

PROFESSOR SIR PAUL VINOGRADOFF¹

1854-1925

SIR PAUL VINOGRADOFF was born at Kostroma on 1st December 1854. He was the son of the director of schools at Moscow, so that he had an hereditary connexion with Russian education. While he was Professor of History at Moscow he worked hard to improve both its standards and its machinery; and throughout his life, and at the time when he was acquiring fame as a great European jurist, he never lost his interest in this cause. In fact he was both a student and an administrator; and, as has often been the case, his interest in affairs helped his studies by keeping him in touch with concrete facts and modern problems. That he will be remembered solely as a great historical jurist, and not as an administrator, is due to the tragic history of his native land. If events there had taken another turn, he might well have been remembered also as a great administrator and a statesman.

Vinogradoff graduated at Moscow in 1875, and in the following year he went to Berlin and studied in Mommsen's and Brunner's Seminars. From Germany he went to Italy. The outcome of his studies there was his first book—*The Origin of Feudal Relations in Lombard Italy*—for which he was awarded the degree of M.A. at Moscow in 1880. In 1881 he was elected *Dozent*, and in 1884 Professor of History at Moscow. He held the Chair of History till his resignation in 1901. It was during his tenure of this chair that he laid the foundations of his future fame both as a great historical jurist and as an administrator.

As Professor of History at Moscow he interpreted the work of the outstanding historians of Western Europe to Russia; he founded a school of historians trained in Western European methods of historical scholarship; and in books and lectures he applied his historical learning to some of the political, economic, and social problems of the day. In fact his work as a professor in Russia foreshadowed the similar work which he was later to do in England. In the first place, he trained students in his seminars. In the second place, he wrote

¹ In writing this memoir I have relied mainly on the following sources of information: articles by Sir Bernard Pares, A. Meyendorff, and myself in the *Slavonic Review* for 1926; an article by Professor de Zulueta in *Law Quarterly Review*, xlii. 202; and an article by Dr. Powicke in *English Historical Review*, xli. 236. I am also indebted to Lady Vinogradoff for additional information, and for the gift of some of the Professor's later books and articles.

many books on history—ancient, medieval, and modern—the preparation of which laid the foundation of his encyclopaedic knowledge. Many of these works show that his mind was being definitely directed to those topics of social and legal history in which he was to become so great a master; and that his wide reading was giving him that remarkable power of analysing the work of his predecessors, and of estimating the extent and nature of their contributions to the knowledge of their subjects, which is a characteristic feature of many of his later books both on history and jurisprudence. And, in doing this work, there is no doubt that he was helped by his great command of languages. He spoke, Dr. Powicke tells us,¹ more than a dozen languages, and wrote in at least five. It was these gifts which made him as valuable a professor to the Russian students at Moscow as he was later to English students at Oxford. In both places his wide learning and cosmopolitan outlook enabled him to correlate and connect the legal and historical studies of a single country with the legal and historical studies of many other countries.

As an administrator he did a great work for the cause of education in Russia. He was a member of the Moscow City Council, and chairman of its school committee; and in both capacities he did much both to make education accessible to all the children of the great province of Moscow, and to improve its quality. He secured an increase in the salaries of the teachers; he was chairman of the Home Reading Society; and he was the founder of the Pedagogical Institute, which gave teachers of all grades the opportunity to discuss the problems and conditions of education.

In 1897, while engaged in these manifold activities, he married Louise, the daughter of Judge A. Stang of Norway. All who are privileged to know Lady Vinogradoff can realize how much he must have owed all through his career to this happy union.

It was in 1883-4, just before the beginning of his career as Professor of History at Moscow, that Vinogradoff paid his first visit to England. For three reasons that visit was destined to be the most important event in his life. First, it made him acquainted with the vast mass of material for English medieval history which lay unused in the Record Office and elsewhere in England. Secondly, it helped to turn his mind definitely to the study of the problems of medieval social and legal history. Thirdly, owing to the unfortunate course of political events in Russia, it was destined to lead ultimately to his election to the Corpus Chair of Jurisprudence. We shall see that the main product of this first visit was his book on *Villainage in England*,

¹ *English Historical Review*, xli. 239.

