Journal for ReAttach Therapy and Developmental Diversities
eISSN: 2589-7799
2023 July; 6 (8s): 335-349

The Psychological Grounding of the Guiding Principles of the Contract: A Comparative Study

[1]Ammar Kareim Al-Bsherawy, [2]Wathiq Kadham Al-Ibraheemy
[1]Faculty of Law, University of Kufa, Najaf, Iraq. Email: hashimf.dabbass@uokufa.edu.iq
[2]Faculty of Law, University of Kufa, Najaf, Iraq.

Received: 15-April-2023
Revised: 17-May-2023
Accepted:30-June-2023

Abstract
The principles of the contract are binding legal norms that enable the legislator to steer the substance of the contract in the direction of the legislator's preferred end goal for the contract. Given the guidelines' malleable formulation, which allows for the accommodation of emerging facts, this enactment not only expresses the philosophy adopted by the legislator in organizing the contract but is also regarded as one of the best effective solutions to confront the major problem represented by how to agree between the immutability of the law and the movement and renewal of facts. All human concepts, including the principles upon which the contract is based, have the trait of being relative facts that vary concerning time, location, and the nature of the mind that generates them. As a result, the contract's guiding principles are widely regarded as one of the most contentious problems that consumed legal thinking, both in terms of what those principles should include and how widely the concept of adopting them was embraced in the legislature. This research makes an effort to trace the origins of the contract's guiding principles to its intellectual underpinnings.

Keywords: philosophy of contract guidelines, philosophy of contract, contractual freedom, good faith, contractual balance, contractual solidarity.

1. Introduction

Since the normative human sciences are categorical sciences based on the link between the means and the end, and thus their rules are built based on an end and a criterion. If the aim of the science of logic is correct thinking and its criterion is observing what is right (1), and ethics aims to regulate human behavior and its criterion is a virtue, then what is the aim of law? As long as it is standard science. And if the guiding principles of the contract are a legal fact that clearly expresses the philosophical ground upon which the legislative construction of the theory of the contract is based, then what is its final authenticity? It may seem at first glance that these questions do not cause trouble in revealing their answers, and they would be the same if the law consists of pure objective facts (mental facts), but the law with its universal principles, detailed rules, and intellectual frameworks is composed of a mixture of objective facts and legal facts. It does not consist only of the facts approved by the sound mind and the living conscience and are compatible with the requirements of fairness, but rather wears these facts in the dress of consideration affected by time and place, and therefore the focus of this research revolves around the philosophical rooting of the guiding principles of the contract to extract the extent of the influence of legal facts on the nature and content of these principles. The philosophical construction of the theory of the contract, although it is based on objective facts that are fixed in their essence, they are legal and changeable in their legislative appearance. The contract is different, the problem remains in determining what the final goal is based on the legislative structure of the contract theory as a whole, and this research tries to reach a determination of the ideal goal of the contract to provide the Iraqi legislator with objective inferential solutions to address and correct the philosophical ground upon which the contract theory is based in civil law Iraqi.

2. Research Methodology

Since legal thought has differed regarding defining the content of the guiding principles of the contract according to the difference in defining the considerations affecting the formation of the final goal of the legislative construction of the theory of the contract. Consequently, the scope of this research will be limited to confronting the philosophical foundations of this difference by comparing the traditional and contemporary

philosophical frameworks for the governing principles of the contract. On the origin and purpose of these principles, generalizations are made based on facts and findings. In addition to the comparative method for comparing and balancing philosophical and legal perspectives on the subject of the research. In light of the aforementioned research problem, and to solveit under good presentation and detail, I have decided to divide this research into two requirements, the first of which is to explain the traditional philosophical frameworks for the guiding principles of the contract, and the second of which is to explain the traditional philosophical frameworks for the guiding principles of the contract.

3. Literature Review

Since the ideal purpose of the law is plagued by temporal and spatial considerations of the environment in which the law is born, Every legal principle must start from a living reality and be the result and expression of a certain philosophy(2), thus the principles that embody the basis of contract theory must Ala When drafting, the legislator ignores the conditions of his physical and spiritual environment, as the legal wording that does not suit these circumstances may be just ink on paper that the legislator wasted his effort in legislating(3).

Since the legislative construction of the theory of contract is never separated from the final goal of the law, so the orientation of the contractual essence by legislative policy (4), towards the achievement of contracts ideal for the law, but requires guidelines with certain peculiarities that distinguish them from other legal texts, and since the laws in question have been greatly influenced by the philosophy of individualism (which we preferred to express in traditional philosophy), so we will try in this requirement to search for the metaphysical significance of the term " principles Guiding the contract "in the traditional philosophy of law, and we see that the search for this metaphysical significance requires rooting the base of the contract under the traditional philosophy, and then reach the determination of the content of the traditional guidelines of the contract, and therefore this requirement will be distributed on two sections, we deal in the first section of the traditional philosophy of the contract, and the second section is to clarify the content of the traditional principles guiding the contract.

3.1. The traditional philosophy of the contract

The search for the metaphysical significance of a term, requires access to the teleological originality of this term, to explore its semantic possibilities and penetrate its figurative intensity, and all of this is from purely philosophical premises, and by following the original approach in extrapolating the parts involved under the significance of this term to reach the overall results, and since the traditional philosophy has greatly influenced the formation of the French civil law (6), which in turn was influential in the formation of the Iraqi civil law (57). Therefore, the research in this regard will focus on the "philosophy of the contract" and the effectiveness of the law in it.

Since the philosophical enlightenment under the conditions of feudal and authoritarian darkness prevailing before the French Revolution, he believed that the only way to clear the black clouds from the horizon is the necessity of sanctifying the freedom of the individual and further respecting his will (8), and although the French Revolution occurred in France, but it aroused passion and ignited thought until it became the basis for many jurisprudence and theories related to man and his future, it is the largest revolution with an ideological impact in the history of the West, and has resulted in Deep-rooted changes in many affairs of life such as politics, law and others (9), and the most important ideas that came out is the need to free the individual from all restrictions that constrain his freedom, and that the freedom of individuals is the basis for all organizations of society, especially the law, and the fact that the idea of sanctifying the freedom of the individual has been inspired by the French Revolution from the philosophy of the Enlightenment in the seventeenth century, it stems from certain ideas of individualism.

The idea of the social contract (Contract Social) of the French philosopher Jean-Jacques Rousseau (Jean Jacques Rousseau) is a luminous torch guided by the individual doctrine (10), and the idea of the social contract is that the human being living on the instinct and enjoys absolute freedom, and since the absolute freedom of each individual would lead to chaos and prevent the establishment of an organized society, and help the strong to control the weak, so individuals agreed among themselves on a social contract that limits their

freedom to the limits of fate necessary for the establishment of an organized society, thus replacing each individual with absolute freedom with limited civil freedom.

