





utility, and accordingly, the beneficiary is the one that brings pleasure and pushes away pain.(Bentham ,2000, p14-15).

Bentham believes that human instinct is vested in pleasure and pain, and it is to them which man owes his ideas, as returned in all of his judgments and purposes in life, the purpose of which is to demand pleasure and escape from pain (Moses, 2017, p. 82-83). Consequently, the utility aims for pleasure and leads to it, as happiness is the end goal, and happiness is the summation of pleasure (Moses, 2017, p. 248). This could be one of the reasons that classical scholars accepted utilitarianism as ‘individualistic’ and assumed it is good for freedom and liberty. However, “utilitarianism is not individualistic, at least when it is arrived at by the more natural course of reflection, in that, by conflating all systems of desires, it applies to society the principle of choice for one man”(Rawls, 1999, p. 26).

Pleasure always carries good to Bentham, where he is no longer concerned about the condition in which pleasure occurs and its causes and consequences. The causes that lead to pleasure can cause pain at the same time, as long as the goal is to reach pleasure. While one should be cautious about pain, the first is always outweigh the second, and the cost is pain in order to get the pleasure that is above it (Mazhar, 2012, p. 63-64). Thus, pleasure is good, and pain is evil, and happiness brings pleasure and avoids pain. Bentham, pleasure is the only good in existence. Accordingly, Bentham believes that people, by nature, ask for pleasure and avoid pain, uncommon with animals. Still, the mind is the key here, as people are distinguished from animals by following the principle of utility wherever they work. The mind rules that the act is good whenever it returns with constant pleasure or if the pleasure prevails in pain. In contrast, the evil act is the one that brings constant pain or upsurges the pain on pleasure (Karam, 2012, p. 347).

Bentham calculates the amounts of homogeneous pleasures based on the seven factors: (Bentham, 2000, p32).

1. Intensity: Measuring pleasure in terms of strength or weakness.
2. Duration: Calculating the duration of pleasure by time.
3. Certainty: The act that brings today’s pleasure is better than tomorrow’s.
4. Propinquity: Any current pleasure is better than the pleasure that is forthcoming.
5. Fruitfulness: It is a pleasure that produces and drags behind it for another self.
6. Serenity or purity: Pleasure is free of pain.
7. Extension: I.e., increasing the number of people enjoying pleasure

These are the factors that are taken into account to calculate the amounts of homogenous pleasures mathematically. In contrast, heterogeneous pleasures such as reading and sports, cannot be calculated (Sabah, 2015, p. 35-36). Therefore, pleasure should be favoured over the other in accordance with those criteria, so that the value of pleasure and pain is then directly related to its severity, durability, certainty, propinquity, fertility, purity, extension or inclusion of the largest number of people, with the latter as the most important factor.

Bentham went on to calculate pleasure in a quantitative way and in the commercial spirit, he measures them with money, where he determines the value of pleasures at their monetary price when he considers money as the main tool for measuring pleasure. It is clear from conclusive experience that the actual amount of pleasure is followed in each particular case - according to this relationship or the amount of money. For Bentham, money has been accepted as a communal instrument for measuring things by nature. He illustrated that in the following questions “How much money do you give to buy this pleasure? Five pounds no more. And how much money do you give to buy that other pleasure? Five pounds no more. So these two pleasures are, in your view, equal,” he said, even as a savings fund with amounts of money to be paid in advance (Badawi, 1976, p. 250-252).

Bentham, therefore, believes that through the quantitative investigation of happiness, “the greatest happiness to the greatest number of people”, ethics and legislative science can be transformed into two sciences as controlled as mathematics (Karam, 2012, p. 348). This idea was rejected by John Rawls because “the greatest happiness to the greatest number of people” is not enough if it is not applied in a just method (Rawls, 1999). For example, there are many countries in the world with great wealth, but the wealth is not distributed justly; this is not converted to the happiness of the majority of the people (Hasan and Perot, 2021).

Bentham evaluates his utilitarian philosophy on experimental grounds, deciding on the following principles (Abdah, 1999, p. 60):

1. Pleasure is the only thing desired.
2. The only proof that something is desirable is the actual desire of people towards it.
3. General happiness is good for everyone, since the happiness of all is better compared to a single person.

## **2.2 The Law according to Bentham:**

Jeremy Bentham defined the law as the set of evidence and orders that refers to the direction of the governor’s will in the state (Long, 2016, p.38). It is noted that the definition is excessively broad. This definition embraces laws issued by the legislator, case laws, administrative principles, local orders and all complementary or codified laws without restrictions (Dias, 1985, p. 26).

