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BIOGRAPHY

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María Luisa Marín Castán
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FULL BIOGRAPHY

Biography written by María Luisa Marín Castán. Doctor of Law from the Complutense University of Madrid and Professor of Philosophy of Law at the Department of Legal, Moral and Political Philosophy (I) at the aforementioned University. The author of numerous publications, she has worked on a variety of research projects. She is an academican of the Royal Academy of Jurisprudence and Legislation.

Jurist, Professor of Civil Law, Chief Justice of the Supreme Court and of the General Council of the Judiciary, as well as politician, President of the Spanish Parliament and of the Council of State.

Puebla de Alcocer (Badajoz), 29.III.1915 – Madrid, 26.V.1994.

He was part of a lineage of jurists from Extremadura that were closely linked to the Administration of Justice; his father was, at the time of his birth, a trial judge, and would later go on to become state inspector for the Supreme Court and Undersecretary of the Interior. His two younger brothers would also become public prosecutors, and his older brother, a magistrate. He went to secondary school at the Instituto de Cáceres and later read Law at the University of Salamanca, graduating in 1935.

He completed his doctoral studies at the Universidad de Madrid (now the Complutense University of Madrid), receiving the Extraordinary Award for his thesis on *El sistema sucesorio militar romano* in 1941. He furthered his education by studying a Degree in Philosophy and Literature, which was very much in line with his concerns and literary interests and which would lead to him founding the magazine *Cristal* in Cáceres. Twenty issues of this magazine were published, featuring prose and verse as well as the collaboration of prestigious pre-war writers from Extremadura. In 1941 he received the Luis Vives award, granted by the Ministry of Education for his work *Luis Vives, prototipo del renacimiento español*. His teaching career started after the Civil War as an assistant professor of Civil Law at the Faculty of Law, Universidad Central (now the Complutense University of Madrid), joining the Chair of Blas Pérez González, shortly becoming responsible for the ordinary classes imparted as Blas was appointed Minister of the Interior by General Franco. In 1943 he overwhelmingly won the competitive examinations for the Chair of Civil Law at the University of Oviedo, obtaining shortly thereafter the same in Granada. In 1945 he started teaching in Madrid, being responsible for the Chair of Blas Pérez. At this time, he also started his fruitful intellectual work at the Faculty of Law, while at the same time teaching at other institutions, including the CEU San Pablo University Foundation and the Social School, at which he was, respectively, Professor of Civil Law and Professor of Labour Law.

He also became a professor at the Judicial School.

After the public examinations, he was admitted to the Madrid Bar Association, becoming a member of their Governing Board, as well as the Albacete, Barcelona, Bilbao, Cáceres and Pamplona Bar Associations. His role as a lawyer would continuously

progress over several decades until his appointment as President of the Parliament, becoming one of the leading figures of the Twentieth Century Spanish Forum. His “expert opinions” are published in his *Obras completas*.

In 1945 he became a permanent member of the Law Commission attached to Civil Law, where he began a vital work. That same year he married Amalia Álvarez-Cienfuegos, who was to share his intellectual and literary interests, as evidenced by the fact that they published a book together on the work of the writer and journalist from Extremadura, Pedro de Lorenzo (*Pedro de Lorenzo. Palabra y mensaje*, Madrid, 1977). They had two children, also jurists, who continue the family tradition: Antonio, who, besides being a lawyer, is a Professor of Civil Law, and Guadalupe, who is currently secretary general of the Council of State.

After having won the competitive examinations for the Chair of Civil Law at the Complutense University of Madrid, Hernández Gil fully devoted himself to teaching and research, creating several generations of protégés. The final years of his university activities were devoted to teaching specialised doctorate courses, focusing mainly on legal philosophy, epistemology and methodology.

He was elected Full Member of the Royal Academy of Jurisprudence and Legislation in 1960, delivering his inaugural speech in 1967 on *La función social de la posesión* (*Ensayo de teorización sociológico-jurídica*). He became president of the aforementioned academy in 1975.

After the death of José Castán in 1969, he was elected President of the Law Commission. He was instrumental in the completion of the pre-legislative work on the reform of the Preliminary Title of the Civil Code which led to the Framework Law of 17th March 1973. His contribution to the Family Law reform, which prepared the Law of 2nd May 1975, should be highlighted. As should, also under his guidance, the significant reforms made to marriage, parentage, parental responsibility and matrimonial property of 1981 as well as the custody reform of 1983.