On this basis, traditional legal thought, which embodies the ideas of individual philosophy, believes that the law must not infringe on the freedom of the individual, and its role should be limited to limiting the absolute freedoms of the individual to the extent that it preserves respect for the freedoms and rights of others. What the parties to the contract have agreed.

Under traditional legal thought, the function of the contract is to achieve the private interests of its parties, and thus the contract assumes a conflict among the interests of its parties, so each contractor must seek to secure his desired private interest from the contract by various legitimate self-means, and therefore he must before concluding the contract to collect the necessary information that would make him submit to the contract knowing the reality of the contract and what the private interest that is envisaged to be achieved through the contract, even at the expense of The interest of the other party, and this view of the function of the contract necessitates the existence of a hidden conflict between the contractors during the negotiation period.

After we found that traditional legal thought views the contract as a means to achieve the private interests of its parties and that it is based on free will, and that the role of the law is to protect this will only, we see the need to search for the truth of the justifications on which this traditional view of the contract is based, and these justifications we try to detail in the following paragraphs:

First – philosophical justifications: The freedom of will and sovereignty in contracts were based on the ideas of theology, and the metaphysical theological approach believes that the right speech and just behavior is only an expression of a stand-alone meaning sourced from the transcendent divine, and thus it is abstract from the human mind (11), and from this point of view the religious teachings of the Church require the need to respect the effects of doctrinal ties and fulfillment, even if they are not emptied in a specific template or form, and that the non-fulfillment of contracts that Created by common free will is a religious sin.

After the emergence of the doctrine of natural law, which is Aristotle founder, which believes that natural law is mental law, and that the realization of justice is done by sound reason, and that positive law is artificial justice, made by the will of the legislator, and must be obeyed to assume his approval of real justice, and thus Aristotle believes that the freedom of individuals is not absolute (12), but must be subject to the provisions of positive law, but the subjection of individuals to positive law is not obligatory in all cases If it is clear that positive law does not reflect the natural law, which is synonymous with justice in itself, it should not be subject to it because it is an unjust law, and therefore the natural doctrine considers the contract as being made by the will of its parties to achieve their interests through it, and that the will of man is the best way to achieve justice for its owner, but a contract that violates justice is a fundamental violation that does not deserve respect because it achieves injustice .

Based on the foregoing, it is clear to us that the doctrine of natural law, even though it believes that the nature of man necessitates that it be accompanied from the moment of his birth by a natural right to freedom, and under this freedom man does not bear an obligation unless it is based on his free consent, and in support of that, the philosopher Hegel says ((that the basis of the right and its field and its starting point is the will and free will is the essence of the right and its goal at the same time))(13) Therefore, the law should not violate this inherent right of man by forcing him to fulfill an obligation to which his will is not directed, but this doctrine never believes in absolute freedom.

The German philosopher (Kant) the founder of critical philosophy, although the common jurists that the term "the authority of the will " belongs to him and that he was the first to give the legal character to the authority of the will (14), but the meaning of the term authority of the will has completely different from the common meaning of this term among jurists, through access to the philosophy of ethics and the concept of freedom when this philosopher (15) We found that the authority of the will and its independence, is entrusted with the description of moral behavior, although all moral doctrines make moral behavior based on the achievement of a certain goal, whether this end is pleasure, happiness, perfection or God's satisfaction, but Kant refuses to describe behavior as ethical if the motivation to do it or leave it is an external end, he believes that the moral behavior is the independence of the will from every external influencer, On that says: ((impossible for us to imagine a mind in the fullest state of feeling, receives on the provisions guidance from the outside, the will of

the rational being is not his will that belongs to him in the true sense unless it is independent of any external influence)), and ends Kant to define moral law or natural law as: ((All behavior can be formulated by a general rule, without being subject to criticism of reason or absurdity))(16).
Thus, it can be said that jurists have taken the term authority of will from Kant and used it contrary to its true meaning since Kant believes that contractual will is a utilitarian will that contradicts the authority of the will as a criterion of morality, but he believes that the contract derives its binding force from the necessity of fulfilling the covenant made, which is itself a moral principle.
As for the rest of the philosophers of the Enlightenment before the French Revolution, under the dark conditions that prevailed because of the policies that used the law as a means of oppression and injustice, people were narrowed by the legal restrictions imposed on them, so the philosophy of the Enlightenment at that time strived to provide everything that confirms the freedom and dignity of the individual, and thus called for the need for the ultimate goal of the law to be the affirmation of the subjectivity of the individual and respect for his freedom.

Based on all the above presentation on the philosophical justifications on which traditional legal thought is based, we conclude that the Enlightenment philosophy that prevailed before the French Revolution with its different doctrines was calling for the need for the individual to be free in his will, and that the task of law is to protect the free will of individuals and within the limits that do not make the exercise of free will lead to harm to others, and within the framework of contracts the goal of the law is to achieve contractual justice based on Abstract equality between the parties to the contract in terms of legal protection of their freedom of will, and regardless of what the free contractual will of outputs may be objectively unequal, each individual as long as endowed with a sound mind is the most able to assess his interest, and therefore every action based on the free will of the individual must be protected and not prejudiced except to the extent that preserves not to infringe on the freedoms of others, and here the contract concluded as a result of the compatibility of two wills is not tainted by defects The will is like the sacred thing that everyone must respect and not be subjected to.
Second - economic justifications: Traditional legal thought believes that the economy of a free society develops better if individuals are allowed the largest amount of free behavior, so the traditional legal thought believes that freedom of contract is one of the most effective means of the prosperity of the economy, but the restriction of the law to this freedom leads as a result to weaken equality in the bargaining center, which constitutes the strength of the free economy (15) In the sense that moving the economic wheel in society is through not restricting the spirit of economic relations and exchanges that are embodied in supply and demand and on which the market economy is based, and this duality represented by supply and demand is the same duality represented by offer and acceptance, which is the common contractual will (16).
Thus, traditional legal thought believes that if the law is to contribute to the development of the free economy, it must respect contractual freedom and not restrict and trim it, because it is the greatest value on which the economy wheel is based. Free contracting leads to the abundance of production and its development quantitatively and qualitatively because it allows the production of the commodity at the lowest possible expense, and the disparity between the contractors in terms of contractual experiences and estimating the size of the personal benefits resulting from the contract, is only the right of the strong party in this area, because the cognitive power of the contractor came as a result of his effort to acquire and develop his contractual capabilities, and therefore it is unfair to combat this disparity and equate the weak party with the strong party, and deprive the latter of investment His abilities are in the center of bargaining over contracts.

