

PHILOSOPHY AND THE STATE

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My purpose is to analyze the problem of the State starting from the philosophical position of a German woman philosopher, who gave an important contribution to the clarification of many serious questions of our time. I should like to show in this way what a woman can do in the field of philosophical research.

Among Husserl's Göttingen disciples, Edith Stein (1911-1942) is the one who went through her philosophical formation most directly with him. After attending courses in psychology and Germanistics at Breslau University for four semesters from 1911 to 1913, she transferred to Göttingen to study Husserl's phenomenology and complete her studies in the philosophical ambit.

In her graduation dissertation on empathy, which she developed under Husserl's guidance, she accepted the method proposed by the maestro and applied it in a genial manner, especially when one bears in mind her young age, to the analysis of the inter-subjective relationship, to knowledge of the other. A year later, on the occasion of publication of the text in 1916, by which time she had become Husserl's assistant, she had the possibility of accessing the manuscripts that, thanks also to her transcription, were to constitute the second volume of *Ideen zu einer reinen Phänomenologie und einer phänomenologischen Philosophie (Ideas pertaining to a pure phenomenology and to a*

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phenomenological Philosophy), published posthumously; though she had complained that she had had to write her thesis without Husserl's constant guidance, she now realized that she had arrived at the same results that the maestro had been approaching since 1905, the date that can be attributed to his earliest manuscripts on the subject.¹ She recognized that "... the approach to the problem and the method of my work have matured as a result of the stimuli that I received from Professor Husserl, so that it is highly questionable what I can really claim as my 'spiritual property' in the treatments that follow. But I can say that the results that I now present were obtained by my work. I could not affirm this if I now introduced any changes."²

Indeed, it is interesting to note that the results attained by Edith Stein are practically the same as those obtained by Husserl, even though she had proceeded in a rather autonomous manner, one can say that the method used has proved to be valid, because it makes it possible to obtain identical descriptions from the analyses carried out by various researchers.

What is currently being researched are not the results, but the method. One should note that E. Stein sets out the fundamental lines of phenomenological inquiry in clear, concise and efficacious manner, dwelling on reduction as the elimination of what is doubtful, what has already been consolidated into scientific knowledge or what is obtained in natural experience and thus — in the last analysis — eliminating the physical and psychophysical world from the circuit, including — in as much as he is subject in the psychological sense — the inquirer himself. Very acutely, albeit somewhat synthetically, she discusses the operation of eliminating from the circuit the 'position of being' (*Existenzsetzung*).

She is well aware that the difficulty consists of understanding how it is possible to suspend the act of positing being and at the same time conserve the character of perception in its fullness, overcoming it by using the example of hallucination, which remains valid as a perception, even though it is not filled by the real existence of the perceived object; it is therefore possible to 'suspend' judgment as regards the existence

of the world, as Husserl conceded to Descartes, to throw more light into the phenomena that make it possible to know the world. Fundamental among these phenomena is the particular lived experience, *Erlebnis*, that Husserl had already pinpointed and Edith Stein examines in her thesis, constituted by the experience of the other, empathy (*Einfühlung*).

In any case, we are always concerned with an essential consideration: "In this way each phenomenon is assumed as an exemplary base for the purposes of a consideration of the essence."³ On the other hand, there arises the question concerning the person who performs this operation; the empirical, psychological subject of the lived experience may or, rather, has to be put in parentheses, and yet always remains the subject of the lived experience, that is to say, I "... who consider the world and my person as phenomena, so that it is not possible for either myself or the experience to be cancelled or called into doubt."⁴

In this way Edith Stein discusses and clarifies the relationship between the world, the question of existence and the subject, a relationship that is analyzed in a peculiar manner by phenomenology. The other two important texts that she published in 1922 and 1925 in the review edited by Husserl, which we shall review further on, were likewise along this basic line of agreement with the maestro.

If we, therefore, examine the question of the phenomenological method, we note that in her 1922 essay entitled *Beiträge zur philosophischen Begründung der Psychologie und der Geisteswissenschaften* (*Contributions to a philosophical foundation of psychology and the spiritual sciences*) – dedicated to Husserl on the occasion of his 60th birthday, though in actual fact published only three years later – she not only comes to grips with a theme dear to Husserl, but claims to be following his basic approach or, rather, to be developing an aspect of Husserl's inquiry in the hope of receiving his approval.⁵

It was a question of resuming some of the themes Husserl had developed in the second volume of *Ideen* by placing the accent on consciousness as *Erlebnisstrom*, flow of lived

experiences, and therefore examining the noetic moment and the sense in which it is correlated with consciousness, just as Husserl had been doing in his researches concerning time, the greater part of which Edith Stein had edited and published posthumously in the Huserliana series under the title *Zur Phänomenologie des inneren Zeitbewusstseins*.

