Hart first considers the positivist doctrine of Bentham and Austin regarding the separation of law and morals. He then considers three possible critiques of this doctrine and refutes each of them as misunderstanding the central point of the doctrine.

Part I: distinguishing law as it is from law as it ought to be
This first section of the essay clarifies more precisely the nature of the separation thesis in Bentham and Austin.

1. the Utilitarians, like Bentham & Austin, constantly insisted on the need to distinguish, firmly & with the maximum of clarity, law as it is from law as it ought to be; their reason for this insistence was to enable men to see clearly and distinctly the precise issues posed by the existence of morally bad laws, & to understand the specific character of the authority of a legal system.

2. Both Bentham & Austin asserted two things:
   - (1) in the absence of an expressed constitutional or legal provision, it could not follow from the mere fact that a rule violated standards of morality that it was not a rule of law
   - (2) it could not follow from the mere fact that a rule was morally desirable that it was a rule of law

Part II: other doctrines of legal positivism
This second section of the essay points out that there were other provisions of legal positivism in Bentham and Austin in addition to the separation thesis. In fact, Hart points to two other doctrines and then argues that the three doctrines are separate. Hart is interested in showing that a rejection of one part of legal positivism doesn’t necessarily entail a rejection of the entirety of legal positivism. So the first criticism he considers is a critique of the command theory of Austin’s. So we can distinguish the doctrine of the separation of law and morals from the command theory and reject the command theory while maintaining the separation of law and morality.

Part III: Positivism and (the vices of and errors of) Formalism
Hart now turns to a second critique of the separation thesis, one that comes from the American legal realists. Here, Hart reviews the problem of the core and the penumbra of concepts in laws (i.e., “vehicle”) and considers the charge that in settling disputes regarding penumbral cases, judges consult moral theories, that is, some concept of what the law ought to be. The charge that Hart is considering: the wrongness of deciding cases in an automatic and mechanical way and the rightness of deciding cases by reference to social purposes show that the insistence on the separation thesis is wrong.

- Problems of the Penumbra: the problems which arise outside the hard core of standard instances or settled meaning.
- Why is the problem of the penumbra a problem for positivism? It seems to suggest that in order to make sound decisions in such cases some concept of what the law ought to be must be consulted. So the problem of the penumbra creates for us a situation where we seem to witness the intersection of law and morals.
- What the critique of positivism says: Instead of saying that the recurrence of penumbral questions shows us that legal rules are essentially incomplete, and that, when they fail to determine decisions, judges must legislate & so exercise a creative choice between alternatives, we shall say that the social policies which guide the judges’ choice are in a sense there for them to discover; the judges are only “drawing out” of the rule what, if it is properly understood, is “latent within it.”
"Ought": the word "ought" merely reflects the presence of some standard of criticism; one of these standards is a moral standard but not all standards are moral. Intelligent decisions which we oppose to mechanical or formal decisions are not necessarily identical with decisions defensible on moral grounds. So Hart is arguing that merely because a judge thinks that the word “vehicle” ought to include x, y, or z, this doesn’t necessarily mean he is referring to moral principles. SO: the main point here is that it is true that the intelligent decision of penumbral questions is one made not mechanically but in the light of aims, purposes, and policies, though not necessarily in the light of anything we would call moral principles.

Part IV: Positivism, Nazi Germany, and the existence of morally evil laws
In this section Hart considers a third critique of the separation doctrine growing out of the experience with the Nazi regime: positivism had somehow contributed to the Nazi tyranny.

Radbruch: before his conversion, Radbruch held that resistance to law was a matter for the personal conscience, to be thought out by the individual as a moral problem, & the validity of a law could not be disproved by showing that its requirements were morally evil or even by showing that the effect of compliance with the law would be more evil than the effect of disobedience. The Natural Law Position: His considered reflections led him to the doctrine that the fundamental principles of humanitarian morality were part of the very concept of Legality & that no positive enactment or statute, however clearly it was expressed & however clearly it conformed with the formal criteria of validity of a given legal system, could be valid it contravened basic principles of morality (p.198)

Austin & Bentham: said that if laws reached a certain degree of iniquity then there would be a plain moral obligation to resist them & to withhold obedience

Most everything that Radbruch says is really dependent upon an enormous overvaluation of the importance of the bare fact that a rule may be said to be a valid rule of law, as if this, once declared, was conclusive of the final moral question: "Ought this rule of law to be obeyed?" The Utilitarians can claim that laws may be laws but too evil to be obeyed. This approach is more immediate, obvious, and understandable. Plain speech is preferable to disputable philosophy.

Hart cites the case of a woman who turns in her husband and argues that it is not the most straightforward way to treat this case by declaring a statute established since 1934 not to have the force of law. He seems to prefer the introduction of a retrospective law to the introduction of “the sound conscience and sense of justice of all decent human beings.”

Part V: The Separation Thesis and Legal Systems
Hart addresses the issue of whether the separation thesis can be applied to legal systems. This seems relevant to Fuller’s account of the internal morality of the law. Here Hart seems to make some concessions to the natural law theorist and defend something that he calls a minimum content theory of natural law. Hart identifies two ways in which the legal system overlaps with moral values but he argues that we shouldn’t read too much into this. A legal system can satisfy his minimal requirements and still apply laws which were hideously oppressive (i.e., slavery: “might deny to a vast rightless slave population the minimum benefits of protection from violence and theft).

Part VI: Positivism and Noncognitivism
Hart considers the confusion between positivism and the moral theory that statements of what is the case (statements of fact) belong to a category or type radically different from statements of what ought to be (value statements). Does disproof of non-cognitivism lead to disproof of the separation thesis? Hart argues not.