We believe that the release of contractual freedom for each individual, as in the capitalist economic system, would lead to results incompatible with contractual justice in its objective sense, as well as the confiscation of the freedom of individuals under the socialist economic system, and therefore it is necessary to control contractual freedom through the law to make it compatible with objective contractual justice.
Third – moral justifications: The roots of these justifications lie in the values planted by religious teachings that call for respect for the effects of agreements and fulfillment, as long as the doctrinal bond arose under the free common will is a fair relationship, so launched Professor Fillet (Fouillée) famous phrase: ((Who said a contract, he said just))(17), and this phrase is consistent with the words of the philosopher Aristotle: ((The person who

gives something he owns to another person, is not a victim of injustice, and if a person is free to donate and contract, this freedom can not make him a victim of injustice, we can not meet injustice only by forcing our will))(18), and Aristotle believes that the contract is something made by the will, which is used to achieve the purposes of life, and this contractual will is the most capable way to achieve justice for its owner, but it does not live up to the level of real justice Therefore, traditional legal thought holds that it is necessary to achieve legal equality among the contracting parties, that is, that both have free contractual will, but it is not necessary for them to achieve de facto equality and contractual justice based on balance by mutual performances .

As a result of the sum of the justifications presented above, on which traditional legal thought is based in its glorification of contractual freedom, and because the French Civil Code was developed at a time when individual philosophy was the dominant and accepted philosophy in French society, so this law came to a large extent the philosophical thought of the individualist doctrine, Article (1134)) of this law to represent a fortified fortress of the principle of the authority of the will, which stipulates that: "Agreements concluded legitimately take the place of law for their parties", meaning when the contract is concluded correctly, it becomes the law of the contracting parties, and the status of law binding on them, and no one of its parties can unilaterally revoke, amend or suspend its validity without the consent of the parties (19).

Since French civil law had a leading position and attractiveness affecting the European and international legal systems, it was affected by most of the civil legislation in the Arab countries (20), and Iraqi civil legislation is one of the legislations many provisions have been cultivated from the French civil code (21), and therefore the principle of the authority of the contractual will was present in the Iraqi civil law, under the first paragraph of the article (146) which stipulates that: "If the contract is executed, it is necessary, and no one of the contracting parties may withdraw from it or amend it except under a provision in the law or by mutual consent", it is clear that the Iraqi legislator has adopted the principle of the authority of the will restricted by the provisions of the law.

For all the above presentation on the traditional rooting of the rule of the contract, we conclude that the traditional philosophy of individualism believes that the ideal goal that the law must seek to achieve within the framework of contractual relations is to respect the will of the individual and protect his freedom and that this end must be the ground on which the construction of the theory of the contract is based, and thus the justice advocated by this philosophy is abstract based on the presumption that the parties Contract When they conclude the contract of their own free will and without affecting their freedom, this contract embodies justice, even if its economic balance is objectively unequal.

According to this advanced philosophical proposal, the essence of contractual justice has been distorted by the guise of considerations that the individual doctrine believes in, and this is what justifies saying that the law does not consist of pure and absolute objective facts, but rather objective facts appear in the dress of factual considerations, and therefore the facts involved in the law are relative legal facts, and therefore the door for teleological questions remains open about the proximity or distance of contractual justice with its legal appearance resulting from philosophical theses imbued with the spirit of Individualism about its immutable essence in the world of absolute truth? How is this legal fact embodied in the world of the legislative text? And how useful are the texts Legislative based on this fact in the real world and the repeated application of its manifestations and categorical feasibility on the ground?

3.2. Content of the traditional principles guiding the Contract

The philosophical roots of the traditional legal thought that provides its review indicate that free will is the strength and pillar of the contract, and all the effects resulting from this will must be respected, and work to protect it, and therefore the guiding principles of the contract according to traditional legal thought is the principle of contractual freedom, and the principle of the binding force of the contract (22), and through the following two paragraphs we try to detail each of them:

First – the principle of freedom of contract: The concept of freedom in its philosophical dimension goes to the special queen that characterizes the human being in terms of is located sane, chooses his actions of his own free will without being affected by the will of the other (23), so the philosophical tradition was in his definition of freedom as the extent of flexibility in choice or lack thereof (24), and analyze the principle of contractual

freedom we find it has been built on the philosophy that freedom is the principle and the ultimate and is the motive and goal in human life, as long as man has endowed the mind And distinguish it from other creatures, must be able to choose freely (25), has passed contractual freedom successive stages, in the stage of formation was just a philosophical idea based on the concept of the individual and the concept of self, then after the concerted economic, political and social factors in the elevation moved to the stage of vogue and influence, and then after being inspired and embraced by many jurists in that era and called for the need to be built by the law of contracts moved To the stage of completion and application, and eventually contractual freedom reached the stage of trimming and refinement and created in order to achieve the supreme goal of legislative policy (26).

The researcher believes that the lack of control of contractual freedom by the legislator, and not framing the requirements of actual contractual equality and the public interest, may make it a weapon ready in the hands of powerful contractors, to pave the way to achieve their interests at the expense of others, individuals as long as they vary in their chances of talents and self-qualities, it is logical that they differ in the extent of benefit from absolute contractual freedom or restricted by ineffective restrictions in achieving actual equality between contractors, and lead this inevitable difference Between the parties to the contract, contractual freedom is the legal expression of the interests of the powerful contracting parties who do not make their contractual freedom limits of spiritual and moral values, and therefore the contractual relations are dominated by a spirit of selfishness and greed, rather than a spirit of cooperation and solidarity.

Second – the principle of binding force of the contract: This principle means that the contract once properly held is enforceable and prevents prejudice to it in revocation or amendment, except with the consent of the common contractual will that created it, and by analyzing this principle and searching for its roots, we find that it has been built on religious, moral and economic foundations and justifications, all resulting from individual philosophy and these foundations and justifications on which the binding force of the contract is based have varied, from a religious point of view there is no doubt that all monotheistic religions It has recommended the fulfillment of the covenant, and from a moral point of view, honesty, honesty, loyalty, and good dealings with people, all require respect for trust in contracts, so the French jurist Gistan (Gistan) says:(The source of binding strength of the contract lies in the confidence granted by the creditor to his debtor, where the debtor must not be disappointed with him, and not to prejudice the confidence granted to him by his creditor. From an economic point of view, the principle of the binding force of the contract is based on an economic objective, which is the stability of transactions, and if the contract does not bind the contracting parties to what it contains, there is no trust between individuals and they refrain from concluding contracts that are the basis of the economic field.
In support of the above, part of the traditional French jurisprudence believes that binding force is a characteristic close to the contractual relationship whenever it arises true, and must not respond to the binding contract restrictions only in narrow circumstances and that its source is the common free will that formed the contract, it is the basis for its binding and reliability, the contractor is not only obligated by his contractual will, but also obliges him to trust the other contractor in it, where the French jurist says two names ((Esmein) : ((The trust is what leads an honest person with a conscience to contract, and the implementation of his contractual promise, and from this trust stems the binding force of the contract))(27).

