

# EDITH STEIN'S POLITICAL ONTOLOGY

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*What is a society? What is political power? John Searle claims that previous political philosophers not only neglected these fundamental questions but also lacked the means to effectively address them. Good answers, he thinks, depend on theories of speech acts, intentionality, and constitutive rules first developed by analytic philosophers. But Searle is mistaken. Early phenomenologists had already developed the requisite theories. Reinach's philosophy of law includes a theory of speech acts. This theory is based on Husserl's account of intentionality. Edith Stein extended that account by offering a detailed description of collective intentionality. And it was Stein who brought these strands of early phenomenological research together to address the very questions of political philosophy Searle regards as both fundamental and neglected. In this paper, I recount Stein's answers to these questions and argue that they compare favourably with those of Searle.*

John Searle begins his foray in political philosophy with the following remarks:

In spite of its impressive achievements, I have always found our tradition of political philosophy in various ways unsatisfying. I do not think it is the best expression of Western philosophy. But my general problem with the tradition is not that it gives wrong answers to the questions it asks, but rather it seems to me it does not always ask the questions that need to be asked in the first place. Prior to answering such questions as "What is a just society?" and "What is the proper exercise of political power?" it seems to me we should answer the more fundamental questions: "What is a society in the first place?" and "What sort of power is political power anyhow?"<sup>1</sup>

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<sup>1</sup> John Searle, "Social Ontology and Political Power," in *Socializing Metaphysics: The Nature of Social Reality*, (ed.) F. Schmitt (New York: Rowan and Littlefield, 2005), 195. Hereafter referred to as SOPP.

Searle goes on to address the questions that he regards as fundamental: questions of political ontology. By his own admission, he is not the first to do so. Searle's view is that previous political philosophers, in their haste to deal with normative issues, have neglected ontology. He would likely add that earlier efforts failed for want of adequate conceptual tools. This is the approach he takes to the late nineteenth- and early twentieth-century founders of sociology. In *The Construction of Social Reality*, Searle claims that figures such as Durkheim and Weber pursued lines of inquiry similar to his own,

but from such acquaintance with their works as I have, it seems to me that they were not in a position to answer the questions that puzzle me, because they did not have the necessary tools. That is, through no fault of their own, they lacked an adequate theory of speech acts, of performatives, of intentionality, of collective intentionality, of rule-governed behavior, etc."<sup>2</sup>

Analytic philosophers have since developed the requisite tools. With better conceptual resources at his disposal, Searle believes he can provide better answers to questions about social reality in general. He should be able to do the same for questions about political reality in particular.

Unbeknownst to most analytic philosophers, phenomenologists working in the early part of the twentieth century had already invented most of the tools Searle mentions. Adolf Reinach's philosophy of law includes a theory of social acts, acts which are nowadays better known as speech acts.<sup>3</sup> Reinach developed his theory on the basis of the most comprehensive theory of intentionality offered to date: Husserl's phenomenology. Edith Stein, a student of both Reinach and Husserl at Göttingen, offered a phenomenological description of collective intentionality as part of her effort to distinguish between basic kinds of social collectivity. And it was Stein who, in a little known work called *An Investigation Concerning the State*, brought these strands of early phenomenological research together in order to address the very questions of political philosophy that Searle regards as both fundamental and neglected.

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<sup>2</sup> John Searle, *The Construction of Social Reality* (New York: The Free Press, 1995), xii. Hereafter referred to as CSR.

<sup>3</sup> For a thorough discussion of Reinach's place in the history of speech act theory, see Barry Smith, "Materials Toward a History of Speech Act Theory," in *Karl Bühler's Theory of Language*, (ed.) A. Eschbach (Amsterdam: Benjamins, 1987).

In this paper, I recount Stein's answers to these questions and argue that they compare favourably with those of Searle. I begin by providing the conceptual background to Stein's political ontology, especially her theory of social collectivities and the basics of Reinach's philosophy of law. I then show that, in Stein's view, politically organised society (i.e., a society with a state) is a social collectivity with a closed system of positive law. Political power is a matter of having the right to make law and govern according to such a system. I conclude with a cursory summary of Searle's political ontology and a brief catalogue of those points on which Stein's account is superior.

