

LORCA MARTÍN DE VILLODRES, M^a ISABEL, *EL CONCEPTO DE DERECHO DE UN SIGLO. SU PERSPECTIVA IUSFILOSÓFICA*. MADRID, REAL ACADEMIA DE JURISPRUDENCIA Y LEGISLACIÓN/ DYKINSON, 2017, 104 PP.

The Philosophy of Law usually deals with its problems consulting the works of the authors who constitute this field, both “pure” philosophers and jurists in charge of the most theoretical tasks. This task is, of course, essential, because the role of the ideas and the concepts in the transformation of reality is much more important than some materialistic streams have wanted to see. However, it is also true that the knowledge of the dominant juridical ideas in an age needs an approach to other sources a little further from the professional philosophy and more focused to the everydayness of the juridical life. Precisely one of the merits of this monography is to explore those kind of sources, in this case, the concepts about Law exposed in their speeches by the members of the Real Academia de Jurisprudencia y Legislación (RAJyL) of Madrid since the middle of the 19th century until the middle of the 20th one. The author, M^a Isabel Lorca, is well equipped to face the task, because she has shown throughout her academic career an interest in History joining the studies about more “classical” authors as Aristotle and Cicero with the investigation of characters directly implicated in the more practical aspects of Law and Politics, among them Cánovas and Castelar, very outstanding figures in the period which, from another point of view, she studies in this book.

M^a Isabel Lorca begins placing those reflections in the corresponding historical context which she describes as a “turbulent” age, with political changes, attempts of renewal and revolutions. Before this sequence of tumultuous events and quieter moments, the RAJyL offered a notion of Law that, as the author highlights, shows a clear cohesion if it is observed with an attention that overcomes the apparent dispersion of features. From page 38, the author, by a detailed analysis of the academic speeches, threshes the features of that concept of Law. One of them is the defence of the nature of the thing and of Natural Law; this feature could seem striking, because it is common to consider the 19th century

the age of the triumphant juridical Positivism, specifically the variant which identifies Law with the legislative will of the State. However, the generalizing explanations in History have a problem: they neglect the details and peculiarities, the specific circumstances and the nuances; they ignore, as a consequence, the varied and specific character of human matters. But one the successes of M^a Isabel Lorca is taking into account the complexity of the human, irreducible to abstract concepts. She partakes of the healthy attitude of paying attention to the sources of the age and undoing simplistic views.

Diethelm Klippel has shown that the 19th century saw in Germany the publication of a lot of works devoted to Natural Law¹⁵. For his part, Francisco Carpintero has pointed out that the crisis of the modern individualistic iusnaturalism at the beginning of the 19th century, and the appearance of the positivist juridical philosophy, didn't imply the disappearance of all reflection about Natural Law¹⁶. The study we are dealing with follows that path; centered in the Spanish juridical science, it shows that the scholars defend the metapositive grounds of Law which establish the foundations of Justice; this Natural Law is not the one which is developed in the Modern Natural Law School, because, as it is highlighted by the author, the scholars criticized the modern contractualism derived from an individualistic concept of person. In their speeches, they choose considerations more akin to the Historical School (as the text points out expressly) and to Sociology, which were so widely spread during the 19th century. This defence of the historicity carries them to the rejection of an exclusively legalistic concept of Law; this is not the mere product of the State will, but a creation of the display of the human social life reworked by a juridical science which wants to be alien to the ideologies of politicians. Moreover, and this is another outstanding feature in this book, the scholars defend the importance of the written legal rule as guarantee of the juridical certainty, especially by the codification (pp. 46-47). And they also defend the presence of a procedural justice exercised by competent judges. Perhaps it could seem that defence of the legal rule, as basic source of law, is somewhat contradictory with the recognition of Natural Law, but the inconsistency is only apparent. The author tells us that the scholars propose a juridical science conciliatory between the request of certainty and the axiological requirements (the Natural Law). As a matter of fact, this was not a novel aspiration, because Aristotle and Thomas of Aquinas affirmed the necessity of judging always by laws, which, of course, had to be just. The scholars were aware of it, as Castán showed in a speech quoted in this monography.

Another interesting aspect of these academic considerations which the study specially emphasizes is the weight they render to Sociology, as I pointed out above. The image which is described by M^a Isabel Lorca shows some scholars critical of the central ideas of the juridical Modernity, like Individualism and the

¹⁵ Vid. for instance, DIETHELM KLIPPEL, *Naturrecht und Rechtsphilosophie im 19. Jahrhundert. Eine Bibliographie. 1780 bis 1850* (Tubinga, Mohr Siebeck, 2012), p. 9.

¹⁶ Vid. FRANCISCO CARPINTERO, «*Naturrecht*» y «*Rechtsphilosophie*». Los inicios del positivismo jurídico en Alemania, in *Anuario de Filosofía del Derecho*, 3, 1986, pp. 343-397.

State monopolization of Law, but very attentive to other creation of the modern culture like Sociology. It is interesting to know the abundant presence of books devoted to the advance of sciences in the library of the RAJyL. Again it may seem contradictory this concern, because Sociology usually appears linked to the research of the empirical fact in a scarcely compatible way with Iusnaturalism professed likewise by the scholars.

The answer to this possible contradiction is offered by the author when she writes about the eclecticism and the philosophically conciliatory spirit of the scholars. Such as they raise the question, it seems that their interest in Sociology doesn't carry them to an empirist positivism of facts, but to a knowledge of the social phenomena based on the observation and the experience (p. 86); they link that research to the attention to the juridical institutions rooted in the nature of the thing and in the historical-social development of the human being. M^a Isabel Lorca highlights the "strong and deep convictions" about the being and the ought to be of Law which underlies the lectures of the scholars (p. 49). Those convictions consist of the defence of a rigorous juridical science and the elaboration of laws built on the ground of a justice attached to customs and traditions investigated with sociological seriousness and alien to the ideological tides; this scholars' last demand makes specially interesting that the book inserts their speeches into the political instabilities of the age.

Although the author tries to carry out a fair exposition of the academic opinions, her writing reveals her sympathy for that juridical science which seeks Justice in the daily experiences of the human, in the nature of the thing, some ideas she has expressed in other publications¹⁷. Indeed, throughout her academic career, the author has been interested in the link between the more ideal dimension of Law with its real and social development, and this monography is an example of that concern now implemented in the analysis of the recent Spanish history. History is not only historical contemplation of past events, it is also regenerative appropriation of what it has been transmitted; both aspects are taken into account by M^a Isabel Lorca in this exciting journey through the mentality of these Spanish scholars.

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¹⁷ Vid. for example, M^a ISABEL LORCA MARTÍN DE VILLODRES, *La experiencia jurídica actual desde la clásica naturaleza de las cosas*, in *Persona y Derecho*, 68, 2013, pp. 39-75.