

*Author and Authenticity in
Conring's New Discourse on the
Roman-German Emperor:
A Seventeenth-Century Case Study**

by CONSTANTIN FASOLT

Hermann Conring (1606-1681) disavowed responsibility for the New Discourse on the Roman-German Emperor (1642) because it was a pirated reprint of a dissertation prepared by one of his students. A closer look, however, reveals that the New Discourse reflects Conring's most radical ideas more faithfully than do works indisputably written by himself, even those he wrote expressly in order to correct the misrepresentations of which the New Discourse was allegedly guilty. That suggests that concepts of authorship and authenticity may conceal the true relationship between writers and their ideas.

Sometime in 1642 a slender quarto volume, no more than forty pages long, with the title *Discursus novus de Imperatore Romano-Germanico* was published under the name of Hermann Conring.¹ Judged by the standards of the time, the title page was bare. It carried the name of the (supposed) author, the title, and the date of publication. That was all. No indication of the place where it was published. No mention of the printer. And none of the florid details with which seventeenth-century printers were happy to adorn the title pages of their books in a transparent effort to attract potential buyers.

The *New Discourse* was a small book, but it dealt with a big subject. Right from the start it turned to one of the fundamental questions for the self-understanding of early modern Europeans in general and early modern Germans in particular: did the Roman empire still exist, or had it long since

*This article is an expanded version of information first presented at the Sixteenth Century Studies Conference in St. Louis in 1993. I would like to thank the Herzog August Bibliothek, the Max Planck Institute for European Legal History, the John Simon Guggenheim Memorial Foundation, the Gladys Krieble Delmas Foundation, and the National Humanities Center for supporting the research on which this article is based, and John Headley and Karl F. Otto for their constructive suggestions for revision.

¹Hermann Conring (1606-1681) was a professor of medicine and, after 1650, politics at the university of Helmstedt, one of the leading intellectual centers in Protestant Germany at the time. Quite apart from his medical studies, he had a major impact on the rethinking of the relationship between religion, politics, and law in early modern Germany. He is now poorly remembered, but this is not the place to introduce the reader to his life and significance. For more information see Herberger and Stolleis, 1981, and Stolleis, 1983. The old biography by Moeller has never been superseded. Johann Wilhelm Goebel edited most of Conring's works in six massive folio volumes and one index volume (1730a). But he omitted all of Conring's writings on natural philosophy and medicine, and most of his confessional polemics.

vanished from the face of the earth? The answer was both simple and provocative: either the Roman empire had disappeared completely, or it had shrunk to an empty title and a tiny piece of land consisting of the city of Rome and its environs — a title and a piece of land that were now in the hands of the pope. In neither case was there any reason why German kings should continue to pretend that they were Roman emperors, much less why they should at great expense and no small danger to their persons attempt to march into Italy in order to have themselves crowned by the bishop of Rome.² Those were bold things to say at a time when many, and by no means only inconsequential, people still believed, or at least pretended to believe, that the Roman empire was the last of four world monarchies, and was not going to vanish from the face of the earth until the world itself had come to an end.³

Towards the middle of 1643 the *New Discourse* fell into the hands of its supposed author.⁴ He did not like what he saw. He considered the publication of the *New Discourse* horrifying evidence for the depths to which contemporary morals had sunk. He would never have dreamed that anyone should have dared to publish so shoddy a piece of writing under his good name, especially not while he himself was still among the living. He was saddened by the cowardice that had stopped the printer from identifying himself or the place of publication on the title page. He was dismayed by the rapacious shrewdness with which that same printer had invented an “insolent” title for this “primitive supposititious child.” He was appalled by the damage done to his reputation. And he saw no other remedy to save his reputation than to do something he would much rather have avoided, namely, to write a better book on the same subject. That book was entitled *De Germanorum imperio Romano* (The Roman Empire of the Germans). It was

²1642, chap. 52. Since the pagination differs from one version of the text to another, which can be confusing, and since the chapters of the *New Discourse* are mostly short, I am going to refer to chapters rather than pages. For an analysis of the argument of the *New Discourse* with further references to the literature, see Fasolt, 1997.

³Conring's friend Jacob Lampadius, for example, began his account of the “Roman-German commonwealth” with the foundation of the city of Rome. See Conring's edition of Lampadius's *De republica Romano-Germanica* 2.1 (1730a, 2:50). On Lampadius see Dietrich. There is a large literature on the broader issue; see, e.g., Lübke-Wolff, Neddermeyer, and Seifert.

⁴Conring had already expressed his unhappiness about the publication of the *New Discourse* in a letter of November 1642 to Johannes Schwartzkopf, the chancellor of Brunswick-Wolfenbüttel (Moeller, 76). In his preface to the *De Germanorum imperio Romano* of December 1643, however, he stated that he obtained a copy of the *New Discourse* “six months” ago, about the middle of 1643 (1730a, 1:27). That suggests that he heard about the *New Discourse* in the fall of 1642, but did not actually see a copy until the summer of 1643.

published in the first days of 1644, and it was in his preface to that book that Conring offered his unflattering assessment of the *New Discourse*.⁵

Those were strong words. Small wonder that Johann Wilhelm Goebel did not include the *New Discourse* in his edition of Conring's *Opera* but placed it on a list of "writings that the author did not acknowledge as his own and that his heirs do not acknowledge either."⁶ Small wonder also that historians since then have more or less ignored the *New Discourse*.⁷ But that is a pity. For the *New Discourse* was identical with a work entitled *Exercitatio de imperatore Romano Germanico* over whose publication Conring himself had presided in 1641 (1641b), that he had no qualms calling "my" *Exercitatio*,⁸ republished in 1674,⁹ and that Goebel had no hesitation whatsoever to include among Conring's *Opera* (1:528-42). More important, the teachings of the *New Discourse* are, with a few telling exceptions, indistinguishable from those of a work that has with good reason been called Conring's chef-d'oeuvre on the constitution of Germany: none other than the very *De Germanorum imperio Romano* ostensibly written in order to supersede the shoddy scholarship of the *New Discourse*.¹⁰ Far from shoddy, the *New Discourse* was, in fact, the first publication in which Conring's fundamental ideas about the relationship between Germany and the Roman empire were

⁵"Nihilominus tamen inventus est superiore anno qui libellum istum meo nomine evulgaret, titulo praescripto sane insolente *Discursus novi de imperatore* [sic], credo quo pelliceret emptorem et hedera suspenderetur vino alias minus vendibili, utque lateret fucus et suum et loci sui nomen dissimulavit typographus, corollariis aliisque praesectis. Id scriptum, cum ante hos sex menses in manus meas incideret, obstupui sane eo rediisse mores, ut quis tantum facinus ausus me vivo. Maxime dolui quod, suum locique sui nomen subticente typographo, libellus raram adeo prae se ferens frontem hac tempestate sequiorum facile suspicionem movere et notam famae meae possit inurere. Graviter profecto momordit me haec iniuria, praesertim cum exemplo forte careat, nec pro merito queat vindicari. Neque vero ego aliud restituendae in integrum existimationi meae (illam enim laesam crudo isto ac suppositio foetu non possum non credere) remedium potui excogitare, quam si ipsemet argumentum illud sumerem pertractandum. Ita ego coactus sum horas, quas proximis hisce septimanis potui ordinario labori suffurari, alienis illis studiis impendere" (1730a, 1:27).

⁶"Scripta, quae auctor pro suis non agnovit nec heredes agnoscunt" (1730a, 1:xxxvii-viii). Kelly and Stolleis, 540 no. 48, similarly note that Conring denied being the author of the *New Discourse*.

⁷References to the *New Discourse*, where they can be found at all, are cursory, for example, in Moeller, 94-95. The closely related *Exercitatio de imperatore Romano Germanico* (1641b) is briefly summarized, but not analyzed, by Knoll and by Willoweit.

⁸He called it "altera mearum exercitationum, quae est *De imperatore Romano Germanico*" (1674, sig. :):(1r).

⁹Under the title *De imperatore Romano Germanico* (1674, 32-72).

¹⁰Herberger and Stolleis, 47, call the *De Germanorum imperio Romano* Conring's "staatsrechtliche Hauptschrift."

circulated to a larger audience. It was also the most pointed. Which is almost certainly why it was reprinted in yet another pirated edition in 1655, long after the *De Germanorum imperio Romano* had appeared in print.¹¹

What are we to make of this curious state of affairs? What is the relationship between the *New Discourse*, which Conring rejected, the *Exercitatio de imperatore Romano Germanico*, which he published and republished, and the *De Germanorum imperio Romano*, which is acknowledged to have been one of his most important writings? Does any of them furnish authentic access to his thought? Of which was he the author? The purpose of this article is to throw some light on these and broader questions of authorship and authenticity by tracing the publishing history of the *New Discourse* in detail.¹²

1. THE ORIGINAL OF 1641

The publishing history of the *New Discourse* began, so far as we can tell, not long before 8 May 1641.¹³ That was the day on which a student by the name of Bogislaus Otho von Hoym submitted an *Exercitatio de imperatore Romano Germanico* (Exercise on the Roman German Emperor) to a public examination at the university of Helmstedt over which Conring was presiding.¹⁴

At the time such examinations had two rather different functions.¹⁵ One, not unlike dissertation defenses today, was to certify that the student deserved to be awarded an academic degree. The other was merely to demonstrate that the student had understood his professor's lectures, without entitling him to any degree. In both cases such examinations were conducted in public and based on a printed text that was derived from the

¹¹Under the title *De imperatore Romano Germanico discursus historico-politicus* (1655, 275-309).