In view of the fact that the French Civil Code (Napoleon Law of 1804) has come in light of the flourishing of individual philosophy, so this law has embodied the principle of binding force of the contract, through Article (1134), which stipulates in the first paragraph that: "Agreements concluded legitimately take the place of law for their parties" The second and third paragraphs of the same article have stipulated that: "These agreements are not canceled except by mutual consent of the parties, or for reasons determined and permitted by law, and must be implemented in good faith," and by analyzing this article, it is clear that the first paragraph of it has relegated the contract concluded correctly between the parties to the status of law, that is, the content of the contract is like the law for the contractors, while the second paragraph emphasizes the inviolability of the contract to be canceled or modified except by the common will that created it, and the third paragraph stresses the need for Not to prejudice the mutual trust of the parties to the contract during the implementation phase, thus completing the binding force of the contract, and this article with its three paragraphs is the main source and the fortress of the authority of the will stemming from individual philosophy, as expressed by the French jurist John Carbonnet

((Carbonnier)), and because the civil law has been affected by its provisions many civil legislations, including the Iraqi civil law, which was stipulated in the first paragraph of Article (146) However: "If the contract is performed, it is necessary and no one of the contracting parties may withdraw from it or amend it except by virtue of a provision in the law or by mutual consent", and this text embodies the binding force of the contract.

After showing us the content of the guidelines of the contract in traditional philosophy, it remained to determine the traditional concept of the term guidelines of the contract, and since we did not find in the Iraqi jurisprudence as well as the Arab definition explicitly concerned with this term, and it seems that the reason for this is the modernity of this term and its absence from Arab civil legislation and that what falls into our hands is the definitions of French jurisprudence for this term, but we do not seek to display these jurisprudential definitions Only, but we try to determine the significance of this term by extrapolating its parts and implications from the perspective of traditional philosophy.

French jurisprudence believes that the idea of the guidelines of the contract is modern and was not known to traditional jurisprudence, but the traditional concept of this idea can be approached with the definition of the general traditional principles of the contract, which are the general legal rules established to protect the freedom of contractual will, ensure the implementation of what was agreed upon by free contractual wills and prohibit prejudice to the content of the contract without the consent of its parties. It is clear from these jurisprudential definitions that it tried to approach the concept of the general principles of the contract and the concept of the guidelines of the contract becauseof the participation of these two concepts in terms of function.

The researcher believes that the legal concepts, although they are not read by their explicit names, they can be read with their objective contents, that is, by extrapolating the partial contents to reach facts and results that circulate to the overall concepts, and in addition to all of the above mentioned on the traditional philosophical frameworks of the guidelines of the contract, we can say that these principles in their traditional sense are the major legal rules that embody the ground for the legislative construction of the entire contract theory, which aims to achieve abstract justice based on the presumption that The parties to the contract, whenever they conclude the contract of their own free will and without affecting their freedom, this contract embodies justice.

4. Results

As long as we deal with the entire law as an understanding and human achievement (28), subject to the various conditionalities of the era that gave birth to him, and is only relative facts of its time and surroundings, which is thus inseparable from its history and the conditions of production of its own time, so we believe in the multiplicity of readings of the law with its legislative texts and what stands behind them from intellectual frameworks, and since we are in this place of research we seek to restrict the term "guidelines of the contract" and familiarity with the metaphysical semantics of its semiotic features, so We believe that this may require shifting the meaning and reconsidering the pattern of the relationship between the signifier and the signifier (29) from new philosophical premises leading to a new reading of this term as long as it is multi-layered and intertwined semantics and similar verses, and the subject of questions and tugging, and we believe that the multiplicity of philosophical readings of the same term or text contributes to the maturation of the legal mind.

It has been in the past of this study to provide a reading of the traditional philosophy of this term, and what we seek in this requirement to provide a reading of modern philosophy (the doctrine of social solidarity) for this term, and therefore we have to penetrate the metaphorical density and penetrate into the dismantling of the metaphysical structure of the guidelines of the contract, and this will be done by dealing with this term as an open space, in which we dig for its metaphysical background by digging in its multiple layers and intertwined connotations, in search of holes and gaps, and for His answers and questions, all of which we practice from the perspective of the philosophy of social solidarity, and therefore access to knowledge of the reading of the philosophy of social solidarity of the guidelines of the contract requires the division of this requirement into two branches, the first to explain the modern philosophy of the contract, and the second to clarify the content of the modern principles guiding the contract.

4.1. Modern philosophy of the contract

If the contractual will has reached the peak of popularity and prosperity under the philosophy imbued with the spirit of individualism, which has always stressed that the freedom of the individual to conclude any contract he wishes is the symbol of an open and developed society, then the policy of the law in that era prevailing was to preserve and support contractual freedom and not to restrict it except within narrow limits, in implementation and application of the premise adopted by individual philosophy, which states that the freedom of bargaining in the field of contracting is the strength of the developed society. However, the transformations and changes in various aspects of life witnessed in the twentieth century have revealed the injustices within the framework of contractual relations, as a result of the application of legal rules derived from individual philosophy, and thus the spirit of the ego has dominated contractual relations. Thus, modern legal thought in France tended to highlight the grievances suffered by contractual relations as a result of the application of the traditional guidelines of the contract and detailed rules derived from individual philosophy, and the French jurist (Michel) expressed the fate of the contract in (1964) with the expression "demise or deterioration of the contract" in the sense that the contract is on its way to demise and end (30). This intellectual orientation has led to the need to reconsider the principles that embody the basis for the legal construction of the contract theory.

It seems that this trend in modern legal thought is closer to reality, as it revealed to us that the advocates of individual philosophy were in fact, and as we believe, fighting in a losing battle against social philosophy, as the development of social life and the emergence of major factories and monopolies and cognitive and economic disparity between individuals, all of which led to the emergence of an empowered class in society that only represents its interests, and this class of individuals often uses contracts burdened with arbitrary conditions Or resort to exploiting cognitive disparity in its favor and at the expense of the interest of the other contracting party, so abuses, injustices and inequality among individuals spread within the framework of contractual relations, and therefore those reasons were a cause for the popularity of social philosophy, which is based on the idea that society is the whole and the individual is only part of society. The function of the state is to achieve social justice and well-being for individuals, and social justice is embodied in the determination of actual equality between individuals, and this purpose can only be achieved by controlling the behavior of the individual in society and determining his freedom.

Based on the foregoing, modern legal thought believes that achieving actual contractual justice and the desired public benefit of the contract in light of the inequality between individuals as a result of the development of civil life in its various economic, social, scientific, and technical dimensions all of this calls for spreading the philosophy of the supremacy of the public interest of society over the private interest of the contracting parties, in the sense that the contract is no longer a means to achieve the interest of its contracting parties only, but the contract has become a tool to achieve the private interest of its contracting parties and the general benefit of society as a whole.

