

individual or group' (pp. 153-4). Such a phenomenological aesthetics would 'have to be 'archaeological in Foucault's sense of being directed

towards the historical dimension of experience as discontinuity and rapture rather than continuity and integration' (p. 154).

Husserl Archives, K.U. Leuven

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An Investigation Concerning the State, (*The Collected Works of Edith Stein* Vol. X) Edith Stein, translated by Marianne Sawicki, (Washington D.C.: ICS Publications, 2006). Pp. 202. ISBN: 0935216391. \$13.95 (Pbk.).

To review Edith Stein's *Eine Untersuchung über den Staat* on the occasion of its translation into English by Marianne Sawicki makes one realize that the investigation has not lost its relevance in the 83 years since its first publication. Stein's awareness of intersubjective constitution (often today called 'social construction') makes the treatise seem strikingly up to date: hers is a perspective that combines phenomenology in its most classical form with insights that have often been thought to pertain to the post-modern era.

The translation leaves nothing to be desired: footnotes of an explanatory nature clarify the text throughout and terms are rendered consistently and with insight. Thus the text is brought to us clean and accessible, and the reviewer's task is therefore more meaningfully concentrated on articulating what is in the text.

The project of phenomenology as laid out in Husserl's programmatic *Ideas* includes both constitutional and eidetic analyzes; analyzes of *how* things are experienced and analyzes of *what* it is that is thus experienced. *An Investigation Concerning the State*, as it concerns an inter-subjectively

constituted entity characterized precisely by exhibiting in its turn a specific type of intersubjective constitution (i.e. law-making), combines these two types of analysis seamlessly, as what is investigated cannot be investigated without being constituted. Although this is the case for all things in their objectivity, the inseparability of the two types of analysis is more obvious when we deal with social phenomena, and it is in this area particularly that the addition provided by Stein to Husserl's phenomenology in her doctoral dissertation *On the Problem of Empathy* matters most.

In *An Investigation concerning the State*, Stein attempts to make available for intuition the essence (the *eidōs*) of the state, i.e. answer the simple question which nevertheless requires a comprehensive answer: 'what is the state?' Her analysis will only be fully understood on the background of her earlier works *On the Problem of Empathy* and the *Philosophy of Psychology and the Humanities*, as these works respectively ground and explain the structure of intersubjectivity, of which the state is precisely 'a state'. But her description of the state can easily be recognized, even without prior knowledge of these works.

The state is tremendously important for our understanding of the social world. In fact the state so easily serves as a point of reference for our understanding of the world, in its historical as well as in its geographical dimensions, that we tend to forget it could be otherwise. To Stein, however, the state is not necessary: it does not arise by necessity, nor is it necessarily arising from the essence of human beings. It is in fact possible for human beings to live in community without living in states. Nevertheless, particular communities, when constituting themselves as characterized by a particular type of value response (i.e. when they share a culture and is culturally creative), have a tendency to consolidate themselves by giving themselves the possibility for unified action in lawmaking. The state is in fact, in Stein's view, essentially *sovereign lawmaking*, and all that it is apart from this is to be understood in relation to this central feature. Hence state = lawmaking, and lawmaking, to be what it is, is necessarily sovereign. Once sovereignty has been established, however, the community it rules may well change character, so that the state can be seen to have a life that is distinct from that of the community (the Polish state and the Polish nation have distinct histories), although it depends on the community in many ways. Stein's careful analysis of the distinction and interdependence of nation (people) and state forms part of the reason why her work might find new readers today among phenomenologists and social or political scientists in quest of systematic work based on sustainable definitions of social realities.

The book under review is about what the state *is*. As such it is divided into two parts: 'the ontic fabric of the state' and 'the state from perspectives of value', concerning, respectively, the structure and value of the state. The first part is divided into three; the first concerned with the civil community that underlies the state or for whom the state obtains; the second with the relation between state, legislation and law, and the third with the dependence of the state on factors foreign to its essence. The second part looks at the value of the state for the individuals who belong to it, the relationship of this value to (their) moral values and the value they might place on religion.

Stein starts by situating the state as a social pattern in relation to the social patterns of mass, association and community, familiar from her *Individual and Community* (forming the second part of *Philosophy of Psychology and the Humanities*), and makes it clear that the state is a specific type of community-organization, and not simply an association created by individuals, as contract theory would have it. Too many aspects of concrete state-formation militate against that idea: states are not just invented. It rather emerges from communities, and hence depends on these for its initial formation. The unity of the state is constituted by its lawmaking (with its corollaries of reinforcement, adjudication and regulation), but although the civil community requires no ethic community in order to be, the value of the state may depend on the provisions it makes for allowing the community to be culturally creative. As such the state is value

neutral: all that pertains to its essence is the requirement to stay in charge. If it relinquishes its ability to legislate and reinforce its laws, it loses itself.

Stein gives a very interesting analysis of the state's relationship to super-ordinate, coordinate and subordinate social patterns, where the distinctiveness of the state among communities of various extensions is seen to reside precisely in its sovereignty. Whether or not the state obtains at one or other level of extension (at the national level or the European one, for example) depends on this feature. If sovereignty forms part of the state's extension it pertains to the essence of the state to work for its integration. The obedience the state requires from its citizens for integration to take place and sovereignty to be possible therefore often conflict with other claims on their loyalty. But as it is not in the interest of the state to push individuals towards a conflict of conscience (as this conflict is liable to weaken or destabilize the state), it is in accordance with the idea of the state to allow, as far as possible, for religious freedom and the freedom of conscience.

