

A Question of Right: Hermann Conring's *New Discourse on the Roman-German Emperor*

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In his *New Discourse on the Roman-German Emperor* Hermann Conring (1606–1681) argued that the Roman Empire had disappeared from the face of the earth or had at least been reduced to a sorry remnant in the hands of the papacy. Germany was a modern state that existed on entirely independent foundations. Conring's analysis helped to restore a lasting political order without reinvoking principles of universal governance that the Reformation had effectively destroyed. In spite of its brevity and disputed authorship, the *New Discourse* can thus serve as an introduction to one of the main turns on the road from medieval to modern conceptions of political order. Its success raises two questions: Is the history that Conring deployed to make his case still worth telling? And how are we to explain its success in the first place? The answers to those questions go beyond the limits of this article.

IN 1642 A SHORT BOOK entitled *Discursus novus de Imperatore Romano-Germanico* or *A New Discourse on the Roman-German Emperor* was published under the name of Hermann Conring by an unknown printer in an unknown place.¹ The purpose of this article is to draw some attention to that book and its significance for our understanding of early modern European political thought. I will divide my presentation into three parts: first, the interest of the *New Discourse*; second, the argument presented in it; and third, two unanswered questions that follow from this analysis.²

¹Hermann Conring, *Discursus novus de Imperatore Romano-Germanico* (n.p., 1642). The term "discourse" has become something like a registered trademark for a brand of contemporary scholarship so well known that using it to translate the title of Hermann Conring's *Discursus* may raise suspicions that I intend to increase his share of the intellectual market by dishonest means. In order to escape that suspicion I toyed with *A New Account of the Roman-German Emperor* for a while, but then rejected it because it sounds too much like a statement of debits and credits from a Habsburg bank. Unless someone with more imagination than I finds a better translation, it will therefore have to remain *A New Discourse on the Roman-German Emperor*.

²This is not the right place to introduce readers to Hermann Conring's life and works. The indispensable starting point for anyone looking for more information on those matters is Michael Stolleis, ed., *Hermann Conring (1606–1681): Beiträge zu Leben und Werk* (Berlin: Duncker & Humblot, 1983). Also useful is the illustrated catalog of the exhibition that took place at the Herzog-August Bibliothek in 1981: Patricia Herberger and Michael Stolleis, *Hermann Conring, 1606–1681: Ein Gelehrter der Universität Helmstedt* (Wolfenbüttel: Herzog-August Bibliothek, 1981). Ernst von Moeller, *Hermann Conring, der Vorkämpfer des deutschen Rechts, 1606–1681* (Hannover: E. Geibel, 1915), though dated, is still the most complete biography. For a concise recent overview see Dietmar Willoweit, "Hermann Conring," in Michael Stolleis, ed., *Staatsdenker in der frühen Neuzeit*, 3d ed. (Munich: C. H. Beck, 1995), 129–47.

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THE INTEREST OF THE NEW DISCOURSE

To the best of my knowledge no one has paid serious attention to the *New Discourse on the Roman-German Emperor* since the seventeenth century.³ And it is not hard to see why. It is a slight book of less than forty pages that appeared relatively early in Conring's life and was soon overshadowed by larger volumes on the same and many other subjects that he produced over the course of a prolific career.⁴ Moreover, it was published without his consent, and when he learned of its publication, he rejected it sharply—even though it was identical with a work of indisputable authenticity that Conring himself republished late in his life.⁵

Historians with an interest in Conring's ideas have thus had good reason to focus their attention on other works—longer and later works that were indisputably written by Conring and that contain mature statements of his ideas. One thinks, for example, of the magisterial *De Germanorum imperio Romano liber unus* of 1644, an important book that is closely related to the *New Discourse* because it was published only two years later and deals with the same subject, but in more depth and at greater length.⁶ One also thinks of Conring's celebrated attack on Roman law, the *De origine iuris Germanici* of 1643, which made his reputation in the seventeenth century and continues to be responsible for most of the modest fame that he enjoys today because it amounted to the first plausible explanation of the channels through which the practice of Roman law entered Germany in later medieval and early modern times.⁷ Above all one thinks of the *De civili prudentia* of 1662, perhaps

³I have not found more than cursory references to the *New Discourse*, for example, by Moeller, *Hermann Conring*, 94–95. Matters are only slightly better with the *Exercitatio de Imperatore Romano Germanico* (Helmstadt: H. Müller, 1641), a closely related work that is briefly summarized by Robert Knoll, *Hermann Conring als Historiker* (Rostock: Universitäts-Buchdruckerei von Adler's Erben, 1889), 24–26, and Dietmar Willoweit, “Kaiser, Reich und Reichsstände bei Hermann Conring,” in Stolleis, ed., *Hermann Conring* (1983), 324–25. Cf. below, n. 36.

⁴William Ashford Kelly and Michael Stolleis, “Hermann Conring: Gedruckte Werke, 1627–1751,” in Stolleis, ed., *Hermann Conring* (1983), 535–72, list 294 published works. The edition of Conring's *Opera* by Johann Wilhelm Goebel (Brunsvigae: Meyer, 1730; rpt. Aalen: Scientia Verlag, 1970–1973) consists of six monumental folio volumes and an index volume. Even so it still excludes all of Conring's writings on medicine and natural philosophy as well as most of his forays into confessional polemics, which would easily amount to several more folios. Moreover, some of Conring's works, such as his evaluation of the relationship between the city and elector of Cologne, were never published. For eulogies of Conring's productivity see “De Hermann Conringio ejusque scriptis doctorum virorum judicia et testimonia,” compiled by Goebel, ed., *Opera*, 1:xxv–xxxvi.

⁵That work was the *Exercitatio de Imperatore Romano Germanico*, resp. Bogislaus Otho von Hoym (Helmstadt: H. Müller, 1641), reprinted in Hermann Conring, *Exercitationes academicae de republica Imperii Germanici* (Helmstadt: Typis J. Mulleri, 1674), 32–72, and in *Opera*, 1:528–42. Cf. Kelly and Stolleis, “Hermann Conring: Gedruckte Werke,” 540 no. 47. For Conring's rejection of the *New Discourse* see his preface to *De Germanorum imperio Romano liber unus* in *Opera*, 1:27, as well as the preface to his *Exercitationes academicae de republica Imperii Germanici* (1674), sig. :(:)(1 –):(:)(2).

⁶*De Germanorum imperio Romano liber unus* (Helmstadt: H. Müller, 1644), also in *Opera*, 1:26–107, written, at least in part, in order to set a record straight that Conring believed to have been muddled by the unauthorized publication of the *New Discourse*. It may be characterized as an authorized and bigger sibling of the *New Discourse*. Cf. Moeller, *Hermann Conring*, 95–99.

⁷*De origine iuris Germanici commentarius historicus* (Helmstadt: H. Müller, 1643), also in *Opera*, 6:77–202. This has recently been translated as *Der Ursprung des deutschen Rechts*, ed. Michael Stolleis, trans. Ilse Hoffmann-Mecklenstock, Bibliothek des deutschen Staatsdenkens, 3 (Frankfurt: Insel Verlag, 1994), and embellished by an incisive assessment of its importance by Michael Stolleis, “Hermann Conring und die Begründung der deutschen Rechtsgeschichte,” 253–68.

the crowning achievement of a lifetime of reflection on politics and one of the most important statements of political theory to appear in seventeenth-century Germany.⁸ Works like these loom much larger in existing scholarly treatments of Hermann Conring than does the *New Discourse*.⁹

Nonetheless there is much to be learned from reading the *New Discourse*, and some material that would be difficult to learn elsewhere. For first of all, and in spite of Conring's repeated refusals to recognize it as his own work, his own work is precisely what it is, albeit in a sense that needs a more detailed explanation than can be given at this point.¹⁰ More important, and quite apart from the question of authorship, there can be no doubt that it contains his chief arguments about the legal and constitutional relationship between the contemporary German kingdom in which he lived and the ancient Roman Empire whose law he is famous for having subjected to historical criticism. It may lack some of the subtleties and some of the evidence that were going to be included in the *De Germanorum imperio Romano* in 1644, but the subject, the structure, the argument, and sometimes even the choice of words are the same. For all practical purposes the *De Germanorum imperio Romano* is nothing more than a revised and expanded statement of a case that had already been made in the *New Discourse on the Roman-German Emperor*. The *New Discourse* thus is an early, brief, and unvarnished statement of a thesis that was going to remain central to Conring's thinking about the Holy Roman Empire throughout a long and productive scholarly life. Anyone looking for a rapid introduction to Conring's achievements will do well to start there.

