

Past Sense

*Studies in Medieval and Early Modern
European History*

By

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In the fall of 1975 I arrived in New York to study history at Columbia University with John Mundy, J. M. W. Bean, Robert Somerville, Eugene Rice, and Paul Oskar Kristeller. That had not been a foregone conclusion. Before I came to the United States, I had been studying philosophy. Growing up in Bonn in what was then West Germany, at a time when the Holocaust and World War II were barely over and the Cold War was at its height, in an upper class family of mixed German, Russian, English, and Irish ancestry, with similarly mixed traditions in literary, military, aristocratic, and business life, baptized Russian Orthodox, classified Lutheran at school for purposes of religious instruction, and living in a solidly Catholic part of Germany—had left me with some basic

* I would like to thank the members of the Early Modern Workshop at the University of Chicago, particularly Mohamad Ballan, for giving me their feedback on an incomplete draft of this introduction. I owe a special debt to Jean K. Carney for her comments on the completed draft.

questions: What is going on? Is this the way it is supposed to be? Could it be something else? How can I tell? I wanted a means of orientation. I thought philosophy might be that means.

It did not turn out that way. What I learned from reading philosophy at the universities of Bonn from 1972–74 and Heidelberg from 1974–75—particularly Kant, Husserl, Heidegger, and Aristotle—has never been far from my mind. But it did not give me what I was looking for. Most of philosophy seemed to require mastering issues of great theoretical complexity for reasons that never became coherent and were all too far removed from the questions whose urgency I felt pressing in on me, but of which I could not tell how they were to be asked, much less how to be answered. The rest of philosophy seemed to boil down to a variety of intellectual history. I had no idea what I had missed and I did not find out until much later.

That led me to believe that history might well be better suited to my purpose. History had been one of my minor fields of study from the beginning. It seemed to be the polar opposite of philosophy and therefore a good way to hedge my bets. It boasted little theoretical complexity, asked a straightforward question, and used a simple method to find answers. The question was: “What happened?” The method was: “Study the evidence!” It was completely opportunistic. Whatever method led to evidence and made the evidence lead to results was fine. It made far less ambitious claims than philosophy, but seemed to back them up with better reasons. Above all, it focused on what was in fact the case. The case was what I wanted to understand.

I started by casting my net as wide as possible without having to use more than the languages with which I was familiar.¹ I had no interest in any special field or aspect of history. I was interested in history as such: a discipline that promises an understanding of change over time. I hoped it would give me a perspective on my place in time without making unwarranted assumptions. But I also knew that history as such is nothing that anyone can study. I needed to settle on some specific subject in order to find out what history as such can teach. The question was: Which subject would that be? I ran the gamut of survey courses in ancient, medieval, modern, and contemporary European history. I took lectures, proseminars, and seminars. I was introduced to bibliography, paleography, and diplomatics. I settled on medieval history.

1 German, English, French, Latin, and Greek. I used French and Latin as a basis on which to make myself somewhat familiar with Italian and Spanish. I also learned a modicum of Russian, but that was mostly for the sake of understanding conversations between my father and his mother.

Modern history seemed too close. I thought that studying a time so close to mine would risk begging the very questions I wanted answered. That was a risk I did not want to take. Ancient history, by contrast, seemed too far removed from where I wanted to go—and the well-known ways in which the ancient world has often been said to resemble the modern one more closely than the Middle Ages struck me as optical illusions. The Middle Ages lay in the middle distance. They seemed to occupy a place in time not so close that it could be mistaken for the present and not so far away that the present could not be clearly seen from there. They were so thoroughly unlike the present that they seemed difficult to understand. But the people living there were hardly less intelligent or capable of making sense than we, and surely more closely related to ourselves than ancient Greeks and Romans. If they were difficult to understand, I thought, it was because they had used their intelligence to make a different kind of sense. That was precisely what I found appealing. I thought that learning to understand the sense they made would give me the criteria I needed to figure out what sense we make today.²

It also seemed a good idea to study in the United States. I had family in New York and had spent time with them on an extended visit in 1967, which left me with an indelible impression of how different life could be from what it was in Germany. I thought that looking at Europe from over there would make it easier for me to see what I was trying to discover over here. I was also confident that graduate school in the United States would give me better training than I had found in Germany, where too many students were merely biding their time and too many professors content to leave them alone.

I was encouraged by my father and Hubert Jedin, a great historian whom I had known since childhood as a friend of the family. Jedin had once turned down an offer from Harvard because his visit to the United States persuaded him that, as he put it, he could not breathe where so little history was in the air. At the same time he made it very clear that I should go. He said it would give me an opportunity to teach something to Americans they did not understand about Europe, and something else to Europeans who could not bring themselves to look beyond the limits of their own narrow historical experience, among whom he explicitly included himself. He thought it was important for me to seize that opportunity. I visited Harvard, Princeton, Yale, and Columbia. I applied for admission to Harvard and Columbia. Harvard turned

² Throughout this introduction I shall use the words 'we,' 'us,' and 'our' without defining them. The reason is simple: I know what they mean, but I do not know to whom they refer. I only know that they do not refer to all of my readers, or only to my readers, or to the same group of people on every occasion. I offer my apologies to anyone who feels improperly included.

me down. Columbia offered me a fellowship. I accepted. That, in brief, is how my career began.

* * *

With the exception of two books, an edition and translation, and a dozen primary sources translated for the *University of Chicago Readings in Western Civilization*, the twenty studies collected in this volume comprise most of my work in the following thirty years.³ I have divided them into three parts.

Part one consists of seven studies devoted to William Durant the Younger, the subject of my first book. Durant was born ca. 1266 in Puimisson near Béziers and ruled the Gévaudan, a rugged territory in the Massif Central in southern France, as bishop of Mende and count of Gévaudan from 1296 until his death in 1330. I have called this part “Holding On,” because holding on is what William Durant the Younger was trying to do: holding on to the supremacy of the church and the allegiance of the laity; holding on to his own position; holding on to his conviction that he knew what was right, what needed fixing, and how it needed to be fixed; holding on to a whole understanding of the right order of the world that he saw slipping away and that was destined to lose its sway over Europe in the following centuries. I studied William Durant the Younger because it seemed to me that he was speaking directly to the deepest fears and highest hopes of his age.

Part two consists of seven studies devoted to Hermann Conring, the subject of my second book—though not its subject in a sense that earned his name a place on the title page, annoying readers who believed that they knew better what my book was about. Conring was born in Norden near the coast of East Frisia in 1606, studied at the universities of Helmstedt and Leiden, both of which were in the vanguard of Protestant intellectual life in Northern Europe at the time, and spent the rest of his life at the University of Helmstedt: as professor of natural philosophy from 1632–37, professor of medicine from 1637–81, professor of politics from 1650–81, and as a practicing physician all the time. I have called it “Moving On,” because moving on is what Hermann Conring was trying to do: moving on from the upheavals of the Thirty Years War to peace; moving on from violence, superstition, and oppression to liberty and reason; moving on from a past that had suffered from false ideas about religion, church, and empire to a future founded on sovereign states, autonomous

3 The books are *Council and Hierarchy* and *The Limits of History*. The edition and translation is *Hermann Conring's New Discourse on the Roman-German Emperor*. The translations of primary sources are *University of Chicago Readings in Western Civilization*, 4:55–66, 87–95, 164–9, 304–12, 360–7, 369–77, 383–402, 434–46, and 6:103–37.

individuals, and science. I studied Hermann Conring because it seemed to me that he, too, was speaking directly to the deepest fears and highest hopes of his age.

Part three consists of six studies devoted to our understanding of the changes Europe underwent during the centuries leading from the days of William Durant the Younger to those of Hermann Conring—the period of history now generally called ‘early modern.’ They focus on the forms in which we have been trying to make sense of those changes and the concepts in which that sense has until recently been crystallized, like ‘politics,’ ‘religion,’ ‘state,’ ‘church,’ ‘law,’ ‘right,’ ‘sovereignty,’ ‘empire,’ ‘history,’ ‘reformation,’ ‘science,’ ‘fact,’ ‘idea,’ ‘subject,’ ‘object,’ ‘reason,’ ‘truth’ . . . the list is easy to extend. These studies are founded on my understanding of what William Durant the Younger and Hermann Conring meant by writing what they did and what their writings meant—which is not the same.⁴

What they meant and what their writings meant is of course not representative of European history in any of the senses usually evoked by the idea of ‘representation.’ It is not even representative of the history of European legal, historical, or political thought. But one can say of them what Virginia Woolf said about masterpieces: “Masterpieces are not single and solitary births; they are the outcome of many years of thinking in common, of thinking by the body of the people, so that the experience of the mass is behind the single voice.”⁵ Because the experience of the mass was behind their single voices, the writings of William Durant the Younger and Hermann Conring can illuminate the essence of early modern European history. That essence is the subject of part three.⁶ I have called it “Come and Gone: Past Sense” and chosen *Past Sense* as the title for the whole book as well because it is meant to show how Europe came to commit itself to certain elementary beliefs from which we are by now so far removed that we can say their sense is past.

Each of these parts is arranged in the chronological order in which the studies in that part were written, which is largely the same as that in which they

4 I shall have more to say about the difference between ‘what they meant’ and ‘what their writings meant’ later on.

5 V. Woolf, *Room of One’s Own*, 68–9.

6 Because I am well aware how many readers will bristle at my use of the term ‘essence,’ especially in such close proximity to ‘history,’ I should point out that I use ‘essence’ in the sense in which it was used by Wittgenstein: “*essence* is expressed in grammar,” and “grammar tells what kind of object anything is.” *PI* §§ 371, 373; cf. §§ 65, 89, 92, 95, 116, 239, 241, 429, 562, and 564. I shall have more to say about this, too.

were published.⁷ The three parts themselves follow each other in an order that is also roughly chronological, but with some overlap: part two was begun ten years before part one was finished; part three was begun twelve years before part two was finished; and part three was finished only one year after part two. The studies closing parts one and two are meant to sum up some of the main lessons that can be learned from the preceding studies in that part. The final study in part three, “Hegel’s Ghost: Europe, the Reformation, and the Middle Ages,” can serve as a conclusion to the whole volume.

These studies are a disparate lot. The first was published in 1978, when I was still in graduate school, the last in 2008, after twenty-five years of service at the University of Chicago. Some are long, some are short. Some are densely annotated; some have hardly any notes at all. Some were written when I had barely learned how to write English academic prose, others when I was confident that I was able not just to say what I meant, but say it well. Three were originally written in German, in part to demonstrate that I had not entirely forgotten my mother tongue. Some are occasional pieces, others the fruit of many years of thinking, writing, and rewriting. Some are preliminary studies, fragments, or offshoots of the books I was writing at the same time. Others are only indirectly related to the books. Some were published in widely read journals, others in conference proceedings and *Festschriften* unlikely to have reached far beyond the circle of those immediately involved.

Two reasons prompt me to present all of these studies in one volume here. One is simply to make them more accessible, particularly those that appeared in places far from the beaten track. The other is that in spite of their disparities they constitute a whole, with a beginning, middle, and end.

I did of course not plan them like that. They were planned one at a time. They differ from each other in method, form, and substance. They went through many twists and turns that took me in directions I had not expected and in one instance abruptly changed my whole career. They certainly do not make up the kind of project for which I could have applied to anyone for funding. But their unity is more than autobiographical: they are held together by a guiding desire, follow a single line of inquiry, and lead to a definite conclusion. The desire is to come to terms with the condition of our time. The line of inquiry runs from evidence and highly technical investigations in medieval

7 There are two exceptions: nr. 2 was written a year before nr. 3, but published a year later; nr. 4 was written years before nr. 5, but published years later. I might add that nr. 20 began as a paper I gave in German in 1999 and published in 2001 under the title “Europäische Geschichte, zweiter Akt: Die Reformation,” but did not translate into English until Tom Brady convinced me to do so in 2003 and kept revising and expanding until 2008.

and early modern history via Wittgenstein's *Philosophical Investigations* and reflection on the nature of historical research to a break with historicism, an affirmation of anachronism, and a broad perspective on the history of Europe. The conclusion is that history can very well serve as a means of orientation, but only if we pay more attention to language and imagination than may be possible within the limits of the historical profession.

That conclusion has changed my mind about the study of the past and made me look in new directions.⁸ From hindsight I can thus say about the studies collected here what I could not have said when I was writing them. They amount to a coherent program of research that I began in graduate school and that has now fulfilled its purpose. In the remainder of this introduction I will try to explain how it took shape, what it established, and what it leaves to be desired for the future.

One—Holding On: William Durant the Younger (ca. 1266–1330)

In the fall of 1976 I took my first seminar with John Mundy. Mundy's habit was to ask the members of his seminar to focus on one text, or several texts by the same author, and to prepare a handout for class discussion. The handout—reproduced by mimeograph or, more precisely, spirit duplication in aniline purple type—was supposed to run somewhere from ten to twenty pages and consist of three main sections: a chronology of relevant events, a bibliography of primary and secondary sources, and a selection of whatever excerpts from the writing in question struck the student as particularly interesting. Mundy would usually add some excerpts of his own. After a brief introduction by the presenter, the seminar was spent translating and discussing these excerpts.

At Mundy's suggestion, I prepared such a chronology, bibliography, and selection of excerpts for William Durant the Younger's *Tractatus de modo generalis concilii celebrandi*, or *Treatise on How to Hold a General Council*, in which Mundy had been interested for some time. The title is not authentic. It was invented by some later copyist. Durant never seems to have called his book anything other than *Tractatus*. It is somewhat misleading, too. His book was really a massive set of detailed proposals for the reform of church, state, and society.

⁸ For some steps in those directions see "History and Religion," "Respect for the Word," "Saving Renaissance and Reformation," and especially "Breaking up Time." I hope to take more in the future.

Not much later I asked Mundy if he had any suggestions for a subject on which to write a dissertation. He gave me five. One of them was Durant's *Tractatus*. I liked it better than the other four. I asked Jedin for his opinion. He thought Durant's treatise was perfect for a dissertation: poorly understood today, but widely known and influential at the time. I submitted a proposal. In October 1978 my proposal was approved and I began to write my dissertation.

The most obvious reason for choosing Durant's *Tractatus* as my topic was that it was best remembered for two specific demands no one had made in public with such clarity and force before: according to Durant no laws of any kind were to be passed or changed without the participation of a council, and general councils were to meet every ten years in order to consider the laws governing all of Christendom. Because church history is now a relatively narrow specialty, modern readers, including historians, rarely appreciate just what that meant. It meant that governments of any kind—large or small, local or universal, temporal or spiritual, royal, imperial, or papal—were to be stopped from passing new laws or changing existing laws without consulting the people who were affected by those laws, and that a representative assembly of the clergy, the laity, and experts from leading universities was to meet every ten years in order to make sure that the people would have regularly recurring opportunities to express their views on matters concerning all of Christendom. General councils had been meeting since antiquity, but their membership had been more limited, their meetings had never been legally required, and even during the preceding two centuries, when they were meeting more frequently than at any earlier or later time, they had met at an average of only once in thirty years.

This was no matter of mere theory. Durant submitted his proposal to the Council of Vienne (1311–12)—just such a council representing all of Christendom—in hopes of achieving constitutional reform. His hopes were dashed. But his ideas were to the point and they were not forgotten. A century later the Council of Constance (1414–18) enacted legislation that gave general councils supreme authority in matters of faith, schism, and general reform, including the right to force the pope to follow their decisions. It also required such councils to be convoked every ten years. That was a major turning point in the development of government by representative assemblies, and almost the same as what Durant had asked a century before. There was good reason to believe that his countless proposals concerning other issues would cast a similarly diagnostic light on circumstances going far beyond his person.

There were also pragmatic reasons to make Durant's *Tractatus* an attractive topic for a dissertation. It had definite limits: an author, a text, and a closely related set of questions. Exactly why did he propose that general councils should meet every ten years? Exactly what did he have in mind? What does that tell us

about him? What does it tell us about his time and place? At the same time the great variety of issues Durant addressed allowed me to range as far and wide as I saw fit. The revival of liberal Catholicism in the aftermath of World War II and the Second Vatican Council had made Durant more interesting to more historians. Yet no one had managed to make sense of what appeared to be a mixture of unnecessary repetitions, blatant contradictions, and bad organization. The text had been published in several early modern printed editions, one of which had conveniently been reprinted at some unspecified date in the 1960s, but none of them seemed reliable. Durant was frequently confused with William Durant the Elder (ca. 1230–96), his uncle, namesake, predecessor as bishop of Mende, and one of the most influential jurists of medieval Europe, known as the Speculator after his most famous book, the *Speculum Iudiciale* or *Speculum Iuris*. What little scholarship there was—a handful of articles, chapters in books, and mostly boilerplate biographical sketches—was shot through with uncertainties and mistakes. In short, there was a lot to do that no one had done before, and there were obvious criteria for setting clear priorities.

The most important reason for choosing William Durant the Younger's treatise as the subject of my dissertation, however, had nothing to do with the *Tractatus* as such, and everything with the kind of document it was. It had been written by someone disturbed by his belief that things were bad, and thoroughly determined to stop them from getting worse. It gave me a means of studying what I wanted to know: what human beings do to find their way through changes that they did not initiate and that exceed their understanding. It helped that William Durant the Younger's way through those changes seemed to have met with the approval of a great many other people disturbed by similar beliefs at roughly the same time. It helped as well that it was part of the same history that had brought Europe to the point at which I met with it when I was growing up. Perhaps it could give me some of the criteria I needed to sort out my place in time.

*The Manuscripts and Editions of William Durant the Younger's
Tractatus de modo generalis concilii celebrandi*

The first order of business was to track down the surviving manuscripts and printed editions. A few scholars had made passing remarks about one or another of those manuscripts and editions, but no one had tried to find them all or studied them in detail. I was not planning to produce a critical edition, at least not at that time. But I had every intention of making sure that I would know what Durant had actually written.

I was lucky to be able to draw on the advice of Paul Oskar Kristeller, both because Kristeller knew as much or more about Latin manuscripts in Europe

during the period from 1300–1600 than anyone else, and because he had persuaded Columbia University Library to purchase as many published catalogs of such manuscripts held in public and private libraries and archives across the world as possible. That made Columbia's collection of such catalogs one of the finest of its kind.

I spent a few months leafing through those catalogs, looking at tables of contents and checking indices for the title of the *Tractatus* and various spellings of Durant's name: under D for Duranti, Durantis, Durant, or Durandus; under G for Guglielmus, Guglielmo, Guillaume, and Guillermo; and under W for William and Wilhelm. I read through sections labeled 'anonymous' and looked at every entry recording the works of William Durant the Younger's uncle, knowing that Durant's treatise might well have been catalogued with the works of the Speculator, with whom he was so regularly confused. If a catalog did not have an index, I scanned its contents as best I could. I bought a copy of Kristeller's *Latin Manuscript Books before 1600*—a list of catalogs and inventories of libraries and archives with manuscript collections—and put a checkmark next to the title of every catalog I had looked up in order to keep track of the work I had completed. When I was done, I thus knew both which libraries and archives I had checked for manuscripts of the *Tractatus* and which I had not, either because their manuscript catalogs were not available at Columbia University or because none had been published.

There were hundreds of such libraries and archives. I sent a letter to as many of them as I could, asking if they had any manuscripts of Durant's *Tractatus*. I received close to three hundred replies, mostly from German, French, and English librarians and archivists. Replies from Italy and Spain were more sporadic. Replies from beyond the Iron Curtain were virtually nil. I sent similar letters to individual scholars whom my teachers knew to specialize in the study of late medieval manuscripts.⁹ At the same time I searched for printed editions of the *Tractatus* in the catalogs of the Bibliothèque Nationale in Paris, the British Museum, and the *National Union Catalog*: online catalogs did not exist.

When I was done I knew of ten manuscripts. I ordered microfilms of all of them. I also knew of six printed editions. I ordered microfilms of these editions, too. Then I gathered as much information about each of these manuscripts and editions as I could—their form and content, identifying marks, the places where they had been described, their history—and published the sum of my results in the *Annuario historiae conciliorum*, a relatively new journal seeking to promote an understanding of the historical significance of councils.

