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Artículo

Constitutive Feelings for the Life of the State: Edith Stein's Political Phenomenology.

Sentimientos constitutivos para la vida del Estado: La fenomenología política de Edith Stein.

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For Sr. Anneliese Meis Wörmer
—With gratitude and great esteem

Resumen: Aunque cada vez haya más estudios sobre la forma en que Edith Stein entendía el estado, especialmente en lo que respecta a las cuestiones de autonomía, del derecho a priori y de la vida social y comunitaria del estado, hay pocos estudios sobre el sentimiento o el afecto en la estructura del estado. Este ensayo, siguiendo la idea de Anneliese Meis Wörmer sobre la importancia central del sentimiento en la filosofía de Stein, sostiene que el estado debe permitir también la posibilidad del sentimiento. Para ello, considero que el estado se constituye en parte por los sentimientos de solidaridad y el sentimiento por la justicia o por lo recto [Rechtsgefühl]. El primer aspecto forma parte de la vida social y comunitaria del estado, mientras que el segundo debe entenderse como concomitante con la estructura misma de la ley como expresión de la soberanía estatal.

Palabras clave: Edith Stein, Estado, Sentimiento, Solidaridad, Sentimiento por la justicia o el derecho, Comunidad.

Abstract: Though there is growing scholarship on Edith Stein's understanding of the state, especially concerning questions of autonomy, a priori law, and the communal sociality of the state, there is little scholarship on feeling or affect in the structure of the state. This essay argues, following the guiding insight of Anneliese Meis Wörmer about the central importance of feeling in Stein's philosophy, that the state must also admit the possibility of feeling. To this end, I discuss the state as having as part of its constitution the feelings of solidarity and the feeling for justice or what is right [*Rechtsgefühl*]. The former is part of the communal sociality of the state, whereas the latter must be read as concomitant with the very structure of the law as the expression of state sovereignty.

Keywords: Edith Stein, the State, Feeling, Solidarity, Feeling for justice or right, Community.

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In her magnificent study of feeling (*sentimiento*/*Gefühl*) in the work of Edith Stein,[1] Anneliese Meis Wörmer traces how the thinker develops and deploys her discussion of feelings throughout her philosophy and theology. She maintains that feelings and the capacity to have them (affectivity) are fundamental for Stein as they serve as an important bridge that connects body to psyche (soul) while also informing the construction of will and motivation within the life of spirit. She also holds that Stein's concept of feelings helps make possible the human relation with the divine. Feeling in Stein is complex and includes both passive and active (hyletic and noetic) layers that move from lived experiences of sensations like pleasure and plain, fatigue and feeling energised, to general sense perceptions, emotions, moods, and specific feelings like sadness or joy. Scholars draw upon Stein's rich studies, especially *On the Problem of Empathy*, *Philosophy of Psychology and the Humanities*, *Introduction to Philosophy*, and *Final and Eternal Being*, to explain how feeling intersects with the constitutive layers of personhood, including body, psyche, and spirit.

If we accept Meis Wörmer's argument, we should be able to find in Stein's political ontology a place and role for feeling. And though Stein offers no complete analysis of the role of feeling in her work on the state,[2] we do find important clues that allow us to build on Meis Wörmer's insight about the importance of feeling for Stein's philosophy and theology. I argue here that Stein's discussion of the state indeed includes

[1] ANNELIESE MEIS WÖRMER, *El espíritu santo y el sentimiento: Nexo misterioso entre espíritu y cuerpo en Edith Stein* (Madrid, Ediciones Universidad San Dámaso, 2016).
[2] EDITH STEIN, *An Investigation Concerning the State*, tr. Marianne Sawicki (Washington, D.C., ICS Publication, 2006).

a discussion of feeling, and though one could limit the discussion of the role of feelings within the framework of the human person or subject that carries the state within themselves as a *Staatsträger*,[3] namely as part of the underlying personal communal sociality of the state, I maintain that the state itself, as a phenomenological object, carries within it an important and constitutive feeling necessary for its very condition of possibility. Justice and a feeling (*Rechtsgefühl*) for what is right is fundamental for the state to establish its own sovereign right to shape itself rightly and justly. While it is undeniably true that a communal feeling of living the life of the state, that is, a feeling of solidarity, must exist for the state to be, we must also add to this fact a feeling for the rightness of the law and the power of the state to make and enact such laws. In this way, we could say that the two principal constitutive feelings or affects of the state are the feelings of solidarity of the community of law-givers and law-followers, as well as what Stein calls *Rechtsgefühl*.

STEIN'S NOTION OF THE STATE

Most scholarly studies of Stein's idea of the state have focused on three defining aspects: the a priori right of the state to self-determine itself in

[3] TIMOTHY MARTELL, "Edith Stein's Political Ontology", *Symposium: Canadian Journal of Continental Philosophy* 16, n° 2 (2012): 201–217.

and through its sovereignty;[4] its communal sociality;[5] and its value-bearing ethical and cultural status.[6] Undoubtedly, these studies have helped scholars grasp Stein's unique but complex phenomenological idea of the state. Historically, the idea of the 19th-century state has its rise in important developments like the separation of religious from secular powers (i.e., Westphalian sovereignty), stemming from long-lasting and bloody civil wars. Stein's work on the state, though mindful of the historical unfolding of the state as a political reality, also claims that it has a unique phenomenological reality or essence. What are its essential traits?

The Steinian state is marked by a robust form of sovereignty or self-legislation.[7] The state has the a priori right and power to determine itself though its own enactments and legislative powers.[8] This kind of power is originary with the state itself and is not bestowed on the state from some outside source, that is, the power of the state to rule itself is not derivative or dependent upon an external source. The Steinian idea of sovereignty does not only include the principal of sovereign autonomy but

4 ANTONIO CALCAGNO, "Persona Politica: Unity and Difference in Edith Stein's Political Philosophy", *International Philosophical Quarterly* 37, n° 2, (1997), 203–215; LUIS MARIANO DE LA MAZA, "Sovereignty and the Ethical Demands of the State". En *Edith Stein's Investigation Concerning the State: Sociality, Nationhood, Ethics*. Editado por Eva Reyes-Gacitúa y Antonio Calcagno, 63–74. (Dordrecht: Springer, 2020).

5 HAMID TAIEB, "Acts of the State and Representation in Edith Stein", *Journal of Social Ontology* 1 (2020), 10.1515/jso-2019-0017.

6 ANGELA ALES BELLO, "Edith Stein: Phenomenology, the State and Religious Commitment", *Analecta Husserliana* 80 (2002), 648–656.

7 EDITH STEIN, *An Investigation of the State*, 3.

8 MARCELO GIDI SJ, "Certain Legal Presuppositions About the Idea of Law in Edith Stein's An Investigation Concerning the State". En *Edith Stein's Investigation Concerning the State: Sociality, Nationhood, Ethics*. Editado por Eva Reyes-Gacitúa y Antonio Calcagno, (Dordrecht: Springer, 2020), 41–52.

also contains the Aristotelian idea of autarchy, understood as the right to defend oneself from external threat. Furthermore, it is clear from Stein's investigation, that the state defines its own physical territory vis-à-vis other states.[9] It should be remarked here that though Stein is a committed Liberal philosopher, she is not a strong advocate of a strict Westphalian form of sovereignty that separates state from religion. Stein does posit, within the framework of cultural and its expression, the possibility that a state may have certain religious values that are seen to define and typify the personality of the state. She loosely describes the state as a person, but only insofar as it is the extension of the collective life of its members. The state itself is not a person, nor it is it incorporated as such. In terms of certain religious values, the subjects who bear the life (*Träger*) of the state come to live and adhere to the religious values that the state holds to be valuable and meaningful. Often, these religious values will act as a cornerstone for the ethical life of the state and its citizens.

