* Recap:
	+ Planning theory – laws are plans, and Congress establishes laws which establish a relationship with a certain norm or standard.
		- Problem: some laws are not plans, they aren’t created by an intentional act of making a plan. 🡨 customs are an example of this.
			* Shapiro’s Solution: plan-like-norms
			* custom is plan-like because it can provide the same settling function as a plan
			* so a master plan can identify as law subplans or planlike norms
		- What does the existence of plan-like-norms do to the master plan? Is it necessary that there is always an intentional act/explicit decision that creates the master plan?
			* Green: In fact, custom/plan-like-norms may stand at the apex of the master plan. Ex: England. No one got together and decided to pick a Queen and Parliament, it just kind of happened.
				+ Shouldn't be that much of a problem for Shapiro, even though it's a plan-like-norm at the center its still functioning like a plan.
	+ Exclusive legal positivism follows from the planning theory of law via SLOP.
		- This has been shown to prove that morality cannot be law, despite the fact that judges can be legally required to look at morality because it is the very thing law is supposed to settle.
			* Does this argument only apply to morality? No, the law also settles factual disagreements. So maybe those facts cannot be law either on the same grounds. (ex: in a criminal case, did he do it?) Or any consideration that the law is supposed to settle.
				+ The question of if something is law itself may also fall under this. The fact that something is law doesn't mean that the fact itself is law, until something settles that it is in fact law, like through litigation. (Ex: The security and exchange act. Was it actually passed by congress? Was it signed by the president? 🡨 that fact is not law - it is unsettled, which means there could be contention until there was litigation and then that settles the matter)

Normally this doesn't need to be settled because it isn’t in contention, but it could be

* + - * + Another way to put this may be that you only need law for things that need to be settled because of disagreement.
			* What about laws that don't appear to settle anything? How does the criminalization of murder settle anything, since it already was a moral fact that murder was impermissible

Whoa, wait it does settle some things still though even if it doesn't settle everything about the matter:

Like what is actually murder in contentious cases

Consequences and penalties

How murder should be adjudicated

Etc.

* + The planning theory is supposed to be a response to Dworkin. (Remember: Dworkin’s criticism is (1) in hard cases judges disagree about the answer, look at morality to resolve it but think there is a preexisting legal answer that they are discovering rather than making
	+ Hart’s response was inclusive legal positivism – morality can be a ground of law if social facts about the rule of recognition say so
	+ but D’s second criticism is harder to respond to
	+ (2) in hard cases the disagreements are about the grounds for law at the level of the rule of recognition, look at morality to resolve it but think there is a preexisting legal answer that they are discovering rather than making
	+ which must mean some moral considerations are included not just social facts)
		- #2 response by Shapiro is this idea of the economy of trust. At the level of the master plan there can be a settlement of trust that decided who should be trusted and is more likely to get it right. The adoption of the master plan settles this and lets you answer about the disagreements at that level in a positivist way.
			* Basically saying there is more agreement than you think, and that the agreement there is will settle the disagreements because of the settlement of the economy of trust at the master level even if judges disagree about what is going on. (🡨 Green finds this improbable, also we didn't read this)
		- When is something unsettled for Shapiro? Like what if only a few people think its unsettled? Are there microdisagreements that call for microlaws? 🡨 left it at that

Authority – Shapiro

* + Again talking about a government being legitimate. Existence of law doesn't require a legitimate government, but it is a special quality that will create normative benefits.
	+ Razian view is the natural view that if a government is legitimate you have a normative duty to abide by law. Indeed not only do you have a duty to do X of the law says X, but you have a preemptive duty to do X so you don't have a duty to act on your other reasons for or against doing X (ex: stopping at a red light, you are preempted from acting on other reasons) Secondly, the duty is content independent (aka if the government said x, or not x it doesn't matter the preemptive duty can be created by the government telling you regardless of what it is)
		- Raz thinks this is what governments are claiming/claim they are able to do.
		- Wolff says it isn’t possible for there to be the normative power the government claims:
			* 1) its against rationality (rationality puzzle)
			What does it mean to be rational? That the balance of reasons led you to your decision. Ex: washing your car, if you are just doing it with no reason that is irrational. So it seems like government is supporting irrational behavior because you are just supposed to do what government says not act on the balance of reasons.
				+ If gov asks you to do something against the balance of reasons its irrational

So the duty doesn't override other considerations, it just excludes them. That sounds impossible/irrational.

* + - * 2) contrary to autonomy (autonomy puzzle)
			If the government claims it gives you a duty to do X by saying do X it is claiming a moral power that doesn't exist. It isn’t possible for there to be these content independent duties of making a wrong act right just by saying so (except maybe god) we cant just change morality at will. Even through a promise, because even you don't have the power to give away content independent duties. You can’t create a duty to torture a kitten just by promising to torture a kitten
	+ Shapiro offers some theories for weakening authority to solve these puzzles:
		- Ladenson argument: Hohfeldian privilege to punish instead of a power to change duties. Government has the moral privilege to punish you for not following the law.
			* But this doesn't seem right, the government seems to be saying more - that you shouldn't have done it in the first place.
		- Theoretical authority: a doctor giving you advice, or a weatherman. These authorities don't claim any capacity to create a reason for action but to only give you a reason to believe you have a reason for action. What the person says doesn't change a thing because you already have a reason (or not have a reason) to do it. It changes your practical reasoning with respect to the beliefs of whether the thing the authority says will help. Ex: a doctor saying to take a pill, a weatherman saying to bring an umbrella. So there is no normative power being claimed.
			* Ex: breads bad for ducks. Your mother says don't feed the ducks. You say my mother knows more about animal morality about ducks than me. I now think there is a moral reason to not feed the ducks. My mother has no power over the subject, she just knows more about the subject and can give me more reasons to act that way.
			* Arbitration: concerns about bias. An arbitrator is unbiased and can make a judgment. Ex: A & B are in a fight, uninvolved C says actually A you were wrong apologize to B. If we think about an arbitrator as a theoretical authority, A’s belief about how to behave now has a moral reason to apologize that was always there brought more to life by C saying something unbiased. C isn’t claiming any moral power over you at all, just the capacity to give you information about your reasons already
			* **Problems with this**: recognizing the authority the government claims is not always the authority the government has. Governments authority seems like its supposed to be dispositive and theoretical authority doesn't seem to do that. Government is claiming practical authority, a new reason for action.
			* A theoretical authority just changes your belief one way or another. You dont have to recognize the authority for them to be an authority.