In addition, the *New Discourse* helps us to understand the development of Conring's ideas and the obstacles that he encountered in presenting them to a wider public. This is because the basic similarity between the *New Discourse* of 1642 and the *De Germanorum imperio Romano* of 1644 does not hold without exception. There are differences.¹¹ They are few, but they are telling, because they concern the direction in which Conring's argument was leading and the lengths to which he was willing to take it. And it was only in the earlier work, the *New Discourse*, that he took it to its logical conclusion: the Roman Empire had either ceased to exist completely or been reduced to a rather sorry remnant that was now in the hands of the papacy and consisted of the city of Rome and its environs.¹² But though that

⁸*De civili prudentia liber unus* (Helmstadt: H. Müller, 1662), also in *Opera*, 3:280–421; cf. Horst Dreitzel, "Hermann Conring und die Politische Wissenschaft seiner Zeit," in Stolleis, ed., *Hermann Conring* (1983), 135–172. It may be worth reporting that John Jay owned a copy of the *De civili prudentia* that is now preserved in the library of Columbia University—a small but intriguing clue for links between early modern German legal thinkers who are widely ignored and the founders of the American Constitution.

⁹Even these works, however, have not nearly received the attention they deserve—not to mention Conring's substantial medical writings, which have been almost entirely forgotten.

¹⁰For more information see Constantin Fasolt, "A Supposititious Child? The Publishing History of Hermann Conring's *New Discourse on the Roman-German Emperor*" (forthcoming), where the place of the *New Discourse* among the works of Hermann Conring is analyzed in detail.

¹¹There are similar differences between the *New Discourse* and the revised version of the *Exercitatio de Imperatore Romano Germanico* that Conring published in 1674.

¹²*Discursus novus*, c. 52. Since the chapters in the *New Discourse* are mostly short, and since the text was printed in several editions with different paginations, it seems more economical to refer to chapters than to pages. See also below, p. 750.

conclusion followed easily from the principles on which Conring rested his case, it had implications for contemporary politics that were bound to stir up trouble for their author. To declare in the middle of the Thirty Years' War, at a time when Ferdinand II, a Catholic monarch who considered himself to be Roman Emperor, was relying on force of arms to subject Protestant Princes to his rule, that the Roman Empire had ceased to exist or had fallen into the hands of the papacy was to call for, shall we say, unnecessarily hostile attention. Thus, when the unauthorized publication of the *New Discourse* unexpectedly compelled Conring to take responsibility for his ideas in front of a larger audience than he was prepared to face, he retreated. Distancing himself from thoughts he had permitted himself only two years earlier, he disowned the *New Discourse*, reworked its substance into the *De Germanorum imperio Romano*, and took care to soften the edge of his conclusions by insisting that the Roman Empire, sorry remnant though it may very well have been, did most definitely, absolutely, even positively continue to be in the hands of the king of Germany—and whoever said the opposite was a rascal and a fool.¹³

The *New Discourse* thus helps us with a difficulty that is typical for Conring's writings on political issues. Conring was an author with more than the usual degree of circumspection. It is often hard to tell whether he was speaking openly or was reserving his true opinion to himself. One suspects that such self-denying restraint had become a habit ever since, upon returning to Germany from his sojourn as a student in the Netherlands, he had accepted a position at the University of Helmstedt in 1631.¹⁴ Even contemporaries observed that, perhaps precisely because of the boldness with which he often departed from commonly held views, he was accustomed to "dissimulate" so as to avoid offending powerful interests.¹⁵ Respect for, and fear of, the authorities inclined him to stop short of stating his views so sharply that conflict could not be avoided.

More than likely that explains the discrepancies between the *New Discourse* and the *De Germanorum Imperio Romano*. The *New Discourse* thus allows us to catch a glimpse of Conring's mind at a relatively unguarded moment—early in his life,

¹³That was the conclusion of the *De Germanorum Imperio Romano*, chap. 13 §. 27, in *Opera*, 1:107. But even in this work, though in a place less conspicuous than the conclusion, Conring reckoned with the possibility that the Roman Empire had disappeared completely; see below, n. 46.

¹⁴In the Netherlands Conring had enjoyed considerable intellectual freedom and developed great sympathy for Arminianism. At the University of Helmstedt, however, Lutheranism was obligatory—so much so that Conring did not believe that he could speak freely in front of even his most devoted supporters. He bared his soul in a letter written to his mentor Caspar Barlaeus in June 1631, just prior to his return to Germany. The letter is printed and translated into German in Herberger and Stolleis, *Hermann Conring* (1981), 28–29. The scorn poured by Moeller, *Hermann Conring*, 28, on Conring's decision to return to Germany in order to accept a secure position at what was at the time one of the leading German universities, instead of standing up for his convictions and facing an uncertain future, seems a bit out of place.

¹⁵Remembering conversations with Conring, Pufendorf thus commented: "In most respects he agreed with me on the state of Germany and freely shared with me writings of his whose character differs widely from those of the crowd. Nonetheless, even though he expressed himself quite frankly on any number of issues in these writings, it was evident that he kept a great deal to himself in order to avoid offending the powerful or provoking the anger of Catholics"; translated from Conring, *Opera*, 1, sig. a 4v.

before he had been reminded to conduct himself with more circumspection by the glare of publicity and the battles with hostile readers into which he was going to find himself being drawn over and over again. At the time he was still prepared to argue that the Roman Empire had disappeared from the face of the earth. Not so later in his life. That helps us to understand precisely where in the 1640s a young professor at the University of Helmstedt with radical ideas about the relationship between the German Kingdom and the Roman Empire drew the line between what he allowed himself to speculate in private and what he was willing to announce to the public. Put more generally, it helps us to identify where in mid-seventeenth-century Germany the lines of constitutional debate were drawn.

Even though the *New Discourse* was published without Conring's consent and in spite of his denials, it continued to circulate under his name. It was read, reread, and in the mid-1650s it was even republished in yet another unauthorized edition that conflated the *New Discourse* with certain passages taken from the *De Germanorum Imperio Romano*.¹⁶ According to Conring's own testimony, that version was read in France, Italy, Spain, and England.¹⁷ Evidently the *New Discourse* met a real demand. At last that seems to have persuaded Conring himself that, instead of ignoring, denouncing, or attempting to suppress pirated editions, he was better advised to compete with them by publishing a version authorized by himself.

