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The Concept of Cognitive Equilibrium and its Legal Basis in Consumption Contracts: An Analytical Study

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Abstract

Objective: This research aims to examine cognitive balance in contracts, focusing on knowledge imbalances between parties, and develop a theoretical framework for understanding this aspect of contractual relationships.

Theoretical framework: The research's theoretical framework centers around cognitive balance as a legal principle that emerged in response to criticisms of the principle of the will of the sovereign. Legal scholars advocate for cognitive balance in contracts to address disparities between parties. It imposes obligations on the stronger party and adjusts the relationship, resulting in a more accurate measure of the contract.

Method: The research will use a qualitative methodology, analyzing legal literature, precedents, and frameworks. It will examine existing legal frameworks, case law, and consumer protection laws related to a cognitive imbalance in contracts. Economic and technological impacts on cognitive imbalance will also be explored.

Results and conclusion: This research provides a comprehensive analysis of cognitive imbalance in contracts and its implications. It develops a theoretical framework for cognitive balance, contributing to understanding and improving contractual relationships

Implications of the research: The findings have implications for legal practice and policy-making, emphasizing the importance of cognitive balance in contracts. It highlights the need to consider cognitive balance in legal frameworks and consumer protection laws, proposing measures to promote fairness and equality in contractual relationships.

Originality/value: This research explores cognitive balance in contracts, offering valuable insights into understanding and enhancing contractual relationships. It guides legal practitioners, policymakers, and scholars in addressing cognitive imbalances and promoting fairness in contracts.

Keywords: *Principle of contractual balance, Principle of the will of the sovereign, Criticism, Equality in contracts.*

1. Introduction

For a long time, the dominant theory in contract law revolved around the principle of the power of the will. However, as legal scholars started criticizing this principle and pointing out its shortcomings, the concept of contractual equilibrium emerged as a response. This principle acknowledges the existence of a strong party and a weak party in contractual relationships, offering a new perspective on contract theory.

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Understanding contractual equilibrium in terms of the consistency of performances between contracting parties, it becomes apparent that modern consumption contracts and the rapid advancements in technology require a different understanding of contractual equilibrium between the consumer and the service provider. Economic developments and technological progress have given rise to new consumption relationships that have a technical and artistic nature, highlighting the cognitive disparities between the professional and the consumer. Cognitive disparities have become a predominant characteristic in service contracts and all contracts where information plays a significant role.

Legal jurisprudence has mainly focused on examining cognitive disparities as a reason for contractual imbalances, exploring their nature, effects, and relationship to contractual disequilibrium. However, little attention has been given to the positive aspect of cognitive equilibrium as a separate concept in its own right within the realm of contract law. This research aims to fill that gap by analytically studying cognitive equilibrium, its conceptual framework, and its legal foundations.

The research will be divided into two sections. The first section will delve into the concept of cognitive equilibrium, exploring its definition, components, and relevance to contract law. The second section will focus on the legal basis for cognitive equilibrium, examining existing legal frameworks and precedents that support the notion of achieving balance in knowledge between contracting parties. By addressing this topic, the research seeks to contribute to the understanding and development of contractual relationships from the perspective of cognitive equilibrium.

2. Methodology

The methodology of the research can be summarized as following

1. Literature review: The author reviews the writings and perspectives of different jurists and legal researchers who have discussed cognitive equilibrium and contractual equilibrium. These sources are used to gather definitions and insights on the subject matter.

2. Definition analysis: The author analyzes the definitions provided by the jurists to gain a deeper understanding of cognitive equilibrium and contractual equilibrium. They highlight the common elements and themes present in these definitions.

3. Comparative analysis: The author compares and contrasts cognitive equilibrium with other forms of equilibrium, such as economic equilibrium and willful equilibrium. They explore the similarities and differences between these concepts and explain how cognitive equilibrium is distinct from the others.

4. Conceptualization: The author proposes their own definition of cognitive equilibrium based on the analysis of existing definitions. They aim to provide a comprehensive and inclusive definition that encompasses the subjective and objective aspects of cognitive equilibrium.