The recognition of his value as a public figure opens a new period of his biography; marked by his remarkable activity at the forefront of the highest state institutions during the democratic transition, which he would outstandingly contribute towards. In 1977 he was appointed Senator by royal order and President of the Spanish Parliament and of the Council of the Kingdom. Under his presidency in this Constituent Assembly, which then included the Congress and the Senate, the Spanish Constitution of 1978 was developed and approved, the result of a consensus among the country's main political forces, the text of which revealed his concerns as a jurist. In connection with the Preliminary Title, his influence should be highlighted as regards the inclusion of the concept of legal order and deferral to higher values. Two days after the entry into force of the Constitution, he resigned as President of the Parliament, the constituent legislature having been concluded. He was appointed President of the Council of State, the highest advisory body of the Executive Branch, on 7th December 1982.

His involvement in all three branches of State culminated in 1985 when he was appointed Chief Justice of the Supreme Court and of the General Council of the Judiciary, a position which was one of his greatest professional dreams. His first speech opening the judicial year covered *La Justicia, su independencia y eficacia* (Madrid, 1986), in which he emphasised the material conception of the State and the Law, transcending rigid positivism, in the material constitution and in openness to values.

He resigned from the presidency of the aforementioned body in 1990 for health reasons and withdrew from public life.

The following are included among the other positions and roles he held throughout his remarkable life: President of the Academy of Literature and Arts of Extremadura, Chairman of the Editorial Board of *Revista de Derecho Privado*, Secretary of Civil Law of the National Institute of Legal Studies, Member of the Society for Comparative Legislation in Paris, the Argentine Institute of Legal and Social Philosophy, the Institute of Political Studies, the Board of the Institute of Comparative Law at Complutense University of Madrid, Editorial Advisor of *Anuario de Derecho Civil* and the *Revista de Derecho Español y Americano* and honorary doctorates from the Universities of Extremadura and Alicante. He also received renowned awards, including the Grand Cross of the Order of Civil Merit, the St. Raymond of Peñafort Order of Merit, the Carlos III Order of Merit and, posthumously, the Collar of the Order of Civil Merit for his contribution to the development of the Spanish Constitution of 1978.

Two main areas of focus can be identified in Hernández Gil's legal work. First, his methodological and epistemological concern over the issue of the potential and conditions for a true legal science, the inquiry of its disciplinary charter, the specificity of its purpose and the scope and methods of research and analysis of the legal disciplines. Second, Civil Law studies focused - apart from the initial works devoted to the concept, method and sources of the discipline - on his specialisation with regard to ownership and possession, issues which he prioritised. All the foregoing is underpinned by his overall philosophical conception of the Law and the legal experience openly inscribed in tridimensionalism, where the law, as well as social factuality and normativity, is presented with an evident ethical dimension which is manifested in "legal values", which must be implemented by the order and centred on the human being and human dignity. A convinced advocate of interdisciplinarity as a key guideline in modern thought, he took on and applied this conviction, projecting it in his scientific and research work.

His writings are compiled in his *Obras completas*, which he himself prepared and systematised in eight volumes. The first volume, dedicated to legal concepts, includes the following areas: epistemological concern, traditional legal science and its transformation, variations on the theory of the science and the language of the Civil Code.

The second volume, *La posesión*, includes: the social function of possession and the shift in Spanish doctrine around Article 464 of the Civil Code. The third volume is dedicated to the Law of Obligations, which brings together twelve works on the subject, including his general theory of obligations, and twenty-one works on contracts and legal business. The fourth volume, *Derechos reales, familia y sucesiones*, includes more than forty studies on real, family and inheritance rights. The fifth volume, *Metodología de la Ciencia del Derecho*, includes the three volumes of the 1971 edition (1. *Las concepciones y los métodos jurídicos tradicionales. El proceso de su revisión*; 2. *Las corrientes generales del pensamiento y su proyección en la Ciencia del Derecho: fenomenología, sociología, marxismo, estructuralismo, etc.*; 3. *Nueva evolución de las posiciones y direcciones metodológicas: la tensión, formalismo, antiformalismo, pluralismos*). The sixth volume is dedicated to legal knowledge and language. The seventh volume, dedicated to *La Constitución y su entorno*, includes works on the Spanish political change and the Constitution, as well as fourteen texts on constitutional issues.

The last volume is entitled *Política y Letras*.

His works also include texts on the Law, the role of the Law, clarifications and corrections to judicial positivism, the Law as an element of cultural integration, legal order and the unitary and ethical conception of good faith.

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