audience needs no other title to greatness. The orator who commands national applause, the lawyer who gains even international renown among his class, possess only a simulacrum of that larger meed. The pleader who, in putting off his gown and bands, flings away his legal jargon with them, and speaks from heart to heart, through the barriers of manners and language, about law and its institutions, belongs to that order of genius which, as Heine has said, knows no affiliation of race, and, we may add, no badge of class.

This pamphlet—it is not much more—is itself a "struggle for right" in the plane of ideas. Its object is twofold: to teach the layman the vital value of law, and to free the lawyer from narrow views about law.

The former end is the more important. The author says: "I was concerned, in preparing it, not so much with the promotion of the scientific study of law as with the cultivation of the state of mind from which the law must ultimately derive its strength, viz., the courageous and constant exercise of the feeling of right."—(Preface.)

The basal thesis is that the law is born in strife, lives by strife, and can progress by strife only. The constant factor in law is thus revealed. The author maintains this view with uncompromising ardor from the first page to the last.

"The end of the law is peace; the means to that end is war. So long as the law is compelled to hold itself in readiness to resist the attacks of wrong—and this it will be compelled to do until the end of time—it cannot dispense with war. The life of the law is a struggle of nations, of the State power, of classes, of individuals." (page 1, American edition, to which all references will be made.)

And here follows the first of those wonderful illustrations which the author can conjure up at will: "The law is not mere theory, but living force. And hence it is that Justice, which in one hand holds the scales in which she weighs the right, carries in the other the sword with which she executes it. The sword without the scales is brute force; the scales without the sword is the impotence of law. The scales and the sword belong together; and the state of the law is perfect only where the power with which Justice carries the sword is equalled by the skill with which she holds the scales." (p. 2.)

A luminous figure, assuredly; and yet a novel interpretation of the stock picture of Justice. Others have seen in the scales the symbol of civil law, and in the sword that of the criminal system. They forget that the civil decree is ultimately enforceable *manu militari*, although the display of force is not as great as in the case of penal administration.

The author considers that modern jurists have erred by attaching more importance to the scales than to the sword. The latter, typifying the struggle to obtain and maintain justice, is, in his view, the more vital organ of the law.

Just as pain is the signal of physical disturbance, so the feeling of outraged right is the warning reminder of impending danger to the moral life. The impulse to rectify is instinctive in each instance, and is no more dependent on moral advancement in the latter case than in the former. "If I were called upon to pass judgment on the practical importance of the two principles: 'Do no injustice,' and 'Suffer no injustice,' I would say that the first rule was: 'Suffer no injustice,' and the second: 'Do none!'" (p. 70.)

Kant had already said, in his "Metaphysical Principles of Law," that "he who crawls like a worm must not complain if he is trampled under foot like a worm!" and stated the same idea in the form of a moral commandment: "Let not your rights be trampled under foot with impunity." (Preface, xi.)

Von Jhering's position was an unwitting repetition of these words. A breeze of Teutonic liberty invigorates every sentence of his compact little book.

Like every other historical or philosophical proposition, the Strife Theory must itself do battle before it can be accepted in whole or in part.

The first position which calls for examination is that which places the origin of law in a struggle. The Historical School, on the contrary, declares custom, or usage preserved by tradition, to be the primitive source of law. Savigny and Puchta push the Custom Theory so far as to declare that the formation of law is effected by a process as spontaneous and unnoticed as in the growth of language. They consequently regard legislation—the issue of binding commands by a sovereign power—as a secondary and less legitimate means of forming the law. Law is viewed by them as the mere realization, in outward life, of the developing spirit of the nation.

The Custom Theory long constituted the legal orthodoxy of Germany. Von Jhering admits that he himself believed in it when he left college. But his virile intelligence soon revolted from doctrines which gave the preference to unconscious or semi-conscious law, over the conscious and scientific elaboration made possible only through legislation.

The conception of law as a blind growth was intolerable to one who valued the force of individual character in other spheres. In this department alone of human activity, was individual initiative to count for nothing? Was Law to have no heroes? Was her life to be reduced to a mere process of inflection and conjugation, and she herself to be degraded into the yoke fellow of her servant—Language?

The parallel between law and language is destroyed in these sarcastic words: "The principle of the old