

Edith Stein on the State¹

Edith Stein sobre el Estado

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ABSTRACT

An Inquiry concerning the State (Eine Untersuchung über den Staat) is the last of four “phenomenological” writings that Edith Stein (1891-1942) composed before becoming a Catholic in 1922. The work contains Stein’s political philosophy and theory of the state and appeared in the phenomenological journal *Jahrbuch für Philosophie und phänomenologische Forschung* in 1925. Her analyses are not only important theoretically; they also cast light on the political movements of her time (Adolf Hitler’s *Mein Kampf* was published in the same year) and indeed are quite relevant to the social turmoil and ideological controversies we are experiencing today. The following is a sketch of Stein’s life and intellectual activity and a review of main topics she treats in work: state and community, sovereignty, people and nation, law, morality and religion.

Keywords: State, phenomenology, community, power, essence, person.

RESUMEN

Una consulta sobre el Estado (*Eine Untersuchung über den Staat*) es el último de cuatro escritos “fenomenológicos” que Edith Stein (1891-1942) compuso antes de convertirse en católico en 1922. El trabajo contiene la filosofía política y la teoría del estado de Stein y apareció en la revista fenomenológica *Jahrbuch für Philosophie und phänomenologische Forschung* en 1925. Sus análisis no solo son importantes teóricamente; También arrojan luz sobre los movimientos políticos de su tiempo (*Mein Kampf* de Adolf Hitler se publicó en el mismo año) y, de hecho, son bastante relevantes para la agitación social y las controversias ideológicas que estamos experimentando hoy. El siguiente es un bosquejo de la vida y la actividad intelectual de Stein y una revisión de los principales temas que trata en el trabajo: estado y comunidad, soberanía, pueblo y nación, ley, moralidad y religión.

Palabras clave: Estado, fenomenología, comunidad, poder, esencia, persona.

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1. Early philosophical writings

Eine Untersuchung über den Staat, “An Inquiry into the State”, belongs to a group of “phenomenological” writings that Edith Stein, St. Benedicta Theresa of the Cross (1891-1942), composed before becoming a Catholic at the beginning of 1922. They include the doctoral dissertation she wrote under Edmund Husserl, “On the Problem of Empathy” (1913)² and two “Contributions to the Philosophical Foundation of Psychology and the Humanities”, on “Psychological Causality” and “Individual and Community”, which accompanied her application for a position in the University of Göttingen (1919).³ Her monograph on the state was published in the phenomenological journal *Jahrbuch für Philosophie und phänomenologische Forschung* in 1925,⁴ and although substantially completed before her conversion, it shows a marked affinity for religion and for Catholicism is particular.

I wish to offer a quick tour of Edith Stein’s treatise on the state, at times quoting her words and adding here and there some observations suggested by our own social realities. I hardly need say that my remarks are tentative, since both her own views and the controversy she was taking part in needs thorough investigation.

2. Life and philosophy

I’ll begin by saying a few words on Edith Stein’s life, especially up to the time she composed the work we are describing. She was born in Breslau, now in Poland but then a part of Germany. At fourteen she broke off her studies to spend a year in Hamburg with her sister and brother-in-law, and by the time she returned home she had “deliberately and consciously” abandoned her family’s Jewish faith. She entered the University of Breslau (1911), where she majored in psychology for four semesters and also pursued German studies and history.

² *Zum Problem der Einfühlung*, Halle, Max Niemeyer, 1917, reprinted, Munich G. Kaffke Verlag, 1980; translation by W. Stein, ICS Publications, vol. 3 of *The Collected Works of Edith Stein* Washington, 1989.

³ *Psychische Kausalität and Individuum und Gemeinschaft in Beiträge zur philosophische Begründung der Psychologie und der Geisteswissenschaften*, *Jahrbuch*, vol. 5, Halle, Niemeyer, 1922, dedicated to Husserl on his 60th birthday. A Second edition appeared with *Eine Untersuchung über den Staat*, Tübingen, Niemeyer 1970. All translations here are by W. Redmond. See the translation by Marianne Sawicki, *An Investigation concerning the State*, (Washington: ICS Publications, 2006), vol. 10 of the *Collected Works of Edith Stein*.

⁴ Vol. 7, Halle, Niemeyer, 1925; second edition with *Beiträge*, Tübingen, Niemeyer, 1970.

The psychology taught in Breslau in her judgment was “lacking the necessary foundation of clarified basic concepts”. But when she became acquainted with the *Philosophical Investigations* of philosopher Edmund Husserl of the University of Göttingen, she sensed that he was indeed doing “this work of clarification”.⁵ His phenomenological method of exploring “things themselves” rather than the “subject” promised her *Sachlichkeit*, objectivity. Perception “again appeared as reception” to her, “deriving laws from objects”, not “imposing laws” on objects.

So in 1913 off she went to Göttingen for the summer semester, but elected to stay to do her doctorate in philosophy under her “dear Master”. She was also stimulated by the “Philosophical Society” founded by Adolf Reinach and Theodor Conrad (to whom she dedicated her treatise on the state) and attended by Max Scheler, Hedwig Conrad-Martius, Dietrich von Hildebrand, and other members of the early phenomenological circle.

