



*Asesorías y Tutorías para la Investigación Científica en la Educación Puig-Salabarría S.C.
José María Pino Suárez 460-2 esq a Lerdo de Tejada, Toluca, Estado de México. 7223898475*

RFC: ATI120618V12

Revista Dilemas Contemporáneos: Educación, Política y Valores.

<http://www.dilemascontemporaneoseducacionpoliticayvalores.com/>

Año: VII Número: 2 Artículo no.:105 Período: 1ro de enero al 30 de abril del 2020.

TÍTULO: F.K. von Savigny en Derecho, Estado, Persona y Sociedad.

AUTOR:

1. Pas. Sc. Denisov Anton Mikhailovich.

RESUMEN: El artículo analiza las características teóricas y metodológicas de las enseñanzas políticas y legales de F.K. von Savigny, que corrobora la síntesis de la interpretación teórica y jurídica de los problemas del derecho, el individuo, la sociedad y el estado sobre la base del principio irracional llevado a cabo constantemente en la metodología del conocimiento científico. El elemento central de la teoría de F.K. von Savigny es la doctrina de la conciencia nacional, resultante del desarrollo histórico de la gente en su conjunto. Es conciencia nacional en F.K. von Savigny el espacio en el que toma forma la ley y en el que el estado encuentra su fundamento.

PALABRAS CLAVES: Savigny, ley, estado, ideal legal, historicismo.

TITLE: F.K. von Savigny on Law, State, Person and Society

AUTOR:

1. Science intern. Denisov Anton Mikhailovich

ABSTRACT: The article analyzes the theoretical and methodological characteristics of the political and legal teachings of F.K. von Savigny, which corroborates the synthesis of the theoretical and legal interpretation of the problems of law, the individual, society and the state on

the basis of the irrational principle constantly carried out in the methodology of scientific knowledge. The central element of F.K. von Savigny is the doctrine of national conscience, resulting from the historical development of the people as a whole. It is national consciousness in F.K. von Savigny the space in which the law takes shape and in which the state finds its foundation.

KEY WORDS: Savigny, law, state, legal ideal, historicism.

INTRODUCTION.

Analyzing the content of the ideas of the historical school of law, you need to pay attention to the following characteristic point. According to F.K. von Savigny, popular justice is not only a substance of the formation of the law of laws, but it is in itself a right. P.I. draws attention to this. Novgorodtsev: "The nation-wide legal consciousness, according to F.K. von Savigny, is a right in itself, without any further requirements regarding its positivization. This directly follows from those places of the "System of Modern Roman Law", which refers to the emergence of legal norms" [1, p. 83]. If society has developed a strong belief in the value and truthfulness of a particular social norm, then we can already talk about its legal significance.

Whenever there is a need for a particular legal norm, the legislator can discern it in the prevailing legal custom or in the phenomena of national justice. It is on this basis that F.K. von Savigny calls the people's sense of justice "positive" right. Commenting on this train of thought of a German scientist, P.I. Novgorodtsev rightly linked the orientation to the identification of spontaneous social justice with positive law, which he noted with F.K. von Savigny, with the latter's desire for a moral justification of law.

"According to its main provisions, the content of law is revealed in history, in the process of objectification of the national spirit and from this it should be deduced. It seems to him data for reason and not subject to subjective discretion, but this historically given right was exactly opposed to them by the arbitrariness of the rulers, as was the natural law of the former philosophers. Here,

we come again to the main motive of the views aspiration, from which all the essential features of his theory are explained. To raise the moral significance of the historical order - such was the dominant goal of its constructions ... The polemic with natural law, which attacked the positive due to the lack of moral elements in it, made the desire, above all, pay attention to the moral justification of positive institutions” [1, p. 84-85].

In contrast to the supporters of the natural law tradition, F.K. von Savigny does not try to disclose the content of this “positive law”, embodied in public justice, as a set of any natural laws or norms. For him, this “right”, although it has objective content, but this consideration takes on a concrete form only through its cutting in the activities of the legislator. If we try to perceive it as a fact of the historical process, then it will appear to us as something purely irrational in nature.

