SUBJECT MATTER OF LEGAL THEORY

- material subject matter (extension)
  - also an object of other disciplines (e.g. sociology, psychology, anthropology)
  - law

- formal subject matter (intension)
  - special perspective of legal theory on its material subject matter
  - the nature of law (or ‘the concept of law’?)
‘Analytical jurisprudence is concerned with explaining the nature of law by attempting to isolate and explain those features which make law into what it is.’ (Dickson, 2001)

‘I am using ‘the nature of law’ to refer to those essential properties which a given set of phenomena must exhibit in order to be law.’ (Dickson, 2001)
STAGES IN CONSTRUCTING ANALYTICAL LEGAL THEORY

1) determination (identification) of the object of inquiry (i.e. the nature of law)
   ➢ Determination Stage

2) giving of an adequate account (explanation) of the object of inquiry (i.e. the nature of law)
   ➢ Explanation Stage
STAGES IN CONSTRUCTING ANALYTICAL LEGAL THEORY

- **Determination Stage:**
  a) identification of samples of law
     - list of the possible situations that could rightly be described as ‘law’ (in the legal sense)
     - e.g. state law, customary law, religious law, international law, transnational law, indigenous law, natural law
  b) determination of necessary (or important) features of law
     - what features x must have in order to be ‘law’
     - e.g. law’s claim to be a legitimate authority, normativity, coerciveness, conventionality, law’s claim to correctness
CONCEPTUAL ANALYSIS

- conceptual analysis (CA) = analysing concepts by identifying their contents and the way in which they relate to other concepts

- concept (classical sense):
  1) an idea (i.e., the content of our thinking) that applies to a
  2) set of individual things or situations,
  3) is expressed by words,
  4) mediates between the mind and physical reality,
  5) and is of vital importance in our understanding

⇒ represents a category of phenomena
CONCEPTUAL ANALYSIS

- CA attempts to discover ‘what elements a concept is composed of and how these elements are related’ (Bunnin & Yu)

1) traditional view of CA
   - looking for definitions of the concepts
   - definitions are given by stating the necessary and sufficient conditions for the concept to apply
   - singling out a set of *a priori* analytic truths about a concept in order to reveal the n. and s. conditions of its proper application
   - a necessary condition is something that *has to be* in place for the concept to apply
   - a sufficient condition is one that is *enough* for the concept to apply
CONCEPTUAL ANALYSIS

2) pragmatist view of CA

- reservations about analyticity and *a priori* truths
- uncovering the most salient and important features of a concept
- ‘those that figure most prominently in an explanation of the kind of thing it is the concept of’ (Coleman)
- ‘that are central to our understanding and appreciation of it’ (Coleman)
AIMS OF CONCEPTUAL ANALYSIS

a) to provide a theory which yields a better understanding of the concept

b) to ‘maintain a structure within which meaningful discussion can occur’ (Bix)
   - Are two people who appear to be discussing the same subject in fact doing so?

c) to set the boundaries of the analysed concept, thus making an investigation into its relations with other (neighbouring) concepts possible

d) to ‘learn something interesting, important, or essential about the nature of the thing the concept denotes’ (Coleman)
HOW CONCEPTUAL ANALYSIS IS DONE

1) philosophers’ intuitions about clear cases of the analysed concept
2) identification of the clear cases
3) further intuitions (triggered by clear cases) as evidence about the concept’s necessary or salient features
4) identification of the necessary or salient features
INTUITIONS

- philosophers’ intuitions can either be representative of:
  
a) the intuitions of the class of professional philosophers (intuition elitism)
  
b) a broader class that includes non-philosophers (‘the folk’) (intuition populism)

- insofar as the philosopher’s intuitions correspond to the ordinary common understanding of the concept-term, they reveal the ‘folk theory’ about things that fall under the concept
OBJECT OF CONCEPTUAL ANALYSIS

Is our ultimate object of inquiry to elucidate concepts (ideas), or to determine the nature of the objects they refer to (reality)?

1) modest conceptual analysis
   - draws conclusions about the content of the analysed concept and about how the concept relates to the folk conception of it

2) immodest conceptual analysis
   - draws conclusions about what the world which the concept strives to describe (the concept’s referent) is like
Thank you for your attention!