When war broke out in 1914, Edith interrupted her studies to work for the Red Cross in a military hospital for typhoid victims in Weisskirchen. After the hospital was closed she taught in Breslau and prepared for her Greek qualifier exam. She accompanied Husserl to Freiburg im Breisgau, received her doctorate there *summa cum laude* in 1916, and stayed on as his assistant. At this time she ran a “philosophical kindergarten”, for people who had trouble following Husserl’s lectures. She became dissatisfied with her association with Husserl and resigned in 1918, hoping to find a faculty position herself. She spend the next few years, mostly in Breslau, giving private lectures, teaching in a high school, and preparing her work on psychology. However, despite Husserl’s warm recommendation, she failed to obtain a professorship. It was during this time that she composed her work on the state.

Edith Stein became disappointed by the “idealism” she found in Husserl’s *Ideas*, which appeared in 1913. It seemed to her that he did not get back to things after all, since his thought remained within consciousness. She went into a philosophical and personal crisis that found a spiritual resolution. In 1921 while she was staying in Bergzabern with her friends, the philosopher couple Theodor and Hedwig Conrad-Martius, she chanced upon the autobiography of St. Teresa of Avila, foundress of the religious order of Discalced Carmelites, and read it to the end. “This”, she declared when she put it down, “is the truth”, and soon afterwards requested baptism. From 1923 until 1931 she taught in the teachers college of the Dominican Sisters at Speier, and in the following year began teaching in the German Institute of Scientific Pedagogy in Münster.

⁵ *Logische Untersuchungen/Prolegomena zur reinen Logik*, 1900-1901.

With her usual passion Stein absorbed her new Catholic culture: the *liturgy* (she frequently visited the Benedict abbey of Beuron), the *philosophy* and *theology* of St. Thomas Aquinas (who became her second “Master”), but also John Duns Scotus, St. Augustine, and Pseudo-Dionysius, and of course the *spirituality* of St. Teresa of Avila and Teresa’s associate, St. John of the Cross. She translated Thomas’s *Quaestiones disputatae de veritate* and Cardinal Newman’s early letters and diary, and composed *Potenz und Akt*, a phenomenological analysis of the foundations of Aquinas’s philosophy of being.⁶ From 1928 to 1932 she lectured frequently, especially on education and women’s issues, in Germany, Austria, France, Czechoslovakia, and Switzerland.

Edith Stein lost her position in Münster in 1932 when Nazi law barred Jews from teaching, and in the following year in Cologne she entered the Carmelite order St. Teresa had founded. At first she was resigned to forego intellectual pursuits, but at her superior’s request she was soon hard at work again on her philosophy. She said that doing philosophy was a kind of prayer for her. Her most important work, *Finite and Eternal Being*, was about to appear, but the printing was stopped after Nazi law barred Jews from publishing. She devoted her last writing, “Science of the Cross”, to the thought of St. John of the Cross. She was sent to a convent in Echt in the Netherlands in 1938, and there was arrested in 1942 with her sister Rosa, taken to Auschwitz, where she died in a gas chamber.⁷ She was canonized a saint in 1998.

Stein’s philosophy showed continuity throughout her life (especially in her anthropology), but naturally it took a quite different turn after her conversion to Catholicism and her immersion in its scholastic thought. A change is noticeable not only in content of her work but also in her method and style. She herself seems to be the “disciple” that she put in quotation marks in the following passage, which she placed in the mouth of St. Thomas:

Anyone who studies my works will find clear, definite answers, perhaps to more questions than he himself could ask. And what is more, the *organon* that I bore within myself and enabled me to settle a host of issues with a firm, serene “*respondeo dicendum* [in reply it ought to be said that]”, leaves its mark

⁶ *Des heiligen Thomas von Aquino/“Untersuchungen über die Wahrheit” in deutscher Übertragung*, two volumes, 1931, O. Borgmeyer, Breslau, 1931, J. H. Kardinal Newman/Briefe und Tagebücher bis zum Übertritt zur Kirche, 1801-1845, Theatiner Verlag, Munich, 1928, *Potenz und Akt/Studien zu einer Philosophie des Seins*, written in 1931 as a *Habilitationsschrift* for the University of Freiburg (she failed to obtain a position) and published for the first time as volume 18 of Edith Steins Werke, Herder, Freiburg, 1998.

⁷ *Endliches und ewiges Sein/Versuch eines Aufstiegs zum Sinn des Seins*, vol. 2 of Edith Steins Werke, Herder, Freiburg im Breisgau, 1950, 1986; *Kreuzeswissenschaft/Studie über Joannes a Cruce*, vol. 1, Louvain, Nauwelaerts, Freiburg, Herder, 1954.

on my “disciple” and gives him the ability to answer questions in my spirit that I never asked and possibly at the time could not have been asked at all.⁸

The reader of her later philosophy gets the impression of a Catholic intellectual, well at home in the emerging German Catholic movement of the time.