F.K. von Savigny, wanting to get away from arbitrary idealistic conclusions of supporters of natural law, in which he rightly saw subjectivity, contrasts with the natural law the positivity of historically given public consciousness. At the same time, paradoxically coming to the irrational nature of the very positive law itself, he achieves his main goal, which was to get rid of the notions of law as the result of the subjective activity of the legislator or interpreter of natural law, but the price he had to pay for this goal led him only to a more consistent and frank idealism in the interpretation of law.

According to F.K. von Savigny, law has already been fully given in its original form of positive public justice, it is not the fruit of arbitrary institutions, but needs further development of its form. This development can be realized only through the interaction of this kind of public law-making with the legislative activity of state power.

State F.K. von Savigny interprets as "the bodily image (Gestalt) of the spiritual unity of society." The “Gestalt” lexeme used by him has many aspects in scientific German speech. It can also be interpreted as a prototype or as a “phenomenon”, if we use the expression of Goethe, for similar

series of phenomena. It is no coincidence that F.K. von Savigny further stipulates that in the image of the state, the unity of society not given in the senses takes on the features of something sensual.

The aforesaid F.K. von Savigny extends to law: in the purely spiritual unity of society, law exists only as “living contemplation” and does not acquire conscious logical forms, but only in the state does law find its life and its reality. At the same time, the state itself cannot yet guarantee the validity of law, since the state is only an “image” of the social essence from which law grows.

So, according to F.K. von Savigny, non-state nature, but cannot exist without the state, being outside of it something incomplete, because only in the state does it find its full “image”. "Law" and natural law appear as interconnected entities. Natural law originates in the depths of the national spirit, living social unity, but only in the system of laws, i.e. in positive law, it receives its final and actual embodiment, but precisely for this reason, “not only the natural-legal philosophy was unacceptable for the representatives of the historical school, but also the statist view of law, which is the object of its study, entirely dependent on the arbitrariness of the legislator, and therefore random, in the existence of which there are no laws for the disclosure of which the efforts of the new school were directed” [2, p. 315].

Characterizing the complex of relations taking shape within the framework of the opposition of state and law, F.K. von Savigny identifies three real groups of contradictions: between the certainty of the existence of individual peoples and the evidence of the existence of humanity as a whole, between individual social groups with their historical past and future of society as a whole, between the necessity of the existence of law as an element of the national spirit and the random nature, the anomalous nature of its manifestation. He interprets these contradictions as inevitable in the process of moving from the uncertainty of law as the essence of social phenomena to the specificity of the system of laws recognized by society and supported by the state.

These contradictions, however, are inevitably found in the fact that law, on the one hand, must be recognized by the state, but on the other hand, it should not be just a matter of the state. Further, in that the law should be recognized not only by the national state, but should also be thought of as universal law, in the limit - world law. Law should not be a matter of chance and human free will, but should be something fundamentally binding on everyone.

Ultimately, F.K. von Savigny, rising to the level of philosophical generalization, argues that law should be manifested as unity. However, it does not exist as an abstract unity, but as a concrete unity, given in the present, as something real. As such, it must first of all reveal itself as a unity of legal value and legal reality.

Such a unity, according to F.K. von Savigny, should be proved in the philosophy of history, and concretized in a complex of basic concepts of jurisprudence. These concepts should be able to universally explain the relationship between the concepts of "people", "state" and "law". However, we must admit that these findings F.K. von Savigny is, in the best sense, a scientific program. Where we could expect this kind of concretization from him, F.K. von Savigny for the most part refers to the "highest necessity", which for him is a self-evident source of development of all social phenomena.

Analyzing from these positions the relation of law and the state, F.K. von Savigny formulates them in the following provisions. He argues that law can only be recognized in the state and through the state, while its approval and recognition does not fall within the competence of only the state. Law, further, should be recognized not only in the national state, but also should be conceivable as having universal significance, truly "world" law. At the same time, law should not only be something historically random and at least somehow dependent on human arbitrariness, but it fundamentally contains the principles of necessity. Such a right, although it contains the beginning of necessity, but it is not something finite and closed, but rather, it is open to the necessary development. Such a

right acts as a single system, but its unity is not something abstract, abstracted from the real life of society. On the contrary, it should act as a concrete, betrayed, completely real, and by no means, not an ideal right.