In connection with *Ideen* she held that Husserl had turned to the world of the natural attitude and had considered as consciousness all the multiplicities that constitute the unity of consciousness in both the noetic and the noematic sense, for example, how the thing of nature is constituted, how it can be experienced both by all the individuals and by just one of them, and again how it can be grasped by means of a process of adumbrations and therefore what it is that constitutes the qualities, the sensitive data, and son on; certainly, all these noematic moments correspond to noetic moments of the life of consciousness, but it is precisely this latter that Edith Stein sets out to examine.

What we here have is not a merely formal acceptance of Husserl's method determined by the circumstances in which the publication took place, because the entire manner in which the analysis is performed bears witness to her acceptance of the methodological premises; moreover, even her second text, *A Research about the State*.

I. THE INTER-SUBJECTIVE LINKS: FROM EMPATHY TO SOLIDARITY

In the post-positivist climate that was spreading in Europe between the end of the 19th century and the first decades of the 20th there delineated themselves the so-called sciences of the spirit with the intention of subtracting the inquiry about the human being from the ambit of philosophy, which was deemed insufficient for comprehending the social world.

Husserl's phenomenology had already inserted itself in the debate for and against this undertaking, on the one hand, stressing the independence of these sciences with respect to the

model represented by physico-mathematical inquiries — and in this operation found itself in full agreement with other philosophers: W. Dilthey, M. Weber, G. Simmel and, in general, the exponents of neo-Kantism — and, on the other hand, claiming the priority of philosophical research, particularly that based on the phenomenological approach, in treating the human being both individually and in its communitarian dimension.

This had certainly not been a secondary research theme for Husserl, who had refined his method precisely in relation to the comprehension of the subject and his/her world. Already in the early years of the century Husserl had identified among the lived experiences present in the flow of consciousness a particular modality of approaching the other, a specific experience that he had called *Einfühlung*, empathy.

It was not a mere matter of chance that when Edith Stein had to choose a graduation thesis, she opted for treating this theme, namely the phenomenological description of the manner in which human subjects recognize each other as such, that is to say, as subjects and not mere objects like the things of the physical world or manufactured products, and also different from animals. In the orientation of her youthful search we can therefore already note her interest for the human world, the opening for comprehension of the other, attention for the community, attitudes that subsequently — though without referring to herself — was to consider characteristic of the female aspect of the human being.

The analysis of empathy sets out to respond to the question: what does it mean to ‘become aware of’ the lived experience of another?⁶

What Edith Stein analyzes, often with examples drawn from our daily life, is a kind of experiential act *sui generis*. If somebody whom I see or meet feels joy or sorrow, I can understand what he is feeling; I certainly do not feel his joy or his sorrow, but I have a lived experience, an *Erlebnis* of one or the other, I realize that I am not living them in the first person —

so that they are not 'originary' as far as I am concerned — what is originary for me is to feel that the other person is living them.

One has to concentrate on the originariness or non-originariness of the lived experience to understand what is happening. One can, therefore, distinguish the originary act of realizing that the other is feeling joy from the joy felt by the other, which for me becomes a content of the act, but not in itself an originary lived experience. It is not a question of rejoicing together, although this may also happen, but necessary to isolate a moment or an act, it is a feeling — though not accompanied by an identification (an entering into the other) — and has to be distinguished from sympathy; this act, identified and defined almost in negative terms, by means of a series of distinctions with respect to other acts, is the lived experience of empathy in the proper meaning of the term.

In identifying this lived experience, leaving aside every other affective connotation that could conceivably accompany it — I can feel the joy of another and can therefore rejoice with him or feel envy — Edith Stein subjects to critique some interpretations of the phenomenon bound up with the names of T. Lipps or M. Scheler, holding that we are not concerned with association, analogy by inference or imitation and that the result is neither unipathy nor reflected sympathy, as they had suggested, but that we are concerned with an autonomous act that underlies all the indicated acts and implies a clear distinction between the subjects; one thus understands why the subjects maintain their individuality, which is also profoundly bound up with their corporeity, even though they can recognize each other and communicate.

