3. Classical legal positivism

This chapter examines the theories of the foremost legal positivists of the nineteenth century: Jeremy Bentham and John Austin. Bentham is best known as a utilitarian and law reformer, but who insisted on the separation between the ‘is’ and ‘ought’ of law, or what he preferred to call ‘expositiorial’ and ‘censorial’ jurisprudence, respectively. Austin was equally emphatic in maintaining this distinction, but his analysis is generally regarded as much narrower in scope and objective than Bentham’s. A number of key concepts analysed by both of these theorists are examined and compared, including their definitions of law, commands, sovereignty, and sanctions.

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