Offering such an interpretation of the relationship between law and the state, F.K. von Savigny seeks to connect in a unified theory the beginnings of necessity and the truth of law, the reality of the state and the realism of legal norms. Ultimately, he seeks to achieve a concrete unity of legal value and legal reality, without opposing each other the form and content of law. According to his basic tenets, this can be achieved only by turning to the philosophical and legal method of understanding the historical process. It is the latter, according to F.K. von Savigny, is a valid justification of the fundamental concepts of law, in a universal way explaining the relationship of law, state and society.

Treating the concept of the state, F.K. von Savigny distinguishes the state as a “historically acting entity” from the state as “only existing” (in the original: “existent”). As the first, the state encompasses the essential connection of laws, or legislation as such, which constitutes what he calls “state law”. At the same time, legislation should not be conceived of as a simple collection of available data, positive norms, rather, it is their internal essence, which is not inherent in anything accidental or arbitrary. Understand what this “legislation” is in a specific interpretation of F.K. von Savigny, as well as know its content, can only be seen as a historical phenomenon. “The science of legislation is a historical science ... the whole nature of the science of legislation should be historical,” stated F.K. von Savigny [3, p. 115]. Moreover, he once again draws attention to the fact that “historical” means not only something given, but given with a necessity, again specific to F.K. von Savigny is the meaning of the word about which we spoke above.

We are talking about the fact that the state, with his understanding of F.K. von Savigny does not grow out of some arbitrariness of historical actors, but rather, on the contrary, opposes this

arbitrariness. As a kind of universal state, a "state in general," it realizes itself in various historical forms of its manifestation as a "degree of restriction of the individual", i.e. restrictions on the possible arbitrariness of a society or person acting contrary to objective necessity embodied in a universal state. This restriction realizes itself in these laws, which are precisely why they are fundamentally objective and necessary. Accordingly, the science of legislation and law, according to F.K. von Savigny, should be understood as objective and at the same time historical sciences.

A German jurist believed that they should be based on a reference to some legal ideal. This ideal is not given anywhere in the phenomenon and cannot be grasped purely empirically, but at the same time it should be the basis of the science of legislation. The appeal to the ideal in legal science was mainly characteristic of the neo-Kantian tradition. It was an analogue of the Kantian "ideal of pure reason", which was introduced by I. Kant in the final part of "Critique of pure reason". According to I. Kant, the mind will only strive for knowledge when it can assume this process is complete, which means that it must admit the ideal of reason, which has all the fullness of knowledge.

An analogue of this intellectual construction was proposed at the beginning of the 20th century by G. Kelsen in his theory of the "basic norm", which does not have an empirical analogue and therefore cannot be verbally expressed, but the idea of it as a legal ideal is necessary for the legal mind to give to all others, i.e. private, quality standards of objectivity and commitment.

It could well be considered that F.K. von Savigny. However, the founder of the historical school of lawyers was not a Kantian, and he took the idea of a legal ideal not from the Critique of Pure Reason, but, as a modern German researcher points out, from the work of German romantics of the late 18th-19th centuries, to whom he was especially close and with whom, for example, with Jacob Grimm, was in constant correspondence [4, p. 330-333]. Of the romantics who influenced the teachings of F.K. von Savigny on the legal ideal, especially stands out F. Gelderlin, who in his

novel Hyperion developed the idea of the ideal as following the nature of things and subordinating to this nature, contrary to the prescriptive tenets of reason.

In an aesthetic sense, F. Schelling developed this doctrine of the ideal, which is especially often referred to as the thinker who inspired F.K. von Savigny on the development of an irrational doctrine of the historical beginning of law. We think that the specific irrationalism of F.K. von Savigny could also get something like legitimacy in the scientific community after he was introduced into science by such an influential author as the great philosopher Schelling, as discussed above.