5. Causal analysis: The author discusses the causes and results of cognitive equilibrium, emphasizing the importance of knowledge parity and information equality between the parties in a contractual relationship.

6. Distinguishing cognitive equilibrium: The author explores the distinctions between cognitive equilibrium and other types of equilibrium, such as economic equilibrium and willful equilibrium. They highlight the unique aspects of cognitive equilibrium that differentiate it from the other forms.

Overall, the methodology used in the text involves reviewing existing literature, analyzing definitions and perspectives, making comparisons, and proposing a comprehensive understanding of cognitive equilibrium.

3. Results and Discussion

First: the definition of cognitive equilibrium in consumption contracts

We will try to search for the definition of cognitive equilibrium and to distinguish it from what is suspected in the following two paragraphs:

Based on the information provided in the previous messages, it appears that the methodology employed in the text is mainly focused on reviewing and analyzing existing definitions and perspectives on cognitive equilibrium and contractual equilibrium. The author references multiple jurists and legal researchers who have discussed and defined these concepts in various ways.

Definition of Cognitive Equilibrium:

The majority of jurists and legal researchers were interested in defining the meaning of cognitive equilibrium in addition to contractual equilibrium in general. Their interest focused on looking at this issue in terms of disequilibrium. Their writings focused on defining the meaning of contractual disequilibrium, and then defining the meaning of cognitive disequilibrium. In spite, some have tried, however few they are, to define the contractual equilibrium. Some of them defined it as "the harmonious composition of the content of the specified contract as a whole." (Langer, 2002).

The content of the contract is determined according to this perception by a set of rights and obligations that lead to economic exchange on the one hand, and in the economic exchange between performances on the other hand. (Makki, 2011). The proponents of this view distinguish between two types of equilibrium: the first is of a legal nature, represented by a set of contract conditions, including the rights and obligations that extend to it. The second is of an economic nature, commensurate with the economic process that the contract achieves through mutual performances. The contractual equilibrium is a combination of the legal and economic equilibrium, which make up the content of the contract (Makki, 2011).

Other scholars stated "the idea of contractual equilibrium is an idea as old as the legal systems, where its entity is based on the principle of proportionality, equality and equilibrium in the give and take between the two parties of the contractual relationship. What each party takes under the contract must be somewhat equivalent to what the other party gives. Otherwise, we will be faced with an economic disequilibrium between the obligations and rights generated by the contract, which leads to disequilibrium of contractual justice. Equilibrium represents the fair distribution of the elements of the whole, as it is the harmonious formation of the content of the contract. This harmonious dissemination can be estimated with less or more difficulty, depending on the degree of simplicity or complexity of the content of the contract (BinAzouz, 2013).

Others defined the meaning of the contractual equilibrium as "the rights and obligations of the parties at the time of making up the contract have arisen in a way that makes them financially balanced." (Al-Habashi, 2008).

Financial equilibrium does not mean arithmetical equality, but rather it is the honorable equation between rights and obligations that have been taken into consideration. It is simply a general guide that helps the judge determine the right amount due to the contractor in the event of a financial imbalance in the contract at issue. It should not be understood as aiming to achieve the absolute arithmetic equilibrium among the obligations and rights of the contracting parties. In the same context, Berthia, (1999)

defined it as “equivalence in performances, that is, in rights and obligations.” It seems clear that the previous definitions take the economic meaning as a basis for defining the concept of contractual equilibrium. Proportionality among performances is the criterion for achieving contractual equilibrium. The content of the contract, including the rights and obligations it includes, and what it aims at economically, is what depends on whether or not the contractual equilibrium is achieved.