That is precisely what he did towards the end of his life. He assembled ten dissertations that his students had written about various aspects of the constitution of the Holy Roman Empire between 1641 and 1669, including the *New Discourse*, reviewed them, revised them, sometimes extensively, and published them as a collection under the title *Exercitationes academicae de republica Imperii Germanici* in 1674.¹⁸ There interested readers can find the authorized version of the *New Discourse* that Conring decided to put forward in the end.¹⁹

¹⁶This is the *De Imperatore Romano Germanico discursus historico-politicus* contained on pp. 275–309 of the *De Imperii Germanici republica acroamata sex historico-politica* (Ebroduni: Apud Societatem, 1655; the frontispiece preceding the title page has 1654 as the year of publication). I have not been able to identify the nature of the “society” named as the publisher. The *De Imperatore Romano Germanico discursus historico-politicus* is not simply a copy of the *New Discourse*, but a composite containing chapters 1–5 and 24–56 of the *New Discourse* and chapters 2–5 of *De Germanorum Imperio Romano*. Apart from the *De Imperatore Romano Germanico discursus historico-politicus* the *Acroamata sex* contained dissertations by Conring's students on the imperial estates in general (1–23), the cities (25–76), the dukes and counts (77–96), the electors (97–120), the bishops (121–196), and the imperial courts (197–274).

¹⁷Conring, *Exercitationes academicae de republica Imperii Germanici*, sig. : () : (2).

¹⁸Hermann Conring, *Exercitationes academicae de republica Imperii Germanici infinitis locis mutatae & auctae, inque unum volumen redactae* (Helmstadt: Typis J. Mulleri, 1674). The preface he wrote on that occasion is a gold mine of information about his relationship to his students and his attitude towards the *New Discourse*. In addition to the *New Discourse* and the six dissertations that had already been included in the *Acroamata sex* of 1655, the *Exercitationes academicae* included three new dissertations that had first been published between 1666 and 1669. They deal with the imperial diets, the business conducted at such diets, and imperial *officiales*, i.e., the prince electors.

¹⁹Under the title *Exercitatio de Imperatore Romano Germanico* in Conring, *Exercitationes academicae de republica Imperii Germanici* (1674), 32–72. This is the version that was reprinted by Goebel in *Opera*, 1:528–542. For differences between this authorized version and the unauthorized one of 1642, see Fasolt, “A Supposititious Child?” (forthcoming).

Over the objections of its author, who would rather have seen it vanish from the face of the earth, the *New Discourse* thus turned out to be something of a success. It was published twice against his will and once by himself, though under a different title. It had a career that is worth studying in its own right because it throws a bright light on at least three subjects: the demand of a learned audience for writings on the imperial constitution like the *New Discourse*; the intricate questions lurking behind the apparently simple concept of authorship; and the hard times that Hermann Conring had in trying to exercise the rights that the concept of authorship is supposed to entail.

Finally, and most important, the brevity of the *New Discourse* and its early date are something of an advantage for anyone seeking to understand what precisely Hermann Conring set out to do and why it mattered in the broad scheme of early modern European history. The *New Discourse* contains the crucial ingredients in his theory of German law and the German state, but only the crucial ingredients. It does not encumber them with the details that did as much to complicate his case as they helped to bolster it later on. It shows with marvelous lucidity how he translated a question about constitutional law into a question about history and thus redrew the boundary between questions of right and questions of fact. It underscores both the simplicity and the extraordinary conceptual and historical significance of that single step—a step that seems so obvious from hindsight and was so difficult to take at the time. It allows us to perceive why history began to matter in the early modern period as it had not mattered in the middle ages, and how deeply its origins were rooted in the study of law.²⁰

The *New Discourse* can therefore serve as an introduction, not only to the thought of Hermann Conring and his preoccupation with the Holy Roman Empire, but also to one of the main turns on the road from medieval to modern conceptions of political order. Far more briefly, but just as directly as Bodin's *Method for the Easy Comprehension of History*, it enters into the question how, in the aftermath of the Reformation, a lasting political order could be restored without reinvoking principles of universal governance that the Reformation had effectively

²⁰ The standard treatment of the relationship between modern approaches to history and the study of law in Germany, but with an emphasis on the period following Conring's life, remains Notker Hammerstein, *Jus und Historie: Ein Beitrag zur Geschichte des historischen Denkens an deutschen Universitäten im späten 17. und 18. Jahrhundert* (Göttingen: Vandenhoeck & Ruprecht, 1972). For a more recent study with a wider chronological frame of reference see Ulrich Muhlack, *Geschichtswissenschaft im Humanismus und in der Aufklärung: Die Vorgeschichte des Historismus* (Munich: C. H. Beck, 1991). For France Donald R. Kelley, *Foundations of Modern Historical Scholarship: Language, Law, and History in the French Renaissance* (New York: Columbia UP, 1970), furnishes the most accessible general treatment, while Julian H. Franklin, *Jean Bodin and the Sixteenth-Century Revolution in the Methodology of Law and History* (New York: Columbia UP, 1963), focuses on perhaps the single most important figure. For England similar questions have been investigated by J. G. A. Pocock, *The Ancient Constitution and the Feudal Law: A Study of English Historical Thought in the Seventeenth Century*, rev. ed. (Cambridge: Cambridge UP, 1987, first published 1957), and for Italy Domenico Maffei, *Gli inizi dell'umanesimo giuridico* (Milan: Giuffrè, 1956), is still illuminating.

destroyed.²¹ In different places and at different times that question had to be answered in different ways. Conring's answer was predicated on circumstances in Germany in the middle of the seventeenth century. Germany was the place where the Reformation had started in the sixteenth century; it was also part of the Holy Roman Empire; it was divided into a multitude of states ranging in size from middling to tiny that made political centralization as practiced by the monarchs of England and France impossible; and it had only recently given a standing to Roman law as high, not only in theory but also in practice, as France and Italy had been giving it for much longer, if not in theory, most certainly in practice, and as England was never going to give it at all. Hence, in Germany, allegiance to the kind of universal order that was embodied in the claims of Roman law—the kind of order that is generally, though inaccurately, referred to as medieval—played a very different role than it did elsewhere.²² Hence the modern relationship between law, history, and politics was configured differently in Germany than it was in other places. Hence also Conring's writings look quaintly antiquarian by comparison with those of Jean Bodin. But it may be worth saying that the writings of Jean Bodin themselves when actually inspected look quaintly antiquarian. More important, no matter how different the answers and the circumstances from which they arose in Germany, Italy, France, or England, the principles on which they were founded are in all circumstances more remarkable for their similarity than for their differences. At bottom the question was everywhere the same: how could public order be restored in the absence of the religious sanctions that had at least in theory guaranteed peace until the Reformation? And at bottom the answers, including Conring's answers, turned everywhere on a new perspective on history and the realignment of divine, natural, and positive law with historical facts that was enshrined in the theory of sovereignty.

That is the overarching historical context in which the *New Discourse* deserves to be interpreted. It sought to secure the legitimacy of the German state on its own footing, in the face of confessional turmoil, and without having to rely on Roman law. Instead of accepting the claims of the Roman Empire as a normative reality, it sought to reduce them to a fact of passing, indeed, past historical significance. It thus gives us a means of studying an important moment in the disassemblage of medieval, and their transformation into modern, conceptions of order that took place all over early modern Europe. And it is a telling instance of that transformation in a particular setting whose importance for our understanding of the underlying historical process exceeds by far the attention it is ordinarily given in studies

²¹Jean Bodin, *Methodus ad facilem historiarum cognitionem* (Paris: Apud Martinum Juvenem, 1572), in Jean Bodin, *Oeuvres philosophiques*, ed. Pierre Mesnard (Paris: Presse universitaire de France, 1951), 105–269. Translated as *Method for the Easy Comprehension of History* by Beatrice Reynolds (New York: Columbia UP, 1945).

²²It should be added that allegiance to a universal order played a more important role in England and France than is commonly recognized in the secondary literature, which has, on the whole and until recently, relentlessly focused on those elements of the time that point towards the emergence of a modern political order. For a different perspective see, e.g., Franz Bosbach, *Monarchia universalis: Ein politischer Leitbegriff der frühen Neuzeit* (Göttingen: Vandenhoeck & Ruprecht, 1988).

of early modern European legal and political thought, namely, the Holy Roman Empire. In that sense it throws light on a subject of European dimensions.