The carrier of the irrational ideal F.K. von Savigny saw the people. In this context of his legal theory, the German scientist preferred not to talk about “civil society”, but about “people”. “It is the people who are considered by the historical school as a subject repeating the law” [2, p. 317]. Civil society as an internally structured whole for F.K. von Savigny was nothing more than an external carrier of that substantial spiritual, rationally inexpressible content, which constituted the internal content of the “people” as a historical given. However, the people for F.K. von Savigny must act in the state and realize himself through the state. In this, he draws close to the position of G. Hegel, who believed that only the peoples who created the state can be fully considered historical peoples. At the same time, he interprets civil society as a kind of “external state” [5].

Late F.K. von Savigny, as it seems to us, in his interpretation of the relationship “state - civil society”, or “state - people”, approaches the Hegelian interpretation. The difference is manifested only in the methodology, primarily in the interpretation of the concept of the people: absolutely idealistic, as in G. Hegel, or irrationalistic, as in F.K. von Savigny. This allowed the later authors of the XIX century. without much violence over the material, try to reconcile the theoretical premises of the two classics. An example is the outstanding Russian jurist K.A. Nevolin [6].

An appeal to the people as the main source of law quite naturally leads F.K. von Savigny to the recognition of the leading role of private law over other types of law. He substantiates the point of view according to which in the absence of an autonomous sovereign state and state law, it is private law that is the minimum legal order of civil society. In this ideas F.K. von Savigny are consonant with the thoughts of his like-minded K.F. Eichhorn, who emphasized the role of private law in the implementation of the principle of historicism in law.

K.F. Eichhorn wrote in this connection: “There is no institution of today's law in which it would not be possible to discover which key oldest principles depend on the same constantly occurring individual statements, and since the institutions are distinguished according to their differences, which do not indicate what is the nature of the institute, spelled out in the source of law on which it is based, and how it should be explained. The common law institution is becoming universally applicable, while deviations from it should be considered as examples of private law, where other rules of interpretation are used, they must be explained and applied by their own analogy. In order to discover these key principles, it is necessary to proceed from the oldest characteristics of each institution and pass each through these historical evidence, trace its fate up to the latest legal sources in order to find modifications in them that arose at different times as subspecies of the institution in question and describe them in accordance with their common features; it is necessary to rework all sources of German law, without exception, concerning the essence of the issue under consideration, on the basis of which it will be possible to consider which institutions could be in general and to which of them what qualities of principles on which everything depends are characteristic the provisions of individual private rights are evidence of the results found” [7].

K.F. Eichhorn argues that in each legal institution, one can distinguish a certain basic principle, which is a distinctive feature of the institution of private law, and this feature is based on the general legal doctrine of law, which operates everywhere, while the modified principles comprise

specific ordinary rights that apply only in a separate specific place. And this difference, he believes, can be found in the texts of legal sources themselves. So, private law serves as a historical source for modifying the leading principles of common law.

“In very close tones”, F.K. wrote about private law F.K. von Savigny. However, unlike K.F. Eichhorn, the argument of F.K. von Savigny turned out to be more focused on modern times. In discussion with A.F. that is, Roman law was interpreted by him as an actual legal system, which he tried to counter to the attempts of modern codification of the law of German states. Actually, the name of the main work of F.K. von Savigny sounds: "The system of modern Roman law." For its author, Roman law seems to be an exemplary perfect system of law, complex and thought out to the details. And in this capacity, Roman law contains a methodological prerequisite for the development of modern law.

About this F.K. von Savigny quite definitely wrote in his Journal of Historical Jurisprudence, in a programmatic introductory article entitled “On the Purpose of this Journal”: “This is a universal question: how does the past relate to the present, becoming to observation? and some teach that each time freely and arbitrarily generates its being, its world, good and happy, or bad and unhappy, depending on the degree of wisdom and strength ... But at the same time, the historical school suggests that the material for law is given by the unified past of the nation, but not arbitrarily, so that by chance it may turn out to be this or that, but proceeding from the deep essence of the nation itself and its history. However, any prudent activity at any time should be aimed at reviewing this material, given the internal necessity, updating it and preserving it” [8].