In our estimation, the contractual equilibrium must be viewed in terms of its causes and result that must be reached. It must be viewed with a subjective criterion in terms of its causes and a physical criterion in terms of its effect. More precisely, the view of the contractual equilibrium must be comprehensive. The contractual equilibrium must extend to the will of the contracting parties in terms of freedom and knowledge when concluding the contract. This is the subjective standard, which also extends, on the other hand, to the result and purpose of the contractual relationship in terms of the corresponding performances between the two parties, and the parity or relative equilibrium among these performances. We cannot define the idea of cognitive equilibrium using the concept of contractual equilibrium, which jurists attempted to limit to the economic component. Therefore, we will try to define this concept by analyzing and discussing the definitions given by some jurists for the same cognitive disequilibrium. In this context, some of them argue that the concept of contractual disequilibrium is "inequality in knowledge and experience between the two parties of the contract, where we find one party possessing knowledge and experience and another party lacking information and data related to the contract that it will make." (Dawood, 2014). There are those who expressed this disequilibrium by saying, "two persons are unequal in information and contractual data, regardless of the their profession. (Kazim, 2020)

This occurs as soon as one of the contracting parties is more knowledgeable than the other without any other condition. Usually, the superior here obtains knowledge from his learning or from obtaining a specific certificate in a specific framework. The freelancers, such as doctors, lawyers, engineers, and others are among these superiors. In contrast, the expert may obtain knowledge from his regular practice of a specific activity, regardless of the reason for the practice, whether it is based on a certificate, a hobby, or something else. Among these craftsmen and manufacturers, as well as freelance. Therefore, the person with experience is more knowledgeable and familiar with the characteristics of contracting. Other stated that "it is a lack of information and general knowledge, where the lack is in technical and scientific ability. It is also a lack of sufficient knowledge in which the contractor realizes that his performance varies greatly." (Asali, 2015)

(Ahmed, N.D.) expressed disequilibrium by stating that the degree of cognitive disparity among individuals concerning data awareness related to contracts depends mainly on the fact that there is a simple person with little experience and knowledge. That person usually knows only a small amount of information related to what he deals with others other than the specialized person." In a particular field, who has huge amounts of data related to what he deals with by virtue of his specialization. (Langer, 2002)

The previous definitions agree on one criterion in determining the cognitive disequilibrium represented in the presence of one party in the contractual relationship who possesses information and data that are not known to the other party. The two parties are unequal in terms of knowledge of the content of the contract. Therefore, cognitive equilibrium is equality between the parties in knowledge. Based on this perception, we can define the cognitive equilibrium as "the consistent formation of the content of the cognitive contract in contracts in which information and data are a key factor in determining the content of the contract. The parties' awareness of the reality of this content is equal."

Distinguishing cognitive equilibrium from what is suspected:

We previously indicated that the contractual equilibrium in the light of the forms of the disequilibrium of this equilibrium is of three types: economic equilibrium, willful equilibrium, and cognitive equilibrium. Since the latter was one of the modern topics that focused a great deal on it with the emergence of the legal concept of consumer contracts, distinguishing it from the previous types or forms was unclear for some, which necessitated precise boundaries separating it from those types. Before delving into that, we must point out that the contractual equilibrium in its outcome is an economic equilibrium in reciprocal contracts. We do not mean here the economic equilibrium in the sense intended by the researchers in the scope of the economic disequilibrium as a result of the disparity in the economic status of the contractors. The contract, as stated by Stoffel, (2000), is the legal expression of an economic process." Economic exchange is the goal of the contract. As the terms of the contract are of an economic nature as well as their legal aspect. It can lead to achieve a benefit or paying a loss to the beneficiary (Makki, 2011).

In other words, looking at the intended purpose of the contract reveals its economic nature. This means that looking from the angle of the result means that the contractual equilibrium assumes parity in the performances between the two parties of the contract (Langer, 2002). This parity is achieved if there is an economic, cognitive and voluntary equilibrium between the two parties of the contract. The latter combined are the reasons for achieving contractual equilibrium between the two parties of the contract. Therefore, we do not support those who went from among the jurists (Badr, 2004) that the contractual equilibrium is achieved in the stage of formation of the contract when the cognitive equilibrium is achieved alone at this stage. This in turn leads to achieving equilibrium in the performances inevitably, or who stated that the cognitive equilibrium in the stage of formation of the contracts is not considered a contractual equilibrium in anything. Equilibrium in performances is what they count on. The implementation stage of the contract is the one on which the contractual equilibrium is relied upon. (Langer, 2002)