¹²The evidence for this history consists mostly of the title pages of the various printings that will be mentioned below, the results of a close comparison of the texts in question, the preface to the *De Germanorum imperio Romano* (1730a, 1:26-27), and the preface to the *Exercitationes academicae de republica imperii Germanici* (1674, sig.):():(1r -):():(2r). The latter is a particularly valuable source of information for Conring's attitude to the dissertations written by his students, but one that was unfortunately not reprinted in the *Opera*.

¹³Only so far as we can tell, because we do not know enough about the development of Conring's thought from the time when he first began to devote himself to the study of the empire in 1632, via the beginning of his lectures on the empire in about 1634, to the appearance of his first dissertations on the empire in 1641; see Moeller, 64-65, and Kundert, 1983, 403.

¹⁴Bogislaus Otho von Hoym was one of Conring's less distinguished students. We know about him only that he belonged to an old noble family with an ancestral seat near Quedlinburg. See *Neue deutsche Biographie*, *Allgemeine deutsche Biographie*, and *Deutsches biographisches Archiv*, where several other and more distinguished members of the family are mentioned.

¹⁵The following account draws heavily on Kundert, 1984, esp. 44-67, and Schubart-Fikentscher.

lectures of the professor who presided over the examination. Sometimes the student wrote the text, sometimes the professor, sometimes both, but there were few cases in which the professor's lectures did not ultimately furnish the basis both of the examination and of the accompanying text.

These texts were referred to as *theses*, *exercitationes*, *disputationes*, or *dissertationes* — all of them varieties of the same literary species with subtle differences that are impossible to define with precision except in concrete instances. Theses that were printed for an examination of the more elevated type and led to the award of a doctoral degree were usually identified as “inaugural” dissertations. Inaugural and non-inaugural dissertations could vary enormously in length and presentation. Some consisted of a single page containing a few tersely stated theses. Others were longer than a hundred pages containing not only many different theses but also detailed arguments and copious evidence in support of each thesis, along with ornate prefatory matter like dedications, gratulations, and letters to the reader.

Often these *theses*, *exercitationes*, *disputationes*, or *dissertationes* concluded with a separate set of briefly stated theses known as *corollaria*. The *corollaria* usually made points that were not addressed directly in the body of the text, but were so closely related to points that were addressed in the body of the text that both stood or fell together. Their function is not altogether clear, but the student was probably expected to prove their validity in the course of his examination by demonstrating how they followed from the substance of the dissertation. In this fashion he could demonstrate his mastery of the subject matter while at the same time maintaining a certain distinction between his professor's authority and his own. The professor presided over the examination and had given the lectures underlying the text of the dissertation. The student demonstrated his grasp of the subject by his ability not only to clarify the arguments made by the professor but also to extend them to a defense of *corollaria* for which the dissertation itself contained no explicit justification.

Such was precisely the case with Bogislaus Otho von Hoym's *Exercitatio de imperatore Romano Germanico*: the title page announced the date of the examination, named Hermann Conring as the presiding examiner, and spelled out that the text was mostly (*praecipue*) based on Conring's lectures.¹⁶ The text, divided into fifty-six numbered theses and printed on forty-four unnumbered pages, served as the foundation for a public academic exercise

¹⁶The full title was *Exercitatio de imperatore Romano Germanico, quam ex discursibus praecipue viri clarissimi, excellentissimi, atque experientissimi Hermannii Conringii, philosophiae ac medicinae doctoris huiusque in illustri Iulia Academia professoris celeberrimi, fautoris ac praeceptoris plurimum honorandi, desumptam eodem praeside examini publico submittit Bogislaus Otho ab Hoym, eques Pomeranus, ad diem IIX Maii, in Novo Iuleo Maiori.*

of the lesser variety, not an inaugural dissertation. And it concluded with seven *corollaria*.¹⁷ As with so many other seventeenth-century dissertations, one may therefore wonder who exactly wrote the *Exercitatio de imperatore Romano Germanico* and how accurately it represented the views of Hermann Conring. But there is no doubt at all that it is an authentic record of the text that Bogislaus Otho von Hoym defended and that Hermann Conring approved for publication in May of 1641.¹⁸ In order to distinguish this original text from the other versions in which it appeared later on, I shall refer to it as the *Exercitatio* of 1641, or von Hoym's *Exercitatio* of 1641.

Later on, in the preface to the *De Germanorum imperio Romano*, Conring would maintain that von Hoym clearly identified himself as the author (*auctor*) of the *Exercitatio* of 1641, that he had taken only some matters (*nonnulla tantum*) from Conring's lectures (*discursibus*), and taken the rest from elsewhere (*aliunde*).¹⁹ But that is thoroughly misleading. Von Hoym did say that his dissertation was mostly (*praecipue*) based on Conring's lectures. And if it was "mostly" based on Conring's lectures, one may of course assume that it must "partly" have come from elsewhere. But von Hoym left it entirely open how much, if anything, he actually did take from elsewhere, and he said nothing at all about what "elsewhere" might have meant. Given the great similarities between the *Exercitatio* of 1641 and the *De Germanorum imperio Romano* of 1644 to be described below, it seems likely that whatever he did take from other sources amounted to very little — if it amounted to anything at all. The "mostly" in the title of his *Exercitatio* could easily have served him as a fig leaf with which to disguise the scarcity of his own contributions (a sentence here, a reference there?). Perhaps there were no such contributions at all. Or the "mostly" may have been a hedge against the charge that he had failed to report Conring's views with the necessary precision. What matters most, however, regardless of the extent of von

¹⁷To give two examples: the first corollary declared that "the emperor in his role as king of Germany is the chief prince of the Christian world" and the last declared that "the law of nature does not forbid taking large parts of the ocean into private possession."

¹⁸The Dukes of Wolfenbüttel, in their capacity as rectors of the university of Helmstedt, reserved the right to approve or disapprove the publication of any works written at their university. Since the number of such works was considerable, they had delegated the responsibility for exercising that right to the deans of the various university faculties. Each dean was expected to examine every text to be printed by a member of his faculty before permitting its publication (Kundert, 1984, 56). It thus seems likely that von Hoym's *Exercitatio* was given at least formal approval by the dean of the faculty of philosophy.

¹⁹"Biennium scilicet est et quod excurrit, cum adolescens quidam libellum thesium *De imperatore Romano Germanico* academiae huius examini submitteret, me praeside, ut loquuntur, defendendum. Professus ille aperte erat semetipsum auctorem scripti, nonnulla tantum meis discursibus deberi, reliqua aliunde esse desumpta" (1730a, 1:27).

Hoym's own contributions, is this: von Hoym described himself as a "Pomeranian knight," but certainly not as the "author" of the *Exercitatio* — a point Conring must surely have noticed since he himself had once been careful to describe himself as "A. & R.," i.e., "author and respondent" of a dissertation he had written while a student in Leiden.²⁰

If von Hoym's *Exercitatio* of 1641 had been a run-of-the-mill thesis, his examination might very well have been the last that anyone would hear of it. Throughout the seventeenth century, at universities in Germany and elsewhere, year in year out, such theses were duly published and defended with dulling regularity by students who rarely looked back to what was seldom more than a simple demonstration that they had understood their teacher's Latin lectures or, at best, a ticket of admission to a career in public or academic service. Thousands and tens of thousands of such dissertations have been preserved in European libraries. How many of them have been read since the day they were defended is doubtful. Only very recently have historians begun to pay closer attention to the massive amount of information they contain about early modern intellectual life and the conditions by which it was shaped.²¹

But von Hoym's *Exercitatio* was not run-of-the-mill. It dealt with one of the most important constitutional questions of the day and it contained some rather radical conclusions presented in unguarded language. It was also the first time that Conring's ideas about the emperor and the relationship between Germany and the Roman empire were put into print.²² It would not take him much longer to establish his reputation as a leading interpreter of the history and law of the German empire. Only two years later, in 1643, he was going to publish the *De origine iuris Germanici commentarius historicus*, a genuine milestone in the long debate on the relationship between Roman law and the German constitution.²³ Hence the *Exercitatio* was going to receive more than the usual amount of attention, recur in more different printed versions, and have a longer life than was common for dissertations.²⁴

²⁰The *Theses variae de morali prudentia* (1629), whose dedication Conring signed "Hermannus Conringius, A. & R."

²¹For pointed assessments of their value, the difficulties they present to researchers, and the reasons why they have been ignored in the past, see Wieacker; and Evans.

²²The most important earlier occasion on which Conring had addressed that subject in writing was the "Praefatio de historiarum, Germanorum imprimis, studiis" in his edition of Tacitus's *De moribus Germanorum* (1635). But there he dealt with the relationship between Germany and Rome only coincidentally, because his emphasis was on the principles of historical study. For details see Fasolt, 1987.