9 Most helpful were Gilbert Ouy, Marie-Thérèse d'Alverny, Adriana Marucchi, Martin Bertram, and Neil Ker.

This was my first scholarly publication. Two things went wrong with it, one substantive and serious, the other formal and funny. Serious was a mistake I made about the provenance of a manuscript now held in the Vatican Library with the designation Barb. lat. 1487, meaning, codex nr. 1487 in the Barberini collection of Latin manuscripts. I found a description of this same manuscript in a book on the manuscript libraries of Padua that Jacobus Philippus Tomasini (1596–1655) had published in 1639, under the heading of manuscript VII in the old library of San Giovanni in Verdara.¹⁰ That led me to conclude that the manuscript now known as Barb. lat. 1487 and held in the Vatican Library had once been owned by that library. But I was wrong. Tomasini did in fact describe Barb. lat. 1487 in some detail, but left no doubt that it was not at all the same as manuscript VII in the old library of San Giovanni in Verdara. He owed the description of Barb. lat. 1487 to his friend Leone Allacci (1586–1669), and described it only because he thought the comparison with manuscript VII was interesting. I had not read Tomasini carefully enough.

I should have been alerted to my mistake as soon as I mentioned my ‘discovery’ to Kristeller. Kristeller reacted with a mixture of interest and surprise. It was, he said, the only instance he had ever come across in which a Barberini manuscript could be traced back to the library of San Giovanni in Verdara. He thought that was remarkable. What was remarkable, of course, was only my mistake. I did not notice the significance of Kristeller’s surprise until Jürgen Miethke noticed my mistake and published a correction in *Quellen und Forschungen aus italienischen Archiven und Bibliotheken*, 61 (1981): 450–2. It was of course Kristeller who was the first to tell me about Miethke’s review. I still have the photocopy he gave me with a handwritten annotation to identify its source. I wrote to Miethke right away to thank him for having saved me from repeating my mistake. That marked the beginning of a long and fruitful friendship with a remarkable scholar to whom I have been grateful ever since for many instances of interest, kindness, and support.

The funny thing was an embarrassing mistake in English. My spoken English was all right. My written English lagged behind. Needless to say, I worked hard on making sure that the English prose of this, my first scholarly publication, would be, if not elegant, at least correct. I never spent more time and effort on reading and correcting proofs. But for reasons that I was never able to determine, the page proofs—the final version of the text I saw before it went to press—were altered after I had seen and corrected them. Somehow they did not make it on to the printed page unscathed. Fortunately most of the changes were minor and unobtrusive. Unfortunately one of them, though minor,

10 Tomasini, *Bibliothecae Patavinae*, 12–15.

was only too obtrusive. It came in the first sentence: “There ist no thorough study. . . .” I could virtually hear the German accent: “Zairr issst no sssorrow study. . . .” It was humiliating. But it was also very funny.

*A New View of William Durant the Younger’s Tractatus de modo
generalis concilii celebrandi*

The next step was to compare the manuscripts both with each other and with the printed editions. Only two of the ten manuscripts contained all of the text. Fortunately these two were also the oldest and most reliable. Five other manuscripts contained most of the text. The remaining three contained only fragments of the beginning. All of them had flaws of one kind or another but comparing them with each other helped to remove most of the doubts I had about the accuracy of whatever version I was reading.

The first printed edition was published by Jean Crespin in Lyon in 1531. Crespin reproduced a manuscript that has been lost since then. Because that manuscript may have been better than the surviving manuscripts, at least in some regards, I used his edition as another witness to the text. The other printed editions differed from Jean Crespin’s in many ways. But all of them were clearly based on his. They cast no independent light on Durant’s writing. Crespin’s edition thus was the only one I really needed to consider.

It quickly dawned on me that the manuscripts arranged the *Tractatus* quite differently from the printed editions. The printed editions treated it as a single book divided into three parts. The manuscripts, by contrast, seemed to treat part three as though it had been a separate piece of writing. The parts had different lengths as well. Part one was equally long in the manuscripts and the editions: four chapters and three unnumbered ‘rubrics.’¹¹ But part two was much longer (one hundred chapters versus seventy-two), and part three was much shorter (forty chapters versus sixty-three). What was going on?

The first clue came when I compared the end of part two and the beginning of part three in the manuscripts with the printed editions: it was the same. Another clue came when I looked more closely at the manuscript chapters seventy-two to ninety-nine in part two that seemed to be missing from the printed editions. They were not missing at all. Apart from minor differences at the beginning and the end, they were identical to chapters two to twenty-nine of part three in the printed editions. They had merely been moved from their original location. But why?

11 Five chapters in the edition by Philippe Le Preux of Paris, 1545, where the chapters and rubrics are divided up differently.

I do not remember how I found out. I do remember that I found out after I noticed that in Crespin's edition the last chapter of part two was numbered one hundred, as in the manuscripts, even though there were only seventy-one chapters preceding it. That gave me an idea: What if it was not that chapters seventy-two to ninety-nine had been moved forward from part two to part three? What if it was instead the beginning of part three that had been moved back, and then all of the following chapters had been renumbered? The idea was confirmed when I discovered that chapter thirty of part three in the printed editions contained a passage that corresponded almost word for word to a passage right in the middle of chapter seventy-one of part two in the manuscripts.

Now I knew what had happened: two relatively short but widely separated pieces of text had traded places with each other. One of them had been taken from the middle of chapter seventy-one in part two; the other, of roughly the same length, from the end of part two and the beginning of part three. It was pure coincidence that the second piece of text spanned the dividing line between parts two and three. But it had the unfortunate result that, when it traded places with the other piece, the dividing line between parts two and three landed in the middle of chapter seventy-one in part two. Someone who noticed what now looked like a mistaken numbering of the chapters following the beginning of part three renumbered them to suit the new arrangement. Instead of being numbered chapters seventy-two to ninety-nine (in the original part two) and chapters two to thirty (in the original part three), they were now conflated into a single part and consecutively numbered one to sixty-three. Part two was left truncated at seventy-two.¹²

That left one question to be answered: Why would two widely separated pieces of text have traded places with each other? For anyone who knows how manuscripts are put together, that is not hard to imagine. Manuscripts consist of one or more gatherings of sheets that are folded into half and then sown together, like the sections of a newspaper, except that the sections of a newspaper are not sown together. Assume that a manuscript fell apart, or was taken apart because the binding had gone bad and needed to be repaired. Assume that it was put back together—but only after the outermost sheet of one gathering (of one section of the newspaper) had accidentally been folded backwards. Now the first leaf of this gathering (of the newspaper section) had become the last, and the last had become the first. Two equally long pieces of text separated from each other by the entire contents of the gathering had traded places with each other. The text of those pieces obviously did not make

12 Careful readers may notice that the numbers do not add up. For the reasons see below, pp. 173–4.

good sense in its new location. But medieval copyists focused on copying what they saw, not on understanding what they were copying. Once the rebound manuscript had been copied again, perhaps repeatedly, in different manuscripts with gatherings of different lengths beginning and ending at different points in the text, it would have been hard to recognize what had happened. It would have been much easier to notice that the chapters in part three seemed to be oddly numbered: not i, ii, iii, iv, v, and so on, but i, lxxii, lxxiii, lxxiv, lxxv, and so on. It would have been easy to jump to the conclusion that the Roman numerals were wrong and to ‘correct’ the numbering. Voilà: part two would have consisted of seventy-two chapters, and part three of an amalgam of sixty-three.

Once I knew that the printed editions had garbled the parts and chapters of the *Tractatus*, and once I had looked more closely at the text Durant had actually written, something else became apparent. The garbled sequencing was not merely a matter of moving two bits of text around. It affected a major point of substance. Durant had actually not written one book divided into three parts. He had written two separate books. One of them was written before the Council of Vienne had met. That book consisted of part one and part two with all of its one hundred chapters. One could tell it had been written before the council met because it referred to the council in the future tense. Because it was so much longer than the other, I called it *Tractatus maior*. The other book was written while the council was in session. One could tell because it referred to the council in the present tense and concluded with a notice stating that it had been “dictated” at the council by the bishop of Mende. That book consisted of forty chapters. Because it was so much shorter, I called it *Tractatus minor*.

Much of the *Tractatus minor* simply repeats ideas that can be found in the *Tractatus maior*, too, but it is by no means the same kind of work. The differences are many, and they concern matters of form as much as substance. The most important difference is that Durant dropped his program for constitutional reform and his pronounced reliance on the obligatory force of ancient law. He said nothing about convening general councils every ten years and he abandoned his sustained attack on papal exemptions of monks and friars from episcopal control. Instead of calling for controversial limits on the power of central government, he called for reforms with which virtually everybody could agree: better education, better care of souls, and better observance of the liturgy. His criticism of the papacy was no less pointed than before, but it was muted by a heightened stress on papal primacy. His argument changed from conclusive to admonitory. His reasons changed from legal to moral. His method changed from technical to rhetorical.

We cannot be certain exactly what moved him to make those changes. But there is one compelling explanation: Durant's demands for constitutional reform were met with real hostility. Pope John XXII later claimed that Durant had tried to provoke a schism between Pope Clement V and the bishops assembled at Vienne. That may be an exaggeration. But there is no doubt that Durant found himself rebuffed. Most likely he wrote the *Tractatus minor* in order to redeem himself, omitting what had provoked the most hostility, condensing what he had previously written, and keeping what he thought stood the best chance of being put into effect. That makes the *Tractatus minor* good evidence for his response to opposition, but not for the plans with which he went to the council. No wonder historians had previously not been able to make much sense of the *Tractatus de modo generalis concilii celebrandi*.

Research on William Durant the Younger's Tractatus de modo generalis concilii celebrandi: A Critical Review

Having established a text that I could trust, and having found out about the main differences between the *Tractatus maior* and the *Tractatus minor*, I was eager to turn to the question what Durant had actually tried to achieve, and why. But there was still one other thing I needed to do first, namely, take a close look at what others had previously written about Durant. That did not take long. There were only a handful of chapters and articles communicating the results of original research. But it was nonetheless revealing. It taught me as clearly as John Mundy had promised me it would that the positions historians take tend to match their confessional background more closely than one might expect in the age of professional historical scholarship.¹³

The first historian after the French Revolution, and one of the most interesting to take a serious interest in William Durant the Younger, was Ignaz von Döllinger (1799–1890), an ardent Catholic opponent of the absolutist tendencies characteristic of the ultramontane papacy in the nineteenth-century heyday of what the papacy regarded as its battle with the modern world for the survival of the church. In a wide-ranging book about the role of councils and the pope published in 1869, Döllinger mentioned Durant's criticism of the late medieval papacy and his demand for general councils because they agreed

13 As Mundy once put it to me in a marginal note on a draft of one of the chapters of my dissertation in an inimitable formulation I must unfortunately cite from memory because I no longer have that draft, but remember well because one of Mundy's gifts was to express himself in memorable turns of phrase: "There are among modern scholars Catholics—curial/papal, conciliar, members of the orders—various shades of Protestants, and secular Levites masquerading, and sometimes acting, as 'scientific' historians."

with his attempt to stop the papacy from making papal infallibility official Catholic dogma. “If one looks at it from the viewpoint of the ancient church from the days of the Apostles down to about 845,” he wrote, “what the papacy has become since then looks like a disfiguring, pathological, and suffocating tumor on the organism of the church, stunting and corroding its vitality and bringing sundry scourges in its wake.”¹⁴ Like Durant, Döllinger did not pull any punches and like Durant, Döllinger did not succeed. In 1870 the First Vatican Council made papal infallibility official Catholic dogma. Old Catholics split from the official church, and for more than a generation Catholics did not publish any new research on William Durant the Younger.

Protestant historians briefly took an interest in Durant around the turn of the twentieth century. Like Döllinger they saw him primarily as an opponent of the papacy who wanted to bring the church back to its ancient shape. But one suspects that, unlike Döllinger, they had no sympathy for his devotion to canon law. They might have given him a warmer welcome if he could have been treated as a precursor of the Reformation. Unfortunately that was impossible. He was as ardent a champion of canon law and ecclesiastical supremacy as any pope who ever lived. There was no trace of anything like salvation by faith alone in any of his writings. No Protestant historian wrote anything significant about Durant thereafter.

Catholics began to pay renewed attention to Durant after the turn of the century, perhaps because the so-called modernism crisis renewed resistance to papal monarchy. But when they did, they were at pains to distance themselves from the position that Döllinger had taken and tried to rescue Durant from what they seem to have regarded as Protestant misinterpretations. They stressed his loyalty to the Catholic Church and sought to make light of the more pointed charges he leveled against the papacy by characterizing them as expressions of youthful exuberance, naiveté, or otherwise discountable departures from his own better judgment—never mind that at the time this young man was well into his forties and had already proved himself to be a leading expert in canon law. As far as they could tell, Durant was a loyal and well-meaning son of the church who did not in the least intend to challenge the papacy.

That changed after World War II, when Pope John XXIII prepared the way for the Second Vatican Council and opened the door to major church reform. In that setting Catholic historians like Hubert Jedin, Brian Tierney, and Francis Oakley turned to the task of bringing church history up to date without allowing themselves to be maneuvered into the isolation that Döllinger had suffered.

14 Döllinger, *Papst und Concil*, viii–ix, my translation.

Jedin established how crucial the conciliar movement was to the Catholic Reformation.¹⁵ Tierney proved that conciliar theories limiting papal power were not heretical, but deeply embedded in canon law itself.¹⁶ And Oakley showed that, contrary to the impression created by the victory of Ultramontanism in the late nineteenth century, conciliar traditions survived long after the Council of Trent and did not lose their vigor until the First Vatican Council cast them into oblivion by making the papacy's absolute predominance over the church the touchstone of Catholicism in one of the sharper breaks in church history.¹⁷ All three placed Durant firmly in the long arc of conciliar traditions that were rooted in antiquity and peaked in the late Middle Ages, treating him as a keen observer of the ills afflicting the church and showing sympathy for his proposals for reform.

In its small way the history of scholarly attention to William Durant the Younger thus reflects both the grip in which confessional hostilities were holding the imagination of historians well into the twentieth century and the relaxation of those hostilities in the aftermath of World War II. That increased my confidence that I might have something useful to say about William Durant the Younger, not merely because both Catholic and Protestant scholars seemed to have become more willing to pay attention to a late medieval bishop whose ideas fell squarely between the chairs of papal absolutism and Protestant revolution, but also because I myself was falling between those chairs. In this context having been baptized Russian Orthodox, classified Lutheran at school for purposes of religious instruction, and raised in a Catholic part of Germany looked more like an asset to scholarship than a source of confusion.

Quod omnes tangit ab omnibus approbari debet: *The Words and the Meaning*

These three preliminary studies assured me that I knew what Durant had written and what others had written about him. When they were finished, I set about the work that needed to be done in order to understand his treatise in both of the dimensions I mentioned above: what he meant by writing it and what his writing meant separately from what he meant. The results went straight into the dissertation I finished in 1981 and the book that was published in 1991. There is no need to repeat them here. The most important were summed up in "William Durant the Younger and Conciliar Theory," on which I shall have more to say below. There was one central issue, however,

15 Jedin, *Geschichte*.

16 Tierney, *Foundations*.

17 Oakley, *Conciliarist Tradition*.

that seemed to deserve a separate publication, namely, the famous principle Durant invoked in making his conciliar demand: *Quod omnes tangit ab omnibus approbari debet*, “What touches all must be approved by all.” That principle was obviously crucial. But what exactly did it mean?

At first sight its meaning may seem so blindingly obvious that it is hardly worth closer examination. It seems to mean that measures affecting all the people have no validity unless the people have given their consent. It looks like an endorsement of popular sovereignty. It was by no means peculiar to Durant. It was a commonplace whose history can be traced back to Roman law. It was regularly quoted by Durant’s predecessors and contemporaries as a justification for constitutional limits on royal and papal power. When it was applied to the entirety of Christendom, as in the case of Durant’s *Tractatus*, it seems difficult to take as anything other than proof that the roots of modern democracy lie in the Middle Ages, especially in canon law and theories devised by canon lawyers to deal with corporations that had their own legal personality, and in the right of the members of such corporations to affect or even to control decisions made by the corporation’s head.¹⁸ At first sight, in other words, it seems that Durant was calling for a form of constitutional government in which the will of the people would be supreme and general councils were meant to express that will.

A closer look however shows this to be a case of wishful thinking that glosses over a longer, more complicated, and more interesting history. It does no justice either to the magnitude of the obstacles that needed to be scaled before democracy became conceivable or to the ingenuity and patience of the people who did the scaling. Detailed research by expert historians with an interest in the origins of modern democracy has turned the obvious reading of “What touches all must be approved by all” into a classic illustration of the extent to which appearances can be deceiving.¹⁹

Durant founded his case on two principles that were, if not directly opposed to popular sovereignty, at least completely different in origin and meaning. One was the superiority of the clergy over the laity. He was as firm in his support of ecclesiastical supremacy as his archbishop, Giles of Rome, with whom he collaborated at the Council of Vienne and whose treatise *On Ecclesiastical Power*, one of the most exorbitant vindications of ecclesiastical supremacy ever written, he recommended enthusiastically to his readers. The other was the

18 Thus Tierney, *Foundations*, and Tierney, *Religion*.

19 The most important work was done by Gaines Post in a series of articles collected in his *Studies in Medieval Legal Thought*.

rule of law. From his perspective, the well-being of the commonwealth—what he called *res publica*—depended entirely on the degree to which everyone, the people as well as the people's rulers, temporal as well as spiritual government, obeyed the law. The law was more for him than just a body of rules. The law gave voice to justice, equity, and reason. It was a sacred matter. It proceeded directly from the will of God. The will of the people, let alone the will of their rulers, was utterly beside the point.

The trouble with the law, of course, was that the law needed to be applied to changing circumstances. Some circumstances were so peculiar and some changes so profound that old laws had to be changed and new laws enacted. Such changes posed grave dangers. You had to get them right. If you did not, instead of giving voice to justice, equity, and reason, you had subverted the rule of law.

That was the danger Durant's conciliar proposal was meant to combat. He never actually demanded that "What touches all must be approved by all." He merely used it as a reason to justify what he did actually demand. What he did demand was that no laws ought to be passed or modified without the participation of general councils and that such councils ought to meet every ten years. Not once did he maintain that general councils ought to be able to impose their will on a recalcitrant pope. Not once did he address the question what was to happen in case the council and the pope could not agree. That is the single most important point on which his demand differs from the Council of Constance's decree *Haec sancta*, which did make it explicit a hundred years later that at least on such fundamental issues as faith, schism, and general reform the council had the right to impose its will on an unwilling pope by force.

This is no oversight. It rather tells us what Durant had in mind when he used "What touches all must be approved by all" to justify his conciliar demand. What he had in mind was not that general councils had the right to impose their will on an unwilling pope or, for that matter, that general estates had the right to impose their will on an unwilling king. It was that no ruler ought to take any measures affecting all of his subjects without first having given his subjects an opportunity to speak their mind. His reasoning was simple, and well supported with quotations from the Old Testament, the New Testament, canon law, and Roman law. It was that no single person, not even the pope, could make the right decision on every matter concerning the whole of Christendom all by himself. But he could with the help of councils. Christ had promised his followers that God would fulfill their wishes if two or three of them were gathering in his name. Councils were gathered in his name. They could be trusted

to determine what was right on all matters concerning all of Christendom. They spoke with the voice of the Holy Spirit and when law had to be changed, the rule of law depended on guidance from that voice.

