passivity he inherits
idea of productive
spite of his intention
projection (Entwurf)
awrowness as 'coeval or
gleichursprünglich')

Husserl Archives, K.U. Leuven

John Noris


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

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

The project of phenomenology as laid out in Husserl's programmatic Ideas includes both constitutional and eidetic analyzes; analyzes of how things are experienced and analyzes of what it is that is thus experienced. An Investigation Concerning the State, as it concerns an inter-subjectively constituted entity characterized precisely by exhibiting in its turn a specific type of intersubjective constitution (i.e. law-making), combines these two types of analysis seamlessly, as what is investigated cannot be investigated without being constituted. Although this is the case for all things in their objectivity, the inseparability of the two types of analysis is more obvious when we deal with social phenomena, and it is in this area particularly that the addition provided by Stein to Husserl's phenomenology in her doctoral dissertation On the Problem of Empathy matters most.

In An Investigation concerning the State, Stein attempts to make available for intuition the essence (the eidos) of the state, i.e. answer the simple question which nevertheless requires a comprehensive answer: 'what is the state?' Her analysis will only be fully understood on the background of her earlier works On the Problem of Empathy and the Philosophy of Psychology and the Humanities, as these works respectively ground and explain the structure of intersubjectivity, of which the state is precisely 'a state'. But her description of the state can easily be recognized, even without prior knowledge of these works.
The state is tremendously important for our understanding of the social world. In fact the state so easily serves as a point of reference for our understanding of the world, in its historical as well as in its geographical dimensions, that we tend to forget it could be otherwise. To Stein, however, the state is not: necessary; it does not arise by necessity, nor is it necessarily arising from the essence of human beings. It is in fact possible for human beings to live in community without living in states. Nevertheless, particular communities, when constituting themselves as characterized by a particular type of value response (i.e. when they share a culture and is culturally creative), have a tendency to consolidate themselves by giving themselves the possibility for unified action in lawmaking. The state is in fact, in Stein's view, essentially sovereign and all that it is apart from this is to be understood in relation to this central feature. Hence state = lawmaking, and lawmaking, to be what it is, is necessarily sovereign. Once sovereignty has been established, however, the community it rules may well change character, so that the state can be seen to have a life that is distinct from that of the community (the Polish state and the Polish nation have distinct histories), although it depends on the community in many ways. Stein's careful analysis of the distinction and interdependence of nation (people) and state forms part of the reason why her work might find new readers today among phenomenologists and social or political scientists in quest of systematic work based on sustainable definitions of social realities.

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

Stein starts by situating the state as a social pattern in relation to the social patterns of mass, association and community, familiar from her *Individual and Community* (forming the second part of *Philosophy of Psychology and the Humanities*), and makes it clear that the state is a specific type of community-organization, and not simply an association created by individuals, as contract theory would have it. Too many aspects of concrete state-formation militate against that idea: states are not just invented. It rather emerges from communities, and hence depends on these for its initial formation. The unity of the state is constituted by its lawmaking (with its corollaries of reinforcement, adjudication and regulation), but although the civil community requires no ethic community in order to be, the value of the state may depend on the provisions it makes for allowing the community to be culturally creative. As such the state is value neutral: all that peace is the requirement it relinquishes its super-ordinate, subordinate social distinctiveness of communities of value seen to reside in sovereignty. When obtains at one extension (at the European one, for on this feature. If part of the state's essence to the essence of the nation's integration. This state requires first integration to sovereignty to be often conflict with the interest of the individuals toward conscience (as this weaken or destabilize accordingly with the allow, as far religious freedom a conscience.

Turning to essence of the state distinguishes between law and pure law distinguished from 'old' law). The id inherited from Ado as subsisting 'inde choice and indepen-or not it's recogn is force'. Positive law created or put into deliberate acts'. The common their for:
book under review is the state. As such it is

by situating the state as a

neutral: all that pertains to its essence

is the requirement to stay in charge. If

it relinquishes its ability to legislate

and reinforce its laws, it loses itself.