Bentham also considered the essence of the law merely as an order, which refers to the will of the ruler, and is, therefore, one of the founders of legal positivism. Bentham believes that the law stems from the will of the legislator (Bentham, 2018). The legislator is the only authority capable of realizing and knowing what benefits individuals and what harms them. Bentham believes that the legislator depends on five types of sanctions to evaluate and assess moral conduct. These sanctions are religious, physical, political, moral and sympathy (Bentham, 2018). Therefore, the utility to Bentham is the reason for the emergence of the law and its purpose, and the will of the ruler is strong. It does not make mistakes and claims that its legislation lacks deficiencies (Hussain, 2017, p. 204).

The legislator must reach the general principles of analyzing existing legal texts, guided by utility, without concern for innovation and creative work. Still, his work is the logical development of the principles arising from the analysis of legal texts, improving the form of the law by placing it

within an organized framework. The legislator must keep this logical accommodation of its parts in mind to qualify the law and make it suitable for court presentation (Pound, 1967, p. 34).

Community interest, according to Bentham, is also the aim of the law, so that the law is based only on the interest of the common, as the law must adjust itself to human nature that cannot be changed (Kaabi, 2018, p. 292-293). Bantam's statement also emphasizes not only the interpretation of good with happiness, but also confirms that everyone always seeks what he believes to be his own happiness, and then leaves it to the legislator to reconcile public and private interests. It is for the benefit of the public that theft should be refrained from, while there is only criminal law for personal interest. The latter thus becomes an approach to harmonizing the interests of the individual with those of the community. Bantam's vision of punishment is limited to its existence without being rigorous.<sup>1</sup> In fact, each punishment is harmful because it is evil in itself and carries pain. Therefore, it should not be permissible in accordance with the principle of utilitarianism (Strauss and Cropsey, 2005, p. 361).

Bentham also believes that the principle of utility (in order to achieve the greatest benefit to the largest number) is variable. The idea of beneficial is a general idea, as it is subject to repeated experience, which makes us feel the existence of pleasure. Therefore, that "happiness to the maximum extent possible" to Bentham is the only principle that controls the creation of legislation. Its conditions for achieving the greatest possible happiness vary according to time, place, influences and customs. There remains a matter that nothing will be determined absolutely, so how can the law be just? (Rawls, 1999, p. 399). Bentham believes that laws should be examined through their potential to achieve the greatest happiness for the largest number, i.e., through their effects. The laws are also changing, and the best laws that are possible at the moment have not been so in the past, and the best laws in the past may not be the best today either (Chatelet, 2014, p. 198-199).

Bentham's disregard for the principle of intentions should be noted, as he was overly keen on the effects of an act without the motives that prompted it, though he takes into account the circumstances in which the results of the actions arise within them. The effects of an act cannot be beneficial or harmful in an absolute way, but are determined by the circumstances surrounding the act, which indicates that a single act may have bad effects in certain circumstances and good effects in others. This makes it impossible to set an absolute criterion for beneficial actions as well (Hind and Attia, 2006, p. 426).

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<sup>1</sup>) In the time of Bentham, many secondary crimes were subject to the death penalty, therefore the jurors often refused to condemn such crimes, because they considered the penalty to be excessive, As such Bentham was calling for the abolition of the death penalty for all crimes except those that were the most dangerous and, before his death, he eased the criminal law from this aspect. (Russell, 1977, p. 415).



### 3. Analysis of Manifestations of legal utilitarianism(Evaluate of theory aspect)

#### 3.1 Bentham did not succeed in pleasure calculation:

Despite the glamour that was accompanied by what Bentham brought regarding the self-calculation, it was not in fact without its shortcomings, including:

- A person may not measure both pleasure and pain, and he may do it in contrast to what Bentham. Furthermore, those criteria cannot be measured together; for example, the duration cannot be measured as certainty. In addition to that, it contradicts personal nature, as it is not absolute.
- The other criticism is that even if it is possible to measure the physiological differences of individuals and the required pleasure to the body, it is impossible to measure the sense of pleasure.
- We cannot accurately determine the results and consequences of our actions, and we cannot measure both pleasure and pain based on that.
- Calculating all the pleasure and pain and other options from actions that can be performed, as well as determining the number of people affected by them, is very difficult, so how can pleasure and pain be calculated in the work we do if it affects millions of people in the coming centuries? (Jalili Muqaddam, 1389, p. 113).
- We must also acknowledge the relativity of the two ideas of pleasure and pain. They differ according to different people, so someone may have great pleasure in work, while another person sees greater or less pleasure in it. Accordingly, people differ in judging good or evil, and the calculation of the amount of pleasure and pain becomes wrong. For example, a group of people hears musical sounds, and some of them are very happy, while others in the group do not care about it and do not get excited and were not affected by it. So, how can we take pleasure and pain as a measure by which actions are measured (Amin, 2012, p. 36)
- Relying on the quantitative factor that Bentham believes in, the calculation of the self leads to unacceptable consequences. We may fall into a preference for an immoral act that brings more pleasure (utility) over a moral action that brings less pleasure (utility) (Al-Buhairi, 2015, p. 125).
- Criticism has been directed at the principle of neutrality ruling on utilitarianism as well, to secure the maximum happiness for the largest number of people. According to this principle, it is not possible to favour or offer the benefit of some over others. So it argues that actors should not vary their acts towards some compared to actions towards others, like relatives.

Our conscience does not accept it for us to help others, while our father or mother needs help (Jalili Muqaddam, 1389, p. 113).

#### 3.2 Bentham's theory decreased the value of the duty:

It is not always right to measure good and bad with pleasure and pain because pleasure is not synonymous with good, as Bentham claimed. Since honesty, justice, and courage are all good, their opposite is evil regardless of its consequences. Good here is due to self-attributes in it, so honesty is good in itself; likewise, lying is evil to prove that there is no need for the results. (Amin, 2012, pp. 37-38). Besides, people naturally seek joy and intend to avoid any harm. This is what applies to the concept of honesty, as well as justice, courage and goodwill. These concepts go better and match with

the nature of human beings and the contradictions of those ideas - of lies, injustice, cowardice, and bad faith - are inconsistent with people's instinct and their natures.

Accordingly, Bentham over-constructed the theory, as he confused good and benefit or virtue and interest. This confusion ignores the conflict in the conscience between interest and duty. Even if Bentham acknowledges this conflict and believes that its solution is through self-reckoning, he is deluded in that because the account of pleasures is only an account of interests, and there is no weight in it for duty (Markas, 1999, p. 260).

By linking goodness with pleasure, utility and happiness, Bentham made his doctrine a teleological doctrine. Whereby his experimental tendency made him consider goodness merely as a tangible thing through the calculation of pleasure, which made it an objective direction. This resulted in making morality in its entirety a mere search for the pleasurable results and beneficial effects, and the transformation of life. The entire ethical process leads to a process of continuous endeavour in order to obtain the means that lead to benefit. Therefore, this utility philosophy results in making life a mere search for the means, without concern for realizing the purpose behind it. This philosophy seems to be the reason why the modern man has become simply a "slave of utility". He seeks after the self and pursues the benefits without thinking about the purpose that leads to them, so it is no wonder that the modern man has become lacking in values (Ibrahim, DT, pp. 150-151, p. 163).

Accordingly, for the person who is governed by his pleasures and desires, their values will lose meaning. In this manner, justice will not remain an ideal value, just as religion does not represent anything to him, and morality is not a constraint on his behaviour. Instead, benefits remain the only value that a person maintains (Hussain, 2017, p. 192). Thus, his eagerness to enjoy pleasure and fear of pain are the only directives for his behaviour.

Accordingly, Bentham asks to cancel the phrase "duty" from the dictionary of ethics, warning of its misuse (Badawi, 1976, p. 251). His belief that duty can be used to achieve pleasure and happiness is included in the calculation of the self, so it remains a minor recognition of the concept of duty. This belief makes us search for the meaning of duty, its source and its function, which he restricts to pleasure and benefit. (Markas, 1999, p. 260).

### **3.3 The private and public interests are not well-combined by him**

Bentham sought to establish his theory on the basis of goodness through experience. For him, the sole way is not to prove desirable; the matter is instead confined to exhibiting people's appeal for it. Thus, that will be sufficient for us to rely on experience to validate something that people prefer, and we consider this as "happiness". We assume that this one desire is the reason for reaching these objectives. Therefore, good is equivalent to benefit, which is advantageous for us and, in the meantime, useful for others. (Ibrahim, pp. 148-149).