The practical significance of the historical heritage in law is realized in modern practice through the conscious and purposeful application of the methodology of interpretation of historical tradition, combining the methodology of historical and philosophical knowledge. This methodology is close to the hermeneutical method, which will be discussed below.

F.K. von Savigny summarized about this methodology as follows: “A new look at science: a historical interpretation in the literal sense, that is, consideration of lawmaking as a conceived way to solve a problem in a certain period of time; - the connection of our science with the history of the state and the people - the system itself should be conceived as progressive.

A presentation that includes examples — in this respect, this technique is a prerequisite for both and brings them together — not as if we looked at their character as a spiritual activity — now it is coordinated with a linguistic function and is part of the historical one — as it is already will be afterwards. The practical significance of this part of jurisprudence depends on the circumstances. In Roman law, it is the largest” [9].

Similarly, F.K. von Savigny also speaks out in his 1814 programmatic work “On the calling of our time to law and jurisprudence”: “A double meaning is inevitable among lawyers: historical, to encompass the peculiar features of every era and every legal form, and systematic, to see every concept and each sentence is in a live connection and interaction with the whole, that is, in relationships that are only real and natural” [3, p. 81]. Therefore, the historical approach of F.K. von Savigny is quite organically supplemented by the requirement to form an estate of professional lawyers, able to combine the intuitive perception of the “national spirit” and “popular justice” with its logical understanding and interpretation. Roman lawyers of the classical era, especially Ulpian, are also a model for him. They were distinguished by the ability to present the results of the systematization of historical material through the "geometric method", borrowed from Euclid.

F.K. von Savigny wrote in this connection: “... in our science, all success is based on mastery of key principles, and it is this possession that is what is the basis for the greatness of Roman lawyers. The concepts and terms of their science did not appear arbitrarily. They are a real entity whose being and genealogy became known to them during a long-proven path. That is why all their experience

inspires confidence that cannot be found without mathematics, and it can be said without exaggeration that they use legal concepts with mathematical precision” [3, p. 82].

The realization of law acquires concreteness in the essence of the “national spirit” understood and expressed by professional lawyers. Right, literally, grows out of the people. The possibility of self-identification of the people F.K. von Savigny saw the application of the “national criterion”, which is expressed in the people's sense of justice and in the national culture as a whole: “Law grows with the people, improves with them, and finally dies when the people lose their identity. This improvement alone, including during this cultural time, is of great difficulty for observation. It has been argued earlier that the foundation of law is the universal self-awareness of the people. For example, in Roman law, the unified nature of marriage, property, and so on can be called the foundations, however, everyone will understand the impossibility of such detailing, about which we find quotes in the pandects” [3, p. 81].

In the understanding of F.K. von Savigny “people” as an integral socio-cultural phenomenon becomes a kind of “breeding ground” for the estate of professional lawyers who complement the masses who do not have a special education to interpret legal knowledge. Justifying this approach, F.K. von Savigny wrote: “These difficulties have led us to a new perspective on the development of law. In the context of a growing level of culture, all types of activities of the people are becoming increasingly disconnected, and what was previously done by common forces is now done individually. Lawyers have now become the same separated estate. Law now develops much more linguistically, it has taken a scientific direction, and what used to live in the self-consciousness of the whole nation now remains in the minds of lawyers who represent the whole nation in this function” [3, p. 84].

The work of professional lawyers introduces the beginning of rationality and clarity of judgment into the general field of law, growing out of the elements of public life. Moreover, the law itself is developing in the direction of differentiation and substantial complication. In this regard, F.K. von Savigny noted the following: “The existence of law, starting from the present moment, becomes artificial and complex, since it has a double life, one as part of a common public life that does not cease to exist; the second as a special science in the hands of lawyers. As a consequence of this interaction of influences, all subsequent phenomena occur, and it is now clear how completely monstrous, not arbitrary and without special intention, some monstrous details can arise. For the sake of brevity, we call the connection of law with the common people's life a political element, while the isolated scientific life of law is its technical element” [3, p. 84].

