Lect 22

Now – planning theory of law

* one goal of theory is explaining answers to theoretical disagreement in a way that satisfies positivism
* start with nature of legal institutions -
* Based on practices among officials (as with Hart)
* Difference and similarities to Hart
* For Hart, what is goal of legal practices? – only solves problems of disagreement, change (rules of recognition, change, adjudication)
  + but no essentially moral purpose
* difference for Shapiro – legal systems are based in practices among officials with a moral purpose
  + moral aim thesis
    - their goal is to solve moral problems whose solutions are arbitrary, contentious or complex
* in addition it is compulsory (binding people independently of their consent)
* also self-certifying
  + enforceable simply by being issued, without confirmation from another authority
  + distinguishes law from rules of a condo association

Nature of legal norms – laws are plans and legal activity is planning activity

Start with individual plan

Choose to stop smoking – then I smoke

what did I do wrong?

* I failed as an agent – failed to act rationally
* this is a failure independent my reasons not to smoke
* assume I decide to do something I ought not do (torture a puppy) and then don’t do it
* that too is a failure of rationality, even though it had a good result
* notice that having decided I act, in a sense, robotically – I am simply disposed to act

plans are also nested – having made a plan I have a reason to make subplans about how to effectuate the plan – if I fail to make subplans I am again irrational