishment. If I do sth wrong they take me to the office and we talk.” However, he still seeks more freedom “I don’t like this rule that they do not leave us free to do what we like at the moment. For example playing or talking to friends.” He likes that the students have a chance to play the role of teacher sometimes “We have sport course once a week and one of the student gets the trainer every week. We decide ourselves.”

Anecdote: He leaves the interview unfinished and went to play.

28- Arsalan

Gender: boy

Age: 8 years old

Condition of interview:

The general condition is the same as what has been explained in interview #27.

Arsalan goes to public school and is jealous about his friend, Omid, who goes to a school with an alternative method (Interview #27) vice versa of what Omid was saying about his school, Arsalan has a lot of complains and does not seem to be very happy about school.

Content of interview:

Arsalan complains basically about the restrictions of playing and running in the school. He said: “We should not run in rest time but we do and we get punishment. I hate this rule which does not let us run and play. I don’t know why they don’t let us run.... We have camera and they see us running so they come and hit us. I hate this.” He mentions that hitting is a common punishment in their school and he hates this. “The principle assistant is tough to us, they punish. They hit.”

Anecdote: he left the interview unfinished and went to play.

29- Mahmood

Gender: boy

Age: 13 years old

Condition of interview:

The general condition is the same as condition explained in interview #27.

Mahmood is a petit boy physically but talks very confidently. He has voice in his noise and seems to be very smart and creative. He has experienced both private and public school but now is the student of public school.

Content of interview:

He is happy about the activities that they have in the school. “We study with computer. We also do pottery. We have group work in pottery. They make an exhibition from our handcraft.” He mentions the camera as a device with which the director and principle assistant would control the kids. However, he says that there is no body punishment. ”My teacher would not punish. If we run a lot they just take us to the office. They see us in camera and give us warning. But they do not hit.” He likes to play and run in break time. “I like it when they let us play in the breaks. We just need to be careful.” This shows that the kids would appreciate if they feel the freedom.

Anecdote: he left the interview unfinished and went to play.

30- Hasan

Gender: boy

Age: 10 years old

Condition of interview:

The condition of interview is the same as what explained in interview #27.

Hasan is very savvy, creative and smart, small physically but talks excited about his school and activities.

Content of interview:

Hasan talks about creative activities that they do in the school. He says that they create games and have fun. However, he complains about the limits on the playing and running and is very critical in this case. “We have lots of forbidden things but we do all of them. We are not supposed to run, we have to sit. But we like to run. We always say between us: the break time is the time to have fun. I hate this rule that they say you cannot have fun in breaks.” He has not heard about children’s

rights but by this term he remembers the creative and cooperative method of his teacher. “No I have not heard about kids’ rights but the teacher used to play with us even while teaching.” He also remembers teachers’ advices about the respecting people’s rights “The teacher talks a lot about respecting others. For example to excuse your friend if you have struggle. Or to share your snack with him.”

Anecdote: He left the interview unfinished and went to play soccer.

31- Farshid

Gender: boy

Age: 9 years old

Condition of interview:

The same condition as it was explained in interview #27. Farshid seems to be convinced about school’s rules.

Content of interview:

He understands the rules that limits children’s running in the yard. “I agree with the rules about not running because the floor is too tough and the yard is too crowded.” He seems to be justified in this case. However, he does not like the idea of controlling the students with the camera. “We used to play and run if there were no staff in the yard and we did not know that there is a camera. They came to the class and gave us a warning.” When I ask him if he had ever any role in decision making in the school, he says no and does not remember that they have had given him a chance to decide about any case.

Anecdote: he also left the interview unfinished and wanted to go to play.

32- Shahab

Gender: boy

Age: 11 years old

Condition of interview:

Shahab was one of the relative's son and was curious about my project and interviews. So I made an interview with him too as a 4th grade student who used to go to public school before but now his parents changed his school to a private one. He is very polite and super active. He loves to play soccer.

Content of interview:

Shahab has never heard about children's rights and just knows that he should respect the others. He talks about some rules at the school. "We cannot drink water or go to washroom during the class...The teacher does not like the naughty students very much. He would not hit but will send to office. -Basically they do not hit us but the director did once. If we have a bad discipline mark they won't register us next year." When I ask him about the students' associations he says that it exist but it is not efficient. "We have student association but it does not work. It is ridiculous."

Anecdote:φ

33- Maryam

Gender: girl

Age: 9 years old

Condition of interview:

I went to a public elementary school of girls in an average level of the city and made some group interviews with students of different ages. Maryam was one of the interviewees of the group of 3rd grade. She was very confident and seemed to be happy at the school.

Content of interview:

Maryam seemed to be justified about the regulations of the school. "We are not allowed to run and seek each other because we may hit and hurt someone. I think all the rules of school are good because they make us disciplined." When I asked about the concepts of children's rights and human rights, she remembered the teachers talking about the relationship of boss and employee. "The boss should pay the employees, otherwise he is disrespecting their rights." and also had a skill in her mind to prevent the arguments and disputes with friends. "If I take my friend's pencil

with her permission, she will also learn to do so.” Her idea about the rights is very vague but at least he could connect it to some close concepts.

Anecdote:φ

34-Ana

Gender: girl

Age: 10 years old

Condition of interview:

Ana is the student of 3rd grade in a public school. She is petite physically but talks very wisely and critics some rules of school confidently.

Content of interview:

Ana believes that it is the right of children to run and play and critics the adults that do not let them play freely. “I like to run and they don’t let us. The kids must be free to play, the adults should not force them to sit down all the time!” She relates the human rights concept to her religious beliefs. “- All the people are God’s creature, so they are equal. This is what the teacher told us.” She has some ideas to resolve the struggles and also to improve the friendships. “We should not struggle for the sitting spot, we can make it by turn. -We make food at home, bring it to the school and share with friends.”

Anecdote:φ

35- Mina

Gender: girl

Age: 9 years old

Condition of interview:

Mina is also in the group interview of 3rd grades students of a public school. She was a bit shy and despite the other girls of the group she would not talk unless asked her directly the questions.

Content of interview:

Mina links the concept of peace and human rights to God's willing. " God created us to be friend and not to fight". She does not have a clear idea about children's rights but says; "I have just heard that the adults should not disrespect kids' rights. For example they should not take their money." As a dispute resolution in case of disagreements with friends, she suggests: "We could just disregard and forgive the friends' mistake."

Anecdote:φ

36- Soodabeh

Gender: girl

Age: 10 years old

Condition of interview:

Soodabeh speaks very loudly and seems to be one those super active students who sometimes make trouble.

Content of interview:

She complains that the school's rules does not let them free to play all the games they like. She says: "We are not allowed to play with water and climb the volleyball net". Regarding the question of human rights and peace, she suggests a peaceful resolution to end the struggles. "We can forgive our friend even if she makes a mistake."

Anecdote: φ

37- Sahar

Gender: girl

Age: 9 years old

Condition of interview:

Sahar is a very cute and nice girl who sometimes during talking spells the word wrongly. She is in the group interview of 3rd grade students.

Content of interview:

Sahar mentions the right to play and the right to be her friends as the rights of children. So she has an idea of rights. She also talks about the virtue of caring for others. “We can show our sympathy for a friend when she hit the ground.” She says that the reaction of teacher in case of students struggle would be changing their places or just sending them out of the class.

Anecdote: φ

38-Tanya

Gender: girl

Age: 10 years old

Condition of interview:

Tanya is tall and thin girl who likes to have sportive activities at the school. She goes to public school and is in 3rd grade.

Content of interview:

She only mentions the right to ride bicycle when Ii asked about the rights of children. She likes to bring her bicycle to school but she is not allowed. She remembers he advice of teacher about the concept of peace and respecting rights of others. “The teacher says you should be friend otherwise you will only have bad memories from school.” Tanya, like many other kids of her age, related the concept of human rights and peace to a concept of “good life” or “good human being”.

Anecdote:φ

39- Saeedeh

Gender: girl

Age: 8 years old

Condition of interview:

I talked to Saeedeh and 3 other girls of 2nd grade as a group of interviewees in a public school. These girls talk more about their experience at school. They talk with confidence and more organized than the boys of the same age but still are not answering the questions very directly and

related. They like talking and discussing together. However, I assume the girls of this age much more mature in order to run an interview. They sat to the end of interview and answered all my questions.

Saeedeh was taller than her other friends and was talking very confidently and loud.

Content of interview:

Saeede complains about the limits on the physical activities in the school. “We cannot run in the yard, we can only sit on the bench and talk or play thoughtful games.” When I ask her about the children’s rights, she replies: “We have right to study so we can become doctor or scientist when we grow up.” It shoes her good sense of basic right of kids to education, however, she mentions that “we have to obey the parents.” Which states her idea about the balance between rights and duties.

Anecdote:φ

40-Solmaz

Gender: girl

Age: 8 years old

Condition of interview:

The condition is the same as what explained in interview #39. Solmaz was talking logically and tried to show that she knows a lot about everything.

Content of interview:

Solmaz mentions the right to play when I ask about children’s rights. she explains the daily condition of the school and in between she talks about the monitors in the play yard, in the corridor, or at the water source to watch the kids not to drink water with hand. It seems that it’s everybody’s wish to become a monitor. She says that the teacher or school staff have never asked their opinion in any case, so they do not really have role in decision making. She recalls her teacher’s advice when the girls are talking about the rights of other and the concept of peace. “-The teacher says you should be friend, you should not fight.”

Anecdote:φ

41- Leila

Gender: girl

Age: 8 years old

Condition of interview:

The condition basically was the same as in interview #39. Leila was not very informative for my interview but her emphasise was more on the right to playing and is not very happy about the rules of school in this regard.

Content of interview:

Leila was complaining about the restrictions on the playing and running in the yard of the school, however, she seems to know the reason. “We are not allowed to play running like a train, because it may cause someone to hit the ground.” Leila aslo connects the concept of human rights to her divine concepts that has heard from teacher “The teacher says the god has created you to be friend.”

Anecdote:φ

42- Nazanin

Gender: girl

Age: 8 years old

Condition of interview:

The same condition as described in interview #39. Nazanin was a very petit girl and a bit shy. So she did not talk a lot.

Content of interview:

The interesting part of her talks was when she linked the concept of peace and human rigths to religious beliefs, like her other friends. “The god does not like the people to fight. This is the evil’s wish.”

Anecdote:φ

43- Mona

Gender: girl

Age: 7 years old

Condition of interview:

The principle assistant sent me to a first grade classroom whose teacher were absent. I had to take care of them while the teacher is away and took the time to ask a few questions from the girls. They made a lot of noise and were not patient to talk to me. It was very difficult to record what they say one by one. However, I could recorded the voice of 4 girls answering to my questions. Mona was the first one.

Content of interview:

Ii asked Mona what would be the reaction of teacher in case of kids' struggle. "The teacher said if you have a struggle, explain me what has happened then I will tell you whose fault it is." She linked the concept of human rights to the concept of "good human being" by saying "We should not be cruel to others. This is other's rights."

Anecdote: The children were talking all together and it was almost impossible to make the interview. I just tried to ask short questions and record the answers of a few of them.

44- Saba

Gender: girl

Age: 7 years old

Condition of interview:

The same condition as the interview #43.

Content of interview:

Saba talks about the rules of school which is difficult for her. "We are not allowed to run like a train....We cannot go to washroom or drink water without teacher's permission. She only let us sometimes to go." She recalls the advice of teacher about the relationship with others: "The teacher says do not hit someone even if she hits you." This the usual approach of girls in disputes. In

response to the question of human rights she says : “If we do cruel things God won’t like us. This is people’s rights.”

Anecdote: refer to #43.

45- Sorour

Gender: girl

Age: 7 years old

Condition of interview:

The same condition as described in interview #43. Parnia seems to be hyper active and wants to participate in answering the questions anyways.

Content of interview:

Sorour mentioned her right to property when I asked the kids about the children’s rights. “We have right to keep our money”. She must have had the experience that her parents took her money or so.

Anecdote: refer to #43.

46- Tina

Gender: girl

Age: 7 years old

Condition of interview:

The same condition as described in interview #43.

Content of interview:

Tina also complain about the restrictions of the playing and running. “I don’t like this rule that does not let us run after each other.” However, she likes it that the teacher let them free in the classroom sometimes. “The teacher let us read story books in the class.” Tina mentions the right to play regarding the question of children’s rights: “We have right to go to cinema, to play.”

Anecdote: refer to #43

47- Parnia

Gender: girl

Age: 7 years old

Condition of interview:

The same condition as described in interview #43.

Content of interview:

Parnia mention the creative activities in the classroom which her favorite. “The teachers gives us a painted circle on a paper and we have to paint (create) something out of it. This is creativity.”

Anecdote: refer to #43.

48- Sarina

Gender: girl

Age: 7 years old

Condition of interview:

These four 7 year old girls- interview 48-51- were in a group interview together. They talk very confidently, relevant to my questions and with a correct structure. These girls seem to have a fantastic talent of telling stories and talking about their experiences. When I ask them if they have heard about people’s rights, they say no, but they tell stories and memories of what struggles have happened between friends and how it has ended by excuses. They automatically relate the concept of “human rights” to the concept of “peace”.

Content of interview:

Sabrina mentions her right to play and have sportive activities: “I like to have always sportive activities at school because I myself am a gymnast.” However, she obliges herself to listen to adult advices: “If the teacher asks us not to do something, we should listen because we have to respect her as an adult.” When I ask about the rights of people she mention the right to privacy although

she does not mention the term of privacy: “It is very bad to take a look into others’ bags because she might have something private and does not want to show it to others, so she will get upset if we see.”

Anecdote:φ

49- Atena

Gender: girl

Age: 7 years old

Condition of interview:

The same condition as described in interview #48. Atena talks with a tongue between the teeth, she is very cute! However very smart talking and talks a lot.

Content of interview:

“Have you heard about children’s rights?” I ask. “Yes” she answers the first and tells me a story in which her classmate did not give her enough space to sit and write! This is my right to have enough space! Then she tells her concern about not having permission to be more active in the class. I like to talk with my friend at the classroom, but if I do so I will be punished. I always say to myself, oh my god, I have to sit like a statue all the time in the school!!!

I ask her about the teacher’s reaction to the kids’ struggle and she says: “Our teacher makes fun when we have fight and she tries to make peace (she tells a story about having fight with a friend).” She seems to be ok with the teachers’ advices and rules. “There must be a reason that the teacher prevents us from doing something.”

Anecdote:φ

50- Mania

Gender: girl

Age: 7 years old

Condition of interview:

The same condition as described in interview #48. Mania is a bit shy though and does not talk a lot.

Content of interview:

Mania like that teacher appreciate the good attitude of students and it seems that these kind of methods encourage her to improve. “The teacher will reward us when we are good and polite students.” She recalls the teacher’s advice in relationship with friends as I ask about the rights of people: “The teacher says you do not accuse your friend unless you are sure of her fault.”

Anecdote:φ

51- Tara

Gender: girl

Age: 7 years old

Condition of interview:

The same condition as described in interview #48. Tara is not a very informative girl though. She confirms the sayings of other students usually.

Content of interview:

Tara says that the teacher changes the place when the students have struggle or fight. So the teachers tries to end the struggle by changing the condition. She mention that “Looking into others’ notebook is a bad doing.” As an example for respecting other people’s rights.

Anecdote:φ

52- Tooran

Gender: girl

Age: 9 years old

Condition of interview:

I met Tooran in the park close to school while she was sitting on the ground with her friend. She was very confident and was talking with a loud firm voice. She was curious about my project and

was looking into my papers to see what is going on. She was a monitor in the school to observe the students and was proud to be.

Content of interview:

Tooran had not heard about children's rights, however, she linked the concept of human rights to a religious concept. She said: "We have somehow in our divine gift book about the people's rights. It says that we have to be nice to others and not fight with other people so the God will reward us."

Anecdote:φ

53- Sara

Gender: girl

Age: 8 years old

Condition of interview:

Sara was sitting in the park with her friend. They were going back home from school. She was little girl whose answer to most of my questions were "I don't know".

Content of interview:

She described the daily schedule of the school and mentioned that they have some creative activities like painting and hand crafting in the school.

Anecdote:φ

54- Zahra

Gender: girl

Age: 12 years old

Condition of interview:

I talked to Zahra in a group interview with a few girls of different ages. They were in a library in a small city called Qom which is a very religious city and is very close to the capital city, Tehran. They talked to me with pleasure and seemed to be very happy children.

Zahra was tall and skinny and looked like very disciplined and religious.

Content of interview:

Zahra talks about the religious activities in the school like praying. She also mentions that they cannot go to washroom or drink water during the course time.

Anecdote: she left the interview because her father was there to pick her up.

55-Ameneh

Gender: girl

Age: 11 years old

Condition of interview:

The general condition the same as explained in Interview #54. Ameneh is very active and confident girl, talks very much and explains everything, very logic talking and seems to be very religious

Content of interview:

Ameneh talks about the daily activities in the school: “We always have extra activities. The Trainer organizes the morning program every day and the students would present it. I had a speech and performance once....We get milk every other day.” She also says that it is the rights of children that their talents get recognized and developed. “The kids have all the rights because a kid might have a talent and capability of older than her age but the adults don’t believe her. This might be a talent in me which has to be recognized.” However, she believes that the basic rights of more vulnerable children should be respected. “The kids in my range and level they mostly have everything so their rights are basically respected. But the kids in lower level of economy and quality of life have to get help to achieve their rights.” she also explains about the students association and its process of voting. “We have student association. There is a voting day. The members try to do some activities for the students.”

Anecdote: φ

56- Noora

Gender: girl

Age: 11 years old

Condition of interview:

The same condition as described in interview #54. Noora is a petit girl physically and is very polit. She does not talk very much.

Content of interview:

Noora talks about the praying at the school. They do it before and after the class but she states that it is not compulsory. However, most of the kids attend the praying. She says that in case the students have any struggle, the teacher would not interfere and send them to assistant principle. “The teacher does not want us to complain about the fighting with friends. She says tell this to the director.”

Anecdote: she had to leave the interview earlier than the other kids.

57- Neda

Gender: girl

Age: 10 years old

Condition of interview:

The same as the condition described in interview #54. Neda has a sense of humor and is a happy and active girl.