Jeremy Bentham and other prominent followers of this philosophy in the eighteenth and nineteenth centuries believed that man is equipped to rise and progress without limit (Mazhar, 2012, p. 141). Moreover, through his resolution to achieve maximum happiness for the largest number of people, he identifies that the direct benefit of the individual may conflict with the benefit of the public. In such cases, a settlement is necessary for them by sacrificing some individuals' interests to

achieve the public's interest, as in the case of ownership appropriation for the public benefit (Markas, 1999, p. 259). Bentham wishes to provide a social aspect to the benefit when he states: "In search of the pleasure for others is the best means that can aid the individual himself to reach the greatest possible level of pleasure" (Abdah, 1999, p. 59).

Meanwhile, Bentham notifies us about what to expect from others when performing something for others with no interest in themselves, as he states: "Never dream of people moving their little fingers to assist you unless the benefit is apparent through their behaviour. They will never do so until the existing material covers their nature. However, they accept your service only when there is an interest for themselves, and how many benefits they will gain for themselves while providing you with assistance" (Al-Tawil, 1953, p. 100).

Hence, Bentham admits that man is egocentric by nature, as he (in determining the fate of the number of people who enjoy pleasure) does not admit to sacrificing for the sake of others in compliance with their selfish characteristics by nature. Also, he does not object to the person sharing his pleasure with others, rather, he prefers it, but with the condition that this sharing does not cost him anything or affect his pleasure. For instance, the participation of someone in listening to music in a concert on the condition that it should not cost him anything extra and is not lessening anyone else's personal pleasure (Badawi, 1976, p. 250).

Therefore, a clear contradiction can be noticed in what Bentham brought. Any work is good if it includes a greater amount of happiness than pain for the doer and others, which requires reconciliation between the two interests if they contradict, and this is that to which Bentham aspires. This matter in itself depends on the individual giving up on his greediness, though Bentham believes at the same time that the former never abandons his/her selfishness. So, happiness is the sum of a collection of preferences, which includes individual benefits. In turn, their private and public interests conflict, though there should be harmony between the two, even while the individual is concerned with his own interests only. So, taking what Bentham presents leads us to an empty circle from which there is no escape, and it seems that he leaves the matter to the legislator. It can be concluded that Bentham's principle self-terminates where everyone should enjoy happiness. Everyone seeks after his happiness, where they do not give up anything, and they are all caring for their happiness only. However, they cannot all be happy, so it remains only as a wish for them.

### **3.4 According to Bentham, Utilitarianism leads to the eradication of the discrimination between what is and what it should be:**

Bentham believes that pleasure along with pain dominate moral life, where they direct all behaviors. The influence of man by appealing to moral terms hinders the recognition of the impact of both pleasure and pain on behavior.

Bentham also denied the phrase "should", given its impact on the natural inclinations of people, considering that the purpose of moral philosophy is to set rules for guiding our actions and achieving the greatest possible satisfaction for our innate motives. The ethics philosopher does not say that a person should do such-and-such, but rather states it is the nature of man to do such-and-such. This person is not responsible if he has a benefit behind his stealing. Rather the person responsible here is



the specialist in punishing criminals, or he is the criminal legislator who underestimated the punishment (Al-Tawil, 1953, pp. 103-104).

Bentham calls for the freedom of the study of law from issues of morality and religion, as well as natural law, due to them being unseen and vague, and due to the fact that they bring vagueness and confusion to thinking (Luaid, 1981, p.94). Hence, pleasure and pain for Bentham are majestic and sovereign, which not only determine what we truly do, but rather define for us what should we do (Strauss and Cropsy, 2005, p. 354).

### **3.5 Bentham has denied the idea of natural law**

Bentham believes that, when formulating laws, the legislator must find the best way to reconcile and harmonize pleasures and punishments, instead of making a natural law his ideal. He does not believe in the natural right or the product of the natural law, which represents an illusion and nothing more, as well as the arbitration of whether this act is good or bad under the umbrella of the fixed rule. This is on the pretext that its compatibility or opposition to natural right, natural justice and human rights is, in reality, only an arbitrary judgment. As no attention is paid to the interest of others, but rather because someone agrees with the will of those who judge that or annoy him, so Bentham calls it (the principle of sympathy and aversion). Instead, Bentham recommends the realistic rights that exist, as they are the products of realistic laws, according to him. And realistic laws, according to Bentham, are: the man-made laws that admit independent rights and that the legislator establishes with the aim of achieving the maximum level of pleasure (Chatelet, 2014, p.197).