If self-rule, autonomy, or state sovereignty is central for the very ontic constitution of the state, the expression of this originary status is performed or enacted through the law. Drawing form the work of Aldolf Reinach, Stein maintains the distinction between a priori right and positive right.[10] The state, then, can pass either statutes, regulations and/or commands that are the extension of the power of the state to self-rule. These aforementioned forms of laws can come to take two essential forms: they can be either a priori right or positive. The former refers to

[9] RUDOLF KIELLEN, *Världskrigets politiska problem.* (Stockholm, Albert Bonniers förlag, 1915).
[10] EDITH STEIN, *An Investigation Concerning the State*, 38–44.

legislation that is universally binding and not conditioned by historical time, place, or events. An example of a priori right would be rights granted to all citizens of the state, for example, the right of the freedom of movement, speech, and/or work. Citizens may also have certain ap priori protections, for example, the right to not suffer harm or injury to life or body. The universality of such a priori rights are guaranteed by the very authority of the state and its capacity to self-legislate. The latter refers to sets of statues, regulations, or even commands that are conditioned by a particular cultural, social, economic, and or political need, in historical time and space. The difference between the former and the latter revolves around the nature of the relation between the law and historical time and necessity, as well as the justification of the nature of the force of the law. In the former, the universality of the prescriptions is connected to the very originary status of the sovereignty of the state to self-legislate. And, the scope of the legislation usually seeks to encompass all citizens, no matter status or class. For example, human rights are not dependent upon the demands of history or circumstance for their very justification of their force in law. In the latter, material and historical necessity demand certain legislation to help alleviate developments or events in the very life of the state and its peoples. For example, an economic crisis may cause the state to have to pass and enforce certain statues and regulations in order to prevent total economic collapse. But in times of greater economic stability, such laws may be changed or even eliminated. Such laws, too, may affect only certain segments of the state's citizens.

Thus far, Stein's theory of the state offers a fairly standard picture of the 19th century idea of the state. And this comes as no surprise, given

Stein's own commitment to the convictions of the German Democratic Party.[11] It is clear form Stein's letters and other political essays, that in her theory of the state women and religion come to take on important roles. But what is unique about Stein's theory of the state? As I have argued elsewhere, Stein's originality, if not controversy, lies in her attempt to insert her own unique understanding of sociality into the life of the state. More specifically, Stein argues that the life of the state, as a self-legislating body, can be optimally sustained if the relation between the law-makers and -followers is communal and, therefore, personal. She rejects the idea of the state as a contract, that is, she rejects the dominant form of state sociality as societal (*Gesellschaft*).

To understand the foregoing distinction between community and society, we need to unpack Stein's phenomenological account of sociality or her social ontology to better grasp her unique idea of statehood. She devoted a large part of her early phenomenology to questions of intersubjectivity and social ontology. Stein, following the major social relations described by thinkers like Ferdinand Tönnies and Georg Simmel, indicates that there are three types of social bonds or relations, namely, the relations of mass, society, and community.[12] These three forms of sociality are found in the life of the state, but the state, to be constituted properly as a state, requires the most intense and personal form of social bond, namely, community [*Gemeinschaft*].

[11] CAROLYN BEARD, "Edith Stein—die Suffragette". En *Edith Stein Jahrbuch* 25 (2019), 85–93.
[12] EDITH STEIN, *An Investigation Concerning the State*, 2–3.