## 1. Social Collectivities

Phenomenology, as Stein and other early phenomenologists understood it, has both epistemological and ontological dimensions. Phenomenology is a theory of intentional mental states, mental states which are about objects. One of the goals of phenomenological research is to identify the various parts of these states. Another is to address functional problems. A functional problem is a problem concerning the conditions according to which an intentional mental state is about an object under some description.<sup>4</sup> One of the more important descriptions according to which an object can be determined is "known." A chief concern of Husserlian phenomenology is to identify the conditions under which an intentional mental state is about an object under that description. Phenomenology, then, has an epistemological dimension. According to Husserl, objects of different sorts fall under the description "known" under different conditions. In order to pursue epistemologically oriented phenomenological research, it is therefore necessary to distinguish between the various sorts of objects that might be known. Phenomenology, then, also has an ontological dimension.

Stein's *Philosophy of Psychology and the Humanities*<sup>5</sup> is an ontological contribution to phenomenological philosophy. As indicated by the work's German title, *Beiträge zur philosophischen Begründung der Psychologie und der Geisteswissenschaften*, she was concerned with the philosophical grounding of psychology and the social sciences. A

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<sup>4</sup> Edmund Husserl, *Ideas Pertaining to a Pure Phenomenology and to a Phenomenological Philosophy: First Book*, (tr.) F. Kersten, (Dordrecht: Kluwer, 1983), 207. (Original work published in 1913).

<sup>5</sup> Edith Stein, *Philosophy of Psychology and the Humanities*, (tr.) M. C. Baseheart and M. Sawicki (Washington, D.C: ICS Publications, 2000). (Original work published in 1922). Hereafter referred to as PPH.

philosophical grounding of a science is an account of the conditions according to which something counts as an object studied by that science. For psychology, Stein clarified the conditions under which something counts as experience, mind, psychological causality or motivation. For the social sciences, she clarified the conditions under which a number of persons constitute a group, as well as the conditions under which a number of persons constitute a group of one kind rather than another.

Stein distinguished three basic kinds of groups: community, mass and association. The key to this distinction is the concept of communal experience, or *Gemeinschaftserlebnis*. This is an intentional mental state that one shares with other persons. A communal experience differs from an intentional state that one experiences merely as an individual in three ways: its subject, its composition and the temporally ordered series of other intentional states to which it belongs. (PPH, 134) As a member of an academic committee charged with drafting a policy for the college, I might think that we intend that the policy be adopted. I am not, in this case, the sole subject of the intention. Rather, the subject of the intention consists of each of those individuals to whom reference is made by “we,” a number of persons including myself. What we intend, in this case, might differ from what each of us individually intends. One committee member might intend that the policy be adopted as a step toward thoroughgoing change in existing practices; another might intend that it be adopted precisely in order to forestall such change. But the whole group, the committee, simply intends that the policy be adopted. If the committee, upon proposing the policy, decides to hold an additional meeting on another matter, then this decision belongs to a series of communal experiences that includes both the intention that the policy be adopted and the proposal of the policy. This series of experiences differs from the series of experiences of individual committee members. The members have lives beyond their committee work, lives that include intentional experiences which they undergo as members of other groups, as well as experiences they undergo merely as individuals.

Communal experience makes for community. A number of individuals are a community if and only if the truth conditions of a statement of the form “we think that p” are satisfied where “we” refers to those persons.<sup>6</sup> Stein’s view, in other words, is that collective intentionality

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<sup>6</sup> In *Philosophy of Psychology and the Humanities*, Stein defers analysis of the conditions under which there is a communal experience. (PPH, 133–34) She acknowledges that they are somehow built up out of individual experiences (PPH, 143), but provides few details on how this is supposed to occur.

is a necessary and sufficient condition for the existence of a community. This means that communities are groups to which propositional attitudes may truthfully be attributed. Communities are groups that think.