Content of interview:

She talks about the school happily, however, she mentions the forbidden stuff what they cannot take to school. “Chips is forbidden. Tablet and mobile are forbidden.” when I ask about the teacher’s reaction to the students’ struggle she said: “We were having fight but we hide it from the teacher.” She seems to be mature enough to be able to solve the problems with her friends.

Anecdote: she left the interview unfinished because she had to go home.

58- Samin

Gender: girl

Age: 8 years old

Condition of interview:

The condition is the same as what described in interview #54.

Content of interview:

Samin talks about her experiences at the school and the relationship with the teacher and principal. “Once I came late to the class and the teacher did not let me in. the Trainer talked to my teacher so she let me in.” she talks about the extra activities that they do every day in the school. “The students make morning program every day.”

Anecdote: she left the interview very early. Her father picked her up.

59- Nasrin

Gender: girl

Age: 9 years old

Condition of interview:

Refer to the condition of interview #54. Nasrin is very calm and talks with a delicate voice. She looks totally confident and happy.

Content of interview:

Nasrin talks about the religious activities that they do every day in the class. “We read Dua (prayers) every morning before starting the studies.” She tells some stories about the school, her stories with her friends and teachers and during all of them she laughs and seems to be very happy. However, she recalls that all the student were afraid of the director. When I talk about children’s rights, Nasrin tells one memory that she thinks is related to the rights of kids. “Once a mother came to school and complained to the teacher why she would have kick her daughter out of the class. This is the right of the kid to stay in the class.”

Anecdote: φ

60- Sana

Gender: girl

Age: 10 years old

Condition of interview:

Refer to the condition of interview #54. Sana is a confident and happy girl who talk excitedly about the school.

Content of interview:

She explains her relationship with the teachers as a good student. “I am very friendly with all the staff. The teacher does not send me out of the class even if I talk a lot in the class...It is normal that the teacher likes more the good student who gets better mark. But it is only in studies. They do a talent discovery every year at school so they encourage the kids.” about the right of other people she had an example: “Respecting the turn in queue for example. The teacher says you must respect others’ rights.”

Anecdote:φ

61- Mojgan

Gender: girl

Age: 11 years old

Conditions of interview:

Refer to the condition of interview #54.

Content of interview:

Mojgan thinks that the teachers treat somehow differently. “The teachers make more fun and have intimate relation with the good students. They say we don’t treat differently but I am not sure!...It seems that the students who are more visible they get more responsibilities.” When I ask about the teacher’s reaction in case of student’s struggle she say “If I have a struggle with my friend I would explain to the teacher so she will talk to my friend.” She also says that the teacher gets familiar

with students talent even though they do not have a formal talent discovery at the school. She goes to a public school and the public schools usually do not have such programs.

Anecdote:φ

Group 2: Parents

62- Shirin

Gender: female

Age: 31 years old

Condition of interview:

Shirin is a 31 years old woman, mother of 2 boys, the older one is 11 years old and the younger one 6 years old. She is student of master in theology, wearing glasses and seems to be very concerned about the psychological situation of kids at the school. I talked to her at her home as she was a friend of mine.

Content of interview:

The important things that she points out:

1- The children's need are actually their rights. 2- We don't really have "recognitions of children's rights" in our society. 3- Her son has experience a sexual harassment I the school by older students. 4- Creative activities are not common in public schools however it depends on teacher's method and creativity. 5- She agrees with the idea of teaching human rights to the kids in school and believes that it is the best way of doing it. However she believes that in Iran respecting children's rights does not really happen and as example talks about a kids with psychological problems in his son's classroom. She believes that these kids with special need deserve special schools.

Anecdote:φ

63- Ala

Gender: female

Age: 32 years old

Condition of interview:

Ala is a 32 years old woman, mother of 3 kids, her daughter is 8 years old and her two sons are 5 and 2. She talks very clearly and logically like a well-educated lady, she is Iranian and has studied in Iran but now her daughter is going to school in Iraq because of her husband's job. She is very

religious but she says her method of treatment to her kids usually comes from her psychological readings and her own experience. I talked to her over phone. As she had herself a high concern about the kids' education, she was very kind and patient to give me her time despite her busy life with three kids.

Content of interview:

Interesting in her talks:

1- Childhood is the most important period of life in which the characteristic will be constructed.
2- She talks about the age of childhood- 12 or 14. (She does not mention 18!) 3- She makes herself obliged to give only healthy food to her kids. (Children's right to healthy food) 4- She doesn't assume that the school of her daughter really improves student's talents. 5- She agrees with teaching human rights to the kids but believes that it must be consistent with the circumstances. 6- She mentions the role of teacher and says that first the teachers must be taught!

Anecdote: φ

Group 3: Teachers (Oral interviews)

64- Salman

Gender: male

Age: over 50 years old

Condition of interview:

I talked to Salman in a private school in the break time while he was sitting for rest. I asked him if he would answer a few questions and explained about my project and he accepted with pleasure. He was not very energetic though. He was talking very generally, vaguely and slowly.

Content of interview:

1-The child is someone who is really lovely and valuable. Up to 7 is childhood, after that is adolescence. 2-I don't punish the kids. I only would make a mad or sad face. (Teachers' method) 3-My method is usually by advising, making peace and friendship. 4-Human rights are what we respect already. We try to do a part of it at the school. (A vague idea of children's rights) 5-It is good for the kids to know about human rights. If they know the rights then they would respect them. 6-The basic rule of the education in Iran is not to punish (body punishment) at all. And it is repeated in the school policies too. But you cannot say that it is what happens in all the classrooms and by all the teachers. (The actual condition of children's rights in Iran)

Anecdote:φ

65- Mahshid

Gender: female

Age: 34 years old

Condition of interview:

Mahshid was a 34 years old, female teacher, first grade teacher, the kids love her. I met her in the school yard while her students were playing. She seems to be familiar with the psychology of children and has a good relationship with the students.

Content of interview:

1-They are kids until they don't have complete comprehension from their surrounding environment and this is not related to their age. It is more related to their family and what they have learnt in the family. (The priority of family to school) 2-The educational system has to let the teacher's hand open so that the teacher take her own method to train the kids regarding their differences. Now the system just limits the teachers and it does not work, I think! (The significance of teachers' role in proper education)

Anecdote: her students came to her and started talking so I had to end the interview.

66- Masoud

Gender: male

Age: 36 years old

Condition of interview:

Masoud was a 36 years old teacher, male, very active and had a lot of concerns in training the kids with the method of talents discovering. He seems to care a lot about kids issues, he is actually the Trainer (social trainer) in the school, the students talk about him very often that it seems like he has very much influence on them, he has tried to improve creative and artistic activities of the students regarding their talent and interest. I met him while I was in a private school walking around and he asked me what I was looking for. After I explained him a bit about my project he was very interested to give me an interview.

Content of interview:

1-I asked the director to leave me free to do my job and not to interfere. I asked them to trust me. (The role of teacher in creative methods of education) 2-I said all the students have to have the opportunity to express their talents and capabilities, not only the ones who are already known for that. I gave the chance to everybody to perform. (Talents discovery at the school) 3-I talk to students about life's issues, how to achieve tranquility, their beliefs, etc. (Intimacy to the kids)

In general, I assume this teacher as an example of implementing the alternative method of education with the elements of: Intimacy with students, creative methods, being efficient in improving kids' talents, etc.)

Anecdote: φ

67-Atoosa

Gender: female

Age: 35 years old

Condition of interview:

Atoosa was a 35 years old female, teacher of third grade. I talked to her after the class while she was in her break time. She seemed to be very creative and active teacher, having lots of energy in teaching with creative methods.

Content of interview:

1-The right to choose... The right to talk... the right to protest when my teacher punishes me. (Children's rights in the eyes of a teacher in proper education) 2-She has a democratic way of ruling the class: asking the kids' opinion and deciding together. (Democratic method- alternative method- right to decision making) 3- She considers dispute resolutions like talking and forgiveness and sometimes by the vote of students they punish! (The role of teacher) 4-Before the kid enters the school, the family must learn what the rights are and how they must be respected. The problem is within the families. (The priority of family to school) 5-I think if you tell the kids a lot about their rights, and if we tell them you are right all the time , we will have the kingdom of children. (Kingdom of children)

Anecdote: I had to finish the interview very fast because the school bell rang!

68- Farideh

Gender: female

Age: 37 years old

Condition of interview:

Farideh was a 37 years old female, teacher of third grade. She was studying law too parallel to her teaching job, she seems to be very calm and wise teacher. I talked to her while she was sitting in

the class and her students were writing and painting. Farideh was interested in my project and really agreed to teach the kids about their rights.

Content of interview:

1-She mentions the age of childhood different for the girls than the boys. 9 for the girls! (does not mention 18) 2- The right to education is almost protected in Iran. Even if they are not capable, there are NGOs to protect them. Now in every small area of Iran there is school and teacher. 3-I believe the kids rights are not really protected in my class though because it is not only the right to study. They need to get improved in all aspects and because of the big amounts of students in the class we cannot provide then all their rights. (The actual condition of children's rights in Iran) 4- She has intimate relationship with students and uses peaceful resolves in struggles. (The role of teacher in proper education)

Anecdote:φ

69- Mahla

Gender: female

Age: 33 years old

Condition of interview:

Mahla is a 32 years old female, grade 4th teacher, very nice and cooperative. We had a long distance interview on WhatsApp and she did this very kindly with pleasure. She used to be my colleague in a primary school and at that time she use to tell me some tricks and methods to manage the class better. She is very bright and creative. She is an Afghan immigrant in Iran. Also has been teacher in Afghanistan formerly and seems to be an activist to promote proper education for kids.

Content of interview:

1- We taught them somehow to talk about their problem and let the principle know about their protest and unhappiness. (Children's right to negotiate and protest) 2-I would make some rules for the class in the beginning days of the year and it will be with the help and opinion of children that what rule is good for our class. (Democratic ruling method) 3-I make an intimate chair in the class, I sit on it close to kids and I ask one of the kids to play the role of teacher. (Teacher's intimacy to

children) 4- I tell them the morality is the highest point of humanity and try my best to consider it myself so my kid can follow my morality and I have to be good pattern for him. (the role of teacher as a pattern in proper education theory) 5- We should not consider the school only from the education sight. First it must be considered from the pion of well-being of kids and then a place for education. This well-being training will make talented and capable kids. This is my most often method in teaching that let the kids more free. (Alternative method of education is this.) 7-The kids must know that nobody has right to hit him or to abuse him or to be sent to streets to work. He has to enjoy the life in this age. (The children have to know their rights) 8-We can see some cases here and there in which the kids are sexually abused even from the side of their family and the kids keep silence because he thinks that he is kid and is week so he has to suffer. He must know that this is not what he deserves. He has to know that he deserves a good life that the family and the society could not provide him. Knowing these rights, the kid who has lost his freedom, at least won't lose his freedom of thought. He doesn't have wings to fly now, but he would know in his inside that this is not what he deserves. He should not accept that I have to suffer all these bad things. He must improve this in his inside that I don't deserve such a life. (Right to have sexual security and being aware of this right)

Anecdote: (I WAS IMPRESSED BY THIS TEACHER) I would consider her thoughts and methods as an example of a proper education without knowing it legally.

Group 4: Teachers (filled questionnaires)

Interviews #70 to #86 are written interviews. The interviewees have filled a questionnaire. The age of interviewees is not mentioned and the condition is not known.

70- Akram

Gender: female

Age:φ

Condition of interview:φ

Content of interview:

First grade teacher, she has replied to every question very short and very generally and sometimes leaves her answers uncomplete, I think she did not really feel involved in this interview.

1-She mentions the right of child to be happy. (The importance of happiness in education) 2-She suggests “talking” and “negotiation” as dispute resolutions for kids. 3-agrees to teach human rights to children and ask their opinion in ruling the school. (Right to decision making)

Anecdote:φ

71- Mahnaz

Gender: female

Age:φ

Condition of interview:φ

Content of interview:

Teacher of grade 2, female, replied very complete and detailed, very detailed and accurate about the method of teach and the rules of class. She seems not to be happy about actual system of education and thinks that it must be more be focused on training the kids for the life instead of teaching heavy books.

1-She believe the kids should know their rights and get moral teaching. (Moral education) 2-“I believe in Islamic training.” Then she mentions some modern methods of teaching as an example! (The belief that Islam does not oppose to children’s rights and modern methods of education. At least modern Islamic approaches) 3- The kids do not become educated by “talks”, they only get educated by “action”. They need to learn the art of life! (Alternative method of education- proper education)

Anecdote:φ

72- Samira

Gender: female

Age:φ

Condition of interview:φ

Content of interview:

Teacher of 3rd grade, female, has replied to all the questions completely and directly, seems to be aware of kids’ right, seems to be an expert in primary education.

1-she works on children’s talents and creation (Teacher’s role and talent discovery) 2-The kids should always remember the school with good memory (The importance of happy atmosphere of the school) 3-try to make peace if they have fight or struggle (teacher’s reaction to kids’ fight)

Anecdote:φ

73- Narges

Gender: female

Age:φ

Condition of interview:φ

Content of interview:

Teacher of first grade, female, has replied to the questions in detail and complete, seems to be religious and insists on Islam as the base of children’s rights.

1-she has intimate relationship with students. I announce all the kids as brothers and sister and I am their mother. (Teacher's intimacy with kids) 2-She emphasizes on the role of family and society in recognizing and respecting children's rights. (The priority of family) 3-She has peaceful options in reaction to kids' fights.

Anecdote: φ

74- Pante'a

Gender: female

Age: φ

Condition of interview: φ

Content of interview:

Teacher of first grade, female, the interview form is almost empty, she has replied very shortly and vaguely, seems that she is more for teaching the kids to obey rather than their rights. She uses students' opinion in ruling the class and tries to improve kids' talents with creative activities though.

Anecdote: φ

75- Mandana

Gender: female

Age: φ

Condition of interview: φ

Content of interview:

Teacher of 2nd grade, female, has replied shortly to the questions, but seems to be for the idea of letting the kids know about their rights.

1-she believes that Islam recognizes rights for the kids as well as the adults. (Islam for the children's rights, Interview #71) 2-she suggests to use the students' opinion in managing the school

so they would be more justified about what they are asked to do. (Right to decision making- the advantage of justifying the kids)

Anecdote:φ

76- Mehrnaz

Gender: female

Age:φ

Condition of interview:φ

Content of interview:

Teacher of 2nd grade, female, very honest and direct in replying the questions, confesses that she does not know anything about kid's rights and seems to manage the class only through experience not knowledge.

1-I have no idea about children's rights and it is not only me. I would say the society is not aware of that. (The general idea of respecting children's rights in Iran in the first look) 2- She agrees to teach the children about their rights but indirectly with games and in action. (Teaching children's right through games and extra activities)

Anecdote:φ

77- Zohreh

Gender: female

Age:φ

Condition of interview:φ

Content of interview:

Teacher of 3rd grade, female. The questionnaire is almost white and the answers are totally short, she believes that the kids do not have fully comprehension so we cannot tell them all their rights. She believes that human rights could be taught to the kids by showing them movies. (Indirect teaching of human rights to the kids.)

Anecdote:φ

78- Hanieh

Gender: female

Age:φ

Condition of interview:φ

Content of interview:

Teacher of 3rd grade, female, seems to be familiar to the creative method of teaching and children's psychology but does not explain a lot, believes that Islam has the best recipe for human rights. She thinks that the kids do not need to know about their rights but agrees to teach them indirectly about human rights through games.

Anecdote:φ

79- Solmaz

Gender: female

Age:φ

Condition of interview:φ

Content of interview:

Teacher of first grade, female, has replied nicely and completely to the questions and seems to be an intimate teacher with students.

-She has peaceful reaction to kids' struggles and faults. She seems to be a good example of what we consider in proper education as the proper way to teach peace using the opportunity of fight. She agrees to talk about human rights to kids with showing movies or through the books.

Anecdote:φ

80- Atefeh

Gender: female

Age:φ

Condition of interview:φ

Content of interview:

Teacher of 4th grade, female, she believes that it is good for the kids to know their rights and also their limit, she recognizes the kids' rights by having right to play and make noise, living in a happy environment, but still has concern about kids' discipline.

1-right to happiness as an important element of proper education 2-she highly believes in letting the kids participate in ruling the class as a psychological point.

Anecdote:φ

81- Mojdeh

Gender: female

Age:φ

Condition of interview:φ

Content of interview:

Teacher of preschool, female, she thinks that the base of kid's rights is morality and they have to be taught practically about their rights, she uses the story telling and singing as education method.

1-She thinks everybody in the schools environment should act regarding children's rights and there must be supervision on this. (Respecting children's rights systematically) 2-She mentions the children's right to be heard! (A right mentioned in CRC)

Anecdote:φ

82- Diba

Gender: female

Age:φ

Condition of interview:φ

Content of interview:

Teacher of first grade, very mature and expert in education, has a cooperative method with the students in the class, she believes in implicit education. She mentions the age of childhood up to 10. (Does not seem to accord with CRC -18 years old) She mentions the right to play and be happy.

Anecdote:φ

83- Taraneh

Gender: female

Age:φ

Condition of interview:φ

Content of interview:

Teacher of 4th grade, female, she answered the question very wisely and related to the psychology of kids, she seems to be aware of kids' rights, agrees to teach human rights to them and benefits creative method in teaching.

1-She mentions the right of children to have education without violence, right participation and no discrimination (teacher's awareness of children's rights) 2-teaching human rights through games and stories (indirect teaching) 3-she mentions the significance of teacher's character and role in proper education

Anecdote: φ

84- Elham

Gender: female

Age:φ

Condition of interview:φ

Content of interview:

Teacher of 2nd grade, female, she seems to be familiar with the formal rights of children as it comes in laws but she still believes that these rights come from Islam, law and morality in combination. She has a cooperative method in ruling the class and agrees to teach human rights to kids totally!

1-she is the only one who mentions the age of 18 years old as the age of childhood. 2-the aim of education should be to improve children's character and capabilities. (Children's well-being as the aim of education)

Anecdote: φ

85-Marzieh

Gender: female

Age: φ

Condition of interview: φ

Content of interview:

Teacher of 3rd grade, female, she strongly believes that if we have an Islamic based education the kids will achieve their rights more. She thinks that Islam has the best rules to treat the children. She leaves the kids free to play after the teaching and finds this method working and making the kids more attentive and silent during the teaching.