²³It remains his most frequently invoked work today. See the recent translation by Hoffmann-Meckenstock (1994). Also see Luig; Gross, 255-92; and the older work by Kossert.

²⁴On the frequency of reprinted dissertations in general see Kundert, 1984, 77-85.

2. THE UNAUTHORIZED REPRINT OF 1642

The first of those other versions was, of course, the *New Discourse on the Roman-German Emperor*, that “primitive supposititious child” whose birth Conring found so distressing. It was published about one year after von Hoym’s *Exercitatio*, in an unknown place, but probably in the Netherlands.²⁵

I have previously said that the *New Discourse* is identical with von Hoym’s *Exercitatio*. But that is not literally true. There are differences. Most of them are insignificant except perhaps to bibliographers.²⁶ But some are interesting. Misprints in von Hoym’s *Exercitatio*, for example, were sometimes corrected in the *New Discourse*.²⁷ There is even a reference to Grotius’s famous *De iure belli ac pacis libri tres* that was misprinted in von Hoym’s *Exercitatio*, but corrected in the *New Discourse*.²⁸ Clearly, whoever printed the *New Discourse* was either knowledgeable enough to recognize a garbled reference to an important statement by Grotius at first sight, or careful enough to check. On the other hand there are also perfectly obvious misprints in the *Exercitatio* that were not corrected in the *New Discourse*.²⁹ And there are even a few entirely new misprints that had not yet existed in von Hoym’s *Exercitatio*.³⁰ Evidently the effort to correct misprints was only intermittent and not enough to prevent the introduction of new errors.

²⁵Conring himself believed that it was in the Netherlands (1674, sig.):():(1r-v); cf. n. 35 below.

²⁶The *New Discourse* has a different typeface, a different layout, and slightly fewer pages than von Hoym’s *Exercitatio* (forty, as compared to forty-four). The choice of italic type (for quotations and references) as opposed to Roman type (for the rest of the text) is not always the same. The two works also spell and capitalize a number of words differently, and not always consistently.

²⁷For example, at the end of chapter 21 the misprinted year “735” is corrected to “753” in the *New Discourse*.

²⁸The reference occurs at the very end of chapter 20. The question there is whether or not prescription (the Roman legal principle by which the uncontested possession of something over a certain length of time is sufficient to earn the possessor property rights over his possession) is founded on the law of nature — an absolutely crucial ingredient in Conring’s argumentation. The *Exercitatio* refers to Grotius, *De iure belli ac pacis* 1.4, where Grotius actually dealt with wars of subjects against superiors. In the *New Discourse* the reference is corrected to *De iure belli ac pacis* 2.4, “On Assumed Abandonment of Ownership and Occupation Consequent Thereon; and Wherein this Differs from Ownership by Usucapion and by Prescription” (2:220-30). Grotius supplied Conring with some of the most important and fundamental doctrines on which he relied in the *New Discourse*. For more information see Hofmann; and Tuck, 154-201.

²⁹In chapter 23 the dating of an act of King Pippin to the obviously misprinted year “71” is not corrected to “771” in the *New Discourse*.

³⁰In the middle of chapter 27 the *New Discourse* refers mistakenly to Otto of Freising’s *Chronica* 2.28, where Hoym’s *Exercitatio* had correctly referred to 5.28.

The most important differences between von Hoym's *Exercitatio* and the *New Discourse*, however, are of an entirely different nature. They occur at the beginning of the text and at the end. At the beginning, on the title page, the *New Discourse* bears only the name of Hermann Conring, the new title *Discursus novus de imperatore Romano-Germanico*, and an indication that it was published in 1642.³¹ At the end it omits the seven *corollaria* that were printed on the final two pages of von Hoym's *Exercitatio*. The *New Discourse* thus suppressed any information about the academic setting in which the text had originated at the university of Helmstedt and it concealed the identity of the student or "respondent" who had submitted it to public examination under Conring's guidance. It even dropped the word *thesis* from the numbering of the first chapter on the first page of the text. All of this led readers to believe that they were being offered "chapters" in a "book," as opposed to the consecutively numbered "theses" of an academic "exercise."

These may not seem like major differences either. Their effect, however, was to transform the nature of the work. We should not let ourselves be deceived about the *Exercitatio* of 1641 by the fact that it was printed like a book. Printing was simply the most efficient means available for distributing any written text for discussion, regardless of whether the discussion was to be conducted by students and faculty at one particular university or readers of Latin all over Europe. Dissertations printed by the Helmstedt printers were only meant to circulate within the classrooms of the university, in order to be read and commented upon by other students. They were accessories to an event whose essence consisted of the student's live performance.³² They were not, or only coincidentally, meant to reach an audience beyond the university. Had more modern technologies been available at the time, the *Exercitatio* of 1641 would have been photocopied or placed on a publicly accessible computer.

The *Exercitatio* of 1641 thus was not a "book." It was a "paper" intended to serve as the written basis for the oral examination of a student. That is what it was, and that is how it presented itself to its readers. The *New Discourse*, on the other hand, presented itself as a work written and published by Conring himself for dissemination to the European reading public. It was one thing to discuss the constitution of the empire in the context of a university examination, as Bogislaus Otho von Hoym had done in the *Exercitatio*. But it was something altogether different to step forward with such a discussion and invite a European audience to a public debate with Hermann

³¹The title page of the *New Discourse* in its entirety reads: "Hermanni Conringii Discursus novus de imperatore Romano-Germanico. Typis exscriptus 1642."

³²Kundert, 1984, 56-58, and Wieacker, 11-15, both insist on this point.

Conring, as the printers of the *New Discourse* had done — especially at a time like the early 1640s, when the Thirty Years War was still several years away from a peaceful conclusion.

In order to grasp the difference, it may be useful to invoke the distinction between locutionary content and illocutionary acts that Quentin Skinner has so successfully applied to the history of political thought.³³ *Locutionary content* consists of things that people say (or by extension, write). *Illocutionary acts* consist of things that people do in saying whatever they happen to be saying (or writing).³⁴ The distinction is necessary because the very same words can be used to convey entirely different meanings. A *good morning* spoken to a child just woken by a parent not long after sunrise, for example, has an entirely different meaning from a *good morning* spoken by a professor waking a student in his class during a lecture at some point in the early afternoon. The locution is the same, but parent and professor are doing different things with it.

Illocutionary acts determine the meaning of words and sentences on a more fundamental level than does locutionary content. Locutionary content is like the ripples on the surface of a pond. Illocutionary acts are like the spring from which the pond is fed. But in spite of their importance, illocutionary acts are supremely difficult to study, precisely because they differ from whatever words happen to be spoken. Words spoken are easily studied. Words written more easily still. Words are code. Unspoken acts are not. Different unspoken acts are usually expressed in spoken words that differ from each other precisely because they are meant to convey different illocutionary acts. In such cases the difference between unspoken acts and spoken words remains invisible, as it were. The different unspoken acts are so deeply embedded in the different words by which they are expressed as to be indistinguishable from them. That makes it fatally easy to assume that different words all by themselves are what conveys the different meanings — as if code were identical with meaning.

Sometimes, however, illocutionary acts emerge from beneath the surface by which they are ordinarily concealed. They do so most obviously when identical words are used to convey different meanings. When the locutions are identical and yet their meanings obviously different, it becomes clear that the locutionary surface must never be confused with the illocutionary substance; that the code is not the same as the meaning. That is the main reason

³³For a convenient collection of essays by Skinner and his critics on this and related methodological questions see Tully.

³⁴Hence the title of the lectures in which John L. Austin first made the point: *How to do Things with Words*.

why it is worth the effort of comparing the words of different authors on the same question, or different writings by a single author, or different works by different authors over time in order to track down instances in which identical (or nearly identical) words were spoken in different circumstances. Not at all, as one might think, because identical locutions establish identical meanings (a cardinal fallacy) but, far more basically, because identical locutions furnish a precious opportunity to grasp the illocutionary act that they embody, and thus to determine what the author really meant.

The rare occasions on which identical words can be found to have been used for different purposes are therefore moments of great excitement for anyone interested in meaning. Those are the moments when it seems possible to perceive speech action directly, as it were, divested of the clothes in which it is usually dressed. Those are the moments when it seems possible to communicate directly with the speaker, to go beyond the code and grasp meaning without mediation. Those are the moments when we believe we really understand.

Comparing the *Exercitatio de imperatore Romano Germanico* with the *New Discourse* leads to precisely such a moment. Von Hoym's *Exercitatio* had the same locutionary content as the *New Discourse*: both were using the same words. But they were performing different illocutionary acts. That is exciting for us, because it promises us the pleasure of looking through the surface of Conring's words and discovering what he really meant. It was exciting for Conring, too, although for very different reasons. He, too, was looking through the surface of his words and discovered what someone really meant, except that the someone was an anonymous printer who had turned his words to a purpose that he had not intended. We may leave it undecided whether or not the printer was really motivated by the greed that Conring attributed to him. Perhaps he was motivated also by a commendable desire to bring Conring's ideas to the attention of an audience beyond the walls of the university of Helmstedt. But whatever his motivation, he did perform an illocutionary act of which Conring did not regard himself the author. Leaving aside, for the moment, the question whether Conring did or did not subscribe to the locutionary content of the *Exercitatio de imperatore Romano Germanico* and the *New Discourse* (whether or not he approved their words and sentences), as well as the further question whether he did or did not subscribe to the illocutionary acts performed by the *Exercitatio de imperatore Romano Germanico* (whether or not he approved what von Hoym was doing in putting those words and sentences into print and defending them in public), there is no doubt at all that he angrily disapproved of the illocutionary acts performed by the *New Discourse*. In the *New Discourse* Conring found his words, or at the very least the words of a student that he

had approved in a public examination, turned against himself. His excitement did not manifest itself in the pleasure of understanding that we may feel upon comparing the *New Discourse* with the *Exercitatio de imperatore Romano Germanico*, but in the anger of an author who discovered that someone whom he did not even know had turned his words to a meaning he did not wish them to have. He had been robbed.