Starting from corporeity, Edith Stein — already in her Dissertation — continues her analysis of the constitution of the human being, which she was to develop further in the previously mentioned article published in 1922, and indicates the presence of the psychic sphere and the spiritual sphere and the possibility of inter-subjective communication in connection with these spheres. According to her, one has to note, first of all, that mere external perception gives us nothing other than the physical

body, while the individual as such, as psychophysical being, becomes constituted by means of acts of empathy. However, the movement of comprehension and recognition is not univocal in direction, *i.e.* from me to the other, but is rather reciprocal; indeed, the constitution of the extraneous individual is the condition of the constitution of one's own individuality: while I grasp the body of another as similar to myself, I also grasp myself as similar to him, and at the psychological level I thus place myself at his observation point to look at my own psychic life, acquiring the image that the other has of me.⁷

Most acutely Edith Stein distinguishes the role of the philosophizing and reflecting subject, which may be phenomenologically defined as 'pure I' and from whom there moves the reflection about the acts and the constitution of human beings, from the concrete encounter of these beings, which does not privilege a subjective starting point. Quite the contrary, examining the question genetically, one clearly grasps the reciprocal correlation-distinction of the individuals, so that the starting point in the concrete genesis of the subject could even be otherness; this does not mean, however, that the other determines me socially as I, because — quite the contrary — he arouses within me the confrontation with what is given me in internal perception, enabling me to acquire an increasing awareness of myself through a continuous deferment (reference) that can also perform a corrective function as far as possible deceptions are concerned.⁸

The important part played by empathy manifests itself in the comprehension among persons at the spiritual level; this level, already connected with the previous one, manifests itself to its full extent in the ambit of the will: "The act of willing is not faced with just an objective correlate — the thing that is wanted — but, unleashing action of its own accord, confers a reality upon what is wanted and becomes creative. The whole of our 'world of culture', everything that the 'hand of man' has formed, all the objects of use, all the works of artisanry, technology and art are correlates of the spirit that have become reality."⁹

According to Edith Stein, this is how one has to come to grips with the sciences of the spirit. One has to note that they are founded not on "... a causal explanation, but on relived comprehension",¹⁰ indeed, it is only at the spiritual level that the 'person' becomes configured, and this both as regards the individual and the community (*Gemeinschaft*), which latter can be considered as analogous to an individual personality.

Her treatment of the structures of associative life is developed in a long appendix to the 1922 essay entitled *Individuum und Gemeinschaft (Individual and Community)* and dedicated to psychology and the sciences of the spirit; it was completed by a long investigation of the state (*Eine Untersuchung über den Staat*) that was published in 1925 and which we shall discuss further on.

She re-examines some fundamental concepts that recur in the ambit of sociology — one may think, for example, of F. Toennis, author of the book *Gemeinschaft und Gesellschaft (Community and Society)* (1887), which Edith Stein bears in mind in her treatment — and the philosophical reflection on politics that had already been discussed in the idealist environment: the concept of community and that of society. Here, once again, the guide criterion of her investigation is constituted by a global examination of the associative phenomenon, which she grasps in the plurality of its aspects, but also in their profound interconnections.

The human associative fact is substantially bound up with a personalistic vision that, discovered at the individual level, is then rediscovered in the inter-subjective or interpersonal links. A second characteristic that emerges from the analysis concerns the capacity of taking into account and therefore justifying the level (yes) of factual givenness in all its positive and negative moments and, at one and the same time, the ethical indications of an having to be that is never abstract, but presents itself as a possibility, an ideal indication.

The type of analysis with which we are here concerned is undoubtedly connected with the investigations of Max Scheler,

on the one hand, and Edmund Husserl, on the other; indeed, not only does she frequently cite these thinkers, but also the problematical background and the approach of her search recall their inquiries. The new and personal element comes to the fore in the particular attention she pays to the totality, which is not to be understood in the idealist sense — indeed, even though the associative phenomenon, as we shall see, is basically bound up with the spirit, this spirit is not interpreted in the objective-metaphysical sense — but as totality and organicity of the person, which becomes emblematic for understanding the ‘personality’ of the organizations of a higher degree, in which it does not lose its particular individuality, but can rather affirm and expand it.

What is here investigated is, therefore, substantially the relationship between the individual and the human association, something on which a great deal has been said and written, and what emerges from a painstaking analysis that is not conditioned by any prior presupposition is precisely the paradigmaticity of the individual; the human being, though not living in an isolated manner, in actual fact represents a microcosm, but an open microcosm and in this aperture we once again find one of the fundamental features of this investigation that does not absolutize either the particular or the whole, but succeeds in dosing the presence and the importance of the individual in a wider context.