1-She tries to improve an intimate relationship with the students. (Intimate atmosphere in the school) 2-creative activities and asking the kids' opinion (Right to decision making- freedom of expression) 3-School's rules have to be flexible and transparency! (Flexible rules gives freedom of creativity to the teachers according to every situation)

Anecdote: φ

86- Arezoo

Gender: female

Age: φ

Condition of interview:φ

Content of interview:

Teacher of 4th grade, female, she does not believe in explicit teaching of right to the kids and thinks that the families ignore the kids' rights as the first and most important protectors of kids. She takes cooperative method in ruling the class.

1-The priority of children's rights in the family and the ignorance of society about the children's rights. (A common belief in Iran) 2-There must be a supervision on the teacher's relationship to the kids. 3-It could even be annoying for them if they know about their rights. (Not to tell to kids directly about their rights)

Anecdote:φ

Group 6: children's rights activist

87- Mastaneh

Gender: female

Age: around 50 years old

Condition of interview:

She is in her 50s, a female children rights activist in an NGO in Tehran, she presents workshop on children's rights once or two times a month and have been worked actively for years to help vulnerable children psychologically, legally and by food and medication. She is one of the main staff of the "Protecting Children's Rights" NGO. They go to different cities and villages to present workshops and inform people about children's rights. They also have a program to send educators to school to work with teachers and students regarding the goals of their NGO. I asked her to give me a time for an interview but she suggested me to attend her workshop and record it instead of interview.

Content of interview:

She tried to talk about the psychology of children and the importance of childhood. She also criticised the social policies of the country regarding children. Some of the most important things she mentioned is listed below:

- 1-The missing link in our educational system is "Understanding the children".
- 2-Playing is the way the kids make connection to the world. (The basic right of kids to play)
- 3-We should ask children's opinion about all their own affairs. (Right to decision making)
- 4- There are some kinds of discrimination in our educational system: religious, ethnic, and linguistic and gender discriminations. (The actual condition of children's rights in Iran)
- 5- She mentions the lack of attention to the children's proper education (human relation, cooperative working, dispute resolution, etc.)

Anecdote:φ

**Chapter Four. Conclusive Chapter:
A Critical Legal Essay to Advocate Iranian Children’s Right
to “Proper” Education**

Introduction

This chapter states the final discussion of the current thesis and is then the main contribution of this law doctoral research. It would be good to recall that our main goal was to search for an innovative way to help the Iranian governance in improving towards the respect of children's right to education. Our project was to pursue this goal with two preliminary steps. The first step (chapter two) was to add a critical content to the "international child's right to education" from an ethical perspective in order to transform such an occidental concept in partially adaptable one that would be more effective because is more suited for an Islamic culture like Iran's: the right to "proper education". The second step (chapter three) was to make the effort to descend on the empirical ground, to know a bit what is really going on in Iranian schools now: could voices of actors teach us in which normative direction to go as an activist of child's right to education? This fourth chapter, however, contains the main contribution to law field. As long as it is constantly said that unlike scientific study, an essay can be partisan, this chapter presents our final legal essay – the work of a proud human rights activist that the author of the current thesis tends to be – built at the light of the results of previous chapters and for the benefit of the Iranian legislative should desiring to better support of the right to education for his children.

This last chapter will observe the pros and cons, raises new questions and finally proposes a critical overview of the whole picture in order to look for new directions to achieve the aim of this thesis.

We will now look for any observed deficiency in the actual condition of children's rights to education in Iran and express why we concluded the suggestions that will follow to move forward to a better condition regarding the very specific Islamic Iranian context. Those suggestions are the result of the following three stages of reasoning: In step one, we propose a critical analysis of the

Iranian legal system and of the observed empirical founding in order to say what problems in this field can be seen as obstacles for the ideally respect of children's rights to proper education.

In the second step, we will propose the wording of a question to find out if this observed field shows any potentials that could help improvements in children's rights protection in this society.

In fact we will look for the socio-cultural features that have to be considered in any political-legal movement towards a better condition. As the empirical part of this research has found two important features in the Iranian socio-cultural environment – a pro-democratic social representation among the actors of educational system and also an embedded Islamic social representation of the good life in referring to the concept of human rights – these results would lead us to understand that a human rights improvement in this part of the world, cannot happen only with an imported occidental concept of human rights but needs to be adopted to the very specific socio-cultural context of this Islamic society.

Therefore, in the third step of our rational path, we will then present the suggestions for the Iranian legislative. A suggested change that we hope for the best of Iranian public policies in the educational system and finally a proper contribution on international public law.

Step One: Actual Condition of Children’s Right to “Proper Education” in Iran

To help the Iranian governance in improving toward a better protection of children’s right to proper education, we found it appropriate first to look for the problems hidden in this system in order to find the suitable resolutions. As we have examined earlier, in the current interdisciplinary thesis, the actual condition of Iranian children’s right to education through a classical legal study and also through an empirical inquiry, we will use the results of these chapters to look for the legal and social deficiencies of this field.

1. A View to the Iranian Legal System regarding the Children’s Rights Protection

The Iranian legal system in many aspects, is respective of fulfilling its duty to protect children’s rights: in families, by considering the best interest of child³⁹⁷; in educational system, by stating the compulsory education for every child³⁹⁸ and aiming to provide a happy environment for the students³⁹⁹; and facing the criminal cases, by adopting the “*law of protecting children and adolescents*”⁴⁰⁰; Although this is a good start, there are criticism waves regarding the situation of children in this legal system.

Observing the difficulties facing the Iran’s legal and political structure, one could end up discovering two main challenging points as the most problematic issues: one is the way this legal system faces the Islamic regulations and the other one is the public policies of the country in regard

³⁹⁷ M. B. PARSAPOUR et S. NOURBAKHS, préc., note 150.

³⁹⁸ *The law of providing facilities for education of Iranian children and youth (1974)*, Article 2.

³⁹⁹ *Executive regulations of schools (2000)*, Article 98.

⁴⁰⁰ Adopted on 2002

to the children's status. While a quite conservative and traditional interpretation of Islam seems to be taken in all the legislative sections including children's affairs, the public governance of Iran also does not seem to be children's rights oriented or respecting. These two issues will be presented more in next two sections.

1-1. Fundamentalist Islamic approach in Iranian Legal System

Iran has been one of the first states that ratified the *International Convention on the Rights of Child*. However, this acceptance was conditional; so the priority of Islamic regulations has been reserved in case of any contradiction. This seems to be a challenging point because in most criticized cases where the Iranian legal regulations fail to fulfill the international duty of children's right protection, there is an Islamic matter of concern.

The age of childhood is, for example, the most challenging criterion that ends up dismissing some internationally accepted rights of children such as criminal liability of kids under 18 and child marriage. The age of childhood has not been determined clearly in Islamic teachings (only the physical puberty has been mentioned as the criterion for considering the person as an adult, and this age is traditionally considered 9 years old for girls and 15 years old for boy). So, there is always a chance for a misjudgment and also discriminative convictions for the persons under 18.

This is while these Islamic regulations are contradictive even among the Islamic thinkers and specialists. There have been numerous debates on the relationship of Islam with Human rights which usually go under the philosophy of religion and also the science of interpretation (Hermeneutics).

“These problems do not derive from Islam *per se* but have to do with the Islamic shariah, or more precisely, with traditional or fundamentalist

interpretations of the shariah...Given the fact that the basic features of the shariah developed in the first centuries of Islamic history, whereas the historical breakthrough of human rights was roughly a millennium later, differences and conflicts between these two normative systems can be no surprise.”⁴⁰¹

Therefore, there have been different approaches to integrate the occidental concept of human rights into the fourteen centuries old Islamic culture either by being essentialist (fundamentalist) approaches or enlightened and more modern interpretations of Islam. The Iranian legal system seems to have integrated the traditional and fundamentalist interpretation of Islam which ends up being criticized by the human rights defenders.

The essentialist point of view takes Islam as the source of ideal life for human being and tries to adopt human rights norms only when they are compatible with Islamic regulations. The *Cairo Declaration of Human Rights in Islam (1990)* could be an example of such an approach because Muslim states found the *Universal Human Rights Declaration* incompatible with Islamic rules in some points and tried to give an Islamic version of Human Rights. Although this declaration uses a universal language of rights, it still mentions Islamic Shari’a as the only source of given rights in the declaration. Like when the introduction of “*The Universal Islam Declaration of Human Rights (1981)*” states “fourteen hundred years ago, Islam gave to humanity an ideal code of human rights”, so they never leave any opening for a contemporary interpretation adapted to the modern life of Muslim people.

This is while the enlighten approach tries to present an interpretation of Islam which is compatible with the Universal Human Rights regulations. Abdulahi Ahmed An-Na’im is an example of the

⁴⁰¹ Heiner BIELEFELDT, « “Western” versus “Islamic” Human Rights Conceptions? A Critique of Cultural Essentialism in the Discussion on Human Rights », (2000) 28-1 *Polit. Theory* 90-121, 102-103.

Islamic thinkers who believe that despite the real inconsistency between shari'a and Human rights, there could be an interpretation from Quran to be compatible with these universal regulations because the core of Islam is also based on equality and human dignity.⁴⁰²

There are also some points of view that make a distinction between these two phenomena (Islam and Human Rights) and believe that, even though Human Rights cannot be Islamic by definition, Muslim societies have to accept human rights rules as the essence of modern social life. This is the idea of Professor Mohammad Mojtahed Shabestari, an Iranian specialist in Islamic hermeneutics and Islamic enlightenment. He believes that the concept of "right" is a modern phenomenon as a result of human being's social experience and cannot be related to a divine source—God's endowment to human being. So instead of trying to patch such a western concept on the Islamic contexts, the best method for the Muslim societies is to accept the human rights regulations as a need for their actual social life just as a human beings' achievement.⁴⁰³

Despite all these contradictive ideas about the relationship between Islam and human rights, it seems that a traditional and conservative interpretation of Islam has been taken into account for the Iranian legislator which is the challenging point that makes an important part of children's right deficiency in this society.

⁴⁰² For more detailed discussion of him look at: Abdullahi Ahmed AN-NA'IM, « Human Rights in the Muslim World: Socio-Political Conditions and Scriptural Imperatives - A Preliminary Inquiry », (1990) 3 *Harv. Hum. Rights J.* 13-52.

⁴⁰³ Mohammad MOJTAHED SHABESTARI, *Human Rights will not become Islamic but Muslims should accept it*, février 2017, en ligne : <<http://mohammadmojtahedshabestari.com/>>.

1-2. Iran's Public Policies Deficiency regarding Children's Rights

In Iran —probably like many other countries in the world – the children were not recognized as the right holders until at least 100 years ago. It was only on the period of 1923-1925 that the first attentions were paid to the children's right to live and health by making vaccinations against deadly and contagious diseases. For the first time, on 1923 in one of the Iran's provinces, children's labour was banned for the girls under 10 and boys under 8 years old. This kind of protecting basic rights of children continued to exist to some extents but the researchers usually recall the *Law of protecting children and adolescents (2002)* as the turning point where the expression of “child abuse” has been used for the first time in the legal literature of Iran.⁴⁰⁴

Therefore, it is not a surprise that the general policies of Iran, either social or legal policies, are still suffering from the deficiencies in the field of children's rights, as it is a totally new concept entering the Iranian socio-legal literature. The traditional point of view about the children have been existed in this system for a long time and it will take a considerable time and effort to change the traditional image of children to the modern one. Let's remember that, for a very long time, hundreds or even millions of years, the children have been usually considered the private properties of their fathers, whose lives have been in some occasions in their hands. To understand the magnitude of the challenge of the child subject of rights, in terms of social change, Violaine Lemay refers to “socio-cultural inertia”. She affirms that, according to sociology of law temporality, the social habits do not change immediately despite passing modern legislation to protect the rights of children. It would generally take as long as the age of a social habit to change a social habit even

⁴⁰⁴ Mohammad Reza GHAFARI et Mohammad HOSSEINI, « Reconsidering the social policies about children in contemporary Iran », (2015) 47 *J. Sociol. Stud.* 177-210.

after adopting modern legislations.⁴⁰⁵ When one keeps in mind that these parts of the world are rather heirs of old civilization and not necessarily inclined to be open to western modernity, one can better understand why the Iranian legal system still suffers from traditional social habits regarding children.

NazerZade Kermani, in her article “Children’s rights: a need for recreation”, also emphasises on the fact that the Iran’s legal regulations about children have been usually based on a traditional look about the children. She says:

“[We] believe that many of the laws regarding the children, including civil or criminal, are not efficient, and in some cases they are lacking the concept of justice and are harmful for the society. The “traditional view” to the child and childhood, in these laws, could not response to the needs of “Today’s Iranian child”. The achievements of civil and rural sociology reveal obvious differences between the civil and rural families... It seems that the family law and specifically the regulations about the children are affected by rural/traditional society.”⁴⁰⁶

So she calls for a reconceptualization of “children’s right” in Iran’s legal system. This has also been mentioned by another famous children’s rights activist and scholar in Iran, Mehrangiz e Kar, who believes that a basic change must take place in the legal system of Iran in order to fulfill the rights of children and women. She believes that “if we seek the protection of children’s rights, it must be declared explicitly in the *constitutional law* of the country” and continues:

“... but unfortunately we do not see in any articles of our constitution such an explicit point about the rights of children. The legislations have to be based on the Islamic rules... and Islamic rules have never been defined

⁴⁰⁵ Violaine LEMAY, « Mutations contemporaines des représentations de l’enfant par le droit », dans *la représentation de l’enfant devant les tribunaux*, Montreal, Themis, 2009, p. 3-44.

⁴⁰⁶ Farnaz NAZERZADEH KERMANI, « Children’s rights: a need for recreation », (2009) 2 *Dadnameh J.* 38-42, 39-40.

explicitly, so it is open for everybody to interpret Islam regarding his own interest... I mean, the need for modifying the laws is vital for the Iranian people like the need for the air and water, but the windows of legal structure is still closed to this change... the authority also does not seem to be intended to finish this condition.”⁴⁰⁷

As we can see, the structural difficulties in Iranian legal system, and even in a broader look, the social policies, limit the extent of children’s rights protection. This has been criticised by many Iranian scholars and by executives too. Emad o ‘din Baghi, an Iranian sociologist who has been the president of the organization of protecting prisoners’ rights, in his article “the typology of violated rights of children”, categorizes the violence against children in Iran in 9 types: Child abuse (physical abuse, sexual abuse, slaughter) ; street children; children trade; kidnapping; children’s labour; children’s beggary; children in jail; non-democratic educational system and improper laws. Baghi, by giving statistic of these varieties of violence against kids, declares a hypothesis about the relationship between the increases of these crimes lately with the recent socio-political frustration of people about their decision-making role in the society.⁴⁰⁸

Although Baghi’s main claim could be described a kind of psycho-political theory, he also confirms our claim about the deficiency in public policies to protect children’s rights by mentioning that, unfortunately in contemporary Iran, the children’s rights protecting organizations either do not exist or are not powerful enough to make a change in this condition.⁴⁰⁹

Another research have been done on the issue of children’s prostitution and Iran’s criminal policy in this regard. The Iranian criminalization of this issue has been criticised in this article while

⁴⁰⁷ Mehrangiz KA’R, « The essence of modifying the constitution in order to fulfil the children and women’ s rights: an interview », (2005) 64 *J. Thoughts’ Reflect.* 97-102, 97-98.

⁴⁰⁸ E. BAGHI, préc., note 342.

⁴⁰⁹ *Id.*, 294.

mentioning the need for a more precise legal protection for the vulnerable children. The writer also confirms our critical view in this section by saying that:

“In our country there is no legal authority, nor any information center, neither a secure place for children to recourse in emergency cases... Despite the prepared legal context, Iran is still too far from the complete implementation of Convention on the Rights of Children... and the most reasons of this condition goes back to the government. 1) Iran has accepted the CRC *conditionally*. 2) In Iran’s civil law there are some articles that easily neglects the rights of children. 3) The government does not even fulfill its duty of protecting children’s rights to some extents that have been accepted by its internal laws; such as educating kids and families, recognizing the child as a dependent person, [and] paying enough attention to the state of family.”⁴¹⁰

This weakness could also be seen in governmental management of education. Torab Zadeh and DanaiiFard in their recent research in 2017 have shown an inconsistency between public and private schools’ justice features.⁴¹¹ The public educational policies seems to be not efficient in implementing the macro-policies of the Islamic sovereignty about justice and elimination of discriminations.

Neglecting children’s rights in urban planning has also been discussed by some Iranian architects. Tavakkolian and Sinaii have studies the urban construction of Iranian cities comparing to some other countries and have found the difficulties in planning of common spaces for the children and

⁴¹⁰ Omid MIRFARDI, « Considering Iran’s criminal policy facing the children’s prostitution in Iranian legal system and the second amended protocol to Convention on Children’s Rights », (2017) 3-2 *Polit. Stud. Law Figh’h* 113-133, 125-128.

⁴¹¹ Hasan DANAIIFARD et M.Sadegh TORABZADEH, « An analysis on the consistency of justice theory in Iran’s educational policies », (2017) 1-11 *Strateg. Manag. Thoughts* 73-108.

also the defects of the public playgrounds regarding the security and wellbeing of the kids.⁴¹² In general, one could look for the importance of children's rights for the public policy makers and executives through all the features of social life in the area in which having a child friendly planning in the scene of cities is one of the most visible aspects.

Having surveyed the academic researches which have been made by the subject of deficiency of children based public policies in the society of Iran, we also have noticed that this critic is accepted even by the political executors of this sphere.

Shahnaz Sajjadi, the vice president of Iran in the women and family's affairs, in an interview, emphasizes that the current laws are not child-oriented and this is the most important deficiency in protecting children's rights. She also stresses the recent character of women's and children's rights in the country:

“Although improving the health and stability of families are the policies of the government, unfortunately, paying attention to children's rights is less visible in our country. We could see this defect all over the legal system since there was not the same concept of childhood in the past periods. The children's rights is very young in our country as well as the women's rights. Since two decades ago, by increasing the number of child abuses in the society, the sensibilities for the children's rights protection have been turned into a common demand.”⁴¹³

⁴¹² Faezeh TAVAKKOLINIA et Nastaran SINAIL, « Comparative study of children's rights in Iranian and universal urban planning », (2018) 1-3 *J. Sci. Eng. Elites* 62-78.