As for distinguishing the epistemological equilibrium from the economic equilibrium, the latter can be determined by the concept of contradiction to the statements of the jurists regarding the economic disequilibrium. According to a section of the law surrounding submitting contracts, it is "the circumstance that resulted in one of the contractual parties possessing a better economic position. (Sadah, 1946)

This superiority enabled the contract to have an overpowering will that could set conditions that could not be modified or altered. It may be possible for the powerful party to do so because it has a legal or actual monopoly on providing goods or services that are considered primary necessities to the public and must be contracted for. In the context of consumer contracts. (Rahma, 2018) explained the economic disequilibrium by two parties in the economic relationship, one of which is a producer and the other is a consumer. The producer, with economic ability, sets conditions on the consumer without negotiating with the latter. These conditions do not accept modification or discussion, with the aim of achieving the greatest amount of profit without taking into account the interest of the consumer. This is due either to the huge economic influence of the producer and his control over the market in the face of the economic weakness of the consumer or to the consumer's urgent need for the commodity or service provided by the producer (Al-Kalaby, 2012). (Adaluo, 2016)

Based on the foregoing, the economic equilibrium in the contract is represented in the relative parity in the economic power and influence of the two parties to the consumption contract. In this sense, it is distinguished from the cognitive equilibrium that relates to the parity of information and data between the two parties of the contract. Despite the clear difference between these two types of equilibrium, or more precisely between these two

types of contractual equilibrium causes, there are those who asserted (Mursi Zahra, 2008) that cognitive equilibrium does not have an independent existence from economic equilibrium. Simultaneously, within the scope of talking about the disequilibrium, the cognitive equilibrium can include that the disparity in economic and cognitive influence can be combined by one concept, which is the economic disequilibrium. The concept of economic and knowledge disequilibrium is based on the monopoly of one party of the contract for the necessary needs of the other party, as the concept of the contract of compliance developed to be defined by an economic standard centered around the economic and knowledge disparity between the two parties of the contract. However, we support those who stated that the contemporary technological development imposed new forms of weakness that were not discovered and its features were drawn only recently. This development resulted in a non-economic disparity, but an epistemological disparity between the parties of the contract, as is the case with the disparity between professionals and consumers. (Dawood, 2014)

Furthermore, the discrepancy in knowledge may be between two professional parties who have the ability and competence in their field of professionalism, for example, the producers of computers, as they excel in knowledge and experience over the distributors who resell these devices. (Jumi, 1996). Cognitive disparity is a disparity in knowledge, or know-how, which is called cognitive weakness (Abd-Ala'al, 2007).

Within the scope of distinguishing cognitive equilibrium from willful equilibrium, the latter is represented in the direction of the will of the two parties of the contract to conclude the contract without any defect of will. The principle of will power refers to the freedom of the parties to the contractual relationship in determining the rights and obligations arising from their agreement. This is based on the ability of each party to define its rights and obligations in the contract, away from the interference of the legislator, whose role is to fill any deficiency that may occur in this contract. But the reality indicates that there are many of these relationships that deviate from this basis through a defect of a personal nature that taints the will of one of the parties to the contractual relationship, and then a state of contractual disequilibrium arises between the parties to this relationship (Assali, 2015).

Since the contract is based on the congruence of two wills and not the congruence of two performances, therefore protection must focus on the will according to which the valid contract is established. Whenever the will is sound and not tainted by any of the defects, then it binds its owner to the contract and the ensuing rights and obligations, given that it is the sound will that achieves the contractual equilibrium. Consent is one of the most important pillars of the contractual relationship. If this relationship is marred by one of the defects of will due to error, coercion or exploitation, the contracting party whose will has been marred by one of these defects may request the judge to annul this contract. Here the judge has to exercise his role to remedy this disequilibrium arising from one of the defects of the will.