3. The state

When an undergraduate in Breslau Edith Stein was quite interested in politics and held “a nearly conservative view of the state” but without any Prussian “taint”.⁹ She felt “deep gratitude to the state” for granting her “academic citizenship with its free access to the wisdom of mankind”. Perhaps she meant her treatise on the state, which she was writing after World War I and during the upheavals of the Weimar Republic, to be a contribution –if highly theoretical– to the rebuilding of her country. And when she speaks of peoples in the work, she of course is referring in a special way to the German people.

She herself stressed her German patriotism. When war was declared she told herself “I have no more private life”, and if she did not get into nursing, she said, she would have worked in a munitions factory. Her friends were indeed surprised that she would interrupt her studies to work in a military hospital, and once when asked why she did it, she replied “all my fellow students were in the service and I could not see why I should be better off than they”. She then tried to finagle a job in a field hospital.¹⁰

Stein’s work on the state is divided into two parts: the structure of the state and its relation to value. Her general approach incorporates the familiar phenomenological distinction between eidetics and empirics, between necessity and fact: between what belongs “in principle” to the “ontic” notion of something, to its a-priori *essence*, and what belongs to a something “in fact”, as it actually exists. Hence she first establishes the essence of the state and then she relates the essence to actual states. An example of this procedure is her view of the social contract theory of T. Hobbes, J.-J. Rousseau, and others; it is correct for claiming that citizens should have some part in making laws but wrong as an explanation of how states emerge historically.

⁸ “Husserl and Aquinas: A Comparison”, *Knowledge and Faith*, vol. 8 of Edith Stein’s Complete Works, Washington (Washington: ICS publications, 2000), translation by W. Redmond of *Erkenntnis und Glaube*, vol. 15 of *Werke*, p.27.

⁹ *Edith Stein/Life in a Jewish Family, 1891-1916*, by Edith Stein, translated by J. Koeppl, OCD, Washington, ICS Publications, 1986, p.191.

¹⁰ *Life in a Jewish Family*, pp. 297, 393, footnote 159, p. 348.

To understand Stein's distinction between principle and fact it is well to bear in mind an old Scholastic saying: *abstrahentium non est mendacium*: focusing on one side of a distinction ignores the other for the moment but does not deny it. When she says that ethics and religion lie outside the essence of the state, she is not denying their importance and relevance for the state. It is also well to keep in mind that her approach is highly *abstract*: she deliberately excludes reference to actual circumstances, although she not infrequently gives "factual" examples.

4. State and Community

Stein begins her treatise thus;

The various sorts of theories on the state start from the fact that the state is a social form. Indeed, that it subjects live in the state and carry out quite definite functions in its organization will turn out to be an indispensable aspect of its structure. So if we wish to see this structure clearly we may begin by looking at the possible ways in principle in which we live together (1/285).

She mentions three ways of living together: as masses (*Masse*), community (*Gemeinschaft*), and society (*Gesellschaft*). "Masses" implies the barest "being together" (*Zusammensein*) without any sense of belonging, without "spirit" or "mind" (*Geist*). But community connotes an awareness of living "with one another" (*miteinander*); it has "spirit", a life of its own. Communities "arise" by themselves, but societies are deliberately "founded" as rational recastings of community. The state is related to these social forms: it ideally presupposes community. but society presupposes the state.

Stein pictures two communities at the poles of social organization: the family and friendship circles at the bottom and at the top mankind, the community of communities. Others lie in between: kinship groups, peoples (*Völker*), religions, political parties, unions, social classes, cultures, races, etc.. The state runs between the poles, cutting across these various communities in a complex way. She defines the state at the end of the first section (she insists that definitions come at the end of an analysis, not at the beginning) in this way: "the state is a social entity into which free persons are integrated in such wise that one or a majority rule over the others (or all rule) in the name of the entire entity" (65/349).

5. Sovereignty

Edith Stein strongly defends the idea that sovereignty, autonomy, *autarchy* in Aristotle, is *essentially* coterminous with the state. "The state *must be its own master*; no outside power, be it an individual or a community above, below, or to the side, may dictate how its life is to be led" (5/289).

Without sovereignty we may have a social entity [*Gemeinwesen*], but not a state. There is no state in the proper sense where internal communities, another country, or an international body have control. Stein here is touching on two conflicts that have arisen in our country: states rights vis-à-vis the nation and national rights vis-à-vis a world organization. If states, in the sense of "United States", have power over the union, they, not the union, are states. If the German Empire, or, she would say, the League of Nations, the United Nations, or the European Union can dictate to any of its members, these bodies, not its members, are states. Stein will have more to say about this when she talks about international law.

Sovereignty means that the state must be the source of its organization and must have the power to safeguard its autonomy. Power, then, belongs to the essence of the state, but how power is wielded does not; it is "factual", for example, whether it is monarchy, aristocracy, or democracy, whether there is a division of executive, legislative, and judicial branches. Stein holds that democracy has the firmest foundation, but "given what people are usually like" its high demands are unlikely to be met (22/306).

The state posits itself by establishing its authority. To exist it must consolidate its power and have it acknowledged by its citizens and by other states. But individual freedom goes hand in hand with state sovereignty.