It should be noted in this regard that social philosophy in its claim for justice and well-being for society as a whole hardly differs from utilitarian philosophy, whose proponents are supporters of individual philosophy by origin, but by focusing their claim on the need to increase the volume of human happiness, they presented a philosophy that adopts the improvement of the material situation of society as a whole.

As a result of the foregoing, and since the contract is the most common tool in the establishment of relations between persons, so modern legal thought sees the need to take into account the requirements surrounding the contract of public interest and social benefit, and the need to achieve security, stability, and justice, and these requirements must outweigh the social value "contractual freedom" on which the traditional conception of the contract (individual philosophy) was and is still based.

Therefore, modern legal thought has made these desired goals of the contract justifications for its claim that the legislative policy of the state should move from its traditional role as a guardian of some values in the contractual field, including (contractual freedom) to the intervening role in directing the contract to achieve realistic doctrinal justice and social benefit (31), and this matter requires that the legal construction of the organization of the contract is based on a set of requirements surrounding contractual relations, we will try to summarize them in the following paragraphs:

First - the need to take into account that the contract is a tool to achieve a social goal: Based on the social philosophy that believes that society is a solidarity unit, and that the progress of society requires that individuals interdependent among themselves and solidarity their wills in order to cooperate and help the weak party and achieve the interest of the group, modern legal thought believes that the contract should not only play a role in achieving the private interest of its contracting parties, but should also be a tool through which the desired social goal is achieved, and that these The goal cannot be achieved under the sanctification of individual freedom, so it was necessary to move according to modern legal thought to consider society as a higher value than the individual, and that achieving the desired public interest of the contract requires the rejection of selfishness and subjectivity within the framework of the exercise of contractual freedom, and this is done by controlling the principle of contractual freedom and restricting it to ensure reconciliation between the requirements of freedom and the requirements of social interest and contractual justice (32). We support this modern trend of legal thought, which calls for the need to adopt social ideas that restrict and determine the individual will to achieve the interest of society and the interest of contractors alike, because this modern trend would make the law of contracts applicable on the ground and express the hopes of the members of society addressed to it, and achieve contractual justice and the desired social interest.

Second: The need to replace abstract contractual equality with actual contractual equality: The transformations and changes in civil life have had a great impact in creating a degree of disparity between individuals, and this disparity leads to an imbalance in the economic balance of contracts concluded between them, especially contracts that are replaced by a type of goods and products that may be difficult if not impossible for a non-specialist to realize all the information related to them, which makes his will insufficient to launch an informed decision on the scope of Obligations relating to the contract.

Thus, addressing the problem of contractual equality - according to traditional legal thought - through the theory of defects of consent, which focuses on providing legal equality, that is, the legal protection of the contractual will represented by the theory of defects of consent, this equality is a formality and is almost an illusion or fantasy that does not exist in achieving actual equality, as long as the actual reality of contemporary life confirms that the disparity in subjective qualities and economic and social positions between contractors has become unquestionable. We believe that the legislator's role should not be limited to protecting the contractual will only, but should also intervene by imposing legal duties such as the obligation to inform, the period of reflection, the annulment of the obligation resulting from coercion based on the exploitation of the state of dependency or need, and the prohibition of arbitrary conditions, all to reduce the gap in the disparity in subjective qualifications between the contracting parties, thus achieving objective contractual equality and not abstract.

Third - the need to take into account that the law is the source of the binding force of the contract: Due to the development of legal thought and the influence of social philosophy, the binding force of the contract has become seen as stemming from the law, which aims to reconcile the interests of the individual and society, and for this the contract gives a binding force that confirms and protects it in a way that does not conflict with the supreme interest of society, and in this regard the Austrian jurist (Kelsen says) In the same context, the French jurist Jacques Gastan says: ((The objective law seeks to achieve a useful and fair contract that justifies the binding force of the contract and sets its terms and limits inspiring the contract system in its entirety, and that the contract is stripped of its binding force if it is useless or does not respect contractual justice))(33).

Based on the foregoing, it is clear to us that the modern orientation of legal thought states that the binding of the contract is inferred from the extent of respect for the benefit intended to be achieved through the contract and in a way that achieves contractual justice, and is compatible with the requirements of the general interest of society, and thus the binding force of the contract is based on substantive law, and is not based on the will of the contractors alone, and therefore the judge can intervene in the contract in order to direct the contract towards the beneficial and just, that is, its implementation of the detailed guidelines and rules Which would make the contract achieve the intended benefit of it in a balanced manner between the contracting parties, in accordance with the benefit or public interest envisaged from the contract, and this renewal of the concept of binding force

of the contract is only the result of realistic developments, so the rigidity of the principle of binding force is no longer in line with the circumstances surrounding the contract.

4.2. Content of modern principles guiding the contract

The continuous developments witnessed by society in various fields have revealed that the theory of the contract under the traditional guidelines emanating from the ideas of individual philosophy is unable to achieve balance and actual contractual justice between the contractors, so modern legal thought saw the need to reform the theory of the contract by activating new principles embodying the ideas of social philosophy that calls for the prevalence of the spirit of cooperation between the contractors, and obliging them to follow the path that makes the contract a means to achieve the desired social function as well as Achieving the interest of the contracting parties.

Thus, the contract in its modern concept resulting from social philosophy has become only a means of cooperation and solidarity, and a product of mutual trust between its parties (34), the contract is no longer seen as a mere tool through which the contractor seeks to achieve his own interest, even at the expense of the interest of the other contractor, but has become modern legal thought looks at the contractual relationship as similar to a small community and each member must strive to achieve one common goal, not It is the sum of the individual interests sought by each contractor, and thus the union between the interests of the contractors replaces the conflict assumed by the contractual relationship (35), and this makes the contract a tool for sincere cooperation between its parties in order to achieve objective justice between them, and responds to crises and external circumstances that may affect the economic balance at the stage of implementation, and thus the contract is a means to achieve the public good and solidarity among members of society, and on this basis modern legal thought reached a set of principles Guiding the contract, these modern principles we try to explain the content of each of them in the following paragraphs:

First – the principle of good faith: It is established in modern legal thought that the principle of good faith precedes all the principles guiding the contract, because of the ability of this principle to ensure integrity, stability, contractual equality, and contractual balance (36) if it is implemented at all stages of the contract, it is a tool that enriches and develops the behaviors of the contracting parties to achieve sincere cooperation between them. Therefore, some jurisprudence states that contractual justice revolves around existence and non-existence with good faith.