There is nothing more frustrating for speakers and writers than the possibility that their audience may fail to follow across the great divide between words and meaning — may fail to grasp the illocutionary act below the locutionary surface, may fail to get “it”; nothing more frightening than that the audience may walk away believing to have understood when it has done nothing of the kind; and nothing more enraging than having one’s words turned against oneself by someone deliberately taking malicious advantage of the difference between words and meaning. That is what Conring must have felt on reading the *New Discourse*. The printers of the *New Discourse* had turned his words against him by making them “his” words. His anger was the anger of speechlessness.

What provoked Conring’s anger was thus not simply that von Hoym’s *Exercitatio* had been reprinted without his permission. It was that reprinting the *Exercitatio* under the title of a *New Discourse on the Roman-German Emperor* identified his name in public with radical ideas about the empire under “a title that was not only insolent, but even dangerous at a time when war was still raging,” as he was going to put it more than thirty years later.³⁵ It exposed him to a certain risk that may well not have been as large as he imagined or pretended, but that was not negligible and to which he had in any case not given his consent. By suppressing all mention of Bogislaus Otho von Hoym and the academic setting in which the *New Discourse* had originated, it pretended to a degree of authenticity and authority that Conring had not wished to claim — at least not yet and not in public. Authenticity, because the ideas were presented as Conring’s “own.” And authority, because they were presented as the author’s considered judgment, his “discourse,” published for dissemination to the educated European public. In this fashion the publication of the *New Discourse* left Conring straining for speech. That explains the vehemence of his reaction.

Conring’s anger, however, must not be allowed to obscure the central fact about the relationship between von Hoym’s *Exercitatio* and the *New*

³⁵“Ad hoc iam ante annos hosce triginta amplius prodiit alicubi (in Batavis, quantum intellexi) in lucem altera mearum exercitationum, quae est *De imperatore Romano Germanico*, solius mei nomine praefixo, additaque insolente et illa quidem bellica tempestate periculi plena inscriptione *Discursus novi de imperatore* [sic]” (1674, sig.):():(1r-v).

Discourse. That fact is this: the text of the two versions is word for word the same.³⁶ On the locutionary level, the words of the *New Discourse* were Conring's own or, at the very least, the words of a student to which he had given his formal approval in a public examination. The "legitimate child" and the "supposititious child" may have worn different clothes. They may even have done different things. But on the evidence of their bodies they were identical twins.

We can only speculate about the circumstances that led to the publication of the *New Discourse*. Perhaps Bogislaus Otho von Hoym had a hand in it. More likely it was someone else, someone who was familiar with Conring's work or had come across the *Exercitatio* of 1641 by accident, but in any event someone who was convinced that its contents were too interesting to languish in the relative obscurity of a Helmstedt dissertation.³⁷ We do know that Conring had nothing to do with the publication of the *New Discourse* and never managed to find out exactly who did, or at least did not say so in any recorded piece of information.³⁸ We also know that he disapproved of it vehemently. The *New Discourse* was a pirated edition to which he had not given his approval, masquerading under his good name as if he were its author, as if this were the best he had been able to say on a subject of such great significance.

It was not the best, or at any rate not the most exhaustive. Conring soon set about repairing whatever damage he feared the publication of the *New*

³⁶Excepting the mechanical differences and typographical errors described above.

³⁷Conring may well have suspected John Maire, one of the Leiden printers with whom he had begun to work during his student days in the Netherlands. Maire had printed two medical works edited by Conring: Berengarius's *De fractura cranii* in 1629, and Billichius's *Observationes et paradoxa chemica* in 1631. He also printed Conring's edition of Jacob Lampadius's *De constitutione imperii Romano-Germanici* (1634), and reprinted it as *De republica Romano-Germanica* in 1642. Conring published a second edition with Rixner in Helmstedt in 1640. As it happens, the third edition of Lampadius's work was not only published in the same year as the *New Discourse*, but is also the last known association between Maire and Conring. That may be no coincidence.

³⁸Actually, we do not even know that. We merely believe it. It is conceivable (and I thank Mordechai Feingold for having conceived it in private conversation) that Conring himself launched the *New Discourse* as a means of testing how his ideas would be received, and then deliberately feigned disapproval in order to keep his role secret. There is no evidence to substantiate that possibility — but then that is precisely what one would expect if Conring wanted to keep it secret. Hence the possibility cannot be dismissed. But it seems unlikely, given Conring's reaction, not only in the published preface to the *De Germanorum imperio Romano*, but also in his letter to Chancellor Schwartzkopf of November 1642 (above, n. 4), and the changes he made in the text of the *Exercitatio de imperatore Romano Germanico* when he republished it in 1674 (below, p. 212).

Discourse had done to his reputation.³⁹ Publicly, he declared his unhappiness about having to take time away from his medical research and teaching in order to devote attention to a subject that now threatened to attract unwanted attention and was not unlikely to embroil him in more of the kind of contentious debates that characterized his entire career.⁴⁰ He wanted to preserve the peace and quiet of his academic life, and he would probably have been not a little upset had he been able to foretell how often that peace and quiet were going to be disturbed in the future.

Public expressions of unhappiness, however, must be taken with a grain of salt. Ever since meeting with Jacob Lampadius in 1632 Conring had been at least as deeply interested in the history and constitution of the empire as in medicine. And since about 1634 he had regularly acted on that interest by teaching a private lecture course on the subject.⁴¹ It was not only that the publication of the *New Discourse* could not be left unanswered. It also gave Conring an occasion, perhaps a little sooner than he had wished, to publish a systematic and detailed account of his ideas about a subject that had been close to his heart all along. That led to the next step in the publishing history of the *New Discourse*.

3. THE REBUTTAL OF 1644

In the first days of 1644, no more than about half a year after a copy of the *New Discourse* had first fallen into his hands, Hermann Conring published his *De Germanorum imperio Romano liber unus* (One Book on the Roman Empire of the Germans).⁴² The subject was exactly the same as that of the *New Discourse*. But the book was so much more impressive that it has with good reason been described as Conring's chef-d'oeuvre on the constitution

³⁹He could not respond immediately: 1643 was a busy year. First he had to finish two of his most important writings, the *De sanguinis generatione et motu naturali opus novum* and the *De origine iuris Germanici commentarius historicus*, both of which were published in 1643, before he was able to respond to the *New Discourse* (Moeller, 75-76).

⁴⁰In his dedicatory letter to Duke August he announced, "verum dum aliorum operam circumspicio et desidero, ipsemet ego, nescio qui, adigor invitatus ad suscipiendum laborem illum, ut a vitae genere ita ab animo alienum. Neque enim declinare licuit hoc negotium, neque non invitatus potui id agere, quod ab artis medicae studiis, quibus me et vitae ratio et munus academicum adstringit, toto pene, quod aiunt, coelo remotum est" (1730a, 1:26). In his letter to the reader he wrote similarly, "artis enim medicae negotiis occupato mihi parum profecto superest temporis adeo diversa, ut curem . . . Caeterum ex sententia vivere non licuit mihi hoc tempore et otio tantum medico frui per iniuriam insignem, quae tamen nescio vel quo auctore vel ubi illata sit" (1730a, 1:27).

⁴¹Moeller, 64-65; Kundert, 1983, 403.

⁴²The full title is *De Germanorum imperio Romano liber unus. Accessit Francisci Guicciardini discursus de origine secularis potestatis in Romana ecclesia*. See Kelly and Stolleis, 543 no. 66.

of Germany.⁴³ At thirteen chapters on 138 pages, it was not only more than three times as long, but also more clearly structured and argued. It dealt with the same questions, but in a more elaborate mixture of chronological progression with systematic analysis. It contained more abstract reasoning and more explicit statements of underlying philosophical principles, sometimes taking the form of excursions from the historical line to which the *New Discourse* had for the most part stayed close. It offered more detail and more quotations from primary and secondary sources, as well as two prefatory letters with information about the circumstances under which it was written, and an appendix with excerpts from the writings of Jean Pithou and Guicciardini that helped to substantiate attacks on papal government.⁴⁴

Above all else, however, the *De Germanorum imperio Romano* appears to arrive at an altogether different conclusion from the *Exercitatio* of 1641 and, consequently, the *New Discourse* of 1642. The *Exercitatio* ended by declaring that the Roman empire had either ceased to exist or been reduced to a mere shadow of its former self. As far as the *Exercitatio* and the *New Discourse* were concerned, the Roman empire was gone and a "German empire" had risen in its place.⁴⁵ The *De Germanorum imperio Romano*, on the other hand, insisted that the Roman empire was not gone at all. The very title of the work distinguished carefully between "Germans" and the "Roman empire," implying not only that there was no such thing as a "German empire," but also announcing that the Roman empire was very much alive and well — or at least alive and well enough to be held by Germans.⁴⁶

⁴³Thus Herberger and Stolleis, 47. Conring himself referred to it with a certain degree of understatement as a "liber mole quidem exiguus, at argumenti neutiquam proletarius" and even a mere "libellus" (1730a, 1:26, 27). Apart from the dated and superficial analysis offered by Knoll, 46-92, the *De Germanorum imperio Romano* has received little scholarly attention. See, for example, Moeller, 94-99; Wolf, 238-41, and Mazzacane, 269-70. Lang, whom one might have expected to treat it in detail, excluded it from consideration altogether — a casualty of the conceptual limits enforced by certain types of legal history. Seifert's chapter on "Conring und die 'Ottonische Legende'" (165-86) is by far the most interesting and thoughtful treatment to date.