⁴¹³ *Not being child-oriented of current laws as the most important deficiency in protecting children's rights: an investigating report*, IRIB NEWS AGENCY, 2018, en ligne : <<http://www.iribnews.ir/fa/news/2134413>> (consulté le 22 novembre 2018).

Sajjadi then mentions some anti-children's rights laws in Iranian legal system, such as the right of father to corporal punishment of the child, excluding father from common punishment (Ghisas⁴¹⁴) in case of murder his own child, the age of criminal liability which is assumed the same as the age of physical puberty (9 for the girls and 15 for the boys), etc. She hopes that all these problems get resolved by approving the *New Bill of Protecting the Children and Adolescents* by the parliament.

Mousavi Chalak, the president of Social Assistance Committee of Iran, in his interview with Isna also has emphasized that the social policies on children's rights in Iran should be analysed, evaluated and get evidenced, so that we could recognize our weaknesses and strengths in order to plan for the country's goals regarding children.⁴¹⁵

There has not been any authority in the field of children's rights in Iran until a few years ago but now there is an institution called the "National Reference of Children's rights Convention". However, this authority does not have any executive responsibilities and has only some tasks of arrangements and reporting. As we have heard from one of our interviewees (Mastaneh, Interviewee #87), who is professional activist in the field of children's rights, this only reference also does not seem to be very efficient.

In sum, this first overview of the Iranian condition of the child's right leads us to point two elements to keep in mind: the fundamentalist interpretation of Islam affecting the legal system and the deficiencies in the public policies of Iran regarding the rights of children. It is good to know

⁴¹⁴ The basic punishment of slaughter in Iran's legal system is Ghisas which means that the same thing should happen for the crime committer i.e. death penalty in case of killing someone.

⁴¹⁵ Hassan MOUSAVI CHALAK, *The essence of analyzing social policies regarding children*, 21 octobre 2015, en ligne : <<https://www.isna.ir/news/94072918791>> (consulté le 22 novembre 2018).

that a deep desire towards new representation of the child by public order has been turned into a common demand by the Iranian nation as the pro-democratic movements in the contemporary Iran.

2- Reflection on Children's Rights Condition in Iran through the Empirical Results

We turn now to our empirical results. What weaknesses and deficiencies this field can reveal in regard to the children's right to "proper education"? The observed social representations give us a good idea of what difficulties this society can face according to the social representations of children's rights in the elementary schools, such as what we call a "traditional form of authority" in the educational system of Iran and also an overlooking approach to the rights of children in the public policies.

2-1. Traditional Mode of Authority in Educational System

One considerable conclusion that could be extracted from the observed field (Iranian elementary schools) is a fact that what we call here a phenomenon of social pregnancy of a "traditional model of authority" (according to Gérard Mendel theories applied to general educational field by Violaine Lemay⁴¹⁶) which seems to be existing in the educational system of Iran. In other words, the relationship of teacher-student or parents-students still follows a rather traditional order of power (authority) where the superordinate party (the adult) does not share any bit of autonomy, responsibility or useful knowledge with the vulnerable (the child). So let's first present this quite interesting theory before listing the Iranian social occurrences matching this theory.

⁴¹⁶ V. LEMAY, préc., note 21.

a. “Traditional and Modern Authority”: Mendel’s Theory applied to Education

According to Violaine Lemay, what would be called the “psychological modernity” seems to be an unescapable event of the occidental world. It has been discussed extensively in her PhD thesis on “pedagogical contract” in which she explains how the form of authority over the child changes in this shift:

“L'avènement de la modernité psychologique, dont on peut faire remonter très loin le germe, mais dont la théorisation ne pouvait émerger qu'avec la genèse de la toute nouvelle conscience de soi (*ego*) et sa science (la psychologie), apparaît ainsi comme une mutation dans la façon de gérer l'antique subordination intergénérationnelle et, par extension, de l'asymétrie en compétence entre les personnes. Dans la société traditionnelle, les aînés se retrouvaient en position de force puisqu'à travers l'expérience, ils avaient acquis les connaissances nécessaires à la survie. Les benjamins, privés de ces connaissances, avaient besoin de la protection du groupe pour survivre. Le rapport de force antique et brut imposait la subordination des personnes en position de faiblesse sociocognitive.⁴¹⁷ »

Lemay focuses on the analysis of the educational authority. A fact catches her attention. In the twentieth century, social work, psychology and, more recently, pedagogy appear to be the three similar theories of intervention: these three theories that call themselves "contractual" (some without the knowledge of others) because they prescribe to the holder of power the same rules of *relational sharing*: 1-do not decide only based on your own idea (*share ideas*) 2-do not decide everything alone (*share autonomy*); 3- do not look at each other as unworthy to explanation (*share*

⁴¹⁷*Id.*, p. 151-152.

information); 4-do not look at yourself as the sole responsible (*share obligations*). These four are praised in their respective disciplines because of their spontaneous "clinical adherence": in other words, when the authority holder exercises power according to this model, his subordinates not only adhere to his orders, but seek his command. That is the reason this movement is now strong in the health systems, at the root of the "patient expertise" growing around the world.⁴¹⁸

What is important now is to understand why the contractual authority model causes membership effects in subordinates. From a combined reading of the work of Gerard Mendel and Boris Cyrulnik, Lemay recalls that the contractual model in fact meets a psycho-emotional need presenting in every human being. Mendel's theories describe the phenomenon of authority as an *empirically* universal phenomenon: it is present at all times and among all peoples. Mendel sees this as a phenomenon of psychofamily origin, a reminiscence of the fact that every human being has necessarily been one day under the authority of an older person.

« Le nourrisson et le jeune enfant dépendent des adultes pour leur survie. Il est inévitable qu'ils ressentent par intermittence de l'agressivité envers ces adultes qui, obligatoirement, sont à certains moments frustrants. Le corrélatif, lui aussi inévitable, de cette agressivité est une peur d'être abandonné. A partir de ces processus, qui pourraient n'être que momentanés, l'adulte depuis les débuts de l'humanité a construit le phénomène d'autorité. »⁴¹⁹

An anthropologically fundamental structure emerges from this common experience; it becomes a model of social belonging instinctively pursued by the human: that of a solidarity unit turned towards survival. As a result, the human would be an animal whose specificity would be looking

⁴¹⁸ For example :V. LEMAY, P. HAMET, C. HIZEL, É LEMARIÉ et Y. TREMBLAY, « Personalized Medicine: Interdisciplinary Perspective, World Tidal Wave, and Potential Growth for the Emerging Countries », dans *Progress and Challenges in Precision Medicine*, Elsevier, 2017, p. 301- 314.

⁴¹⁹ Gérard MENDEL, *Pour décoloniser l'enfant: sociopsychanalyse de l'autorité*, Paris, petite bibliothèque Payot, 1971, p. 302-303.

for belonging to a clan where the sharing of decisions, information and responsibilities maximizes the chances of survival of the group. It revolts more readily against the "archaic" power that fails to obey this model: the authority gives orders, but it does not explain why; it decides everything and takes no note of any collective responsibility. Then the authority enters into a typical crisis and the phenomenon called "modernity" (including astonishingly all disciplinary acceptance of the concept) appears, always be related in some way to an authority phenomenon: it is the authority with "contractual" dimension as a social critique to a previous and traditional dimension. While the archaistic authority is a traditional imposing form of power, the contractual form suits the psychological modernity which comes with shared authority instead of totalitarianism and with negotiation instead of imposing the norms. The "contract" of work would have replaced slavery: it is *Ploutos*, economic modernity according to Mendel. The social "contract" would have replaced the dictatorship: it is *Demos*, the "political modernity" according to Mendel.⁴²⁰ Then, the contemporary world would be emerging as *Ego*, Mendel's "psychological modernity". The one version of the model that is the most important for this current thesis. Then Lemay links it to Boris Cyrulnik works on resilience: human, and particularity child, would instinctively seek for contractual form of authority because it nurtures the growth of the resilience potential.

Cyrulnik's theories of child resilience add to the understanding of Mendel's theories by revealing how much the contractual authority model is needed to build the resilience potential of children. According to Cyrulnik, many Western models of education, though paved with good intentions, fail to entrust real responsibilities to children. Many families, with parents overworked, tired and absent, fail to explain the children why the labor is "survival". They fail to share

⁴²⁰He goes further towards political sciences in : Gérard MENDEL, *Pourquoi la démocratie est en panne: construire la démocratie participative*, La découverte, 2012.

“information and responsibilities” with the little being subordinates of the clan. The sense of belonging and utility to the clan does not appear. They then try to give orders, but to no avail. The children's revolt is smoldering. School authorities who unconsciously obey the same unchallenged models then experience the same pitfalls. Paradoxically then, for many children in revolt, membership in street gangs will increase: they will find small guys who will give them responsibilities to the height of their abilities, who will give them orders by explaining why, in terms of clan interest.

The situation explains the low resilience potential of many Western children, says Cyrulkik, because this educational authority structure is necessary for their psycho-emotional development and maturation. The author explains the explosive speed of psychological healing of African warrior children, having experienced dozens of atrocities, compared to the slow and difficult healing of Western children seeing much lighter sentences: the first have often lived in the poverty, but they had access to the feeling of belonging to a solidarity unit focused on survival. It is the natural tendency of the child to seek authority capable of nourishing his potential for resilience, which explains the spontaneous adherence of the subordinate to the contractual forms of power. If he does not find it at home or at school, he will find it in groups of friends and even in merchants, whose sales techniques today use and abuse this process of producing unconscious adhesion.

Let us note that this concept—contractual authority—is in many ways similar to that of *assabyia* as the concept which is used by the great Muslim author, Ibn Khaldun (1332-1406).

« L' 'assabiya est traduite par esprit de clan, esprit public et même capital social. Elle renvoie à une force psychologique qui unit les membres de plusieurs clans et leur procure la possibilité d'accéder au pouvoir. »⁴²¹[...]

⁴²¹ Sahbi NABLIA, *La conceptualisation de la société civile islamiste selon Ibn Khaldūn: vers une première lecture du printemps arabe*, PhD Thesis, Montreal, Université du Québec à Montréal, 2011, p. 114.

« Je dis qu'il n'y a pas de pouvoir sans « assabiyya ». [...] C'est le nœud de toute ma théorie sociale et politique, voire de toute ma vision de la civilisation et de l'histoire. La « assabiyya » est au cœur du pouvoir, et le pouvoir est au cœur du fonctionnement de la société et du développement de la civilisation... »⁴²²

This notion once again reveals the prognosticator character of this great Muslim author, who is still and sadly not yet widely known in the West. A bit like Mendel and Cyrulnik at Lemay, who wrote on the twentieth century, he had the intuition of common anthropological traits explaining peoples' adherence to certain powers and the impact of this adherence on the destiny of collective relations.

Observing the elementary schools of Islamic-Iranian society in this thesis project reveals a very close connection with psychoanalytic theory of Mendel and also those of Cyrulnik and Ibn Khaldun. While an existing “archaic” model of power fails to fully respect the rights of children in the educational system of Iran, a socio-political change towards the “contractual authority” would be a survival path for the future generation of this society by paying more attention to the development of psychology and the psycho-emotional needs of children.

b. Empirical Occurrences Related to the Traditional Authority in School

The empirical material (content of the interviews) is another source to be observed and analysed to become “considerable” conclusions for the current thesis. Let us now review some of those occurrences and explain why we relate them to the theoretical authority model presented above.

⁴²² Abdesselam CHEDDADI, *Ibn Khaldoun*, Casablanca, La croisée des chemins, 2016, p. 145.

Occurrence #1: We observed a confusion in understanding children's rights among some teachers. They had a fear of ending up to the "kingdom of children" by recognizing and teaching the children's rights. We already explained that phenomenon as the result of a wrong association of the "fundamental rights" for the kids (to be protected against any unhuman violence) and the childish desire not to obey their legitimate parental order. The adults then think that putting a limit to parental authority means necessarily falling into an "all or nothing" process. Either parental authority would come from nature and suffers no limit at all or it is exaggerated, putting the educator in nonsense position where a child could not be taught by the norms, behaviors and limits that he needs to learn for his own good.

When one reflects on this point, it can be linked to the social pregnancy of an archaic understanding of educational authority which cannot imagine any concession to the subordinate (in the sense that no reference would be at all to the "contractual" form of relationship between adults and children.) The teachers and parents seem to believe in a legitimate authority for the adults over the kids that child subject of law would dissolve in a non-sense "kingdom of child" and then the poles of the vertical relationship between adult and child would be reversed.

Occurrence #2: In the discourse of the children we met, we observed a very high tendency of children to be free to run and play. The kids usually complain that they are not allowed to play and have physical activities as they wish. We considered the right to play and run as a crucial right for the children according to their basic need to move and play. Although the children's desire to play and run has been a repeating fact for us to be noticed as their right in this thesis, a more fundamental reflection leads us to ask why there are so much complain about that. It reveals, in our idea, the traditional form of psychology which seems to be ruling in the educational system of this society: stronger parties (adults) have power and decide what they prefer without accepting any

compromise in satisfying the weaker (children). Just as the time when kids complain about being controlled everywhere in the school by the cameras and feel insecure under these unwanted and sometimes unnoticed control. It seems the decrease of traditional reign power on children, characterized by total absence of limit, never even began.

Occurrence #3: We have mentioned the student's desire to break the rules of school whenever they catch an opportunity and they feel proud because they find the school's rule unjust, not only according to their need but also because they see themselves as subordinates in this authority structure. It goes up to the point when they ask for the right to "not to go to school", which is not a logic demand in the adult's point of view as they consider education as the means of kid's well-being and flourishing but for a child who is not convinced about what he/she has to do in his/her life, there is always a right to be wrong. The children want to be heard and get involved in everything related to their very own life -childhood-. This type of child resistance to school norms and authority, like we will explain later in this chapter⁴²³, reveals a phenomenon linked to the weak type of educational power or authority, the "archaic one in Mendel's terms", because of its lack of the effect of clinical adherence that produces a more "modern" one.

Occurrence #4: We have talked about the effect of cooperative methods of teachers on children's happiness in the school. Although the point that happiness is a right for children and an aim-method for education has been observed, a deeper analysis would lead us to the point that a cooperative method of teaching is considered as an alternative for the students —probably not as a default method— for which they scream; they like it because it suits their psychologically desired pattern of learning. The modern method of teaching confirms this modern psychology and teachers have

⁴²³ *Infra*, p. 356.

mentioned some skills in this regard in our interviews but whether they actualize these theories in their real relationship with their students or not, is a matter of doubt.

Occurrence #5: According to Mendel, the typical vertical form of relationship of adults-children starts from the families. That is the fact being observed in our empirical study where the teachers emphasise on the role of families in respecting children's rights. "If the kid's rights are not respected in the families, how do the parents expect them to be respected in the school?" (Atoosa, Interview #67) This teacher – by saying this sentence – does not want to ignore the schools' responsibility regarding the children's right rather tends to show the significance of family's role in changing the traditional form of authority relationship settled in the society. The modern psychological reform should happen in the society starting from the families, then we could expect the modernity reform in school's authority relationships actualized from theory to the action.

These observed occurrences in the empirical field that states the existence of traditional form of authority in the Iranian educational system, should be recognized as a significant deficiency in the Iranian condition of children's right to proper education in order to find the appropriate resolution for this issue. Below, comes the second empirical conclusion illustrating another difficulty in this field.

2-2. Overlooking Children's Rights in Iranian Public Policy

Another idea extracting from the field is an observed social representation of public policy of Iran regarding children's rights which indicates the interviewees' unhappiness about the general social policies of the society about the children's rights.

Occurrence #1: We have discussed a very general disappointment of people regarding children's rights exercise in the society. We observed a negative reaction from the interviewees when they

have been asked about children's rights condition in Iranian schools. They presented either an unawareness of the rights of kids or complaining about not being respected.

“I have no idea about children's rights and it is not only me. I would say the society is not aware of that.” (Mehrnaz, teacher of 2nd grade, Interview #76) “There are many types of discriminations in our educational system: religious, linguistic and gender discrimination. We receive many reports on sexual abuse of children.” (Mastaneh, children's rights activist, interview #87)

The observations in our field show a common sense among the people of negligence about children's rights, or even more generally, human rights in Iran's society. People who are directly in contact with children —being either the parents, teachers or children's rights activists—do not believe that the public policy of the country is working in favor of protecting children's rights.

One could say that a common dissatisfaction about the condition of human rights in this society is not a matter of surprise because the lack of free expression and free media in Iran does not really let the people be in the real stream of news and facts which are happening around them. They cannot trust the official statistics as they have a feeling that the truth is being hidden from them. So each time they hear a disastrous news about the children, they come to the conclusion that there must be even something worse. They actually extent their unhappiness about their own condition to everything related to the governmental policies. The general distrust amongst people and political power causes a general negative view about the exercise of human rights in the society.

Occurrence #2: The sexual security of children is a very important subject of social policies which has been discussed in our empirical analysis. How could a mother, whose son has experienced a sexual abuse in the very first grade of public elementary school, trust the social and political efforts of the public power anymore? The problem gets worse when we observe the fact that people

usually keep silence when they face such abuses, so the statistic around this issue is never an accurate one. This is another problem identified by V.Lemay⁴²⁴ as an indicator of social inertia in favor of habits of no limited power of the adult on the child. For example, when common sense still approve the only jurisdiction of the father on the child, and the idea of the child only as the object of law still exists, the public denunciation of the pedophile father is highly unlikely: isn't his family jurisdiction sacred and legitimate? Isn't the child his own property? Then it stays untouched immemorial law of silence. In contemporary Iran, there seem to be no education toward protecting children from sexual abuses because the public policy of educational system still believes that these are the red lines for the kids and might mislead them to sexual deviation rather than protecting them.