A common cause of contract disequilibrium is when someone contracts unfairly under the influence of economic coercion. The latter does not include coercion, which is stipulated in Article (112) of the Iraqi Civil Code, as it is "unlawfully forcing a person to do work without his consent," which is one of the conditions for the establishment of fear in the soul of the contracting party that compels him to contract, using material means of coercion. That which spoils satisfaction is not the material means used in coercion, but rather the awe that lies in the same contracting party (Al- Sanhouri, 1966). Benefiting from the poor position of the contractor, which leads to contracting with unfair terms included in the contract, i.e. an unfair objective disequilibrium between the performances of the parties that cannot be accepted under normal circumstances. Coercion, according to this concept, is considered a tool for addressing the contractual disequilibrium. Economic coercion is based on the contractual disequilibrium (Assali, 2015).

The economic dependency that one of the parties of the contract suffering from may contribute to the creation of critical economic conditions that are not immune from the constituent elements of coercion. Exploiting economic dependency with the intent of obtaining a benefit or gain due to fear of damage or harm that threatens the legitimate interests of the person. This new concept of coercion is made by the French judiciary through the introduction of the concept of coercion in the concept of exploitation of economic dependence This is in a contract assigning the author's rights to a woman working in a publishing house under the threat of dismissal from work. The French Court of Cassation saw that the worker's refusal to waive her copyright would weaken her position, given the damage represented by her real and serious exposure to dismissal from work. Consequently, this pressure was considered by the aforementioned court as economic coercion, which led to disequilibrium in the contractual equilibrium.

We see that the text of Article (125) of the Iraqi Civil Code, which stipulates that "if one of the contracting parties has exploited his need, indiscretion, whim, lack of experience, or lack of understanding, then he will be subjected to gross unfairness from his contract. Article (129) is an Egyptian civil that can be expanded to include Exploiting economic dependence to force a person to conclude a contract. The exploitation provided for in the aforementioned article has two elements, one of which is material, which is unfairness, i.e. the lack of equality between the two considerations, a discrepancy that leads to a contractual disequilibrium. As for the other element, which is psychological, it is represented in exploiting a need, recklessness, whim, and lack of experience (Al-Sanhouri, 1966). The occasions mentioned in the article in which unfairness is achieved are only examples. The text can accommodate every similar situation that affects the will of the person, forcing him to make an unfair contract between what he is obligated to provide as compensation and the benefit he gets. Based on the foregoing, the willful equilibrium is represented in equality in freedom and choice in the direction of the will of the two parties to conclude the contract. It is thus distinguished from the epistemological equilibrium, which assumes relative equality in knowing and appreciating the reality of the content of the contract.

Second: The role of cognitive equilibrium in consumption contracts:

Contracts of consumption are defined as "ordinary contracts that represent the supply or provision of tangible movable objects or services, but the provider of the commodity is a producer or a professional, and the recipient is the consumer or an ordinary individual who wants to satisfy a personal or family need unrelated to his commercial or professional activity" (Mansour, 2009).

Some scholars referred to the technical development in contracting by referring to electronic means in concluding a consumption contract. He defined it as "the contract concluded by electronic or traditional means between the professional and the consumer regarding goods or services provided by the first to the second to satisfy his personal or family needs." (Abu Amro, 2010)

Consumer contracts are concluded between a professional and a consumer which are goods and services provided by the first to the second, and with the tremendous development in technology, a large difference in knowledge has emerged between the two parties. Hence, the role of cognitive equilibrium in consumption contracts began to appear. The Iraqi legislator used the term (supplier) in Article (1/Sixth) of Consumer Protection Law No. (1) of 2011. He defined it as "every natural or legal person who is a producer, importer, exporter, distributor, seller of a commodity or a service provider, whether he is a principal, a mediator or an agent." The Egyptian legislator called it the "supplier", as Article (5/1) of the Egyptian Consumer Protection Law No. 181 of 2018 defined, "every person who practices a commercial, industrial, professional or craft activity that provides a service to the consumer, or produces, manufactures or imports a commodity, or issues, sells, rents, displays, trades, distributes or markets them.

