

**OUTLINES OF HISTORICAL  
JURISPRUDENCE. VOL. II.  
THE JURISPRUDENCE OF  
THE GREEK CITY**

Published @ 2017 Trieste Publishing Pty Ltd

ISBN 9780649666089

Outlines of Historical Jurisprudence. Vol. II. The Jurisprudence of the Greek City by Sir Paul Vinogradoff

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Edited by Trieste Publishing Pty Ltd.  
Cover @ 2017

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*In preparation:*

VOLUME III: THE MEDIAEVAL JURISPRUDENCE  
OF WESTERN CHRISTENDOM

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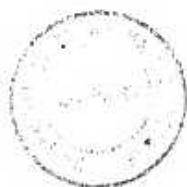
BY

SIR PAUL VINOGRADOFF, F.B.A.

CORPUS PROFESSOR OF JURISPRUDENCE IN  
THE UNIVERSITY OF OXFORD

*Volume Two*

*The Jurisprudence of the Greek City*



OXFORD UNIVERSITY PRESS  
LONDON EDINBURGH GLASGOW COPENHAGEN  
NEW YORK TORONTO MELBOURNE CAPE TOWN  
BOMBAY CALCUTTA MADRAS SHANGHAI  
HUMPHREY MILFORD

1922

Printed in England



TO THE MEMORY  
OF  
RODOLPHE DARESTE

## PREFACE

IT may not be amiss to state from the outset what will be attempted in this volume and what remains outside its scope. The subject treated is not Greek positive law in all its bearings, but the Greek jurisprudence of the epoch when democracy prevailed in the leading cities.

One of the Nestors of Hellenic studies, Dareste, had this distinction in view when he dedicated a book to the Science of law in Greece (*La Science du droit en Grèce*). But instead of tracing, as he might well have done, the application of juridical doctrines in the institutes of positive law, he contented himself with presenting a sketch of the teaching of Plato, Aristotle, and Theophrastos.

And yet it might be said that we actually possess in a fragmentary form the elements of Greek jurisprudence. They are set out in the writings of Aristotle and of his school—not so completely as the comparative politics of the period, but with sufficient definiteness and clearness. The well-known chapters of the *Ethics*, the *Rhetoric*, the *Politics*, the treatise on the *Athenian Constitution*, supply precious indications as to the way in which the various rules of substantive law and of procedure, illustrated by inscriptions and speeches, were connected in the minds of philosophers of the fourth century into a system of city-law. Some of the rules have disappeared, some of the applications appear problematical or contradictory, but on the whole the Aristotelian teaching on Political Science makes it possible to treat the details of Greek law as the ramifications of philosophical and juridical principles conditioned by the development of City-commonwealths. Greek juridical theory was undoubtedly connected with actual practice of Courts and Assemblies. There is no lack of books on general jurisprudence nowadays: why should we not try to reconstitute the general jurisprudence of the fourth century B. C.?

Another preliminary warning is suggested to me by some of the criticisms—generally kind and pertinent—called forth by the first volume of the *Outlines*. In that volume I restricted my field of observation as much as possible to a comparative study of Indo-European legal antiquities, called for the sake of brevity Aryan antiquities. The only exception allowed was the use of ethnological materials from various racial surroundings to characterize the elements of the family, for which Aryan culture does not provide sufficiently primitive examples. But I purposely avoided including within the range of comparison the data of Semitic or Babylonian history, not because I ignored the importance of Hammurabi's legislation or of Babylonian inscriptions, but because I did not want to lose my way in the maze of extremely different Social situations. The Aryan group seemed wide enough for a more or less definite statement of tribal institutions. In the same manner in this volume I have abstained from plunging into the immense sources of materials opened up for the Hellenistic period in papyri and inscriptions. It is with the City of the fifth and fourth centuries that I have to deal, and not with the equally interesting manifestations of Greek genius in Egypt and Hellenistic Asia. By way of exception I have referred to a few inscriptions of the third and second centuries B.C. because they presented some characteristic institutions with particular clearness, but I have renounced with regret any idea of following in the footsteps of Grenfell and Mitteis.

The fact that I refer seldom to Roman law will be easily understood; the subject has been treated so often and so well that any one who wants to institute comparisons can easily do so by turning to the works of the well-known masters of the study.

It remains for me to acknowledge with sincere gratitude the advice and assistance of kind friends—Prof. J. A. Smith, Prof. J. L. Myres, Prof. De Zulueta, Mr. C. K. Allen, of University College, and Miss M. F. Moor, of Somerville College, Oxford. I am indebted to Miss Moor for the compilation of the Index.