

Austin, also, in his work on Jurisprudence, already mentioned, and referring to Pufendorf and others of his school, says :

"They have confounded positive international morality or the rules which actually obtain amongst civilized nations in their mutual intercourse, with their own vague conceptions of international morality as it ought to be, with that indeterminate something which they call the law of nature. Professor von Martens of Gottingen is actually the first of the writers on the law of nations, who has seized this distinction with a firm grasp; the first who has distinguished the rules which ought to be received in the intercourse of nations, or, which would be received if they conformed to an assumed standard of whatever kind, from those which are so received, endeavored to collect from the practice of civilized communities what are the rules actually recognized and acted upon by them and gave to these rules the name of positive international law."

Finally Woolsey, speaking of this class of writers, says they commit the fault of failing to distinguish sufficiently between natural justice and the law of nations, of spinning the web of a system out of their own brain as if they were the legislators of the world, and of neglecting to inform us what the world actually holds the law to be by which nations regulate their conduct. So much for the law of nature.

What are we to say of the appeal to the law of morality ?

It cannot be affirmed that there is a universally accepted standard of morality. Then what is to be the standard ? The standard of what nation ? The standard of what nation and in what age ?

Human society is progressive—progressive let us hope, to a higher, a purer, a more unselfish ethical standard. The Mosaic law enjoined the principle of an eye for an eye, a tooth for a tooth. The Christian law enjoins that we love our enemies, and that we do good to those who hate us. But more. Nations although progressing, let us believe, in the sense which I have indicated, do not progress *pari passu*. One instance occurs to me pertinent to the subject in hand.

Take the case of privateering. The United States is to-day the only great power which has not given its adhesion to the principle of the Declaration of Paris of 1856, for the abolition of privateering. The other great nations of the earth have denounced privateering as immoral, and as the cover and the fruitful occasion of piracy. I am not at all concerned to discuss, in this connection, whether the United States were right or were wrong. It would not be pertinent to the point; but it is just to add that the assenting powers had not scrupled to resort to privateering in past times, and also that the United States declared their willingness to abandon the practice if more complete immunity of private property in time of war were secured.

Nor do nations, even when they are agreed on the inhumanity and immorality of given practices, straightway proceed to condemn them as international crimes. Take as an example of this, the slave trade. It is not too much to say that the civilized powers are abreast of one another in condemnation of the traffic in human beings as an unclean thing—