Consequently, justice for Bentham is not the goal that can be found in natural law. Rather, the behavior must be assessed according to the benefit and harm caused by itself. Then legislation must also be weighed with the balance of profit and loss that resulted by it, and its value is estimated according to its results. Thus justice is results from a calculation based on profits and losses that made from a behavior, decision, or legislation (Hind and Attia, 2006, p. 426).

Bentham's argument in this regard is that saying that humans have natural rights, equality, and freedom. This idea absolutely encourages an individual to confront existing laws with terms of equality and freedom, which make him deny realistic laws in the name of fictitious laws, which is the natural law. To Bentham, the natural law is a public allegation for everyone, so that every individual will claim to replace man-made laws with them. (Chatelet, 2014, p. 198).

In addition, Bentham attacks the idea of natural law because he also gives sanctity to created law that it is not always worthy, thus it impedes the issue of legal reform (Al-Kaabi, 2018, p. 295).

### **3.6 Bentham links law to the will of the rulers and interests**

Bentham believes that the will of the ruler produces the law, and the ruler does not commit any mistakes in determining the benefit and harm. Hence, the ruler brings a law without deficiency, so individuals have no choice but to obey. This is what made Bentham one of the founders of the legal position. Thus, to Bentham, the ruler is a successful shepherd who always makes his herd of sheep obey his own law, as long as he guarantees their benefits and happiness.

The ruler may be a person or a group of people who exercise authority over a group of individuals. They obey him with the aim of being provided and developing happiness. The ruler is basically the maker of the law, and his major task is to regulate the motive of self-interest, which achieves the greatest happiness, by estimating certain penalties, which means permitting the exercising of certain pains for someone who commits actions that are contrary to public happiness (Hind and Attia, 2006, p. 427).

The general goal of all laws should be to increase the overall happiness of society, and it should be expelled whatever reduces or harms it. (Strauss & Cropsy, 2005, p. 361).

It is worth mentioning that, although Bentham made the law dependent on the will of the state, he did not distinguish between (Hussain, 2017, p. 204):

1. Public and private laws.
2. Criminal and civil laws.

Bentham says that civil law should have four goals: survival, prosperity, security, and equality. But he did not mention freedom, and in fact, he paid little attention to freedom. Bentham admired the righteous dictators who had lived before the French Revolution.<sup>i</sup> Consequently, if the ruler issues the law, then what he says is right, and accordingly, is a duty as well. He justifies those thoughts with benefit and happiness, and has forgotten that the will of the ruler is one thing and benefit or happiness is another.

## Conclusion

After completing this research, we reached the following results, most notably are:

- Utilitarianism is not a modern idea. Rather, it is considered an old philosophical trend. However, Bentham, like others, has influenced its renovation. Bentham's merit in the doctrine of public utility is due to his active use of it in the experimental side regarding practical problems.
- Bentham made a mistake in his intuition, when he thought that through the quantitative investigation of happiness it is possible to control morals and legislation, such as mathematics, because life is more than just numbers, and the experience that he, in turn, relied on upon the theory structure proves to us the truth of that.
- What Bentham built is self-defeating, as he did not succeed in combining the private and public interests. He builds his theory on achieving the greatest happiness for the largest number, while believing in the selfishness of the individual and does not trust his ability to get rid of it.
- Bentham made a mistake in his calculations, when he placed a wall between religion, morals and values in general and the law. He considers that the law revives an independent life, and that material benefit is the only value that a person preserves, and pleasure is the one that governs it. So, this short view reduces the value of duty and prevents it from being understood as happiness that goes beyond this intended benefit.

Bentham exaggerated what he brought about, and his adoption would lead to unacceptable results. He believed that the authority does not make mistakes, and individuals should submit to his will, that he knows more about their interests than themselves. So, Bentham did not give value to their

freedom for their happiness, ignoring that freedom is part of happiness despite its proration, as it justifies the preference for unethical work over ethical work to gain greater pleasure.

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<sup>i)</sup> It is worth mentioning that Bentham used to despise the theory of human rights and characterize human rights as pure rhetoric, and basic human rights are rhetoric that walks on two long legs, and in the French Revolution when declaring human rights, Bantam underestimated him and divided the articles into three categories: 1. The articles that are unreasonable 2 Void articles 3. Articles that are unreasonable and void at the same time (Russell, 1977, pp. 415-416).