⁴⁴The first prefatory letter was a letter of dedication to Duke August of Brunswick-Wolfenbüttel dated 23 December 1643 (1730a, 1:26-27). The second was the *Benevolo lectori* in which Conring complained about the publication of the *New Discourse*; (1730a, 1:27). The material in the appendix (1730a, 1:108-13) was copied from Goldast, 3:17-21.

⁴⁵"Imperium Germanicum" is the phrase used in the first sentence of the *New Discourse*. The remainder of the text, however, speaks exclusively of *Germania* or *Regnum Germanicum*. "Imperium Germanicum" had also appeared in the title of Conring, 1641a.

⁴⁶Conring maintained the same point of view throughout the text by speaking consistently about Germany (*Germania*) on the one hand and the Roman empire (*imperium Romanum*) on the other, but never simply of a "German empire." He returned to the usage "German empire" about ten years later in the *De finibus imperii Germanici* (1654), again in

The same point of view was confirmed in what looked like unmistakable language in the final chapter of the *De Germanorum imperio Romano*. The heading of that chapter announced that “the empire over the city of Rome and the rights attached thereto still belong to Germany, even though the Pope has torn them to pieces every which way.”⁴⁷ And the conclusion culminated in a ringing endorsement of the right of German kings to rule over the Roman empire that was, for good measure, combined with an angry indictment of the papacy’s usurpation of imperial rights.⁴⁸ That seems about as far removed from the conclusion of the *Exercitatio* as can be imagined. It also seems to make the *De Germanorum imperio Romano* an authentic statement of Conring’s ideas.

On closer inspection, however, appearances turn out to be deceptive. *Roman empire*, as Conring explained in the body of the *De Germanorum imperio Romano*, had a double meaning. It could be taken to mean a “vast commonwealth” that went far beyond the city of Rome. It could also be taken to mean rule over the city of Rome alone. In the former sense, it was defunct. Only in the latter sense could it be said to have endured to the present.⁴⁹ On those points there was no difference between the *Exercitatio* of 1641 and the *De*

De pace perpetua inter imperii Germanici ordines religione dissidentes servanda (1657), and above all the *Exercitationes academicae de republica imperii Germanici* (1674). The “Roman-German” combination reappeared in the *Dissertatio de comitiis imperii Romano-Germanici* (1666a) and the revised edition of Lampadius’s *De republica Romano-Germanica* (1671). The inconsistent terminology clearly reflects the difficulty Conring confronted in bringing the concept of the sovereign state to bear on the reality of the Holy Roman Empire. On the history of the official title of the empire in general see the excellent article by Weisert, with further references.

⁴⁷“Imperii urbis Romae et eorum, quae inde pendent iura, etsi a papa omnibus modis sint convulsa, etiamnum tamen ad Germaniam pertinere” (1730a, 1:99).

⁴⁸“Cum nullo igitur iure excusserint papae caesaream vim a sese ac urbe Roma, manifestum est iura illa caesarum, quibus ad Hildebrandi usque aevum fuerunt usi, utut adversum illa arietaverint pontifices, hodieque integra subsistere. Finiam hanc disputationem verbis quae feruntur Cyni Pistoriensis nobilissimi iurisconsulti: *pastores ecclesiae in lupos rapaces sunt conversi, insatiabiles rerum temporalium et ambitione dominandi. Diversis viis illicitis nisi sunt et nituntur imperium et imperialia usurpare. Ideo sub eorum gubernatione totus mundus positus est in maligno, et sub regimine tyrannorum. Sed sicut puto, eorum divina vindicta proxima est. Et utinam esset proximior!*” (1730a, 1:107). Note that on this occasion Conring calls his book a disputation. So far I have not been able to verify the source of the quotation attributed to Cino da Pistoia.

⁴⁹“Igitur si imperii Romani voce intelligas vastam aliquam rempublicam, cuius iura ad urbem illam pertineant, ut factum olim, dudum desiit Romanum imperium omne. Si vero ad nominis illius maiestatem tuendam sufficit unius urbis regimen, durat Romanum imperium hodieque” (1730a, 1:89). Conring was by no means the first to insist on this distinction. For a celebrated and much earlier use of precisely the same distinction, see Marsiglio of Padua’s *De translatione imperii* 1 (66).

Germanorum imperio Romano at all. Both maintained that the Roman empire in the sense of a "vast commonwealth" was gone, and that whatever was left of it was now limited to rule over the city of Rome. And both maintained that rule over the city of Rome was now in the hands of the papacy.

The difference between the *Exercitatio* of 1641 and the *De Germanorum imperio Romano* thus turns out to be limited to two points: first, the *Exercitatio* of 1641 entertained the possibility that the papacy's control over the city of Rome had become legitimate; the *De Germanorum imperio Romano* insisted that it had not. This difference turned on the purely technical legal question whether or not prescription (the Roman legal tool by which undisputed possession over a long period of time is transformed into legitimate ownership) applied to the papacy's control over Rome. It was also small: for though the *Exercitatio* of 1641 did grant the possibility that prescription had worked in the papacy's favor, it did so only because it considered the point too unimportant to argue. Second, according to the *Exercitatio* of 1641 German kings seeking to reassert control over a "Roman empire" narrowly defined as rule over the city of Rome were wasting their time; according to the *De Germanorum imperio Romano* they were not wasting any time at all. That difference was more significant, but it was merely a matter of emphasis and judgment. It helped to deflect the anger of Protestant princes who might have been upset over the carelessness with which the *Exercitatio* of 1641 surrendered Rome to the papacy, and that of a king of Germany who insisted on being treated as emperor of Rome. It reflects, not a change of mind, but Conring's concern for his own safety and reputation.⁵⁰

In truth, the *De Germanorum imperio Romano* of 1644 thus turns out to reach essentially the same conclusion as the *Exercitatio* of 1641. Indeed, even the formal difference between the mere "exercise" of 1641 and the authoritative "book" of 1644 is not what it at first sight seems to be. For the *De Germanorum imperio Romano* of 1644, too, was first presented to the public as a dissertation defended in a public academic examination by one of Conring's students. The dissertation was entitled *De imperio Romano Germanorum disputatio* (note the slightly different title), the student was Johann Christian von Boineburg, and the defense took place on two separate occasions in December 1643, only a few days before the *De Germanorum imperio Romano* officially appeared in print.⁵¹ All that remains is the announcement

⁵⁰The issues raised in this paragraph are too complicated to be considered here in full. I hope to deal with them in greater detail in the future.

⁵¹The full title reads: *De imperio Romano Germanorum disputatio prima, quam sub praesidio Hermanni Conringii, philosophiae ac medicinae doctoris huiusque professoris publici, publice examinandum proponit Ioan Christian a Boineburg ad VI. Decembris* (1643d). See also Kelly and Stolleis, 542 no. 64. On Boineburg see Ultsch; Saring; and, now especially, Peterse.

of Boineburg's first disputation for 6 December 1643, accompanied by three corollaries. No announcement of the second disputation has been preserved (if one was ever printed), nor is there any separately printed version of the text that Boineburg defended. But that does not mean that the text of his disputation has been lost. Conring's own *De Germanorum imperio Romano* was published in the very first days of 1644 at the latest, and in it Conring himself stated as clearly as could be desired that Boineburg had defended it "in the academic fashion" on two separate occasions.⁵² Thus Boineburg's disputation was almost certainly based on galleys or an advance copy of the *De Germanorum imperio Romano* itself.⁵³

The publication of the *De Germanorum imperio Romano* thus furnishes an interesting point of comparison with von Hoym's *Exercitatio* of 1641. Unlike von Hoym's *Exercitatio*, the *De Germanorum imperio Romano* was acknowledged by Conring to have been written by himself and published under his own name. It did not simply consist of notes taken from his lectures and the student who defended it, though among Conring's most distinguished, does not appear to have had any hand in its composition. Like von Hoym's *Exercitatio*, on the other hand, the text of the *De Germanorum imperio Romano* was first presented to the public in an academic disputation at the university of Helmstedt by one of the students under Conring's supervision.