For these reasons Durant did not even consider the question how to resolve a disagreement between the council and the pope. Such disagreements would have reduced his case to absurdity. Divided councils obviously did not speak with the voice of the Holy Spirit. What would have been the point of calling general councils every ten years if they could not be trusted to give voice to equity, justice, and reason? A council that ended in disagreement was a council that had failed. It could neither maintain the rule of law nor the supremacy of the church. A council made sense only if it arrived at a conclusion that did not pit its members against the pope. Once all the arguments had been duly presented, the council was obliged to render its consent to the decision of the pope. "What touches all must be approved by all" was a procedural requirement. It did not give the council the right to withhold its consent from the decisions of the pope. Conciliar consent, to use a pointed formulation made famous by Gaines Post, was compulsory.²⁰

This is by no means to deny that medieval jurists established concepts, theories, and practices without which modern representative institutions would never have begun to play the role we take for granted nowadays. It rather is to insist that the former are separated from the latter by longer distances and deeper changes than could be guessed by reading that "What touches all must be approved by all." Nor is it to belittle the considerable power a council might well have exercised over the pope in practice, even without a formal right to withhold its consent or to enforce its will. It is merely to insist that Durant did not demand such a right and that his argument contained no justification for making such a demand. Pope Boniface VIII himself included the principle that "What touches all must be approved by all" among the rules of law that make up the concluding section of the *Liber sextus*, the code of canon law he published in 1298. Like Giles of Rome, Boniface VIII is often said to have made the most exaggerated claims on behalf of papal supremacy in all of medieval Europe. If he saw fit to declare that "What touches all must be approved by all," there is good reason to suspect that this particular rule of law did not (yet) limit the exercise of papal power quite as strictly, and did not (yet) advance the principle of popular sovereignty quite as far, as might at first be thought. As long as politics continued to be viewed as subject to law, popular sovereignty was difficult to justify. Even today, after all, the question exactly how to reconcile democracy with the rule of law remains wide open.

20 Post, "Romano-Canonical Maxim."

*At the Crossroads of Law and Politics: William Durant the Younger's
'Treatise' on Councils*

Tractatus is the only word of which we can be certain that Durant used it to refer to the *Tractatus maior*. It has an obvious English analogue: 'treatise.' Because the analogy is obvious, I relied on it unthinkingly until, at some point during the writing of *Council and Hierarchy*, I realized that I had never tested its reliability. Once I had asked the question, it did not take much digging to find out that *tractatus* meant something more interesting than the vague "literary composition dealing more or less formally or systematically with definite subject" as which 'treatise' is defined in the *Concise Oxford Dictionary*.²¹ That, too, seemed worth a separate publication.

In the first place, *tractatus* was closely related to a specific issue, namely, conflicts between different laws and different interpretations of those laws. Since ancient Roman times it had been used to refer to the activity of experts involved in resolving such conflicts by negotiation and analysis, as well as to the writings resulting from such negotiation and analysis. In that sense *tractatus* was something that lawyers did or wrote in order to resolve a conflict between different laws.

In the second place, the writings that medieval jurists called *tractatus* were mostly organized in one of two ways: by subject matter or by the books in which the laws were written. Those organized by subject matter focused on the different solutions one could give to a specific problem by drawing on different laws. They sought to resolve the differences between those solutions in some systematic and comprehensive fashion. Those organized by books focused, not on any specific problem, but on the larger problem posed by differences between whole sets of different laws addressing a variety of different issues, and they attempted to resolve the differences between those sets. There was a whole class of such treatises, and many were explicitly entitled "treatise on differences."

In the third place, *tractatus* came to be applied to negotiations at the assemblies called by medieval lords. That kind of *tractatus* was also closely related to conflicts between different laws and different interpretations of laws, but the personnel did not consist of lawyers, and it was not restricted to purely legal matters. The personnel consisted of leading figures in the temporal and spiritual realm, and their *tractatus* consisted of negotiating with their rulers about the well-being of the commonwealth. That added a distinctly political dimension to *tractatus*.

21 *Concise Oxford Dictionary*, 7th ed., 1142.

All three of these meanings applied directly to the *tractatus* Durant wrote for the Council of Vienne. The central issue he addressed was typical: a conflict between two sets of different laws, namely, the canon law of antiquity and canon law as it had developed since the twelfth century under the leadership of the papacy. Most of the second part of the *Tractatus maior* was organized according to the sequence of canons in the collection from which he had taken them. We do not know exactly which collection that was. Most likely it was one or another version of the so-called *Collectio Hispana*, amplified by the famous Pseudo-Isidorian decretals. We do know that the sequence was roughly chronological. Arranging canons in chronological order had been standard practice during the early Middle Ages. But since the eleventh century canon law had been given a systematic arrangement and chronological collections had fallen out of use. By presenting the ancient conciliar canons in their chronological order, Durant's *tractatus* thus heightened the contrast between ancient and modern canon law. In this sense, his treatise resembled a treatise on differences in the technical sense.

Above all else, Durant's *tractatus* sat precisely at the crossroads between law and politics. On the one hand, it was squarely founded on canon law, and sharply focused on conflicts between different bodies of law. On the other hand, it did not resolve those conflicts. It rather submitted them for consideration to the Council of Vienne. It amounted to the first step in a political proceeding that Durant hoped to carry to a successful conclusion in the negotiations to be conducted at the council, and the conclusion was supposed to resolve the problem he had identified: the difference between ancient and modern canon law.

The meaning of the word *tractatus* thus casts an unexpectedly bright light on the substance and purpose of the work Durant submitted to the Council of Vienne. It was not the meaning we tend to associate with 'treatise.' It demonstrates how closely writing in general and writing a *tractatus* in particular was related to the exercise of power, and how far it was removed from purely private or theoretical affairs. Durant's *tractatus* treated law as part and parcel of politics and politics as part of law. It thus points to a specifically medieval understanding of the relationship between politics and law. That understanding has largely vanished from sight since then. In our world the law is, or is at least supposed to be, distinct from politics.²² The only area where that is not the case so clearly consists of the relations between states. There is no sovereign who legislates for those relations. 'Treaty'—a word that is derived from *tracta-*

22 I should point out that the distinction is never absolute and that, for reasons rooted in early modern history, it became much stricter in Europe than in America.

tus and refers to legal arrangements governing relations between states—may therefore be the only word still carrying the meaning *tractatus* had for Durant: a piece of writing in which politics cannot be told apart from law.

The Reception of William Durant the Younger's Treatises in Late Medieval and Early Modern Times

The question how well William Durant's ideas were received in late medieval and early modern Europe led too far afield for me to deal with it directly in *Council and Hierarchy*. It is also more difficult to answer than one might think. We know that Durant managed to exercise substantial influence on the legislation passed by the Council of Vienne, in spite of the hostility with which Pope Clement V, and even more so Cardinal Jacques Duèse, the future Pope John XXII, viewed his proposals for wholesale constitutional reform. There are also a handful of instances in which we can be certain that his treatise was behind recommendations made in the fifteenth century. The Council of Constance adopted the ten-year period for general councils. Leading theologians like Pierre d'Ailly (1351–1420), Jean Gerson (1363–1429), and Nicholas of Cusa (1401–64) were not merely familiar with his work in general terms, but relied on it for guidance on some specific issues. Durant, however, went to extraordinary lengths to couch his demands in terms quoted verbatim from canon law. That helped to make his demands compelling, but it complicates the task of measuring the extent to which his ideas were taken up by others. It is easy enough to find cases in which later writers quoted laws they might well have taken from Durant's treatise. But usually it is next to impossible to tell whether they quoted his treatise or merely the same legal source he had quoted.

It is much easier to judge the recognition Durant received in later times by tracing the history of the manuscripts and printed editions in which his treatise circulated. The numbers—ten manuscripts, most of them incomplete, and six printed editions—may not seem large. But they are larger than those of some other and far more famous works in the history of medieval political thought.²³ The treatise was definitely known at the Council of Constance (1414–18), attracted more attention at the Council of Basel (1431–49), and continued to be read throughout the early modern period, particularly in connection with the Council of Trent and the disputes pitting French Gallicans against the papacy. No less telling is the standing of the people who owned a manuscript or were involved in one of the printed editions. Some of them, like Peter Nümagen (ca. 1450–1515), Guglielmo Sirleto (1514–85), and Pierre Pithou

23 The *Defensor Minor* by Marsiglio of Padua is famously preserved in a single manuscript that languished in obscurity until it was discovered in the nineteenth century.

(1539–96), were highly regarded at the time, but are not well remembered now. Others, like Pope Benedict XIII (1328–1423), Nicholas of Cusa (1401–64), Jean-Baptiste Colbert (1619–83), and Jacques-Bénigne Bossuet (1627–1704), rose to such heights of power, influence, and intellectual distinction that their names are recognized outside specialist circles. That is more than enough to secure Durant a respectable position among the writers of late medieval and early modern Europe whose works were taken seriously by later generations.

William Durant the Younger and Conciliar Theory

My study of the reception of Durant's ideas was published in 1991, the same year as *Council and Hierarchy*. It was the last piece of original research that I devoted to Durant. "William Durant the Younger and Conciliar Theory" was published a few years later. It sums up the conclusions that research established, not to everybody's, but certainly to my satisfaction.

These conclusions are best presented in three parts. The first concerns what Durant meant with his conciliar proposal. He meant that the commonwealth in general and the church in particular badly needed reform, and that general councils, convoked at regular intervals and authorized to be consulted whenever general legislation was to be passed or altered, were the best means to reform them. He was no enemy of the papacy, neither was he a proto-democrat, he was not in favor of popular sovereignty, and he had no concept of the general will. He surely knew of the sophisticated theories of corporations and corporate personalities advanced by thirteenth-century canonists. But he did not make them the basis of his case. His case was based on law. He was convinced that God ruled the world by law, and that he had entrusted his law to a hierarchy whose reach was universal, whose apex consisted of the bishop of Rome, and whose clerical members governed the laity by leading them with good examples. He was as loyal and ardent a proponent of ecclesiastical supremacy as any pope. He was convinced that there was nothing wrong with the foundations of the church as they had been established in antiquity and modified in the great papal revolution of the eleventh century. Like Giles of Rome he insisted on the right of the church to exercise its powers of jurisdiction independently from, at a higher level than, and directly over temporal powers. What troubled him was that the church had strayed from the law on which its supremacy depended. He was afraid that "the faith, which is dead without works according to St. James, will be considered by believers and unbelievers alike to have perished through the fault of the prelates and the clergy, . . . [and that] events incomparably worse than those of the past will follow, and all of them will be blamed upon our lord the highest pontiff, his venerable college of cardinals,

and this sacred council.”²⁴ He was certain that the Church of Rome was by far the worst offender, not because its offenses were extreme, but because it set an example for all of Christendom. His call for general councils was meant to recall the church to its foundations and restore the allegiance of the laity. He was a true reformer: determined to go back to a past that he believed had been corrupted by misguided policies pursued by popes, monks, mendicants, and other guilty parties. He had no wish to change the system. He was holding on to the system with all his strength and intelligence.

The second part of these conclusions concerns the circumstances that prompted Durant to advocate reform along such lines and to back down when he ran into opposition. He regarded the authority of bishops over monks, friars, and the nobility as the main pillar supporting the authority of the church over the laity. On this understanding the greatest danger to the church consisted of the steadily proceeding encroachment by papal and royal governments, all too often in collusion with monks, friars, and the nobility, on the control of bishops over their dioceses. He recognized an opportunity in 1301, when King Philip IV clashed with Pope Boniface VIII. In 1307 he managed to obtain a favorable settlement of his disagreements with Philip IV in the so-called *Paréage of Mende*, which gave the Gévaudan a form of governance that lasted until the French Revolution. He hoped to settle his disagreements with the papacy as well by moving the Council of Vienne to adopt the measures he advocated in the *Tractatus maior*. But there he was disappointed. By the time the council met, Pope Clement V and King Philip IV were fast restoring good relations, and Durant had to retreat. The nature of his retreat is amply documented in the *Tractatus minor*. Though he spent the remainder of his life in high office, he never really challenged the papacy again.

The *Tractatus maior* and the *Tractatus minor* thus tell us how Durant hoped to roll back, or at the very least to stop, the advance of central government, and how he changed his plans when his hopes proved to be unrealistic. They document a short stretch of time when circumstances were favorable to his plans. That time began with a sharp disagreement between the pope and the king of France, which opened a window of opportunity through which Durant was able to envision real constitutional reform. It ended when Pope Clement V moved to Avignon and resumed friendly relations with the king of France at the Council of Vienne. The opportunity had passed and the window closed.

The third part of these conclusions concerns the meaning of Durant’s two treatises for our understanding of late medieval and early modern history. That

24 Fasolt, *Council and Hierarchy*, 300.

meaning is quite different from what he wanted to convey. He wanted to reassert the rule of law, but in the very act of calling for a return to ancient law, he proved how far the church had moved away from its foundations. He took his guidance from canons he discovered in an old chronological collection, but in the very act of communicating his discovery, he proved that those canons had failed to stop the church from losing its way before and could therefore hardly be relied upon to prevent the church from losing its way again. He called for general councils in order to strengthen the rule of law, but in the very act of making his call, he raised the question how to resolve a conflict between the council and the pope. These are definite implications of his argument. They are written all over his proposals and sometimes they take shape in starkly divergent formulations of his goals. But he never spelled them out. He could not spell them out without raising a doubt about the possibility of his success, a doubt he could not bring himself to face. The meaning of his treatises conflicts with the meaning he wanted them to have. That was a fatal weakness, and the weakness was revealed as soon as the pope confronted him. Unwilling to spell out the implications of his argument himself, he was forced to agree with them when they were spelled out for him.

It is important to be precise about the conflict at issue here. It does not consist of the differences between the *Tractatus maior* and the *Tractatus minor*. The conflict is firmly embedded in each of these two books. The differences between the books are merely evidence for what it is. The conflict is especially not to be confused with logical contradictions. It is rather a straightforward and perfectly familiar instance of what happens when human beings fail to make up their minds. It pitted Durant against himself. It is as elementary as the distinction between what 'I mean' and what 'it means,' that is, between meaning expressed in the first person present indicative and meaning expressed in the third person present indicative.

The difference between the first person and the third person may well seem to be a matter of purely linguistic or grammatical significance. But it goes straight to the core of human life. To give a plain example, consider someone saying 'five times five is thirty.' The meaning of what that person says is obviously not that 'five times five is thirty.' We know that five times five is twenty-five. The meaning of what that person says is what it tells us about that person, as maybe 'this person does not know how to multiply,' or 'this person is drunk,' or 'this person does not know English well,' or 'this person is making a joke,' and so on. Exactly what the meaning is depends entirely on circumstance. The possibilities are infinite—except that one possibility is excluded. Whatever 'five times five is thirty' means, it does not mean what the person says it means: that five times five is thirty.

It must be stressed how simple this example is. It is simple because it consists of a single sentence and the sentence concerns arithmetic. Matters are more complicated when the sentences are many and do not concern arithmetic. The complications rise to a whole different level when people take conscious advantage of the difference between what 'I mean' and what 'it means,' for example, to make a joke, to deceive their interlocutors, or to express their contempt, as in 'that is a fine piece of work' said with a tone that changes the overt meaning into its opposite. Spy novels specialize in complications of this kind. They demonstrate the pleasure we take in understanding such complications in exquisite detail without thinking even for a second about the grammar of the distinction between what 'I mean' and what 'it means,' the meaning of my words and the meaning I want my words to have.

It also needs to be stressed how deeply this distinction affects our lives. Oedipus is a good example. Oedipus vows to avoid his fate and then fulfills his fate by trying to fulfill his vow. That makes the meaning of his vow the opposite of what he meant. When he discovers the difference between the meaning of his intention and the meaning of his vow, he suffers agony and blinds himself. This difference constitutes the substance of tragedy. Unhappiness is not enough, however deep. Tragedy reveals the truth by tearing it apart.

Take examples closer to home: a child who is told that he or she has been adopted; a wife who finds out that her husband has had an affair; a creditor whose debtor turns out to be a fraud; a believer who loses faith. Take Freudian slips. In Freudian slips the conflict lies, so to speak, between what 'I mean' and what 'Id means.' Each of these cases turns on the discovery of a difference between the meaning of my words and the meaning I want my words to have. Such discoveries reveal something about myself without my knowledge or against my will. Their effects can range from mild surprise, amusement, and embarrassment to despair, madness, murder, and suicide. They can shatter a human being. This helps to understand why we try hard never to have to reckon with differences between what 'I mean' and what 'it means.'²⁵

That is precisely what Durant did not manage to do. He did have to reckon with differences between what 'I mean' and what 'it means.' He said things he did not want to say, betrayed fears he did not want to feel, and raised hopes in which he had no trust. He was struggling against himself, his hands were tied by his own argument, and ultimately he was defeated by his own efforts to prevail. That explains the mood and tone of his writing: the mood is grim; the tone despairing. Both convey the opposite of what he had in mind.

25 For a more substantial treatment of this issue see Fasolt, "Breaking up Time."

Durant was unique in his particulars, of course. But he was utterly commonplace in two basic regards: his trust in the rule of law and his belief that church and state needed to be reformed. As he believed that true obedience to ancient laws would save the church, so did his age. As he struggled to face the possibility that the foundations on which he had staked his case were crumbling under the weight he placed on them, so was his age. As he hoped against hope that pope and council would stand shoulder to shoulder in the cause of reform, so hoped his age. As he was forced to contemplate, against his will, the very future he had hoped to avoid, so was his age. In those regards, his treatises really were “the outcome of many years of thinking in common, of thinking by the body of the people.”

On a small scale, in a specific instance, the fate of William Durant the Younger thus foretold the fate of Europe in late medieval and early modern times. The fate of Europe took place on a much grander stage and took much longer to unfold. But it was driven by the same kind of disagreement with oneself and followed a similar course. If William Durant was one of the first to experience that fate, it was because he was especially well versed in law, especially exposed to the advance of central government, especially eager to achieve reform, and blessed with a rare opportunity to act on his convictions. The window of opportunity that Philip IV's dispute with Boniface VIII opened briefly for him was going to be opened much wider, for much longer, and for many more people by the Hundred Years War, the Great Schism, and the Hussite Revolution. His lonely request to give general councils a leading role in church reform was going to be widely repeated and given a much sharper edge by the conciliar movement. But just as the window of opportunity closed for Durant at the Council of Vienne, so it did across the length and breadth of Europe in the fifteenth century, and for the same reasons. As soon as the Council of Constance had put an end to the Great Schism, the papacy began to retrieve the power it seemed to have lost. When Pope Eugenius IV succeeded in restoring friendly relations with the monarchs of Europe—the kings of France and England, the emperor, the German princes—central governments in state and church resumed their advance with vigor. As his defeat by King Philip IV and Pope Clement V had led Durant to shift his case from law and legal science to virtue, rhetoric, and submission to papal primacy at the Council of Vienne, so the defeat of the conciliar movement led Europe to shift its case from law and reform to Humanism and sovereignty. Small wonder that Durant's proposals in the *Tractatus Minor* for reforming education, the care of souls, and divine worship, coming after his conflict with the pope, read almost like a blueprint for the reforms enacted at the Council of Trent.

The future lay with the very possibilities Durant had raised, but refused to contemplate. Humanism, Renaissance, and Reformation began with plans to reform the church quite like those he had put forth. They ended by rejecting both the ends he set for himself and the means he chose to achieve those ends. The laws with which he hoped to maintain the supremacy of the clergy over the laity lost their public authority to the state and became objects of purely confessional attachment or historical scrutiny. Ecclesiastical supremacy was overturned by rulers claiming a kind of sovereignty that was defined by its exemption, not simply from positive law—that kind of sovereignty had for a long time been asserted by the papacy itself—but specifically from the laws of the papacy. Where once the papacy had exercised jurisdiction over the continent, its jurisdiction was now defined as purely spiritual or indirect, if it was not repudiated altogether. In the end the pope looked like a prince almost like any other.²⁶ When that prince tried to fulfill his responsibility as head of Christendom by rejecting the terms on which Catholics had made peace with Protestants in 1648 on the grounds that Protestants were heretics, he was roundly ignored.

In the short run this understanding of late medieval and early modern history was the most important result I took away from studying William Durant the Younger's writing. In the long run, the most important result was the significance of the grammatical distinction between the first person and the third person for understanding history *tout court*. It was the most important because it proved that the question I had asked—what was the meaning of Durant's conciliar proposal—was badly put. It was not badly put merely because his proposal had more than a single meaning or because his treatises made more than just one proposal. That much was obvious from the start. It was badly put because it was conceived in terms of more or less logical coherence. It did not merely leave open the possibility that one of the treatise's many meanings might have been basic to the rest in some more or less systematic fashion: it was founded on that possibility. But in fact that possibility did not exist. The meaning of Durant's proposal came in two different kinds; the kinds were grammatical, not logical; and the difference between the kinds was irreducible.