This is in order to present it to the consumer or to deal or contract with him on it in any way, including electronic means and other modern technical means. The Iraqi legislator defined the consumer in Article (1 / Clause V) of the Consumer Protection Law No. (1) for the year 2011 as (the natural or legal person who supplies a commodity or service with the intention of benefiting from it). The Egyptian legislator also defined the consumer in Article (1/1) of the Consumer Protection Law No. 181 of 2018 as "every natural or legal person to whom a product is provided to satisfy his non-professional, non-professional, or non-commercial needs, or with whom a deal or contract is conducted in this regard." The concept of cognitive equilibrium sheds light on the weak side in the contractual relationship. This weakness was not based on a disparity in economic influence between the two parties, as is the case in contracts of acquiescence, but rather on a disparity in knowledge of what the latter represents in terms of information and data that lead to the consumer realizing the truth of the content of the contract or its subject. The consumer often has the ability to negotiate, but does not have enough information about the subject matter of the contract to enable him to reach an equal economic exchange in the outcome, that is, as a result of the contractual process.

The effect of this role appeared in the resort of jurisprudence to consider the cognitive disequilibrium as a criterion for consumption contracts (Dawood, 2014). The cognitive disequilibrium is the essence of consumption contracts (Kazim, 2020). Consumer contracts assume disequilibrium of knowledge between the professional and the consumer. This assumption is represented by a conclusive legal presumption that this equilibrium is imbalanced in this group of contracts (Dawood, 2014).

It is no longer the duty of the consumer to prove this disequilibrium. The mere conclusion of a contract on which the description of consumption is approved, the legislator assumes the presumption of cognitive ignorance. This prompted some jurisprudence in France to demand that the judiciary not tend to automatically apply the presumption of epistemological ignorance, and to make it a simple presumption that accepts proof of the opposite, in order to avoid considering it an objective rule that is applied automatically without any conditions. (Chazel,2000)

The legal basis for cognitive equilibrium in consumption contracts

The legal basis for any idea or system means investigating the legal rules or principles to interpret that idea or system. (Al-Barazanji, 1971). When the legal basis for cognitive equilibrium was not directly discussed by jurists of law, we found it necessary to find from the expressions of jurisprudence what can be considered a basis for contractual equilibrium in general and then a basis for cognitive equilibrium. This basis lies in the idea of public order, the idea of contractual justice, and the idea of reason, which we will discuss in the following paragraphs:

First: the idea of the general system:

Despite the difficulty of defining the idea of public order, some jurists (Murkus, 1987) defined it as "a set of legal rules that regulate interests that concern society more directly than concern individuals, whether those interests are political, social, economic or moral." (Hijazi, 1982) defined it as "a set of systems and rules intended to maintain the proper functioning of public interests in the state, and to ensure security and morality in transactions among individuals, as individuals may not exclude them in their agreements." The idea of public order is embodied in the imperative texts that the contracting parties may not agree to disagree with, as their agreement to exclude these texts is invalid. The idea of the system did not deviate from other legal ideas in terms of its potential for development. Jurisprudence has become a distinction between public order in its traditional sense and public order in its modern sense through the role played by each of them within the framework of private law in general and within the framework of the contractual relationship in particular. The first, which is what he called the general political and moral system, remained imprisoned in the principle of the authority of the

will, which was prevalent in traditional legal thought. Its role in the scope of the contract was limited to prohibiting illegal contracts in terms of their place or motive. The restrictions imposed by this concept were confined to the framework of the freedom to conclude contracts, without affecting the freedom of the parties to determine the content of the contract, which remained free from any restriction (Abd-Ala'al, 1998).

As for the public order in its modern concept, which was called the economic and social public order, and the protective and directive public order that branched out, it sought to impose more restrictions on the principle of the authority of the will, whether in the stage of forming the contract or in the stage of its implementation. The role of public order is no longer as negative as it was in the traditional concept, as it has a positive role represented in increasing the state's intervention in the decades immediately after World War II in organizing production and distributing funds and services (Gustan, 2000).