This was no mere formality. Conring himself made sure to inform his readers that Boineburg had defended the *De Germanorum imperio Romano* in an academic disputation.⁵⁴ And on at least one occasion, in the conclusion, he actually referred to the *De Germanorum imperio Romano* as a

⁵²"More academico bis pro hisce defendendis respondit Ioannes Christianus a Boinenburg" (Conring, 1644a, sig.): (3v). Goebel omitted that statement from its proper location, immediately following the prefatory letters, in his reprint of the *De Germanorum* (1730a, 1:27), but did repeat it in his own description of the circumstances surrounding its publication (1730a, 1:vii).

⁵³The official date of publication is slightly misleading. The printed dedicatory letter to Duke August was dated as early as 23 December 1643 (1730a, 1:27), and only two weeks later, on 8 January 1644, Conring sent a printed presentation copy to Duke August. That copy is preserved in the Herzog August Bibliothek in Wolfenbüttel with the call number "36.4 Politica," and Conring's accompanying letter to the duke is glued to the back of the front cover. In spite of the official date of publication, the book may thus well have been printed before the year 1643 had ended. Goebel actually does date the publication of the *De Germanorum imperio Romano* to 1643 (1730a, 1:vii), but probably only because he never saw the title page of the first edition, the only place from which he could have known the original date of publication. He reprinted the second edition of 1694, which makes no reference to the original date of publication, but does contain Conring's dedicatory letter to the duke of December 1643.

⁵⁴Above, n. 52.

"disputation."⁵⁵ Moreover, even if Conring did not compose the *De Germanorum imperio Romano* by drawing directly on his own lecture notes, their content must surely have been thoroughly present in his mind. He had been giving courses on the Holy Roman Empire for close to ten years. Lacking transcripts of his lectures, we shall never know just how closely the text of the *De Germanorum imperio Romano* resembles the words Conring delivered in class. But given the speed with which the *De Germanorum imperio Romano* was written, the resemblance may well have been great.

The distinction between the *Exercitatio de imperatore Romano Germanico* and the *De Germanorum imperio Romano* thus is not nearly as sharp in reality as Conring wanted his readers to believe. In a purely formal sense, they belonged to the same genre. Both were first presented to the public in academic examinations in which they were defended by his students; both reproduce material that he had first presented in his lectures; both received his approval, though different forms of it; and neither may be assumed to represent exactly what he told his students.

The same conclusion follows if we look more closely at the contents of the *De Germanorum imperio Romano*. Never mind the length, arrangement, and external appearance of the *De Germanorum imperio Romano*. These are indeed quite different. But the case is fundamentally the same. It begins with the same questions. It uses the same means to answer them. It proceeds in the same fashion from the fall of Rome via Charlemagne and Otto the Great to (more or less) the present. It gives the same (novel) significance to the coronation of Charlemagne on Christmas 800, and it dwells at the same length and with the same grave emphasis on the reign of Otto the Great. In short, both works embraced the same fundamental perspective on the demise of the Roman empire.⁵⁶

Indeed, the resemblance between the *Exercitatio* of 1641, the *New Discourse* of 1642, and the *De Germanorum imperio Romano* of 1644 is so close that the former are perfectly well suited to convey the ideas restated in the latter. Conring himself thought so and even said so many years later, when the risks he might have feared in 1643 were no longer present and without, of course, pointing out that the *New Discourse* contained precisely the same text as the *Exercitatio*. He did so in lectures on the Holy Roman Empire that were never published until Goebel included them in his edition of the *Opera*. There Conring stated flatly that the *Exercitatio* of 1641 could be

⁵⁵Above, n. 48.

⁵⁶See, for example, the opening passages of the two works, where their rationales are established in virtually identical fashion; or *De Germanorum imperio Romano* 2.1 with *New Discourse* 4-5, where the same textual references are invoked; *De Germanorum imperio Romano* 3.9 with *New Discourse* 12; and *De Germanorum imperio Romano* 3.14 with *New Discourse* 9.

used as a “compendium” of the *De Germanorum imperio Romano* and positively encouraged his students to rely on the *Exercitatio* if they had any trouble locating a copy of the *De Germanorum imperio Romano*.⁵⁷ That clinches the case. It is surprising only if one believes that Conring’s rejection of the *New Discourse* was founded on his disagreement with the doctrines it contained. It is not at all surprising if one recognizes that the *New Discourse* is substantially identical with the *Exercitatio* of 1641, and that both of them make the same case in brief as the *De Germanorum imperio Romano* makes at length.⁵⁸

The differences between the *Exercitatio de imperatore Romano Germanico* of 1641, the *New Discourse* of 1642, and the *De Germanorum imperio Romano* of 1644 are thus not at all well described by declaring that Conring was the author only of the latter (because he wrote it “himself”) but not of the former (because one was “written” by a student, and the other an unlicensed reprint). Much less is it permissible to take at face value Conring’s castigation of the *Exercitatio de imperatore Romano Germanico* of 1641, his outright rejection of the *New Discourse* of 1642, or his characterization of the *De Germanorum imperio Romano* as a rebuttal of the two former works. In truth, all three works reflect different shades of Conring’s thinking, and the *De Germanorum imperio Romano* cannot be trusted to offer his point of view with any greater degree of authenticity than do the *Exercitatio de imperatore Romano Germanico* or the *New Discourse*. Indeed, to the extent that it was written to forestall attacks on Conring’s person, it must be judged to be a shade less authentic.

Over the years Conring repeatedly announced his intention to prepare a second edition of the *De Germanorum imperio Romano*.⁵⁹ He also compiled a number of notes that were meant for inclusion in the second edition.⁶⁰ But he died in 1681 without ever having managed to complete the task. It was

⁵⁷“Caeterum tempore Ottonis Magni, qui praeterpropter 100 annis vixit post Carolum Magnum, ipsius felicitate regnum Germaniae, quod tum regnum Francorum dictum, alterno foedere iungebatur regno Italiae et imperio Romano, quod ostensum a me in libro de imperio Romano Germanico. Quibus liber iste non est in manibus, legant disputationem meam de imperio Germanico, quae quasi est compendium eius rei” (1730b, 2:239).

⁵⁸Knoll, 24, arrived at a similar conclusion. Knoll’s analysis, however, leaves much to be desired and is entirely uninformed about the differences between the conclusions of the *Exercitatio* and the *De Germanorum imperio Romano* that were considered above.

⁵⁹See Goebel’s remarks on no. 2 in his preface to the first volume of the *Opera* (1730a, sig.):():(r).

⁶⁰It seems likely that at least some of those notes were made during Conring’s re-reading of the *Exercitatio de imperatore Romano Germanico* of 1641 in preparation for its republication in the *Exercitationes* of 1674, on which see below, pp. 211-12.

left to his son, Hermann Conring junior, to publish a second edition with the notes that Conring had collected before his death (1694).⁶¹

The main differences between the first and the second edition of the *De Germanorum imperio Romano* are easily described. First, Conring junior subdivided each of the thirteen long chapters of the *De Germanorum imperio Romano* into short paragraphs, which made it easier to refer to the text with precision. Second, he added a two-page index of the sources on which Conring senior had relied, as well as a somewhat more detailed subject index.⁶² Third, he inserted a "New Letter to the Reader" in which Conring senior explained with some contrition why he had attributed the short statement about the temporal power of the pope in the appendix to Pierre Pithou.⁶³ Fourth, and finally, he incorporated Conring senior's notes into the body of the text.⁶⁴ Most of these additions consist of minor reformulations and new or expanded references to the literature. On a few occasions they extend to whole paragraphs and include new thoughts and arguments.⁶⁵ But only very rarely do they suggest that Conring had changed his mind about this or that matter.⁶⁶

⁶¹Kelly and Stolleis, 543 no. 66b. This is the edition that Goebel reproduced in the *Opera* (1730a, 1:26-107). Note that Kelly and Stolleis, 542 nos. 64 and 64a, 543 nos. 66 and 66a, 550 nos. 135 and 135a, confuse the *De Germanorum imperio Romano* of 1644 with Boineburg's dissertation of 1643 and the hybrid edition in the *Acroamata sex* of 1655 to be discussed below, pp. 209-10.

⁶²"Index autorum et monumentorum," 195-96 (actually, 165-66), reprinted by Goebel (1730a, 1:113-14). The "Index rerum" consists of five unpaginated leaves at the end of the book. Goebel did not reprint that index, presumably because he compiled his own subject index to all of Conring's works in volume 7 of the *Opera*.

⁶³He had relied on his source, Melchior Goldast's *Monarchia sacri Romani imperii*, but Goldast was apparently mistaken (1730a, 1:107-08).

⁶⁴He did not identify these notes explicitly. He did usually introduce them with a signal to the reader that he would now refer to another reference (*vide*) or add (*additur*) another passage. But their extent cannot be reliably identified unless the text of the second edition of 1694 is compared line by line with the first edition of 1644.

⁶⁵Thus for example *De Germanorum imperio Romano* 9.5 (1694, 67), which mentions in passing a question about the nature of Charlemagne's empire; 10.22 (1694, 91), commenting briefly on a statement of Georg Calixt on the western church; and 13.26 (1694, 143-44), which contains a number of references designed to substantiate the point that the kings of Germany never acquiesced in the usurpation of imperial rights that Conring believed the papacy to have been guilty of practicing since the times of Pope Gregory VII.