The first level of associated life that presents itself for consideration is that of the community, and the parallelism that can be indicated between the individual and the community consists of tracing in the human association something more than a mere aggregation, which would not justify many secondary aspects and phenomena connected with the presence of the inter-subjective links. To understand these links, rather, one has to recognize that even communities have an organic character, which can be traced to the vital force, which is of a psychic character. Nevertheless, this must not be understood as something that is supra-individual, independent of the individuals, rather, one notes the presence of a mutual exchange

relationship between the two moments: in fact, the vital force is of the individuals who contribute to forming the community, but once it has been objectivated, it can serve as a stimulus for the individual within the ambit of a particular community and, moreover, the individual may also belong to different communities, giving to and receiving from them without exhausting his/her vital force.¹¹

Just as in the individual the psychic force is closely connected with the spiritual force, the same thing can be noted in the case of communities and the communities par excellence that are the peoples. It is possible to find peoples that remain unproductive at the cultural level, but normally the life of peoples manifests itself at the spiritual level, giving rise to formations that can vary considerably in both quality and intensity.¹²

In any case, if we want to understand what is happening at the objective, communitarian level, we have to return to the subjective manifestations of spirituality and examine the influences, the contributions of the individuals; commerce between the individuals takes place by means of social acts. One may speak of social acts when they are performed by a person and regard the taking of position of that person, be it positive or negative; social acts are not only love, trust, gratitude, etc., but also distrust, hate and antipathy. The positive or negative nature of these acts can be ascertained only through their effects: love is a productive force, while hate is destructive and positive nature becomes a value not in the abstract sense, but rather in as much as it is indissolubly linked with the being of the person: "The moment I take position positively or negatively with respect to a person, in his eyes I configure myself as a value or a disvalue."¹³

In this way she arrives at the central point of her inquiry, which concerns associated life; indeed, solidarity is found on this very attitude of being available with respect to others that the human being assumes. Solidarity is highly constructive in the community sense and is implemented "... wherever human beings are 'open'; with respect to each other, where the positions taken by one do not remain without effect on the other, but rather solicit, urge, stimulate him and develop their efficacy, this is

what community life consists of; and thus both the members are a totality and community is not possible without this mutual relationship.”¹⁴ This renders possible the manifestation of a vital force of the community or, put more incisively, the coming into being of a supra-individual unitary personality.

Husserl had already spoken of the community in terms of personality,¹⁵ and Edith Stein took up the theme, developing it in all its aspects, psychic and spiritual as they might be, and demonstrating that simple aggregation cannot justify the existence of groups that configure themselves as unitary precisely in their collective life. Nevertheless, what unites them does not manifest itself as a supra-national entity in the metaphysical sense, as Hegel had suggested for example, but is rather the profound connection that springs from the individual psychic or spiritual force, which interacts with that of the others; it is the quality of this interaction that gives rise to the possibility (or otherwise) of community, which can obviously always be menaced by disaggregation and contrast.

Indeed, community will lack when the individuals estrange themselves from it or when they use each other as objects. It is their mutual relationship that creates a community, which may be considered as a personal unity but, once it is constituted, this unity is not related to the individual members as if it were a person. Love of the fatherland of the individual, for example, cannot directly influence the community, but only indirectly as stimulus for the others and it can be efficacious in this sense.

Rather, one will note a mutual relationship between the communities that can once again be one of love or hate, and even the ‘neutrality’ of a country is sometimes far more harmful than hate, even if it does not express itself in the form of war operations. All this is the result of an analysis that is carried out in relation to the subjects, examining the feelings and attitudes of the members of a community.¹⁶

But an ‘objective’ dimension can also be traced. The force that comes from the subjects is not sufficient for the constitution of a community, it also needs the existence of objective factors

and conditions bound up with the space and time characteristics in which the communities happen to be placed and, among these, one has to include not only the family, but particularly the peoples, since the external conditions influence the mentality of a people and its vital feelings. The world of values in which the people lives is also very important; ethical, esthetic and religious values are governing motives or factors as far as the behaviour of human groups is concerned.¹⁷ The nature and culture of a people therefore constitute the two essential moments for understanding a community.

A better understanding of the character of a community and its centrality for associated life can be obtained by comparing the 'mass' with 'society'.

