

Jeremy Bentham and H.L.A. Hart's Utilitarian Tradition in Jurisprudence

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Hart identified a utilitarian tradition in jurisprudence, which he associated with Jeremy Bentham and John Austin. This tradition consisted in three doctrines: the separation of law and morals; the analysis of legal concepts; and the imperative theory of law. I argue, contrary to Hart, that Bentham did not adopt a 'positivist' conception of law which insisted on the separation of law and morals; and that Hart misinterpreted Bentham's approach to the analysis of language. Hart was wrong, moreover, in assuming that Bentham's jurisprudential project was a precursor to his own attempt to provide a morally neutral description of a legal system. It was this assumption, however, which may have influenced Hart's editing of *Of Laws in General*, and contributed to the editorial problems which have necessitated a new edition of that work under the title *Of the Limits of the Penal Branch of Jurisprudence*.