THE ARGUMENT OF THE NEW DISCOURSE

The *New Discourse* opens with a few straightforward questions: Was the king of Germany entitled to call himself Roman Emperor or was he not? Had the Roman Empire ceased to exist or had it not? And if it had ceased to exist, had all of its rights expired as well or had they been transferred to someone else who continued to hold them at present?²³

These questions went straight to the constitutional foundations of the Holy Roman Empire, and thus to the foundations on which the house of Habsburg had established its rule. They also struck at the core of that vision of history according to which an unbroken continuity extended from the present backwards to the times when Augustus had founded the Roman Empire and when Christ had been born.²⁴

The received wisdom, as Conring saw it, gave an obvious answer to the questions he raised.²⁵ Of course the Roman Empire continued to exist, chiefly in Germany and Italy, and of course the king of Germany was entitled to call himself Roman Emperor. The Roman Empire was supposed to endure until the end of the world. Since the end of the world had not yet come, the Roman Empire could not very well have ceased to exist either.²⁶ But Conring disagreed with the received wisdom and he proceeded to explain why.

His first step was to identify the limits of the Roman Empire in antiquity.²⁷ Here, too, there was a received wisdom: the Roman Emperor had ruled the entire world. Bartolus (1313/14–1357) himself, perhaps the greatest jurist of the middle ages, “was so certain of this truth that he did not hesitate to brand conflicting views as heresy.”²⁸ But Conring thought that Bartolus was wrong. To prove his point he

²³ *Discursus novus*, chaps. 1–3.

²⁴ In lieu of many other possible references, see Arno Seifert, *Der Rückzug der biblischen Prophetie von der neueren Geschichte: Studien zur Geschichte der Reichstheologie des frühneuzeitlichen deutschen Protestantismus* (Cologne: Böhlau, 1990), which pays special attention to Conring's views on these issues.

²⁵ *Discursus novus*, chap. 4.

²⁶ Conring did not directly address prophetic statements about the expected coincidence between the demise of the Roman Empire and the end of the world until chapter 54.

²⁷ *Discursus novus*, chaps. 5–13.

²⁸ “Usque adeo enim verum id esse [i.e., totum terrarum orbem Romanis olim paruisse, vel certe parere debuisset], ut alios nunc taceam, credidit olim magnum illud Iuriconsultorum lumen Bartolus, ut non dubitaverit adversam sententiam haereseos postulare.” *Discursus novus*, chap. 5. In spite of its brevity, this reference to Bartolus is absolutely crucial for understanding Conring's frame of reference. It announces his intention to break with what one may call the main tradition in legal thought. In addition to Bartolus, Conring referred to Roman law, the Gospel of Luke, Petronius, and Dionysius of Halicarnassus. With the exception of the reference to Dionysius of Halicarnassus all of these references were borrowed, without acknowledgment, from Hugo Grotius, *De iure belli ac pacis*, book 2, chapter 22, section 13, ed. James Brown Scott, trans. Francis W. Kelsey (Washington, D.C.: Carnegie Institution, 1913–1925), 2:551–52. Grotius for his part, but with acknowledgment, had taken the references to Roman law and the Bible from Bartolus, while adding the reference to Petronius. Cf. Bartolus on *Digesta* 49.15.24, s.v. *hostes*, nos. 6–7, in *Opera* (Venetiis: Apud Iuntas, 1570–1571), 6:228r, col. a. The

divided the issue into two parts: the question of whether or not the Romans had ruled the world in fact, and the question of whether or not the Romans had the right to rule the world.

As far as the question of fact was concerned, Conring thought the answer was obvious: the Roman Empire had not even included all of Europe, much less the new world that had only recently been discovered. The Romans could not possibly have ruled the entire world in fact.²⁹

As far as the question of right was concerned, Conring began by distinguishing three sources from which, in principle, the Romans could have obtained such a right. These sources, he maintained, were the law of God as contained in the Bible, the law of nature and nations, and the civil law. Now concerning divine law it was obvious that nowhere in the Bible had God revealed any law that endowed the Romans with the right to rule the world. Concerning natural law it was obvious that there was no means by which a Roman right to rule the world could have been deduced from "the known principles of nature."³⁰ And concerning human law it was obvious that the Romans could not really have derived the right to rule the world from a law of which they were themselves the authors: "Even a child can see that the civil law of the city of Rome could not possibly have given the Romans the right to rule the world, for how could the entire world be bound by a law that was established by a single people in their city?"³¹ Not even the Romans themselves, moreover, had ever made any such claims. They had been careful to distinguish their civil laws from natural law, precisely because they recognized that only the latter was universally valid, but not the former. Moreover, whatever rights they claimed in places where their civil law was valid, which is to say, within the boundaries of their empire, were not written in stone. They had been acquired, and thus they could be lost in exactly the same ways in which such rights were lost and acquired all the time: by conquest, contract, donations, and similar means.³² In sum, there was no source at all from which the Romans could have derived the

Roman law supporting the reference to the emperor as *dominus mundi* is *Digesta* 14.2.9. What Bartolus actually thought about these matters remains the subject of a debate transcending the limits of this article. Compare, e.g., Marcel David, "Le Contenu de l'hégémonie impériale dans la doctrine de Bartole," in *Bartolo da Sassoferrato: Studi e documenti per il VI centenario* (Milan: Giuffrè, 1962), 2:199–216, with Quentin Skinner, *Foundations of Modern Political Thought* (Cambridge: Cambridge UP, 1978), 1:10, or Dietmar Willoweit, *Rechtsgrundlagen der Territorialgewalt* (Cologne: Böhlau, 1975), 25–26.

²⁹ Contrary to the impression given by Conring, Bartolus himself was not only perfectly well aware that the Roman Emperor had never ruled the whole world as a matter of fact, but even used the distinction between questions of right and questions of fact to excellent purpose in his commentary on the opening law in Justinian's *Code* that is generally referred to as the law *Cunctos populos*; cf. Bartolus on *Codex* 1.1.1, in *Opera*, 7:3v, col. a, no. 1. See Cecil N. Sidney Woolf, *Bartolus of Sassoferrato* (Cambridge: Cambridge UP, 1912), 21–22. Again the interpretation of Bartolus' meaning is disputed, and the relationship between Conring and Bartolus too complex to be explored here.

³⁰ "Tale enim jus Naturae aut gentium nemo hominum ex principiis natura notis hactenus probavit vel probare conatus est, nec probari videtur posse." *Discursus novus*, chap. 11.

³¹ "Iure porro civili urbis Romae non potuisse Romanis jus aliquod competere in terrarum orbem vel puero liquet. Qui enim totum terrarum orbem obliget, quod unus populus sua in urbe constituit?" *Discursus novus*, chap. 11.

³² *Discursus novus*, chaps. 12–13.

right to rule the world. They had not ruled the world in fact and they had not had the right to rule it either.

Next Conring turned to the history of the early middle ages in order to show that by the eighth century the Romans had lost most of whatever rights they had once held in western Europe.³³ That was certainly true for Germany itself, which the Romans had never ruled to begin with. But it was also true for England, France, and Spain, where they had been thoroughly defeated by early medieval conquerors of Germanic extraction.

Italy was more complicated because it was divided into three different areas. The north was controlled by the Lombards, the middle by the bishop of Rome, and the south by the Eastern Roman Empire.³⁴ But though there was some dispute about the precise location of the boundaries between the three parts of Italy, one thing was certain: neither the kingdom of the Lombards in the north nor the areas under the control of the Eastern Roman Empire in the south could fairly be considered part of the Western Roman Empire. The Lombards ruled the north by right of conquest, and the Eastern Roman Empire—well, it was Eastern and not Western. By the eighth century the Western Roman Empire had thus shrunk to the small part of central Italy that remained under the direct control of the bishop and the people of Rome. That part, thought Conring, and nothing more than that part was what Charlemagne acquired in the famous ceremony on Christmas day A.D. 800 when Pope Leo III and the citizens of Rome acclaimed him as Roman Emperor.³⁵

By this stage Conring had thus given a preliminary answer to the questions posed at the beginning of the *New Discourse*. At the time of Charlemagne the Roman Empire still existed in western Europe, but it had shrunk to the area surrounding Rome.³⁶

What about the times following Charlemagne? It was perfectly conceivable that the Roman Empire could have begun to grow again. It could, for example,

³³*Discursus novus*, chaps. 14–25.

