

## Overview of John Austin’s Theory of Law

### I. Central Aspects of Austin’s Theory

- A. *Analytic Jurisprudence*: Austin was concerned to analyze the concept of a legal system and the central concepts used in legal discourse.
  - 1. *Reductive Analysis*: Austin’s particular form of analysis was reductive. His intention was to analyze legal concepts in terms of non-legal concepts so that the whole realm of the law could be understood in non-legal terms—in particular, in psychological and sociological terms. This was part of an attempt by many philosophers to unify all knowledge with physics at the base.
  
- B. Legal Positivism
  - 1. *The Descriptive/Prescriptive Distinction*: Both as a substantive point of his legal theory and as a point of methodology, Austin drew a sharp conceptual distinction between law as it is and law as it ought to be.
  - 2. *Genetic Test of Legal Validity*: Because the law may, for Austin, have any content whatsoever, there needs to be some test of legal validity that doesn’t depend on the content of the law. Like later positivists, Austin accepts a “pedigree” or genetic test. The validity of law is determined by its origin, source or history. (*E.g.*, was it passed by the required legislative bodies, signed by the required executive bodies, *etc?*)
  - 3. *Centrality of Rules*: Law is a species of rules.
  
- C. *Command Theory of Law and the Theory of Legal Sovereignty*: These two aspects of Austin’s theory give the basis for his specific pedigree test of legal validity. They are a part of *his* version of legal positivism but not, as we shall see later, an essential part of legal positivism itself.

### II. A Chart of Austin’s Reductionism:

