Roman law, that the creditor might sell his insolvent debtor as a slave in foreign parts, or that the owner of a thing might claim it from anyone in whose possession he found it, would have been formed in ancient Rome, according to this view, scarcely in any other manner than that in which the grammatical rule that *cum* governs the ablative was formed." (page 8.)

The author was thus impelled to choose an active principle as the source of law. This he found in Strife. And in the recoil from the mechanical ideas to which it was opposed, he discarded utterly the passive principle, Custom.

As a criticism of the extreme views of the Historical School, the new theory was a success. But it erred in turn by absolutely rejecting the theory of custom. Whatever be the value of Strife as a transitional agency, it cannot claim the parentage of Law.

Science has demonstrated that the beginnings of law are to be found in the rude usages of a primitive people. The moment that neighbors or fellow-tribesmen interfere in private disputes, to prevent the violation of a traditional right, law has begun. When an organized force, such as the modern state, enforces the body of existing customs, a new influence is introduced which lifts law to a higher place of development.

War undoubtedly plays an important part in the early life of nations. Their warlike prowess preserves them from disintegration; their military training also accustoms them to the ideas of obedience and discipline, the only agencies by which nations are enabled to rise out of barbarism. Law is thus tribal, or national, during its formative period.

When law settles into the customary form, it may become so hard and fast that improvement is impossible. Such is the case with the so-called stationary civilizations: China, India, the ancient Aztecs and others. If improvement is possible, even although attended with pain and bloodshed, the national future is illimitably progressive.

Here is the most important function of Strife. It consists in breaking up and remodelling the primitive customs. Sir Henry Maine has explained, with great lucidity, how this is usually done. The methods are: Fiction, Equity and Legislation. The spirit which forces the change, and utilizes one of these methods, is that of the struggle of the new ideas with the old. The partisans of each side have a certain degree of right on their side; and a complete triumph of either is not the most beneficial or the most usual result.

The new law should supplement and modify the old; it should gradually prepare its way; it should strike down or throw aside only when the old law embodies no principle of present utility.

This legal evolution may be studied in many instructive cases. The laws of citizenship, property, inheritance, and wills are prominent examples.

The importance of individual struggling is thus found to be, not in the *formation* of law, but in its *reformation* or *betterment*.

In its highest form, this struggle is shifted to the realm of moral principle. The words of our author, intended to advocate a different view of the origin of law from that here outlined, are of great worth when taken as a description of its progressive amelioration:

"The law can renew its youth only by breaking with its own past. A concrete legal right or principle of law, which, simply because it has come into existence, claims an unlimited and therefore eternal existence, is a child lifting its arm against its own mother; it despises the idea of the law when it appeals to that idea: for the idea of the law is an eternal Becoming; but that which Has Become must yield to the New Becoming." (p. 12.)

The author's second proposition is that the law lives by struggling:

"Whenever a person's legal right is violated, he is placed face to face with the question: whether he will assert his right, resist his opponent—that is, engage in a struggle; or whether, in order to avoid this, he will leave right in the lurch." (p.p. 20-21.)

Then follows a demonstration that the decision of the above problem is not a mere matter of calculation. If the feeling of right is wounded, the wish for reparation is instructive. It is almost reflex. And this is simply due to the fact that to avoid the struggle is to imperil the moral life. To take an example:

"Let us drop the consideration of the controversy between two private persons, and in their place put two nations. The one nation, let us suppose, has, contrary to law, taken from the other a square mile of barren, worthless land. Shall the latter go to war? Let us examine the question from precisely the same standpoint from which the theory of the mania for litigation judges it, in the case of the peasant from whose land a neighbor has ploughed away a few feet, or into whose meadow he has thrown a few stones. What signifies a square mile of barren land compared with a war which costs the lives of thousands, brings sorrow and misery into the palace and the hut, eats up millions and millions of the treasure of the State, and possibly imperils its existence? What folly to make such a sacrifice for such an end!

"Such would have to be our judgment, if the peasant and the nation were measured with the same measure. Yet no one would wish to give to the nation the same advice as to the peasant. Every-