But at the time I had not yet understood the place of grammar in history. I was perfectly well aware of the tension that ran through Durant's work. I documented it in ways that stood up well to every critique I could imagine and every critique I actually received. I used it to formulate an understanding of late medieval and early modern history that has continued to serve me

26 Cf. Prodi, *Papal Prince*.

well since then. But I believed it was a problem that lay, not in grammar, but in some kind of historical ‘reality’ in which his ‘interests’ conflicted with his ‘ideas.’ I tried to solve the problem by doing what we have all been trained to do: I distinguished between text and context, intentions and circumstances, ideas and interests, language and reality, and so on, so that I could fulfill the obligations historicism has sworn us to uphold ever since it first impressed them on us in the nineteenth century. Under the pressure of those obligations I divided Durant’s proposals into two parts: one part hierarchical, reflecting his insistence on the law; the other republican, reflecting his desire to go beyond the law. Hence the title *Council and Hierarchy*. That was all right as far as it went. But it went in the wrong direction. It merely cast the same problem in an altered form and thereby made the solution more difficult to find.

I suspect that was the reason why Brian Tierney found it difficult to understand my argument and suggested that perhaps I was making the same point he had once made about the unity of conciliar thought, but in a muddled fashion.²⁷ I knew Tierney was wrong, but I did not know why. Only much later, when I had taken up the writings of Ludwig Wittgenstein and entered into the world of the *Philosophical Investigations*, I realized that both of us were wrong. He was wrong because it was not a matter of unity and diversity at all, but a matter of grammar. I was wrong because grammar was not a problem. It was the solution.

Two—Moving On: Hermann Conring (1606–81)

Early in 1983 the University of Chicago offered me an appointment as Assistant Professor in the Department of History and the College on condition that I turn myself into a historian of early modern Europe. As the chair put it to me, the department understood that I had been trained as a medieval historian, and it fully expected me to publish a book based on my dissertation. Apart from that, however, it wanted me to teach graduate and undergraduate courses in early modern history, demonstrate significant progress on a research project in early modern history by the time of my review for tenure five or six years

27 “It is not easy to understand Fasolt’s underlying attitude to conciliar thought. . . . Fasolt was perhaps making in a muddled fashion the point I noted in *Foundations* (p. 3). ‘In strict accuracy, no doubt, one should speak of a collection of conciliar proposals rather than of “the Conciliar Theory”; and yet there was sufficient unity of thought among the various writers to render the latter expression significant and useful.’ Tierney, *Foundations* (1998), xiiin4, with reference to Tierney, *Foundations*, 3.

down the line, ideally in the form of a second book, and to establish myself as a leading historian of early modern Europe within about ten years. One of my future colleagues put it more succinctly: the less you say about the Middle Ages, the better.

I never found out what prompted the department to make that offer on those terms, but I jumped at the opportunity. I was young and I had no idea that switching fields like that might rob me of both of the most effective means with which to raise my standing in the profession, and thus my salary: securing offers from other universities and supervising many Ph.D.'s. Who was going to make an offer to a medievalist who had abandoned medieval history? Who was going to study early modern history with someone trained in medieval history? I did not reckon with the possibility that medievalists might lose sight of me or even consider me a traitor—I heard some did—and that early modernists might think I was, as they say in Chicago, “somebody who nobody sent.” I underestimated how difficult it is to cross the boundary dividing, not the Middle Ages from modernity, but medievalists from modernists, and I did not foresee that writing a book on a late medieval bishop while developing new courses and research in early modern history would give me a case of intellectual double vision. I had a lot to learn.

If someone had explained all that to me, I might have hesitated. But I would not have hesitated long. I would have thought it foolish to turn down an opportunity to make my living at a distinguished university merely because it meant that I would have to move my research forward two or three centuries. To the contrary, it was precisely the opportunity to cross the boundary dividing medieval from modern history that appealed to me. I had already crossed two well-marked boundaries: between philosophy and history, and between Europe and the United States. I was only too happy to cross another one, particularly one that irritated me as much as this one did.

To many historians the tripartite division of European history into ancient, medieval, and modern periods seems to be nothing worse than a convention that is now dated and certainly misleading, but has been superseded by recent research and at any rate does no real harm. To me it seems unjust to the people to whom it is applied, and to blind those who do the applying. It is not merely a problem for understanding European history. It springs from a kind of intellectual tyranny that damages our ability to come to terms both with the past and with ourselves. It cannot be improved by tinkering around the edges: it needs to be faced down. It demands a reconsideration of our treatment of the past, not in its parts, but as a whole. I had chafed under the designation ‘medievalist’ long before I ever thought of moving to Chicago. By my lights, the University of Chicago was challenging me to enter into battle with an opponent really worth fighting. That was an opportunity I did not want to miss.

It did not take me long to settle on Hermann Conring as the subject of my new research. I had first heard of Conring in a course on diplomatic—meaning the scholarly study of medieval charters and documents—taught by Paul Egon Hübinger (1911–87) at the University of Bonn in the early 1970s. Hübinger had made two points that left a strong impression: that Conring was one of the most significant figures in the development of the critical study of historical documents—more significant perhaps than Jean Mabillon (1632–1707), who is usually the first to be mentioned in this regard—and that Conring had never been given the attention he deserved. When he died in 1681, Conring left a large library, a substantial estate, and hundreds of publications on medicine, the circulation of the blood, natural philosophy, alchemy, the history and constitution of Germany, Roman law, German law, religion, confessional disputes, theology, commerce, statistics, politics, diplomacy, political science, and more. He was a polymath whose writings spread in all sorts of different directions. Like William Durant the Younger he had been held in high regard in his own day, but neglected by historians. His works were barely read in Germany, and the *Encyclopedia Britannica* did not even know of his existence. If he was mentioned at all, he was usually referred to as “the founder of German legal history,” a title awarded him by Otto Stobbe (1831–87), a leading historian of German law, in the inaugural address he gave as rector of the University of Breslau in 1869, at a time when Germany was just about to be unified—the same time, so it happens, when Döllinger was drawing attention to Durant in order to put a stop to papal absolutism.²⁸ Conring was clearly something different from a historian of law, but what? Was there some rhyme or reason behind his sprawling oeuvre? Was there some goal he had in mind that gave a coherent meaning to his many pursuits? Those questions attracted me, and I had a hunch I might be able to set some of the record straight.

In order to reassure myself that I was not about to go off on a tangent, I asked again for the advice of someone whose judgment I could trust. In this case it was Arnaldo Momigliano (1908–87), an extraordinary scholar whom I was lucky to count among my colleagues and to whom I could talk about Conring without having to explain whom I meant. Momigliano agreed wholeheartedly that Conring was a good subject for new research. His reasons were similar to those that Hübinger had mentioned, except that he added an emphasis on Conring’s work as a physician and writer on medicine. What was it, Momigliano asked, that put men with a professional grasp of medicine like Conring and Locke in the forefront of the political thinking of their time? What did they share with predecessors like Marsiglio of Padua and Marsilio Ficino,

28 Stobbe, *Hermann Conring*.

who had distinguished themselves in similar ways during the fourteenth and fifteenth centuries?²⁹

The more closely I looked, the more interesting Conring became. Like William Durant the Younger, he seemed concerned with problems he had discerned in the foundations of society and determined to solve them by some sort of reform in which law and legislation were to play an important part. That complemented nicely what I already knew about the history of law. At the same time he belonged to a completely different historical terrain. He was a Lutheran who detested ecclesiastical supremacy, and he was German, not French, from the North, not the South. Like Durant, he was a commoner who built his career on talent, perseverance, and powerful patrons. Unlike Durant, he never held high temporal or spiritual office, but made his living as a physician, professor, and expert adviser to princes and men of state. On balance, he offered an attractive combination of similarity and difference compared to the work I had been doing on Durant and was still doing at the time. I would neither have to begin entirely from scratch nor put myself in danger of saying the same thing twice.

Above all else Conring allowed me to leapfrog the traffic jam of historians clogging all roads to the Reformation. He lived as long after the Reformation as Durant had lived before. He led me straight into a period of German history where traffic was thin, historians seemed to be few and far between, and their attention absorbed by little besides the Thirty Years War and the Peace of Westphalia—a kind of darkened landscape between the Reformation and the Enlightenment, contrasting sharply with the splendor of France's grand siècle, Spain's Siglo de Oro, and England's Hobbes, Milton, and Locke. That gave me a straightforward opportunity to break new ground. But it did more than that, because the new ground was systematically different from the ground I had been covering so far. By Conring's time the case Durant had made was closed. The tide had turned and the terms had changed: the age of reform was gone. What had once made Durant look to the future with fear and foreboding was precisely what made Conring look to the future with hope and anticipation. What Conring wanted was precisely what Durant opposed: freeing states and individuals from being governed by the church.

That contrast was doubtless going to require qualifications. But no qualification was going to lead back to the place where I had left Durant. To the extent that anything in history can be a counterpoint to anything else, Conring

29 As it turned out, I never managed to follow those questions further than to establish that Conring considered medicine, history, and politics to be closely related forms of science; see below, pp. 35–6, 39–43, 57–9.

was such a counterpoint to Durant. That meant that I could use him to run an experiment—or come as close to running an experiment as can be done in history. The experiment was to compare the cases of Conring and Durant in search of reasons for the incoherence over which Durant had foundered. Did Conring, under opposite historical conditions, achieve the coherence that had eluded Durant? If so, the conditions might well have been the reason. Or did he have to battle with the same incoherence? In that case the different circumstances were clearly no explanation.

That was an experiment I really wanted to run. Precisely because it involved comparing a ‘medieval’ with a ‘modern’ case, I thought that it might lead me to a criterion with which to judge the meaning of the division of European history into ‘medieval’ and ‘modern’ periods. It held the promise of subjecting the hypothesis that history might give me a means of orientation amidst the circumstances of my time to a decisive test. That would have been a handsome return on the investment I had made by agreeing to turn myself into an early modern historian.

Conring on History

As I had done with Durant, I started by making a survey of everything Conring had written and others had written about him. Most of his literary output on subjects other than medicine and natural philosophy was published by Johann Wilhelm Goebel in six massive volumes of *Opera* in 1730, conveniently reproduced in a photographic reprint in the early 1970s. The Special Collections Research Center at the University of Chicago and the Newberry Library held a good number of the books Conring had published in the seventeenth century. The National Library of Medicine in Bethesda had a substantial proportion of his medical writings. The rest, almost without exception, could be found in the Herzog August Bibliothek in Wolfenbüttel, which Conring himself had helped to develop and where many books once belonging to the University of Helmstedt had been sent. That made it easy to lay my hands on Conring’s published writings. Once I had traveled to Wolfenbüttel and the Herzog August Bibliothek had sent me the microfilms I ordered, I had virtually everything I wanted to read or thought I might need to consult within reach in Chicago.

The scholarship on Conring was more substantial than that on William Durant the Younger. Since Otto Stobbe had drawn attention to him in 1869, his biography, his contributions to the study of history and law, his work on statistics, his views on politics, and his political activities had all received attention in monographs, articles, and essays. Most of that scholarship was superseded, and almost none of it took notice of his writings on medicine and natural philosophy. As recently as 1981, however, on the occasion of the three-hundredth

anniversary of Conring's death, Michael Stolleis had organized a conference and exhibition in Wolfenbüttel that resulted in the publication of an illustrated catalog and a hefty volume of studies—*Beiträge zu Leben und Werk*—by leading scholars dealing with most aspects of Conring's life and works.³⁰ Those volumes summarized what had been known before, broke new ground in significant respects, and included the first thorough bibliography of Conring's writings, as well as surveys of his published and unpublished correspondence. That made it possible for me to go straight to the issues without having to carry out preliminary studies.

The first specific subject I wanted to investigate was Conring's concept of history. It was an obvious choice. Advancing critical methods for authenticating ancient and medieval documents was one of Conring's chief claims to fame. He published more than one work explicitly designated as 'historical' investigations. He was the first to point out that Roman law had come to be considered binding in Germany because German students had been going to Italy for centuries to study at the best schools of law, where they learned Roman law, of course, and from where they returned to practice the law that they had studied. He drove the last nail into the coffin of the belief that Roman law was valid in Germany because its validity was universal. This use of history made for a major difference between him and Durant. I wanted to grasp that difference.

It was easy enough to make a rapid start. Conring had stated his ideas about the study of history early in his career. He did so in the preface to an edition of Tacitus's *Germania* he published in 1635, when he was twenty-nine. He republished the same preface in 1652, and once again in 1678, three years before he died, making a point of stressing that he had not revised it because he still believed what he had written in his youth. That made it a reliable piece of information about what Conring had in mind when he said 'history.'

What I found was that his concept of history differed by a considerable margin from what we mean when we say 'history' today. What we mean, roughly speaking, is either the past or an account of the past. What he meant was a record of purely empirical information. History was data. It was not a form of knowledge properly speaking. Knowledge—what Conring called *scientia*—required two ingredients: empirical observations and general laws and principles or, as he put it, "common laws and universal precepts," with which to explain the observations. History was only one of those two ingredients, and it did not concern itself exclusively with the affairs of human beings. It recorded everything the senses had perceived and only what the senses had perceived,

30 Herberger and Stolleis, *Hermann Conring* (1981); Stolleis, ed., *Hermann Conring* (1983).

in nature no less than in human affairs. History was the empirical foundation of every art and science that had an empirical foundation: natural history was the foundation of natural philosophy, heavenly history of astronomy, political history of political science, medical history of medicine, and so on. Mathematics, logic, and metaphysics had no empirical foundation, and thus no history; all other forms of knowledge did.

Conring's concept of history was thus both wider than ours (because it included other areas of knowledge) and narrower (because it was not a form of knowledge strictly speaking). That does not mean that Conring never used 'history' in order to refer to knowledge of the human past. On the contrary, that is precisely how he usually did use the term. It rather means that he used 'history' to designate real knowledge of the human past only when he did not need to draw attention to the distinction between a record of purely empirical observations and such knowledge. Strictly speaking, only the former was 'history': the latter was not simply 'history,' but 'historical science' (*historica scientia*).

That made for a fundamental difference to William Durant the Younger. Durant had treated the writings of antiquity as authorities conveying true knowledge about the government of state and church. The problem was not that these authorities could not be trusted. The problem was that they had fallen out of use. Conring, by contrast, did not trust these authorities at all. He treated them as evidence. They needed to be critically weighed and judged. He knew perfectly well how much evidence consisted of writings that did not merely record empirical observations, but also claimed to convey real knowledge and commanded great authority. He founded much of his thinking on such writings, particularly those of Aristotle. But he did not do so because of their authority. When he described the principles of knowledge in his inaugural address as professor of natural philosophy, he stressed that Aristotle himself had placed the truth above the authority of Plato. Bowing to the authority of Aristotle was a poor way of showing one's respect for him. A better way was to submit his writings to the same critical judgment with which Aristotle himself had approached the evidence. Knowledge, Conring maintained, was never based on authority: knowledge was based on truth. Conring, to put it bluntly, was no historian at all—let alone a reformer like Durant: he was a scientist.³¹

31 It may be worth noting the similarity of Conring's account of history to Hempel, "Function of General Laws," which kept provoking debate until Kuhn, *Structure of Scientific Revolutions*, changed the terms of the debate for good.

*From Helmstedt via Mainz to Paris: Hermann Conring and
Hugues de Lionne*

That is one reason why Conring's designation as "the founder of German legal history" does no justice to his place in time. What he called 'history' was nothing anyone could possibly have 'founded.' 'History' could only be recorded, and what he called 'science' was by his own account something that did not have to be founded because it had been founded long ago, by Aristotle for example. As far as Conring was concerned, he founded nothing whatever. He merely made a point of practicing true and tried principles of science in areas of knowledge that he believed to have been disfigured by ignorance, hate, and superstition. His accomplishment was never to relax the discipline required to withstand such enemies, and never to forget the difference between mere words and the reality of things, *verba* and *res*. What counted, he liked to insist, was not the words. What counted was the things, and he was confident there was just one way to grasp the things: that way was science.

Another objection to calling Conring "founder of German legal history" is that it makes him sound too much like nineteenth-century nationalists. Doubtless there are similarities. He wrote in praise of the German nation and hoped for its political unification, sometimes in terms that sound strikingly nationalistic. But in his times those terms had not yet risen to the dominance they won in the nineteenth century. They represented only one of many different commitments among which those to science, peace, and natural law ranked higher. The pursuit of science, peace, and natural law gave Conring every right to act in ways that had little to do with loyalty to Germany. But that was difficult to understand for historians who wanted to measure Conring's significance by the degree of his enthusiasm for Germany. The very same historians who praised him for having founded German legal history, precisely because they praised him in those terms, were therefore sorely tempted to impugn his national credentials and charge him with dishonor whenever his behavior did not match the role they wanted to assign to him.

That bothered me. I thought that if there was dishonor, it lay in treating Conring in terms that ruled out the possibility of self-defense because they could not be rebutted without conceding the legitimacy of those terms—along the line of questions like 'Did you beat your wife today?' I knew of course that things had changed since the nineteenth century. After World War II historians had become more careful about charging Conring with dishonor. Their predecessors, however, had so effectively obscured the difference between the kind of Germany that Conring had imagined in the seventeenth century and the empire that Bismarck had founded in 1871 that it was difficult to recognize

the sense in which the charges of dishonor had always been illegitimate, no matter that historians had stopped repeating them.

The simplest road to clarity, I thought, would be to focus squarely on the subject that nineteenth-century historians had found to be most embarrassing: the services Conring had rendered to princes who were unlikely to have had Germany's best interests at heart. The most important case in point, of course, was that of King Louis XIV of France. In 1660 Conring approached Louis XIV's foreign minister Hugues de Lionne in hopes of winning his patronage. One year later he dedicated his commentary on Machiavelli's *Prince* to Lionne, and for more than ten years thereafter he maintained friendly and lucrative relations with the court of Versailles, including no less a figure than Colbert, to whom he dedicated the second edition of his book on hermetic medicine in 1669. His chief reward for offering his counsel consisted of an annual pension from 1664 to 1673. Patronage was what he wanted, and patronage was what he got.

One can imagine how difficult it must have been for patriotic German historians writing after the founding of the German empire in 1871 to have to admit that Conring had taken payment from the very nation that Germany had just defeated in a war of national unification. But there is nothing wrong with getting paid. Conring, like most scholars in the Republic of Letters, depended for his sustenance on the support of patrons in ways not very different from those in which scholars, artists, and scientists today depend for theirs on public and private funds. Of course he was getting paid, but the question was: For what did he get paid, and why should he not have been paid by Louis XIV?

A thorough answer to that question would have required a thorough study of the differences between Germany in 1648 and Germany in 1871. That would have taken me too far afield. So I limited myself to looking at a memorandum that Conring wrote for France in 1670. It caught my eye because it gave a strong endorsement to France's leadership in Europe. Its central thesis was that it made little sense for France to invest in military power and engage in foreign wars without laying reliable foundations at home. Real power, Conring maintained, depended on the ability to tax, which depended on the wealth of the populace, which depended on the vitality of commerce. The best thing France could do to increase its power was to improve its commerce, and the most obvious way to do just that was to monopolize Mediterranean trade. It followed that France ought to raise capital, possibly in the form of a national merchant company; maintain a navy with which to defend its Mediterranean coast; and enter into friendly relations with the Ottomans and the pirates of Barbary.

More interesting were the reasons that Conring gave to justify this advice. He did not think of France in isolation, but thought of it in the context of Europe as a whole. From his perspective religious war no longer posed the most important threat to peace. The treaties of Westphalia had seen to that. Now peace in Europe was threatened by the ruthlessness with which the English and the Dutch placed the pursuit of profit ahead of natural law, and the success with which they were converting profit into military power. The English and the Dutch were putting the rest of Europe at risk of falling victim to the despotism of pure greed. Only France was powerful enough to stop that despotism in its tracks, provided that France did not squander its resources on military expeditions bound to be fruitless or, worse, drive the Dutch and English into each other's arms. For Conring France was a potential ally in the cause of saving Europe from government by greed. He may well have been wrong in that assessment. But that hardly made him a traitor. It shows rather how far he looked beyond the borders of Germany in order to make up his mind about contemporary politics, and how happily his pension from Versailles went hand in hand with the good conscience of having placed his knowledge of 'statistics' in service, not just to France, but to the common European good.