The idea of public order appears as the basis for the contractual equilibrium and then for the cognitive equilibrium through the idea of the economic and social system. This was done by adopting the idea of protecting the weak party in the contractual relationship arising from the disequilibrium in most contracts. The legislator intervened to protect the contracting party, which appears to be more deserving of protection in the face of the powerful party that has the means to protect its own interests.

The will of the legislator tended to try to reform the contractual relationship by intervening in the essence and content of the contract (Binazouz, 2014). This leads to achieving equilibrium in the contractual relationship, whether in its economic sense or in the concept of cognitive equilibrium. However, the idea of a general, economic, protectionist system, in our estimation, can be considered a means to achieve contractual equilibrium, and then epistemological equilibrium, rather than being a basis for it. This idea does not explain the equilibrium itself. Contractual equilibrium is not a modern concept, but rather a concept that has evolved with the development of legal thought. This concept had a special meaning under the traditional theory of the contract based on the principle of the authority of the will (Binazouz, 2014).

Second: the idea of contractual justice

Some scholars defined contractual justice as a requirement to achieve financial benefit to the contracting party so that each contracting party receives an equivalent of what he gave. (Gustan, 2000). It was also defined by Juma'a (2014) as "achieving material benefit for each contractor so that it is commensurate with the performance required to be done". It seems to us that the two previous definitions confuse the concept of contractual justice with the concept of contractual equilibrium, although there is a correlation between the two concepts in that contractual equilibrium leads to achieving contractual justice. The latter is the goal of contractual equilibrium , and the relationship between them is a cause-and-effect relationship, but that does not mean that they are identical in concept. Contractual justice is the contractual relations in which the contractual equilibrium is achieved in terms of the causes and results of this equilibrium. There are two concepts of contractual justice: a traditional concept and a modern concept. The traditional concept of it is that justice achieved by the will. The will alone is able to embody contractual justice, and it is the one that can distinguish the beneficial from the harmful in financial transactions. Contractual freedom is the one that can reach contractual justice, but it stops at the limits of the freedom of others. A person is free to contract or not to contract, which is sufficient to achieve the contractual equilibrium and its goal, which is contractual justice, because it will balance its various interests. This will, just as it has the right to create the contract, it also has the right to set the contractual conditions associated with it. Contractual justice is evident in this concept through the personal value of the contracted upon, even if it is insignificant in itself. On this basis, the contract does not contain unfairness if, in the view of the contracting party, it is safe from that, where according to some jurists, they stated (everything that is contractual is fair). As for the modern concept

of contractual justice, it is represented by benefit and equivalence in performances, or equivalence to the degree of equivalence, which is outside the will of the parties (Hafeez, 2012).

However, the idea of contractual justice in its traditional and modern sense, in our estimation, can be considered as the goal of contractual equilibrium, and after it, epistemological equilibrium, rather than being a basis for it. This idea does not explain to us the equilibrium itself, although it does explain to us its purpose.

Third: The idea of reason

The theory of reason has met the jurists' opinions with analysis and deconstruction in order to reach a comprehensive definition that prevents the idea of legal reason. A group of jurists limited the reason to the commitment and removed it from the contract, given that the contract has a pillar and an intrinsic element, which is the will. The contractual distinction cannot be withdrawn from under the will. (Hijazi and Hijazi, 1998). Therefore, the proponents of the principle of the authority of the will made the cause a pillar of commitment, not of the contract. Saying otherwise means that mutual consent alone is not worthy of creating a contract, but other pillars must be supported. This matter was initially rejected by the proponents of this trend when they considered the will to be the sole source of the contract and the basis of its binding force. It is not easy to admit that there is another corner in which he shares. When they collided with the legislator's desire to consider the cause and the place as two other pillars of the contract, they added "it is scientifically useful to keep them within the study of the contract theory. This excess of will is criticized by the fact that it was not only the scientific interest that required the preservation of the cause, but the practical interest as well.