By reviewing and reflecting on what the jurist Portalis mentioned in the introductory speech of the birth of the French Civil Code issued in (1804), one of the authors of this law, said: ((Good faith must be the basis for equality and equality in contracts))(37), it becomes clear and confirmed to us that the French legislator adopts the philosophy of libertarian individualism. Which calls for abstract contractual equality and not actual, evidence that good faith as a legal duty had been limited by the French legislator to the stage of implementation of the contract, and this is confirmed by Article (1134-3) former and canceled of the French Civil Code, which stipulates that: "Agreements must be implemented in good faith" (38), in the sense that both contractors carry out their obligations sincerely and honestly not tainted by any fraud and fraud, and does not conflict with common contractual intent, and the question arises In this regard, how effective is good faith in achieving actual contractual equality, and then contractual balance, if its field of business is limited to the stage of contract implementation?

The answer to the advanced question from the perspective of the philosophy of social solidarity and modern legal thought requires that the implementation of good faith at the stage of implementing the contract without extending to the stage of negotiating its conclusion does not lead to actual contractual equality and social justice, because the role of good faith at the stage of contract implementation is to ensure the implementation of the performances determined by the common will of the contractors. The intention of the stage of implementation to lead to unjust results, so the French jurist Jacques Gastan goes on to say: ((There is no benefit in imposing the principle of good faith during the stage of the implementation of the contract, if it is not imposed as well at the stage of contract formation because the contract constitutes a single body and it is vital to be narrated by good faith as a whole))(39).

From this standpoint, modern legal thought believes that the principle of good faith should be enshrined at all stages of the contract, especially at the stage of conclusion, since the dedication of good faith at the stage of concluding the contract makes it the basis for obligations that would achieve actual contractual equality, such as the obligation to inform, warn or advise, and these obligations are effective solutions to address the knowledge and economic disparity between the contracting parties.

Third – the principle of contractual solidarity (40): This principle is one of the most important and latest solutions reached by modern legal thought to reduce contradiction and selfishness in contractual relations, as the dedication of this principle in the law of contracts would be the nerve sensitive in the creation of the contractual relationship, and this principle is based as the French jurist Demogue (Demogue (On the idea of considering the contract as a civil or commercial institution, in which each party must work in the spirit of the community for the common goal that this institution seeks to achieve, and the common goal in the contract is the sum of the individual goals or interests of each contractor), and in the same regard the French jurist (Ripert) believes that: ((Each contract is only a union that constitutes between its parties a small temporary institution with the aim of achieving a specific goal)) This idea is also supported by the French jurist Carbonnier (Carbonnier) By saying: ((The contract is by its nature a cooperative act, but it is the economic and social transformations that have tried to give it the character of conflict, antagonism and conflict))(41).

The idea of the principle of doctrinal solidarity lies in its roots in social philosophy, and its standard is a set of legal, moral, and rational values, and thus it establishes the behavior of the contractors in a way that makes the contract a means of cooperation and mutual trust between the contracting parties, in the sense that each contractor does what he can of the necessary care to assist the other contractor, to achieve the desired fruit of the contract, in other words, access to the maximum benefits that are in the interest of the contractors and society as a whole at the same time (42).

The principle of nodal balance: The legal systems continuously seek to provide legislative solutions that address the shortcomings or defects shown by reality in the organization of social and economic ties between individuals, to be able to achieve justice and balance between the parties to the legal relationship in line with the requirements of change and development in society. Widening in the knowledge or economic gap between individuals, so the contractual imbalance is possible to exist since the inception of the contract (43), so the French jurist Ripert says : ((The establishment or achievement of actual equality between the contractors is an imposition that does not exist, so it is difficult to achieve balance since the formation of the contract for the actual inequality in terms of the pattern of thinking, knowledge, and goals between the contractors))(44).

If the theory of defects of will as a traditional legislative solution to address the contractual imbalance since the formation of the contract, by protecting the free consent of the contractual will, it is not effective and sufficient to achieve contractual balance when the contractor seeks to satisfy his necessary needs through the contract with the existence of a knowledge or economic gap between him and the other contractor, because the theory of defects of will does not provide the contractor who is weak cognitively or economically the ability to make an informed decision with full knowledge of all the details of the contract. Legislative solutions resulting from individual philosophy are therefore insufficient to establish a doctrinal balance.

Therefore, the urgent need to find an effective legal technique in creating a climate for real contractual balance has called for the modern legal trend to the need to adopt the contractual balance as a guideline for the contract, and through this principle can create and find detailed legal rules embodied in its function to preserve the contractual balance or return it to the appropriate limit of contractual justice.

In light of all the foregoing concerning the content of the guidelines of the contract in the modern philosophy of law, French jurisprudence considers that the guidelines of the contract in their modern sense are a set of general legal rules placed at the head of the part on the organization of contracts or contractual obligations, the purpose of which is to guide the judge and the contractors towards the achievement of substantive contractual justice based on proportionality and balance between the reciprocal performances in the contract. , or flexible legal rules that guide contractual conduct to achieve contractual justice based on reasonable equivalence at the time of contracting and in the performance of the contract, also defined as a category of legal rules formulated in general terms that focus on directing contractual relations along the path that ensures the objective balance of

the contract or rules characterized by a high degree of generality aimed at creating contractual relations and achieving a spirit of solidarity and cooperation in contracts, and it is noted that these definitions of the modern concept of contract guidelines have focused on the nature and purpose of these principles.

Based on all of the foregoing, we can say that the guidelines of the contract according to the reading of the modern philosophy of law (the philosophy of social solidarity) are intended as a set of legal rules that are characterized by generality, flexibility and the ability to inspire detailed legal rules, and their purpose is to direct the contractual essence towards achieving the public benefit and doctrinal justice based on a reasonable balance in mutual performances, and thus serve as an expression or practical embodiment of the legislator's philosophy in organizing contracts and that these principles find a place Welcome in the theory of contract whenever the legislator adopts contractual justice in its objective dress.

Thus, we conclude that the teleological originality of the guidelines of the contract is inseparable from the teleological originality of the law as a whole and that the difference in the purpose of these principles is the same as the difference between these principles and their contents, and that the balance and final weighting between the philosophical doctrines that differed and varied their readings of the concept of the guidelines of the contract depends on the realization of the full impact. To implement these principles on the ground and assess the fate of the contractual essence in terms of its composition and to address its imbalance in light of its subject to the effectiveness of these guidelines of the contract.