A mass of individuals differs from a community insofar as a mass lacks communal experiences. Individuals making up a mass merely have experiences of the same type when in contact with one another. If I were to attend some public gathering at which a number of individuals express great anger or fear over, say, health-care reform, I might come to feel likewise. I might absorb the feelings that others are expressing. The result of this emotional contagion would not, however, constitute a communal experience, an experience that I consciously have with others. Instead of feeling angry or afraid with the others, I would simply be angry about or afraid of the proposed legislation, and I would have been caused to feel this way by others expressing similar feelings.

Stein's third category of social collectivity, the association, is best viewed as a kind of community. Like any community, an association is a group of individuals which has communal experiences. But, Stein claims, association members relate to one another predominately as objects rather than as fellow subjects.<sup>7</sup> I take this to mean that non-communal experiences or the communal experiences of other groups play a dominant role in explaining how association members act in relation to one another. An academic committee, for instance, is an association. Members might collectively intend that a policy be adopted, but, as noted above, each member might have her own reasons for forming this intention. One member might do so in order to further goals which she has as a participant in some other group, such as an environmental organization. It is conceivable that other members participate only in order to satisfy requirements for tenure. In both cases, working with others on the committee is merely a means to further ends which the others do not share. This is different from intending to engage in the committee's work for the sake of a collectively valued goal. In the latter case, participants in the group form the intention for a shared reason; they form the intention, in other words, in solidarity with one another.

This view of association means that most communities are associations to some extent. Stein's point in distinguishing a group as an association is to indicate, roughly, the degree to which non-communal

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<sup>7</sup> Edith Stein, *An Investigation Concerning the State*, (tr.) M. Sawicki (Washington, D.C.: ICS Publications, 2006), 4. (Original work published in 1925). Hereafter referred to as ICS.

experiences or the communal experiences of other groups dictate the way in which individual members of the group act in relation to one another. Small, informal groups such as a group of friends are at one end of spectrum; corporations are at the other. Religious orders such as that which Stein eventually joined fall somewhere in the middle.

According to Stein, a mass of persons is, as such, incapable of being a state. Groups that are capable of being states must continue to exist even when their members are not in proximity to one another and they must generate institutions.<sup>8</sup> Masses exist only so long as individuals are proximate to one another, and masses do not produce institutions. (ICS, 2) This leaves communities and associations as possible states. Stein allows that groups of either type may, in principle, form the collective basis of a state (though she doubts that a state based on association would be viable). In either case, the collectivity is a state only if it possesses a certain kind of legal system.

## 2. Social Acts and Positive Law

Stein's views on law are taken directly from Adolf Reinach's "Apriori Foundations of the Civil Law."<sup>9</sup> This, too, is an ontological contribution to phenomenological philosophy. Reinach is interested in phenomena such as the right to use some object, as well as states of affairs such as those in which one person has an obligation to another to perform some action. More precisely, Reinach is interested in legal entities and facts which might, in principle, obtain independently of any system of positive law. (AFCL, 6) He does not, however, offer a philosophy of law in the natural law tradition, since the legal entities and facts with which he is concerned are supposed to be distinct from moral entities and moral facts. While Reinach's distinction between the legal and the moral is not, perhaps, as clear as one might like, he seems to have thought that a distinguishing mark of legal entities and facts is that they, unlike moral entities and facts, are brought into existence by social acts. (AFCL, 13)

Social acts are spontaneous actions, actions initiated by an agent. These spontaneous acts involve intentional mental states. They can-

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<sup>8</sup> An institution is what Stein calls an objective mode of being-together. (ICS, 2) She does not provide any explanation for the latter concept. Since law is the state-making institution, her understanding of an objective mode of being-together is best extrapolated from her discussion of law.