Only a structure of free persons can declare itself sovereign or show itself to be so by its actions. The structure or the body representing it cannot take away the individual's freedom, which is a condition of its viability. But this check, which is constitutive of sovereignty, should not be taken as a restriction on sovereignty. "Unrestricted state power", precisely in its essence, lasts only as long as it is recognized and it can at any moment receive a deathblow.

Stein stresses that the state is most secure when it is built on a previously existing community and passes laws that parallel relations in the community, and when its right to govern is taken for granted.

Sovereignty is to the state as freedom to the person. We call a person free when he performs spontaneous actions and governs himself accordingly. Sovereignty is freedom in this sense, but it is the social unity that governs itself.

Edith Stein, then, makes a striking, paradoxical, analogy between the freedom of the individual citizen and the sovereignty –that is, the freedom– of the state. This parallelism shows why we call the state a “person”, she says, even though it seems quite impersonal. The life of the state is freedom– whenever we encounter a state we encounter free acts. The person subject to another’s commands is not free; neither is the state free that is subject to other states.

6. People and nation

A people (*Volk*), given this equivalence of statehood and sovereignty, does not need a state to exist. The demise of the Polish state did not do away with the Polish people. When the state is bound to a people we speak of a *national* state, a nation. A state may indeed embrace more than one people and the essence of the state only requires a domain of citizens regardless of how its citizens are interrelated.

A people, as any community, has an ongoing life which touches all its members. But unlike small communities of relatives or friends, a people, which may exist in far-flung places and over a long time, does not require personal contact. Still, its members must bear a unique *mark* (*Volkscharakter*), an “ethnicity”, a personality (“*Persönlichkeit*”), a soul– and a culture.

A community may claim to be a *people* only if its very own culture springs from its spirit. By culture I mean a well-defined cosmos of spiritual [*geistig*] goods (works of art or science, even the personal lifestyle of its members). Every culture has a spiritual center that has brought forth these goods: a creative community whose soul (*seelisch*) is affected by and reflected in all it produces (14/298).

A culture may be larger or smaller than a people. Several peoples may share the same culture and within a culture an extended family or a social class may form a subculture. But being creative is *essential* only for a people; when the culture gives out, the people perishes. Stein’s example of how strife between two cultures can destabilize a state is the *irredenta* situation where a territory within one political unit has strong ethnic ties to another.

As sovereignty is to a state, cultural autonomy is to a people. There is reciprocity here: a people needs a state for protection, and a state needs the creative power of a people to give it content and direction and legitimize its authority. Both nation and people have a sort of personhood and in both there is a sense of belonging to the community. But citizens of a nation are *reflexively* aware of belonging to the nation. When a people matures it becomes a nation, just as an individual person grows in self-knowledge.

In its essence, then, the state need not be a people nor a nation. When all three are present there is an interplay, but the people's development may be thwarted when national feeling fails to appear in the state. As sovereignty is unaffected by number of citizens, states may vary widely in size. But a people cannot sustain unlimited population growth; on the other hand a people needs a critical mass in order to function, since a cultural cosmos must rely on the achievement of persons and associations.

7. Politicians and citizens

Stein's remarks on statesmanship bring recent problems to mind: how does the politician's personal morality (or lack thereof) affect the execution of his or her official duties? The politician, she says, is the "bearer of the life of the state" and has far greater responsibility than other citizens. Still, the state does place the personal demands on him that, say, his family does. But she adds:

The statesman, like the saint, may be convinced that the salvation of his soul is above the welfare of the state. What counts is that he live first and foremost as a member of the state, that this be the firm reference point from which he weighs and measures his behavior, even in affairs other than those of state (21.305).

For other citizens it is enough to do their duty to the state; they do not need any sense of belonging to the state and may even be hostile to it.

But Edith Stein's heart is with a people. The healthy, normal situation is where the state is bound up with a people. True, a state can exist apart from a people, demanding of its subjects only "loyalty", but such a state is a hollow shell. Frederick the Great's Prussia had no Prussian people or Prussian national feeling to bolster it.

Any state drawing individuals into its sphere (whether they serve voluntarily or under duress) that lacks the organization and personality of a people (one or more) always strikes us as remarkably weird (*unheimlich*). It is like a machine that needs human lives to start up and keep running but never comes alive itself and remains indifferent to the lives it co-opts. The state is soulless and has no productivity that would issue from a soul; that is why it seems odd, and in a certain sense unseemly, be it necessary for its existence, when souls are devoted to it.

With a people the case is quite different. True, it does not ask total commitment of its members. But it is a community of labor that produces works of the soul and has its own power to create works of culture. Individuals are its bearers, but it nourishes their souls (from the state they only get external services which as such are more obvious). And this is why we think it much more natural and

sensible for a person to love his people, and only derivatively to love his state as the outer form of his people, not for its own sake (23/307).

On the other hand, a state without a people may have value; it may watch over the development of its members and their communities— and aid in the birth of a people.