The second part of Stein's *Philosophy of Psychology and the Humanities*[13] explores how larger social realities such as community and society are phenomenologically constituted. Whereas empathy is an act of the mind that allows one to live in the experience of another and grasp the sense of the other's experience, social objectivities such as community (*Gemeinschaft*) and society (*Gesellschaft*) are marked by different states of mind. Although community and society require empathy in order for individuals to be able to understand one another, they are larger, more encompassing mental structures than the empathic intersubjectivity of two or three people. Drawing from the sociology and psychology of her day, Stein is deeply aware that the lived experiences of community and society are conditioned by material and historical factors. Geography, language, culture, economics, history, and race are all aspects that shape communities and societies. Stein discusses, for example, how a people (*Volk*) may or may not form a society or community based simply on a shared language, religion, culture, or ethnic identity.[14] She consistently denied the claim, contra some of her contemporaries, that, in order to experience the highest or most intense form of community, individuals must belong to a people. A phenomenological understanding of community and society specifically explores the particular state of mind necessary for the formation of the bonds of these kinds of social objectivities as well as the conditions that make their intelligibility or essential sense possible. Drawing on her earlier insight about the need for

[13] EDITH STEIN, *Philosophy of Psychology and the Humanities*, trs. Mary Catharine Baseheart and Marianne Sawicki (Washington, D.C., ICS Publications, 2000).
[14] EDITH STEIN, *Philosophy of Psychology and the Humanities*, 262–265.

the cultural and historical sciences to give an account of the various forms of phenomenological consciousness that make larger social realities possible, Stein understood community as providing the foundational structure of higher forms of sociality that then express themselves within historical and cultural contexts.

The most minimal kind of social relation is that of the mass, which is typified as a kind of individuals' unconscious imitation of one another. Here, individuals may even be moved to imitate another by the effect of certain feelings. For example, a child may begin to cry simply because they hear other children crying. The child may have no specific reason for crying, but simply imitates what other children are doing. Stein claims, following the general psychology of her day, that a kind of herd behaviour is possible on account of what she calls psychic contagion [*psychische Ansteckung*]. In a certain respect, the sociality of the group is largely unconscious and intentionally undirected.

The second form of sociality Stein discusses is societal [*Gesellschaft*]. Here, members of group bond with one another as they are directed by an external, common goal. The individuals here are united by some collective purpose that lies outside their own personal lives. For example, workers of a certain firm or enterprise work and live collectively a form of social bonding that is directed towards the achievement of the goal of the firm. A university has as its goal the successful education of students, equipping them with the knowledge and skills they need not only to find work but also to help build and contribute to the wellbeing of society, broadly understood. Though social relations here remain largely

conditioned by the goals of the university itself, members of the university society can also form more intimate, personal bonds, in which case they may also be part of an interpersonal community that resides within the society structure of the university.

The most intimate form of sociality is the community [*Gemeinschaft*]. Here, members of the community live in the very lives of one another, and they grasp the value and meaning of the personal relationships that animate the community, what Stein terms an *ineinandergreifen*. The sociality of community is marked by an intensity of interpersonal intersubjectivity, and what is ultimately lived together in the community are the lives of the constitutive personalities. Communities are also marked by the life of spirit of its members. And spirit designates the realm of human being expressed in acts of motivation, reason, and willing. It is also in and through the spirit of persons that values and disvalues come to take shape, both of which constitute what a community may hold and share as dear and important as well as unimportant or noxious.

Contra Scheler and Walther, Stein argued that the experience of community must never be understood as an experience of fusion or identification (*Einsfühlung*) in which one experiences the deep oneness of a we-experience.[15] She maintained that the central and foundational role of the I can never be absorbed by identification with the views of a community. In a community, an individual not only understands what the sense or meaning of the lived experience is in general, but also lives the experience of the group. Stein gave the example of the death of a beloved

[15] EDITH STEIN, *Philosophy of Psychology and the Humanities*, 135.