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

Now I knew what Conring was not: neither a plain historian nor a German in the nineteenth-century sense. That left the question what he was. What did it mean for him to turn from medicine to history and politics? What did it mean to treat the past as a subject of science? I looked for answers to those questions in his *New Discourse on the Roman-German Emperor*. Printed in 1642, the *New Discourse* seemed to be the first real book he published under his own name. All of his earlier writings had been mere academic exercises, works by other authors he merely edited, prefaces he wrote for these editions, or set pieces like his inaugural lecture as professor of natural philosophy.

The *New Discourse* was more revealing. It turned to history for answers to questions about the standing of the German state. It used loaded terms—*imperium, regnum, res publica, summus magistratus*—that were evidently part and parcel of those “common laws and universal precepts” Conring considered to be constitutive of historical science. Though it was only one book among many, and a short one at that, it went straight to the conceptual core of Conring's thinking. It seemed a reasonable choice for the experiment I had been planning.

The outcome of that experiment was prefigured by my very first reaction to reading the *New Discourse*: I was surprised by the delight I felt in reading it. I had never felt anything like that in reading Durant's *Tractatus*. It was like meeting an old friend for the first time in many years: strikingly familiar and strikingly different, too. Familiar, because it was almost the same as what I had been taught in school. Different, because in school it had consisted of a list of names, dates, and events—Caesar's conquest of Gaul, Germanic tribes in ancient forests, Visigoths, Ostrogoths, Charlemagne, feudalism, Henry IV battling the papacy, Frederick Barbarossa also battling the papacy, and so on—whose purpose I had never managed to figure out. What was the meaning of that list? Why did I have to make its acquaintance? I was told that this was what had happened and that it was my heritage. All well and good. But for the life of me I did not understand why that made it worth knowing. It seemed to be a lot of true but needless information.

The *New Discourse* was rather more exciting. It consisted of a brief history of the extent of the Roman Empire since antiquity and its relationship to the German people. Much of this history resembled what I had learned in school. But this time the information came with a reason that made sense. The reason was to prove that the Roman Emperor had no right to rule Germany, let alone the world.

That made it clear what Conring meant when he insisted on the need for general laws and principles to grasp the meaning of historical observations. The general law was that humanity consists of different peoples and that each people has a right to rule itself by forming its own state (*res publica*). The historical observations proved that the Roman Emperor had never ruled the world; that for all practical purposes the Roman Empire was long gone; and that the German people were being ruled by someone who violated natural law by claiming the right to rule the entire world because he was Roman Emperor. The *New Discourse* was not intended to enlighten the German people about their heritage, but to cure them of a historical delusion. It dealt with a question of right. It was a political, constitutional, and legal brief for the sovereignty of the German state. The brief was needed because the so-called Roman Emperor was at that very moment, in 1642, still waging war on Germany in order to enforce his claims. Those claims, Conring believed, were what had caused the Thirty Years War. They had to be refuted for the sake of peace, and they could only be refuted with accurate historical documentation.

This understanding of Germany's condition accounted for Conring's turn from medicine to history. His work in medicine and history was fueled by one and the same desire and carried out with the same means. The desire was to improve the lot of human beings, and the means was science. The difference

was that medicine helped individual human beings with troubles afflicting their natural bodies, while history helped them with troubles afflicting the body politic. The 'body politic' was not a metaphor, it was a veritable body.³² It suffered from real diseases, and it needed real medicine. History was that medicine. How badly the medicine of history was needed to heal the German body politic was something Conring had not known when he began to study medicine in the Netherlands. He learned it only in conversation with his friend and mentor Jacob Lampadius (1593–1649) when he returned from Leiden in 1632. But once he had learned it, he turned to history for the same fundamental reasons and with the same passion with which he practiced medicine throughout his life.

No wonder I had been bored by the history I had been taught in school. The disease it had been meant to cure was gone and the reason for telling it had been forgotten. It seemed to have been written by no one, nowhere, for no purpose. Whatever may have been the medicine that Germany needed in the middle of the twentieth century, it was not the medicine Conring had given to Germany three hundred years before. No wonder that reading the *New Discourse* was a delight. Conring knew what he was doing and why he was doing it. He was practicing science in order to put an end to violence and superstition. The question was: How well did science do the job?

The answer is that science did not do the job as well as Conring maintained. What I knew about the Middle Ages focused my attention on a clue that I might otherwise have overlooked. The clue consisted of the haughty manner in which he dismissed Bartolus of Sassoferrato for having claimed that the Roman Emperor was lord of the world. That made me suspicious. I knew that Bartolus was one of the most level-headed and learned of medieval thinkers. He was widely recognized as the guiding intellectual light of the *mos italicus*, one of two main schools of legal thought in late medieval and early modern Europe. He was not in the habit of making unfounded claims. That Conring ridiculed his claims was *prima facie* evidence that something was amiss.

What was amiss was fundamental: the case of which Conring disposed was not a case that Bartolus had ever made. Bartolus was well aware how limited the power of the emperor was in France, in England, and in the self-governing Italian cities, not to mention the world outside Europe. He knew the facts, he mentioned them explicitly. But they did not affect his case. His case rested on different facts, namely, the statements of Roman law. Conring treated those

32 In spite of the great differences between Conring and Hobbes, one cannot help but think of the famous frontispiece to Hobbes's *Leviathan*, depicting the ruler's artificial body as composed of the natural bodies of human beings.

statements as mere words pronouncing the laws of just one ancient people, as was his right. But it was not his right to act as though Bartolus ought to have treated them the same. Bartolus was just as much within his rights to treat them as something different from mere words, namely, standards of justice for the whole world, which is precisely what he did, along with his contemporaries, including men like William Durant the Younger.

The point at issue between Conring and Bartolus was therefore not a question that could be answered simply by pointing to certain facts. The point at issue was the question of just what ought to be counted as a fact. That question demanded a different kind of attention to the meaning of terms like 'world,' 'rule,' 'people,' 'right,' 'law,' and 'lord' than Conring was giving them. On Bartolus's understanding of those terms, the emperor was "truly lord of the world" (*dominus totius mundi vere*). His lack of power to enforce his will was not on point. On Conring's understanding of the same terms, that made no sense. But Conring never addressed the difference in dispute. He kept insisting that words and things are not to be confused. But he took it for granted that no one could dispute his understanding of what counted as fact, what it meant to rule, and what it meant to rule the world. It seemed obvious to him that the Romans were no different from any other people and that only someone with the ability to enforce his will in every part of the world deserved to be called lord of the world. But not once did he explain just why the right that Bartolus attributed to the emperor ought to be counted as a matter of mere words. He begged the most important question.

Hermann Conring and the Republic of Letters

That was an exciting discovery. It revealed that Conring did something similar to what Durant had done: he refused to countenance a possibility that he himself had raised. Like William Durant the Younger, he was confronted by a tension between the meaning he wanted his writing to have and the meaning it had in fact. The meaning he wanted it to have was that of knowledge—pure knowledge, a kind of knowledge that was founded solely on facts, secured by science, and needed no support apart from the support it got from being true. This was what he kept trying to drive home with his assertions that Bartolus ignored the facts. But when the facts did not speak for themselves, he did not hesitate to speak for them. Instead of responding to the case that Bartolus had made, he brusquely stopped it from even being heard. He acted as though the answer were a forgone conclusion, so obvious that any child would know. That gave a different meaning to his writing: against his will he proved his knowledge not to be pure at all, but to embody his refusal to engage with Bartolus in open debate about the differences dividing them over the meaning of the terms they used. His case depended on the repression of a doubt.

That cast Conring's work in a new light. Precisely by promoting the scientific study of the past he silenced whatever opposition came from anyone whose erudition conflicted with his own. He may well have been an honest citizen in the Republic of Letters. But like other citizens in that Republic he did not merely render his services to scholarship and science. Precisely by advancing scholarship and science he served the state as well. He cast a veil over the reasons on which imperial and papal opponents of territorial sovereignty had based their claims to universal authority. He did nothing more effectively than wipe the slate clean of any claims the past might otherwise have exercised upon the present and he concealed what he was doing from everyone, himself included. The injury he did to Bartolus was as completely hidden by his scholarship as the criteria on which he based his judgment were hidden by the facts they were supposed to justify. That may well be the deepest reasons why arguments like his proved to be irresistible.

Conring's *New Discourse* thus constitutes a tiny clue to a large danger buried in the foundations on which Europe was staking its future at that time. Like Conring, Europe had placed its bet on scholarship and science. Like Conring, Europe refused to countenance the questions raised by that bet and made its self-assurance depend on the repression of a doubt. The doubt was well understood. It had been advertised by the revival of Pyrrhonic skepticism during the sixteenth century and raised to new heights by Montaigne. Descartes had given it the memorable shape of a malicious demon inspiring cosmic fears of nothingness.³³ But once Descartes had found what he regarded as the indubitable truth, demonic doubts and fears were buried deep in the foundations on which Europe was building its dominance over the world. They seemed to have been superseded by peace and progress in the name of reason, liberty, and civilization, nowhere more blatantly than in the works of Hegel. It took a while before Europe woke up to the realization that the terms with which it had sought to justify itself were not at all self-evident. When it did wake up, it could not tell how to defend itself against the doubts and fears it had learned only to repress.

The case of Hermann Conring thus resembles the case of William Durant the Younger in one important respect: his writings shed light on history far beyond the limits of his own life. In another respect their cases are strikingly different: they are placed at something like opposite points in time. The foundations on which Durant rested his case were old when he was making it. His trouble was that the possibility he did not want to face was just about to turn into reality. Reality was forced on his attention by the same papacy he had been hoping to constrain, at the same council to which he submitted his proposals for reform.

33 Descartes, "Meditations," 15, 18.

He lived to see his fate unfold. By contrast, the foundations on which Conring was building his case were still quite new when he was building it. Enthusiasm for the ability of those foundations to put an end to the upheaval that Europe had been suffering for more than a century was still so lively at the time that it was easy to overlook whatever doubts and fears they hid. Conring did not live to see his fate unfold. Durant's misfortune was Conring's good luck. Durant lived at the end, and Conring at the beginning, of a historical development leading from the repression of doubt and fear to their return.

Experiment Over

It took a while for me to realize that my account of Conring's case had dangerous implications for the validity of mine. When I was reading Conring's preface to Tacitus, I had been captivated by the differences between what Conring meant by 'history' and what we mean by 'history' today. Those differences had seemed to justify a sharp distinction between the 'science' Conring believed to practice and our kind of 'history.' But that distinction was something of an optical illusion, due to the great progress the natural sciences had made in the nineteenth and twentieth centuries. History had never been expected to extend the boundaries of knowledge as far as that. History's standing as a science rested on a simple foundation: the possibility of subjecting our knowledge of the past to a critical test. The test consisted of the analysis of the surviving evidence. The value of that test seems obvious from hindsight. But at the time it amounted to a major discovery. It gave historians the power to expose as myth and legend what had previously passed for the unquestionable truth, even the word of God himself. The progress of the natural sciences did nothing to reverse that discovery. Whatever else historians may nowadays believe, they still base their claims on evidence and they continue to regard it as a myth that the Roman Emperor rules the world, or has the right to rule the world, or ever did so in the past. To that extent historians today, like Conring in his time, have every right to say that history is science, even if they no longer call it science as confidently as J. B. Bury did in 1902.³⁴

That was another reason for the delight I felt in reading the *New Discourse*. It flattered my vanity as a historian. But for that very reason it also undermined my case. I had been trying to discover a criterion with which to judge the significance of the distinction between the Middle Ages and modernity. I had thought that comparing Conring with Durant would tell me whether Durant's refusal to face the meaning of his work was merely a matter of the conditions of his time or something else. When I realized that Conring refused to face the

34 "History is a science, no less and no more." Quoted from Moore, "World History," 942.

meaning of his work in the same way, but under conditions that were almost directly opposite, I thought that my experiment had worked. It seemed that I had found a constant that was not changed by the transition from medieval to modern times. It seemed that now I merely needed to trace the history of that constant from Durant to Conring in order to overturn the tyranny of the distinction between the Middle Ages and modernity.

But I had missed a crucial point. I stood with Conring on the same side of the divide between the Middle Ages and modernity. We were allies in the cause he had directed against Bartolus and people like my old friend William Durant the Younger. That raised an obvious question: If Conring's methods were like mine, why would mine yield more reliable results than his? If Conring's practice of history was flawed because it repressed a fundamental doubt, what gave me the right to think that mine did not? If Conring was not doing justice to Bartolus, what gave me the right to claim I was?

The answer was that nothing did. If Conring was dealing with a question of, not fact, but right, then so was I. If my methods were the same as Conring's, the results that I obtained from them were just as compromised as those he had obtained. The difference was merely whom each of us was trying to refute. He was refuting Bartolus; I was refuting Conring—along with those among my fellow historians who had 'failed' to consider the evidence to which I was drawing their attention, just as Conring had 'failed' to consider the terms in which Bartolus had framed his case. If I was defending Bartolus from Conring's attacks, should I not also have been defending Conring and my fellow historians from mine? Should I perhaps not even have defended myself against myself?

My experiment had worked all right. But not as I had thought. So far from giving me criteria with which to escape from the tyranny of the distinction between 'medieval' and 'modern' times, it had established that I was complicit in the tyranny. My historical investigation of Conring's historical investigation had led into a vicious circle. The question was no longer merely why Conring and Durant had failed to face the meaning of their work. The question was whether I could face the meaning of my own. Did I have any reason to believe my work to be immune to the distinction between the meaning we want our words to have and the meaning they have in fact? The answer was obvious. My work was subject to the same kind of doubt as Conring's and Durant's. My experiment had worked all right, but only because it had exploded.

Learning from Wittgenstein

As you might well imagine, that made me wonder about the wisdom of having cast my lot with history. For several years, while carrying on with my

professional responsibilities, I looked in all sorts of directions for clues how to get out of my quandary. I went back to areas of knowledge I had once actively explored, but to which I had stopped paying attention since I had received my Ph.D. and the requirements of working as a historian had made me vulnerable to the dangers of what the French call *déformation professionnelle*. I read whatever came to hand: literature, psychology, religion, anthropology, linguistics, sociology, history, theory, critical theory, and chaos theory; ancients, medievals, and moderns; primary sources and secondary literature; poetry and prose. I revisited Kant, dabbled in Hegel and Nietzsche, spent much time with Heidegger, and followed up by dipping into writers like Barthes, Foucault, Derrida, Jameson, Rorty, Lyotard, Taylor, Geertz, Benjamin, Arendt, Habermas, Strauss, Ricoeur, Freud, Jung, and Kierkegaard. I even read some mathematics and technically undemanding introductions to quantum mechanics; I read a lot.

But I read nothing deeply. I found a great deal that was rewarding and a great deal that did me no good at all. But I found nothing anywhere that I had never heard before—nothing of which I had the slightest hope that it would have been able to withstand the explosion in my experiment. No matter where I looked, no matter how different each book seemed from the next at first, sooner or later I ran into one of two things: either the very same distinction between words and things that had exploded in my face, or proposals for doing away with it that were confused (because they kept asserting that one thing is definitely true about reality, namely, that nothing is definitely true about reality) or dangerous (because they made a virtue of irrationality).

Except when I read Wittgenstein. I had encountered Wittgenstein before, during the year I spent in Heidelberg before arriving in the United States in 1975. I had been prompted by Ernst Tugendhat in a seminar he taught on Aristotle's *Metaphysics* and a lecture course on the philosophy of language. Tugendhat had made a compelling case that Wittgenstein had changed philosophy in ways that did not merely cast the philosophical tradition in a new light, but gave it new life. I had read the *Tractatus logico-philosophicus* and the *Philosophical Investigations* in hopes of learning about that new life. I had been left with the distinct impression that there was something important going on, but I could not tell what it was, not on my own. My failure to make sense of what I read had been intensely irritating, but over time the irritation had gradually diminished until it was a vague and distant memory of some unfinished business.

When I returned to reading Wittgenstein in the mid-1990s, it was as though I had never read him before. This time I managed to follow his terse sentences with understanding, slowly at first, then with increasing speed and

confidence.³⁵ It quickly dawned on me that I was entering a realm of thought that no one else had shown to me before. I had expected Wittgenstein to defy Hume, Kant, and Descartes. But I had thought he would defy them on lines like those pursued by Nietzsche, Heidegger, Foucault, or Derrida, if not the lines that had been recommended by logical positivists. I had not expected to find something completely different and far more radical than that. For the first time, I was not disappointed.

Wittgenstein made none of the false moves with which I had become so thoroughly familiar. He made every form of criticism that I had met before seem feeble, no matter how radical it had once looked to me. He challenged not only Hume, Kant, and Descartes, but also their followers, critics, predecessors, and predecessors' critics, all the way back to the Pre-Socratics. Philosophers had seemed to be divided by fundamental disagreements. Wittgenstein showed that they did not disagree with one another nearly as fundamentally as it had seemed. They turned out to be united in a cause that I had never known existed and could not have imagined without his help.³⁶ He took no sides with any of the parties. What he kept driving home was that all of the parties were in agreement on the foundations of their case—foundations all the more durable for being well concealed—and that the problems lay, not with their disagreements, however exciting and stridently pronounced, but with their failure to recognize how much they shared. He showed that “idealism, strictly thought out, leads to realism,” and “solipsism, strictly followed through, collapses into pure realism.”³⁷ He offered freedom from questions that had been keeping us

35 The single most important piece of advice to help me over the obstacle I had not managed to scale some twenty years earlier was James Conant's recommendation that I read G. P. Baker and P. M. S. Hacker's *Analytical Commentary on the Philosophical Investigations*. Once I had read those volumes, I knew how to find my way to “the new Wittgenstein.” Cf. Crary and Read, eds., *New Wittgenstein*.

36 Compare, for example, Finkelstein, “Wittgenstein and Platonism,” with Stone, “Wittgenstein on Deconstruction.”

37 “I am alluding here to a formulation of Wittgenstein's regarding what is involved in philosophical elucidation that surfaces in passages such as the following: ‘[I]dealism, strictly thought out [streng durchgedacht], leads to realism.’ (NB p. 85; I have emended the translation)—and: ‘[S]olipsism, strictly followed through [streng durchgeführt], collapses into pure realism.’ (TLP 5.64; I have emended the translation).” Conant, “Wittgenstein's Later Criticism,” 175n5, with reference to Wittgenstein, *Notebooks*, 85, and Wittgenstein, *Tractatus logico-philosophicus*, trans. Ogden and Ramsey, 90; brackets supplied by Conant.

in the grip of metaphysics since antiquity: What is being? What is consciousness? What is the relationship between the subject and the object?³⁸

Contrary to the familiar stereotype according to which Wittgenstein changed his mind after he had written the *Tractatus logico-philosophicus* and developed a completely different philosophy in the *Philosophical Investigations*, I found that the *Tractatus logico-philosophicus* and the *Philosophical Investigations* were aimed at the same target and written in the same spirit.³⁹ Contrary to opinions held almost universally, he never tried to determine the boundaries of sense, much less the boundaries of thought or language. What he did try to do was just the opposite: to show that trying to determine the boundaries of sense leads only to nonsense—not meaningful nonsense hinting at hidden truths, as many would like to have it, but plain nonsense, making no sense at all and having no meaning whatsoever. He traced the unending proliferation of such nonsense back to well-nigh irresistible temptations so deeply embedded in our language as to keep driving us to meaninglessness and worse, and he described the essence of those temptations as clearly as one could possibly desire:

We're tempted to say that our way of speaking does not describe the facts as they really are. As if, for example, the proposition 'he has pains' could be false in some other way than by that man's *not* having pains. As if the form of expression were saying something false, even when the proposition *faute de mieux* asserted something true. For *this* is what disputes between idealists, solipsists, and realists look like. The one party attacks the normal form of expression as if they were attacking an assertion; the others defend it, as if they were stating facts recognized by every reasonable human being.⁴⁰

That was diametrically opposed to virtually everything that I had read under the rubric of the 'linguistic turn.' It made plain nonsense of the idea that there is something wrong with the forms of our expressions or (to use a more famil-

38 I first learned to appreciate the extent to which awareness of these questions illuminates both the history of the philosophical tradition and its transformation by Wittgenstein from Tugendhat, *Vorlesungen*, and Tugendhat, *Selbstbewusstsein*.