8. Law

For Stein the law is the heart of sovereignty. Referring in this context to Reinach, she applies to it the distinction between essence and fact. We speak essentially of *pure law*, that is, pure legal states of affairs that we intuit as holding always and everywhere for all peoples. For example, “promises when fulfilled no longer bind” and “it is wrong to renege on a debt”. Or by “law” we may mean *positive law*, law actually in force. Positive law requires a law-maker and a domain of persons bound by the law. The German word here (*Recht*), she notes (25/309 and footnote 2), has another sense: *right*; for example, the lawgiver must claim a right to pass laws before he passes them.

Stein’s use of the category of states of affairs (*Sachverhalte*) —in this case legal states of affairs (*Rechtsverhalte*)—is perhaps a point of agreement between phenomenological, analytic philosophy, and scholasticism. Moreover, her concept of the a-priori structure of law grounds a strong anti-relativistic position. For the validity of pure legal states does not depend on their being recognized “theoretically” by lawmaking bodies or their subjects. There is, indeed, a gap between pure and positive law:

A legal determination may be justified for coinciding with an intuited legal state of affairs. In fact, however, the provisions of positive law are by and large independent of any theoretical basis; they owe their content not to insight but to pure arbitrariness. So “recognizing” a law implies no theoretical assent, and it makes no sense to ask whether it is right or wrong. Recognizing it means subjecting oneself to it or to the lawgiver’s will (26/310).

An example is a legislator who passes laws to privilege a certain social class that he thinks ought to be better off than other classes. Such action, she says, threatens the stability of law and of the state making it.

Legislating is not the only function of the state. The state may take the initiative in areas like education and the economy, establish colonies, encourage and regulate trade, and wage war. The politician leader need not conceive the project, but he must take the lead in launching it. Stein calls such actions of the state “governing” in the proper sense. On the other hand, while the

state may regulate commerce, doing business lies outside the notion of the state. The economy is one of the things that the state may organize or leave to private initiative, but in the latter case it may set the ground rules. On the other hand, when the economy is so complex to be beyond centralization, imposing or maintaining control endangers the state.

Class division lies outside the essence of the state. Workers could contribute to the decision-making process and help insure that the decisions are carried out. Citizens of such a state would divide their efforts between work and leadership. If economic need totally absorbs the workers, they cannot be available for affairs of state. But by altering conditions and promoting education leaders could free workers to share in the life of the state and prevent them from being devoured by it.

Individual or “subjective” rights gives people the power to act. Rights, “surprisingly”, always have corresponding duties. Not only do citizens have rights and duties, but politicians are responsible for the rights of their constituency and are empowered to perform acts in their name.

The state must be protected from administrators who break the law. Crime by officials will be countered by crime by citizens, and both threaten the state. Surveillance is needed but how it is carried out is an open question. Strictly speaking, there is no legal right to revolution –Stein says she will not discuss a moral right–, but rebelling against a lawless state to insure lawfulness is not contrary to the notion of the state itself. Historically this sort of action has led to the formation of “division of powers” in government.

9. International law

If sovereignty and lawmaking are proper to the state as such, how can there be a “law of nations”, that is international law, the *jus gentium*? Stein in reply defines international law as convention, and distinguishes between pure law and existing conventions among states. Conflict is possible; the same treaty may be right because it accords with positive law yet wrong for contravening pure law. Breaking a treaty goes against pure law but not against positive law.

There are dilemmas here. If the “law” of nations is but convention, how can it be law at all? And if it is, who or what body makes international laws? Stein examines suggestions made by H. Grotius. The representatives of several countries may issue a directive binding their governments– but in this case the body of representatives would be sovereign. Or else the body gets its mandate from the individual states– but how can representatives of one

country legislate for another? She answers that international law is compatible with state sovereignty only if it is taken as a set of positive laws *resolved* upon by the international body but *enacted* by each member state. So if the state violates international law, it violates its own law. Still, each state may repeal an international law unilaterally without “breaking” it, for a resolution is not a law. On the other hand, such abrogation may be unwise or immoral.

States are always bumping into one another, she says, and temporary situations solidify in time. Strictly speaking, a state that encroaches upon another (with or without a declaration of war) does not break the law, because no law is in force in the newly acquired territory. The reason is that the invaded state has lost its authority and the invading state’s jurisdiction must await formal annexation.

10. State, morality, and God

Pure law is not exactly ethics for Edith Stein; indeed she thinks “natural law” is a muddled version of pure law. She criticizes medieval law theory (but not its practice) for supposedly mixing up law and morality. She also thought that positive law viewed only as a reflection of pure law is not really law, for the legislator would be a steward, not a maker, of the law.

She insists that the state as state *rules, governs*, it acts only to maintain the relation of ruler to ruled. It may not command anything endangering this relation, such as policies that arouse the indignation of citizens, lay harsh demands on them, or cause misgiving about the government’s resolve. It *may*, but need not, perform other actions, for example foster nationhood, promote the welfare of the people, or support morality, but these are not acts of state. “The notion of the state does not require it to serve moral law, to be a moral kingdom. Satan’s kingdom can be a state just as much as God’s kingdom” (66/350).