Occurrence #3: Another example of dissatisfaction about public efforts to execute children's rights in the society has been presented when we discussed the issue of children with handicaps in educational system. The children with minor and major problems have the right to receive "proper education" but it seems that the social constructions in Iran does not allow them to fully benefit their rights despite the legal protection of handicapped persons' rights. Shirin, the mother of a 10 years old boy, extends her son's experience to the whole society because she does not feel that any solution exists for such a problems in her society. "We don't have such a thing [education separation for children with special needs]! My son had a classmate who used to take lots of pills and used to hit the other students!"(Shirin, Interviewee#62)

Occurrence #4: The big difference between the quality of education in public and private schools could also be a symbolic sign for deficiency of educational policies in Iran. The private schools

⁴²⁴ V. LEMAY, préc., note 404.

offer a higher quality of education and treatment for students, while it is still very difficult for most of the people to afford the expenses of private schooling for their children. This has also been approved by some quantitative and qualitative researches such as an article which indicates a considerable difference in structural learning between the public and private schools. Regarding this empirical research, the private schools have a higher quality in all the aspects of structural learning comparing to the public schools.⁴²⁵

It seems that the basic rights of children—sexual security, proper education and right to their physical integrity (not to get corporal punishment) —are a lot more easily disrespected in public schools rather than in private ones. Why should be such a gap between private and public education that makes the majority of parents and teachers concerned about? Is this not a clear discrimination which seems to be neglected by the policy makers of educational system? This is despite the fact that the education in Iran is a centralized matter and all the schools' main structures and curriculum should follow the same system indicated by the central policy of the government. But what happens in the case of quality of education and the resulted discrimination through the high paid/private schools vs. public schools, seems to be abandoned. However on that matter, one could mention that Iran's context of seizure between private and public schools may probably be compared the same to the situation of dozens of other countries.

Occurrence #5: Finally, another element of the field leads us to the same conclusion of public deficiency. It comes from the complaining of a children's rights activist about the lack of public efforts in actual protection of children's rights. "You have an organization for 'promoting the

⁴²⁵Hasan ZAREI MATIN, Gholamreza JANDAGHI et Boshra MOEENI, « Considering and comparing the extent of structural learning in public and private schools of Qom in 2002-2003 », (2003) 3-22 *J. Handl. Cult.* 47-68.

consumption of egg'; what organization do you have for the 'children's rights'?!” she addresses the policy makers and high executors of the country. (Mastaneh, Interviewee #87)

This is how the problems of the children's rights in the Iranian society could be observed among the social representations of deficiency in the general policies of children's right in educational system. As a jurist who is preparing a critical legal essay to help the Iranian governance in this case, these empirical founding would be precious data for implementing a suitable cure. One must be aware of the social problems of an issue to become able to look for the appropriate resolutions. Knowing the most important deficiencies of the Iranian educational system regarding the right to proper education – i.e. traditional for of authority and public policies issues – we could now continue the rational path of suggesting remedies.

Step Two: The Observed Iranian Socio-Cultural features to be Considered for any Potential Improvement

In this step, it is now time to look for the actual potentials of the field research (chap. 3) that could help us achieve our goal. Here, we ask ourselves whether there are any potentials that have been observed in the Iranian society to be considered as the opening point toward a change. What social representations, observed in chapter three, could be taken into account in this field before advising the Iranian governance in order to improve the condition of children's right to "proper education"?

While the goal is to find an adaptable version of children's right to education to the socio-cultural context of Iranian society and to approach the respect of kids' "right to proper education", considering the socially embedded elements would be undeniable. We will present two significant notion in this regard: first is the pro-democratic movement and social representation of a high demand for human rights implementation and secondly the fact that this high desire for human rights protection is naturally and unavoidably attached to the Islamic concept of *the good life*.

1. Pro-Democratic Social Representation in Iranian Elementary Schools

Having observed the field of elementary schools by talking to the children and teachers, we have come to the conclusion which is, despite all the actual difficulties and complains that exist against the respecting children's right to "proper education", a very high tendency and desire to build up a democratic sphere can be seen amongst the students, teachers and parents. This is deduced from results presented previously.

Occurrence #1: Among our empirical data we faced a very mature understanding of children's rights concept in some young students. They were aware of the difficult situation of many children

in the society who deserve to benefit the children's rights as they do already, like the right to education and not to work in the streets. "The children in the street must be helped by the municipality and other [organizations.]" By saying this, Ahmad showed his adherence to the idea of the responsibility of state organizations in taking care of children's rights in the society. (Ahmad, 13 year-old-boy, Interviewe#7)

While it is more common for the children to care only about their own interest and desires, it seems very impressive to find out that, in this society, the children's understanding and caring about children's rights go beyond their own immediate desires. In Canada, maybe because of large middle class and reduced gaps between the wealthy and the poor child, children usually do not think about such things like "children left on the street", aspiring to "rights" to protect them. But children in the Iranian society can see the vulnerable children very closely. It probably explains why they can become concerned about their fundamental rights to live, to educate, to receive food, etc. The ones whom we met, talked about it in a way that presents a certain comprehension that these rights of the children come with the duty of the government to act toward respecting them. Quite interesting when one keeps in mind that we are talking here of mainly prepubescent kids. So we can probably say here that we have a positive human potential here to use in some way, if one legislator wants to enforce child's rights.

Occurrence #2: Another interesting phenomenon showed up in our field of inquiry: the children's desire to political acting toward democracy in the school's area. It is true that the students complained about the students' association for not being very effective, but is this also not a developed sign of their understanding of what should be expected form a democratic structure?

Every year in almost every elementary school of Iran, an election takes place with all its appliances. The students become candidate and present their plans. They compete in different ways (which

may seem very basic and even funny sometimes for the adults) to attract the other students' vote. They vote and select their representatives, then they expect the association to work for their interests. Yes, they complain sometimes that the association is not beneficial enough...

“We had an election day and voting program for the student association for which the students were very active and exited. It was just like a real election and the students voted regarding the candidates plan and I think they had proper choices. This is the result of trusting the children and letting them perform their capacity of understanding.” (Masoud, teacher, Interviewee #66)

Regardless of how effective is the association at the end, is this not a democratic practice in the very young ages of the childhood? Is this not a call for having democracy in the wider spheres? Is this not a presentation of a social desire to democracy that takes place among the very young generations? Comparing again to the situation of other countries, one can surely ask for the hypothesis of a big difference. In a country where parents and society in general do not feel the lack of democratic processes, kids are less likely to inherit from their elders the want of voting and the increasing power of peoples' representatives. In sum and again, we can probably say here that we have a positive human potential here to use in some way, if one legislator wants to enforce child's rights.

Occurrence #3: We presented a considerable skill amongst the young girls in dispute resolution. Having observed the girls who were trying to prevent any struggles with their classmates or to resolve peacefully the issues what happens between them, we came wonder if the concept of peace and friendship was more understood among the society of girls. Could this behavior be an indicator of the women's desire to participate in developing a democratic society respecting the peace and human rights? Is the women's general will preparing through their young daughters' acting? We

must be vigilant here, the risk to take one's desire for reality being is high. But the hypothesis worth to be said, as long as it is not purely impossible and then can be, among others, a reason for hope and a potential way to borrow.

Putting aside a women oriented analysis of a democratic desire in the studied field of Iran, the understanding of some concepts like peace and dispute resolution in the very young children of this society could be a matter of sociopolitical analysis by itself. The kids talk about the concept of peace as a means of "the good life". Even though they refer so often to their religious background on this subject, however, they represent a social desire to peace and human rights in their own level of perform.

Occurrence #4: We mentioned in our empirical field a very explicit wish of the teachers and parents that human rights be taught to the children in the schools. We have asked them if they agree to teach human rights to the kids and they mostly answered positively. The majority of the interviewees seemed to find the idea of teaching such a modern concepts to the children not only helpful in their training for the future of the society but also, in some cases, as an essential need for them to be able to be protected from the children's rights violence.

"I am hundred percent agree to the idea of teaching human rights to children. Everybody should know about his/her rights from childhood through the adulthood. Many social issues are the consequence of unawareness." (Farideh, teacher of 3rd grade, interview #68)

The social representation of the demand for human rights training in the observed fields lead us again to the conclusion that there is a desire in this society to start the reform toward a human rights respecting sphere where the democratic structure is probably the base.

However, what we have seen in our field as a high tendency of children, teachers and parents to promote a democratic environment to the extent of their capabilities, must have a root in the bigger society of Iran either as a social or political desire to develop their quality of life to a higher level of democracy and human rights engagement.

Here, we try to show that such a pro-democratic movement has been floated in the Iranian society for a while (by indicating some of its historical, social and political aspects), so observing the same movement in the educational system of this society is not a matter of surprise.

1-1. Iranian Pro-Democratic Movement

Iran's history thorough the last century has been full of attempts toward establishing social and political modern elements, especially democracy. As a country with a long historical experience of over 2000 years of dictatorship, adopting the new concept of state, that supposedly would present the power to the people rather than the unquestionable authority of the kingdom, was not an easy step, considering the significant role of Islam and clergy in the socio-cultural context of Iran during the times. Therefore, several attempts have been made to theorize such a reform which could be categorized under: a very minimalistic democracy, a secular democracy or a religious democracy.⁴²⁶

However, the Iranian's effort to establish democracy in the society during the last hundred years is not deniable. Jalaiipour, an Iranian professor of political science describes the Iranian path through the last century as below:

“In the Constitutional Revolution (1906) while the number of middle class citizens were very small, the Iranian's request for democracy was

⁴²⁶ Mohammad Ali AKBARI, *Iranian's desire to democracy*, 2003, p. 70.

presented by establishing the Constitutional state. Later on during the Nationalist Movement (1953-58) by establishing the government of Mohammad Mosaddegh, and in 1978 by the Islamic Revolution [it continued.] In May 1997, by Khatami's government starting, the Iranian's desire to democracy peaked up while the new middle classes were the majority of big cities population. It was presented as a social movement, however, the execution of a parliamentary democracy still faces the difficulties."⁴²⁷

As Jalaiipour mentioned, there have been four significant waves of demand for democracy in Iranian contemporary history.⁴²⁸ While for the first time people tried to limit the authority of kingdom by the Rule of law (The Constitutional Revolution, 1906), the second time was during the prime ministry of Mosaddegh by Nationalisation of Iranian Oil Industry and then by the Islamic Revolution(1978) that ended finally the thousands years old monarchy. However, the presidential election of Khatami on 1997 was the most important recent movement toward the democracy demands of Iranians, which is called the *Reform movement*.

“In the May 26, 1997, millions of Iranians defied the wishes of Supreme Leader of Islamic Republic ...[and] elected a lesser known but reformist cleric with experience in public office, Seyyed Mohammad Khatami, to the presidency. For the overwhelming majority of Iranian electorates, Khatami's promises during the presidential campaign to protect individual rights and promote democratic practices suggested a new day in Iranian politics- the beginning of the end of dogmatic theocracy and concrete steps

⁴²⁷ Hamidreza JALAIPOUR, « Theoretical thoughts on the democracy in contemporary Iran », (2004) 23 *Lett. Soc. Sci. J.* 191-200, 192.

⁴²⁸ Arezoo RAVANESTAN, « The effect of universal pro-democratic movements on the Iran's state and people relationship », (2017) 22 *J. Int. Investig.* 47-67.

in the direction of establishing democracy in the country, albeit under the rubric of the Islamic Republic.”⁴²⁹

After the reform movement, the socio-political groups in Iran started to develop democratic and civil norms in which the concepts of civil society, pluralism, democracy, dialogue, tolerance, competition, participation, etc. were the main principles. Despite all these political efforts to open the society to the democratic views and the emergence of civil society, the process of passing towards democracy in Iran has always been faced with ideological obstacles that ended up to some failures in this path.⁴³⁰ However, the current desire of Iranian people to democracy which is the result of many socio-political expenses paid by this nation, is promising by itself.⁴³¹

Iranian people seem to be still in the path of learning democracy, while trying to practice it in small levels such as schools as we observed in our field investigation. They seek a human rights respecting society and they know that “wherever human rights are violated, there is no democracy.”⁴³² Women’s activities in this regard are also not negligible as it has also been proved in our observation of the field in their roles as teachers and NGO activists.⁴³³

⁴²⁹Ali GHEISSARI et Vali NASR, *Democracy in Iran: history and the quest for liberty*, Oxford University Press, 2009, p. 5.

⁴³⁰Hosein BASHIRIYEH, *The transition toward democracy*, Negahe Mo’aser publication, 2008, p. 99.

⁴³¹ Mohammad Ali HOMAYOUN KATOZIAN, *Tyranny, Democracy and Nationalist Movement*, Tehran, Markaz Publication, 1993, p. 20.

⁴³²Ebrahim YAZDI, « Pro-Democratic Movement », (2006) 75 *Reflect. Thoughts Baztabe Andisheh* 7-12, 1.

⁴³³ Researches have written a lot about women’s movements effect on the pro-democracy movements in Iran, for example:

-Soheila VAHDATI, « Our request for democracy and the women’s movement », (2005) 67 *Reflect. Thoughts Baztabe Andisheh* 14-18.

-Mehrnaz NAGHIBI, « Women’s participation, process of request for democracy and the public sphere », (2004) 59 *Media J.* 179-186.

After all, even though the Iranian people's desire to democracy has still difficulties to get actualization, what remains to be found by them is their own proper pattern of democracy consistent with their national-Islamic identity and their own geopolitical condition.

“After passing through the fruitful historical experiences that happened to Iranians, this nation have come to this conclusion that to sustain its existence among the changing 21st century geopolitics of the world, it has no other way other than high steps towards a domestic democracy... It is now clear for all the nations that democracy[...] is not a luxury gift cloth for which the body of nations must be carved. It is rather a not-sewed cloth which will be sewed only by the hands of those nations and for their very own cultural body.”⁴³⁴

Let us here focus of the latter words of this quotation... “Domestic democracy [...] is rather a not-sewed cloth which will be sewed only by the hands of those nations and for their very own cultural body”. One could not better express the critical global approach of this legal essay.

However, social demand for democracy and human rights in this society seems not to be detachable from the Islamic concept of *the good life* what they have been taught through the ages of being under the effect of Islamic culture. This is what we will see in the next section.

⁴³⁴Pirouz MOJTAHEDZADEH, *Democracy and Iranian Identity*, Tehran, Kavir Publication, 2007, p. 104.

2. A Naturally and Unavoidably Embeddedness of “Human Rights Social Representations” in Islamic Culture of Iranian

One of the very noticeable features of Iranian society facing with the question of human rights/ children’s rights seems to be the Islamic embeddedness concept of “the good life” and “the good human being” in the Iranian culture. This was also a matter of notice in our interviews and observations in the field of elementary schools.

Occurrence #1: We were asking the very young children in the school if they have heard about human rights or people’s rights. Interestingly, we used to get answers linked to the religious concepts like God’s will and God’s rewarding. The concepts of “equality” and “peace” were straightly defined through the God’s wish while “fighting” and “being cruel” were toward the Evil’s wish and against the God’s willing to be a good human being. For the kids of eight or nine years old, this shows that their image of respecting other’s rights comes with concept of “good” and “bad” which apparently comes from the Islamic context of where they are culturally being nourished.

Here are some of children’s discourses indicating what has been claimed above:

“All the people are God’s creatures, so they are all equal.” (Ana, 10 years old girl, Interview #34)

“God doesn’t like people to fight; this is what the evil likes and God will get upset!” (Nazanin, 8 years old girl, Interview #42)

“God created us to be friend ad not to fight.” (Mina, 9 years old girl, Interview #35)

“If we do cruel things to other people, God won’t like us anymore.” (Saba, 7 years old girl, Interview #44)

“We have somehow in our divine gift book about the people’s rights. It says that we have to be nice to others and not to fight with other people so the God will reward us.” (Tooran, 9 years old girl, Interview #52)

Teacher’s discourses also show a considerable tendency to rely on Islamic culture in recognizing children’s rights. Not only some teachers perform some Islamic practices in the classroom like praying before starting the course, etc., but also many of them mentioned Islam as a rich source for the rights of children:

“Islam has imaged the highest rights for the kids including the right to be respected, to be loved and treated nicely, to get their basic needs fulfilled: emotional needs and a need for socio-moral education.” (Marzieh, 3rd grade teacher, Interview 85)

“Islam has the best rules for the human beings including the kids.” (Hanieh, 3rd grade teacher, Interviewee #78)

“Islam has recognized the rights for the kids the same as the adults.”(Mandana, 2nd grade teacher, Interviewee # 75)

Occurrence #2: Another unconscious —or conscious to some extents—effect of Islamic context on the social representations of children’s rights was the adults’ definition of the “age of childhood”. Some of our interviewees showed a tendency to have an Islamic view about the differentiation between girls and boys childhood age. Girls are supposed to be considered as “not a child anymore” after the age of 9 years old or at most the age of physical puberty, while the situation is different for the boys. The boys’ age of puberty (and consequently the end of childhood) is at least 15 years old. This is obviously an Islamic-based definition of childhood.

People’s understanding of the end of childhood comes only with the Islamic defined age of puberty while the age of 9 for the girls and 15 for the boys are supposed to be just considered as the age of

spiritual maturity or beginning the spiritual practices for human being even according to Islam regulations. So the ages of civil or criminal responsibility have been assumed differently regarding modern interpretations of Islam- Shari'a⁴³⁵.

Moreover, the Islamic and ideological educational system of Iran has also an undeniable effect on the Iranian religion oriented understanding of human rights and “the good life”. We will, here, take a look at the long tradition of the Islamic-ideological educational system in Iran., while at the same time, a modern and enlightened interpretation of Islam is also observable in Iranian contemporary society. These two factors will explain our observation of social representations of children’s rights in elementary schools and will answer the question of why and how human rights social understanding of children and also teachers is significantly embedded in the Islamic concept of “the good life” and “the good human being”.

2-1. Islamic Educational System in Iran

A factor that plays a significant role, in forming an Islamic social representation of human rights in the elementary schools of Iran, is the fact of an Islamic educational system, for which the roots could also be found in the religious based education in this country through the times.

⁴³⁵ The age of childhood has been discussed earlier in this thesis under the section of Iranian legal system and the modern interpretations of Shari 'a will be discussed briefly further in the current section.

