* Recap:
  + Planning Theory
    - Moral aim thesis – the essence of law, it is necessary for law, if it doesn't have this quality it isn’t law. It has as its purpose overcoming moral problems whose solution are complex, arbitrary, or contentious
      * This can explain why officials tell private citizens to follow the plan, because of the moral reasons for the plan to begin with. But the private citizens have not necessarily adopted the plan, and therefore do not have that the reasons for action that the planning provides.
        + Ex: Nazi officials make the master plan to do what Hitler says as a way of solving moral problems whose solution are complex, arbitrary, or contentious. They tell German citizens to do what Hitler says. The idea explained above explains why German officials think that German citizens should follow what Hitler says.
    - Another essential condition n doe law is that it is self-certifying
    - Law is essentially plans (talking about officials)
      * Hart & Shapiro think that what is essential to law is a practice among officials
      * For Shapiro, for Shapiro the practice is one of planning
        + This is nice because it explains why there is a reason for action/to jump for the official that is independent of morality. Why? Because the officials have adopted the master plan and subsequent sub plans.

Ex: group plan of painting a house. Once that plan is adopted the participants will have rational reasons to create subplans to achieve the plan

they will have a reason to act in accordance with one another’s subplans

act/jump regardless of more deliberation.

A legal example: enforcing judgments

* + - * When officials abide the rule of recognition is it because of a plan (thinking about Hart)?
        + Doesn't seem like they would have to, because it seems like under the rule of recognition it isn’t necessary for officials to have plans - they can always be using all things considered reasoning (ex: Ill do what the queen says cause I need a pay check, and it is easy to do, and blah blah blah)
        + So Shapiro’s theory seems different from Hart’s.

Also different from Dworkins theory because for Dworkins theory you are always using all things considered reasoning to draw out the moral elements from legal practices, so you are always thinking about associative obligations. Further, just because the matter has been settled in the past doesn't mean it was settled correctly, so you always reconsider for Dworkin.

* + - Exclusive Legal Positivism – because laws are plans, it is not possible for morality to be law. Why? because plans settle matter, that is the essence of a plan.
      * So what is the problem? Laws try to settle moral problems/questions.
        + This is where we get SLOP. Figuring out the existence and content of a plan cannot require consideration of the matters the plan was supposed to settle.

Ex: “Ill stop smoking if stopping smoking is the right thing to do” 🡨 that's not a plan. When you adopt a plan of what to do you are settling what you are doing. **SO** a plan would be: “Im stopping smoking.” 🡨 this settles the matter

* + - * Since law/plans is supposed to settle morality questions, morality cant be part of the law.
        + Two examples:

1) Montana speed limit example. Proper speed is a reasonable rate of speed. Montana has adopted a moral standard as the law, an exclusive legal positivist will say that that standard cant be the law because it didn't settle anything. People were already required to drive a reasonable rate of speed so nothing new has been settled, so that standard isn’t law.

2) Due Process Clause: equal protection and due process themselves cant be law because they are not something that is settled, they are a moral consideration that was already a binding consideration before even enacting them as law. So with the 14th Amendment law kind of withdraws and lets some of morality (due process, equal protection) that exist from the very beginning do its work.

Question by Green: does the 14th A mean that law withdraws for private citizens (as opposed to judges)? No

when a law violates due process, can you just say it isn’t law and not abide (minus a judgment?) No. You still have to follow it until its struck down.

When the judge gives a judgment striking down a law/clarifying the validity of a law then the matter becomes law, because the judgment settles a matter. (So private citizens are bound by the settlement/law of congress or courts, the moral considerations are left to the judges when they make a decision that settles a matter.)

Ex: Judge is required to use rules of grammar or mathematics, but these are not law for the ELP because they are not settled. However, the ruling from using grammar or math would settle the matter and be law even though using grammar or math is not itself law.