The mass does not have a character and one mass cannot be distinguished from another; it is a set of individuals who all behave in the same manner, without an internal unity and a common life. But care is needed in defining a mass — the term, as Edith Stein notes, is often used in an improper manner in political language. When people talk about the will of the masses, for example, they say something that has not been sufficiently meditated, for a mass is devoid of will and is characterized by a collective reaction based on the excitability of the individual psyche.

This demonstrates that the mass does not have a spiritual life; its life is purely psychic. Among the individuals that make up a mass there develops a kind of 'contagion' of 'suggestion' that can prevail also over their spiritual dimension and, as it were, subdue it. For this reason the mass needs a guide and at times may also be dragged along by an idea, but the guide is extraneous to the mass and the idea does not spring from within it; it thus lacks motivation and a consciously assumed position.¹⁸

The possibility of specific personal and spiritual union that is society delineates itself in a manner completely different from a mass, for the individuals that form it are bound by a common scope. A society has a life, that is to say, it begins and ends, it possesses a structure and its members perform a 'role' within it,

i.e. they may be 'workers' or 'members of a party', and so on. Society, in fact, is characterized by the rationalization of relationships: with respect to another, each individual is an object in the sense that he is there in an objective manner; but in the community each member is and remains a subject.¹⁹

Even though it has its own connotations, a society cannot do without the community, which remains its primary reference point, because even in society all its members have to consider themselves as subjects who establish objective relations with each other.²⁰

A further difference between a society and a community derives from the fact that even though a society is founded on the rationalization of the relations between its members, it has neither a history nor a tradition and can subsist notwithstanding the turnover (change) of its members; in a more general or global sense, it comprises all the members that ever belonged to it and does not coincide merely with the community of the living, as Scheler would have it.²¹

If one now examines the question of the genesis of society, one discovers that it is not based on a mutual diffidence that induces its members to rationalize their relationships; once again in conflict with Scheler's opinion, Edith Stein holds that the condition for the constitution of a society is a communicative base, and this enables her to affirm that society is not a degeneration of the community, just as it is not its perfection or complete realization. She concludes with an observation according to which an essential understanding of society can be gained only by presupposing some forms of community.²²

In this way she re-affirms the centrality of the community; given the organic nature of the community, its genesis takes place when there becomes established a mutual relationship between the individuals at the level of communication, of action, of feelings, in either a positive or a negative sense; and since she recognizes the contribution of the individual, she also admits that the most influential personalities can impress a turning point, a typical character upon the entire group.²³

In the mutual influence that the individuals exert on each other is a characterizing feature, what essentially connotes a community is an objective and a common purpose. In this sense one can speak of the personal character of the community as such, a character that emerges when the individuals live as members of the community, that is to say, with a common scope.²⁴ One may, therefore, say that a community has a soul (*Seele*) and a spirit (*Geist*) when there exists a mutual aperture of the members and when there becomes established a unity in the qualitative sense: to have a soul means to carry within oneself the focal point of one's being, to have a spirit means to be configured as personalities in their own right.²⁵

We have thus returned to what was our starting point: indeed, if "... all the genuine supra-individual realities are spiritual,"²⁶ that is to say, truly and validly realized, then knowledge of these realities can be defined as sciences of the spirit and the cultural moment can be traced back to those vital expressions that constitute the unity of human groups in the qualitative sense.

II. THE ESSENCE OF THE STATE

The analysis recalled above becomes the basis for a reflection about political association, of which Edith Stein examines the carrying structures; one can therefore establish a continuity between the essay in which she examines the philosophical foundation of psychology and the one about the state: *Eine Untersuchung über den Staat (An Inquiry into the State)*; the guiding thread is constituted precisely by the description of community and society.

As already indicated in connection with the birth of society, Edith Stein does not agree with the theories that consider human associations as a simple aggregation of individuals; in contrast with a contractualist interpretation of the state, she holds that it is underlain by the community or society;²⁷ it is not even a question of admitting in the idealist sense a kind of dialectic of the spirit that sees in the highest moment, that of the state, the realization of the individual and the human associations inferior to the state.

In terms of political doctrines one may sustain that the theory of Edith Stein comes close to a kind of liberalism, albeit revised in some important points concerning the overcoming of the concept of the individual by that of the person — so that her conception could be considered to be personalistic — and the organic nature of the human associations, though from liberalism she accepts the conviction of the not all-englobing, non-totalizing role of the state.

Moving from the analysis of the more restricted communities, like the family and bonds of friendship, and then passing on to more complex ones like the tribe, the people and various types of association, religious communities and so on, one can arrive at the community of all the individuals as spiritual community. Between the two poles, *i.e.* the restricted community and the spiritual community that comprises all, there is the state, the state community that extends as far as autarchy in the Aristotelian sense, *i.e.* sovereignty, to be understood in the sense that the forms of state life must not be determined by any outside force.