<sup>9</sup> Adolf Reinach, "The Apriori Foundations of the Civil Law," (tr.) J. F. Crosby, *Aletheia*, vol. 3 (1983), 1-142. (Original work published in 1913). Hereafter referred to as AFCL.

not, though, be identified with those states. A promise, for instance, involves the intention of the promising agent to carry out an action. An agent promising to go for a walk with someone has the intention of going for a walk with that person.<sup>10</sup> But the intention to go for the walk is insufficient to constitute a promise to go for the walk. A promise, after all, results in a claim to some course of action on the part of another person, the person to whom the promise is made. No claim would result from the mere intention to go for the walk. In addition to the intention, the promising agent must utter the phrase "I promise you that I will go for the walk" or make some equivalent symbolic expression. Yet, no claim would arise unless the addressee hears this utterance. If the utterance counts as part of an act of promising, the person to whom the promise is made must perceive the utterance and understand it as bringing about an obligation to perform that action on the part of the speaker and a claim to the performance of that action on the part of the addressee. A social act, then, has the following parts: an agent who has an intentional mental state and makes an utterance about the object of that state, and another agent who hears this utterance.<sup>11</sup>

Some social acts can only occur on the basis of other social acts. (AFCL, 21) According to Reinach, an act of command is founded on an act of yielding by the person to whom the command is addressed. Yielding is a social act whereby an agent places himself under a more or less limited obligation to obey another person's orders. An agent does this by making some utterance which must be perceived by the person to whom that agent would thereby yield. Promising, on the other hand, is not founded on a social act, since it merely requires that the other party hear the utterance.

Reinach allows that social collectivities can engage in social acts. A corporation can, for instance, promise some course of action or issue a command to one of its members. When a corporation makes a promise, an obligation to carry out the promised action is imposed on the group as a whole. When a corporation issues a command to one of its members, an obligation to carry out some action is imposed on the

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<sup>10</sup> Reinach acknowledges that social acts are not always performed with the requisite intentional state. Thus, someone might utter an expression that is ordinarily part of a promise without actually intending to carry out the promised course of action. He calls such cases "pseudo-performances" (AFCL, 22), thereby indicating that they are defective forms of social acts.

<sup>11</sup> For a more detailed account of the constituents of social acts, see Kevin Mulligan, "Promising and Other Social Acts: Their Constituents and Structure," in *Speech Act and Sachverhalt: Reinach and the Foundations of Realist Phenomenology*, (ed.) K. Mulligan (Dordrecht: Nijhoff, 1987).

member. As just noted, this command can only occur if that member has yielded to the corporation. This means that social collectivities can also be addressed in social acts. (AFCL, 24)

Social acts of two kinds are most important for Stein's purposes: representational acts and enactments. Representational acts differ from other legally relevant social acts insofar as the obligations, claims and rights that would ordinarily devolve upon the person performing the act instead devolve upon another person, the represented party.<sup>12</sup> If I were to represent another person in making a promise to a third party, this would create an obligation to do as I have promised on the part of the person I represent, as well as a claim on the part of the addressee against the person I represent. Like commands, representational acts depend upon other social acts. Specifically, an act of representation requires that the represented party grant the representative the power to create obligations, rights and claims in the represented party's name. (AFCL, 86)

Enactments are social acts that create positive law. As with other social acts, the agent performing an enactment must have some intentional mental state. The intentional mental state in this case is about a legal fact. The conditions under which someone counts as a U.S. citizen could, for example, be the object of such an intentional state, since being a U.S. citizen goes along with having certain (non-moral) rights and obligations. Like other social acts, enactment involves an utterance. This utterance is about the same legal state of affairs as the speaker's intentional state, but it does not function to assert that this state of affairs actually obtains. In an efficacious enactment, the utterance functions to make it the case that the legal state of affairs obtains. (AFCL, 107–08) In terms of speech-act theory, enactments are performatives.<sup>13</sup> Enactments are founded on other social acts. If the legal state of affairs described by the utterance is to obtain, there must be some persons who not only hear the utterance but also recognise the legal state of affairs that it describes. (AFCL, 117) At least some of the persons who hear the utterance must accept that the utterance counts

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<sup>12</sup> Note that, in Reinach's view, the agent of a representatively performed act is the representative, not the party represented by the representative. Unlike some recent accounts of representative action, such as in D. Copp, "Hobbes on Artificial Persons and Collective Actions," *The Philosophical Review*, vol. 89, no. 4 (1980), 579–606, Reinach does not hold that a represented party somehow acts by way of the representative. Representation is instead a device by which the represented agent acquires the rights, obligations and claims that she would have acquired had she performed the social act which is actually performed by her representative.