³⁴*Discursus novus*, chap. 20.

³⁵*Discursus novus*, chaps. 26–28, contains the arguments for Conring's sharp limitation of the significance of Charlemagne's imperial coronation. Crucial is Conring's insistence that Charlemagne ruled only the middle part of Italy as Roman Emperor, and that he ruled France and Germany not as emperor but as king, by rights that were entirely separate from those of the Roman Empire and derived from the events of the earlier middle ages.

³⁶I do not understand why Knoll, *Hermann Conring als Historiker*, 25, in his summary of Conring's *Exercitatio de Imperatore Romano Germanico* (Helmstadt: H. Müller, 1641)—the reader may remember that the text of the *Exercitatio* is identical with the *Discursus*—why Knoll maintains that Conring denied any continuity between the ancient Roman Empire and the empire founded by Charlemagne: "In Folge dessen steht das neu gegründete Kaiserreich in keinem inneren Zusammenhang mit dem früheren, sondern muß in jeder Beziehung von ihm getrennt werden und zwar wird diesem am besten dadurch Ausdruck gegeben, dass das römische Kaiserreich deutscher Nation eine selbständige Chronologie hat." Knoll's opinion is shared by Willoweit, "Kaiser, Reich und Reichsstände bei Hermann Conring," 325: "Zu diesen Ergebnissen gelangt Conring durch den sorgfältigen Nachweis, dass zwischen dem antiken römischen Reich und der seit Karl d. Gr. und Otto d. Gr. erneuerten Kaiserwürde kein Zusammenhang besteht." But Conring proved precisely the opposite: the imperial dignity of Charlemagne and Otto was identical with its ancient counterpart. The only change was that it had been sadly reduced in scope. Conring merely denied that Charlemagne's rights as Roman Emperor were identical with his rights as king of the Franks and Lombards. He did not deny the continuity between the Roman Empire existing in Charlemagne's time and that which had existed in antiquity.

have reconquered some of the areas it had lost to the Germans. Or the Germans and the Franks could have subjected themselves to the Roman Emperor of their own accord.

In the following chapters Conring therefore went on to show that the pattern established by the time of Charlemagne applied even after the collapse of the Carolingian Empire.³⁷ He thought it was obvious that France, Spain, England, Sweden, and other states in the North and East of Europe never subjected themselves to the Roman Emperor and were never conquered by him either.³⁸ Thus no one could have reasonably claimed that those areas were part of the Roman Empire. But the same was not so obvious in the case of Germany and Italy.

Germany and Italy required rather more careful investigation, because ever since the renewal of the Roman Empire under Otto the Great the kingdoms of Germany and Lombard Italy had been linked to the Roman Empire, or what was left of it, by an everlasting alliance.³⁹ Moreover, unlike their Carolingian predecessors, the kings of Germany and Italy had only rarely taken the trouble to distinguish their rights as kings from their rights as Roman Emperors. Italy and Germany had regularly been referred to as the Roman Empire, as if there had been only a single state, and the rulers of Italy and Germany had regularly been referred to as Roman Emperors, as if there had been only a single ruler. In theory that could have meant, and in the view of many it did in fact mean, that Germany and Italy had been fused with the Roman Empire. But in Conring's view the facts were different.

The rulers of Italy and Germany had established their states on foundations that had nothing to do with the Roman Empire. It was a mere historical accident that they had been combined under the control of a single person who also happened to have gained ascendancy over the remnants of the Roman Empire. It did not mean that they had lost their separate existence in constitutional law. If Germany and Italy had ever subjected themselves to the Roman Empire, that would have been an act of major importance that could not have been performed without the consent of the estates. But the estates had never given their consent to any such act. Hence it was clear that Germany and Italy had retained their separate existence as autonomous states. Perhaps the memory of their separate existence had not always been as clearly preserved as would have been desirable. But for all who cared to take a closer look it was plain to see that the rulers of Germany, Italy, and the Roman Empire were not crowned once and with a single crown, but in three different places, in Aachen, Pavia, and Rome, and with three different crowns, each of which nicely symbolized a different state.⁴⁰

That cleared the way for a conclusive answer to the question about the relationship between Germany and the Roman Emperor in modern times: the emperor had no right to rule over Germany at all and he had no right to rule over

³⁷*Discursus novus*, chaps. 29–41. In these and the following chapters the Eastern Roman Empire, and consequently the distinction between Eastern and Western Roman Empire, largely disappears from sight until chapter 55, where Conring mentions the Eastern Roman Empire's inglorious demise under the onslaught of the Ottomans in the fifteenth century.

³⁸*Discursus novus*, chap. 29.

³⁹*Discursus novus*, chaps. 30, 39.

⁴⁰*Discursus novus*, chap. 40.

Italy either, except for that small area around the city of Rome to which the Western Empire had long since been reduced.⁴¹ Only one monarch had the right to rule Germany, and that was the king of Germany. If the king of Germany happened to be elected Roman Emperor as well, that was just fine, but though it added a certain touch to his dignity, it added nothing at all to his rule over Germany. Germany and Lombard Italy were sovereign states ruled by their own kings. They did not belong to the Roman Empire and they were not subject to Roman law. If anyone had been subjected to anyone else, it was not Germans to Romans but the other way round.

A second conclusion followed almost seamlessly from the first: the pope had no right to interfere in the affairs of Germany.⁴² The pope was not a citizen of Germany, but a citizen of Rome. Indeed, he was a particularly distinguished citizen of Rome. As such he did have certain rights in the Roman Empire. Those were precisely the rights that he had exercised when, together with the other citizens of Rome, he had conferred the Roman Empire on Charlemagne. Perhaps he even retained the right to remove the Empire from Germany. That right was doubtful, to be sure, seeing that the Romans had surrendered the right to elect the emperor to the Germans and the Germans had never given it back. But there was no reason not to be magnanimous and resolve the doubt in favor of the pope, at least for the time being.⁴³ For whatever rights the pope might have resumed as a result, the Empire no longer amounted to very much. Hence the rights of the pope did not amount to very much either and they certainly included no rights at all over Germany itself.

That left the question of whether or not the Roman Empire continued to exist at all.⁴⁴ Though reduced in size, it had definitely continued to exist at the time of Emperors Otto the Great, Otto III, and Henry III, who had exercised full imperial rights over the city of Rome, including the right to a decisive say in the election of the bishop of Rome. But, Conring thought, the fate of the empire had taken a turn for the worse when Pope Gregory VII began to claim control over the empire for the papacy. Gregory's claims were as unprecedented as they were unfounded, and later emperors had done their best to reject them. But they had prevailed. For more than four hundred years the power of the emperor had thus not been exercised in Rome at all. Conring's conclusion in chapter 52 is worth quoting in full:

I am not now going to analyze whether four hundred years of possession is enough for the popes to have acquired a genuine right over what they first took by force and crime, especially since in all of that time few emperors have disputed the case. But this, at least, seems certain: if after

⁴¹*Discursus novus*, chaps. 42–44.

⁴²*Discursus novus*, chaps. 45–47.

⁴³In *De Germanorum Imperio Romano*, chap. 10 §. 23–29, in *Opera*, 1:80–82, Conring was less magnanimous. There he asserted, on the basis of a complicated analysis of several documents whose authenticity had been disputed by Baronius, that the Roman Empire had been surrendered to Germany for good, and that no one was in any position to take it back.