Turning to lawmaking as the essence of the state (part I, § 2), Stein distinguishes between positive law and pure law (which again is distinguished from 'natural' and 'good old' law). The idea of pure law, inherited from Adolf Reinach, is seen as subsisting 'independently of any choice and independently of whether or not it's recognised by any 'law in force''. Positive law, in contrast, 'is created or put into effect through deliberate acts'. The two have in common their form as law, as all law

claims to regulate the behaviour of persons, but what they command may differ. As the will can base itself on insight into values to set about realizing them, the lawmaker can make operative pure law. Likewise the will of the individual person can set about realizing values without regard to their relative motivating power and the legislator can make laws that are not in accordance with pure law. Stein thus sees pure law as an analogue to the value world – both are objective in that insight can be gained of them. But insight isn't necessary; it has to be acquired. One can be wrong about the relationships of pure law and values.

Natural right (understood according to contract-theory as a right of which subjects can divest themselves and invest in the state by founding it) does not exist, according to Stein: pure law subsists independently of the establishment of the state and is unaffected by it (p. 51). Nor is there any more authority to 'good old law' as positive law, no matter how old, may or may not coincide with pure law, and it is this coinciding that determines its value (p. 83). It is because we assume that what is right always holds steady that we think old law should not be tampered with. But this assumption overlooks the distinction between pure law and positive law (in the same way as one could overlook the distinction between what ought to be done and what always has been done), and in so far as the idea of positive law is not grasped, the idea of the state cannot be grasped either (p. 84).

The state as legislator must finally be seen in relation to international law. The latter cannot strictly speaking be seen to reside in

treatises, as these are in need of legal regulation (the prerogative of the state) for their reinforcement. To the extent, therefore, that international law 'does not have a pure law character' and is reduced to treatises, 'it is not to be regarded as positive law'. To make international law positive law the corporate body of states either 'constitutes itself as a sovereign civil authority – thereby destroying the single states; or on the authorization of one of the single states it appoints itself as a super-ordinate authority – which would have the same consequence. Or else the body derives its mandate from the single states. Then the whole thing looks different' (p. 91). In that case ratification by member states ensures that international law is also positive law in the member states. Then the body 'doesn't have the potentiality of enacting collective regulations for all participating states. The persons belonging to it can only discuss and decide collectively what each state singly should regulate for its own state. Discussion and decision are matters for the corporate body. Conversely, regulations are a matter for the state on its own. Through them, each state binds only its own state. (...) This is in fact the only possible way to have a standardization in positive law of transactions among a plurality of commonwealths that is compatible with their existence as *states*. (...) With these as with all other regulations, the state retains the freedom to suspend them all by itself, on its own, without the participation of those states with which it collectively decided to issue them. For a decision has no legally binding power. To dissociate itself from a

decision may be unwise and might be immoral [.., but] in no way is it a breach of the law.' (p. 92). This long quotation serves to show how the contemplation of the essence of the state can serve to delimit practical possibilities, even before they are tried out in practice. The rise of the UNO and human rights law 25 years after the publication of this investigation in fact followed the path thus prescribed. In this manner eidetic analysis as conducted by Stein is in no way either unworldly or impractical – on the contrary it allows for looking at things as they are, which is necessary for any action to succeed.

As Stein moves on to discuss the extrinsic conditions for the state (I, § 3), she reiterates that the community underlies the state, but that the latter cannot simply be reduced to the former, although linked to a preceding development consisting largely in the elaboration of social institutions and the evolution of customs (p. 109-11). The state's sphere of influence on the lives of its citizens is not limited in principle (it may even regulate daily life), but a certain auto-limitation is in the interest of stability, as otherwise individuals will become frustrated and rebel against the state (p. 116). Thus the state often leaves communities (families, associations) regulate themselves, as long as it can stay in control. The state, in fact, is dependent on the recognition of its claim to control by the individuals, and not only on recognition from 'within', but also on recognition from other states, although 'the state can subsist only by virtue of its own proper right' (p. 120-1). The state is also dependent – to the extent that its

citizens are persons extended in space as human beings are by virtue of their body – on having a territory on which its citizens can live, i.e. that can sustain the economy and with it their needs. The state finally is dependent on a certain ‘segmentation by status’ of the members to the extent that labour needs to be divided for the economy to work and the state functions to be upheld (defence, government, policing and adjudication). Stein finishes her account of the dependence of the state on factors extrinsic to its essence with a discussion of the impact various theories of the state has on its perception by the citizens, i.e. to what extent theories of the state (ideologies) can form part of the state’s means of shaping itself by policy. Ideologies account for the unity of different parties competing for control of the government, and they can in fact influence the state to the point of legally adopting its abolition. The state is constituted inter-subjectively from individuals’ perception of it, and how they conceptualize the state thus contribute to shape it. How they see it cannot alter its essence however (as it is constituted from the fact *that* they constitute it), and it is to the value of

this essence that Stein turns in the second part.

The question of the value of the state amounts to the question of its justification. Not the justification of this or that particular state pattern, but of the state as such. If the state was necessarily useful, allowing for mental development of individuals and/or securing justice it would have value as such, but this does not seem to be the case: states can be destructive and unjust. The state could be said to be of value if it was the only way for a community to form – given that it is of value for the individual to live in community – but the state is not the only possible community. Insofar however, as the state organizes the community and allows for its cultural creativity, it has a derivative value. In this way Stein considers the value of the state as deriving from the value of the community it allows develop as a cultural unity.

This possibly makes Stein a communitarian, and one worth taking account of because her definitions are so carefully thought out. The translation of her work enables such taking account, and it must therefore be welcomed