5. Conclusions and Discussions

After our attempt through this research to present a fundamental philosophical study on teleological originality, we concluded with several conclusions and proposals that we hope will be of service to the esteemed Iraqi legislator and the gentlemen researchers, and those interested in the legal field. The law as a whole is a human achievement subject to the various conditions of the era that gave birth to it, and thus the mind that forms the law must be affected by a set of temporal and spatial considerations surrounding it, and therefore the objective facts when they are embodied legislatively are automatically framed by a set of considerations that the legislator embraces and emerge from being an objective fact Fixed to being a changing legal reality depending on the different considerations affecting the mind that embodies it, and this matter applies completely to contractual justice, as it is in its objective reality fixed, but in its legislative appearance it is variable and affected according to what surrounds its legislative embodiment of immediate considerations. The guiding principles of the contract, in terms of their final originality, are never separated from the ideal goal of the law in its legal appearance, and thus they clearly express the philosophy and wisdom of the legislator and embody the legislative structure on which the entire theory of the contract is based. Therefore, the nature and contents of these principles differ according to the difference in determining the final goal. to the law. The contractual freedom by observing human nature is not a solution and an answer within the framework of the contract theory, rather it is always considered a question and a problem, and addressing the problems of this freedom from the perspective of individual philosophy is by directing the contractual essence towards contractual justice based on a presumption that the contract is whenever the contract is concluded by mutual consent. Free is just, but from the perspective of the philosophy of contractual solidarity, contractual freedom is only a stone among the building blocks of society, and the contract is a means of solidarity and union that is not contradictory, and therefore the contractual essence must be directed by the legislator towards achieving contractual justice based on objective equivalence and proportionality in The economic balance of the contract. Therefore, we hope that the Iraqi legislator will reconsider the philosophy on which the legislative construction of the contract theory is based, and we suggest to our esteemed legislator that the basis of the contract theory be based on the public interest and objective contractual justice based on the presumption of balance and reasonable proportionality in the economic balance of the contract because the adoption of the theses of philosophy Saturated with the spirit of individualism as a teleological basis for building the theory of the contract may lead to objective contractual justice in a real ordeal resulting from the inadequacy of abstract contractual equality to bridge the gap and disparity in the subjective experiences and qualifications of the parties to the contract. We also hope that the Iraqi legislator will embody contractual freedom as a guiding principle for the contract and that the circle of this freedom is limited by public order and objective contractual justice. Therefore, we suggest that the legislative formulation of this principle be as follows: “Every person has the freedom to enter into a contract, choose the

contracting party with him, and determine the content of the contract." Its shape is within the limits set by law to preserve public order and doctrinal balance. In addition, the Iraqi legislator must embody the principle of contractual balance for its effective role in directing the contractual essence towards objective contractual justice, and we suggest that the legislative formulation of this principle be as follows: "The balance of mutual contractual performances must be in a reasonable manner of objective balance and proportionality, Any condition contrary to this is considered invalid, and this principle is considered part of the public order." Finally, we hope that the Iraqi legislator will embody the principle of contractual solidarity for its effective role in eliminating the spirit of selfishness from contractual relations and prevailing in the spirit of solidarity and cooperation, all of which contribute to the morality of contractual behavior and the strengthening of objective contractual justice. Solidarity at all stages of the contract, and this solidarity takes place in the negotiation stage through a commitment to perform every behavior that would take into account the interest of the other party and reduce the disparity in experiences related to the conclusion of the contract to a reasonable extent, while in the implementation stage, solidarity is achieved through a commitment to seriousness, cooperation, and sincerity in the implementation of the contract If its economic equilibrium is stable, or in the event of its disruption due to an emergency circumstance or force majeure, the two parties must jointly bear the consequences of these circumstances to the reasonable extent that preserves the balance of the contractual essence, and this principle is considered part of the public order.

References

1- A. Reygrobellet, Le projet de réforme du droit des obligations: incidences sur le régime des cessions de droits sociales, Bulletin Joly Sociétés, 2015.
2- A.-S. Courdier-Cuisinier, Le solidarisme contractuel, Litec, 2006.
3- Abdallah Laroui, The Concept of Freedom, Arab Cultural Center, Casablanca, Morocco, 2012.
4- Abdel Rahman Ayyad, The basis of contractual commitment, University Culture Foundation, Alexandria.
5- Alain Chirez, La Confiance en droit contractuel, Thèses, Nice, 1977.
6- Ali Harb, Critique of Truth, 1st Edition, Arab Cultural Center, Beirut, 1993.
7- Ali Harb, Essence and Relationship, Towards a Transformative Logic, 1st Edition, Arab Cultural Center, Beirut, 1998.
8- Amal Kazem Saud, Commitment to cooperation in contracts, Ph.D. thesis submitted to the Council of the College of Law at Al-Nahrain University, Baghdad, 2007.
9- Assali Arara, Nodal balance at the origin of the contract, Ph.D. thesis submitted to the Faculty of Law of the University of Algiers1, 2015.
10- B. Lefebvre, la justice contractuelle " mythe ou réalité " article, Les Cahiers de Droit, VOL 37 N°1, 1996.
11- Bahar Mahmoud, The Value of Goodness in Legislative Philosophy, Japanese Civil Law as a Model, Ph.D. thesis submitted to the Council of the Faculty of Law and Politics at the University of Sulaymaniyah, 2014.
12- D. Mazeaud, Loyalty, solidarity, fraternity: the new contractual motto? In Mélanges F. Terré, L'avenir du droit, Dalloz, Paris, 1999.
13- Dennis Lloyd, The Idea of Law, translated by Salim Al-Suwais, The World of Knowledge, 1st Edition, Kuwait, 1981.
14- Dr. Abdel Halim Abdel Latif Al-Qoni, The Principle of Good Faith and its Impact on Behavior, Menoufia University, Egypt, without year of publication.
15- Dr. Abdul Razzaq Al-Sanhouri and Dr. Ahmed Heshmat Abu Steit, Fundamentals of Law, Authorship, Translation and Publishing Committee Press, Cairo, 1950.
16- Dr. Abdul Razzaq Al-Sanhouri, The Theory of the Contract, Part 1, 2nd Edition, Al-Halabi Human Rights Publications, Beirut, 1998.