⁴⁴*Discursus novus*, chaps. 48–52.

so many years of prescription our kings and emperors have lost all those true and ancient imperial rights, then there is no longer any reason why some of them should vainly boast I know not what lordship over the world or the city of Rome, much less, why emperors elect should at great expense and in overwhelming danger march into Italy in order to obtain the imperial crown from the Roman bishop. The conclusion is not difficult to perceive: since the Eastern Roman Empire has long since been destroyed by the Turks and hardly anything of the Western Empire is left to our emperors except the imperial title, it is perhaps not wrong to affirm that either the Roman Empire has perished completely or, if you put aside the question of whether or not the papacy had the right to usurp the imperial title and confer it on others, that the imperial power is actually in the hands of the Roman Pope.⁴⁵

Here was Conring's answer to the chief question that the *New Discourse* had raised. Did the Roman Empire continue to exist today? That depended on your perspective. The eastern part of the Empire had been destroyed by the Turks and of the western part nothing was left except the title. From that point of view the Roman empire had disappeared completely. On the other hand you could argue that, though the papacy had gained control over the western Empire by usurpation, its rights had been made legitimate by four hundred years of prescription. From that point of view the imperial power did continue to exist, albeit in the hands of the papacy and sadly reduced in scope.⁴⁶ But in neither case was there any reason why the king of Germany should be regarded as Roman Emperor, much less as lord of the world. Kings of Germany who went to Rome in order to obtain a title

⁴⁵"Non disputabo nunc, an quadrigentorum annorum possessione id quod initio per vim et scelera peperunt sibi Pontifices nunc vere suum fecerint, praesertim quum tanto temporis spacio pauci Caesares idipsum videantur in controversiam vocasse; id certum videtur, si tot annorum praescriptione perierint nostris Regibus et Caesaribus omnia vera illa et antiqua Caesarum jura, non esse amplius quur vane jactent nonnulli nescio quod orbis aut Urbis Romae dominium, multo minus nunc esse magnis sumptibus et ingenti periculo in Italiam proficiscendum Caesaribus electis, quo a Romano Pontifice Caesaream coronam consequantur. Quin imo haud obscure hinc est dispicere, cum Orientale Imperium Romanorum per Turcam pridem sit destructum, nec Occidentalis quidquam pene supersit apud Caesares praeter nomen Imperatorium, haud injuria fortassis posse affirmari, vel Imperium Romanum funditus periisse, vel vero Papam Romanum reapse frui nunc potestate Imperatoria, si demas licentiam titulum illum usurpandi, aut in alium conferendi." *Discursus novus*, chap. 52. In chapter 52 of the revised edition of the *Exercitatio de Imperatore Romano Germanico* of 1674, Conring turned the conclusion on its head by adding the phrase "which cannot be admitted by any means" ("quod tamen neutiquam admitti potest") in parentheses immediately following the words "all those true and ancient imperial rights" ("omnia vera illa et antiqua Caesarum jura").

⁴⁶In the *De Germanorum Imperio Romano* and in his revised edition of the *Exercitatio de Imperatore Romano Germanico* of 1674, Conring insisted that the rights of the papacy were unfounded and that the Empire, if it continued to exist at all, remained in the hands of the German king: "Since the Popes had no right to remove the imperial power from themselves and the city of Rome, the imperial rights that were in effect until the times of Hildebrand evidently remain intact today, no matter how strong a blow the Popes may have struck against them." *De Germanorum Imperio Romano*, chap. 13 §. 27, in *Opera*, 1:107. But even there he allowed the possibility that the Roman Empire had disappeared entirely: "If, however, by 'Roman Empire' you mean that vast commonwealth whose rights belong to the city of Rome, as was once the case, that Roman Empire has altogether ceased to exist a long time ago." *De Germanorum Imperio Romano*, chap. 11 §. 12, in *Opera*, 1:89.

that was purely ceremonial from a spiritual ruler with a dubious right to bestow any such title were wasting time and money.

In the last three chapters of the *New Discourse* Conring summed up his case by answering three chief objections, one in each chapter.⁴⁷ These chapters are relatively brief, but they are important from a theoretical point of view.

First, it could be argued that his case conflicted with the Bible, because the Bible had been taken to prophesy that the Roman Empire would last until the end of the world.⁴⁸ That objection was founded on a certain interpretation of the book of Daniel, reinforced by the Apocalypse and by what Conring loosely termed the letters of the Apostles.⁴⁹ Daniel had predicted that four monarchies were going to succeed each other in ruling the world, and the common wisdom was that the fourth of those monarchies was identical with the Roman Empire. But once again the common wisdom was wrong in Conring's view. There had been many more empires than just four, and "the whole idea that there will be only four great monarchies or world empires is more of a rumor than a fact."⁵⁰ Besides, Daniel had not even mentioned the Roman Empire, nor could he have mentioned it, seeing that he had lived long before the Roman Empire came into existence. With a few words Conring thus disposed of one of the more successful doctrines ever invented to shore up Roman imperial ideology with Biblical texts.⁵¹

Second, it could be objected that Conring's case violated Roman law because Roman law had given the Roman Emperor the right to rule the world.⁵² That was an objection that Conring had already disposed of at the very beginning of his treatise.⁵³ Now, having amassed enough historical evidence to substantiate the principles he had enunciated earlier, he returned to it with a vengeance. There was only one premise on which Roman law could be used as an objection to his case, namely, that the emperors of today enjoyed the same rights as the emperors of the past:

That is precisely the kind of argument on which a great many professors of Roman law have relied from the times of Emperor Lothair down to our own age. Some of those professors are convinced that whatever once belonged to Emperor Justinian or even to Emperor Augustus must still

⁴⁷*Discursus novus*, chaps. 54–56.

⁴⁸*Discursus novus*, chap. 54. Conring had already mentioned divine law as a possible objection to his case in chapter 11, but there he had not dealt with Biblical prophecies.

⁴⁹Next to the Apocalypse, which resumes the imagery of Daniel, Paul's second letter to the Thessalonians is the main source for New Testament predictions about the end of the world.

⁵⁰"Totum illud de non nisi quatuor magnis futuris monarchiis seu Imperiis mundi, plus habet famae quam veri." *Discursus novus*, chap. 54.

⁵¹How radical and (relatively) novel this aspect of Conring's case was is put into high relief by Seifert, *Der Rückzug der biblischen Prophetie*. Let it be noted, however, that there is a marked difference between Conring's unequivocal rejection of the prophecy of Daniel and the hesitant language with which he accepts the predictions of the New Testament. In the *New Discourse* he remains more than vague about the question how precisely the predictions of the New Testament are to be interpreted, much less how they are to be reconciled with his rejection of the prophecy of Daniel.

⁵²*Discursus novus*, chap. 55.

⁵³*Discursus novus*, chap. 11.

belong to our emperors today. Now that sort of teaching is certainly good for starting wars, promoting turmoil, and overturning the state. For, if everything is to be measured against the conditions of the age of Augustus, not only our own Germany but practically the whole world must be turned upside down.⁵⁴ But the reasoning of those professors is utterly frivolous, to put it mildly. It has no force at all—unless, of course, you assume that the people and emperor of Rome could not possibly have lost any of their rights in a legitimate way, or that every single piece in the body of Roman laws is founded on the law of nature and therefore true for all times. But such an assumption is completely unfounded. Most Roman laws are based on imperial constitutions, which means that they are positive laws. Any free state can therefore reject them or accept them as it pleases. And controversies between states cannot be settled on the basis of those laws either, as the great Hugo Grotius observes so well in the preface of his *De iure belli ac pacis* in response to Fernando Vázquez. It is simply silly to believe that someone who succeeds someone else in name or some other way must necessarily also succeed to rights that may have been in effect as long as hundreds or thousands of years ago.⁵⁵

Finally, it could be objected that Conring was belittling the dignity of the emperor because he denied the emperor's right to rule the world and exempted even tiny states from his control by allowing them their own sovereignty.⁵⁶ The response to that objection was that the dignity of the empire hardly depended on the possession of a mere title. It depended on the actual power possessed by the kings of Germany. That power had always been, and still remained, considerable, regardless of whether you judged it by the extent of the realm of Charlemagne or that of Otto the Great. Hence Conring concluded:

⁵⁴Note that, at least for the sake of polemics, in the present context Conring was willing to speak just as loosely about "the whole world" as those "professors of Roman law" whom he blamed for failing to recognize the limits of the Roman Empire.