which appeared in Russian in 1887 and in English in 1892.¹ This book is notable, both because it shows what great results could be won from the English records by a mind of the first order trained in methods of scientific research, and because it illustrates the new light which a continental scholar could shed upon problems of our insular history. At the same time the book itself illustrates the union in Vinogradoff of the practical man of affairs and the learned professor. 'Why', he asked in his Preface, 'should a Russian scholar turn to the arduous study of English medieval documents?' And the answer which he gave is as follows: 'We are still living in surroundings created by the social revolution of the peasant emancipation; many of our elder contemporaries remember both the period of serfdom and the passage from it to modern life; some have taken part in the working out and putting into practice of the emancipating Acts. Questions entirely surrendered to antiquarian research in the West of Europe are still topics of contemporary interest with us.'

Unfortunately for Russia, her history was not destined to be moulded by men who worked at the solution of her problems in this spirit. The period 1881-1904 was marked by a repression of the intellectual activities of university students. 'The students were kept under the strictest discipline, and any public initiative on their part might be punished with service in the lowest ranks of the army.'² In 1899 disturbances broke out in the University of St. Petersburg, and the repercussion of these disturbances led, in the same year, to the closing of the University of Moscow. Vinogradoff and some other professors addressed to the government a carefully reasoned memorandum on the causes of these disturbances. The government asked a committee of twelve professors to draw up a report. The report was drawn up, and certain concessions were recommended. These concessions were refused; and, in consequence, Vinogradoff in 1901 resigned his chair. 'Till the day of his departure', says Sir Bernard Pares,³ 'his house was thronged with visitors who came to pay him homage—professors, lecturers, students, school teachers; . . . and on 21st December 1901, when he left, an enormous crowd thronged the huge Alexandrovsky station to which he made a short and sober speech.' His departure from Russia for these reasons and under these circumstances was a severe moral condemnation of the government's educational policy.

Russia's loss was England's gain. Vinogradoff lectured in Cambridge in 1902, and in 1903 he began his twenty-two years' tenure of the Corpus Chair of Jurisprudence. We shall see that it was during his

¹ Below, p. 491.

² *Slavonic Review*, iv. 547.

³ *Ibid.* 548.

tenure of that chair that he gave to the world those works on English medieval social and legal history, and on many aspects of Roman law and jurisprudence, which have made his name famous, not only in English-speaking lands, but also in many other lands which do not own allegiance to English law.¹ But though he was making his name known throughout the civilized world from his Oxford chair, he did not forget the needs and problems of his native land. In 1905 there was some thought of appointing him minister of Public Instruction; but the negotiations broke down, largely because Vinogradoff would not accept the anti-Jewish restrictions of the government. But during the period of the third and fourth Dumas, in 1910 and 1911, the government showed more liberal tendencies; and, at the invitation of his old colleagues, Vinogradoff gave some courses of lectures in Moscow as honorary professor. But in 1911 the government introduced police spies into the lecture audiences. Consequently, he, together with some sixty professors and lecturers, resigned their posts.

At the beginning of the war he worked for English and Russian solidarity; and in 1915 he was elected a member of the Imperial Academy of Sciences in Petrograd. He did much to promote the study of Russian both at Liverpool and London. It was not till after the Bolshevik revolution of 1917 that he gave up all hope of a normal constitutional development for Russia. In 1918 he became a British subject.

Vinogradoff thus failed to exert that influence upon the course of the history of his own country which, under happier circumstances, he might have exerted. His failure was due in part to the tyranny of the old régime of the Czars, and in part to the tyranny of the new régime of the Bolsheviks. The tyranny of the Czars was stupid, cruel, and corrupt. But it did permit the growth of an enlightened middle class, and it did produce Vinogradoff and other leaders of thought, who have made their names in literature, science, and the arts. Like other despotisms in the past, it was conscious that an encouragement of, and an association with, learning and the arts enhanced its brilliance; and so it was far from wishing to suppress all that made for an enlightened and an intellectual civilization. On the other hand the tyranny of the Bolsheviks is more stupid, more cruel, and more corrupt than the tyranny of the Czars; and to these vices of despotism it adds both an intellectual intolerance which is fatal to progress in learning, and something of the characteristic vice of many modern democracies—so great and so unintelligent an absorption in the provision of material comforts for the masses that no means are

¹ Below, pp. 491-7.

left for the cultivation of those higher intellectual quests which are the essence of civilization. Such a government leads inevitably to barbarism. If it continues to guide the destinies of the vast inheritance of the Czars, and if it continues to proselytize amongst discontented, half-educated, and unbalanced individuals throughout the world, this great barbaric state will be a constant threat to all civilized states, even as the barbarians of the ancient world were a constant threat to the civilization of the Roman Empire.