troop leader.[16] The members of the troop are deeply affected by sadness and loss at their leader's death. She claimed not only that one can understand their sadness in general as well as the sadness of the troop's individual members through empathy, but also that one can understand and experience the collective sadness of the troop.[17] There are three distinct forms of sadness that arise in this communal experience: sadness in general, the sadness of individual troop members, and the collective sadness of the group as a whole. Each of these forms is distinct and is experienced differently as it shifts from smaller to larger, more encompassing social configurations. As Stein observed, "The individual lives, feels, and acts as a member of the community, and insofar as he does that, the community lives, feels, and acts in him and through him. But when he becomes conscious of his experiencing or reflects upon it, the community does not become conscious of what it experiences, but, rather, he becomes conscious of that which the community experiences in him."[18]

In order to be able to experience a lived experience of community (*Gemeinschaftserlebnis*), the lived-body, psyche, and spirit must work together; they help to make the lived experience possible. In a collective, communal experience, one cannot speak of a collective or super-individual body because the community is constituted by individuals. Yet, in order for there to be an experience of community, there must be some capacity for sensation because it is this that will allow the communal

[16] EDITH STEIN, *Philosophy of Psychology and the Humanities*, 134.
[17] EDITH STEIN, *Philosophy of Psychology and the Humanities*, 134.
[18] EDITH STEIN, *Philosophy of Psychology and the Humanities*, 140.

experience to presentify in consciousness. Our basic capacity for sensation and the fact that sensations (*Empfindnisse*) can impress themselves upon us, both actively and passively, make us aware of certain affects, emotions, or sensations, such as pleasure or pain.[19] The experience of the collective sadness of the troop requires us to be able to receive the news of the leader's death and to be affected by it; here, we are aware of a psychic causality. But, according to Stein, as individuated egos, we are incapable of true fusion or identification with others. The material-bodily and psychic individuation of the person, it seems, makes collective affectivity impossible. Aware of the problem produced by her insistence on strong ego individuation, she argued that it is fantasy or the imagination that projects into consciousness what it is for us to experience certain embodied affects on a collective level. She offered the example of the collective understanding of fairy tales: here, an individual can experience the collective sadness of a group of characters.[20] As she observed, "Insofar as the fantasy experience is a mental doing, and insofar as it is sense-filled, it can in principle reach beyond individuality. All sense is basically commonly accessible. And where I go along creating sense, where sense is constituted for me, it's available there not only for me but for others as well, (which is to say that the sense can be re-effectuated by them) and co-operation of a plurality of individuals is possible there too. Thus, it is quite possible that fantasy patterns, [in terms of] … sense, are correlative to a communal experience. But as soon as you go on [to] the intuitive

[19] EDITH STEIN, *Philosophy of Psychology and the Humanities*, 151.
[20] EDITH STEIN, *Philosophy of Psychology and the Humanities*, 150.

fulfillment of such a sense content, a set of merely private intuitions takes the place of the communal experience."[21]

In addition to an embodied capacity for sensation and affectivity through the power of the representative imagination, lived experiences of community are also made possible by the structures of rationality, motivation, and will. In order to rationally and intelligibly grasp a communal experience, we need to be able to synthesize the relation between parts and wholes. Husserlian categorial acts, which allow one to synthesize, categorize, order, and structure the content of consciousness, are fundamental for us to be able to distinguish the I from the community group as well as parts from the whole. Drawing from what was said earlier about the interrelation between psyche, reason, and freedom, we can see the importance of motivation insofar as certain motivated acts allow certain values, which can mobilize and shape a community, to emerge. For example, a community may share certain convictions about what is beautiful or good in art or food, etc.[22] Such a shared communal value may help form the community's ethical framework, and it can certainly motivate particular social and ethical acts. Finally, acts of free will[23] allow the community to express higher, spiritual realities such as communal choice. For example, the community of law-givers and law-followers that constitute the Steinian state may issue a *fiat* enacting a certain law in the interest of the community's safety. The individual member can understand

[21] EDITH STEIN, *Philosophy of Psychology and the Humanities*, 151.
[22] EDITH STEIN, *Philosophy of Psychology and the Humanities*, 169–170.
[23] EDITH STEIN, *Philosophy of Psychology and the Humanities*, 191–193.

the law in general, what it is for another to understand the law, and what it is for the communal group to enact and obey such a law of protection.