⁵⁵"Eo argumenti genere usos quidem perquam multos, a Lotharii Caesaris usque temporibus ad nostram hanc aetatem, eos qui Romani juris doctrinam professi sunt; quorum nonnullis pene persuasum est, omnia omnino illa competere hodieque Caesaribus nostris, quae olim Iustiniano imo Augusto Imperatori convenerunt. Verum haec quidem doctrina apta est concitandis bellis, movendis tumultibus, evertendae reipublicae. Si enim omnia ad illam faciem Augustaei aevi sunt componenda, non haec tantum nostra Germania sed pene totus orbis erit commovendus. Est autem tota illa colligendi ratio frivolola, ne quid dicam gravius. Nulla certe illi vis inest, nisi pro confesso et certo sumas: populum Caesaremque Romanum nihil potuisse jure amittere, aut vero omne quod in corpore illo Legum Romanarum reperitur id ex jure naturae venire adeoque aeternae esse veritatis. Quae omnia longe sunt falsissima. Sane cum jura illa pleraque valeant ex constituto sintque positiva, uniuscujusque est liberae reipublicae ea hactenus vel rejicere vel admittere: eoque nec rerumpublicarum controversiae recte ex illis possunt decidi, ut optime post Ferdinandum Vasquium observavit summus vir Hugo Grotius *praef. ad libr. de jure belli ac pacis*. Stultum vero est, omnem, qui in nomen aut aliquo modo succedit in locum, eundem etiam in jura que ante aliquot centum aut mille annos obtinuerunt, succedere." *Discursus novus*, chap. 55. Cf. Hugo Grotius, *De iure belli ac pacis libri tres*, "Prolegomena," par. 55, ed. B. J. A. de Kanter-van Hettinga Tromp (Aalen: Scientia, 1993), 26.

⁵⁶*Discursus novus*, chap. 56.

If ever since the eighth century all other states have yielded first place to Germany and its kings or emperors, they surely did so with good reason. Since this dignity and the privilege of the first rank stem not so much from the imperial title as from the real extent of the Empire, and since Germany's possession of this honor has not been contested up to now, the rights of the German kingdom will remain intact even if you take the name of Emperor completely away.⁵⁷

The *New Discourse on the Roman-German Emperor* thus closed with an implicit invitation to put an end to a long story and cut the age-old ties between Germany and the Roman Empire once and for all.

TWO UNANSWERED QUESTIONS

It is hard for me to describe the mixture of surprise, pleasure, and amusement that I felt when I read the *New Discourse* for the first time. I had not known what to expect, but I had certainly not expected to find something I already knew. It therefore took me a while to recognize what I was reading: it was the history I had been taught as a child in a German Gymnasium.⁵⁸

To be sure, there were differences in detail and scope. The *New Discourse*, after all, is not much more than an outline. It left out things I had been taught. It also mentioned things I had not been taught. And none of my teachers had ever supported Conring's conclusion that in early modern times the Roman Empire consisted of the area surrounding the city of Rome. But those are technical quibbles.

What mattered was the overall impression. There they all were: the Ostrogoths and the Visigoths, the Lombards and the Exarchate, the Franks and the Papacy, the imperial coronation of Charlemagne in 800, the collapse of the Carolingian Empire, the revival of the Empire under Otto the Great, the Investiture Controversy, the failure of the Staufan emperors to reverse the ascendancy of the papacy since Gregory VII, and so on. The names, the events, the turning points, the heroes and the villains—all of them were part of an old and familiar story that I had not heard in a long time and that I had not expected to find in a text from the middle of the seventeenth century.

There was only one important difference between the story that Conring told and the one that I had been taught in school: Conring's was more interesting. Why? Because it was told for a good reason. The reason consisted of the question with

⁵⁷"Denique certum est, ab annis septingentis nullam rempublicam non ultro semper Germaniae ejusque Regibus aut Caesaribus primum locum concessisse. Itaque quum dignitas haec et προεδρία non tam a Caesareo titulo quam ab ipsa amplitudine Imperii veniat, et vero Germanicum regnum in quieta ejus honoris possessione hactenus fuerit, manifestum est, etiam si tollas omne Caesareum nomen, jus tamen suum Germanico regno permansurum integrum." *Discursus novus*, chap. 56. In chapter 56 of the revised edition of the *Exercitatio de Imperatore Romano Germanico* of 1674, Conring added the phrase "and that would be the greatest sacrilege" ("quod summum fuerit nefas") in parentheses immediately following the words "even if you take the name of Emperor completely away" ("etiam si tollas omne Caesareum nomen").

⁵⁸The Staatliches Beethoven-Gymnasium in Bonn, to be precise.

which it opened: did the Roman Emperor have the right to rule Germany? As far as I can remember that question had never been mentioned in my school. It had perhaps not even occurred to my teachers, understandably so, seeing that all of them had been born long after the official demise of the last Roman Emperor, which is usually dated no later than 1806. Nonetheless that question was the source from which the story told in the *New Discourse* drew meaning and purpose. The fate of the "Holy Roman Empire" depended on the answer, and the intensity with which it was debated at the time is still palpable on the pages of that little book.

It may thus very well be that Conring tried to write history objectively, "wie es eigentlich gewesen," in Ranke's celebrated phrase. But it is certainly not the case that he wrote it for its own sake.⁵⁹ He dealt with questions about the past in order to answer questions about the present; with questions about what had once happened in order to answer questions about right and wrong. He did not tell his tale merely in order to tell the truth. He told it in order to win. He told it in order to undermine the theoretical foundations of Habsburg absolutism. The future was at stake. That is what makes the *New Discourse* interesting.

What you can see in the *New Discourse*, in other words, is a wonderfully concrete illustration for a statement often made in general terms, namely, that history is an integral element in the self-understanding of a community. More precisely, what you can see is an example of the self-understanding of a community in transition. Conring, after all, did not invent history out of whole cloth. Germans, like other Europeans, had for a long time had a definite image of their past. They had also had documents on which to base themselves—the Bible, for example—and they had been able to draw on a long interpretative tradition that had built a definite view of the past on a careful study of those documents. At least many learned Germans, therefore, like other learned Europeans, had been used to believe that they were living in the Roman Empire, and that the Roman Empire was the last of the four world monarchies, destined to endure until the end of the world.

It was that particular view of the past that Conring attacked. And the chief weapon in his armory was the new form of history that exploited the critical reading of primary historical documents for the purpose of turning once-cherished beliefs about the past into unbelievable myths. Using that method allowed him to destroy the conventional picture of the past and to compel his learned readers to believe something entirely different: that the story of the four world monarchies was a fiction; that, for all practical purposes, the Roman Empire was gone; and that they were living in a modern sovereign German state with a history and a law entirely different from those of the Roman Empire. That was not a conclusion all of them liked. But like it or not, they could not avoid it—except by engaging Conring on his chosen ground and offering a different interpretation of the evidence that he brought into play; which is to say, they could not avoid it except by playing his own game.