F.K. von Savigny argues that law has a dual function, namely political and technical. The political function of substantive statements in law is addressed to the bulk of society with spontaneous legal awareness. Technical function is the prerogative of educated lawyers. So, real social life and legal science in the field of pure theory are clearly separated, but functionally they are related to each other. At the same time, the sphere of politics and law, although they are two systems independent from each other, but in practice determine each other.

According to F.K. von Savigny, the political necessity realized in the national legal consciousness, in the process of its scientific interpretative “cutting” by professional lawyers and the legislator is transformed into legal reality, the main subject and object of which is the personality. The unity of legal value and legal reality, according to F.K. von Savigny, most clearly finds himself in ensuring the civil rights of the individual, confirmation of which he, first of all, finds in the historical development of Roman law.

Methodological approach F.K. von Savigny to understanding the essence of the people as the bearer of the legal ideal and to the essence of the law itself can also be defined as a kind of early hermeneutic approach [4, p. 355], the idea of which he could have developed under the direct influence of the famous Berlin professor F. Schleiermacher, who studied the process of understanding the subject and developed a methodology of hermeneutic cognition that is relevant for humanitarian cognition, including law [10].

According to F. Schleiermacher, not only the literal meaning of what was said or written by one or another author is subject to understanding, understanding should also be understood by the creator of the text. Every text, every speech can be comprehended and transformed into an act of understanding.

The method of understanding addresses both the general and the singular: both the text and the context of the work itself and the author must be comprehended. In fact, F.K. von Savigny transfers the general hermeneutical principle to the field of legal knowledge: “to understand the author better than he understands himself”. Here the role of context is played by the historical process of the “spirit of the people” movement, and the hermeneutic “assimilation” of the law should help to understand its real nature, which we cannot deduce from their complex of norms.

F.K. von Savigny seeks to find ways to know the law not from external sources (morality, nature, the will of God, etc.), but from the law itself. Such an approach cannot be called either subjective or objective. It is, rather, a kind of intellectual intuition, which should make it possible to understand the superempirical nature of law without going beyond the scope of the legal content. Therefore, F.K. von Savigny, it turns out that the basis for knowing the pure law of intuition cannot be sought in anything even deeper than the intuition of legislation itself. It is intuition that can be for consciousness something initially unified, internally indivisible and constitute a higher unity.

Owing to this quality of her, intuition brings unity, combining, “gluing” together the diverse data on the nature of legal and moral relations that we have gathered from historical experience.

The unity of historical experience cannot be sought either in legal relations themselves, which are always only an object, or in discursive thinking, which, however, in an act of self-consciousness can be pure subjectivity, but at the same time never possesses the dignity of absolute unity. Consequently, the source of the reliability of knowledge of law cannot be sought either in the world of objects or in the cognitive activity of the subject. It can be and is only in the field of intuition, understood as an act of absolute freedom of the subject and is empirically revealed in it only as a “voice of the spirit of the people”.

We think that the incorporation of the ideas of intuition into the doctrine of the historical school of law also did not do without the influence of F.V. Schelling. For F.K. von Savigny, the concept of intuition of the law is higher than the concept of any form of cognition of law, since any form of cognition with good reason can only be interpreted as a modification of limited pure intellectual intuition in a different way, and this is already quite according to F.V.Y. To schelling.

Since intuition cannot be attributed to any of those definitions that we are accustomed to ascribe to things or even forms of intellectual activity, so far as a paradox arises, according to which intuition cannot be said to exist. It is impossible precisely because it is self-existence, since it is primary, since it itself is knowledge, and therefore to possess it already means to have knowledge of it. Here, any definition of law in the form we are accustomed to is a limitation, which means distortion, a departure from the form of pure intellectual intuition to empirical intuition.

So, an intuitive knowledge of law, according to F.K. von Savigny must firstly be absolutely free. No conclusions, no evidence, no arguments appealing to feelings or thoughts can lead to him. Secondly, it should be knowledge, the object of which - law and justice - is not something independent of it. That is, an intuitive knowledge of law should be knowledge, which is at the same

time an act of creating its own object, in which the creator and the created are one and the same. Schelling, in contrast to empirical, sensual, intuition, which is not something that creates a form of law, and, therefore, differs from its activity, called Schelling pure intellectual intuition.