In contrast to the reason for commitment, others viewed that the reason is the reason for the contract, where the reason for the contract is the guarantor to protect the legality from being breached. This approach was as a response to those who said that there was permanent or dominant legitimacy in the cause. It is not possible to be stubborn or ruthless in not recognizing that there are contracts concluded that openly violate the system of society and the public interest and under the umbrella of the law that considers the absolute legitimacy of every action. The reason for the contract discussed the actions and distinguish the legitimate ones from the illegal ones in order to preserve public order and the foundations of society. Historically, it appears that the theory of the cause of the contract stemmed from donation contracts and the search for their legitimacy. The French judiciary searched for the legality of these contracts by monitoring the reason for the donation. The legal and jurisprudential custom used to call the personal cause the motive, but Capitan distinguished between the reason and the motive for the contract in terms of the nature of each of them.

The reason is equal to the meaning of the goal, and each of them is an element of voluntary action. As for the motive that motivates the contract, it is an internal, intrinsic factor that does not enter into this structure, i.e. the composition of voluntary action. To support what Capitan brought, he mentioned two examples of two reasons, namely the reason for the gift and the reason for the bequest. The will is a binding contract for one side, and as long as it is so, the only revenue taken into account is the will of the testator. Therefore, the motive considered the motive that prompted the testator to donate as the reason. As for the gift, it is a binding contract for both sides. The reason for it is not the motive for the contract and the subcontractor. This is not the abstract intention of the donation, but rather the goal pursued by the donor, which is known to the recipient, and its example is the construction of a building. The reason is to fulfill the condition attached to the donation. (Al- Kulsi, 2014) .

As for the other party, no difference between the reason for the obligation and the reason for the contract, since the reason is voluntary. The reason according to this view is an attribute of the will, as the reason in its personal sense is an essential element of the will.

Moreover, this reason prompts to take legal action. The cause of obligation is closely related to the will because it represents the direct purpose arising from the voluntary obligation only. From this point of view, it appears that the reason for the obligation and the reason for the contract have one nature, which is described as a personal nature (Al-Sharqawi, 1956).

Therefore, this team has relied on another type of reason, which is the quantitative economic reason, which is represented by the equivalence between the payments, which distances itself from the will because it is an component in the contract, not in the will. Therefore, the reason has been defined by this concept as: (The economic value of a debt or a right that increases the positive aspect of the debtor's liability in return for increasing the resulting negative aspect, so the reason is necessarily an objective economic one.(Maarouf, 1999).

The equilibrium of performance is a reflection of the reason for the obligation itself. According to some jurists (Delebeque, 1997), we agree with them, they stated that this was a need for the legality of the agreements in general. Hence, we believe that the idea of reason is the logical basis for the idea of contractual equilibrium in terms of its result. This is what is called economic equilibrium, which is assumed as a result to achieve the causes of equilibrium, including cognitive equilibrium. Therefore, we find that the legal basis for cognitive equilibrium lies in the very idea of the reason for commitment.

4. Conclusion:

After discussing the concept and the legal basis of the cognitive equilibrium as an analytical study, the key results that we reached must be underlined in the following points:

First: The contractual equilibrium has to be understood in terms of its causes and the intended results. It has to be evaluated using a subjective standard for its causes and a physical standard for its effects. A more correct statement would be that a full perspective of the contractual equilibrium is required. The contractual equilibrium must extend to the will of the contracting parties in terms of freedom and knowledge when concluding the contract. This is the subjective standard. It also extends, on the other hand, to the result and purpose of the contractual relationship in terms of the corresponding performances between the two parties, and the parity or relative equilibrium between these performances.

Second: New types of weakness imposed by modern technology growth have just lately been identified and recognized. This development resulted in a non-economic disparity, but an epistemological disparity between the parties of the contract, as is the case with the disparity between professionals and consumers.

Third: The concept of the cause, which is the logical foundation for the concept of contractual equilibrium in terms of its result, is known as economic equilibrium. This assumes that, as a result, the causes of equilibrium, including cognitive equilibrium, will be achieved. Therefore, we find that the legal basis for cognitive equilibrium lies in the very idea of the reason for commitment.

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