It was fortunate for the cause of legal and historical learning that, before the clouds and thick darkness settled down on his native land, Vinogradoff had acquired a new country and a new academic home, where he could exercise his talents. Though he had failed to influence the destinies of his country he was now to show how great a power he could be in the world of legal and historical learning. And, though at first sight it may seem that his efforts to improve the education of his country had been wasted efforts, they were not wholly wasted. His acquaintance with practical affairs helped him in two ways. In the first place it helped him to overcome the practical obstacles which the establishment of any kind of organization, and not the least the organization of research, must overcome. In the second place it helped him, as in the past it had helped another great historian, by giving him a power of interpreting concrete facts, which is a condition precedent to the convincing portrayal of all periods and all departments of history. The work which Vinogradoff did as Corpus Professor in England is the work upon which his fame rests. To a consideration of this work we must now turn.

It is impossible in a brief memoir to deal fully with Vinogradoff's many various services to the cause of learning. Nor is it necessary. The Warden of New College is doing for him what he did so excellently for Maitland; and a complete bibliography of his works is to accompany the volume of Essays which is to be published by the Clarendon Press. All that I shall attempt is to indicate briefly Vinogradoff's position (1) as Corpus Professor, (2) as an author, (3) as a teacher, and (4) as a man.

(1) The Corpus Chair of Jurisprudence has had a short and distinguished history.¹ Its three occupants have been Maine, Sir F. Pollock, and Vinogradoff. Vinogradoff was the intellectual peer of his two

¹ The re-allocation of Chairs among the Colleges which the Hebdomadal Council (not always very intelligently) has effected this year, has resulted in the assignment of the Chair of Jurisprudence to University College. The Chair of Jurisprudence, therefore, is no longer the Corpus Chair.

great predecessors, and added to the great prestige of the Chair. Moreover, he carried on its traditional association with the historical side of law and legal theory. He recognized Maine as 'one of his most influential teachers'; and added that the whole of his generation of students of law and history 'have had to deal directly or indirectly with the ideas propagated by him or similar to his'. Maine was influenced by Savigny and Eichhorn. But, as Vinogradoff has shown, he added a new element to their work; for, in accordance with the intellectual tendencies of his day, he was influenced by the desire to give 'a scientific treatment to the problems of social life'. It was this influence which led Maine to make a series of comprehensive surveys of many fields of jurisprudence, which have been an inspiration to many generations of students. Sir F. Pollock is the oldest living representative of that historical school of English lawyers which has put the studies both of jurisprudence and of the history of English law on a new basis. Helped by his work, and more especially by Maitland's work, Vinogradoff used all his great learning and his great intellectual powers to map and chart accurately the ground which Maine had only surveyed. Thus in the three holders of the Corpus Chair we see three of the men whom posterity will acclaim as three of the founders of the school of historical jurisprudence and of the renaissance of historico-legal studies, in England. We must now examine the manner in which Vinogradoff, as an author and a teacher, made good his claim to be reckoned one of the founders of this famous school.

(2) Vinogradoff's work as an author falls roughly into two main divisions. (i) There is the series of books and papers in which he has elucidated many of the problems of the origins and medieval development of English social and legal history; and (ii) the series of books and papers on the theory of the law.

(i) The first and in some ways the best of the longer books in this series is *Villainage in England*, which appeared in its English dress in 1892. It shed a wholly new light on the social and legal aspects of the institution of villainage; and it won high praise from Maitland. In the introduction Vinogradoff showed that power, which he was afterwards to show in his other writings on legal theory, of summarizing the work of his predecessors, both English and foreign, and of thus bringing the work of English writers into relation with the work of continental writers. His next book—*The Growth of the Manor*—appeared in 1905. In the interval between 1892 and 1905 Pollock and Maitland's *History of English Law* had appeared; and much had