39 The reasons why Cora Diamond and James Conant believe that the *Philosophical Investigations* continue the very same kind of work that Wittgenstein began in the *Tractatus logico-philosophicus* seem thoroughly convincing to me; see Diamond, "Throwing Away"; Diamond, *Realistic Spirit*; Conant, "Throwing Away"; Conant, "Method"; and Cray and Read, eds., *New Wittgenstein*.

40 *PI* § 402.

iar way of stating the same idea) that our representations of reality are never adequate to the reality itself. It made equal nonsense of the pellucid clarity philosophers since Plato had made a condition of real knowledge—as if there were something wrong with the knowledge we actually have. It could withstand the most combative forms of skepticism and prevail over the doubts Descartes had battled. It showed that the familiar distinctions between ‘physis’ and ‘nomos,’ ‘nature’ and ‘culture,’ ‘mind’ and ‘matter,’ ‘self’ and ‘other’ lay traps for our thinking. It put paid to the claims of sophists and their enemies alike, and it established a firm position on different intellectual terrain. Wittgenstein offered a new and thoroughly convincing perspective on the relationship between truth and meaning, not least by attending with great care to the difference between what ‘I mean’ and what ‘it means’—precisely the difference with which I had now been confronted twice without quite knowing what to call or make of it. That changed my mind about the study of the past.

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

But that took years and led beyond the studies in this volume. For the time being I kept going on down the road on which I had been travelling all along while looking left and right in hopes of finding a way out of the no man’s land in which I seemed so unexpectedly to have arrived. An obvious question lay at hand. I had examined the *New Discourse*, and what I found had led me to question whether my methods did more justice to Bartolus than Conring’s methods had. But I had not yet tested the degree to which my methods were doing justice to Conring himself. The *New Discourse* was only a single piece of evidence among the several hundred titles on the list of his published writings alone. What was the standing of that evidence? What gave me the right to consider it sufficient for getting hold of Conring’s mind?

Those questions led to a different discovery. At first sight the *New Discourse* appeared to be a book that Conring had published in 1642. But that was an erroneous impression created by an unknown printer, probably in the Netherlands, who had given the *New Discourse* a fictitious title and omitted crucial details about its origin. In fact it had been published without Conring’s knowledge and against his will. As soon as he found out about its publication, he disavowed his authorship in public and emphatic terms, complaining about the damage done to his reputation by what he regarded as the greed with which the printer had attributed this “primitive supposititious child” to his good name and given it an “insolent” title. What he did not say was that this “primitive supposititious child” was virtually identical to a dissertation defended by one of his students in the preceding year. He had approved that dissertation and, what is more,

reprinted it himself late in his life in a collection of his most important studies on the Holy Roman Empire, albeit with small changes to a few sentences that made a big difference to their meaning. He also went on to write a longer and more detailed book *On the Roman Empire of the Germans* in order to set the record straight. That book was published in 1644, only two years after the *New Discourse*. Conring described it as an authoritative statement of what he really thought about the issues the *New Discourse* had treated in such a “primitive” way. But, like the *New Discourse*, that authoritative statement was also first presented to the public in the form of a dissertation by one of Conring’s students. More to the point, its substance differed not nearly as sharply from the *New Discourse* as Conring claimed.

It took some time to figure out exactly what had happened here. Nothing was what it seemed at first. Part of the reason was that in those days a dissertation was never simply written by a student and approved by a professor. It could be written by the professor himself. It could be based on notes the student had taken of the professor’s lectures. It could be written by the student on the instruction of the professor. It could be an amalgam, co-written by the professor and the student. Only one thing was clear: a dissertation needed to be defended in a public examination before it could be approved.

It followed that the dissertations ‘written’ by Conring’s students are by no means easy to distinguish from Conring’s ‘own’ books. Moreover, the ‘books’ that Conring wrote went commonly through several stages of development, from lectures via dissertations to finished books that were reissued and revised more than just once. These lectures, dissertations, and books made the same points in different ways, and different points in the same ways, and sometimes left no doubt that Conring was biting his tongue. In short, the lines that we believe to lead from a definite set of words to the definite thoughts of a definite author could never be completely disentangled, not because they were too complicated, but because the words, the thoughts, and the author were never ‘definite’ in the first place.

As best I could tell after comparing the *New Discourse* with every other writing on the same subject by Conring or one of his students defending a dissertation under his guidance, it was precisely the *New Discourse* that seemed to give the most reliable account of his ideas. The book he advertised as an authoritative statement of what he really thought seemed to have been deliberately written in order to conceal how well the *New Discourse* did in fact convey his own ideas. It seemed he disavowed his own ideas only because they were controversial and he had not expected them to be circulated in public under his name against his will. Once they had escaped the confines of academic life

in Helmstedt, they could be turned against his reputation and authority. He tried to evade the danger by claiming that he was not really their author and not really to be held responsible for them, but none of his attempts to exercise authorial control ever quite worked. The *New Discourse* kept circulating and was reissued in yet another pirated edition. After much time had passed Conring resigned himself to its success. He never explicitly accepted responsibility for it. But he republished the dissertation of which the *New Discourse* was a straightforward copy, and even recommended it as an effective summary of his ideas.

In one sense that was merely another illustration of the significance of the distinction between what 'I mean' and what 'it means.' Doubt about the difference between the meaning Conring attributed to Bartolus and what Bartolus himself had meant was not the only doubt that Conring repressed. A similar doubt went straight to the heart of his own writing. It arose from the difference between the meaning he wanted his words to have and the meaning they had in contexts other than those of which he was in charge. His trouble was that he was forced to turn against a case that he himself had made. The anger he unleashed on the *New Discourse* speaks to the nature of that trouble. It was of the same kind as the anger he had unleashed on Bartolus, except that in this instance he had to aim it at himself.

In another sense, the doubt that had thus fallen on Conring's relationship to his ideas lent welcome confirmation to my understanding of the relationship between Conring's historical investigation of Bartolus and my own historical investigation of Conring's historical investigation. That relationship was deeply problematic. Subjecting Conring's writings to critical historical examination according to the standards on which the historical profession required me to build my case had proved that such an examination could not be carried out without confounding those very standards. The more firmly I put them into effect in order to determine precisely what Conring meant, the more convincingly they proved his meaning to lie in two distinct dimensions. In one dimension, it was a straightforward function of his intention. In the other, it did not merely vary independently from his intention, but veritably foiled his purpose. This was not at all because there was no evidence with which to document his intention, much less because it happened to concern a case of intellectual misappropriation. The evidence was abundant, and the misappropriation merely made the difference between the two dimensions impossible to overlook. It was because the difference between 'I mean' and 'it means' is irreducible. It is constitutive of meaning anything at all. It guarantees that meaning is never singular, but always plural, open-ended, extending

from the original distinction between 'I mean' and 'it means' in the direction of countless other possibilities, any one of which may or may not be given definite expression. It cannot be eliminated except at the price of eliminating meaning altogether. Conring meant nothing whatsoever with the precision the conscientious application of the standards of the historical profession has been supposed to ascertain. That makes the standards dubious.

The Limits of History

At this point I had the makings of a book. I called it *The Limits of History* because it dealt with the limits of the knowledge at which Conring and his like had aimed. It did of course still deal with Conring, and at some length with Bartolus as well. It laid out just what it was about Conring's critique of Bartolus that did not stand up to scrutiny. It traced the paths on which Conring's words could and could not be followed to his ideas. It even included a sketch of Conring's life and works that was not really required by my argument, which I added at the last moment only because it would have seemed foolish not to do so for an author so little known to English-speaking readers. But those were merely the means to an end. The end consisted of an argument in which Conring appeared not as an individual but as a type. It focused on the form of history that was established by those early modern humanists of whom Conring was only one very late example, and that we still practice nowadays: history founded on the critical analysis of evidence.

In the terms I have at my disposal, not at that time, but now, I would sum up the argument in four main points. First, the study of history is itself a part of history. It does not give us any means with which to take ourselves out of the history we study. It neither transports us into the past nor does it restore the past to our presence. It especially does not relieve us of responsibility for the terms to which we commit ourselves in saying whatever we may have to say, no matter how thoroughly our terms may be embedded in our particular ways of life, no matter how sharply they may differ from the terms used by the people whose history we study. It anchors us in the specific plot in time and space we happen to occupy today. In this sense the study of history amounts to something I can only call anachronistic self-assertion.

Second, it is misguided to believe that anachronistic self-assertion conflicts with truth and knowledge on the grounds that it must lead to a vicious circle—the kind of circle that seems to consist of a closed system of self-referential signs and symbols and that apparently makes it impossible for us to grasp reality or other minds, condemning us instead to live our lives in halls of mirrors where we can only see our own reflections, or echo chambers in which we can only

hear ourselves. That circle agitates a great many theorists today.⁴¹ But the circle making the study of history a part of history itself is no more self-referential than the circle in which children learn how to speak from parents.⁴² It is more like the circle by which orthography determines the spelling of 'orthography.'⁴³ It places no limits on our ability to learn the truth about the past at all. To the contrary, it states the conditions that make such knowledge possible.

No one can very well say anything about the past (or for that matter anything else) unless they say it in whatever language they happen to be speaking here and now. That is no deep insight into the laws of truth. It is a truism, as obvious and self-evident as only truisms can be. Truth is a quality of things we say, statements we make, assertions we maintain. Truth is obviously not the only quality our statements can have. Our statements can be false, meaningless, funny, stupid, pointed, good-natured, vague, enlightening, and many other things besides. But they can be none of those things if they are never made. If no one does the telling, no truth is being told. To doubt the truth of an assertion merely because it has been expressed in words is simply meaningless. How else is it supposed to be expressed? Truth goes happily hand in hand

41 It is also typically considered to constitute the main lesson taught by Wittgenstein's *Tractatus logico-philosophicus*. But that gets the *Tractatus* precisely the wrong way round. See above, p. 48.

42 Wittgenstein put it like this: "Then am I explaining what 'order' and 'rule' mean in terms of 'regularity'? – How do I explain the meaning of 'regular', 'uniform', 'same' to anyone? – I'll explain these words to someone who, say, speaks only French by means of the corresponding French words. But if a person has not yet got the *concepts*, I'll teach him to use the words by means of *examples* and by *exercises*. – And when I do this, I do not communicate less to him than I know myself. In the course of this teaching, I'll show him the same colours, the same lengths, the same shapes; I'll make him find them and produce them; and so on. For example, I'll teach him to continue an ornamental pattern "uniformly" when told to do so. – And also to continue progressions. That is, for example, when given: · · · to go on: ··· ···· ·····. I do it, he does it after me; and I influence him by expressions of agreement, rejection, expectation, encouragement. I let him go his way, or hold him back; and so on. Imagine witnessing such teaching. None of the words would be explained by means of itself; there would be no logical circle." *PI* § 208. This is one of the most straightforward passages showing how Wittgenstein managed to put a convincing end to the search for synthetic judgments a priori without having to concede that the alternative must consist of logical tautologies.

43 "One might think: if philosophy speaks of the use of the word 'philosophy', there must be a second-order philosophy. But that's not the way it is; it is, rather, like the case of orthography, which deals with the word 'orthography' among others without then being second-order." *PI* § 121.

with anachronistic self-assertion. What places limits on our knowledge is not anachronistic self-assertion but lack of evidence and lack of familiarity with the language in which the evidence is speaking.

Third, although anachronistic self-assertion need not lead anyone into a vicious circle, it most definitely can. It does whenever we rebuke it for its fallibility and replace it with the desire for a kind of knowledge that seems to require no self-assertion because it is not merely true, but purely true beyond all possibility of doubt. Pure truth is not to be confused with plain old truth. The plain old truth is stated in sentences like 'she stayed at home all afternoon,' 'a tune-up for that bike costs ninety dollars,' and 'if you turn right at the first corner and then go up the hill for about a mile, you'll see it on your left, right behind the gas station.' The plain old truth has two outstanding features: one can always ask 'how do you know?' and sometimes it turns out not to be true at all. Hence we can change our minds when we encounter evidence disproving what we believed to be the case, and state the plain old truth in sentences like 'I thought I paid that bill, but I forgot to put the letter in the mail.' Truth in that straightforward sense is easily within our reach. That sense is fundamental.

Pure truth means something else entirely: a kind of truth that cannot be refuted by any evidence because it speaks directly to the reality of things themselves, with absolute objectivity and no admixture of whatever forms of subjectivity the subject imposes on its interpretation of the evidence. It is purely true because its objectivity is absolute. It is independent of anyone's assertions. It is true regardless of anyone who says it is, and will continue to be true at any time in any place. It bears no relationship to any subject, let alone a human being, and it does not require us to take any responsibility for our knowledge here and now in our place and time. It is as far removed from anachronistic self-assertion as here and now is from eternity.

Such knowledge is the figment of a metaphysical imagination so captivated by the distinction between subject and object as to confuse it with a distinction between two different kinds of things—what Descartes called *res cogitans* and *res extensa*. It forgets that 'subject' and 'object' are terms of grammar, and it excludes all considerations of humanity as it exists in space and time. Such knowledge does not exist, not merely because we do not have it or because the means on which we must depend for our knowledge are sadly inadequate to the task of getting it, but because it is inconceivable. Knowledge no one can have, on the fallacious grounds that having it is tantamount to misrepresenting the reality of things, is no knowledge at all, but a chimera wreaking havoc with meaning and understanding. That does place limits on our knowledge. It makes knowledge meaningless and can all too easily become a source of terror.

Fourth, since early modern times historians have been in the grip of that chimera. Their pursuit of the pure truth—what Conring called *absoluta omnibus numeris rerum scientia*—has always gone beyond the task of analyzing evidence. Sometimes it even tempted them to wish for the extinction of their selves, so that the truth about the past could shine forth all the more purely, as Ranke put it in the nineteenth century.⁴⁴ It always ended in disappointment with the inadequacy of their knowledge. That did lead historians into a vicious circle. At first they very much enjoyed the ride, because the ride allowed them to establish their own authority by sentencing myths like the universal jurisdiction of the Roman Emperor to meaninglessness. But when the Roman Emperor stepped off his throne for the last time in 1806 and absolute objectivity at last appeared to be within their reach, the meaninglessness began to fall back on to themselves. As soon as history turned out not to be capable of yielding absolute knowledge, they were confronted with a crisis—the crisis of historicism, as it is often called—that shook the foundations of their work. The crisis spawned offspring on the Right, according to which history amounts to the survival of the fittest; offspring on the Left, according to which history is pre-determined by iron laws of historical development; and interminable efforts to distinguish the ‘objective’ from the ‘subjective’ ingredients in history—the ‘facts’ from the ‘values,’ the ‘evidence’ from the ‘interpretation’—that were supposed to defend historians against their history. But it was never resolved. By now historians often conclude that ‘truth’ ought to be banished from the vocabulary of the profession, or even be replaced by the assertion that there is no such thing as knowledge of the past at all.⁴⁵

The Limits of History dealt with two instances of this kind of meaninglessness. One instance consists of the seemingly insurmountable divide driven between the evidence and Conring’s thought by pressing the evidence to yield pure knowledge. The evidence consists, in part, of Conring’s writings. These writings are evidence for Conring’s thought. The effect of forcing this evidence to yield pure knowledge is to create the illusion of an unfathomable gulf dividing the evidence from the reality of Conring’s thought. The illusion seems to

44 “Ich wünschte mein Selbst gleichsam auszulöschen und nur die Dinge reden, die mächtigen Kräfte erscheinen zu lassen.” Quoted from Oexle, “Was ist eine Quelle?,” 168.

45 As the current version of the American Historical Association’s *Statement on Standards of Professional Conduct*, 5, puts it in describing the “shared values of historians”: “Multiple, conflicting perspectives are among the truths of history. No single objective or universal account could ever put an end to this endless creative dialogue within and between the past and the present.” Emphasis in the original. Note the false choice between a “single objective or universal account” and “this endless creative dialogue within and between the past and present”—as if there were no room for plain old truth between the opposites.

place his thought beyond the limits of all understanding and leaves the historian wondering if there is anything that can be said with confidence about what Conring thought at all—when it ought to be obvious how much there is, only that it does not conform to the requirements imposed by the delusion that knowledge does not qualify as knowledge unless it is pure.

The other instance consists of the seemingly insurmountable divide driven between the Middle Ages and modernity by pressing the evidence to yield pure knowledge of the difference between these periods. The evidence consists, among a great many other things, of differences between the writings of Conring and Bartolus. These differences amount to perfectly valid reasons for distinguishing the Middle Ages from modernity. But they vanish from sight as soon as we try to define them with absolute precision. They cannot but vanish from sight because they consist of differences between the terms to which Conring and Bartolus were committed. Defining such differences with absolute precision is, by definition, the same as eliminating them. Of course they vanish from sight. Once they have been clearly defined, the differences between the Middle Ages and modernity can only be accounted for in terms of logical distinctions—which is not to account for them at all because the differences in question are not logical, but historical. “Only that which has no history is definable.”⁴⁶ No wonder that historians who try to define the boundary between the Middle Ages and modernity are wondering why something that seems so obvious turns out to be so difficult to fathom.

By now the hunt for absolute objectivity seems to have lost most of its old appeal. What has unhappily not yet lost its appeal is absolute subjectivity. Absolute objectivity is gone from the minds of most respectable historians. Absolute subjectivity is very much alive and well. It has not yet sunk in that absolute subjectivity is merely the mirror image of absolute objectivity, and quite as meaningless.⁴⁷ It cannot very well sink in unless we take responsibility for knowledge and stop imagining that knowledge can be had without anachronistic self-assertion.

*Political Unity and Religious Diversity: Hermann Conring's
Confessional Writings and the Preface to Aristotle's Politics of 1637*

I returned to Conring's writings one more time after *The Limits of History* was published. I knew that he considered history to be a kind of science, and that he practiced it in order to cure his age of the diseases wrought on the body

46 Nietzsche, *Genealogy of Morals*, 2.13, trans. Kaufmann, 80.

47 Conant, “Subjective Thought,” makes the point with great clarity.

politic by ignorance and superstition. What I did not know was how he hoped to distinguish ignorance and superstition from religion.

My first stab at finding an answer was to survey the writings Conring devoted to religious peace and confessional disputes. There is an abundance of such writings, and they leave no doubt about Conring's credentials as a proponent of religious peace, and they testify clearly to his Protestant commitments. But they say very little about the core of his beliefs. They rather leave a powerful impression that Conring preferred to hide his religious face behind a mask like that of Irenaeus Eubulus, the well-meaning but entirely fictitious Catholic irenicist whom he made the supposed author of one of his earliest and most important writings about religious peace.⁴⁸ Whoever wants to grasp the core of Conring's religion is better advised to start with writings that lie at what seems to be a distance from matters of religion. Precisely because they do not address religion head on, they reveal Conring's views on religion with greater clarity.

One such writing is the long preface to Aristotle's *Politics* that Conring published in 1637. It is one of the earliest pieces in which he explained what he meant by terms like 'civil prudence,' 'civil wisdom,' or 'civil philosophy' (*prudencia civilis, civilis sapientia, civilis philosophia*). What he meant was that there was such a thing as the scientific study of the common good. It had the same two basic ingredients as every other kind of science (except for logic, mathematics, and metaphysics): empirical observations and general laws and principles. Civil prudence supplied the general laws and principles of politics and thus complemented history. If history explained what happened at given times and places, civil prudence explained what ought to happen at given times and places. Like the science of history, the science of civil prudence required an empirical component in order to fulfill its purpose. That component consisted of detailed information about the condition of the states whose citizens were trying to achieve the common good. Conring collected such information about as many states and in as much detail as he was able throughout his life, and he presented it in lectures that earned him a reputation as one of the founders of statistics.