The state, then, is incomplete in itself and must get its motivation, its “spirit”, from outside. This spirit will place its stamp on what kind of state it is in other respects. Policy lying outside the purview of the state will get its spirit from its representatives, who in turn may be influenced by “outsiders”—even, she says, God or Satan.

The state is sometimes said to have a special calling from God in history. God did not put His callings into the essence of the state, says Stein, but such purpose is compatible with it. God can use states to bring about His ends in several ways: either the state, by simply doing what it must to exist, automatically advances His cause, or its representatives may enforce His commandments.

11. Fact and theory

In the third part of her analysis of the state's structure, Stein considers how fact relates to the essence of the state: the rise and fall of states, factors of geography and economy, the division of labor, etc.

"Societies", that is, associations (*Verband*), not states, are deliberately created by agreement or contract. The origin of the state is tied to the evolution of a previously existing community, which grows "from inside". The founding action belongs to the community, the material base of the future state. The community may at some moment in its history "break through to freedom"; that is, gain the sovereignty turning it into a state. So the genesis of the state is

"natural" –meaning that it is not "artificial" (arbitrarily founded), not that it is not spiritual–; it is the typical way a community develops. A social entity in our view gains statehood by acquiring sovereignty– I mean, the freedom to create its own institutions and perform all its acts of its own accord (74/358).

She stresses the role that community custom and right plays in the state. The state may indeed control groups explicitly or tacitly, when for example defining relations between parents and children, but it obviously cannot stop people from being drawn to one another. It can proscribe the public profession of a religion, but it cannot affect the relation of the soul to God. It may allow groups to govern themselves, but in this case it is limiting itself, not giving up its sovereignty.

A particular land or "country" is not essential to the state. Stein is thinking here not only of nomads who wander a range unclaimed by other states, but also a state whose citizens are pure spirits –she may mean angels here– not bound by space at all.

She suggests how political theories can influence actual states. Contract theory contributed to the development of the constitutional state and natural law theory to the awareness of human and civil rights and to the demand for democracy. Even the theory of the state's essence –which Stein is here working out– can guide the policies of statesmen. However, although putting a mistaken theory into practice does not affect the notion of the state, it can harm actual states. We are reminded of the collapse of communism, but also, in our own country, of recently revised definitions of marriage and family, even of man and women, that are causing deep divisions. Stein gives the example of supposed individual rights, which may be genuine or bogus: the state, by championing them, may weaken itself. It cuts both ways: it is destructive to use theory to conserve a system whose basis ought to be changed *and* to change a system whose basis cannot support the change.

It is especially alarming, she says, when rival theories are out to fashion the state. She is thinking of political parties with full-blown agendas fighting for power and also parties promoting their private interests. With her customary common sense, Stein recommends: “the power of *ratio* rooted in the actual situation itself. Any order of law that contravenes this *ratio* instead of heeding it should realize that reality stands against it and it will play out with constant breakdowns of order” (96/380).

12. Value

Edith Stein waited until establishing the nature of the state before addressing its relation to value. In this, the second and much shorter, part of her treatise she asks if the state itself is “justified” (*Berechtigung*), meaning “desirable”. She again brings in eidetics and empirics: does the essence of the state include value? She answers that the state does not have value in itself but in some way derives it from the community. What is essentially of value is the life of the community, especially when the community is a people.

The state cannot be justified by claiming that it promotes “life-values” (needs are better met in a state and citizens are better protected) or “growth of the spirit” (spiritual goods are more easily produced in a state), or justice (the state passes just laws), since the state does not *entail* these advantages. Nor does community value necessarily accrue to any particular state; however this will be the case if the state’s legislation provides indispensable protection and stability for the community. A people, not the state, creates culture, but the state shares cultural value by helping to create it.

Moral values, “right” and “wrong”, are personal: they are predicates of states of affairs embodying persons and ways of acting. For example, helping the needy is right and being indifferent to them is wrong. A moral norm or duty, directs the agent to actualize states of affairs he sees as morally right.

Stein is also strongly anti-relativistic in her ethics: there is pure law and there is pure moral standard. Both obtain *a priori*, whether known or acknowledged by any individuals or groups. However, unlike legal acts, moral acts produce no objective states (*Rechts-Gegenständlichkeiten*); she is thinking of such consequences of legal acts as a claim brought about by a promise, the demand for punishment following a crime, and ownership resulting from purchase. And only to morality: “is the specific character of the person’s soul relevant – the point whence he lives his life: the qualities of his soul, his convictions, his emotional attitudes” (102-38).

This idea of the “base (*Standort*)” from which we live our life continued to be a key feature of her anthropology, and is still appears in her last work *Kreuzeswissenschaft*.

Positive law also has an ethical analogue: a particular moral belief-system “in force” at a certain time and place. Ethical mind-sets need not reflect a-priori morality any more than laws on the books need embody pure law. Of course moral views cannot be “passed” as positive laws can; they rather reflect the basic outlook of the community, its soul. Stein adds:

if provisions of positive law clash with prevailing morals, they may alter the way the people typically behave and this new behavior may cause a shakeup in their morals. The law may *intend* to set this change in motion, whereas wishing to dictate the change would be pointless for the lawmaker, since it is beyond his control. This does not rule out the possibility that he would have a duty to encourage this course (109/393).

