

out. Accordingly, we find in all the different fields into which the stimulating, and frequently destructive, waters of criticism have flowed, a growing differentiation of the historical and the philosophical points of view. In theology, and what has more recently been called the science of religion, we have the historical school and the philosophical school. The first tries to find its sanction, the justification of its doctrines, in their historical origins; the latter looks for their philosophical meaning and value. In the study of law, termed in Germany jurisprudence, we have early in the century the opposition of the historical school founded by Savigny to the older philosophical school represented by Thibaut.<sup>1</sup>

<sup>1</sup> Nowhere has the critical spirit in its quest for leading principles of research or for the origin and genesis of existing doctrines been more evident in Germany than in the older science of jurisprudence and the more modern science of sociology. To the latter, as a creation of European thought during the nineteenth century, I shall have special opportunity to refer in a subsequent chapter; the former may be mentioned here as a striking example of the working of the critical spirit, exhibiting an enormous amount of learning little known in this country, though not wanting in dramatic incidents. Among the latter I may mention a controversy which began in the early years, and reached something like a conclusion at the end of the century. The beginning is connected with the celebrated names of Thibaut (1772-1840) and Savigny (1779-1861); the end with the completion and introduction of the German Civil Code (1888). Thibaut belonged, as one of the latest representatives, to the school

of legal studies of which Samuel Puffendorf, of European renown, is considered the founder. It aimed at establishing the so-called "Natturrecht" or Natural Law, "the principles of which were taken to be a measure for the value of the existing Roman Law" (E. Eck, in Lexis, *loc. cit.*, p. 301). "When, after the conclusion of the War of Liberation and of the French supremacy, a feeling of German unity was kindled, many, and among them not the least patriotic, saw in the establishment of a German national code of law a desirable object, and one which was at the time also attainable. This movement found its most prominent spokesman in the Heidelberg professor of Roman Law, Thibaut, who gave it emphatic and eloquent expression in his pamphlet on 'The Necessity of a General Civil Code for Germany' (1814). He was opposed by no less an authority than F. C. von Savigny, who in his treatise 'On the Task of our Age for Legislation and Jurisprudence' furnished the programme of the