Stein's account of super-individual reality, including community and society, explains the mental aspect of our social lives. She emphasizes two important elements in her analysis. First, the mental life of social structures like community require a building of sense or meaning that can be transmitted to and collectively grasped by others. Second, the building up of sense requires that persons constitutive of various social relationships be embodied and possess both psyche and spirit. Body, psyche, and spirit—all constitutive layers of the human person— work together in a unified fashion to help build the layers of coherence of sense that make social life possible.

THE SOCIALITY OF THE STATE

An Investigation Concerning the State (*Eine Untersuchung über den Staat*) originally appeared in the 1925 volume of Edmund Husserl's *Jahrbuch*, though it was written a few years earlier. On one hand, this complex stand-alone volume draws from and completes Stein's earlier phenomenological analyses of sociality, and, on the other hand, it privileges a communal rather than contractual or societal view of the state. In many respects, the work displays Stein's own political sympathies and concerns. Written after the defeat of Germany in World War I, during the throes of Weimar Germany, the text may be read as a sort of blueprint for Stein's vision of the new German state.

The text opens with the claim that there are degrees of community.[24] Smaller, more intimate forms of community include tightly knit social forms such as the family and friendships. More ample forms of community, such as that of all human beings or the members of a large religious faith, may be more socially encompassing. The state lies between the more intimate and the more encompassing forms of community.[25] As we saw earlier, Stein argues that the essence of the state is sovereignty:[26] A state is a state because it can self-legislate and because it is unencumbered by any other state or force. A state directs its rule over a collective of individuals. Law is the principal instrument deployed by the state to ensure and execute its sovereignty.[27] What is unique about Stein's conception is her blending of a general view of Westphalian sovereignty with two phenomenological insights: first, she understood the law as functioning in a priori fashion[28]; second, the articulation and practice of the law as well as obedience to the law are borne and carried out by a community rather than a society. The law is borne by a community of law-givers and law-followers, all of whom are persons.[29] Stein applied the highest form of sociality, namely, community, to the agents that formulate, challenge, reform, and practice the law.

Concerning the first distinguishing phenomenological feature of the state, Stein maintained that the community of law-givers should follow

[24] EDITH STEIN, *An Investigation Concerning the State*, 7.
[25] EDITH STEIN, *An Investigation Concerning the State*, 8.
[26] EDITH STEIN, *An Investigation Concerning the State*, 9, 66.
[27] EDITH STEIN, *An Investigation Concerning the State*, 11, 37.
[28] EDITH STEIN, *An Investigation Concerning the State*, 150–151.
[29] EDITH STEIN, *An Investigation Concerning the State*, 111–112.

Adolf Reinach's model of law.[30] Laws are utterances made by the state that perform or enact what they proclaim. For example, when the state promises or guarantees certain rights, the very proclamation of this promise enacts and enforces the state's right to safeguard certain rights. Reinach and Stein maintained that laws can be both positive and a priori. Again, positive laws include those conditioned by specific cultural and historical conditions: for example, a set of laws that safeguard certain cultural practices of a given people in a particular historical moment. A priori laws—a more foundational form of law that is necessary for state sovereignty—are laws that, independent of specific and relative cultural and historical circumstances, are justified by reason alone. Based on certain self-evident truths such as the right to life, liberty, and equality before the law, a priori laws are universal and necessary. Whether a priori or positive, laws may take the form of commands (*Befehl*), determining ordinances, or regulations (*Bestimmungen*).[31]

The second phenomenological feature of Stein's account of the state constitutes, in many respects, her most original and provocative claim about the ontology of the state. The law must operate within a sociality of community in which one member lives in the life of another in deep solidarity.[32] As persons, the law-givers carry the life of the state within themselves. Each can experience and understand what it is to live the life of a law-based community in general, but they can also live what it is for the collective of state members to live the deeply conditioning