If this conception of the sovereignty of the state seems to suggest a position close to that of Hegel, for whom sovereignty is not of the people — as Rousseau had held — but of the state, the non-all-englobing function of the state brings out its limits, even though its validity is guaranteed.²⁸ Consequently, her idea is equidistant from both the vision of a universal state comprising the entire human community as a spiritual community and from the anarchy that becomes established when the more restricted communities, families, parties, professional organizations, etc., gain the upper hand.

At least in her intentions, her analysis should ignore the questions regarding the division of powers, legislative and executive, or of representation, entrusted to one or more, because the objective in the phenomenological sense is that of determining the ontic structure of the state rather than treating the formation of the ideal state.²⁹ This aspect is not of secondary importance, because it contributes to clarifying the type of inquiry here undertaken, re-affirming what constitutes the

phenomenological point of view and showing the application of an essential analysis, thus making it possible to distinguish between ideal moment and essence: indeed, the author confirms this when she sustains that the ontic ambit that she indicates can be the cognitive condition for the sense and the possibility of an ideal state, because what is here described is the state as such.

The indicated task connotes phenomenological inquiry in an altogether original manner. To understand the point of view here assumed and to confirm what has already been said, it will be appropriate to recall what A. Reinach had set out to do in his law analysis *Die apriorischen Grundlagen des bürgerlichen Rechtes* (The *a priori* foundations of civil law), namely to indicate a field of analysis concerning the juridical entities, which "... possess a being in the same way as numbers, trees or houses;"³⁰ this being is independent of every positive law, which has to recognize that it does not generate its concepts, but finds them already there.

The analysis therefore concentrates on these pre-existing concepts that constitute the *Sache* of law, the thing that has to be inquired into; one thus arrives at entities that *a priori* in the sense that their pre-existence does not refer to the knowledge of either propositions or judgments, but of the state of things (*Sachverhalt*) judged or known.

In the same way, Heidegger — in *Sein und Zeit* (*Being and Time*) — indicates the place of the inquiry in the ontic sense by referring to the question about the particular being (*Seiendes*) that is being here (*Dasein*).³¹

These referrals are important for determining the point of view to be assumed and, therefore, the originality of the phenomenological inquiry with respect to others; it is a case of identifying a level that had previously been ignored, even though present, that Reinach considers to be independent of its recognition in human reflection, even though it cannot be likened to a world of ideas of the Platonic type, because it does not possess a metaphysical consistency of its own.

Assuming a viewpoint very close to that of Reinach, Edith Stein can proceed with the analysis of some essential questions

concerning the state: the relationship between state and people, between state and individual, between state and law and other factors that concur in the formation of the state, which has to be analyzed also from the historical point of view as regards its political function, its territory, the limits of its force and the reasons underlying its genesis and decadence. On the other hand, it is not possible to ignore the question of the value of the state and its relationship with ethical and juridical norms, and also with religion.

As one may note, the analysis proves to be very ample and articulated and, in the first part of the essay, which is dedicated to the identification of the state structure, she endeavours to examine its essence by distinguishing it from other important concepts like people, nation, community, society, while in the second part she attempts a valuation of the state in relation to both the individual and the community.

Having pinpointed sovereignty as the characterizing element of the state, she distinguishes it from the people in as much as it is a social structure, whereas the people is a personality and therefore has an organic character, just as the nation is on the line of the community as community of the people and as consciousness of its unity and tradition. Even though this is not strictly necessary, but simple describable for its proper functioning, the state may or, better, should have a community of the people — but not a nation — as its foundation; though being founded on a nation could provide a further guarantee of stability, it is not indispensable for its structure.³²

As far as the role of the individual is concerned, she notes that the individual is the 'carrier' (*Träger*) of the life of the state, but the state is not the scope of the individual's life, this being true even for the monarch, who is a servant of the state and does not use it for his own interests in the manner of a despot; along this line of inquiry it becomes possible to delve more deeply into the significance of various forms of state organization already discussed in Greek philosophy and, above all, by the schools of Plato and Aristotle: aristocracy and democracy and their degenerative forms, oligarchy and demagogy.³³

In the relations between state and law there re-emerges what Reinach already noted in this connection: what is to be investigated is pure law, which has nothing to do with any positive law. Since law concerns the relations between persons, one has to ask oneself first of all how it comes that the person is the fount of law.

