

Decision Fatigue and the Illusion of Consent in Contract Law: A Comparative Study of the Cognitive Limits of Consent in International Contract Law and European Union Contract Law

Hasan Aminian Joonaghani, Pantea Dabaghpoor and Mansour Amini

Traditional contract doctrine generally assumes that a signature or electronic acceptance (in electronic contracts) reflects free and informed consent. However, findings from neuroscience indicate that time pressure, sequential decision-making, and the depletion of cognitive resources diminish individuals' evaluative capacity and steer them toward impulsive choices, default options, and merely formal manifestations of assent. As a result, apparent consent may lack a sound cognitive foundation, and what is perceived as genuine intention may in fact be the product of mental fatigue.

Adopting an interdisciplinary and comparative approach, the present study examines how international contract law and European Union contract law respond to these cognitive limitations. To this end, the article comparatively assesses the capacity of transnational and international contract law instruments- such as the United Nations Convention on Contracts for the International Sale of Goods (CISG) in the context of interpretation; the UNIDROIT Principles, the Principles of European Contract Law (PECL), and the Draft Common Frame of Reference (DCFR) with regard to contractual validity; and the United Nations Convention on the Use of Electronic Communications in International Contracts together with the EU Consumer Rights Directive in relation to error-correction mechanisms and cooling-off periods. The study proceeds from the premise that decision-making under fatigue can be conceptualized as a form of "situational vulnerability," a condition that, when knowingly exploited by the counterparty, triggers contractual control mechanisms. Accordingly, the article addresses three core issues: first, the interpretation of consent in light of the cognitive conditions under which it is formed; second, the assessment of contractual validity and substantive fairness through doctrines governing the exploitation of a party's vulnerability; and finally, the use of proportionate remedies- such as contract adjustment, error correction, and cooling-off periods- rather than a binary choice between enforcement and avoidance.

Applying this analytical framework to consumer contracts and employment agreements demonstrates that decision-making under fatigue may function as an intangible source of contractual inequality. The article concludes that integrating the psychology of decision-making into the doctrine of consent does not undermine contractual freedom; rather, it strengthens genuine intention and safeguards informed consent.

Keywords: Illusion of Consent, Situational vulnerability, Freedom of Will, Good Faith, Cognitive Fatigue.

