H. L. A. Hart identifies his legal positivism with ‘the utilitarian tradition in jurisprudence’ founded by Jeremy Bentham. According to Hart, this tradition centres on the following three doctrines. 1. The morally neutral description thesis, that is, an analytical-descriptive study of legal concepts is of vital importance, and should be conducted in a morally neutral way. 2. The separation thesis, that is, laws are things made by men and have no necessary or conceptual connection with morality. 3. The command thesis, that is, a law is essentially a command of a sovereign.

In his legal positivism, Hart preserves the first two theses, and discards the third one, which he argues is ‘a great weakness in [Bentham’s] jurisprudence’ and distorts the ‘aspects of law which [Bentham] himself sees to be important though they cannot be fitted into the cramping framework dictated by his imperative theory.’ These aspects include, among other things, legal validity, legal obligation, the sources of laws, and modern constitutionalism. Hart asserts, in order to understand these important features of laws and legal systems, Bentham’s idea of laws as commands of a sovereign which has as its ultimate efficient cause the habit or disposition of obedience of a political community, Hart asserts, has to be replaced by the idea of peremptory content-independent reasons for action, that is, the idea of social rules.

Both Bentham’s expository jurisprudence and Hart’s conceptual theory of law aspire to describe the important features of legal practice. Although sharing some important theses, their expositions of law are widely different. The features that are salient and important for Hart are trivial or even non-existent for Bentham, and vice versa. This paper will first compare Bentham’s theory of laws as commands of a sovereign with Hart’s theory of laws as social rules, and argue that Hart, when presenting Bentham’s theory, commits the mistake of over-simplification, against which he has warned other interpreters of Bentham’s thought. Second, the basic differences between Bentham’s and Hart’s theory will be explained in the light of the disparities between the nature of Bentham’s project of utilitarian legal reform and that of Hart’s project of ‘providing a better understanding’ of legal systems. These disparities give rise to their different methodologies, which Hart mistakes as the same. Third, Hart’s indictment against Bentham’s command theory will be answered on the latter’s behalf, and Hart’s theory of social rules scrutinized through Bentham’s lens. My conclusion is that Bentham’s expository jurisprudence is a different type of theory from Hart’s, and offers a legal explication which is more candid, deep and interesting, and hence more useful than Hart’s theory of social rules.