been written on the manor and cognate subjects by Round and Seebohm. *The Growth of the Manor* co-ordinated the results of these researches, summed up their conclusions, indicated the problems which still awaited solution, and described the important position which the manor occupied in the medieval state. It was based on his lectures, and that it has proved to be one of the most valuable of this series of books to the student is shown by the fact that it has reached its third edition. *English Society in the Eleventh Century* (1908) attempted to analyse the various elements—Old English, Danish, and Norman—which made up English society in this century of rapid change. An examination is made of the influence of political factors and public law on social life; of the influence of economic factors, and their effect on husbandry and the rules of private law; and of the various classes and groups which were created by the working of these political and economic causes. It is not an easy book to read; and the trend of the argument is not always obvious. But, in spite of these defects, it is a most valuable historical analysis of the forces which were creating medieval society in England.

These three books were concerned as much with social as with legal history. Vinogradoff's work on the Year Books of Edward II in the Selden Society's Series was concerned mainly with legal history. It shows a mastery of the MSS. sources, and of the complications of the legal procedure of the fourteenth century. But Vinogradoff was more familiar with the law of England up to the early part of the fourteenth century than with the later periods in its history; and, for this reason, he lacked the capacity to see, so readily as Maitland saw, the germs of doctrines which became important in later law.

All these books were concerned primarily with English history; but they could not have been written if Vinogradoff had not also possessed a wide knowledge of Roman law, ancient history, and European medieval history. His wide knowledge of all these great subjects is illustrated by his work on the origins of the medieval society of Western Europe in the *Cambridge Medieval History*. In the three chapters which he contributed to that history he has given us a luminous summary of the decay of the ancient and the growth of modern society throughout Western Europe—a summary which affords an indispensable background to the special studies of the historians of particular nations.

Vinogradoff wrote many shorter books and papers on subjects connected with the social and legal history of the Middle Ages. The following are some of the most important. In 1914 he, together with Mr. Frank Morgan, edited for the British Academy the *Survey of the*

Honour of Denbigh. It is a most valuable document because it presents us with a survey of a tract of country on the borders of England and Wales, which brings before us the clash and contrast of the Celtic tribal customs, and the more highly organized and the more individualistic English manorial system. Since the Celtic record sheds much light upon the ideas at the back of that element of tribal law, which is present both in Celtic and Germanic institutions and laws, this piece of work must be regarded as a necessary pendant to Vinogradoff's books on English social and legal history. In 1908, at the Berlin Historical Congress, he read a paper on *Reason and Conscience in Thirteenth-Century Jurisprudence*,¹ which for the first time indicated the position in the literature of English law of St. Germain's *Doctor and Student*, and its importance in the history of equity. In 1909 he published his little book on *Roman Law in Medieval Europe*, which is the only up-to-date English authority on a topic, some knowledge of which is essential to the student of all sides of medieval life and thought. With this book may be mentioned his paper in 1923 on the *Roman Elements in Bracton's Treatise*.² In 1913, in his Creighton Lecture on *Constitutional History and the Year Books*,³ he showed how much light the Year Books can be made to shed both on the position of the common law in the constitution, and on concrete problems of medieval constitutional law. In 1918 he contributed a paper to the Magna Carta Commemoration Essays. In 1923 he wrote a most suggestive paper on the use and position of maxims in the early common law⁴—a paper which suggests some useful comparisons with the much later use of maxims in the creation of our system of equity. But perhaps the two most striking of his shorter papers are his essay on Folkland in the *English Historical Review* for 1893, and his paper in the *Athenaeum* on 19 July 1884, in which he describes his rediscovery of the MS. which has come to be known as Bracton's Note Book.

In his paper on Folkland Vinogradoff disposed of Allen's theory that folkland was *ager publicus*, and restored the interpretation of Spelman, who had held, in the seventeenth century, that it was land held by individuals according to the folk or customary law. This restoration of Spelman's view necessitated a considerable revision of existing theories of Anglo-Saxon law and society, and it got rid of a good many of the difficulties which Allen's interpretation had caused. Vinogradoff's discovery of Bracton's Note Book restored to the world

¹ *Law Quarterly Review*, xxiv. 373.

² *Yale Law Review*.

³ *Law Quarterly Review*, xxix. 273.