⁶⁶The most interesting instance of what looks like such a change of mind concerns the interpretation of the Apocalypse of John. In 1644 Conring had accepted the Apocalypse without comment as evidence that the Roman empire would last forever, just so long as "Roman empire" was taken to refer to the empire usurped by the Roman church. In an addition published in 1694, however, he declared, "credibile tamen est, tandem aliquando, et quidem

4. THE UNAUTHORIZED HYBRID OF 1655

In 1655 an anonymous "society" of printers in Embrun republished the *New Discourse* in yet another pirated edition, as part of a volume entitled *De imperii Germanici republica acroamata sex historico-politica* (Six Historico-Political Lectures on the Commonwealth of the German Empire).⁶⁷ The *Acroamata sex* were a compilation of every dissertation on the constitution of the German empire that had been written under Conring's supervision since 1641. In addition to von Hoym's dissertation on the emperor, it included six others dealing with, respectively, the imperial estates, the electors, the bishops, the princes, the cities, and the courts.⁶⁸ The *Acroamata sex* thus constituted something like a compendium on the constitution of the Holy Roman Empire.

The *New Discourse* occupied a special place in that compendium. It was not counted among the six *acroamata* but singled out at the end as a seventh, separate little treatise (1655, 275-309). It was endowed with new and improved titles: *Tractatus de imperatore Romano Germanico* on the title page, and *De imperatore Romano Germanico discursus historico-politicus* (Historico-Political Discourse on the Roman German Emperor) in the body of the text. Most important, the text was altered. The beginning and end were copied directly from the *New Discourse*. But a substantial section in the middle was stolen from the *De Germanorum imperio Romano*.⁶⁹ The *De imperatore Romano Germanico discursus historico-politicus* of 1655 thus is an entirely unreliable hybrid, corresponding to no single work ever written by Conring or any of his students.

satis forte diu ante extremum diem, urbem et imperium hoc ruiturum" (1730a, 1:89-90; "it is, however, likely that this city and empire, too, will eventually come to ruin, and even long before the last day [of the world]." My translation.).

⁶⁷ 1655 is printed on the title page. The frontispiece preceding the title page has 1654. See Kelly and Stolleis, 550 no. 134.

⁶⁸ They were presented in the chronological order in which they had been published: (1) on pages 1-23: *Exercitatio de Germanici imperii civibus* (1641a), dealing not with "citizens," but with the estates in the imperial diet; (2) 25-76: *Exercitatio de urbibus Germanicis* (1641c); (3) 77-96: *Exercitatio de ducibus et comitibus imperii Germanici* (1643c); (4) 97-120: *Dissertatio de septemviris seu electoribus Germanorum regni et imperii Romani* (1644b); (5) 121-96: *De constitutione episcoporum Germaniae* (1647a); and (6) 197-274: *Exercitatio de iudiciis reipublicae Germanicae* (1647b). The printers of the *Acroamata sex*, like those of the *New Discourse*, omitted words like *exercitatio* and *dissertatio* along with references to respondents from the titles, presumably for similar reasons.

⁶⁹ The beginning of the *Acroamata sex* up to the words "sive iure" (1655, 275-76), is taken from *New Discourse* 1-4 and the first sentence of chapter 5; *Acroamata sex* from the words "totum enim terrarum orbem" to the words "saepius iam memorata" (276-89), is taken

The reasons why the *New Discourse* was published in yet another unauthorized version are not difficult to imagine. In the aftermath of the peace of Westphalia of 1648, there was a certain demand for lucid accounts of the Holy Roman Empire's constitutional structure. The *De Germanorum imperio Romano* of 1644 was lucid, but it suffered a serious disadvantage: it was too long. If we can trust the information at Conring's disposal, the *Acroamata sex* were precisely the success that their publishers must have hoped them to be: they circulated in France, Italy, Spain, and England.⁷⁰ They forced Conring to recognize that his dissertations on the constitution of the Roman empire, including the *New Discourse*, had taken on an irrepressible life of their own. Even while he continued to insist that it was wrong to regard his students' dissertations as his own works properly speaking, he did acknowledge that the public relied on them for effective introductions to his understanding of the empire. There were good reasons why they had come to be regarded as if they had been written by himself and why they had acquired a reputation for containing valuable information not to be found anywhere else. Under those circumstances, it was neither right nor possible for him to continue to refuse to take a hand in their circulation, if only in order to prevent any further misrepresentations.⁷¹

from the first edition of *De Germanorum imperio Romano* 2-5 (1644a), and replaces chapters 6-23 of the *New Discourse*; the rest, starting with the words "hec vero cum ita se habeant" (289-309), is taken from *New Discourse* 24-56. The text is not exactly identical with that of either one of its sources. The printers removed the chapter numbering and made other minor changes. And of course it includes none of the additions to the second edition of the *De Germanorum imperio Romano*.

⁷⁰"Qui liber [i.e., the *De imperii Germanici republica acroamata sex*] cum in Galliam, Italiam imo, et Hispaniam ac Britanniam penetraverit, passim ipsimet orbi persuasum est iamdudum mihi auctori isthaec omnia deberi" (1674, sig.):():(1v).

⁷¹His reasoning bears full quotation: "Caeterum, quia hae exercitationes non in totum sunt meae, passus sum eas hactenus vagari earumque singulas huc illuc spargi, omni quasi cura illarum seposita, iam tum praesertim circa vere propria satis occupatus. Ast nunc mutare istum animum non una de causa sum coactus. Observavi videlicet libellos istos disputationum sine discrimine omnes a quammultis praeclare doctis viris passim, non in Germania duntaxat nostra sed etiam alibi, mihi uni acceptos referri, idque non dissimulari etiam editis scriptis . . . Accedit quod benignis praestantium virorum iudiciis ac praeconiis persuasum sit in ipsum vulgus, contineri hisce exercitationibus multa utilia, quae ab alio tamen nemine sint dicta ac proinde alibi nusquam invenire sit; ex quo illarum lectio passim desideratur, ipsis tamen raro comparentibus. Haec sane aliaque nonnulla ad curas secundas horum libellorum me quamvis neutiquam otio abundantem tandem revocaverunt. Nec vero fas fuit visum eorum abiicere omnem prope amorem, quorum pars saltima maxima reapse mihi debebatur, multo minus, postquam hominum quasi communi consensu, etsi erroneo, in unius mei nomen sunt pridem adoptata. Cumque iniuria non levis et bono publico et singulatim mihi

5. THE AUTHORIZED REVISION OF 1674

Those were the reasons that prompted him in 1674 to set the record straight. He collected all of the dissertations on the constitution of the Holy Roman Empire that he had supervised, arranged them in the chronological order in which they had been written, and published them in a single volume entitled *Exercitationes academicae de republica imperii Germanici*. There were now ten such dissertations. Seven had already been available to the editors of the *Acroamata sex* in 1655 (not counting Boineburg's *De imperio Romano Germanorum*). In the 1660s Conring had once again become interested in the German constitution and had directed two dissertations about the imperial diet in 1666 (1666a and 1666b) and one about the "officials" of the empire, which is to say, the prince electors, in 1669. These were now added to the group that was included in the *Acroamata sex*.

At first Conring had planned merely to republish his dissertations as a collection without spending any additional effort on them. But as he reread them, he decided that he needed to make changes and additions.⁷² For the most part he limited himself to changing imprecise formulations, adding cautionary clauses, and correcting outright errors. It deserves to be especially noted that he did not consider it necessary to check the accuracy of every detail. The *Exercitationes academicae* remain full of misprinted dates and garbled references that were copied directly from the originals. But although Conring's changes were limited in scope, they sometimes touched on important points of substance. One dissertation, moreover, dealing with the bishops of the Holy Roman Empire, was far more thoroughly revised than the rest. It addressed a subject that Conring considered to be both especially important and poorly understood.⁷³ Finally, Conring wrote a substantial preface to explain to his readers exactly how these dissertations had come into existence and how closely they represented his own views.

hactenus fuerit illata, cum perquam mendosis editionibus tum mutationibus inconsultis, saltem imposterum illam avertere, (quia quod factum est nequit infectum reddi) etiam officii mei et existimationis tuendae esse iudicavi" (1674, sig. :):(1r-2r).

⁷²"Et sane initio quidem unum hoc consilium fuit, omnia non nisi in pristinam integritatem restituta edere, uno volumine comprehensa. Dum post longum autem temporis intervallum relego cuncta, statim observavi quamplura correctione indigere, alicubi et augmentum aliquod esse necessarium. Eoque in recensione utrumque deinceps etiam egi. Mutavi, inquam, tantum non infinites si quae visa fuerunt minus commodis verbis dicta (ab assertionibus enim ipsis primis vix semel iterumque discessi) etiam interpolando varia passim et frequenter addidi, ita tamen, ut ad plenam tractationem argumenti cuiuslibet multa adhuc deesse nequiquam velim diffiteri" (1674, sig. :):(2r-v).

⁷³See his remarks in 1674, sig. :):(2v-3v).