The studies on the history of education in Iran have found the religious based education for the kids even in the pre-Islamic period. Iranian were Zoroastrian⁴³⁶ in that time and were educating their children at home or in the fire temples principally regarding morality and religion.⁴³⁷

The children's education method continued to be almost the same after Islam came to the scene of the history. The kids used to be gathered in some individual's houses and after a while in the Mosques⁴³⁸ to learn reading, writing and moral/religious lessons all according to Islamic teachings and using Islamic sources especially Quran.⁴³⁹

This traditional form of education continued to exist during centuries so that education became kind of restricted to religious education and in the hands of Clergy. This was the case until the age of Qajar dynasty that started the project of modernization in Iran. Their attempt to initiate modern schooling was opposed by clergy as they believed that it will be an anti-Islamic or de-Islamization project. However, on 1851 finally, a modern high school called Daar o'l Fonoun (Polytechnic high school) was founded in Tehran which was designed with the western methods of training. Daar o'l Fonoun became an inspiring institution for Pahlavi⁴⁴⁰ dynasty to continue the educational reform attempts that included a kind of de-Islamization of schools and curriculums.⁴⁴¹

⁴³⁶ Zoroastrianism was the ancient religion in Iran where the prophet, Zoroaster, emerged and taught people the three main principles of his religion: Good Thinking, Good Talking and Good treating. (Pendar 'e Nik, Goftar 'e Nik, Raftar 'e Nik)

⁴³⁷ Ali SOHBATLOO, « Education in Ancient Iran », (2008) 231 *Teach. Dev. J.*, 18-21.

⁴³⁸ Later on the places where the kids used to go for education were called "Maktab" means a place to read books or a place to learn reading and writing. The education system in "Maktab" were usually very tough for the children. The kids were supposed to learn Quran and also the most important Persian literature books. Physical punishments were a common rule in these small traditional schools (Maktab).

⁴³⁹ Naser TAKMIL HOMAYOUN, « Forming the first state of educating children in Iran's Islamic period », (2002) 43 *Farhang J.* 33-46.

⁴⁴⁰ The last dynasty kingdom ruling over Iran before Islamic revelation 1978.

⁴⁴¹ Yasin TAMER, *Basic changes in Iranian education system before and after Islamic Revolution*, Master thesis, Ankara, Turkey, Middle East Technical University, 2010, p. 27-28.

Iran has experienced two contracting policies before and after Islamic revolution in 1978 which were mainly de-Islamization before the revolution and Islamization afterward. This change unavoidably affected the elementary educational system and curriculum in which the policy-makers had plan to build up the future society. Zarean states that, after revolution, the concepts of Nationalism, westernization, pre-Islam values and secularism were totally refused:

“From the very beginning of the first year of the elementary cycle, the students in Islamic Republic begin to learn about Islam from different directions. While they learn spiritual and moral aspects in an individual domain, they learn how to apply these values in their social and even political life. At the same time, they are trained to oppose those pre-Revolutionary values that were magnified by the Pahlavis and still, to some extent, are evident in society.”⁴⁴²

The religious, ideological and political tendencies in elementary education is obvious in the document of “Aims of elementary education”, approved on May eighteen 2005, according to which the student at the end of elementary school (11 years old) should believe in the principles of Islam, should have to respect the Islamic rules regarding the relationship with counter sex, should be interested in religious governing and be aware of Islam’s contemporary enemies and also be familiar with the concept of “National security”!⁴⁴³

The results of some other researchers, such as Mobinnn Shorish⁴⁴⁴ and Bhram Mohsenpour⁴⁴⁵ on the contents of elementary curriculum in Iran, as well as what we have observed in the field

⁴⁴²Mohammad Javad ZAREAN, *Islamic values and their reflection in the Iranian elementary textbooks: Islamization in post-revolutionary Iran.*, PhD Thesis, McGill University, 1998, p. 273-274.

⁴⁴³M. MANSOORI BOROOJENI, préc., note 124, p. 35.

⁴⁴⁴ M. M. SHORISH, préc., note 346.

⁴⁴⁵Bahram MOHSENPOUR, « Philosophy of education in postrevolutionary Iran », (1988) 32-1 *Comp. Educ. Rev.* 76-86, 76-86.

investigation of this thesis, confirm the fact that primary educational system of post-revolutionary Iran eventually leads to creation of Islamic person with specific ideological features.⁴⁴⁶

No wonder when we ask very young children what they think of *respecting people's rights*, their reaction comes up with a *divine normative structure* which will punish them if they become cruel to others so they try to make friendship with the classmates in order to achieve the satisfaction of God.⁴⁴⁷ All historical culture in which those children live is embedded in normative approach to Islam.

We tried to clarify to some extent the social and historical context of religious education in Iran in which the religious common sense of “rights” is not detachable from the Iranian Islamic concept of “being a good human being” or the essence of the “good life” as one of the most important results extracted from the field. Let us now observe a modern approach to Islamic views which is more compatible with human rights regulations.

2-2.The Modern and Enlighted Interpretations of Islam in Iranian Intellectuals

One could observe the specific approach of Iranian to the Islamic culture which is far from the conservative interpretation of Islam and seems to be compatible with human rights recognition. We seek to open this discussion in a social context to see how it has been formulated in Iranian

⁴⁴⁶ Section.4.17 in chapter 3: **freedom of religion and freedom from religion: signs of religious based education in Iran**

⁴⁴⁷ We have mentioned the examples of this immediate link between Islamic concept and the concept of human rights for the children in the section.4.3 of chapter 3: **Children's expression of human rights linked to the Islamic concepts**

society who claims neither being occidental nor purely Islamic. It is then a complicated concept of being both historical and cultural.

It is a matter of consideration how Iranian, with a long and rich Persian cultural history, faced Islam at one point and accepted it whether under the force of sword or because of their social contextual need. It is also interesting how Islam little by little became part of Iranian culture and created an *Islamic-Iranian identity*. And suddenly in the age of modernity they faced the occidental concept of human rights and tried to adopt it into their culture along with the project of modernity. Well, it is certainly a complex social process. We need to talk about it briefly here, to show that what the children and teachers are talking about seems to us not detachable from what the Iranian society has experienced.

While Nationalism has been an element of Iranian identity, there have been always discussions on the relationship of Iranian nationalism with Islam. According to an extremist nationalism view, being Iranian is contradicted to being Muslim because Islam has been imposed upon Persian culture with the force of sword. But according to a moderate point of view, the existence and acceptance of Islam during the long post-Islam history of Iran cannot be ignored. This is what Zarean states in his PhD thesis (McGill University) about the undeniable *Islamic Nationalist Iranian Identity*. He says:

“Besides the Islamic facet of Persian culture, which expanded greatly after the emergence of Islam, the national Iranian identity, according to this view, has lasted and remains as strong as ever. In spite of the dominance of Islamic tradition within the country, Iranians succeeded in maintaining their identity as Iranians even while accepting Islam. Simply put, Iranians

never became Arab, nor did they accept pure Arabic tradition from the time of ignorance.”⁴⁴⁸

However, it could be said that the Iran’s Islamic Revolution on 1978 was a reaction to de-Islamization policies of the ruling power in Iran during the two last dynasties (Qajar and Pahlavi⁴⁴⁹) which were trying to bring the modernity to Iran’s society and used to see Islam as a barrier of this process. Zarean believes that although the tendency of Iranian society to oppose this de-Islamization combined with the socio-economic challenges of the time, turned finally to the Islamic revolution, the political efforts in eliminating Islam from the society and emphasizing on the Persian nationality had its effects.⁴⁵⁰ Therefore, in the contemporary Iran, neither the Nationalist nor the Islamic aspects of Iranian Identity cannot be neglected.

The other significant period in Iran’s process of modernization especially in socio-political enlightenment was after the presidential election of Mohammad Khatami on 1997, who was representing the reformist approach in politics. He claimed for *freedom in the society and* came up with the suggestion of *dialogue amongst civilizations* in the UN⁴⁵¹. Shadi Mokhtari also mentions this change in Iran’s dealing with the modern subjects especially human rights after the election of Khatami:

“Prior to 1997, the Islamic Republic frequently dismissed criticism of its human rights practices as Western, imperialist, un-Islamic and politically motivated. However, the 1997 election of Mohamad Khatami opened up space for the emergence of a strong reform movement within civil society

⁴⁴⁸ M. J. ZAREAN, préc., note 441, p. 51.

⁴⁴⁹ The two last dynasties (kingdom) that ruled over Iran from 1796 to 1978.

⁴⁵⁰ M. J. ZAREAN, préc., note 441, p. 33-63.

⁴⁵¹ UNESCO. DIRECTOR-GENERAL, *Dialogue among civilizations: the round table on the eve of the United Nations Millennium Summit - UNESCO Digital Library*, New York, Round Table on Dialogue among Civilizations(2000), 2001, en ligne : <<https://unesdoc.unesco.org/ark:/48223/pf0000123890>> (consulté le 14 février 2019).

and the government. Central to this movement has been the debate over human rights in an Islamic society. Khatami and a largely pro-reform civil society have shifted the focus from duties within Islam to rights within Islam, contesting the justifications and bases for human rights violations cited internationally. What has emerged is the prominence of interpretations of Islam and Islamic law that emphasize human dignity, justice, and tolerance.”⁴⁵²

The religious enlightenment, then, spread up in Islamic academic sphere of Iran and the intellectuals tried to theorize the adoption of concepts of secularism, democracy and human rights in the Islamic culture of Iran. Among them, Abdolkarim Soroush is one of the most well-known enlightened thinkers and writers. His specific contribution in new interpretations of Islam was “theoretical contraction and expansion of the shari’a”⁴⁵³ according to which Islamic jurisprudence must follow rational theology, involving the constant reinterpretation of Islam in accordance with the growth of knowledge outside of religion, particularly in science and philosophy.

Soroush’s ideas on democracy, secularism and human rights have been criticized by Islamic fundamentalists in Iran, especially the political power, but his tremendous effect on the modern understanding of Iranian society of Islam is unquestionable. However, he believes that in the challenge of religion, tradition, modernity and political secularism, the crisis of Iranian culture must be acknowledged and remedied through the harmonizing and rational efforts.⁴⁵⁴

⁴⁵² Shadi MOKHTARI, « The search for human rights within an Islamic framework in Iran », (2004) 94-4 *Muslim World* 469-479, 470.

⁴⁵³ Abdolkarim SORUSH, *theoretical contraction and expansion of the shari’a*, 11th éd., Serat Publication, 2009.

⁴⁵⁴ Afshin Matin-asgari, Abdolkarim Soroush and the Secularization of Islamic Thought in Iran, *Iranian Studies*, Vol. 30, No. 1/2 (Winter - Spring, 1997), pp. 95-115

- To read more about Soroush’s effectiveness on the democratic movements in Iran see also:

Forough JAHANBAKHSI, *Islam, democracy and religious modernism in Iran, 1953-2000: from Bāzargān to Soroush*, 77, Brill, 2001.

In sum, one could follow the process of bilateral identity of Iranian society with all its ups and downs through the time but still the Islamic and nationalist aspects have not been separable.

The fruit of this brief survey around the social-historical experience of Iran's society in our subject is the fact that Iranian's common sense of human rights is unavoidably embedded in their Islamic point of view because Islam as a very inclusive religion in all the human being's life features, has become a specific part of Iranian culture although they are pretty advanced now in presenting modern interpretations of Islam in accordance with the essentials of modern life.

Therefore, a both normative and ethical based subject of human rights can be barely understood by Iranian society without referring to normative and ethical nature of their religion, Islam. That is maybe the reason why the very young kids relate the concept of human rights to the concept of moral "good" and "bad" and the teachers refer to Islamic teachings as the source of the best guide for human being's "good life".

Having reviewed the two significant features of Iranian society — the pro-democratic social representations and an Islamic embeddedness in the concept of human rights—and considering the fact that an enlightening stream in the interpretation of Islam is growing in this country, we should now look for the specific suggestions for the Iranian governance in order to approach a concept of children's right to "proper education" which is consistent to its very own *Islamic-Iranian identity*. The next step will discuss this question.

Step Three: Suggestions for Iranian Governance to Move toward a Better Protection of Children’s Right to “Proper Education”

In this third and final step of forming critical legal essay, we now present our suggestions, the ones we hope to be useful for a child ‘rights advocacy and that could be applicable in Iran as a society with all its specific legal, cultural and social features. Therefore, putting together the legal, empirical and philosophical outputs of this thesis so far, we come to the conclusion that the Iranian governance in the educational system could benefit a change toward the Virtue ethical concept of “proper education” which seems to be a modern and contractual type of education adapted to the Islamic cultural context of this society. In this section, however, we will discuss about this suggestion while separating two different aspects: 1. the suggestion for a change toward a modern and contractual authority in the educational system by using the tool of “contractual pedagogy”; 2. a link to the virtue ethic and its affection on the general educational policies to serve the Islamic cultural and political aspect of Iranian society.

1. First Proposal: Contractual Pedagogy to Overcome the Traditional mode of Education

As explained above⁴⁵⁵, the “psychological modernity” in Mendel’s terms is probably an unescapable event in Occident, but it is probably an unescapable event in the developing country of Iran too, which stands in contrast to the traditional forms of social structures. Having said that, it becomes rather logical to take the path to “contractual modernity theory” and transform it as a tool to renew traditional authoritarian forms towards a best support of child’s right in Iran society.

⁴⁵⁵ *Supra*, p. 323.

1-1. Characteristics of Contractual Authority in the Educational System

Hereby, we first summarize the four mentioned characteristics of a contractual pedagogical authority in Violaine Lemay's work. We then signal the presence or absence of them in Iranian education system according to our observations. Although we came above to the conclusion of lacking such a socio-psychological modernity in our investigated field, we also have noticed some practices that already seem to be open to this movement without knowing it. A few interviewed teachers seemed in fact to be practitioners in search of what we call "proper education", in terms of respecting children's rights.

a. Negotiation

According theory of "contractual modern form of authority"⁴⁵⁶ presented in previous sections, negotiation has been referred as a common principle in modern forms of relationships between the authority holders and subordinates, as it gives the opportunity to the latter ones to express their idea and choices and builds up a positive identity for them by providing a contractual context in which the subordinates' rhythm is also taken in count in any development of project.

Claudie Ramond, applying the contractual model in education sphere, declares that in modern schools, the students and the teachers could be active at the same time although with different tasks. This will lead to a cooperative and active pedagogy. She describes the traditional schools as below:

« L'école traditionnelle est le lieu de la passivité ritualisée chez les élèves
[...] puisque l'activité qui leur est demandée consiste le plus souvent à

⁴⁵⁶ *Supra*, p.323.

prendre en note ce que dit le professeur. Elle est par contre le lieu de l'hyperactivité des enseignants puisque tout ce qui se fait passe par eux [...]. Mais aux formes de structure institutionnalisée s'oppose le projet de personnes en recherche de la plus grande satisfaction possible [...]. Il n'est donc pas étonnant que les élèves, auxquels l'institution impose une structuration sans négociation possible, manifestent leur résistance de différentes façons. »⁴⁵⁷

This is what we have observed in the students of Iranian elementary schools in different ways. They try to show their identity by breaking the rules of school. They have never been negotiated about ruling the school's environment and are not even well justified about what they are obliged to do, so they become resistant in accepting the regulations. The students usually find the school's regulation unjust and unfair because they have received them as an imposing obligation with no regard to children's need of being useful and worthy of consideration and counterpart. In the section 4.10 in chapter 3 titled as: "Everything is forbidden but we still do!" we could see the common refusal of the legitimacy of school authority/regulation.

b. Sharing the Autonomy

In continuity of the principle of "negotiation", the principle of "sharing autonomy" will be applicable. It means that once the opinion of subordinates have been consulted, they should get participated in making decision in the cases where their own life and interests are involved. This is either because of a pragmatic point of view or a moral one that indicates the contractual relationships more efficient/functional or being just/moral. From a traditional point of view, only the superordinate of a professional relationship possesses a useful knowledge (the doctor, the

⁴⁵⁷André DE PERETTI et Claudie RAMOND, *Grandir: éducation et analyse transactionnelle*, Desclée De Brouwer, 2011, p. 257-258. In V. LEMAY, préc., note 21, p. 65.

teacher, the psychologist, etc.), but from this “modern authority” point of view, both parties possess one: the under ordinate is the only one to know which are his personal preferences, habits or experiences that one has to know to achieve goals of the relationship.

This factor is also in favor of making a more active sphere especially in the field of education in which Halina Prezmycki works as researcher. She believes that a contractual relationship in this field develops the students’ desire to learn because they find the process of education consistent with their apt and rhythm.

« Il y a le plaisir d'être libre de s'exprimer, d'être soi, celui d'être reconnu dans son vécu et ses goûts personnels, de proposer, d'être à l'origine d'initiatives, de décider et d'agir en fonction de cela et surtout d'être un partenaire qui a du pouvoir sur le monde extérieur sans avoir à se soumettre passivement à ce que pense et dit "l'autorité". Il faut également insister sur le plaisir de comprendre à son rythme [...]. »⁴⁵⁸

In our field, we had the feeling that the children’s desire for a cooperative type of teaching was a kind of aspiration for them. In the section 4.5 of the chapter 3, we have discussed what the students have experienced as a *happy education* by which we mean providing a cooperative environment in the classrooms to improve children’s enthusiasm to get involved in the process of learning which is not only more efficient in the sense of pedagogical aspect but also more in accordance with the children’s rights to “proper education.”

⁴⁵⁸Halina PRZESMYCKI, *La pédagogie de contrat*, Collection Pédagogies pour demain, Paris, Hachette Éducation, 1994, p. 16-18. Cited in V. LEMAY, préc., note 21, p. 67.

c. Communication of Knowledge

Communication of knowledge is another common factor in the modern human relationships especially in subordinate relationships. It includes a kind of pedagogical contract between the two interactors, i.e. there should be communication in all the information and methods of acting without considering the age or level of comprehension of the parties. In education science, specifically, the teacher should explain and clarify the reasons of her/his choices even if the clients in this contract are the children. It is something different than the traditional task of teacher which includes passing the information to the learners. It stays a vertical power relationship, but the verticality is voluntarily reduced. Then, it is more a horizontal, as long as communicative connection reduces the “imposing type”, transforming it in a more consensual form of transferring the knowledge to the students (they are still in compulsory school, but the feeling of it is softened.)

Violaine Lemay explains that this idea of communication and sharing knowledge in the field of education, has another virtue: it helps to eradicate negative social representations of the child, contradictory to the idea of the child subject of law:

« Par voie de conséquence, le principe de la communication du savoir, ou de la direction par l'enseignement, produit un changement de conception de la personne subordonnée, vécu comme étant politiquement nécessaire: on ne communique qu'avec quelqu'un qu'on accepte, au préalable, de regarder comme étant capable de comprendre; on ne prend la peine d'expliquer la rationalité de son exercice d'autorité qu'avec quelqu'un qu'on juge digne d'écoute et de respect. »⁴⁵⁹

⁴⁵⁹V. LEMAY, préc., note 21, p. 72.