⁴ *Revue hist. de droit français et étranger* (4th Series), ii. 334.

of historical scholarship a MS. which had been lost to sight since Fitzherbert used it in the composition of his Grand Abridgement. It also set Maitland to work on his first great book—his edition of the Note Book—in which he proved the correctness of Vinogradoff's conjecture as to its origin, and produced one of the most brilliant essays on the law of Bracton's day which he ever wrote. With this paper on Bracton's Note Book we must put Vinogradoff's essay on the *Text of Bracton*, which he contributed in 1885 to the first volume of the *Law Quarterly Review*. Maitland's verdict was that Vinogradoff 'had learned in a few weeks more about Bracton's text than any Englishman has known since Selden died'.

(ii) I pass now to the series of books and papers on the theory of the law.

All these special investigations into various sides of English social and legal history were leading up to a systematic work on historical jurisprudence. Even in his books which are concerned with problems of English legal and social history, Vinogradoff never lost sight of foreign analogies and foreign law. There is a cosmopolitan note about his work which lets us see that, though he was a first-rate historian, he did not forget that he was also a Professor of Jurisprudence. And this enabled him to escape from errors into which a purely English outlook might have led him. For instance, to my mind, his account of the influence of Roman law on Bracton is more satisfying than the theory put forward by Maitland in his brilliant essay on Bracton and Azo. In the last years of his life he was gathering up the results of a long life of study into his great treatise on *Historical Jurisprudence*. Such a treatise, he thought, might be divided somewhat as follows: (1) Origins in Totemistic Society, (2) Tribal Law, (3) Civic Law, (4) Medieval Law in its combination as Canon and Feudal Law, (5) Individualistic Jurisprudence, (6) Beginnings of Socialistic Jurisprudence. If the treatise, written on these lines, could have been completed, we should have had for the first time a work on historical jurisprudence which could lay claim, if not to finality, at least to adequacy. It would have given us a series of backgrounds which would have been invaluable in the earlier periods to the historians of laws and institutions of many different races, and in the latest periods both to historians and to lawyers. Unfortunately, he only lived to publish two volumes. The first contains the Introduction and the section on Tribal Law. The second contains the section on the Jurisprudence of the Greek City. I propose to say something—first of these volumes, and secondly of his other works on jurisprudence.

The Introduction contains a luminous survey of the whole field of jurisprudence, and of the work of predecessors of many various schools of thought. In the first Part he deals with the relation of law to the sciences—to logic, psychology, social science, and political theory. In the second Part he deals with methods and schools of jurisprudence—the rationalists, the nationalists, the evolutionists, and modern tendencies. To English students of jurisprudence the Introduction is invaluable. It introduces them to a new world of juridical speculation—the world of the European jurist. We see old problems treated from a different point of view; and we discover new problems which our own writers upon legal theory have never suggested to us. We gain much by being thus compelled to reflect upon the basis of our legal ideas. We gain more by being made to see that when our English common lawyers—pursuing an independent, an insular, and untheoretic path—achieved the glory of constructing an independent system of law, they lost something by their complete divorce from that great and continuous stream of learning which has created from the Roman texts the legal systems of modern Europe.

The first volume on Tribal Law necessarily deals with a very early period in legal history. It therefore gives us the background, not so much of the rules and principles of modern law, as of those remnants of old rules embedded in modern law, which are usually known as survivals. So successfully is this tribal background sketched that, after reading it, we are able to understand, far more clearly than before, such concrete institutions as the older forms of Roman will, the old Roman rules as to *furtum*, the system of wergilds, the ideas underlying compurgation, the open field system of cultivation, and the rise of the village community from a tribal basis. And this is just what a book on historical jurisprudence should do. This is what Maine does in a partial and fragmentary way; and this is what Vinogradoff does far more comprehensively, accurately, and thoroughly.

The second volume on the Jurisprudence of the Greek City is based mainly on 'the inscriptions, the speeches, and the historical and philosophical writings of the sixth, fifth, and fourth centuries'; and it presents us with a study of the jurisprudence of a period which has never before been studied by a lawyer from a strictly legal point of view. Because it is a period the intellectual activities of which have influenced all subsequent ages, and a period in which the state had only comparatively recently emerged from a much more primitive tribal organization, its jurisprudence has a unique and a double interest. It has important bearings both on the growth of modern systems of law, and on the study of the antiquities of law. In fact, throughout the

book, we are being constantly reminded of this double interest of the study of the jurisprudence of the Greek City-State.

