

induced a peculiar S-shaped tail-curvature in mice—a deformity that was quite similar to one of the effects of morphine on similar laboratory animals. This is an example of the use of analogical reasoning in what might be considered a “chemical” context. Regrettably, the book does not deal extensively with the well-established and sophisticated sorts of analogical reasoning that are used in advanced chemical research on synthetic methods, structure-determination, and reaction-mechanism elucidation.⁵ Chemists—and philosophers working in the currently emerging discipline of philosophy of chemistry—should find this book to be especially interesting, and also suggestive of ideas for productive future research.

Joseph E. Earley
Georgetown University

5. A relevant book by a well-respected research chemist is briefly cited (ix–x): Theodore L. Brown, *Making Truth: Metaphor in Science* (Urbana: University of Illinois Press, 2003).

Philosophical Review, Vol. 121, No. 3, 2012
DOI 10.1215/00318108-1574454

Scott Shapiro, *Legality*. Cambridge, MA: Harvard University Press, 2011. 488 pp.

Scott Shapiro’s important new book, *Legality*, is the most thorough defense in years of legal positivism. It is required reading in the field not just because of its powerful responses to all the major objections to positivism but also because of its important insights about the legal phenomena that theories of law must explain. Eschewing the common tendency to write primarily for other contributors in the field, Shapiro has produced a book that is at once a highly original contribution and an accessible introduction to the central competing positions and their problems. Those who believe that the literature on the traditional “what is law?”-questions has declined into Scholasticism will see from this book how philosophically exciting and legally relevant the topics remain.

Shapiro defends a deceptively simple thesis: “The fundamental rules of legal systems are plans” (119). In the paradigm case, the “fundamental rule,” or “master plan” of a legal system, is a shared plan among officials allocating responsibilities and powers to holders of offices. Particular laws, such as laws against possession of burglary tools or laws specifying how to get a business license, are usually, also, plans; they are subplans of the master plan formulated by some official to whom the master plan grants the power to produce them.

Shapiro argues that, when this position is appreciated, we can understand both the nature of law's authority and its relationship to morality. But perhaps the book's greatest accomplishment is its development of a conceptual framework through which to situate competing conceptions of how legal texts should be interpreted by judges, a framework that Shapiro shows to follow from the idea that lawmaking is a form of social planning.

Shapiro's primary innovation over other forms of positivism, such as H. L. A. Hart's, is his development of the implications of a similarity between the way in which law guides conduct and the way in which plans do. As Michael Bratman has emphasized, plans settle deliberative questions and so place planners under various normative pressures, including pressures not to reconsider in the absence of powerful reasons to do so. Further, when we plan in groups, we often arrange things so that one person makes plans for another and thereby places him or her under normative pressure to conform. A chef might plan for a sous chef to cook fish, and, assuming that both parties have the right attitudes toward the activity and each other, the sous chef will thereby be placed under normative pressure not to deliberate about the question himself or herself but to defer, instead, to the chef's plan. Plans settle deliberative questions both intra- and interpersonally. This is a tool with many benefits. Thanks to it, for instance, we often manage to deliberate when we are in a frame of mind to do so, rather than in the heat of the moment, and we manage to coordinate our behavior both with our future selves and with other people by providing normatively grounded expectations about what we are going to do.

Laws, as Shapiro emphasizes, play many of the same roles in guiding conduct, and have many of the same virtues, as plans. Instead of asking whether it is *a good idea* to dump waste on a particular site, we ask whether it is *legal* to dump waste on that site. Instead of asking whether a federal judge is *the best person* to settle a dispute between two parties, we ask whether the dispute *legally* belongs in federal court, rather than elsewhere. Instead of answering the ethical or prudential question, that is, we guide our conduct by the law's answer. The law "do[es] the thinking for us" (178). Further, deference to prior plans, like deference to the law, is normatively mandated, rather than physically forced. The pressure to conform to the law, like the pressure not to reconsider one's plans, is the pressure to conform to norms. Add that the normative pressures involved in planning are present even when the plans in question are deeply immoral—thanks to the agent's intention, he or she can be under normative pressure to do what's necessary to clean the blood off the upholstery—and we can see the sense in which law and morality are separate. The similarities that Shapiro details between the guiding roles of plans and laws are of the first importance and, insofar as they have been noted by others, they have been underemphasized.

