

from the special aid of Revelation) Mr. Austin denominates *natural law*.

2. From the rules set by men to men, but not by political superiors to political subjects, *i. e.* from positive moral rules, which a strong and obvious analogy causes to be denominated *the laws of morality*.

3. From those uniform and established sequences, pervading all observable phenomena, which are characterised by an habitual metaphor *laws of the moral and physical world*—a metaphor founded on the slenderest analogy, and indicating no common circumstance except the fact of uniformity.

Obvious as these distinctions seem when specially noted, they have been overlooked and misconceived to a degree scarcely credible—not merely by loose declaimers, but by professional jurists and elaborate writers on the philosophy of law. Blackstone and Montesquieu, as well as the classical Roman jurists, have miserably darkened many of their higher generalizations, by a confused employment of *law* and its connected terms; and the recent work of Professor Liminier (*Sur la Philosophie du Droit*) proves that the vague and erroneous thinking of Montesquieu is not yet banished from the courses of scientific law, as they are taught at Paris. The fanciful metaphor by which the uniformities of the material world are dignified with the name of *laws*, is still recognized as a close and binding analogy, a sound principle of classification. Such pseudo-classifications, pregnant as they are with countless derivative errors, can never be thoroughly extirpated without a rigid analysis of all the essentials of a law, strictly and properly so called; together with a careful explanation of the degree to which each of these essentials is partially wanting, in laws so called improperly and by analogy. Mr. Austin appears to us to have executed this analysis with a perspicuity and fulness which leaves scarcely any possibility of future mistake.

There is another source of confusion, not less mischievous and not less frequent in ordinary speech, against which Mr. Austin has been peculiarly solicitous to guard. Law as it is, and morality as it is, are perpetually confounded with law as it ought to be, and morality as it ought to be. The term morality sometimes denotes the duties imposed by the tone of opinion actually prevalent in any given society—sometimes the duties which would be imposed by opinion, if the society were perfectly wise and virtuous, and if its opinion coincided exactly with the proper standard. The expression *positive morality* (analogous to *positive law*), which Mr. Austin employs to distinguish the former of these two senses, is highly convenient and worthy of remembrance, as a preservative against the equivocal use of a term of the greatest moment.

The proximate standard to which positive (*i. e.* actual) law and morality ought to conform, is the principle of utility: the ultimate standard, according to Mr. Austin, is, the Divine commands, to which, (apart from revelation) he regards the principle of utility as the only trust-worthy index. He seeks to shew that the principle of utility is, and that the moral sense (or immediate instinctive consciousness) is not, the true index to the unrevealed will of the Deity. We do not think that he is successful either in the