To deal adequately with the historical interest of this body of law, both to students of primitive law and of modern legal systems, would be impossible in the space at my disposal. I can only allude to one or two examples. Those who read the chapter on the relations between the Greek Cities and the right of reprisals will think of the analogous relations between the Italian City-States of the Middle Ages, and will remember that the great Bartolus wrote a *Tractatus Repraesaliarum*. English lawyers who read Vinogradoff's account of the Greek system of ownership and possession and the absence of a system of *usucapio*, of the Greek parentelic system of inheritance, of the Greek betrothal and the use made of sureties, will recall obvious parallels in their own system; and the analysis of the conception of *ἐπιείκεια* and its influence on Greek law is particularly interesting to them, because it was this conception which St. Germain borrowed to illustrate the meaning of equity, and used to explain and systematize the equitable jurisdiction of the Chancellor. I think that it may safely be said that this volume has conferred two great services on the study of jurisprudence. It has, in the first place, largely extended the field of comparative law by correlating and bringing within the sphere of strictly legal studies a group of new phenomena of the very highest importance; and, in the second place, it has humanized the study of jurisprudence by connecting it with Greek culture.

Of Vinogradoff's other books on the theory of the law the most noteworthy are his article on *Comparative Jurisprudence* in the *Encyclopaedia Britannica*, his book on *Common Sense in Law*, his *Historical Types of International Law*, and his book on *Custom and Right*.

Vinogradoff's article on *Comparative Jurisprudence* presents us with a less elaborate survey of the work done in this field than that contained in the Introduction to his *Historical Jurisprudence*. But it is equally valuable, and, because it is less elaborate, it is perhaps of more value to the general reader, who is new to the study of the subject. Its main value consists in its exposition of the purposes and methods of Comparative Jurisprudence. It is not sufficient, as Vinogradoff points out, merely to investigate, catalogue, and compare the phenomena of legal systems. Analysis must be brought to bear on the material thus discovered. It is necessary to select principles, rules, and institutions, and to trace their working, 'either through a direct systematization of recorded facts, or, when these fail, through logical inferences'. His work in his two volumes of the *Historical Jurisprudence* shows what important results can be achieved by work done on

these lines. The little book on *Common Sense in Law* states in simple language some of the fundamental concepts of the lawyers. These concepts are, as he says, complicated in their details because they must be applied to complicated states of fact. They are also technical in their expression because a technical language is necessary to the creation of a system of legal rules. But in their essence they are based on common sense, and can be explained in simple language to any person of ordinary intelligence. This explanation Vinogradoff succeeds in giving; and it is the best proof of his claim to be a master in the law. The book on *Historical Types of International Law* originated in lectures delivered at the University of Leiden. It is an original contribution to the historical jurisprudence of International Law; for it is, in effect, a brilliant analysis of the evolution of the ideas which have gone to the making of an international law in many different ages and societies. The book on *Custom and Right* originated in lectures delivered at the University of Oslo. It describes in clear and simple language the Methods of Jurisprudence, the Relations of Custom and Law, Family Organization, and the Right of Appropriation. Of all Vinogradoff's books on jurisprudence it is the best suited to the needs of a student who is beginning his study of this subject.

Many of Vinogradoff's shorter books—notably *Roman Law in Medieval Europe*, *Common Sense in Law*, and *Custom and Right*—show his extraordinary capacity of getting down to first principles, and of explaining them in a manner which is both intelligible to a layman, and satisfactory to a lawyer—a capacity which is the decisive proof of his great intellectual powers, and his complete mastery of these subjects. Moreover, Vinogradoff's consciousness of the need to explain these principles shortly and simply to a beginner gives these books a lucidity which is not always present in some of his more elaborate works. And in that respect we may perhaps draw a comparison between him and one of the greatest of our English lawyers—Edward Coke. These books are to Vinogradoff's larger works what Coke's *Copy-holder* is to his *Reports* and *Institutes*. In both cases the need for compression and simple explanation has led a very learned man to achieve a literary success which he has not always achieved in his larger works.

Vinogradoff's achievement as an author would have been sufficient to establish his fame as one of the greatest jurists of his day. We shall now see that the influence exerted by his writings was equalled by the manner in which, as a teacher, he both organized and inspired enthusiasm for research.

