* Recap:
  + In the middle of the planning theory of law
  + Elements of the Planning Theory of Law:
  + How does this theory differ from Hart?:
    - Both positivism
    - Both depend on practice by officials and acquiescence by citizens
      * + Moral Aim Thesis: circumstances that arise from legality. In other words, problems arise and morality doesn't tell you the solution. So law tries to solve problems that are arbitrary, contentious, and complex. Ex: how many years should someone be in jail for murder?

Moral problems whose solution is arbitrary (ex: speed limit)

Moral problems whose solution is contentious (ex: abortion permissible/impermissible) 🡨 law resolves disagreements about what morality requires.

Moral problems whose solution is complex (ex: building a subway) 🡨 law helps break it down/solve it

* + - * + Law exists for a moral purpose, it doesn't have to do it correctly however. But who has these attitudes?

The Framers? Idea that they set the Master plan which sets a secondary plan/plan about plans (example: Article 5) 🡨 then Shapiro starts to sound like Hart.

* + - * + What about now? How many of these people have to have the attitude that Shapiro is saying is intentional to the law, that law is about solving moral problems?

Unclear if we really know who else…

NOTE: it is possible for members of the plan to be alienated from the plan, either they don't accept the same goal/purpose of the plan/reasons for the plan – though they accept the plan

Again so what are we demanding of the purposes of the master plan?

Plunkett, Shapiro, and Raz talk about the legal point of view. AKA when you start talking as the position of the legal system (judges) you have to talk in terms of the Moral Aim Thesis.

* + - * + What if you find out it just talks about aiming at solving moral problems but doesn't really (ex: Mafia) Green thinks Shapiro would believe that it isn’t a legal system. 🡨 possible challenge if you think it would be

Do we disagree?

Remember Austinian theory, no moral purpose, just need to habitually obey.

maybe Shapiro’s theory is better because there needs to be some claim of solving moral problems, even though this could put a limitation on what law can regulate because it would mean law can only regulate things that try to solve moral problems.

**Remember:** Shapiro’s theory is not that it has to solve moral problems, just that it has the aim to. In fact, arguably if the legal system solved a moral problem but didn't intend to for Shapiro that wouldn't be law.) **NOTE:** this then solves the Nazi problem, because Nazi’s were acting to solve a moral problem/aim even if it isn’t correct or does achieve it.

Lots of people could be alienated, but it seems really weird if no one is thinking they are trying to solve something moral.

* + - Necessary conditions for a legal system (talked about this when talked about Hart):
      * + Ability to regulate anything/sovereign (Shapiro does not seem to adopt this – though it might follow from the moral aim thesis)
      * Compulsory on people
        + binding independently of consent
      * Self-certifying - can be enforced just by being created, doesn't need approval from anything else. (Ex: Condo association isn’t this because they have to go to the police/judge to get a contract enforced to get the money… whereas a law/legal system doesn't have to)
      * NOTE: Shapiro doesn't think punishment is necessary for a legal system because the system can have a plan that doesn't have punishment.
  + Planning Stuff
    - With respect to an individual, there is a normative but non-moral ought that you have that is independent of the reasons you have when you made the plan. This explains why there is this certain wrongness to not following a plan, even if it isn’t the right plan or the plan was decided wrongly. This helps explain the normativity of law without having to be a natural law theorist.
      * (Ex: reasons for and against smoking lead you to make a plan to not smoke. If you don't follow through with that plan you have done something wrong, and that isn’t solely because of the reasons for the plan but because you just didn't follow the plan.)
    - Once I decide to do something by setting a plan, I just act robotically in accordance with my intention/plan. It’s rational that the plan disposes you to act. Having made the decision I should do it, even if it might be the wrong decision and as such plans should not be constantly revised. That isn’t to say they can never be revised (ex: stop don't drink that, there is a bug in your coffee) But to say that once you make a plan the matter is settled.
* NEW:
  + Group plans: the same things that apply to the individual plan would apply to groups. So once the group makes a plan, it is rational to make sub plans to pursue the plan regarding the means to pursue the plan. Those sub plans can be made by other people, but your attitude towards them should be the same that you just do them (that jumping quality where you just do it) because it's the adoption of a group plan.
    - Seems to explain authority
    - Ex: painting a house, when A asks B for a paint brush, B just gives it to A.
  + So what stands as the basis of a legal system? A group plan.
    - How does that explain the ought of the law?
      * One is the moral stance of the aim of the law
      * And one that is the rationality that plans bind you in some way to act in some way. (norms of rationality?)
        + What about Hume’s challenge? Seems like you go from the descriptive to the normative? Ex: I intend to drink this (descriptive.) I ought to have drank this (normative.)