The presence or absence of this principle in Iranian educational system depends again on the children-adult relationship in this sphere. It seems that although the teachers claim to be aware of the modern methods of teaching in the classrooms, there is still a gap between what they theoretically know and what practically happens.⁴⁶⁰ This is while students usually complain about the rules that they don't understand the rationality or they do not find them fair⁴⁶¹ and they are not well justified about the established cameras in the school area.⁴⁶² We could not consider the student-staff relationship following a communicative model either in sharing the information/justification about the rules of school or in respecting children as the right holders to be a part of pedagogical contract.

d. Sharing Responsibility

The principle of sharing the responsibilities, which includes the explanations of reciprocal obligations (or roles), belongs to both the teacher and the students; as it proposes the teachers and school's staff to make their goals and methods clear and justified (for the students and themselves) as well as explaining the students' tasks and obligations.

In the traditional type of pedagogical process, while the aim and path of the educational process were not clarified, the teacher-students relationship would have constructed on the basis of an archaistic authority because the teacher would have imagined her/his hands open to act regarding a vague and unexplained plan and the students would have imagined their tasks regarding the teachers undefined expectations. Prezmycki describes such a situation as below:

⁴⁶⁰ Section 4.8 in chapter 3 on the gap between teacher's talking and acting

⁴⁶¹ Section 8.4 in chapter 3 on the students' complain about the tough rules to limit their physical activities.

⁴⁶² Section 4.6 in chapter 3 on the student's complain of security cameras everywhere

« Dans le contrat tacite entre les élèves et l'école notamment, leurs obligations, figurant souvent dans le règlement intérieur, et les critères de réussite aux examens et de passage dans la classe supérieure, ne sont pas signifiés. [...] Enfin, des contrats implicites régissant le fonctionnement d'une classe afin d'enseigner sont "imaginés par les adultes" [... et] organisent l'imposition déguisée du pouvoir de l'enseignant auquel les élèves se soumettent de façon plus ou moins passive. »⁴⁶³

In sum, the clarification of the roles contains a clear atmosphere in the educational system in which the tasks and responsibilities are explicitly defined regarding the clear goals and methods of the education, while considering the different cognitive capacities of the task holders. This is what we did not really find in our observed field. The elementary schools of Iran, seemed to be more consistent with the traditional type of system.

⁴⁶³H. PRZESMYCKI, préc., note 457, p. 39.

1-2. Observation of Contractual Authority in the Iranian Schools: A Glance for an Open Future

However, despite the more often traditional representation of children-adult relationship in educational system of Iran, we also observed a few example of modern psychological attitude which were quite impressing in a basically different atmosphere.

Amongst all our interviewees, we found two teachers highly engaged in practicing the alternative method of education about whom we are going to talk. We will then show the capacity of educational system in actualizing what seems to be already introduced theoretically to the teachers.

Mahla (Interviewee #69) and Masoud (Interviewee #66) were two examples of what we would call the method and attitude toward the “proper education”. Masoud was the most well-known teacher in the school. He was actually a social trainer whose job would let him to be in contact with all the students of school. He started his work at the school with a different look and asked the director to leave him free to try his new method. He used to go to every classroom and make open conversations with the children. Asking children’s idea and give them the opportunity to express their talents and capabilities were his first mission. “I gave the chance to everybody to perform his talent.” Then he prepared a happy atmosphere for the students to develop their talent freely and not through an imposing type of relationship. He involved the students in an election for the students’ association in which the children improved their communicative activities. All the students recalled him as the only one who cares about their rights. We would not consider Masoud a perfect example of the “proper educator” —there is not such a person on earth as long as our principle of “proper education” is an ideal, but to open up the window in this direction, he plays a big role by inspiring the other teachers and the directors with just an alternative view of education.

Mahla, was another teacher who impressed us by her quite modern and thoughtful methods and ideas. She was a teacher in a school that lies in a quite vulnerable part of the city from an economical or cultural perspective. Despite, Mahla adopts a pedagogical behavior that seems to be a very democratic and modern model of education type. For example, she would say: “I would make some rules in the beginning days of the year with the help of children. We will discuss together about what rule would be good for the class.” She seems to be very familiar with the psychology of children and takes their rationality in count by letting them express about the method of ruling the class. She plays an intimate role among the students and leads them through talking about their issues. She tries also to clarify her role as a teacher for the students and her expectations by letting them practice the role of teacher for a while. “I make an intimate chair in the class, I sit on it close to the kids and ask one of them to play the role of teacher. By this method they get an idea of how it is to be the teacher and her expectations from the students. They also might have some suggestions for me as a teacher.” One sees clearly, with her, an implicit openness to basic Lemay’s “sharing” principles presented above.

Having observed these two examples of teachers whom we consider to be close to the alternative method of education we presented, we still believe that although there might be individuals who are trying to “contractualize” authoritarian relationship between adult and children, the educational system or even more generally the political and cultural system of a society should experience the change in this direction, however, through a Mendelian point of view the archaistic authority could only get eliminated from the change of family orders.

Yet, a very significant point should not be neglected while looking for a paradigm change in Iranian society from an archaic model to a modern and contractual form of authority. That would be the very prominent signs of Islamic culture which affect many social and political spheres of

this society including the social representations of concept of human rights and the form and content of education. This feature will be considered in the next section so we could achieve a theory that fits this very special society with its own characteristics.

2. Second Proposal: Virtue Ethic Theory in order to adapt the Modern Education with Islamic Cultural Context

As it has been observed and discussed extensively in the earlier sections, the Islamic aspect of Iranian society is not detachable from the social representations of children's right in educational sphere. Accordingly, the suggested paradigm shift — from a traditional form of authority in the educational policies to a “contractual” one which is compatible with the psychological modernity—, could not become a well-fitted advice for Iranian society unless we make an anchorage to Islamic cultural context of this field. We have to serve the oriental features of this part of the world rather than adopting just a universal and occidental model that might fail to response the needs of this specific people.

Therefore, while looking for a suitable form of educational policies for Iran, we will look up in the Islamic education's aims and features with its connections to the teachings of virtue ethics. And then, through the political views coming from virtue ethics, we try to suggest public policies for the Iranian governance in the educational system.

2-1. Islamic Education connected to Virtue Ethics as an Aim-Talk for Iranian Educational System

Our chosen ethical theory, in the second chapter of this thesis, helped us conceive the “proper education” as an alternative mode of education to improve the character of children toward an open future and self-flourishing. We have also shown the link we made between the virtue ethics and Islamic ethics. Now, we propose here that our conceived virtue ethical concept of the proper education is very well applicable in the society of Iran especially because of Islamic embeddedness

of the concept of *the good life* in our observed field. In fact, looking at the philosophy and aims of Islamic education approves this approach.

An analysis of the philosophy of Islamic education states that “(i) aiding individual development, (ii) increasing understanding of society and its social and moral rules and (iii) transmitting knowledge”⁴⁶⁴ are three main objectives of Islamic education and if they might not be seen in many Islamic countries in practice, it is mainly because of the influence of western ideas or failing in implementation of compatible methods.

These aims could be observed very similar to the virtue ethics approach in education which intends to develop virtuous characters who beside the attempt for an internally growth, are also devoted to develop their community toward a moral society. One could see the same rationality in the aims of education in Islam that regarding the *First World Conference on Muslim Education* held in Jeddah-Mecca (1977) is “to produce a good man. [And] the ultimate aim lies in the realisation of complete submission to Allah as the Creator, on the level of individual, community and humanity at large.”⁴⁶⁵

It could also be found in the philosophy of great Muslim thinkers like the 11th century Iranian theologian al-Ghazali and the 16th century Turkish moralist Kinalizade, whose writings about the Islamic education have been compared by J. Mark Halstead as quoted below. Let’s observe that their conceiving of Islamic education is rather similar to the conception that we achieved in the philosophical chapter of this thesis as the virtue ethic version of the “proper education”:

⁴⁶⁴ J. Mark HALSTEAD, « An Islamic concept of education », (2004) 40-4 *Comp. Educ.* 517- 529, 522- 523.

⁴⁶⁵ F. B. R. YASIN et M. JANI, « Islamic education: The philosophy, aim, and main features », (2013) 1-10 *Int. J. Educ. Res.* 1- 18, 3.

“Both scholars emphasise the role of parents in the moral upbringing of their own children, both consider the child to be a *tabula rasa* on which good habits can be imprinted, both discuss the tendency of young children to imitate others and hence stress the importance of encouraging good friendships and setting them a good example. Both discuss the importance of learning discipline, self-sufficiency and restraint, as well as generosity, politeness and humility. Both agree that teachers should genuinely care about their pupils, avoid excessive harshness, and encourage games as a way of relaxing and unwinding (as well as a way of familiarising them with the concept of rules).”⁴⁶⁶

Islamic philosophy of education aims to make a balance between the three dimensions of sense, mind and religious faith in order to achieve the human values in reality. So, the Islamic education is aware of the significance of developing the rationality and personal autonomy in attaining the human virtues. While Quran, as the main source of Islamic teaching, advises repeatedly to think rationally and avoid blind faith even in accepting the basic rules of Islam, the Islamic philosophers and authors have also focused on the role of knowledge, science and epistemology in achieving the ultimate truth:

“This education believes that human life progress is a duty of every Muslim. Progress achievement is done by activism of the three dimensions, namely epistemology production ought to rely on experimental and rational methods, while the ethical dimension constitutes as a reference and authority to every human activity. Thus, Knowledge and science had a functional role which comes to achieve better life for humankind.”⁴⁶⁷

⁴⁶⁶ J. Mark HALSTEAD, « Islamic values: a distinctive framework for moral education? », (2007) 36-3 *J. Moral Educ.* 283- 296, 290.

⁴⁶⁷ S. RAYAN, préc., note 7, 156.

Therefore, a short look at the Islamic education that is derived from the Islamic ethics and rationality reveals very much common points with the aims of virtue ethics theory derived from ancient Greek philosophy. The both aim to educate “a good man” in order to achieve the final goal of “the good life”. In both, the means of this moral character education in developing rationality in order to possess virtues. Knowing this similarities, now we can turn to the political aspect of virtue ethics theory to contribute in educational public policies of Islamic Iran.

2-2. The Contribution of Virtue Ethics in Educational Public Policies of Iran in order to achieve the “Proper Education”

In this last step of our critical essay, we will look for the political aspects of virtue ethics theory in order to help the Iranian governance in improving toward the protection of children’s right to “proper education”. As the public policies of Iranian governance have been discovered to be suffering from a traditional form of authority (earlier in the path of our critical discussion) which needs a reform toward a modern and contractual one, therefore, the main contribution of this thesis to help the Iranian governance will be in the field of public law which hopefully decreases the problems of educational public policies of this country.

In order to briefly access to the political philosophy ideas of virtue ethics, we would like to refer to the master thesis of the author of these words⁴⁶⁸, which has been a philosophical attempt to derive a theory of state from the moral philosophy of virtue ethics. Next lines are taken from this work.

⁴⁶⁸ F. BOSTANI, préc., note 163.

Virtue Ethics and the State (2011): In this thesis, the researcher first determines the three main principles of virtues ethics theory as virtue, practical wisdom and the eudemonia or happiness. Then through a vast moral philosophical study from ancient Greek to the contemporary virtue ethics philosophy, she concludes that the aim of happiness could be attained only through the possession of a rational capability named as practical wisdom which by itself guaranties the moral choices or virtuous characteristics. Then by reviewing the political philosophy literature of virtue ethics, including the ideas on the liberty (the virtue ethical approach to the *positive liberty*), the common good (the virtue ethical approach to the *communitarianism*) and the human flourishing or the good life (the virtue ethical approach to the *perfectionism*), finally the author suggests a model of state for the virtue ethics approach to the governance. This model of state is based on the communitarian characteristic of human being i.e. the character perfectionism is achievable through the social activities and exercising the internal virtues by positioning in similar external situations.⁴⁶⁹

This suggested virtue ethical state, then, stands on two basic principles, *virtues* and *practical wisdom*, that failing to adhere each of them will end up to a nonconsistency and internal paradox. Among the socio-political virtues that should become the principle virtues of the state are *Autonomy* (a personal virtue which is developed under the protection of positive liberty) and *Toleration* (a social virtue which causes a pluralistic society as an appropriate filed for improving self-flourishing). The practical wisdom, however, could be conceived as social aspect of the

⁴⁶⁹ See: David MCCABE, « Joseph Raz and the contextual argument for liberal perfectionism », (2001) 111-3 *Ethics* 493- 522.

For an Islamic literature example, refer to Ibn Khaldun:

“A single human being cannot live by himself, and his existence can materialize only in association with his fellow men. (Alone) he would be unable to have a complete existence and lead a complete life. By his very nature, he needs the cooperation of others to satisfy all his needs... God caused human beings to act in an orderly and well-arranged manner, as the result of their ability to think”. Ibn Khaldun, quoted in S. RAYAN, préc., note 7.

virtuous character that employs the internal practical wisdom toward external flourishing of the community. Therefore, a liberal state (either a Political Liberalism⁴⁷⁰ or Perfectionist Liberalism⁴⁷¹)⁴⁷² with the main task of education (in order to improve the practical wisdom autonomous characters) could be imagined for a virtue ethical state.

Having reviewed the political theory of virtue ethics, we can now adapt such a model of state in the public policies of Iranian governance regarding the protection of children's rights of "proper education". A virtue ethic educational system, then, would have to adhere two central principles: promoting autonomy/toleration and improving practical wisdom (moral rationality). According to the previous discussion on the political philosophy of virtue ethics, the educational policies of such a state would aim to provide the children *an open future* and a *flourished character*.

Although some authors believe that the unavoidable distance between Islamic and western liberal conceptions of education is "ultimately unbridgeable"⁴⁷³, but there is a conscious stream of thinking in Iran that seeks the modern democratic principles without surpassing the Islamic culture. This trend is known with the thoughts of Abdulkarim Soroush, the well-known figure among Islamic intellectuals and philosophers at the forefront of the reform movement in post-

⁴⁷⁰ Political Liberalism has been defended by John Rawls and Martha Nussbaum (a contemporary virtue ethics philosopher). Refer to:

John RAWLS, *Political liberalism*, Columbia University Press, 2005.

Martha C. NUSSBAUM, « Perfectionist liberalism and political liberalism », (2011) 39-1 *Philos. Public Aff.* 3- 45.

⁴⁷¹ Perfectionist Liberalism is defended by Joseph Raz. Refer to:

Francesco BIONDO, « Two types of liberal perfectionism », (2005) 18 *Ratio Juris* 519.

D. MCCABE, préc., note 468.

J. RAZ, préc., note 213.

⁴⁷² While the perfectionist liberalism believes in the priority of a form of life for which the liberal states has the duty of providing positive liberty (not being just neutral about all the values but also putting efforts in promoting the social value meaning autonomy in the contemporary world), the Political liberalism promotes the virtue of toleration by accepting that all the forms of life and religions could claim their own priority but have to respect and tolerate the other approaches. However, both of perfectionist and political liberalism focus on the autonomy as the principle virtue that would result in the ultimate good life or happiness for the human being.

⁴⁷³ S. Hussein Nasr, quoted in H. G. EATON, « Knowledge and the Sacred », (1982) 26-3 *Islam. Q.* 138- 148, 114.

revolutionary Iran.⁴⁷⁴ He emphasises on the role of reasoning and rationality in modern Islamic interpretations and therefore does not find it contradictive with the modern rationality of science and democracy:

“... a necessary prerequisite to democratization of religious government is to make religious thought more flexible by elevating the role of 'reason' in it; and that is not individual but collective reason, arising from the participation of all and benefiting from humanity's experiences; and this is possible only through democratic means.”⁴⁷⁵

Even though the Islamic state of Iran is not neutral about the best form of life and promotes the Islamic values in the society by its nature, our suggested model of education promotes these virtues only to some extent that do not limit the free circulation of information and liberty of expression of other forms of life or religions. Therefore, due to the result of such a pluralistic society, the children would have the chance to get informed about all the choices of their life and by benefiting an autonomous character, their right to an open future and self-flourishing would be served.

This education also benefits the contractual approach to the authority in the relationship of adults-children and employs the modern psychological methods in order to develop moral characters with the most probable mental health. The character education methods which are based on developing the character strengths with constructive responses and with the approach of a human rights friendly school would be suggestable in this educational policy.

Regarding the suggestions of this critical legal essay, thus, the Iranian governance could improve toward a better protection of children's right to “proper education”, if the Iranian public law moves

⁴⁷⁴ Farzin VAHDAT, « Post-revolutionary Islamic discourses on modernity in Iran: Expansion and contraction of human subjectivity », (2003) 35-4 *Int. J. Middle East Stud.* 599- 631, 599.

⁴⁷⁵ Abdolkarim SOROUSH, *Farbeh tar az Fde 'olozht [More Corpulent than Ideology]*, Tehran, Serat Publication, 1994, p. 280.

toward a more political liberalism which especially in its educational public policies aims to promote *autonomy* and *toleration* among the children who will build an open future for themselves and for their community. These children will be the fruit of enjoying the right to “proper education” regarding the very own cultural social features of Iranian contemporary society.

Conclusion of Chapter Four

By a simple precaution, let us recall that this final chapter has been initially announced to contain the main contribution of this atypical legal research to the law field. Its aim is to create a critical legal essay in order to answer the main question of this inquiry: *how to help the Iranian governance in improving towards the respect of children's right to "proper education"*? For this purpose, we put together all the previous results of this path including the classical legal study on the children's rights in international and internal law of Iran, the philosophical outcome of perceiving the concept of "proper education" and the empirical results presenting the social representations of human rights in Iranian educational system.

The structure of this critical legal essay has followed a rational path which started from looking critically at the legal system of Iran regarding the protection of children's right to proper education. In this step we used both the classical legal results and our empirical results of the field. We then asked: "what are the socio-legal problems of Iranian educational system that prevents the fulfillment of children's right to proper education?" so we have been inclined to conclude that this socio-legal system suffers from two significant problems: 1) a deficiency in the public policies of Iranian governance in children's affairs and the social inertia problem of the persistence of an obsolete and counterproductive form of educational authority—in the system, in the shared beliefs and in the actors' behaviors. 2) a conservative and fundamental interpretation of Islam also affects the legal and political approaches of Iranian state that decreases the efficiency of serving its international and ethical duties to protect children's rights. So, we concluded that these points should be considered the elements for improvement in order to attain the purpose of this research.