(3) Vinogradoff's greatest single piece of work as a teacher was done before he became Corpus Professor. He told Maitland of the material for English social and legal history which lay buried in the plea rolls, and inspired his earliest book on legal history—the *Pleas of the Crown for the County of Gloucester*. I have already described the manner in which Vinogradoff's discovery of the MS. of Bracton's Note Book set Maitland to work upon it.¹ From the Note Book to the *History of English Law* was no long step. So great are the results when a teacher who is a man of genius meets with a pupil whose genius is equal to his own. This combination put the study of the history of English law upon a new basis, and revolutionized the study of English legal, social, and constitutional history.

The instinct of the teacher, which had thus inspired Maitland, was with Vinogradoff throughout his career; and it had been trained by the discipline of the continental seminar. And so, when he came to Oxford as Corpus Professor, he set about introducing and acclimatizing this foreign institution. This was no easy task; for another system of teaching was in possession of the field; and the institution of the seminar for the teaching and organization of research was new in Oxford. But, to explain why this was so, I must say a few words as to the existing system of teaching at Oxford, and Vinogradoff's relation to it. It will then be possible to appreciate the extent of his achievement in creating a seminar, which has been successful in discovering researchers, and in producing much substantial work.

The Oxford organization of teaching, based on lectures and a very efficient tutorial system, leading up to an examination in some one of different courses of study, must have been very new to Vinogradoff. It is, as Professor de Zulueta has said,² a very good system as far as it goes. 'There is a large staff of tutors, whose tradition is not to "coach", but to teach method; and the examinations, in which the standard for the superior classes is certainly high, are so conducted as to reduce to a minimum the defects inherent in all examinations.' It is a system which is based on the sound idea that the business of a university is quite as much the training of men who will do good service to church and state in administration, trade, and the learned professions, as the promotion of research. That it is a sound idea can be seen from the fact that, when the national crisis came in 1914, the men thus trained were turned into a corps of officers capable of leading the new armies, with a speed which astounded our enemies. But, though the idea was sound, the great emphasis laid upon it tended to obliterate the idea that the promotion of research is, after all, one of

¹ Above, p. 494.

² *Law Quarterly Review*, xlii. 207.

the functions of a University. It tended to foster the idea that research was a matter which must be left to the initiative of the individual. No doubt there is a large element of truth in this idea. The artificial stimulation of research often produces very worthless work; and under this system of leaving research to the initiative of the individual, both Oxford and Cambridge have produced research work which is equal to that of any university in the world. But, for all that, there is no doubt that there are a certain number of graduates who are quite capable of producing valuable work with the help of the stimulus and teaching of a seminar, but who, without that help, would never undertake it. And, there is no doubt also that the organization and the conduct of a seminar can be made of enormous help to the Professor's own work; and can impart a continuity to the prosecution of his studies which is impossible under our more individualistic system.

Vinogradoff was never quite at home with the Oxford lecture and tutorial system, designed for undergraduate courses of instruction leading up to an examination. His lectures did not bear directly and obviously on the questions likely to be set in the examination; and, as an examiner, his papers were sometimes beyond the abilities of the candidates. Undergraduates have an uncanny sense of the lectures which 'pay'—that is, of the lectures which will help them to their immediate objective, the securing of a good class in their examination. And, considering the difference which a good class may make to their future careers, this is a valuable gift. It was mainly for this reason that Vinogradoff was never a popular lecturer. But those who attended his lectures because they were interested in the subjects which he taught for their own sake, and not merely for their value in an examination, were amply repaid. Professor de Zulueta's verdict, in which I as a tutor with a similar experience entirely concur, seems to me to express the truth exactly. He says¹: 'Experience as a tutor taught me that it was not much good to send to his lectures any but the better men—by whom I do not mean necessarily the cleverer men, but those who possessed real intellectual interest.'

It is for these reasons that Vinogradoff's real service as a teacher at Oxford was the institution of his seminar. For this work he was admirably fitted. Professor de Zulueta, who was one of the earliest students in his seminar, says²: 'His immense and intimate knowledge of the sources of every description was controlled and unified by philosophy. He had an unrivalled acquaintance with literature, and an unerring eye for matters that needed further investigation. He was

¹ *Law Quarterly Review*, xlii. 206.