“Factually”, that is, non-essentially, she says in spite of the reservations she has voiced, the state may, through its laws, educate citizens and even other powers in morality, and she adds, seemingly referring to divine providence: “Perhaps the “world plan” uses [the state] to reach this goal; but its necessary structure does not provide for this”.

Care, then, is called for; moral change is sometimes desirable but sometimes not. One thinks of government propagandists manipulating public opinion, and, again in our own country, of activists who feel duty-bound to introduce legislation at variance with traditional morality. Stein sees that it is the wise state that takes into account –even for its own preservation– the moral motivation of its citizens, for if it does not they may refuse to recognize it. In a footnote she gives

a rule for the practical politics of parties that would turn the state into a “moral kingdom”: start with a *people*, not a *state*. The state, for its own sake, should adapt itself to the ethos of the people. But *without* such a basis trimming the state to match moral principles is absurd as well as inimical to the state (111/395).

It is not surprising that Edith Stein has deep misgivings about war. Value-conflict arises when states pursue incompatible goals. If a state had but its own value to consider, using force might be allowable. But the state, like the person, must take all values into account as well as all the possible outcomes of its actions. Force should not resolve the issues. In it often hard to decide what its right, but

when the parties involved make opposing decisions –and this is the only way, even after conscientious ethical reflection, that external conflict can come about– it is an indication that the decision of at least one of them was wrong (112/396).

13. Guilt

Stein appended a long footnote to the passage where she distinguishes between moral and legal acts. Terms uses of both ethical and legal states of affairs cause confusion, she says. "Guilt" or "blame" (*Schuld*) is an example. Legal blame is caused by a criminal act, which may or may not be a moral offence, and exists independently of its perpetrator. Moral guilt, sin, is personal, a stain on the soul, but it is bound to an offence which may or may not be a criminal act. "Sin" itself is ambiguous, meaning original sin, a state independent from any act, and actual sin, which implies guilt. Legal blame comes about when a positive law is violated, even without contravening pure law. Sin is against pure law. Legal guilt demands and is canceled by punishment, but sin demands repentance (*Buße*), which occurs in the soul.

Here, too, she is careful to keep apart the moral and legal spheres.¹¹ In her view, punishment is non-personal; what is personal, that is, occurs in the soul, is atonement (*Sühne*), by which the sinner "offsets" an actual sin, and contrition (*Reue*), which counters the sinful state of the soul. The suffering due to punishment may coincide with contrition when one atones by accepting the penalty imposed. Punishment restores the world's balance but does not remove guilt; atonement restores the balance of the soul upset by sin. But atonement presupposes that the sin is already made null and void and the stain removed by contrition and repentance.

Merit runs parallel to punishment. The person who brings about a state of affairs known to be morally right is "deserving" of a reward (*Lohn*) owing to his merit (*Verdienst*), just as one bringing about a state of affairs he knows to be wrong deserves punishment, owing to his guilt. Reward fulfills the claims of merit and punishment fulfills the claims of blame.

Guilt following positive law is punished by the legislating power or its organ. In the case of "pure" guilt, the sinner may accept the punishment imposed by an earthly judge, seeing him as representing God, Who is judge in the truest sense, or, when his guilt is unknown, he may take a misfortune as punishment or impose a punishment upon himself; in either case he sees God, not himself, as judge, since: "maintaining the world order by weighing guilt and punishment, merit and reward, cannot belong by rights to any finite person; it is the affair of the Lord of the world" (108/393).

¹¹ In this context she takes issue with several claims of Dietrich von Hildebrand found in his "Zum Wesen der Strafe", *Philosophisches Jahrbuch der Görresgesellschaft*, Spring, 1919.

14. History

These positions for do not exclude claims of German idealists, for example, that history as the unfolding of spirit actualizes the moral idea and the state has a role to play in this process. But she rejects Fichte's idea that the individual awakens to freedom only in community, for, she insists, anyone can activate his freedom upon self-reflection, even though some may need community support to do this and the state may have to step in to protect freedom. About taking control, she adds somewhat cryptically: "We cannot rationally grasp, albeit there is no doubt that it is in fact so, how this should be possible only with [*angesichts*] free persons and not, say, with [*im Umgang mit*] lifeless matter" (114/398).

Free will is relevant to morality but in itself it is value-free. The choice between good and evil hinges upon the motives behind the choosing and the courses chosen. So becoming a moral person means not only awakening to freedom but being sensitive to values and getting better at using freedom to actualize them.

Stein's idea of community as a culture-creating personality needing state organization is opposed to individualistic views of the state. She also rejects as "prejudice" individualistic interpretations of the meaning of history. The history of the state is rather bound up with culture: the state gives external expression to the culture of the previous community from which it sprang and continues to aid its further development. But state and history are in principle two distinct entities, since individuals and communities have their history without the state. Particular states, however, may be the bearers of history when free enough to guide the life of the spirit they harbor; indeed the best way to understand history is to take it as the history of states. States are indeed historical entities issuing from the stream of history and developing into centers of activity: "as centers of activity they largely make possible what we called the meaning of history: the realization of values. But, as we noted, their ontic structure only says that it can, not that it must, do this" (117/401).