Stein gives a very interesting

analysis of the state's relationship to

super-ordinate, coordinate and

subordinate social patterns, where the

distinctiveness of the state among

communities of various extensions is

seen to reside precisely in its

sovereignty. Whether or not the state

obtains at one or other level of

extension (at the national level or the

European one, for example) depends

on this feature. If sovereignty forms

part of the state's extension it pertains
to the essence of the state to work for

its integration. The obedience the

state requires from its citizens for

integration to take place and

sovereignty to be possible therefore

often conflict with other claims on

their loyalty. But as it is not in the

interest of the state to push

individuals towards a conflict of

conscience, (as this conflict is liable to

weaken or destabilize the state), it is in

accordance with the idea of the state

to allow, as far as possible, for

religious freedom and the freedom of

conscience.

Turning to lawmaking as the

essence of the state (part I, § 2), Stein

distinguishes between positive law

and pure law (which again is

distinguished from 'natural' and 'good

old' law). The idea of pure law,

inherited from Adolf Reinach, is seen

as subsisting 'independently of any

choice and independently of whether

or not it's recognised by any 'law in

force". Positive law, in contrast, 'is

created or put into effect through

deliberate acts'. The two have in

common their form as law, as all law

claims to regulate the behaviour of

persons, but what they command may
differ. As the will can base itself on

insight into values to set about

realizing them, the lawmaker can

make operative pure law. Likewise the

will of the individual person can set

about realizing values without regard
to their relative motivating power and

the legislator can make laws that are

not in accordance with pure law. Stein

thus sees pure law as an analogue to

the value world - both are objective

in that insight can be gained of them.

But insight isn't necessary; it has to be

acquired. One can be wrong about the

relationships of pure law and values.

Natural right (understood

according to contract-theory as a right

of which subjects can divest

themselves and invest in the state by

founding it) does not exist, according
to Stein: pure law subsists

independently of the establishment of
the state and is unaffected by it (p.

51). Nor is there any more authority

to 'good old law' as positive law, no

matter how old, may or may not

coincide with pure law, and it is this

coinciding that determines its value

(p. 83). It is because we assume that

what is right always holds steady that

we think old law should not be

tampered with. But this assumption

overlooks the distinction between

pure law and positive law (in the same

way as one could overlook the

distinction between what ought to be
done and what always has been done),

and in so far as the idea of positive

law is not grasped, the idea of the

state cannot be grasped either (p. 84).

The state as legislator must

finally be seen in relation to

international law. The latter cannot

strictly speaking be seen to reside in
treatises, as these are in need of legal regulation (the prerogative of the state) for their reinforcement. To the extent, therefore, that international law 'does not have a pure law character' and is reduced to treatises, 'it is not to be regarded as positive law'. To make international law positive law the corporate body of states either 'constitutes itself as a sovereign civil authority - thereby destroying the single states; or on the authorization of one of the single states it appoints itself as a superordinate authority - which would have the same consequence. Or else the body derives its mandate from the single states. Then the whole thing looks different'. 

In that case ratification by member states ensures that international law is also positive law in the member states. Then the body 'doesn't have the potentiality of enacting collective regulations for all participating states. The persons belonging to it can only discuss and decide collectively what each state singly should regulate for its own state. Discussion and decision are matters for the corporate body. Conversely, regulations are a matter for the state on its own. Through them, each state binds only its own state. (...) This is in fact the only possible way to have a standardization in positive law of transactions among a plurality of commonwealths that is compatible with their existence as states. (...) With these as with all other regulations, the state retains the freedom to suspend them all by itself, on its own, without the participation of those states with which it collectively decided to issue them. For a decision has no legally binding power. To dissociate itself from a decision may be unwise and might be immoral [..., but in no way is it a breach of the law:] (p. 92). This long quotation serves to show how the contemplation of the essence of the state can serve to delimit practical possibilities, even before they are tried out in practice. The rise of the UNO and human rights law 25 years after the publication of this investigation in fact followed the path thus prescribed. In this manner eidetic analysis as conducted by Stein is in no way either unworthy or impractical – on the contrary it allows for looking at things as they are, which is necessary for any action to succeed.

