

ANALYTICAL SCHOOL OF JURISPRUDENCE

JOHN AUSTIN

**LAW, COMMAND, DUTY,
SANCTION & SOVEREIGN**

INTRODUCTION

- ❖ **Positivism** : Focuses on "Law as it is". It ignores the past and the future. Law as it is separated from "law that ought to be".
- ❖ This school considers Positive law as the perfect law and the subject matter of jurisprudence. It defines Positive Law as Juridical norms which have been established by the authority of the State. Also considers the law as the command of political authority. As the school focuses on **COMMAND**, so the school is called as **Imperative School of Jurisprudence**.
- ❖ In the process of analysis of positive law, the sociological, historical, moral or ethical aspects are not taken into consideration.
- ❖ This school is also called as **Positive School**.
- ❖ It also rejects **a priori** method.

JOHN AUSTIN

- He was Born in 1790.
- At the age of 16 joined the army and served until 1812.
- In 1818 he started practicing as lawyer.
- He was appointed as the Professor of Jurisprudence at the University of London.
- He is the founder of the Analytical School.
- 1832- The Province of Jurisprudence Determined.
- A plea for the Constitution, Lectures on Jurisprudence (1863).
- In this lecture we will look into his theory of law, sovereign.
- Chief Exponents: Jeremy Bentham, John Austin, Salmond, Prof. H.L.A. Hart, Kelson, Gray, William Markby, Holland.

THEORY OF LAW

- **Law:** Law is a command of the sovereign backed by sanction.
- His theory is called as imperative theory because its emphasis is on **COMMAND**.
- According to him, positive law has four elements:
 1. Command,
 2. Duty,
 3. Sanction and
 4. Sovereign.

COMMAND

- A command is the expression of a wish or desire to another that he shall do or forbear from doing, a particular act coupled with an intimation that, in case he does not comply with it, he will be visited with certain evil consequences.
- The components of command are:
 - a. **Duty**: The obligation to follow or comply.
 - b. **Sanction**: The evil which results from the non-compliance with the command.

Sanction signifies a method of coercion to enforce the command, not leaving the citizen free to obey the law or not as he pleases, but to make him obey whether he likes it or not. It means penalty inflicted for the violation of law.