We are thus brought back to the question of free acts of an ethical nature to which reference was made when speaking of the person, the act in question concerning the person's voluntary resolution as free act that has a particular nature in as much as it refers to the social sphere. More generally, this means that the state cannot constitute itself other than within the ambit of persons, but, on the other hand, these persons, when they act for the state or in the name of the state, perform acts that have a relevance in this context and are not acts that concern their own person.³⁴

We should here note that this distinction is important for identifying the two spheres of the private and the public and avoiding their superposition, and it is in this sense that we said earlier on that Edith Stein's description brings out characteristics of the state that can be traced back in a liberal point of view. On the other hand, the state is not just any kind of association of persons, because its foundation is an act that implies that the person or the group wants to become an organ of the state. However, it is not a question of accepting the contractualist theory for justifying the origin of the state, nor does Edith Stein deem the natural law doctrine to be valid in holding that the individual possesses rights outside the state that derive 'from nature' and which the individual would lose by recognizing the state. According to Edith Stein, though the contractualist doctrine is right in recognizing that the state is made up of persons, it errs when it holds that individuals have the possibility depriving themselves of their liberties by means of a free act.³⁵

Since the *Sache* to be described is the state, one necessarily has to trace its essential characteristics. Having already noted that sovereignty is the first determinant element, she now proceeds to affirm that it constitutes the *condicio sine qua non* of

the state and this quite independently of the type of organization, be it an absolute monarchy or a democracy; the concept of sovereignty has to be understood in connection with the freedom of the individuals that constitute the foundation of the state. Sovereignty is for the state what liberty is for the individual³⁶ as a source of spontaneous acts and, therefore, as personality, so that one can readily understand that the state can be considered a person, though this is not so in the case of a people, where we are concerned, rather, with a community of persons.³⁷

Just like any person performing free acts, the state is a juridical person and therefore a juridical reality, so that it possesses a juridical will and is the subjective source of pure law and positive law — where the latter is distinguished from the former in as much as it is conferred also upon those who are not sources of pure law.³⁸

It is also possible to identify in the acts of the state a certain 'spirit' (*Geist*), which it reveals in its political action and which expresses the *ethos* of the that constitutes the ambit of the state's sovereignty; only this spirit can make us understand whether the representatives of the state have moved away from it in their policy, that is to say, whether or not their acts are merely pseudo-state acts.³⁹

There thus arises the question regarding the relationship between the state and the community or society: the examination carried out suggests that the state embraces — in a more or less rationalized manner or, and this ultimately amounts to the same thing, by means of elements that have a societary structure — a community. The birth of the state cannot, therefore, be ascribed to a contract; as has already been noted, it has its origin in a spiritual process that takes place when there prevail particular conditions that consist of the activity and capacity of initiative of whoever constitutes himself as guide and, as regards the individuals that compose the state, of a psychic disposition such as to render possible an enduring organization; in any case, there can be associations that do not constitute themselves as states.⁴⁰

It has already been noted that the state can be compared to a person and that in an organic vision of the state there have been identified both the spiritual aspect and the psychic aspect; but what has not been traced is the moment of corporeity. A further analysis, however, leads also to the identification of this aspect, which is to be found in the link with a territory, so that one may sustain that the state needs a soil just like the individual needs a body: the citizens, indeed, need a place in which they can live.⁴¹

The organic vision of the state as something that far removed from any form of contractualism recalls the conceptions of Plato or the idealistic ones of Fichte — at least the later Fichte — and Hegel. Indeed, notwithstanding some considerable differences with respect to the positions of these thinkers, Edith Stein explicitly refers to some points of contact.

As far as Plato is concerned, she discusses the fundamental question of the birth of the state, holding quite rightly that the Greek philosopher had insisted on mutual help of the human subjects as fundamental for the genesis of the state and also on the division of the roles, the classes (*Stände*), which she understands in a manner more in keeping with contemporary German society. She thus identifies the class of the military, who have to defend the sovereignty of the state, and that of the employees, who — all together — constitute the primary skeleton of the state; the rest of the population constitutes the third class and represents the material for the concrete formation of the state. Hence, the need for an organization capable of freeing the individuals from their needs underlies the foundation of the state and the configuration of the roles performed by its members; the state is thus a community that specifies itself precisely in relation to the tasks of the classes of which it is made up.