[30] EDITH STEIN, *An Investigation Concerning the State*, 111–112.
[31] EDITH STEIN, *An Investigation Concerning the State*, 52.
[32] EDITH STEIN, *An Investigation Concerning the State*, 6.

force of law. Stein clearly states that not all state members are required to live the intense social form of a law-based community in order for the state to exist: It is sufficient that one person (for example, the head of state) live the solidarity of the law-based community.[33] That the rule of law is one of the traditional aspects of modern liberal states is not controversial; indeed, most contractarian forms of sovereign modern states maintain this principle. But Stein felt that contractarian forms of rule were societal in nature, and hence reduce law and personal relations to objective ends or purposes.[34] She found such societal, contractarian forms of law to be too weak because the law is not lived deeply enough in the lives of those who are charged with its articulation and preservation. Believing that the law required a more intimate form of sociality, Stein not only gave to the law the legal force to carry out its demands and utterances, but set it within a structure of values, in which human freedom and rationality are implicit.[35] This structure of values takes on greater import, she argued, within a communal sociality. In the end, Stein believed that a societal model of ends could not adequately account for the state; for the state to flourish as a state, state sovereignty and the law must be personalized within communal relations.

Let us pause to consider Stein's claim regarding the lived communal experience of solidarity. If community is personal, that is, it resides and is borne in the persons who carry the life of the state within themselves, the experience of solidarity must not only be understood at

[33] EDITH STEIN, *An Investigation Concerning the State*, 47.
[34] EDITH STEIN, *An Investigation Concerning the State*, 4–5.
[35] EDITH STEIN, *An Investigation Concerning the State*, 154–157.

the rational and intellectual level as sense [*Sinn*] but also as something felt. One has to feel the communal bond of solidarity as Steinian personal unity makes possible the connection between feeling and intellection, psyche and spirit. Stein herself never explains how the lived experience of solidarity unfolds within the life of psyche and spirit, but one could legitimately infer based on her robust account of the nature of community as interpersonal that the structure and unity of personhood has to be involved in and make possible the very experience of solidarity. In this sense, solidarity would have to be lived through the union of body, psyche, and spirit, as embodied feeling and as grasped by the intellect as a phenomenological sense.

Philosophically, Stein's conception of the state must be read as an extension of her view of community rather than a developed political theory of the state, for she privileges community over society (and, therefore, contractarian theories of the state). Furthermore, in her adoption of a Reinachian theory of law, Stein elaborates an example of a state community, which does not have its foundation in neither race nor blood nor class. If one reads Stein's theory of state community in conjunction with her ideas developed in her work on empathy and in the Philosophy of Psychology and the Humanities, one uncovers in a law-based state community structures that ground and make possible this kind of community, namely, body, psyche, spirit and other persons. In Steinian terms, the understanding of law requires that we understand the constitutive structure of persons who bear, preserve and live the sense or meaning of the law.

A FEELING OF JUSTICE AS AN AFFECT OF STATE

If Meis Wörmer's thesis is correct, as mentioned above, then we must be able to find some justification of the possibility of affects that belong proper to the life of the state, especially if the sociality that makes possible the Steinian state is personal. Above, I presented an indirect (inferential) argument for understanding solidarity as part of the feeling and sense of what it is for persons to bear the life of the state within themselves. But given Stein's heavy emphasis on the community of law-givers and law-followers, it is no surprise that she discusses the necessity of *Rechtsgefühl* as important for the life of the state. Marianne Sawicki translates *Rechtsgefühl* as the "sense of justice." And while this rendering captures a certain aspect of *Rechtsgefühl*, the emphasis on sense, phenomenologically understood, positions the term within the logic of constitution. Undoubtedly, a feeling, namely, the *Gefühl* or *Rechtsgefühl*, can ultimately be grasped as having a certain sense for consciousness, but it is still an affect. The subject of *Rechtsgefühl* feels, undergoes or receives a certain psychic and embodied sensation of what is right or just, amoral feeling. And, as Meis Wörmer suggests, this feeling then can influence or make us conscious of the need to understand it as presenting a certain motivation for our future actions, when, of course it is brough for rational consideration and judgement through our capacity for intellection, which is an important defining power of the realm of human spirit. The foregoing claim has to be the case, given the unity of body, psyche and spirit mentioned above.