The result was a compendium similar in conception to the unauthorized *Acroamata sex* of 1655, but different in three ways: it was now authorized by Conring himself; it added three new dissertations; and it not only included all of the details necessary to inform readers about the academic origin of each of the dissertations in question, but also improved upon the text of the originals. The *Exercitationes academicae* of 1674 were more than a reprint; they were a revised, improved, and authorized edition.

This applies to the *Exercitatio de imperatore Romano Germanico* of 1641 as well. Most of the changes that Conring made are minor. There are the usual differences in typography, orthography, and punctuation. There are the equally usual erratic corrections of misprints and the appearance of new misprints. And there are a few points where Conring decided to rephrase a sentence in order to straighten out the grammar or add conceptual precision.

There is one point, however, where Conring went beyond making merely cosmetic changes. That point came at the conclusion. The *Exercitatio de imperatore Romano Germanico* of 1641 and the *New Discourse* of 1642 both concluded that the Roman empire had either ceased to exist or been reduced to a tiny piece of land and a worthless title now held by the papacy. In the revised version of 1674, however, the key sentence of the conclusion included a parenthetical addition that changed the point of the original conclusion into its opposite: "If after so many years of prescription our kings and emperors have lost all those true and ancient rights of the emperors (which cannot be admitted by any means), then there is no longer any reason . . ." ⁷⁴ In the original version Conring concluded that the German "kings and emperors had lost all those true and ancient rights of the emperors." In the revised version he concluded that no such loss could be admitted.

This change did not fit altogether smoothly into the logic of the original text: it became difficult to understand, for example, why the text still went on to affirm that the emperor should not continue to claim lordship over the city of Rome or try to secure his coronation in Rome. Why not do just those things if it could not be admitted that he had lost his rights in Rome? But the new version of the *Exercitatio de imperatore Romano Germanico* also brought the conclusion into line with that of the *De Germanorum imperio Romano*.

⁷⁴"Id certum *haud forte iniuria* videtur, si tot annorum praescriptione perierint nostris regibus et caesaribus omnia vera illa et antiqua caesarum iura (*quod tamen neutiquam admitti potest*), non esse amplius, cur vane iacent . . ." (1730a, 1:541). The words in italics were first added in the version of 1674.

6. THE CANONICAL EDITION OF 1730

In 1730 Johann Wilhelm Goebel reprinted the *Exercitatio de imperatore Romano Germanico* in his six-volume edition of Conring's legal, historical, and political works in Brunswick. Not surprisingly, he chose to reproduce the revised version of the *Exercitatio* that Conring had published in 1674 (1730a, 1:528-42).⁷⁵ In this fashion he unwittingly helped Conring to conceal the differences between the original *Exercitatio* of 1641 and the *De Germanorum imperio Romano* of 1644 that seem to have bothered him the most. By the same token he confirmed the impression that Conring had never swerved from insisting on the ancient rights that German kings were entitled to exercise over the Roman empire and against the papacy — and never mind that the Roman empire had shrunk to the limits of the municipal government of Rome. Thus he helped Conring to lead at least one historian who never looked at the original dissertation to believe that the *Exercitatio de imperatore Romano Germanico* of 1641 and the *De Germanorum imperio Romano* of 1644 differed in no important way at all.⁷⁶

The history of the *New Discourse* thus ends on an ironic note. The text that Conring approved in the *Exercitatio* of 1641 and that was reprinted in the *New Discourse* of 1642 became the least likely to be read, and the most likely to be rejected as spurious. The version most likely to be accepted as genuine (because sanctioned by Conring in 1674) and most likely to be read (because reprinted in the *Opera*) departed from the original in an important way. The canonical edition of Conring's works thus helps to conceal a conclusion that he is more than likely to have contemplated seriously in 1641, and from which he only seemed to have dissociated himself in 1644 because its premature publication forced his hand.

In the end Conring thus gained a qualified victory in his battle to banish the *New Discourse* from recognition. It was no longer understood that he rejected the *New Discourse* mostly because of the form in which it had been published. It was forgotten that the *De imperatore Romano Germanico discursus historico-politicus* printed in the *Acroamata sex* of 1655 was an unreliable hybrid. And no one noticed that Goebel's reprint of Conring's revision of the *Exercitatio* differed from the original in at least one noteworthy respect: it obscured the willingness with which, at a relatively early and unguarded moment in his career, Conring had consigned the Roman empire to the past.

⁷⁵Goebel also added a considerable number of footnotes with information about points of detail and references to relevant writings by Conring and other authors.

⁷⁶That historian was Knoll, 24.

7. CONCLUSION

"Of persons artificial, some have their words and actions *owned* by those whom they represent. And then the person is the *actor*, and he that owneth his words and actions is the *AUTHOR*, in which case the actor acteth by authority. For that which in speaking of goods and possessions is called an *owner* (and in Latin *dominus*, in Greek *kurios*), speaking of actions is called author." That is how Thomas Hobbes defined an author, a few years after the *New Discourse* was printed, in words that penetrated straight to the early modern heart of the matter (16.4, 101). If we may follow where Hobbes leads, the upshot of this complicated story for our concepts of authorship and authenticity can be simply stated: *author* is a concept whose meaning is inseparably linked to ownership, agency, and representation. It belongs in the sphere of law. It is useful for settling disputes over the extent to which people *own* their writings, but not so useful for understanding where ideas come from.

When Goebel pointed out that Conring did not acknowledge the *New Discourse* as "his own," he was therefore describing the relationship between Conring and the *New Discourse* well in terms of law. In those terms it was entirely appropriate that he went on to mention Conring's heirs. For neither Conring nor his heirs professed to *own* the *New Discourse*. Hence they could not be held responsible for its contents or publication. But does it follow that Conring did not develop the ideas that the *New Discourse* publicized? Most definitely not. The legal relationship between *authors* and *their* writings is surely different from the creative relationship between people and their ideas. *Author* is a concept too crude to capture both. Spirit is free. Code can be owned. Meaning cannot.

Some of the reasons for this conclusion are, of course, entirely specific to the case examined here: that of a dissertation, based on lectures, defended by a student, pirated, improved, expanded, amalgamated, reconsidered, and reprinted in several different editions. In a case in which so many ideas appeared in so many different guises and with the indisputable participation of several different individuals in shaping the content and publication of a text, it seems evident that the creative relationship between the author and the writing is fluid, shifting, indefinable. The same may not seem nearly so evident in the case of, say, a single piece of writing, clearly different from all other writings, indisputably attributed to just one single person, and published on just one occasion in just one form, although perhaps in many different copies — the case, in other words, of what we normally believe to be a *book*.

From that perspective, the case presented here may well be judged to reflect the particular historical circumstances of the Renaissance: an age in which ideas of authorship (like those of creativity, originality, and individuality) were taking their modern shape, but did not yet dominate the field to the exclusion of that older point of view according to which authority was vested, not in a person, but in the truth of writings transmitted from antiquity. The *author* was still competing with the *authorities*. Hence the uncertainty about the author of the *New Discourse*. Perhaps more specifically still, the case may be said to reflect how difficult it was for authors to disentangle their own authority from the authority of writings in a setting as deeply rooted in medieval corporate traditions of higher learning as that of disputations held by students and professors in seventeenth-century German universities. It is at least legitimate to wonder where else, as late as the 1640s, ideas of authorship could have manifested themselves in equally ambiguous fashion.

But from a broader point of view the case presented here merely reflects particularly clearly how difficult it is in any time and place to specify exactly what is entailed by writing, and how far exactly we may hold writers (all writers, any writer) responsible for what they write. From that perspective the difference between a book with an undisputed author and one like the *New Discourse* is merely a difference of degree, a matter of accidents by which some writings are reproduced in different versions and some writers are compelled to retrieve their rights from pirates and usurpers, whereas others are not. The circumstances of late Renaissance Germany may well have made it more than usually difficult to tell with confidence who was responsible for thinking, saying, or doing what. But they may hardly be credited with having brought into existence a difficulty that stems from the difference between locutionary content and illocutionary act. Conring himself believed the dissertations over whose defenses he presided to have been "both mine and not mine."⁷⁷ That statement may well capture the true relationship between writers and their ideas more adequately than notions of authorship invented in order to make both writers and *their* writings amenable to the kind of law and order demanded by society.

As far as authenticity is concerned, none of the works considered here may claim to represent Conring's meaning fully, but all may claim to represent it to a respectable degree — even the hybrid of 1655. Authentic meaning can hardly manifest itself directly in locutions whose meaning is known, indeed, intended to diverge from the very illocutionary act by which they are proposed. And yet it manifests itself to some degree. The lesson seems to be that authenticity is not to be expected from the routine

⁷⁷"Et meae sunt igitur exercitationes illae, et meae non sunt" (1674, sig.):0:(1r).

deciphering of code. Authentic meaning appears with the greatest clarity when the routine breaks down, as when the publication of the *New Discourse* disturbed the meaning of the *Exercitatio de imperatore Romano Germanico*. That does appear to open a clear view on the writer's mind. The routine may well break down for different reasons: the same piece of code can carry conflicting meanings; and different pieces of codes can carry the same. But some breakdown in understanding seems to be necessary for the experience of authenticity. Perhaps we must first recognize that we have failed to understand correctly in order to arrive at the belief that we can understand at all. Perhaps, at some fundamental level, misunderstanding is a prerequisite for the experience of authenticity.

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