Economic life — in Platonic terms entrusted to the third estate — and cultural life, even though they do not regulate themselves in an autonomous manner for the purposes of state organization, have to be controlled if they are to function properly within the ambit of the state; this is made necessary by

the requirement of autarchy that Aristotle discusses in Books VI and VII of his *Politics*.⁴²

As understood by Edith Stein, this does not mean giving an extraordinary power to the state and therefore throwing the previously defined relationship between the public and the private sphere into crisis, but simply aiming in a concrete manner at harmony between various components of the state that is essential if its very life is not to be endangered. One may here underscore that it is precisely the motive of harmony that emerges from the description of the essence of the state: though the state is something unitary, it has within it a multiplicity of parts and aspects that must all be working towards one and the same end. This constitutes the organicist vision that emerges from the analysis.

Since we are here concerned with an analysis of essentials, it is not based on any precise factual situations, even though there is no lack of references to concrete historical contexts — the Middle Ages or the situation of Germany in the author's own days — and to some fundamental theorizations within the ambit of political doctrines. In actual fact, as I have tried to underscore, Edith Stein was not aiming at determining the best form of state, but rather sought to specify what it means for a human organization to be a state. And in this sense it emerges from her analyses that the type of inquiry proposed by Aristotle is the one she considers to be exemplary, the one she sees as the most convincing.

ENDNOTES

- 1 E. Husserl, *Zur Phänomenologie der Intersubjektivität I*, *Husserliana*, Volume XIII.
- 2 E. Stein, *Zum Problem der Einfühlung*. Buchdruckerei des Waisenhausens, Halle 1917; Reprint, Kaffke, Munich 1980, p. VI.
- 3 *Ibid*, p. 2.
- 4 *Ibid*.
- 5 In *Jahrbuch für Philosophie und phänomenologische Forschung*, Volume V, 1922, p. 7.
- 6 E. Stein, *Zum Problem der Einfühlung*, op. cit., p. 5.
- 7 *Ibid*, Chapter III, p. 5.
- 8 *Ibid*, Chapter III, p. 5.
- 9 *Ibid*, p. 28.
- 10 *Ibid*, p. 103.
- 11 *Ibid*, p. 181.
- 12 E. Stein, *Beiträge etc.*, op. cit., p. 180.
- 13 *Ibid*, p. 191.
- 14 *Ibid*, p. 192.
- 15 E. Husserl, *Zur Phänomenologie der Intersubjektivität (About the phenomenology of intersubjectivity)*, *Husserliana*, Volume XIV, No. 9; *Gemeingeist (Community Spirit) I*, No. 10; *Gemeingeist II*. I discussed this topic in *Il recupero dell'intersoggettività per un mondo umano in E. Husserl in Fenomenologia e Società*, Nos. 3-4, 1978 and *Fenomenologia e politica – Esposizione e analisi di testi husserliani*, *ibid*, No. 12, 1986.
- 16 E. Stein, *Beiträge etc.*, op. cit., pp. 193-194.
- 17 *Ibid*, pp. 196-197.
- 18 *Ibid*, pp. 219-229.
- 19 *Ibid*, pp. 229-231.
- 20 *Ibid*, p. 234.
- 21 *Ibid*, p. 232.

- 22 *Ibid*, p. 235.
- 23 *Ibid*, p. 243.
- 24 *Ibid*, p. 246.
- 25 *Ibid*, pp. 247-249.
- 26 *Ibid*, p. 268.
- 27 *Ibid*, p. 268.
- 28 *Ibid*, pp. 289-290.
- 29 *Ibid*, pp. 290-291.
- 30 A. Reinach, *Die apriorischen Grundlagen des bürgerlichen Rechts*. Philosophia Resources Library, Munich, Hamden, Vienna, 1989, p. 4.
- 31 M. Heidegger, *Sein und Zeit*. M. Niemeyer Verlag, Tübingen, 1972, p. 4.
- 32 E. Stein, *Eine Untersuchung über den Staat, Jahrbuch über Philosophie und phänomenologische Forschung*, Volume VII, 1925, republished by M. Niemeyer Verlag, Tübingen, 1970, pp. 299-300.
- 33 *Ibid*, pp. 304-306.
- 34 *Ibid*, pp. 310-313.
- 35 *Ibid*, p. 316.
- 36 *Ibid*, p. 327.
- 37 *Ibid*, p. 328.
- 38 *Ibid*, pp. 331-333.
- 39 *Ibid*, p. 351.
- 40 *Ibid*, p. 357.
- 41 *Ibid*, p. 368.
- 42 *Ibid*, p. 375.