* + - * + Green thinks the best way to think of Exclusive Legal Positivism is the law withdrawing.
      * All of this follows from the planning theory. It isn’t essential to law that private citizens are planners. So the attitude of private citizens toward the law might involve all-things-considered reasoning
* New: Shapiro Authority Article
  + There is a certain jumping that the law seems to demand of us as citizens. We’ve now explained through planning theory why it makes sense for officials to jump. But if we haven’t adopted the plan ourselves, why should we jump and follow a command? The law seems to do this on private citizens, tell them to act how is commanded just because it was commanded not because of reasons/considerations of the request.
    - NOTE: the duty to obey the law and the reasons for action discussed in the beginning of the course are distinct
    - How can this submission to authoirty be rational? That is the puzzle
  + Could say that it is impossible for the type of authority government claims to exist. Why?
    - 1) it would be irrational for you to submit to a authority in the way it demands
    - 2) it would be contrary to your autonomy/immoral to the ideal of morality to follow the command in the way it demands.
  + Number 1:
    - Ex: I’m washing my car. Someone asks why? And I say I don’t know-just doing it for no reason. That would seem irrational. To be rational is to act on the balances of reasons of which you are aware. This explains why we might say that someone who says smoking is bad but still smokes is irrational.
    - To act rationally then is to act based on the balance of the reasons you are aware.
      * a authority doesn't have you do this though. It tells you what to do and to do it because it says so, not because of a balance of reasons. “Because I say so” vs. putting a reason created by the authority in the hopper of reasons – the former is what authority demands
    - So Government asks private citizens to do something irrational (ex: stop at red lights because the government said for no other reason (like punishment, danger, etc.))
      * If you had a plan of obedience that might be different because you had settled the matter that you were going to obey.
    - Since they are asking you to do something irrational than that kind of authority doesn't exist.
      * POSSIBLE SOLUTION: a weaker understanding of authority - Ladenson’s theory of permissible punishment (in Applbaum.) Government claiming when they make laws that not that you have a duty to do what the law says but only that the government is morally permitted to punish you.
        + But this doesn't seem to capture the real nature of authority
        + Comparatively: Raz, there are reasons for action that seem unique to law. When govt says “stop at the red light” that gives me a reason for me to stop and a reason to act on reasons for or against stopping. Authority creates *preemptive* reasons
  + Number 2: contrary to your autonomy.
    - 1 way this is described: you always have an obligation to consider the reasons behind something
      * but that is probably false
    - 2 way: it simply isn’t the nature of morality that it can change based on what an authority says.
      * If government tells you to X you should X. If it tells you you should –X you should –X 🡨 that sounds like the nature of authority, that the authority can decide the content of morality.
        + This problem is that that isn’t how morality works. Government cant make it so people have a moral obligation to torture a kitten because the government says people should do it. Morality isn’t a matter of discretion because of what a person says (maybe God can) but it seems like governments are saying they have that power within their authority to make something permissible or not.
  + How according to Shapiro does Raz solve this? (Service Conception of Authority) 🡨 an explanation of actual authority.
    - The purpose of authority is to serve the interest of those obligated to obey. We aren’t talking about an authority just serving people’s self interest. Instead, the government serves you by helping you act as you have a reason to do
    - its directives create reasons because they are performing a service for you by helping mediate between the person subject to the authority and the preexisting reasons for action. In other words, the government helps people better satisfy their preexisting reasons for action (esp the moral stuff) by following the authority. So authority is in service of morality. Therefore it is not contrary to autonomy to follow authority.
    - also not irrational because you are making a rational decision to follow the authority because you are more likely to do what you ought to do by following that auth than by reasoning on your own
      * This can exist in a couple of different areas:
        + FDA regulations 🡨 why might it be the case that you are more likely to do what your preexisting reasons would lead you to with the help of the government than on your own? **AKA more knowledge**

They know more than you do (this also explains why doctors have authority and people are more likely to do what they ought to do medically by listening to doctors. Doctor is acting in service of your preexisting reasons by employing his medical knowledge)

* + - * + stopping at red light 🡨 govt isn’t like doctors who know more than the person they are regulating. But they have already done the reasoning about safety etc. (time saving), so it would be wasteful for you to deliberate again because they have already deliberated the issue. **aka time saving**
        + Another arbitrator example: lack of bias might explain a moral authority. Because following what the arbitrator says, who isn’t invested in the matter, is more likely to lead you to abide by your reasons for action because you are worse at considering them. **aka no bias**

also solving coordination and prisoner’s dilemmas – will discuss later