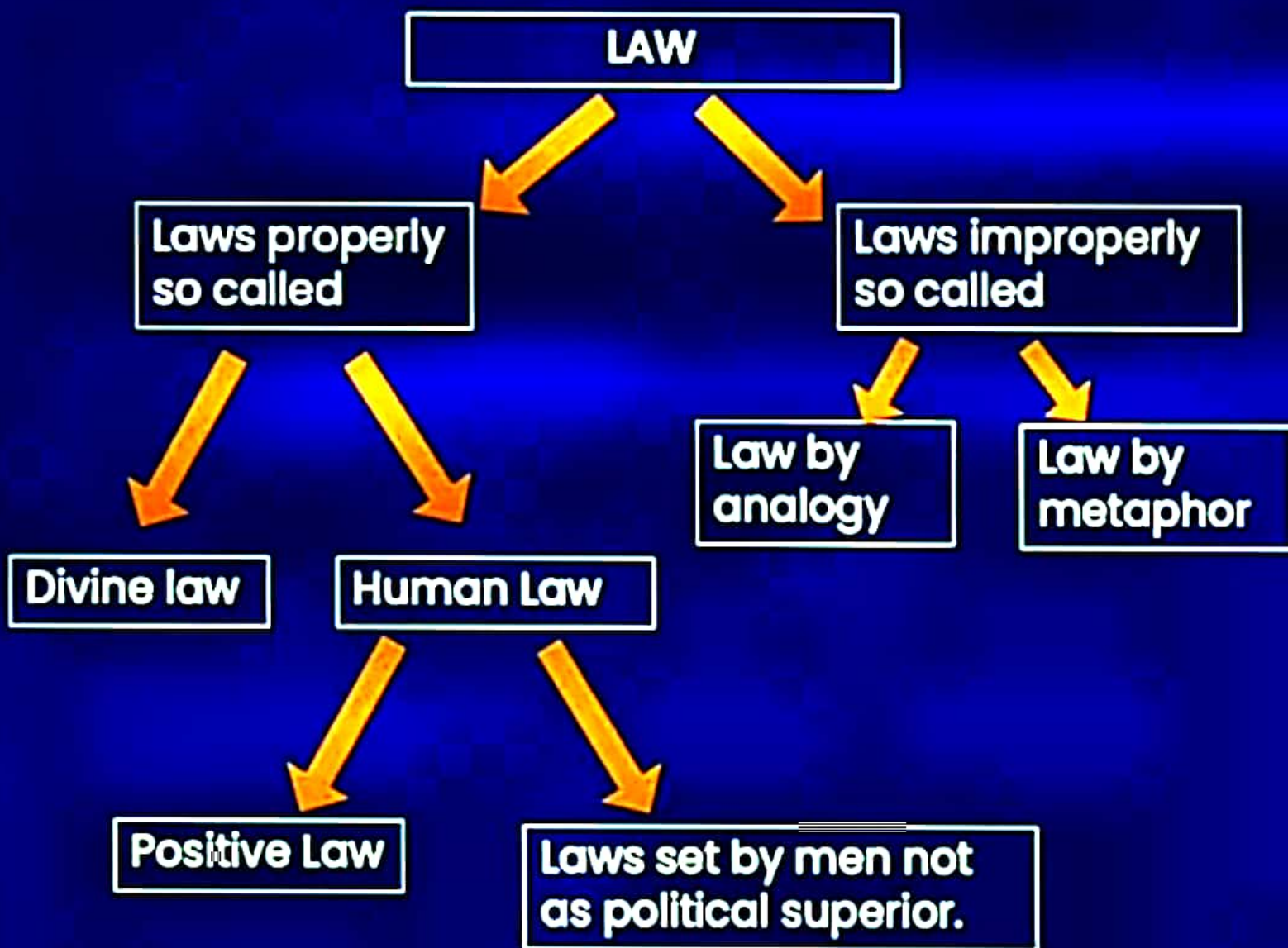
- According to **Austin**, there are two types of command:
 - a. **Particular or occasional command**: Where it obliges specific or Particular act or forbearance.
 - b. **General Command/ law or rule**: Where it obliges generally to acts or forbearances of a class.

SOVEREIGN

- **Meaning:** If a determinate human superior, not in the habit of obedience to a like superior, receives habitual obedience from the bulk of a given society, that determinate superior is sovereign in that society and the society (including the superior) is a society political and independent.
- His definition emphasis on:
 - a. Obedience which must be habitual or permanent,
 - b. Sovereign must be superior in the society,
 - c. The superior must be common to the entire society,
 - d. Independent of all imperative control from outside.

- **According to Austin, there are three essential features of sovereignty:**
 - 1. Essential in every State: Every political society or State must essentially have a sovereign.**
 - 2. Indivisible: Sovereignty cannot be divided.**
 - 3. Unlimited and illimitable in power: Sovereignty is unlimited and illimitable.**

CLASSIFICATION OF LAW



EXCEPTIONS

- He said that there are three exceptions to his theory:
 - ❑ Declaratory laws: Laws that explain or interpret the provisions of the other laws which are already in force.
 - ❑ Repealing laws: That which repeal an existing law.
 - ❑ Imperfect Laws: That which creates imperfect obligations.

CRITICISMS

- **Salmond:** The end of law is justice and the theory of Austin has missed this concept. Any definition of law without reference to justice is inadequate.
- **Customs Ignored:** Austin's view that 'law is the command of sovereign' is not supported by historical evolution of law when customs played a significant role in regulating human conduct.
- He does not treat international law as law because it lacks sanction. He mentions it as positive morality.
- Swedish Jurist Olivecrona has criticized Austin's theory of law because of over-emphasis on command as an inevitable constituent of law.
- Sanction alone is not the means to induce obedience.