² *Ibid.* xlii. 208.

a good judge of men; he could estimate a pupil's powers, and by a combination of firmness and encouragement knew how to extract the best. From the master's range of vision one learnt that the unity of knowledge was no mere philosophical ideal; from his exacting scholarship, that nothing but the utmost that lay in one's power was worth doing.' Helped by the foundation of the Maitland Library, to the upkeep of which the University now makes an annual grant, he has educated a band of students who are proud to own him as their master. The eight volumes of *Oxford Studies in Social and Legal History* contain essays, based on original work on the MS. sources, which are a credit alike to the Professor who inspired them and the pupils who executed them. The five volumes of the British Academy series of *Records of the Social and Economic History of England and Wales* are an illustration both of his own learning, and of his power to organize research and to inspire researchers.

His influence as a teacher was not confined to his adopted country, his university, and his seminar. His fame, like his learning, was worldwide, and many universities competed for the honour of his presence. He lectured several times in different universities of the United States—at Harvard, Columbia, Yale, Michigan, Johns Hopkins, and California. He lectured also at Calcutta, at Oslo, and at Leiden. As we have seen, some of these lectures have been published, and they are not the least valuable of his books. Probably no professor at an English university has ever been so famous as a teacher in foreign lands.

Whether we look at Vinogradoff as a professor, as an author, or as a teacher, we are conscious that his death leaves a large gap. We cannot of course give a final judgement as to the extent and permanence of his influence—that can only be done by his successors. But there is one matter upon which his contemporaries are better informed than his successors. His contemporaries have seen the man: his successors will only know him from his books. Let us then try to tell his successors what manner of man this great professor was.

(4) Two words, I think, describe the impression which Vinogradoff's appearance and manner and mode of speech made upon those who came in contact with him—massiveness and dignity. And these attributes were true indices to his character. They impressed alike his pupils and his colleagues. The success of his seminar at Oxford was due not only to his learning but also to his personality; and the impression which he made upon his colleagues is best illustrated by the speech which Gierke made at Oxford at the International Historical Congress of 1913. The question, he said, that every one was

asking was: 'Wer ist der Mann, der alle Rechte kennt und alle Sprachen spricht?'¹ As Dr. Powicke has said,² 'he was at his best in an international gathering or committee', where his command of languages and his dignity of manner made him an ideal chairman.

He was tenacious of his opinions, and difficult to dissuade when once he had come to a conclusion. Indeed the eloquence and the weight of his language, which he employed to bear down opposition, when he thought it unreasonable, sometimes led those whose acquaintance with him was but slight to think of him as a person whose manners were somewhat overbearing. But this was only an appearance, and a closer acquaintance soon disclosed its absurdity. I think that Professor de Zulueta, who knew him more intimately than I did, has skilfully and correctly summed up the more intimate traits of his personality³: 'The awe inspired in most of us by the prospect of meeting a great *savant* was dispelled by actual contact with the most human of men. His erudition was relieved by a catholic literary and artistic culture. He was a good chess-player, an amateur of fine music, a connoisseur of the drama; he did not disdain a good joke, nor even a good dinner. One may catalogue qualities and attainments; but what cannot be conveyed is the savour of a character at once elevated and accessible, austere and genial, many-sided and simple, by the loss of which the world seems to some of us a smaller, meaner, place.'

Oxford gave to Vinogradoff an academic home in a time of stress; and Sir Bernard Pares has aptly compared his case to that of an earlier Italian exile for liberty, Antonio Panizzi, who became Director of the British Museum.⁴ But Vinogradoff gave more to Oxford. In him Oxford got a professor whose powers of administration and organization would, if they could have been displayed on a larger stage, have entitled him to be called a statesman, a professor whose vast erudition gave him a worldwide fame. Never before has Oxford had, and with difficulty will Oxford get again, a professor who is so completely the master of the vast range of the statutory subjects of his chair—'The History of Laws and the Comparative Jurisprudence of different nations.'

W. S. HOLDSWORTH.

¹ *Law Quarterly Review*, xlii. 209.

² *English Historical Review*, xli. 243.

³ *Law Quarterly Review*, xlii. 209.

⁴ *Slavonic Review*, iv. 544.