<sup>13</sup> John Searle, *Speech Acts: An Essay in the Philosophy of Language* (New York: Cambridge University Press, 1969), 68.

as making the legal state of affairs in question obtain. Relative to the persons who recognise an enacted legal state of affairs, that state of affairs is said to be valid. (AFCL, 108) Valid legal states of affairs are positive laws.

### 3. The State

In *An Investigation Concerning the State*, Stein is careful to distinguish her line of inquiry from that of empirical science. She is not concerned with the history of actually existing states. Nor is she concerned with features that particular states happen to possess.

We're trying instead to establish which of the factors identifiable in the actual composition of the subsisting state constitutes the state as such, and in this way to clarify that concept of the state which is presupposed by the empirical science of the state but not examined. (ICS, 105)

Stein is concerned with the conditions under which a social collectivity constitutes a state. This is the work of political ontology.

According to Stein, positive law is required for statehood: "Where the idea of positive law is lacking, the idea of the state cannot be grasped either...." (ICS, 84) This is not to deny that there are groups with leaders but without law. Stein recognises that such groups exist. She would simply deny that they are states. Law is a condition of statehood, and not just any law will do. The city of Portland, Oregon, for instance, has a system of law, but it is not a state in Stein's sense. The laws of this city only count as such relative to other laws, some of which belong to Oregon law. Oregon would not qualify as a state in Stein's sense either, for the same reason that Portland does not qualify as a state. Oregon law only counts as law relative to another system of law, U.S. constitutional law. The latter does not count as law relative to any other system of law. This is the sort of law that makes for statehood.

As this example indicates, the system of law constitutive of statehood may include laws which are valid only in relation to other laws. The latter are rules of the sort that H. L. A. Hart would call secondary rules.<sup>14</sup> These are rules about rules. It is possible for there to be several orders of secondary rules. A secondary rule might count as law

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<sup>14</sup> H. L. A. Hart, *The Concept of Law* (New York: Oxford University Press, 1994), 94. (Original work published in 1961).

according to conditions set forth in some other secondary rule which itself counts as law according to conditions set forth in another secondary rule, and so forth. But in the system of law constitutive of statehood, every law that is valid in relation to some other law must ultimately be validated by a law belonging to that system. Following Stein's suggestion, we might call such a system of law a closed legal system.<sup>15</sup> If a social collectivity is a state, then it has a closed legal system.

Any social collectivity with a closed legal system must have a civil authority. This is the part of a social collectivity that enacts law and governs. Governing is a matter of commanding the promulgation, interpretation and application of the positive law. (ICS, 55) Stein allows that the civil authority might also command actions such as building and maintaining schools, museums, roads and bridges. (ICS, 58) It may engage in other social acts such as declaring war or entering into international agreements. (ICS, 63) In fact, the civil authority may engage in social acts of the most varied kind so long as they are legally permissible, so long, that is, as these social acts are acts that it may rightfully undertake within the limits of the positive law which it has imposed on itself.

This means that any civil authority is sovereign. (ICS, 15) Sovereignty is simply a matter of enacting and governing according to a closed system of laws. Note that a civil authority is sovereign even if the system of laws requires separation of powers. Stein's view allows that civil authority may be divided so that distinct parts are charged with carrying out different governing functions or making distinct kinds of law.

The civil authority performs social acts only insofar as it thereby performs representational acts. (ICS, 46–52) In keeping with a tradition of political thought going back at least to Hobbes, Stein maintains that the civil authority only acts in the name of the state as a whole. When the civil authority agrees to the terms of a treaty, the state thereby agrees to the terms of that treaty; obligations, claims and rights pertaining to the treaty devolve upon the state as a whole rather than upon the civil authority. When the civil authority issues a command to a citizen, it does so in the name of the state; the citizen is thereby obliged to the state to perform the commanded action.