but this is not a moral normativity

* + - What about what officials are saying to private citizens, they don't have to sign onto the plan? (This was a problem for Hart, fear of sanctions like Austin was what he had to fall back on)
      * For Shapiro, officials can make robust normative claims to private citizens about why it’s important to morally follow the law
        + that is because of the moral aim thesis
        + but doesn’t mean they are right

- for Shapiro there is no general moral duty to obey the law - it is not essential to law that there moral duty of obedience

* + - * but necessarily there is a non-moral ought of a plan binding officials, by virtue of their adoption of the master plan
* New: Inclusive and Exclusive Legal Positivism (Shapiro)
  + Ways to get to exclusive legal positivism
    - law necessarily claims authority and it cannot make that claim if the existence and content of an authoritative utterance requires one to consider the very reasons for action the authority’s directive is displacing (Razian)
    - Plans can’t appeal to the facts the plan is supposed to settle (Shapiro 🡨 what we are using)
  + remember Dworkin’s critique of Hart?: Hard cases, judges disagreeing about what to do and they claim that there is a preexisting legal answer and they are looking to moral considerations, so doesn't that mean morality is essential to legal systems…?
    - * Inclusive legal positivism response (Hart’s Response:) the law is ultimately based on social facts, not moral ones. So moral considerations are contingent on being included within the law. But ultimately, the law is solely a question of social facts because you look to official practice which is about social fact.
        + Dworkin’s second response: umm what about disagreements about the rule of recognition, and officials use moral arguments to answer that so you cant explain morality solely in terms of a rule of recognition telling them to look at morality. So they are disagreeing about the ultimate rule of law and using morality to solve it. 🡨 not talking about the answer to this now.
    - Exclusive legal positivism says that it is impossible for morality to be included in the law. It is true that officials can be legally obligated to apply a moral standard, but that standard is not the law. (Exs: rules of grammar for statutory interpretation analysis even though rules of grammar aren’t laws \*same for math, or foreign law being applied within the system… using mathematics or grammar automatically is what they would do in absence of a law saying to use something else)
      * Imagine that a state (Montana) says that one has an obligation to drive at a reasonable rate of speed on the freeway. Assume one already had such a moral obligation in the absence of the law. The ELP would say that reasonableness standard is not the law even though a judge is legally obligated to look to it
        + that is because the standard does not settle anything
      * Due Process – the Constitution obligates a judge to look to due process to strike down statutes
        + but the judge was bound by duew process (we can assume) even before the Constitution said so
        + so due process is not part of the law, for the ELP
        + The nature of the law by being a plan is to settle things. In so far as nothing is being settled there is no law. So morality isn’t in the law or change what we ought to do, instead it just fills in the holes of where the law doesn't speak.
    - SLOP argument: Why does inclusive positivism not work? Because if you have to consider what the plan is supposed to settle to determine what the plan is/content of the plan is, then it doesn't settle anything. (Ex: take the pill unless you have an allergy 🡨 the issue of allergies is not part of the plan or directive) (Ex: this statute is valid unless it violates due process 🡨 then due process is placed outside of the law because it already binds you because if it was part of the law/plan then it couldn't be used to settle the plan.)
    - There are some things that are not settled (ex: if something violates due process) The constitution is saying this is not settled, and throws you back to what you would use to solve the problem before aka morality.