Analytical School

• Analytical School deals with law as it exists in the present form.
• Established in the beginning of 19th century.

• Jeremy Bentham: Founder

• Austin: Father

• Salmond: Termed it as systematic jurisprudence.
Purpose

• To analyze law, without reference either to their historical origin or development, or their ethical significance or validity, the first principle of law.
John Austin (1790-1859)

• Imperative School – Command Theory
• He considered analysis – chief instrument of jurisprudence.
• Law should be carefully studied & analyzed &
• the principles underlying should be found out.
• Positive law is proper subject matter of study for jurisprudence.
**Concept of law**

- All laws are rules the majority of which regulates behavior.
- These are either directives or those imposed by general opinion.
• Law divided in 2 parts –

1. Laws properly so called-

a) Laws set by God - Devine law

b) Laws set by men to men acting as political superiors.
2. Laws improperly so called –

a) Laws by analogy - laws set & enforced by mere opinion e.g. laws of fashion etc

b) Laws by metaphor – Laws of nature
e.g. Gravity, Laws of motion
Austin’s positive law – Characteristics

1. Command
2. Sovereign
3. Sanctions
Austin’s Approach Emphasizes The Following-

1. A legal system is to be taken as it is to be resolved into its fundamental conceptions.
2. Analysis of any legal system is to be done on the basis of logic, not on the basis of ethical or historical element.
3. Laws are product of a state & all laws are thus, the command of sovereign.
Austin’s Approach Emphasizes The Following-

4. Positive law & ideal law must be kept distinct.
5. International law is not a true law as there is no sanction behind it, imposed by sovereign.
6. ‘As command of sovereign’ treats law as artificial.
7. No place for judge-made law.
8. Not sanction alone but defense, sympathy, fear and reason induce a man to obey law.
• Reference -
• Dr. V D Mahajan - Jurisprudence & Legal Theory.
• Dr. Vijay Ghormade - Lectures on Jurisprudence & Legal Theory.