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<sup>15</sup> In the context of a discussion of the legal foundations of international relations, Stein claims that each state "has its own extraordinary way of being enclosed within itself, and this closure impresses a distinctive mark upon all its external actions." (ICS, 93)

As explained in the preceding section, social acts of representation and enactment are founded, respectively, on social acts of granting and recognising. Thus, it would seem that there can be no civil authority and, hence, no state, unless some agent performs both acts. But in light of Reinach's and Stein's views on enactment, it turns out that recognition alone suffices. Every state must have a civil authority. A person or group constitutes a civil authority only insofar as that person or group is legally vested with the right to make law and govern. This means that a person or group counts as the civil authority only under the conditions set forth in some fundamental enactment according to which that person or group possesses that right. In principle, this enactment not only vests this person or group with the right to make law and govern, but also gives this person or group representative status. Enactment, after all, makes legal facts obtain, and it can do so even if the social acts that ordinarily found those facts have not occurred.

Stein acknowledges that the enactment constituting the civil authority is founded on the recognition of those who are members of the state it represents as well as the recognition of other states. Other states must, in effect, concede that their laws have limited validity. (ICS, 122) The collectivity represented by a civil authority cannot, then, be identified with those who recognise the law by which that person or group has that legal status. Rather, the represented collectivity is the group of persons who recognise the fundamental enactment creating the civil authority and who thereby acquire an obligation to obey legally permissible commands of the civil authority.

How, then, would Stein answer the questions posed by Searle: "What is a society?" and "What is political power?" According to Stein, a society is a mass, a community or an association. The distinction between these groups hinges on collective intentionality and the role it plays in interaction among group members. Only communities and associations can be states. A group of either kind counts as a state in the following conditions: Group members recognise the content of an enactment according to which a person or group of persons has the right to make law and issue commands which they are then obliged to obey; this enactment entails, furthermore, that they will be represented by this person or group of persons. Political power is simply the right to make law and govern. It is constituted, then, by the same acts of recognition and enactment that give rise to the state.

#### 4. Stein and Searle

Searle's account of social reality is well known, so I will only briefly summarise its essential points. The whole of social reality comprises ontologically subjective facts. Whereas ontologically objective facts are independent of intentional mental states, ontologically subjective facts are contingent upon such states. (CSR, 9–13) Intentional mental states bring about ontologically subjective facts by imposing functions on objects. If an agent uses a piece of metal to keep a stack of papers in place, then a paperweight function has been imposed on that piece of metal. Apart from its being used as such by an agent, the object possesses mass, figure and location relative to other objects, but no function. If a function is imposed by a collective intentional state, then the facts concerning that object insofar as it has that function are social facts. (CSR, 26) Returning to the example of the paperweight, if this is how we use this piece of metal rather than merely how I have idiosyncratically chosen to employ it, then facts about this functional object are social facts.

Institutional facts are the most important social facts. An institutional fact is constructed through the imposition of a function of a special sort, a status function. A status function is a function which an object could not perform without being thought of under some description. (CSR, 40–43) Paperweight is not a status function because an object that is a paperweight can hold papers in place without being thought of as a paperweight. But an object such as paper money can perform the function of money only by being thought of as money by some group of people. Functioning as money is a matter of having a status function.

Collective intentional states which impose status functions on objects have the general form of "We accept that *x* counts as *y* in context *c*," where *x* is a description of some object, *y* is the name of a status function, and context *c* is a list of the conditions under which an object fitting the description given in *x* has that status. A rule of this sort is a constitutive rule rather than a regulative rule. It is a constitutive rule because it makes some behaviour possible, whereas a regulative rule merely orders a behaviour that could, in principle, exist apart from it. (CSR, 27–29) The rules of chess make chess-playing possible; they are constitutive rules. Most traffic laws, on the other hand, merely serve to regulate a behaviour that is possible without them—driving.

In the course of developing his theory of institutional facts, Searle goes on to claim that the imposition of a status function always involves granting persons deontic powers. (CSR, 110–12) Deontic powers are fundamentally different from brute powers. The latter are

causal powers that objects possess independently of intentional mental states. Deontic power is a matter of having rights, permissions or authority of some kind. (CSR, 100) The fact that someone has deontic power depends on collectively accepted constitutive rules. Thus, the President of the United States has the power to veto legislation; this is not a brute power because he or she may do this only on the basis of the collective acceptance of a rule permitting such action. According to Searle, any imposition of a status function really amounts to creating deontic powers. The constitutive rules imposing the function of money on certain pieces of paper create deontic powers, since any person in possession of these pieces of paper may do things that she would otherwise not be permitted to do (e.g., enter a movie theatre, board an airplane, remove a book from a bookstore, etc.).