Civil prudence was close to Conring's heart because it seemed to offer a solution to the religious disagreements that had been tearing Europe apart. The solution was to distinguish religion from the common good. Religion was a matter of faith; the common good was a matter of politics. In Conring's view there was no necessary correlation between the two. A citizen's religious faith was something altogether different from that same citizen's ability to act as a good member of the commonwealth. Civil prudence taught that peace and

48 Conring [Irenaeus Eubulus], *Pro pace perpetua* (1648).

political unity did not require religious unity. Good citizens were free to hold whichever religious faith they thought was true.

There was one thing, however, that citizens were not free to believe, namely, that civil prudence was wrong because in fact religious faith did matter for the common good. That belief threatened the essence of Conring's solution to the problem of religious war. It did not merely violate the principles of political science, but reason itself. As far as Conring was concerned, it had nothing at all to do with religion; it rather was a dangerous superstition. It fueled the only kind of heresy that still deserved to be considered 'heresy' even on Conring's terms: political action in the name of religious faith—*any* religious faith.

What Conring called political science thus justified an enmity for heresy and superstition that seems difficult not to regard as an expression of some kind of religious faith. Just what kind of religious faith is as unclear today as it was then. It doubtless differed from the confessions that had grown out of the disintegration of the medieval church, and even more so from the religion of that church itself. It looked so different from any familiar form of religion that it seemed easy to reconcile with the confessions and is hard to find in Conring's writings about confessional disputes. But it imposed an ironclad requirement on modern expressions of religion to limit their significance to matters that had no bearing on the common good. Any kind of religion refusing to accept that limitation had to be battled tooth and nail.

Conring's solution to the problem of religious war is therefore not well described as a shift from faith to reason. The fervor with which he justified the use of force against all people who disputed the existence of a clear boundary between religion and the common good and his outspoken willingness to call such people heretics were hardly less religious than the fervor of those heretics themselves. It is the same fervor with which John Locke, more than half a century later, made equally sanguine claims about the possibility of separating every expression of religion from political identity, declared toleration of different religious faiths to be the mark of true Christianity, and went on without any sense of irony to deny toleration to Catholics, on the grounds that Catholics could not distinguish their religious faith from politics, and to atheists, on the grounds that belief in God and the immortality of the soul are plain requirements of reason and ordinary human morality. The potential of this peculiarly modern kind of religious fervor to run amok is all too ominously adumbrated by Conring's charge that those who fail to embrace the principles of science are driven by Jewish zealotry.⁴⁹

49 More evidence, if any were needed, to support the argument of Nirenberg, *Anti-Judaism*.

I do not think that there is any harm in calling Conring's convictions 'secular,' or in describing the historical development that led to the establishment of such convictions as 'secularization.' But there is real harm in letting such terms obscure the religious basis of his 'secular' convictions. Confusing the progress of secularization with the decline of religion is not only to overlook the lengths to which Conring went in claiming his position to be identical to true Christianity, damning religious claims on politics as heresy, and invoking the wrath of God on people he considered to be enemies of the common good. It is also to ignore the close historical relationship between the abuse of theology during the Middle Ages and that of science in the modern world to justify the exercise of force in the suppression of political dissent.

Hermann Conring and the European History of Law

The final study in this part sums up what I learned about the history of European law by studying the writings of William Durant the Younger and Hermann Conring. It also exemplifies in one specific case just what it means to say that the study of history is itself a part of history. It takes a small step towards the questions about the conventions of the historical profession that I have raised above and shall address in more detail below.

This study has three parts. First, it sketches the history of law in medieval and early modern Europe, meaning the ways in which law changed over time in medieval and early modern Europe. Second, it sketches the origins of legal history, meaning the study of those changes. Third, it uses the results in order to develop a historical perspective on Hermann Conring's writings that does not beg the question of his historical significance by calling him "the founder of German legal history."

The most characteristic feature of the history of European law consists of a conflict between two kinds of law: ancient law, as embodied in the *Corpus iuris civilis* and the canons of the ancient church, on the one hand, and contemporary law, on the other hand. The former was written, but much of it fell out of use during the early Middle Ages until new universities made it a subject of intense academic study in the eleventh century. The latter was sometimes written, sometimes not, and varied in all sorts of ways across the huge number of towns, cities, lordships, and kingdoms comprising medieval and early modern Europe. But it was nowhere the same as ancient Roman and Christian law. In theory, medieval Europeans were living in the same Roman Empire that had been founded by Augustus, converted to Christianity in the fourth century CE, and was expected to last until the end of the world. In theory, they should therefore have lived by ancient law. But in practice, they did not. That difference created a dissonance that was at once legal, institutional, and cognitive.

Legal history arose from that dissonance. But that took time. For centuries Europeans did something quite different from studying the history of law in order to reconcile ancient law with contemporary law: they studied logic. That does not mean that they were unaware how many centuries had passed since antiquity, or how many changes those centuries had brought. It means that they relied on logic in order to achieve a coherent understanding of both ancient and contemporary law. They taught themselves the methods of logical analysis that Aristotle had described in his *Organon* and used them to break ancient law into logical pieces until the pieces were small enough to reassemble in novel forms of legal theory that could accommodate contemporary practice. The results are the glosses, apparatuses, sums, commentaries, and consilia of scholastic jurisprudence. That gave the academic devotees of written Roman and canon law an edge over the lawyers who knew only their local law. By the fifteenth century their success was evident. Europe had given itself something that may be called a common legal culture consisting to varying degrees of Roman, canon, and local law, but everywhere shaped in the image of scholastic jurisprudence.

But that did not resolve the conflict between ancient law and contemporary law. On the contrary, it cast the conflict in a new mold that heightened the dissonance. Precisely because Europe now had a common jurisprudence on which it was more or less agreed—the so-called *ius commune*—a new kind of difference became all the more obvious: not that between the various legal sources the scholars had reconciled with each other, but that between those sources and scholastic jurisprudence itself. The more successfully the scholars resolved the discrepancies between ancient and contemporary law, the more convincingly they proved how deeply scholastic jurisprudence differed from ancient Roman and canon law themselves—not to mention, of course, the Bible. That put scholastic jurisprudence in danger of losing its meaning to a vicious circle.

The invention of legal history by late medieval and early modern humanists pointed a way out of that circle. Humanists did not go down the path of trying to remove the conflict between scholastic jurisprudence and ancient law by means of logical analysis. They did the opposite. Like Protestant theologians pitting the Bible against canon law, they placed that conflict at the center of their work. But they also framed it in new terms. They turned it from a matter of logical contradictions into a matter of differences in time and place. Instead of treating the writings transmitted from antiquity as logical foundations of contemporary jurisprudence, they treated them as evidence for ancient law—and then they treated ancient law itself as a historical source of, or model for, contemporary jurisprudence.

That answered the question how to save contemporary jurisprudence from losing its meaning to self-contradiction. But it did so at the price of casting doubt on the validity of law. Once law was seen as subject to change over time, it lost its standing as a criterion of justice and 'reason in writing.' The first to arrive at that conclusion were Luther and Machiavelli, and the first to propose a workable alternative was Jean Bodin. Bodin had made a more thorough survey of the history of law than any other contemporary scholar. He recognized that justice had to be founded on some principle that, unlike law, was not subject to change over time. That principle was sovereignty. Bodin explicitly required sovereignty to be perpetual and absolute: perpetual, so that it would be exempt from change, and absolute, so that it would be exempt from law. Henceforth jurists were expected to bow to the will of sovereign rulers, and sovereign rulers were free to make the law they pleased. Law lost its independence to history.

The historical significance of legal history is therefore misconstrued if it is limited to the pursuit of knowledge of changes in law over the course of time. Legal historians displaced Roman and canon law into the distance of ancient times and thereby deprived scholastic jurisprudence of its conceptual foundation. In one and the same breath they justified the establishment of a political authority with extralegal powers over the law that was as far removed from ancient Roman and canon law as from scholastic jurisprudence. Far from putting an end to the significance of ancient law in European history, they gave it a new lease on life by using it to overturn the reasons with which scholastic jurisprudence had previously required European rulers to follow the law. In short, the early modern pioneers of legal history performed an act of what I have called anachronistic self-assertion that had unprecedented consequences for the remainder of European history. The essence of their act was to divide the past into two hostile camps—antiquity and the Middle Ages—weaken the claims of both upon the present, and thus leave Europe at liberty to establish its domination in terms of modernity. The importance of their act for our understanding of ourselves is the main reason for the intractability of the distinction between ancient, medieval, and modern history.

By Conring's time the displacement of scholastic jurisprudence by legal history was almost complete. By the nineteenth century it had become difficult to remember how great an effort it had taken. Like Conring, nineteenth-century legal historians provided knowledge of the ways in which law changed over time. But, unlike Conring, they could take the demise of the Holy Roman Empire and the demotion of the Catholic Church from their position of supremacy so much for granted that they no longer had to give a second thought to any limits Roman or canon law might place on the sovereign's legislation. They managed

to make the history of Roman law one of the nineteenth century's signal historical accomplishments. That shows how thoroughly the conflict between ancient and contemporary law had been resolved by legal history. Conring's critique of scholastic jurisprudence had long since lost its significance to a new conflict arising from the very success with which methods like his had helped to lay the conflict between ancient and contemporary law to rest. In that new conflict sovereignty had to contend with, not laws, but constitutions. His designation as "the founder of German legal history" is therefore doubly misleading: first, because it asserts a spurious continuity extending from his work in legal history to that of nineteenth-century legal historians; second, because it hides a continuity between the scholastic study of ancient law and legal history that is all the more profound for being difficult to trace.

Three—Come and Gone: Past Sense

When I accepted Chicago's invitation to move from medieval to early modern history, I did so for two basic reasons. One was that I wanted to make my career at an outstanding university, the other, that it provided me with a professional foundation on which to tackle the familiar periodization of European history. I did not know if history can give us a means of orientation but, having been trained in medieval history, I did know this much for sure: it cannot possibly give us a means of orientation as long as a conceptual wall continues to divide the Middle Ages from modernity. I studied Hermann Conring and William Durant the Younger because I wanted to break through that wall. That is the common thread uniting the six studies in this third part.

Breaking through the wall between the Middle Ages and modernity was far more difficult than I had thought. I knew right from the start that it would never do to ban periodization entirely, as if it were a mere convenience with which historians could dispense at will. Periodization establishes differences between before and after. In principle it does not matter how much time there is 'before' and 'after.' It can be seconds, days, months, years, centuries, or any other length of time. It also does not matter whether the difference between 'before' and 'after' is told in lengths of time or by some other, more meaningful criterion, say, birth, death, marriage, revolution, harvest, size of population, social structure, climate, and so on. What matters is that there can be no history without distinguishing 'before' from 'after.' In that simple and fundamental sense periodization is a condition for the possibility of history. The division of European history into ancient, medieval, and modern periods is merely one instance of a dividing practice without which historians could write no history at all.

I also knew that this particular instance of periodization rested on more than just a whim. It had withstood the test of time for centuries and played a major role in our accounts of Europe's past. It pointed to changes whose significance seemed incontestable, even where they were not well understood. In fact, the periodization of European history did not merely point to those changes: it itself was one of them. It came into existence in early modern times and it displaced other, more ancient forms of periodization, such as the six ages of man and the four world monarchies. It was a part of European history that could not simply be ignored. But, for the reasons I have explained above, it did not make sense of European history in ways with which I could agree. How, then, was it to be replaced?

I was familiar enough with the critiques it had received. I understood the motives of historians who had taken to replacing the boundary between the Middle Ages and modernity with a new period called 'early modern,' and I admired the results of the creative energy they focused on the new period. But I was certain that replacing the old boundary with two new boundaries on either side of the new period—one dividing early modern from medieval history, the other dividing early modern from modern history—was only to displace, not solve the problem.⁵⁰

I agreed whole-heartedly with world historians and historians of the *longue durée* who argued that the beginning of the second millennium CE made for a more fundamental turning point in European history than the fifteenth and sixteenth centuries. But even though their periodization seemed more appropriate to me, it did so for reasons that were empirical. It left the conceptual problem completely unresolved. If it did not provoke as much debate as the conventional periodization, then only because the majority of historians paid it so little heed.

I thought that historians like Quentin Skinner, J. G. A. Pocock, and Reinhart Koselleck were completely right to turn to language for a solution. They put paid to the myth that the history of ideas can be successfully pursued without attention to the specific circumstances by which those ideas were shaped. They took up Wittgenstein's recommendation to study differences between the language-games that people played at different times in different places, and used it to reinvigorate the history of political thought. But what they meant by 'language' seemed much too narrow for a problem that was neither limited to ideas nor to specific contexts, but affected the study of history in its entirety. They did not seem to recognize the force of Wittgenstein's observation that "shared human behaviour is the system of reference by means of which we

50 See Fasolt, "Saving Renaissance and Reformation."

interpret an unknown language.”⁵¹ Much less did they seem to notice that Wittgenstein proposed a radical alternative to academic history by calling the *Philosophical Investigations* “remarks on the natural history of human beings.”⁵² In short, no matter where I looked, what I read, or whom I consulted, I could not find the right conceptual tool with which to solve the problem.⁵³ I tried to solve it by myself when I contrasted Conring with Bartolus—and my solution exploded in my hands.

Today I can say why: the problem is misconceived. It stems from our failure to recognize the role that periodization plays in our understanding of the past. It is one of the “problems arising through a misinterpretation of our forms of language” that Wittgenstein singled out for attention.⁵⁴

We study the past, we notice differences, and we distinguish one period from another. This is fine. There is no problem here. This is how knowledge works. But then “our thinking plays us a strange trick. That is, we want to quote the law of excluded middle and say: ‘Either such a period did exist, or it did not; there is no third possibility!’”⁵⁵ That is where our troubles start: we believe we know what we mean; we mean a period, do we not? And did this period (not) exist? It seems to be a reasonable question. But it leads us into the wilderness: *What* did (not) exist? We have no answer to this question. We merely think we do. In fact we are hallucinating meaning, to borrow a fortuitous expression from James Conant.⁵⁶ The period is the criterion by which we tell *what* did and *what*

51 *PI* § 206.

52 *PI* § 415. Cf. *PI* § 25: “Giving orders, asking questions, telling stories, having a chat, are as much a part of our natural history as walking, eating, drinking, playing.” For a serviceable introduction to Wittgenstein’s conception of “our natural history,” see Garver, *Complicated Form of Life*, 149–58, 237–87; cf. Cavell, *Claim of Reason*, 86–125.

53 The most compelling account I have come across so far is Davis, *Periodization and Sovereignty*. For its strengths and limits see Fasolt, “Scholarship and Periodization.”

54 *PI* § 111.

55 *PI* § 352, with my apologies to Wittgenstein for modifying his words. He was of course not speaking of historical periods (though he very well could have), but of images floating before someone’s mind and the infinite expansion of π . His actual words are: “At this point, our thinking plays us a strange trick. That is, we want to quote the law of excluded middle and say: ‘Either such an image floats before his mind, or it does not; there is no third possibility!’ – We encounter this curious argument also in other regions of philosophy. ‘In the infinite expansion of π either the group “7777” occurs, or it does not – there is no third possibility.’ That is to say: God sees – but we don’t know. But what does that mean?”

56 “In such cases, we undergo the phenomenology of meaning something determinate while failing to mean anything determinate by our words. Part of what causes us to hallucinate a meaning . . .” Conant, “Method,” 418. Cf. his elaboration of what it means to hallucinate meaning, *ibid.*, 419: “We think the problem lies not in an absence of

did not exist. That makes it meaningless to ask whether the *period* did or did not exist. It is analogous to the confusion epitomized by asking whether the color red does or does not exist: it leads into a metaphysical dead end.⁵⁷ There is nothing to be debated there, nothing to be discussed, and nothing to be solved. That is why there can be no end to the debate. We keep debating only because we are confused. We will remain confused until we understand what was so clearly understood by Wittgenstein:

Here the law of excluded middle says: it must look either like *this* or like *that*. So really – and this is surely obvious – it says nothing at all, but gives us a picture. And the problem is now supposed to be: does reality accord with the picture or not? And this picture *seems* to determine what we have to do, what to look for, and how – but it does not, precisely because we do not know how it is to be applied. Here, saying “There is no third possibility” or “There really isn’t a third possibility!” expresses our inability to turn our eyes away from this picture – a picture which looks as if it must already contain both the problem and its solution, while all the time we *feel* that it is not so. Similarly, when it is said “Either he has this sensation, or he doesn’t”, what primarily occurs to us is a picture which already seems to determine the sense of the statements *unequivocally*: “Now you know what is in question”, one would like to say. And that’s just what it does not tell you.⁵⁸

The point that Wittgenstein is making here—perhaps the most essential point for understanding what it means to say that something is ‘the same’ as something else—may be easier to grasp in the following passage, where he speaks of the mistake made by anyone who believes that the length of a rod is independent of the means we use to measure its length:

meaning (in our failing to mean anything by these words), but rather in a presence of meaning (in the incompatible senses the words already have—senses which the words import with them into the context of combination). We think the thought is flawed because the component senses of its parts logically repel one another. They fail to add up to a thought. So we feel our words are attempting to think a logically impossible thought—and that this involves a kind of impossibility of a higher order than ordinary impossibility. Wittgenstein’s teaching is that the problem lies not in the words, but in our confused relation to the words: in our experiencing ourselves as meaning something definite by them, yet also feeling that what we take ourselves to be meaning with the words makes no sense.”

57 For the nature of this confusion see *PI* §§ 57–9, part of a line of thought beginning in § 46.

58 *PI* § 352.

One judges the length of a rod, and may look for and find some method of judging it more exactly or more reliably. So – you say – *what* is judged here is independent of the method of judging it. What length *is* cannot be explained by the method of determining length. — Anyone who thinks like this is making a mistake. What mistake? – To say “The height of Mont Blanc depends on how one climbs it” would be odd. And one wants to compare ‘ever more accurate measurement of length’ with getting closer and closer to an object. But in certain cases it is, and in certain cases it is *not*, clear what “getting closer and closer to the length of an object” means. What “determining the length” means is not learned by learning what *length* and *determining* are; rather, the meaning of the word “length” is learnt by learning, among other things, what it is to determine length.⁵⁹

This is as straightforward as it can be. On the one hand, it is perfectly natural to say that the length of a given object (an objective fact) does not depend on how we measure it (our judgment of this fact). It is natural because it is quite obviously true: the length of an object does not change merely because we measure it for a second or third time with a different set of tools. Length is not ‘purely subjective’ or ‘socially constructed,’ as the language goes. It is a quality a given object has as a matter of fact. But, on the other hand, this presupposes that we know what we mean by ‘length’—what length *is*, the *essence* of length—and the meaning of ‘length’ does depend on measuring lengths, because it is in part by learning how to measure length (judge length) that we acquire the concept of length (what length *is*).⁶⁰ Different ways of measuring length make for different concepts of length, different concepts of length make for a different grammar, and a different grammar makes for a different essence.

This is why it is a mistake to think that the length of an object is independent of our method of measuring: not because the length of the object changes when we measure it in different ways, but because our concept of length—*what* we measure—depends on how we measure it. In this sense the length of an object is neither a ‘thing in itself’ existing independently of us in some utterly objective reality beyond our ken, nor a pure idea existing in some Platonic heaven. It merely appears to be independent of our judgment because

59 PPF § 338. For three different but equally outstanding explanations of the point made in this passage and its significance for our ability to say that something is ‘the same’ as something else, see Winch, *Idea of Social Science*, 24–39; Cavell, *Claim of Reason*, 168–90; and McDowell, “Non-Cognitivism.”