So, in the interpretation of F.K. von Savigny, law acts as a product of the activity of human intelligence, including historical forms, but not as an arbitrary product, but as an objective product. Objectivity to law as initially purely subjective attitudes of the mind is set by the basic property of the subject's orientation toward the object, which, in turn, is determined by the connection of pure and empirical intuition. Such intuition is the knowledge of law at the same time both as the mind's mindset and as objective definitions of being. Pure intuition arises only through the fact that it knows about itself.

As an example of this kind of approach, F.K. von Savigny can point to his teaching on the legal status of the individual in the state, focused on the problem of human rights. These rights F.K. von Savigny does not perceive it as something empirically given, just as we find it in T. Hobbes and J. Locke. Human rights are not associated with its original nature, but with the very "spirit of the people", which in historical development establishes its legal forms. In this case, human rights cannot be accepted as an empirical fact, but must be deduced and proved, for which F.K. von Savigny cannot offer a method other than hermeneutics of intellectual intuition.

On the whole, the irrationally interpreted historical process of the formation of law forms the foundation of the legal theory of F.K. von Savigny. This is especially clearly seen in the aspect of the rights and obligations of the individual. According to F.K. von Savigny, in a real state, national justice in itself cannot contribute to the improvement of society and the protection of individual rights, if it is not promoted by laws approved by the government.

So, in the case of positive laws, we are talking about the reproduction of the individual's perfect rights and obligations in a form transformed in relation to the one that they have at the level of national justice. This, however, does not mean that F.K. von Savigny focuses solely on the positivistic regulation of interpersonal relations. He notes that despite the transformation of national justice into a positive system of laws, it continues to be necessary at any stage in the development of legal relations, since it allows you to adjust the current positive law taking into account the original values of society.

CONCLUSIONS.

By the middle of the XIX century, the influence of F.K. von Savigny in the legal community of Europe reached its peak. His authority in Roman law was unquestioned. But most importantly, it is thanks to the scientific work of F.K. von Savigny, the idea of historicism finally established itself in legal science.

The historicism of G. Hegel, in spite of his general deepest influence on scientific thinking and the methodology of science, was nevertheless clothed in the specific form of his speculative philosophy. In addition, the importance of Hegelianism in science of the second half of the XIX century clearly began to decline: the positivist O. Comte declared him unscientific, the existentialist S. Kierkegaard - anti-human, and this, of course, could not but have an impact on the scientific community.

Another influential scientific school that appealed to the idea of historicism was Marxism, whose representatives developed theoretical jurisprudence based on the method of historical understanding of history developed by K. Marx. But Marxism in the 19th century has not yet become a course of science of an academic type, while being known and recognized mainly only in the radical circles of the European and Russian intelligentsia.

For the legal scholar, who was part of the scientific community of legal and state theorists, neither Hegel's historicism, nor the method of materialist understanding of the history of K. Marx could have the value of a scientific paradigm, i.e. that sample of scientific work, which, according to T. Kuhn, the author of the famous work of 1962, "The structure of scientific revolutions," should be oriented to a researcher who wants to be recognized by the scientific community. The role of such a paradigm, affirming historicism in law, at that time could only have been the scientific works of von F.K. von Savigny. Thanks to the exceptional influence of his personality, the influence of his works and scientific ideas, jurisprudence entered the twentieth century, being armed with the methodology of historicism, without which any humanitarian science in the new century could no longer exist.

Conflict of interest.

The authors confirm the absence of a conflict of interest.

BIBLIOGRAPHIC REFERENCES.

(In Russian).