Political facts are a subset of institutional facts. This subset includes facts about deontic power of a particular kind—political power. (SOPP, 204) As a deontic power, political power is a matter of permissions, rights or authority. Though Searle is unwilling to venture an account of the necessary and sufficient conditions under which a deontic power counts as political power, he notes three typical characteristics of political power: (1) political power has to do with public matters as opposed to private matters; thus, political power exists in societies that somehow recognise a public/private distinction; (2) in societies with political power, there are conflicts over goods, including goods that are themselves deontic powers, such as civil rights; presumably, Searle thinks that political power functions to settle these disputes; and (3) those with political power have a monopoly on the use of armed violence; in other words, the exercise of political power is backed by a credible threat of brute power. (SOPP, 209)

Searle's account of society and political power is in many respects quite similar to Stein's. Positive laws, according to Stein, are legal facts which only obtain on the basis of social acts of enactment and recognition, both of which involve intentional mental states. Moreover, it appears as though the act of recognition that founds positive law is necessarily a collective recognition. Each agent that recognises the enacted legal states of affairs must be cognisant of doing so with others in relation to whom those states of affairs will also be valid. In Searle's terms, this means that positive laws are social facts, facts which are contingent on collective intentionality. The acts of recognition and enactment that form the ultimate basis of all positive law amount to acceptance of constitutive rules. The fundamental enactment granting the civil authority the right to make law and govern stipulates conditions under which enactments count as making law. Positive laws are, then, not just social facts, but also institutional facts.

Enactment and recognition make legal facts obtain, and legal facts are simply facts about non-moral rights, obligations and claims. This means that enactment and recognition create deontic power.

But for all their similarities, the political ontologies of Stein and Searle exhibit quite different strengths and weaknesses. These differences stem from the fact that each is oriented by a broader philosophical agenda. Stein's philosophical agenda, like that of the other early phenomenologists, is decidedly non-reductive. She is interested in discriminating between objects of different ontological classes; she is not interested in showing how objects of one ontological class are really nothing other than objects of another ontological class. Of course, Searle's broader philosophical project is not reductionist either. His broader concern, though, is to provide an account of social reality that is consistent with physicalist assumptions. His basic question is:

How can there be an objective world of money, property, marriage, governments, elections, football games, cocktail parties and law courts in a world that consists entirely of physical particles in fields of force, and in which some of these particles are organized into systems that are conscious biological beasts, such as ourselves? (CSR, xi–xii)

Searle's account of political reality is motivated by the same underlying concern: "How can there be political reality in a world consisting of physical particles?" (SOPP, 196)

Owing to differences in their broader agendas, each political ontology is better in some respects than the other. Searle's theory, for example, is surely better when it comes to questions about the relation between collective intentional states and individual intentional states, or the relation between social and non-social facts. Stein has very little to say about these issues. In the remainder of this paper, I will highlight a few points on which Stein's account strikes me as superior.

"No entity without identity" seems to be a sound methodological principle by which to construct an ontology.<sup>16</sup> We should not, that is, admit an object into our ontology unless we are prepared to explain the conditions according to which descriptions of such objects refer to the same or to different objects. In the case of political ontology, if one admits that there are politically organised societies, one ought to be

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<sup>16</sup> A Quinean dictum, by way of Davidson. See D. Davidson, *Essays on Actions and Events* (New York: Oxford University Press, 2001), 164. (Original work published in 1980).

able state the conditions under which they are individuated. This is one respect in which Stein's work fares better than Searle's. According to Stein, social collectivities constitute different states if and only if each recognises a distinct closed system of law. In other words, sovereignty provides Stein with a principle by which to individuate states.