17- Dr. Abdul-Jabbar Al-Rifai, New Theology, Encyclopedia of Philosophy of Religion, Part 3, Introduction to the Study of New Theology and the Controversy of Science and Religion, 1st Edition, Dar Al-Tanweer for Printing and Publishing, Beirut, 2016.
18- Dr. Ali Filali, Obligations, The General Theory of the Contract, Move Publishing, 3rd Edition, Algeria, 2013.
19- Dr. Ali Muhammad Bdeir, Introduction to the Study of Law, Modern Printing House, 1st Edition, Basra, 1970.
20- Dr. Amir Abbas Salehi, The Philosophy of Ethics and Modernity according to Immanuel Kant, Islamic Center for Strategic Studies, Abbasid Holy Shrine, 1st Edition, Qom, Iran, 2019.
21- Dr. Ayman Ibrahim Al-Ashmawy, The concept of the contract and its development, Dar Al-Nahda Al-Arabiya, Cairo, 2002.
22- Dr. Faisal Mohamed El-Beheiry, Law and Society, Center for Arab Studies for Publishing, Cairo, 2018.
23- Dr. Fayez Mohamed Hussein, The Origin and Development of the Philosophy of Law, Dar Al-Nahda Al-Arabiya, Cairo, 2002.
24- Dr. Ghani Hassoun Taha, Al-Wajeez in the General Theory of Commitment, Al-Maaref Press, Baghdad, 1971.
25- Dr. Hassan Kira, Introduction to Law, Knowledge Foundation, Alexandria, 2014.
26- Dr. Muhammad Irfan Al-Khatib, Economic Analysis of the Theory of Contract from a Legal Perspective "Possible and Unlikely", research published in the Journal of the Kuwait International Law School, the seventh year, first issue, March 2019.
27- Dr. Muhammad Suleiman Al-Ahmad, Civil Thoughts, Library of Thought and Awareness of the Patriotic Union of Kurdistan, Sulaymaniyah, 2009.
28- Dr. Munir Mahmoud Al-Watari, Law, Al-Jahiz Press, 2nd Edition, Baghdad, 1989, p. 16.
29- Dr. Munther Al-Shawi, Philosophy of Law, 1st Edition, Dar Al-Thaqafa for Publishing and Distribution, Amman, 2009.
30- Dr. Nisreen Hussein Nasser El-Din, The binding force of the contract under the Consumer Protection Law, 1st Edition, Zain Human Rights Publications, Beirut, 2018.
31- Dr. Riyad Ahmed Abdel Ghafour, Doctrinal Justice, Ph.D. thesis submitted to the Council of the Faculty of Law, Al-Nahrain University, 2020.
32- Dr. Samir Tanago, The Essence of Law, Al-Wafa Legal Library, 1st Edition, Alexandria, 2014.
33- Dr. Zakaria Ibrahim, The Problem of Freedom, Egypt Library, 2nd Edition, without year of publication.
34- F. Diesse, Le devoir de coopération comme principe directeur du contrat, archives de philosophie du droit, tome 43, 1999.
35- Fatima Nasakh, The Social Function of the Contract, Ph.D. thesis submitted to the University of Algiers1, 2013.
36- Francis Fukuyama, The End of History and the Seal of Mankind, translated by Hussein Ahmed Amin, Al-Ahram Center for Translation and Publishing, 1st Edition, Cairo, 1993.
37- G. Rouhette, La force obligatoire du contrat, Observations critiques , in D. TALLON and D. Harris , Le contrat aujourd'hui: comparaisons franco-anglaises, LGDJ, 1987.
38- Georg Friedrich Hegel, The Origins of the Philosophy of Right, translated by Dr. Imam Abdel Fattah, 3rd Edition, Dar Al-Tanwir, Beirut, 2007.
39- Ghaida Habib Ali Gebara, The Concept of Freedom in Immanuel Kant's Metaphysics, Master's Thesis submitted to the Council of the Faculty of Arts at the University of Kufa, 2014.
40- Guido Alpa, the future of the contract, RICD, 1985.
41- H. Batiffol, the "contract crisis" and its scope, Archive. Philo. law, t. XIII, 1968.
42- Hans Kelsen, Pure Theory of Law, translated by Dr. Akram Al-Watari, Legal Research Center at the Ministry of Justice, Baghdad, 1986.
43- Hashem Saleh, Introduction to the European Enlightenment, Dar Al-Tali'a for Printing and Publishing, 1st Edition, Beirut, 2005.

44- Heba Mahdi Adnan Al-Faham, Protection of Satisfaction for the Weak Party in Contractual Relations, Master's Thesis submitted to the Council of the Faculty of Law at the University of Kufa, 2020.
45- Huda Jamil Thamer, Legal Implantation in Comparative Law, Master's Thesis submitted to the Council of the Faculty of Law, University of Kufa, 2020.
46- Immanuel Kant, Critique of Practical Reason, translated by Ghanem Hana, Arab Organization for Translation, 1st Edition, Beirut 2008.
47- Iraqi Civil Code No. (40) of 1951 in force.
48- J . Carbonnier "Droit civil , Les obligations" P.U.F, Paris, 1985.
49- J. Mestre, L'exigence bonne foi dans la conclusion du contrat , R.T.D.C, 1989.
50- Jacques Ghastan, The Extended in Civil Law, Contract Formation, translated by Mansour Al-Qadi, Majd University Foundation for Studies, Publishing and Distribution, 2nd Edition, Beirut, 2008.
51- L. Amic , La loyauté dans les relations de travail, Droit, Thèse pour obtenir le grade Docteur en Droit Université' Avignon, 2014.
52- M. El Gharbi, Contractual Justice and Freedom of the Will, R.R.J. 2005.
53- M. Goubinat, The guiding principles of contract law, Hal, 2016.
54- M. Mekki, Le contrat: entre liberté et solidarité, In Face à l'irresponsabilité : la dynamique de la solidarité, Dir. A. Supiot, 2018.
55- M. Vasseur, Un nouveau essor du contractuel , Les aspects juridiques de l'économie concertée et contrat", R. T. D. Civ .1964.
56- Maher Nassim, Freedom, Ethics and Law, Al-Resala Press, Cairo, no year of publication.
57- Mestre Jacques , L'évolution du Contrat en droit privé Français in L'évolution contemporaine du droit des contrats journées Savetier, P . M. F.1985.
58- Muhammad Reda Al-Muzaffar, Logic, Part 1, Perceptions, 3rd Edition, Al-Numan Press, Najaf Al-Ashraf, p. 1968.
59- Muhammad Sharif Ahmed, Sources of Obligation in Civil Law, Dar Al-Thaqafa for Publishing and Distribution, Amman, 1999.
60- Mustafa Al-Awji, Civil Law, Contract with Introduction to Civil Obligations, Part 1, 4th Edition, Al-Halabi Human Rights Publications, Beirut 2007.
61- P. Esmein, l'intervention de l'état dans les contrats , sur l'état de question en droit Français , Dalloz, 1946.
62- P. Malaure , L.Aynès ,Cours de droit civil ,Les obligations, 6 édition , Paris ,1995.
63- Robert Alexey, Philosophy of Law, The Concept of Law and its Application, translated by Dr. Kamel Farid Al-Salek, 2nd Edition, Al-Halabi Human Rights Publications, Beirut, 2013.
64- S. Porchy-Simon, Droit civil ,Les obligations, Dalloz, 12th edition, 2020.
65- Salam Abdul Zahra Al-Fatlawi, Scope of the contract, Ph.D. thesis submitted to the Council of the College of Law, University of Baghdad, 2006.
66- The French Civil Code of 1804 in light of its new amendments in 2016.
67- Xavier Jenne, L'intervention de l'état dans les contrats , Dalloz , 1946.