1. We’re working on figuring out how and why we do analytic philosophy.
2. What are the essential qualities of law? the necessary and sufficient conditions of law
   1. necessary in the sense that all law must have it
   2. sufficient in the sense that if something satisfies all of the necessary conditions, it is sufficient for it to be law
      1. analogy
      2. it is necessary to be a bachelor that one is male and that one is unmarried (and human)
      3. if the necessary conditions are satisfied that is sufficient for something bachelor -
   3. To begin, we want to consider the ways we might determine the necessary and sufficient conditions of law:
      1. Mere lexicography?—not this b/c idea isn’t tied to the English word “law”
         1. the word in English picks out lots of stuff that isn’t law in the relevant sense
         2. and people who don’t speak Engl can engage in the analysis too
      2. Platonic perspective?—
         1. investigating some abstract object
         2. notice that the object we are examining is not actual law
         3. compare what we are examining when we learn that a bachelor is an unmarried male
            1. not examining actual bachelors
            2. I can know that a bachelor is an unmarried male without ever seeing a bachelor (indeed it would be true even if there were no bachelors)
            3. the fundamental “idea” of law outside space and time
         4. but how do we get into contact with that thing?
            1. how is this inquiry possible?
      3. some instead adopt a psychological perspective—
         1. what we are really talking about is our thoughts
            1. our concepts
3. Using mathematics to think about the psychological perspective
   1. necessarily 2+2=4 – how do we know this?
      1. arguably not through empirical inquiry (eg looking at what happens when we put two things together with two more things)
      2. we know 2 +2=4 in advance of experience
      3. 2+2=4 even if there isn’t anything in the world
   2. what are we knowing when we know that 2+2=4?
      1. our thoughts?
      2. the problem with this approach is that our thoughts are not necessary
      3. my thoughts can go from 2+2 to 5
   3. it seems like our thoughts must be in relation to some abstract objects (numbers) from which these necessary truths follow
   4. likewise it seems that our thoughts about the necessary characteristics of bachelors or law is about an abstract object that our thoughts are in contact with
   5. we seem back to a form of Platonism
   6. There are abstract objects out there, and when we think about the “law” we choose to make a psychological connection with the abstract object; and this is what we are doing when we are doing conceptual analysis
4. Still, there is an infinite number of abstracts out there, so what happens when people disagree about the necessary characteristics of a thing?
   1. Could say that both people are right, they’re just establishing a relationship with different abstract objects (e.g. bank vs. bank);
      1. but something seems wrong about this, there must be some right answers and a way to have meaningful disagreement about what is necessary of the “law”
      2. people seem to be able to disagree about a theory of law without simply talking past one another
   2. how can we explain this meaningful disagreement?
   3. Bachelor example
      1. assume it is true that if two people have different criteria for using a concept they have different concepts
      2. still some people are better at identifying what those criteria are
      3. two people can share the same criteria but disagree about what they are – one is right and the other is wrong
      4. eg people say blithely that a bachelor is an unmarried male
      5. But…Does the concept apply to the Pope or a 2yo? No, so as we flush out the necessary conditions of bachelor, more than an unmarried male;
         1. so that is one way to explain meaningful disagreement
         2. the person who said bachelor is an unmarried male was wrong about his own criteria, because he will then realize there must be criteria to exclude the Pope and 2 year old boys
      6. of course, if people view a bachelor as any unmarried male no matter what – if they reject the Pope and 2 yr old examples as bachelors, then (under the view that a concept is whatever criteria we have for using it), the have a different concept
      7. So what do you with this disagreement? (when someone disagrees with your counterexample) – give up?
   4. Arthritis example
      1. sometimes the criteria that are associated with a concept are up to experts
      2. lots of people may think that they have arthritis in their bones, but they are wrong, given the expert definition of arthritis as only in joints
   5. or we have a social agreement about the concept with which the word is associated; so when someone uses the word for a different concept they are wrong at least insofar as they claim that they are tracking the social rule
      1. This is drawing us back to a linguistic understanding of conceptual analysis (which we don’t want b/c of the shortcomings of language we discussed earlier)
   6. to repeat we are having a problem with the Criterial theory:
      * 1. a person’s concept is simply the set of criteria the person has for using the concept; and if someone has different criteria, they are talking about something else
   7. here is another way of avoiding the criterial theory –
      1. Meaning can outstrip what is in people’s head at a time
      2. the criteria people had for the concept of water 500 years ago was potable, transparent, tasteless liquid
      3. but in fact even then water was necessarily H2O
      4. they didn’t know the content of their own concept of water
      5. but does law have structure like a chemical?
   8. but there is yet another way to explain meaningful disagreement about the criteria for using a concept without saying people are simply talking about other things
      1. Shapiro view for meaningful disagreement
      2. How do we explain that someone saying “slavery is just” is just plain wrong?
         1. should we say he is right according to his concept of justice…?
         2. no -
      3. Reflective equilibrium:
         1. Try to come up with truisms (committed judgements) about a thing
         2. Then figure out a theory that accounts for these truisms
         3. But some of the original truisms might be thrown out as inconsistent with the theory (and that’s okay).
         4. Eventually come to an equilibrium in which the truisms justify the theory and the theory justifies the truisms
      4. Problems with reflective equilibrium:
         1. how do we know we are aiming at anything?
         2. how to we know people will come to the same equilibrium
      5. Why do this analysis?
         1. Shapiro: It will have a real impact on how the law will work (e.g. how cases are decided)
            1. Different theories will lead to different results in interpretation of the law (?—won’t any theory account for any decision and arguments about interpretation; meta-ethics comparison)