Observing these difficulties in our field of investigation, then, in the second step, we looked for the socio-cultural features of Iranian society which should be considered for any potential improvement. Two significant notions were detected in this regard: 1) a pro-democratic social collective hope and a high desire for human rights implementation, starting from the elementary schools; 2) an inseparable comprehension of human rights from Islamic culture in this field. Therefore, one stays optimistic to the openness of this developing country, as the irresistible desire of people for entering the world of democracy and human rights seems to be an open window through a paradigm change. However, no suggestion for a move toward human rights fulfillment could be negligent about the Islamic socio-cultural context of this country. The growing tree of modern interpretations of Islamic regulations in this culture is also a sign of openness for this modification of socio-cultural phenomenon which will also affect the political and legal structures. The key method probably lies in the adoption of such an occidental concept of human rights and democracy in the Islamic culture with some essential critical views to apply in the domestic culture of society.

Being equipped with all these information and critical analysis, in the third step, we looked for a final advice for the Iranian governance to get improved in the condition of children's right in the educational system, which will be a very domestic right to "proper education". First of all, a paradigm shift from the actual traditional form of authority into a modern "contractual" one, in the sense that Lemay means and which is compatible with the modern psychology of children is suggested. Because it seems that the contractual form of authority in the educational system (that includes negotiation, sharing autonomy, sharing information and sharing responsibilities) will change the public consideration of children-adult relationship and would spread in the whole

society from the families to the educational sphere. Yet, this modern shift still needs to be adapted with the Islamic cultural context of this society.

Our philosophical results helped us in this stage discover that the Iranian Islamic culture could be well-reflected in the virtue ethic theory with its main contribution in the education field. The Islamic education came out to have similarities with our virtue ethical conceive of education in the aims and methods.

Thus, we asked if the political aspect of virtue ethic theory could help the Iranian governance in developing its public policies of education. The master thesis of the author of these words came to the assistance in this regard. While this master research had a focus on a theory of state that could be derived from virtue ethics, the result of this public law inquiry could be used to improve the educational policies of Islamic Iranian society.

Having reviewed the political philosophy and the suggested theory of virtue ethics state and by reflecting the central public principles of such a government into the educational public policies, the conclusion was to advice the Iranian governance to approach a *liberal* form of policies that despite keeping its chosen main religion as Islam and developing the Islamic virtues, will focus on developing the two critical virtues of *autonomy* and *toleration*. By this policy, the Islamic and virtue ethical aim of “proper education” will be served to improve the condition of the children’s “right to an open future” and “the right to character flourishing”.

By these three steps of an interdisciplinary critical rationality, we tried to create a form of legal writing which is called by Jean-François Gaudreault-DesBiens as “faire du droit”. We did it to help the Iranian governance in improving towards a better protection of children’s right to “proper education”. For all these reasons presented above, the current thesis is not “any law thesis on

children's right to education" as it is not a "one size fits all" thesis: it is one specially "tailored" for the contemporary Iran.

General Conclusion

...il faudra d'autant plus de force pour contrecarrer l'inertie socioculturelle que l'habitude est de longue date et bien installée... Il reste donc à s'interroger sur le temps nécessaire pour modifier les habitudes collectives que les nouveaux droits de l'enfant ont pour objet de modifier.

—Violaine Lemay⁴⁷⁶

Children's right to "proper education" signifies not only a specific look at the right to education for the young generation, but also an inclusive concept of all the moral and legal recognised rights for the kids in relation to their everyday life in the educational system and according to their socio-cultural features and habits of the society where they live.

The International Convention on the Rights of Children (1989) as the most ratified human rights treaty—by 194 state parties, including Iran—has documented a variety of rights for the children from very fundamental ones like right to live, to identity and to being protected from violence to the social and political rights like freedom of thought, speech and association. Among all, the right of minor persons to be educated is a morally and legally agreed-upon right for the kids, while one could be curious of the scope of respecting this right in the day-to-day educational life of the children, especially in a non-occidental part of this world. Iran as an improving Islamic country in the Middle East has been the field of such inquiry.

The present research was started with the general aim of contributing to Iranian socio-legal policies improvement regarding the protection of children's right in the sphere of the educational system.

⁴⁷⁶ V. LEMAY, préc., note 19, p. 7.

There were neither a prejudice nor a hypothesis. The researcher just had a feeling that there is a rich field to be investigated and become involved theoretically and empirically.

Therefore, a classical legal study on the International law and the Iranian legal system was done in **the first chapter** as the start point of this research path because in a critical interdisciplinary thesis in the faculty of law, commencing from the host field is needed in order to prepare the dialogue among law and other fields of knowledge.

Our legal study in the first chapter illustrated that *The Convention on the Rights of Children (1989)* could be assumed as a widely agreed-upon criterion to oblige the states in order to protect the rights of minor persons.⁴⁷⁷ Yet, the legal system of Iran, despite joining the latter international treaty, reserves the conditions of Islamic regulations and, therefore, fails in some regards to fulfill its engagement to the Convention. The inexplicit position of Iranian legal system about the age of childhood is one of its general weak points, which brings unfair situations in child marriage and criminal convictions for the kids;⁴⁷⁸ while specifically in the education field, the freedom of thought and religion also tend to be disrespected for the children.⁴⁷⁹

Facing this international and Iranian legal status of children, then **the second chapter** presented a philosophical study on the rights of children and offered a critical approach to the steady position of law in order to broaden the scope of children's right to education adapted to the contextual condition of children in the specific field of this inquiry, Iran. We called it then the right to "proper" education which came out to be a moral and legal right for the kids under the category of

⁴⁷⁷ Convention on the Rights of the Child, Adopted and opened for signature, ratification and accession by General Assembly, resolution 44/25 of 20 November 1989, entry into force 2 September 1990, in accordance with article 49.

⁴⁷⁸ While the age of 18 has been stated by the Convention on the Rights of Children, the Iranian legal system is not clear in this regard and refers to the Islamic age of puberty which is determined differently according to the condition. Generally, the age of 9 for the girls and 15 for the boys is considered as the age of liability or eligibility for the persons.

⁴⁷⁹ Islam is taught and practiced in the educational system of Iran and the according to the Constitution of Iran, only a few recognised religions are allowed to teach and practice of their own.

developmental rights and their *right to an open future*. During this philosophical investigation, we conceived the concept of “proper education” benefiting from virtue ethics theory (and care ethics as a branch of virtue ethics) that has discussed extensively the essence and the quality of education for the children to develop their moral character. On the other hand, the ideas of virtue ethics being closely connected to Islamic ethics and Islamic education, served our concern of Islamic context of Iranian culture. Therefore, through our ethical and philosophical survey the features of the right to a “proper education” for the Iranian children were listed as: a) embedded in virtue ethic of Islam; b) is both a legal and a moral right; c) is more procedural than substantive that leads the students toward an open future; and, d) is aimed to flourish children’s moral character.

Setting out an interdisciplinary and critical conceptual framework for our inquiry, in **the third chapter**, we could then enter the experimental field to observe the actual life of children in the elementary schools of the Islamic country of Iran. This research intended to give a voice to the children of this improving country whose voice and view seemed to be less heard so far. Therefore, with an aim to advocate the rights of minor persons of a society with a challenging condition of human rights, this research appointed a *human rights advocacy* approach, firstly to increase the awareness of the designated society about the actual status of children in the educational system and then to have a role to empower this vulnerable part of society to participate in the modification of policies about their situation of rights.

Even though actualizing such a human rights research in this specific land was not without difficulties, the risk of being politically judged was taken with a faith in producing a scientific and improving as well as advocative action in respect of children’s rights in Iran. Therefore, the best representatives of the field including children, teachers and parents had been searched and interviewed randomly to find the facts of everyday educational life of the children. For this purpose

over eighty (80) interviews have been conducted. Then the children's and teachers' discourses have been analysed to present the social representations of human rights/children's rights in the elementary schools of Iran.

These social representations illustrated that while the concept of human rights/children's rights was partly in connection with the concept of "the good life" and "the religious conception of the good human being" for the kids, and therefore an imperative point of view was detectable in their thoughts about the concept of "rights"; there was also a considerable representation of mentioning their basic need to have fun and physical activities in relation to schools' policies and method of education.

For the teachers, while there seem to be a general unawareness or unhappiness about the respect of rights of children in the society and a general desire to teach them their rights to recover this condition, and even if they are mostly familiar with the modern psychology of children and creative methods of teaching, in practice, their actions do not seem to be in favor of alternative modes of education. However, the general policies of the educational system seem to be their excuse for the failure to fully respect children's rights in the schools.

The next step in analysing the data was to look for the specific results which could be extracted from gathered data considering the theoretical discussion in the first part of the thesis, in order to narrow down the results in responding to the main question about the right of Iranian children to "proper education". As many as twenty analysed experiments of the field have been proclaimed with which different sides of the educational system of Iran have been discussed regarding the children's rights and specifically their right to "proper education".

A very common reflection of Islamic and religious based morals have been detected in the children's representation of human rights, which is emergent through the curriculum and also the

teachers' advices and attitudes. This is along with a basically Islamic educational system in Iran, which has been mentioned in structural regulations and is visible among many aspects of the educational practice in the schools. Besides indicating the Islamic cultural context of this society, the freedom of religion for the children could be under question in such an ideologically formed education.

Some other significant emergent results seem to be regarding the factors which make the educational sphere an unpleasant place for the Iranian kids, like when they have a loud complaint about the limits on their right to have physical activities (right to play and run) or the physical punishment in the school. The undeniable fact of hearing some unpleasant experiences among the students' stories of school reveals the gap existing between the ideal right to "proper education" and the actual life of children in Iran.

While a very general claim of not having a children's rights respecting society could be seen among the interviewees' ideas and there is a dissatisfaction stream about the condition of children's rights in the educational system of Iran, there are also results that show a good understanding and a high desire among the children to practice a better condition of rights in the school. A very visible example of this fact is the practice of democracy by voting for the students' association and the efforts to have a role in decision making for their own affairs in the school.

At the final stage of this interdisciplinary research, equipped with the philosophical and empirical results of the previous chapters, we presented a critical legal essay in **the fourth chapter**. It was the main contribution of this thesis in the field of law specifically in the Iranian public law for which a critical analytical path consisting of three steps was taken.

In the first step, the socio-legal deficiencies of the Iranian society were detected. In fact, one could find out a prominent issue in the Iranian public policies through the both legal and empirical results

of this research, while two other difficulties could have been considered too: *a traditional mode of authority in the educational system of Iran* (the existing “archaic” model of power—in the sense of Mendel— fails to fully respect the rights of children in the educational system of Iran and does not share the information, authority and responsibilities with the students) and *a fundamental interpretation of Islam that highly influences the political-legal policies in regard to the rights of children* (there are always controversial discussions on the different views to Islamic rules among which a very conservative form of Islamic view seems to be considered in Iranian legislations, while the modern and enlightened interpretations of Islam are very popular in the Iranian society). In the second step of our argument in the critical legal essay, two significant features of Iranian society were detected that should be considered in suggesting any improvement resolution: 1) *a naturally and unavoidably embeddedness of “Human rights social representations” in Islamic culture of Iran*. Islam is not detachable from the Iranian culture, while the Iranians have a tendency to emphasise a nationalistic aspect of their Persian culture. The Iranian-Islamic identity of these populations, therefore, affects the actual life of their children in the educational sphere. And 2) *the pro-democratic social representation in Iranian elementary schools*. The Iranian society has started its modernization process since years ago with step-by-step efforts towards the implementation of democracy and human rights; this historical attempt opens up a hope and intention for the modification of authority style in this improving country.

Knowing these presuppositions, in the third step of our essay to help the Iranian public governance, we suggested two main points to consider in its educational policies to go over these difficulties in fully respecting children’s right to “proper” education: first, that this society (specifically the educational system) needs to have a shift from the actual traditional form of authority to the contractual modern one. This latter has been discussed extensively by Violaine Lemay in her PhD

thesis and the four characteristics of the ideal horizontal rapport have been stated as: *negotiation, sharing the authority, sharing the knowledge and finally sharing the responsibilities*.⁴⁸⁰

The second suggestion for the Iranian legislative governance, however, is related to the Islamic cultural context of this society which is unavoidable in all the reformist suggestions. The process of shifting to a modern contractual authority in educational system of Iran needs to be compatible with the Islamic culture of this field. Here, the philosophical results of our inquiry will be useful as they suggest an alternative mode of education which is embedded in virtue ethics of Islam and aim to provide an open future and self-flourishing for the children.

As we had already conducted a political philosophy research on the impact of virtue ethics on the features and tasks of the state (in our master thesis⁴⁸¹), in this specific situation we took advantage of the political aspects of virtue ethics theory to improve the Iranian public policies. The conclusion was to suggest the Iranian governance to approach a *liberal* form of policies in the educational system that promotes two significant virtues of *autonomy* and *toleration* while keeping at the same time the Islamic virtues as its main approach. The Iranian legislative governance, then, by such a paradigm shift to a modern psychology of children and contractual authority in educational sphere and by focusing on the improvement of students' moral autonomy and toleration to the pluralistic environment around them, could achieve the *Islamic virtuous goal of moral character flourishing* as well as serving the *right of children to an open future*. This internationally accepted right to education that fits "properly" the Iranian society, then, could be called as "proper education".

However, referring to the social-cultural inertia⁴⁸² against modification of social habits, the consequently long process of Iran's improvement toward the full respect of children's right to

⁴⁸⁰ V. LEMAY, préc., note 21.

⁴⁸¹ F. BOSTANI, préc., note 163.

⁴⁸² V. LEMAY, B. MOORE et C. BIDEAU-CAYRE, préc., note 21, pp. 6-7.

“proper education” is unavoidable; yet, the effect of every little advocative step of each scholar or practical actors are also undeniable.

The further scholar or action oriented projects to continue the path of current research would also be possible by working on the detailed legal regulations of Iran, to be improved regarding the respect of children’s right to “proper education” and to design a detailed plan of “proper education” for the children in elementary schools. In addition, the children’s rights activists could base their future activities on the need for changing the type of authority in this society to a contractual approach, either in the political power level by giving socio-political proposals or in the sphere of families and small classrooms by training parents and teacher.

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Index 1: Ethical Certificate of the Research Project

The following document is the copy of the ethical certificate of this research project for which all the process of this inquiry had been evaluated with the “Comité plurifacultaire en éthique de la recherche (CPER)” in 2016 when we started the project. Initially the research proposal was about a comparative study in Iran and Canada which had been modified afterward to do the sociological observation only in Iran. Therefore, the committee confirmed the same certification for the research in Iran with just a modification in the documentations and not in the original certificate.

Madame Fateme Bostani
Candidate au doctorat
Faculté de droit

OBJET: Approbation éthique

Mme Fateme Bostani,,

Le *Comité plurifacultaire d'éthique de la recherche (CPER)* a étudié le projet de recherche intitulé « Human Rights Social representations in Elementary Schools: A Comparative study in Iran and Canada » et a délivré le certificat d'éthique demandé suite à la satisfaction des exigences précédemment émises.

Notez qu'il y apparaît une mention relative à un suivi annuel et que le certificat comporte une date de fin de validité. En effet, afin de répondre aux exigences éthiques en vigueur au Canada et à l'Université de Montréal, nous devons exercer un suivi annuel auprès des chercheurs et étudiants-chercheurs.

De manière à rendre ce processus le plus simple possible et afin d'en tirer pour tous le plus grand profit, nous avons élaboré un court questionnaire qui vous permettra à la fois de satisfaire aux exigences du suivi et de nous faire part de vos commentaires et de vos besoins en matière d'éthique en cours de recherche. Ce questionnaire de suivi devra être rempli annuellement jusqu'à la fin du projet et pourra nous être retourné par courriel. La validité de l'approbation éthique est conditionnelle à ce suivi. Sur réception du dernier rapport de suivi en fin de projet, votre dossier sera clos.

Il est entendu que cela ne modifie en rien l'obligation pour le chercheur, tel qu'indiqué sur le certificat d'éthique, de signaler au CPER tout incident grave dès qu'il survient ou de lui faire part de tout changement anticipé au protocole de recherche.

Nous vous prions d'agréer, Madame, l'expression de nos sentiments les meilleurs,

Comité plurifacultaire d'éthique de la recherche (CPER)
Université de Montréal

JP/RS/rs

c.c. Gestion des certificats, BRDV
Violaine Lemay, professeure agrégée, Faculté de droit
Lidia Christine Charles
p.j. Certificat CPER-16-022-P

CERTIFICAT D'APPROBATION ÉTHIQUE

Le Comité plurifacultaire d'éthique de la recherche (CER), selon les procédures en vigueur, en vertu des documents qui lui ont été fournis, a examiné le projet de recherche suivant et conclu qu'il respecte les règles d'éthique énoncées dans la Politique sur la recherche avec des êtres humains de l'Université de Montréal.

Projet	
Titre du projet	Human Rights Social representations in Elementary Schools: A Comparative study in Iran and Canada
Étudiante requérant	Fateme Bostani Candidate au doctorat, Faculté de droit Université de Montréal
Financement	
Organisme	Non financé
Programme	--
Titre de l'octroi si différent	--
Numéro d'octroi	--
Chercheur principal	--
No de compte	--
Approbation reconnue	
Approbation émise par	non
Certificat:	s.o.

MODALITÉS D'APPLICATION

Tout changement anticipé au protocole de recherche doit être communiqué au CER qui en évaluera l'impact au chapitre de l'éthique.

Toute interruption prématurée du projet ou tout incident grave doit être immédiatement signalé au CER.

Selon les règles universitaires en vigueur, un suivi annuel est minimalement exigé pour maintenir la validité de la présente approbation éthique, et ce, jusqu'à la fin du projet. Le questionnaire de suivi est disponible sur la page web du CER.

Comité plurifacultaire d'éthique de la recherche
Université de Montréal

22 août 2016
Date de délivrance

1 septembre 2017
Date de fin de validité