The affect of justice, which can motivate stately acts is taken up by Stein in her discussion of the distinction between a priori right and

positive law. In the case of the latter, the feeling of right does not really appear, so says Stein; rather, it is the experience of a priori right that sense of justice prevails. She writes:

> Let's orient ourselves once more by our distinction between pure law and positive law. Hugo Grotius explains [it] as *ius gentium: quod gentium omnium aut multarum voluntate vim accepit*, but adds that only the natural law would be binding for all peoples. Therefore—since according to our view the "natural law" is merely an erroneous interpretation of pure law—in the repertoire of international law we would have to distinguish between statements of pure law and agreements by the discrete states about the modalities of their reciprocal transactions. In fact, if a state is accused of a breach of international law, you usually hear that it has done something "against which the sense of justice rebels." But the sense of justice speaks only for that which is right in a material sense—and in this case, that means pure law. The content of a positive law need not—according to the idea of positive law—be right in a material sense. Thus a sense of justice can't tell you what is in accord with the regulations of a positive law and what contradicts them. For example, when breaking a treaty is designated as a violation of international law, in no way is it required that the content of the treaty be right in the material sense. Nevertheless from the standpoint of pure law you're dealing with a breach of the law. Independently of all [law-] making, then, it is right that treaties should be kept

> (regardless of their content), and the sense of justice rebels against the breach of the treaty as such.[36]

In positive law, the material of the law need not always accord with the form of the law. This is the case because positive laws are framed within time and space: they are culturally and historically specific. Hence, any feeling of right may be relativized as it becomes circumstantial. In a priori right or pure law, however, the matter and form of the law have to agree or correspond in order to preserve the universality and necessity of the law. For example, human rights law which affirm the inviolability of the human person have to be true regardless of the historical and cultural application of the law. Here, Stein adds that the true feeling of the law, understood as a feeling or justice, can come to bear on the achievement or fulfilment of the law in the community of law-givers and -followers.

A sense of justice, to borrow Sawicki's translation, would have to accompany the true rightness of the a priori law. Stein's reasoning here is sharp, for it allows for the possibility of different cultural expressions and attitudes to positive laws (on similar issues) to emerge while protecting the universality of the possibility of a priori law. In the case of the former the feeling of what is right may vary, given circumstances and diverse cultural practices, but on the a priori level the feeling must be universally shared. This being said, Stein also notes that the feeling of right can guide our rejection of the law, that is, it can guide us in our knowledge of what laws

[36] EDITH STEIN, *An Investigation Concerning the State*, 89–90.

may be unjust and in breach of established contracts. The feeling of the law may help bring to presence or signal a relevant feeling, even before we are fully conscious of the full sense of what lies before us, of what may be just or unjust, ultimately conditioning the very intellection, valuing, and willing (action) of what is actually just or unjust as it pertains to the sovereignty and sociality of the state.

The feeling for what is right or just can only be made possible in and through the sociality that frames the Steinian state. Affect can only be experienced by the carriers of the state, which is the community of law-givers and -followers. It is their very constitution as persons marked by the unified working together of body, psyche, and spirit that makes possible the reception and experience of the feeling of what is right, which then works with the body to feel the physical effect of the feeling and the spirit to reason, value, and will to grasp and live better the fuller sense of the essence of the state as a sovereign community of law-givers/makers and -followers.