Matters are much less clear in Searle's case. If a society is politically organised, it seems safe to say that the persons that make up that society collectively accept constitutive rules according to which someone has political power. Those with political power, Searle claims, have a monopoly on the use of armed violence. Presumably, states can be distinguished from non-states by someone within a group possessing deontic powers as well as a monopoly on the use of armed violence. If, for some group of persons, no one with deontic power has a monopoly on the use of armed violence, then that group is not a state. One state can be distinguished from another by considering who possesses such a monopoly. Groups constitute different states if and only if different persons have a monopoly on the use of armed violence relative to each.

There are several problems with this view. For one thing, it appears to be simply false to say that all persons with political power have a monopoly on the use of armed violence. There are persons in present-day Afghanistan who have political power, yet they are very far from possessing a monopoly on the use of armed violence in any part of that country. For some time both immediately prior to and after NATO intervention, Kosovo was part of the state of Yugoslavia, though those with political power in Yugoslavia did not possess a monopoly on the use of armed violence against the population of Kosovo. The Kurdish region of Iraq was, for the most part, free of armed violence from Iraqi authorities from the time of the first U.S.-led war up until the second. It appears that it will remain so for the foreseeable future. Yet, it also clearly remains part of Iraq. There are many other similar examples. A monopoly on the use of armed violence appears, then, to be unnecessary for statehood and an inadequate criterion by which to distinguish one state from another.

The appeal to a monopoly on the use of armed violence might be improved by stipulating that the monopoly is not *de facto* but *de jure*. Whatever the facts on the ground (or in the air), Yugoslavian-state actors were the only persons who could by law use armed violence against the Albanian population of Kosovo at the time of NATO intervention. But if this revision is on the right track, it is crucial that one system of positive law be distinguished from another. I take it that Stein's work on the state includes a plausible means of making that

distinction. Searle, in sharp contrast, says next to nothing about law in the course of his discussion of political reality.

A political ontology should also help to make sense of claims that are commonly made concerning states, both in the contexts of newspapers, magazines and other parts of the mass media, as well in scientific literature. Statements attributing actions to states are commonplace in these contexts. More precisely, it is a commonplace to say that states engage in speech acts. States, we are told, declare war, agree to the terms of treaties, assert claims before international tribunals, and so forth. Under what conditions, if any, are such claims true? Stein, I believe, has a plausible answer to this question. On the basis of her ontology, many, if not most of these claims, are literally false, yet still informative. In many, if not most cases, the action attributed to the state has actually been performed by the civil authority. Since all social acts of the civil authority are representational acts, any social act performed by the civil authority results in the creation of rights, obligations or claims for the represented collectivity. The state as a whole is accountable for the civil authority's actions. It is not, however, true that the state has performed those actions.

Searle does not fare as well with this issue because he gives no consideration to representation in his account of political power. Claims about state speech acts would have to be either false or true on the condition that everyone included in the state somehow collectively engaged in the act in question. On the one hand, if they are false yet informative, some explanation must be given for how that is possible. Lacking an account of representation, Searle is no position to offer such an explanation. If they are false and uninformative, some explanation should be given for why government officials, political scientists, historians, journalists and ordinary citizens persist in making these claims. On the other hand, it is implausible to maintain that these claims are true only if all persons belonging to the state perform the action. According to this view, whenever it is true that the United States has agreed to the terms of a treaty, all the citizens of the United States have somehow agreed to the terms of that treaty. This is implausible, since in many cases most citizens are not even aware that a treaty has been proposed. If they are not aware that a treaty has been proposed, they cannot possibly agree to it.

## **Conclusion**

Both John Searle, a contemporary analytic philosopher, and Edith Stein, an early phenomenologist, address fundamental, ontological questions of political philosophy: "What is society?" and "What is

political power?" They do so by employing similar conceptual resources: theories of speech acts, intentionality, collective intentionality and constitutive rules. On the basis of these resources, they come to similar conclusions. For both Searle and Stein, social facts are contingent upon collective intentionality, political power is deontic power, and deontic power depends upon the acceptance of constitutive rules. But the work of each philosopher is part of a broader philosophical agenda, and this means that each is better at addressing a different set of questions. Searle's theory provides plausible answers to questions about the relation between social and non-social facts. Stein's account is better suited to addressing questions about the individuation of politically organised societies and the truth conditions of claims about state action.

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