⁵⁹On this point I agree completely with Dietmar Willoweit, "Hermann Conring" (1995), 129–47, esp. 137, 141.

Nowadays the stakes are changed. By and large the story Conring told has proved to be convincing. The disputes in which he was engaged have been settled and his opponents have retreated. The Roman Empire has disappeared for good and there is no one left who still believes that the Roman Emperor has the right to rule Germany, much less the world. Conring, in short, has won.⁶⁰

Conring's success raises two basic questions. The first is whether or not the history that he told is still worth telling. The purpose for which he told it is no longer a matter for live political debate, but has itself become a matter for historical analysis as, for example, in this article. Is there then any reason why his story still needs to be repeated? Or is it perhaps the case that histories can be used up, as it were? That the history presented in the *New Discourse*, precisely because it has fulfilled its purpose, can now be put on the shelf in order to make room for other histories that respond to the questions of our time (whatever those may be) as cogently as this particular story once responded to the questions of another time?

The answer is not at all obvious. There is something to be said in favor of abandoning certain forms of history because they are outdated, just as there is in favor of forgetting. Otherwise it would be hard to explain why we do not keep retelling the story of the four world monarchies. But there is also something to be said in favor of remembering, and a good deal more in favor of continuing old habits for new reasons. Perhaps there is even something to be said in favor of the study of the past for its own sake. But whatever the answer, one thing seems certain: if Conring's story deserves to be retold today, the reasons must be different from the ones by which he was inspired.

The second question is this: what explains Conring's success? How did he manage to turn the tables on Bartolus, disposing of his doctrines so effectively that they are now languishing on a dustheap in one of the more remote corners of the historian's universe?⁶¹ The answer may seem obvious: Conring had the facts on his side; Bartolus did not. What more is there to be said? Who could possibly maintain that the Roman Emperor has the right to rule the world? Who could possibly deny that accurate historical knowledge is an indispensable prerequisite for understanding the present? Is Bartolus' statement that it is heresy to deny the Roman Emperor's right to rule the world not an obvious example of those benighted notions with which the middle ages are reported to have been replete? Does Conring's success really require any explanation beyond attention to the facts and common sense?

⁶⁰I am speaking metaphorically. A properly designed poll might well demonstrate that a specifiable percentage of the population of, say, the United Kingdom or the Republic of China actually does endorse the right of the Roman Emperor to rule the world and, if enough people were asked, some of them might even lay a claim to his throne.

⁶¹I do not mean to imply that Conring defeated Bartolus single-handedly. Conring obviously came late in a long series of authors who had argued along lines similar to those that he pursued. There is no doubt that he was indebted to them for many of his ideas, nor is there any doubt that some of his ideas, such as the distinction between divine, natural, and human law, have an even older ancestry. Nonetheless it is useful to specify the intellectual issue at stake in terms of a conflict between Conring and Bartolus. Bartolus was the first author whom Conring mentioned by name in order to disagree with him. Conring clearly regarded him as the chief representative of the intellectual opposition.

It does, unless we wish to dismiss the possibility that facts, however accurately construed, may conflict with rights. It does, unless we wish to ignore Bartolus' reasoning and consider our agreement with Conring as sufficient proof that he was right. Bartolus was not a man with whom to trifle. For centuries a well-known proverb had it that you could not be a jurist unless you were a Bartolist.⁶² Moreover, and this is the crucial point, Bartolus was perfectly well aware that the Roman Emperor did not in fact rule the entire world. Unlike Conring, however, he did not consider that fact a good enough reason to invalidate the emperor's rights. The emperor's lack of power was a complicating circumstance. It limited the meaning of his right to rule the world. But fact alone was not enough to answer a question of right. It is in the very nature of rights that they can persist independently of facts. How else could rights be violated? From Bartolus' perspective, the facts that limited the power of the emperor constituted a challenge to his intellect to demonstrate how facts and rights could be reconciled with each other—and his explanation of how the existence of the emperor's right to rule the world could be reconciled with the freedom of western European monarchs, Italian city states, and peoples beyond the orbit of Latin Christianity constitutes one of his claims to fame.⁶³

Bartolus, in other words, had excellent reasons for maintaining that it was heresy to deny the universal lordship of the Roman Emperor. To specify those reasons in detail would go beyond the limits of this article, in part because Conring ignored them, in part because the matter is complex, in part because it is in scholarly dispute.⁶⁴ But an analogy may help to clarify the fundamental issue.

Who rules the United States of America? To answer that question, some would turn to the Constitution, where we can read that, in order to meet several precisely defined purposes, the Constitution of the United States of America was ordained and established by "the People of the United States."⁶⁵ The answer to our question would thus appear to be: the People rule the United States of America.

Any historian worth his salt, however, would have little trouble proving that, whoever did ordain and establish the Constitution, it was certainly not "the People," but a rather small number of particular people who were gathered in a particular place for the purpose of writing that Constitution. Paraphrasing Conring, such a historian might argue that even a child can see that a few people at a constitu-

⁶²For more information see, e.g., Constantin Fasolt, "Visions of Order in the Canonists and Civilians," in Thomas A. Brady, Jr., Heiko Oberman, and James Tracy, eds., *Handbook of European History, 1400–1600: Late Middle Ages, Renaissance and Reformation* (Leiden: Brill, 1995), 2:31–59.

⁶³For details see Bartolus' commentary on the following laws of the *Digest*: 2.1.1, s.v. *ius dicentis*, nos. 15–16; 2.1.3, s.v. *imperium*, nos. 3–5; 6.1.1 s.v. *per hanc actionem*, nos. 1–2; and 49.15.24, s.v. *hostes*, nos. 6–7, in *Opera*, 1:47r, cols. a–b, 1:48r, col. a, 1:172r, col. b, and 6:228r, col. a.

⁶⁴See above, n. 28.

⁶⁵"We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America." Günther Franz, ed., *Staatsverfassungen: Eine Sammlung wichtiger Verfassungen der Vergangenheit und Gegenwart in Urtext und Übersetzung*, 3d ed. (Darmstadt: Wissenschaftliche Buchgesellschaft, 1975), 10.

tional convention a long time ago had no right to impose their will on the inhabitants of almost an entire continent today. Nor would it be difficult to make a similar case for the present. Most of the people most of the time have little to do with ruling the United States today except that every now and then they cast their vote to choose between various candidates who wish to rule the United States on their behalf—and a great many of them do not even do that. On the basis of such facts some might conclude that the Constitution is invalid.⁶⁶

This analogy confronts us with a choice between two equally fundamental but contradictory positions about the meaning of the Constitution: either it is a valid rule of law that obliges us to behave in a certain way, or it is a purely historical document that tells us how certain people once did behave or thought they ought to behave while leaving us free to do as we please. Precisely the same choice was at issue between Bartolus and Conring. Bartolus treated Roman law as though it were a constitution. Conring treated it as an historical document. Why, then, *not* proceed like Bartolus?

The answer to that question, too, goes beyond the limits of this article. But one thing is certain. It does not depend on the facts that Conring marshaled in his *New Discourse*. However accurate those facts, the question is not about their accuracy, but about their meaning. Whoever tries to explain Conring's victory over Bartolus by pointing to the accuracy of his historical account, far from explaining anything, merely begs the question. For at bottom the conflict between Bartolus and Conring turned not on a question of fact but on a question of right.

⁶⁶Myron P. Gilmore, *Argument from Roman Law in Political Thought, 1200–1600* (Cambridge, MA: Harvard UP, 1941), 26–27, uses virtually the same analogy in order to clarify the issue. Commenting on the famous debate between Lothair and Azo about the rights of the emperor, he writes that “it was as if the President of the United States today were to ask two professors of government: To whom does sovereignty belong in these United States?” An historian would surely answer the President differently from a constitutional lawyer, and for very good reasons.