As Stein moves on to discuss the extrinsic conditions for the state (I, § 3), she reiterates that the community underlies the state, but that the latter cannot simply be reduced to the former, although linked to a preceding development consisting largely in the elaboration of social institutions and the evolution of customs (p. 109-11). The state's sphere of influence on the lives of its citizens is not limited in principle (it may even regulate daily life), but a certain auto-limitation is in the interest of stability, as otherwise individuals will become frustrated and rebel against the state (p. 116). Thus the state often leaves communities (families, associations) regulate themselves, as long as it can stay in control. The state, in fact, is dependent on the recognition of its claim to control by the individuals, and not only on recognition from 'within', but also on recognition from other states, although 'the state can subsist only by virtue of its own proper right' (p. 120-1). The state is also dependent – to the extent that its citizens are persons as human beings are body – on having at its citizens can live sustain the economy needs. The state fin on a certain 'ge' of the members to labour needs to be economy to work functions to be a government, p adjudication). Stein account of the def state on factors extrin with a discussion various theories of perception by the cit extent theories (ideologies) can for state's means of sl policy. Ideologies a unity of different pi for control of the g they can in fact influ the point of legal abdiation. The state inter-subjectively for perception of it, conceptualize the contribute to shape it, cannot alter its essenc is constituted from th constitute it), and it

National University of In
be unwise and might be
but in no way is it a law.' (p. 92). This long
ves to show how the
of the essence of the
even before they are tried
The rise of the UNO rights law 25 years after
this investigation in
the path thus
In this manner didactic
inducted by Stein is in no
worldly or impractical —
ary it allows for looking
is they are, which is
any action to succeed.
epin moves on to discuss
conditions for the state
she reiterates that the
underlies the state, but
ster cannot simply be
the former, although
preceeding development
gely in the elaboration of
ions and the evolution of
109-11). The state's
fluence on the lives of its
ot limited in principle (it
regulate daily life), but a
-limitation is in the
stability, as otherwise
will become frustrated and
the state (p. 116). Thus
often leaves communities
associations) regulate
as long as it can stay in
the state, in fact, is
on the recognition of its
control by the individuals,
ly on recognition from
also on recognition from
, although 'the state can
by virtue of its own
it' (p. 120-1). The state is
lent — to the extent that its
citizens are persons extended in space
as human beings are by virtue of their
body — on having a territory on which
its citizens can live, i.e. that can
sustain the economy and with it their
needs. The state finally is dependent
on a certain 'segmentation by status'
of the members to the extent that
labour needs to be divided for the
economy to work and the state
functions to be upheld (defence,
government, policing and
judication). Stein finishes her
account of the dependence of the
state on factors extrinsic to its essence
with a discussion of the impact
various theories of the state has on its
perception by the citizens, i.e. to what
extent theories of the state
(ideologies) can form part of the
state's means of shaping itself by
policy. Ideologies account for the
unity of different parties competing
for control of the government, and
they can in fact influence the state to
the point of legally adopting its
abolition. The state is constituted
inter-subjectively from
individuals' perception of it, and how they
conceptualize the state thus
contribute to shape it. How they see it
cannot alter its essence however (as it
is constituted from the fact that they
constitute it), and it is to the value of
this essence that Stein turns in the
second part.
The question of the value of the state
amounts to the question of its
justification. Not the justification of
this or that particular state pattern,
but of the state as such If the state
was necessarily useful, allowing for
mental development of individuals
and/or securing justice it would have
value as such, but this does not seem
to be the case: states can be
destructive and unjust. The state
could be said to be of value if it was
the only way for a community to form
— given that it is of value for the
individual to live in community — but
the state is not the only possible
community. Insofar however, as the
state organizes the community and
allows for its cultural creativity, it has
a derivative value. In this way Stein
considers the value of the state as
deriving from the value of the
community it allows develop as a
cultural unity.

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

National University of Ireland, Maynooth

Mette Leboch