The deep similarity between the guiding roles of plans and laws has important implications. Laws function in many of the same ways that plans do, especially plans shared by groups, and much can be learned about legal

practice and substantive areas of law from this similarity. But Shapiro holds, also, that his account of law's identity answers the most fundamental questions in jurisprudence, questions that are inextricably linked to heady questions in both metaethics and political philosophy, such as what the source of law's normativity is, and in what sense, if any, citizens remain obligated to obey the laws of an evil regime.

One could think that laws are *similar* to plans without holding that laws *are* plans. After all, plans are not the only tools we use to settle questions and obviate the need for later deliberation on the merits. Plans are distinguished from other such tools by the particular normative pressures under which they place us. Consider how a plan can be transformed into a sacred value, so that it comes to impose a different set of normative pressures on those who accept it. At some point, some religious leaders planned for their followers not to eat pork. But to suggest that the prohibition on pork functions for Orthodox Jews today as a *plan* is to radically understate the situation. They are under much greater normative pressure from their attitude toward not eating pork than they would be if they merely intended not to do so. Typically, for instance, it is appropriate to reconsider plans in light of new information not taken into consideration when the plan was formed. But under what conditions would it be appropriate for an Orthodox rabbi to reconsider whether to refrain from pork?

To show that the fundamental laws are plans, Shapiro needs to show that the normative pressures they impose are those distinctive of *plans* in contrast to other attitudes. Shapiro does argue persuasively that the relevant normative pressures are distinct from those imposed by mere conventions, as some have proposed. But there are many other contenders that differ importantly from plans. Perhaps, for instance, legal systems *begin* with a master plan, but law *persists* even when that plan comes to be viewed by most as something much more like an ethical value, with its distinctive normative pressures, than a plan. In short, to conclude from the fact that laws *function in many ways like plans* that they *are* plans is to overlook the range of other things that could also so function. Solutions deriving from the planning role of law to the deep problems pertaining to the source of law's normative authority, however, depend on an *identity* between laws and plans. If the fundamental laws are merely *planlike*, there may be reason to doubt the solutions to those problems that Shapiro offers.

Shapiro shows that one of the distinctive features of complex, nested social plans (and, we might add, of many complex, nested structures of social attitude similar to, but different from, plans) is the way in which they allocate trust to the groups over which they reign. They settle some questions while specifying who is to do the work of settling others, and in what respects. The chef is to set the menu, but the sous chef is to determine how finely the carrots are to be diced, and the carrot chopper is to settle which knife to use. Trust can be thought of analogously to a good distributed among members of a group. The result is, in Shapiro's useful phrase, "an economy of trust." A legal

system's economy of trust is its distribution of the power to settle deliberative questions that remain unsettled by the explicit directives of the system. Shapiro argues that which interpretive methodology is proper in a particular legal system—whether “originalism” or “the living Constitution view,” for instance, is the correct method of Constitutional interpretation in the United States—is a function of the system's economy of trust. He demonstrates ways in which actual debates over proper interpretive methodology are, ultimately, debates about the legal system's economy of trust. And he argues against Ronald Dworkin's influential theory of interpretation on the grounds that it is inconsistent with the economy of trust of the United States, and many mature legal systems. This is extremely exciting material the examination of which ought to occupy scholars for some time to come.

This new framework for thinking about interpretive methodology does not require an identity between the fundamental laws and plans. Even if the fundamental laws are similar to plans, without being plans themselves, they will imply an economy of trust. In fact, we can expect that the economy of trust of a system in which the fundamental laws are sacred values, for instance, to be somewhat different from the economy of trust in which the fundamental laws are plans. This would imply that it would be possible for a disagreement over interpretive methodology to be ultimately rooted in a disagreement over the nature of officials' attitudes toward the fundamental laws of the system. If they merely intend those laws, one method of interpretation might be appropriate, while if they treat them as sacred values, then another might be the right methodology.

The success of Shapiro's book does not turn entirely on whether the fundamental laws *are* plans, a claim about which skepticism might be warranted. In drawing attention to the roles that law plays in social planning, and to the implications of the fact that law plays such roles, Shapiro has opened the door to a way of linking traditional problems of jurisprudence with reflection on the actual practice of law. This will be a lasting and important contribution.

Gideon Yaffe

University of Southern California

Philosophical Review, Vol. 121, No. 3, 2012

DOI 10.1215/00318108-1574463