15. Religion

Edith Stein's remarks on church and the state are relevant today when a "state morality" is seen to threaten the freedom of religion. The problem here is that both state and religion claim unconditional loyalty. We owe obedience first to God and no earthly power can alter this fact. A believer, she says, must follow a command he or she receives from God in prayer or through His representative even if it contradicts the will of the state. No wonder the state has

been mistrustful of and hostile to the church, which is the permanent embodiment of this claim, and the faithful have looked upon the state as the Antichrist.

There is actually no solution in principle here; only de facto arrangements. Such arrangement, or compromise or balancing (*Ausgleich*), goes back to

the Lord's saying "give to Caesar what belongs to Caesar", showing that God wills or at least sanctions the state and obedience to it. It is, though, only a qualified recognition of state sovereignty, presupposing as it does that the state does not rule out "giving to God what is God's". If of its own accord the state incorporates this into the norms for its life, then there is a basis for a de facto smooth co-existence of sovereign state and religion or the church (118/402).

Theocracy is one of the several forms compromise can take.

Believers living in a theocratically organized state deem their system a divine institution. If a people lives its whole life in the presence of God, striving anxiously to allow itself to be led at every step by His will and believing that His will is made known to it through the mouth of His priests— it is only understandable that it will also seek to structure its state as instructed by the divine will, and either simply recognizes the priests as holders of the state power or at least in some way grant them a share in governing the state (118/402).

Things like marriage and family, ownership, and meeting needs are regulated as in any other state, but theocracy is different in that: "the divine Ruler of the world uses the state as an instrument to guide the community and its members" (118-9/402-3).

But if God rules, can we speak of a state at all? Yes, answers Stein. God would indeed be ruling in a sense, but He would not be ordering the state about. Rather, the actions of the state would coincide with His will, and those representing the state would be executors of His will. She adds, perhaps surprisingly, given her reluctance to clutter up the notion of the state: "If doing God's will is what makes the existence of the state possible, then its very notion dictates that it harmonize its laws and actions with these commands" (119/403).

But is this not true of every state— is not every ruler a deputy (*Stellvertreter*) of the supreme Ruler? If it is so it would be only a *fact* lying outside the notion of the state. But what makes the deputy idea

conceivable is not the structure of the state but solely the notion of God governing the world. For if nothing can take place in the world outside of the divine *placet*, neither can any worldly rule be thought of apart from God. This brings us to the surprising conclusion that the state, which seemed to be threatened in its notion by religion can in reality only exist precisely by being borne by this sphere (119/403).

Her understanding of theocracy is now so broad that it is compatible with different forms of the state (types of government, distribution of functions, etc.). And any state that can be empirically shown to be willed by God will be like this.

In theocracy there is no divergence between religious and secular authority. Problems arise, however, when we suppose that states exist in their own right (which itself would lie outside the essence of the state). There may be a clash of loyalty. A person who disobeys a command of the state out of religious conviction becomes an enemy of the state and threatens its existence. How should the state react?

Stein first gives us a prudence-rule: it is unwise for the state to command anything likely to arouse rebellion. At times it is necessary to place great demands on the citizenry, when not doing so would constitute a greater threat, but ordinarily the leader who does this would himself be subversive, since his act turns the people –potential allies– into enemies. It is a ticklish situation when state officials, judging that the person’s religious feeling has gone astray, enforce the command.

An ethical problem is involved here. When officials decide to coerce a religious person, must they take seriously what he *supposes* to be a higher value? They may try to convince the individual that he suffers from an illusion or through self-limitation exempt him from the command. There are no general rules here. However, when many people withhold obedience, it is a sign the state is already on shaky ground and no coercion can help it. Here again, Stein claims that it is dangerous for the state to act contrary to the beliefs, especially the conscience, of the people.

But what if the religious value is acknowledged or at least not questioned by the state? May its representatives issue a command at odds with the religious value it accepts? She thinks that it is wrong for the state to pass laws curbing worship or hampering the clergy. The state must have regard for religious values even when they endanger its interests. As the individual in these circumstances must commend himself to God, so the state must not resist religious values. It makes no difference that the state is essentially unrelated to religion.

Does the state have a duty to promote religion? Its efforts are limited, since religion is untouched by law. Still, legislation can indirectly support (or hinder) its development, e.g., by creating religious “opportunities” for individuals that they would otherwise lack.

The state is not the bearer of religious values. These belong to souls, and, she repeats, the state has no soul. But commitment to the state, as well as motives for recognizing it or rejecting it, do involve the soul. The person indeed

connects with the state, whose province is freedom, but as free subject, not as having a soul. In the state

the person plays a role only qua free subject, not qua possessed of a soul. That is why the individual living in the state may be holy or unholy, as well as the community of a people whose life [the state] regulates, but [the state] itself is not holy (123/407).

Edith Stein wrote these words, with which she ends her treatise, about a decade before the appearance of Naziism.

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