1. Novgorodtsev P.I. Istoricheskaya shkola yuristov, yeye proiskhozhdeniye i sud'ba. Sankt Petersburg: Lan', 1999. 192 s.
2. Kozlikhin I.YU., Polyakov A.V., Timoshina Ye.V. Istoriya politicheskikh i pravovykh ucheniy. Sankt Petersburg: Izdatel'skiy Dom SPbGU, Izdatel'stvo yuridicheskogo fakul'teta SPbGU, 2007. 854 s.
3. Savin'i F.K. iz. O professii nashogo vremeni dlya zakonodatel'stva i prava (Geydel'berg, 1814) // Khattenkhauer KH. Tibo i Savin'i. Vashi programmnyye shrifty. Myunkhen: Valen, 2002. S. 115.
4. Ryukkert Y. Idealizm, yurisprudentsiya i politika s uchastiyem Fridrikha Karla fon Savin'i / Joachim Rückert. - Ebel'sbakh: Gremer, 2018. S. 330-333.
5. Gegel' G.V.F. Entsiklopediya filosofskikh nauk. T. 3. Moskva: Mysl, 1977. S. 342.

6. Yefremova N.N. Ponyatiye gosudarstva v uchenii K.A. Nevolina // Pravo i gosudarstvo v ikh sootnoshenii: teoreticheskoye naslediyе istoricheskoy shkoly prava. Sbornik nauchnykh trudov: k 200-letiyu «Zhurnala istoricheskogo pravovedeniya». Ser. «Istoricheskoye pravovedeniye». Sankt-Peterburg, 2016. S. 69-75.
7. Eichhorn K.F. Einleitung in das deutsche Privatrecht mit Einschluss des Lehenrechts. Göttingen, 1829. S. 121.
8. Savigny F.K. von. Über den Zweck dieser Zeitschrift // Zeitschrift für geschichtliche Rechtswissenschaft. № 1. 1815. S. 2-6.
9. Savigny F.K. von. Vorlesungen über juristische Methodologie. Frankfurt: Klostermann, 1993. S. 88.
10. Sm.: Malinova I.P. Filosofiya prava i yuridicheskaya germenevtika. Yekaterinburg: Ural'skiy gosudarstvennyy yuridicheskiy universitet, 2015. 172 s.; Ovchinnikov A.I. Pravovoye myshleniye v germenevticheskoy paradigme. Rostov n/D: Izd-vo Rost. un-ta, 2002. 285 s.

(In English).

1. Novgorodtsev P.I. (1999) Historical School of Lawyers, its origin and fate. St. Petersburg: Doe. 192 p.
2. Kozlikhin I.Yu., Polyakov A.V., Timoshina E.V. (2007) History of political and legal doctrines. St. Petersburg: Publishing House of St. Petersburg State University, Publishing House of the Law Faculty of St. Petersburg State University. 854 p.
3. Savigny F.K. von (2002) On the profession of our time for legislation and law (Heidelberg, 1814) // Hattenhauer H. Thibaut and Savigny. Your programmatic fonts. Munich: Vahlen. P. 115.
4. Rückert J. (2018) Idealism, jurisprudence and politics with Friedrich Carl von Savigny / Joachim Rückert. Ebelsbach: Gremer. P. 330-333.
5. Hegel G.V.F. (1977) Encyclopedia of Philosophy. T. 3. Moscow: Thought. P. 342.

6. Efremova N.N. (2016) The concept of the state in the teachings of K.A. Nevolina // Law and the state in their correlation: theoretical legacy of the historical school of law. Collection of scientific works: on the 200th anniversary of the "Journal of Historical Law". Ser. "Historical jurisprudence." St. Petersburg. P. 69-75.
7. Eichhorn K.F. (1829) Introduction to German private law, including fief law. Goettingen. P. 121.
8. Savigny F.K. von (1815) about the purpose of this journal // Journal for historical jurisprudence. No. 1. P. 2-6.
9. Savigny F.K. from (1993) lectures on legal methodology. Frankfurt: Klostermann. P. 88.
10. See: Malinova I. (2015) Philosophy of law and legal hermeneutics. Ekaterinburg: Ural State Law University. 172 p.; Ovchinnikov A.I. (2002) Legal thinking in the hermeneutic paradigm. Rostov N/D: Publishing house Rost. University. 285 p.

DATA OF THE AUTHOR.

1. **Anton Mikhailovich Denisov** - graduate student of the Law Institute (St. Petersburg). E-mail: denisov@lawexp.com

RECIBIDO: 15 de diciembre de 2019.

APROBADO: 26 de diciembre del 2019.