60 I suppose that is the point of the uncertainty principle: what we measure at the level of quantum mechanics is not the same as what we measure at the level of daily life.

our agreement on what it means to measure length (our agreement on *what* we measure when we make judgments of length) is so very firm indeed that we cannot even remember joining it when we learned how to speak. “*Essence*,” as Wittgenstein put it in the most general terms, “is expressed in grammar.”⁶¹ Note that he did not say “described,” but “expressed” (*ausgesprochen*). A thing, an object can be described. But essence is not a thing, much less a self-subsistent kind of thing or an ‘idea’ in the Platonic sense. The essence of a thing—the answer to the question what that thing *is*—is what we learn when we are learning what to call that thing; it is inseparable from our language. “Grammar tells what kind of object anything is.”⁶²

The mistake made by those who believe that the length of a rod is independent of the means we use to measure it—independent of our commitment to the criteria we use in making judgments of length—makes for a simple analogy to the mistake made by those who believe that a historical period is independent of the means we use to study it. Here, too, it would be very odd indeed to say: “The nature of the Middle Ages depends on the sources we read.” Here, too, one wants to compare ‘increasingly accurate knowledge of the Middle Ages’ with getting closer and closer to an object. Here, too, it is *not* clear just what getting closer to that object is supposed to mean. We do not learn the meaning of ‘increasingly accurate knowledge of the Middle Ages’ by learning what ‘increasingly accurate knowledge’ is and what ‘the Middle Ages’ are. Rather, the meaning of the expression ‘the Middle Ages’—what the Middle Ages *are*, the *essence* of the Middle Ages—is learnt by learning, among other things, what it is to study the Middle Ages. It is in this way that the essence of the Middle Ages depends on how we learn the meaning of ‘the Middle Ages.’ Not reckoning with that dependence is bound to lead to endless confusion.

The mistake can take completely different forms. One form consists of believing that objective facts cannot conceivably depend in any way on how we learn to ascertain such facts, but must exist in some kind of ‘reality’ of things in themselves, which can then be imagined to be either material or ideal. Another form is based on the ‘discovery’ that the ‘reality’ of things in themselves can never actually be known. It consists of believing that there are no objective facts at all. Yet, different though these forms appear to be, they complement each other perfectly and lead into the same wilderness. They show how a confused relationship to our language results in a bad dialectic

61 *PI* § 371.

62 *PI* § 373.

that makes us shuttle back and forth between equally nonsensical forms of hyper-objectivity and hyper-subjectivity.⁶³

The hopes and fears inspired by this dialectic have to be counted among the most basic forces governing human history, nowhere more obviously so than in modernity. They cannot be tamed without heeding the observation Wittgenstein made in the passage I chose as one of the two mottos for this book. It deserves to be quoted in full:

It is not only agreement in definitions, but also (odd as it may sound) agreement in judgements that is required for communication by means of language. This seems to abolish logic, but does not do so. – It is one thing to describe methods of measurement, and another to obtain and state results of measurement. But what we call “measuring” is in part determined by a certain constancy in results of measurement.⁶⁴

Note that ‘judgment’ here does not mean ‘moral judgment.’ It means using a criterion—a means of distinction, such as a sample or a rule or, in the case of the Middle Ages, a certain body of writings and remainders from the past—not for the purpose of definition, but as a means of establishing *what* we are talking about.⁶⁵

Agreement in such judgments must be distinguished from agreement in definitions. You can define what you mean, and you can explain what you mean—but you cannot explain what you mean by defining what you mean.⁶⁶ Agreement in judgments is what allows us to explain what we mean. It consists of our commitment to the language we have learned to speak. That is what gives us the foundation on which we can proceed to definitions. It gives us to understand what we are trying to define without requiring that we define it in advance. That is what makes it possible for us to use a book like *The Oxford English Dictionary* without running into a vicious circle—in spite of the remarkable fact that *The Oxford English Dictionary* uses the very same words

63 Conant, “Subjective Thought,” traces the path from hyper-objectivity (the thing-in-itself) via hyper-subjectivity (there is no truth) to the resolution adumbrated by Nietzsche and thoroughly elaborated by Wittgenstein.

64 *PI* § 242.

65 Cavell, *Claim of Reason*, 1–125, remains one of the best accounts of this meaning of ‘judgment.’ Garver, *Complicated Form of Life*, 177–96, provides a good overview of the meaning of criteria.

66 ““Red” means the colour that occurs to me when I hear the word “red” – would be a *definition*. Not an explanation of what signifying something by a word *essentially* is.” *PI* § 239.

whose meaning it explains in order to explain the meaning of other words. Agreement in definitions cannot serve as any such foundation. Trying to use agreement in definitions as a foundation does lead into a vicious circle requiring us to make a definition of what we are trying to define in order to define it. There is no hope of grasping the meaning—the essence—of anything that way. If that is what Socrates was trying to do—which seems doubtful to me—then Socrates was wrong.

Measuring the length of an object is a case in which it is relatively easy—not easy, but relatively easy—to see why communication by means of language requires not merely agreement in definitions, but also agreement in judgments, for example, the judgment that any object exactly as long as a certain piece of metal kept in a certain building somewhere near Paris is one meter long. Without agreement on that judgment (or another one like it, for example, on the length of a hand, an ell, a foot, a pace, or a furlong) we would be in no position to communicate with each other about lengths. We would have no means of telling *what* we are talking about, much less that we are talking about the same thing. The firmer our agreement, the more certain we can be that we are truly communicating with each other, not talking at cross-purposes.

The same is true of historical periods. Historical periods are obviously far more complicated things than lengths. So are the judgments and the criteria that go into the making of a concept like ‘medieval.’ That makes the grammar of ‘medieval’ more difficult to master than the grammar of ‘length.’ Our agreement on *what* we study when we study the nature and extent of the Middle Ages is therefore far more precarious than our agreement on what we measure when we measure the length of an object. Confusion about the nature of a historical period is accordingly much harder to avoid, and communication far harder to sustain.⁶⁷ But the principle is still the same. As the essence of length is expressed by the grammar we master when we learn how to measure length,

67 The possibility that criteria may trade places with symptoms—that judgments may trade places with definitions—is a major source of these difficulties. Wittgenstein draws attention to it in *PI* §79: “The fluctuation of scientific definitions: what today counts as an observed concomitant of phenomenon A will tomorrow be used to define ‘A.’” In *PI* § 354 he adds: “The fluctuation in grammar between criteria and symptoms makes it look as if there were nothing at all but symptoms.” In *PI* § 251 he specifies the source of the confusion as “something whose form produces the illusion of being an empirical proposition, but which is really a grammatical one.” Historians rely on evidence to supply them both with the (grammatical) criteria they need in order to determine *what* they are studying and with the (empirical) symptoms informing them of what *was the case* with what they are studying. That makes it particularly difficult for them to avoid confusion and sustain communication.

so the essence of the Middle Ages is expressed by the grammar we master when we learn how to study the Middle Ages. The essence of the Middle Ages is nothing like an object existing out there in the past, much less a Platonic idea. It is a matter of the grammar that tells us what kind of thing the Middle Ages are. Grammar gives us the concept ‘medieval.’ Without agreement on the judgments that make something ‘medieval,’ we are in no position to communicate with each other about the Middle Ages, let alone their nature or existence. We have not yet established whatever it may be that we call ‘medieval.’ The time between 500 and 1500 CE? When classical Latin was not well taught? When society was divided into clergy and laity? When feudal knights went on crusade? When serfs tilled the fields for lords? A textual object at a remove from past reality? All of the above and more? We do not know. We cannot tell *what* we are talking about, much less define it more precisely. All we can do is ask: What do you mean by ‘medieval’?

What makes this point so difficult to take is that it “seems to abolish logic.” It seems to make the truth depend on human agreement. But our agreement only determines what we are talking about. That is why we are free to change it, and do change it all time. It does not at all determine what is true and what is false. Wittgenstein brusquely rebuts the skeptic who thinks it does:

“So you are saying that human agreement decides what is true and what is false?” – What is true or false is what human beings *say*; and it is in their *language* that human beings agree. This is agreement not in opinions, but rather in form of life.⁶⁸

But that does not make it much easier to understand exactly how to reconcile the requirement for agreement in judgments—in form of life—with the law of the excluded middle.⁶⁹ It is hard enough to understand how to do so in a case as simple as the measurement of lengths. It is much harder in a case as complicated as the study of the past. For as historians we do not only communicate with each other. We also communicate with the people whose history we study—of course not in the sense in which we communicate with living human beings, but in the sense in which we seek to understand the evidence

68 *PI* § 241.

69 Stroud, “Wittgenstein and Logical Necessity,” explains the difficulty with great lucidity. It is worth noting that agreement in judgments is not the same as agreement in form of life: the former is narrower than the latter. It makes communication by means of language possible. Our form of life includes a great deal more than communication by means of language.

that has been left behind by people who are now dead. How can we possibly agree in judgments with the dead? How can we agree in form of life with human beings who no longer have any form of life at all? Or do they perhaps have some such form? Is that the meaning of belief in the afterlife? These are questions historians must face. The answers differ from case to case and they are never simple.⁷⁰

I am under no illusion that these remarks suffice to clarify, much less remove, a problem that goes so deep.⁷¹ I do hope they clarify the sense in which the studies assembled in this part deal with the essence of early modern European history. They lead from an uncertain beginning to a certain conclusion. The beginning consists of the problem seemingly posed by the distinction between medieval and modern history. The conclusion is that the problem cannot be solved by means of historical research because it does not lie in the past. It merely seems to constitute a subject for historical research. But that is an illusion. The problem lies with us. It consists of our hesitation to commit ourselves to the criteria—the agreement in judgments, the grammar, the language—on which the meaning of our research depends, especially where that commitment puts us into disagreement with those whose history we study, such as the disagreement we express by distinguishing ‘medieval’ from ‘modern.’ The disagreement is real enough. It consists of our unwillingness to subscribe to judgments that were considered right in medieval Europe. It is a matter of politics—the politics of time, if you like. But it is not a problem that could be solved by more research, if only because there is no such thing as saying anything about the past at all unless we are committed to the criteria we use in claiming that something is the case. If we are saying something about the past, the ‘problem’ has been solved. If it has not been solved, we are not saying anything whatsoever. The ‘problem’ is a chimera: entirely fictitious and very dangerous.

Visions of Order in the Canonists and Civilians

I got my first chance to write about the passage from medieval to modern Europe when I was invited to contribute a chapter on “Visions of Order in the Canonists and Civilians” to the *Handbook of European History, 1400–1600*. At the time, not long after *Council and Hierarchy* had been published, I had

70 I have given the best answer I can in “Saving Renaissance and Reformation.”

71 “The problems arising through a misinterpretation of our forms of language have the character of *depth*. They are deep disquietudes; they are as deeply rooted in us as the forms of our language, and their significance is as great as the importance of our language.” *PI* § 111.

already learned a lot about the order William Durant the Younger had tried to preserve and the alternative that Hermann Conring had tried to put into place. I also knew that I could not address the history of the transition from medieval to modern times without exposing myself to the dangers of metaphysical confusion. But I had no idea how to confront those dangers. I therefore limited my methodological commitments to the bare minimum required by the subject I had been asked to treat: a certain group of people, their “visions of order,” and the way their visions changed during the period in question. That seemed to be the safest course.

The title I was given referred to “canonists and civilians.” But that was too precise. Canonists and civilians were professionally trained at universities in Roman and canon law. They were only one highly specific class among a much larger group of people that qualified as ‘jurists’ in a much broader sense: experts in local customs, reeves, doomsters, seneschals, lawyers trained at Inns of Court, public notaries with the authority to draw up binding documents, judges, diplomats, city scribes, princely secretaries, humanists, and other kinds of people concerned in one way or another with maintaining public and private order in European villages, towns, lordships, territories, courts, countries, and in institutions like the church, the universities, and guilds. ‘Jurist’ does not really capture this variety either, but it seemed better than ‘lawyer,’ ‘attorney,’ ‘advocate,’ ‘jurisprudent,’ and so on, all of which evoke something no less specific than ‘canonist’ or ‘civilian.’

There was a great deal of documentation about some of these ‘jurists.’ All of them had visions of order of one kind or another. Their visions obviously mattered, even if they were hard to document. What mattered more, however, was that they fit no single definition: they came from different social strata, they lived in different parts of Europe, and they had no single common point of view about the nature and sources of law, much less a shared understanding of the location of the supreme authority in church and state. They fought over questions of religion and reform, politics and war, government by monarchy and government by representation. In short, they constituted a group of people held together, not by some one thing, but by the similarities that Wittgenstein called “family resemblances.”⁷² That was particularly true of their involvement with the law. Their involvement with the law did not consist of any definite activity, but of an indefinite number of many different kinds of activities.

There was no reasonable hope of grasping all of the different visions by classifying or enumerating all of the different jurists or their activities. The

72 *PI* § 67.

evidence was much too uneven, and in any case enumeration and classification would have required criteria of selection that were only too likely to pre-judge the matter by ruling out something that needed to be ruled in. There was only one thing all jurists shared: their disagreements with each other. Their disagreements were the very bond by which they were most closely united. That may seem paradoxical. But it is no more paradoxical than the family whose members are so preoccupied with their disagreements with each other that they pay no attention to anyone intruding from the outside. The issues to which these jurists took different approaches, the problems they tried to solve in different ways, and the battles they fought with each other: that was the ground on which they met, not because they shared the same views on any given issue, but because they shared the issues on which they had conflicting views.

That made it obvious what needed to be done in order to gain a clear perspective on their visions of order overall: to find a single issue on which they all disagreed. That was not difficult. It was the reason for calling them 'jurists' in the first place: their expertise in law. It was their understanding of the law on which they were most obviously divided. As it happened, that was also the most important issue on which they changed, not so much what they were saying, but what they meant when they were saying it.

What they meant by 'law' at the beginning of the period was, roughly speaking, a body of rules that needed to be obeyed by everyone who wanted to be just. Justice consisted of heeding the law, and justification consisted of proving that you had heeded it. Let me repeat: they never agreed on what they meant by 'justice' or what they meant by 'law.' Quite the contrary, the records are full of their debates on just these questions, and their disagreements often went very deep. But they were agreed on this: whatever the law required, it had to be just. If the law did not agree with justice, it did not qualify as law. The law was the criterion with which they tried to settle their disagreements about the meaning of justice.

That changed during the later Middle Ages. It changed because it became ever more difficult to settle disagreements about the meaning of the law. There are good reasons why: increasing social strife, increasing literacy, the Hundred Years War, the Great Schism, increasing knowledge of law, and the development of contradictory perspectives on the nature of justification, to mention a few of them. The upshot was that law lost the trust it had enjoyed in earlier days, not at all because people began to ignore the law, but quite the contrary, because they tried so hard to find the link between the law and justice that they could not but recognize how hard that is to do when circumstances change, difficulties multiply, and experts cannot agree on how the law should be applied in

different cases. For quite a while no one could think of an alternative while everyone was trying to muddle through. But then Machiavelli and Luther severed the ties uniting justice with law for good: Luther, by asserting that justification depended on faith alone; Machiavelli, by showing that princes had to do evil; and both by rejecting law as a means of justification. Thereafter law could no longer serve as a reliable criterion of justice.

The result was the great upheaval we call the age of religious wars. It unleashed hostilities as deep and as enduring as the confusion contemporaries faced whenever they sought to justify themselves and found that neither justice nor law could give them the confidence they needed. It wrought havoc on Europe for more than a century, and it lasted until jurists were able to find an alternative to law as the criterion with which to settle their disagreements. That criterion was sovereignty. It was first proposed by Jean Bodin and soon adopted across the continent.

The adoption of sovereignty is no more to be confused with agreement on a shared vision of order than reliance on law should be confused with such an agreement. Different visions of order continued to multiply, and so did the disagreements inspired by different visions. But the adoption of sovereignty did change the terms of the debate, that is, the essence of both law and justice. Henceforth it was no longer necessary to ask if any given law or given interpretation of the law was 'just.' Sovereignty had taken the place that law had occupied so far, and law had been deprived of its ability to sanction social order. Henceforth it was the sovereign who was responsible for justice. Justice was put into quotation marks or turned into a principle of morality of which it was unclear exactly how it related to public order. With the benefit of hindsight Rousseau could state the point with perfect clarity:

All justice comes from God, who alone is its source; and if only we knew how to receive it from that exalted fountain, we should need neither government nor laws. There is undoubtedly a universal justice which springs from reason alone, but if that justice is to be acknowledged as such it must be reciprocal. Humanly speaking, the laws of natural justice, lacking any natural sanction, are unavailing among men. . . . So there must be covenants and positive laws to unite rights with duties and to direct justice to its object.⁷³

Henceforth the crucial question was not whether the law was just, but whether the law expressed the sovereign will. If it did, then it was law. If it did not, then

73 Rousseau, *Social Contract* 2.6, trans. Cranston, 80–1.

it did not amount to law and did not need to be obeyed. At the same time the sovereign was exempted from having to justify himself to anyone except himself and his own judgment of whether his will was in agreement with justice and the will of God. That made it possible to stop fighting religious wars. But it also put brackets around the meaning of justice and laid the conceptual foundations for legal tyranny.

Sovereignty and Heresy

This account of the transition from medieval to modern conceptions of law and politics seemed fair enough to me. It showed that sovereignty marked a radical break and maintained a fundamental continuity at one and the same time: a break, because sovereignty was not the same as law; a continuity, because sovereignty solved the same problem law had solved before. It thus accounted nicely for both of the two poles between which modern theories of sovereignty keep oscillating back and forth: one claiming that sovereignty is a crucial ingredient in secularization (Hans Blumenberg), and the other, that sovereignty is a theological concept in disguise (Carl Schmitt). Yet at the same time I knew that it left much to be desired. It did not show just what was truly novel about sovereignty. It traced the transition from medieval to modern conceptions of law and politics in only one dimension, as if there were a single line through time on which law preceded sovereignty as a criterion of justice—as if the difference between law and sovereignty had been a matter solely of definition, and not of judgment, too.

The best way I could find to capture the difference was to treat sovereignty as an unprecedented kind of heresy—unprecedented because heresy had previously required two ingredients: an opinion conflicting with official religious dogma, and obstinate insistence on that opinion. Sovereignty fulfilled one of those requirements: it was decidedly obstinate in its refusal to bow to ecclesiastical authority. But it did not fulfill the other. As far as religious dogma was concerned, sovereignty was strikingly abstemious. Though sovereigns did not hesitate to make their religious opinions known, and to enforce them too, the institution of sovereignty as such was not attached to any particular form of religion. It was aimed at making sure that no religious disagreements would disturb the peace. That changed the relationship between religion, politics, and law.

I thought the nature of that change could be summed up by making three points. First, sovereignty neutralized the hold of religion on political affairs. By confining the reach of dogma to the private sphere, sovereignty removed the state, public affairs, and the relations between states from the domain of what had previously been counted as religion. That is the reason why the papacy,

only too understandably, refused to agree to the Peace of Westphalia. From the papal perspective, the Peace of Westphalia amounted to peace with heretics.

Second, sovereignty naturalized religion. It was not at all as neutral on questions of religion as it appeared to be. Sovereignty rather changed the criteria with which to settle what should and what should not count as religion. It did so by translating faith in the kingdom of God into faith in the kingdom of nature. The chief article of that faith turned on the distinction between nature and culture: nature was pure and unblemished; culture was pure only insofar as it agreed with nature. The legitimacy of the state depended on the respect with which it treated that agreement.

Third, sovereignty blinded its devotees to the existence of that new faith. Believers in the church of modernity regarded their faith as though it were an obvious and universally acknowledged truth that only ignorant, malicious, or perverted people were able to deny. It never occurred to them how similar that made them to medieval Christians who treated their faith in the same way. They were just as willing to sacrifice their lives and persecute their enemies in the name of nature as medieval Christians had in the name of Christ, and more likely to deny that their enemies were members of the human race. Believers in the modern church do not charge modern heretics with heresy, as medieval Christians did. But they do exterminate them at the stake of inhumanity for their supposedly unnatural acts, unnatural beliefs, and unnatural forms of life.

The old-fashioned distinctions between Christians, Jews, Muslims, heretics, pagans, and other kinds of religious believers thus did by no means lose their strength. If anything, their strength became much greater, precisely because believers in the church of modernity were blind to the continuities that bound them to medieval Christendom.⁷⁴ Even while they continued and intensified the persecution of Jews, Muslims, heretics, pagans, and other kinds of believers, they could assert that they were acting solely on principles of reason. They reserved the term 'religion' for the modern variants of long-established faiths, with little regard for the deep differences that separate the modern religions from the medieval church, and no awareness of the religious character of their own faith. In perfectly good conscience they could declare themselves to be beholden to no church at all.

From this perspective sovereignty is poorly understood as a principle of secular rationality, and equally poorly as a religious principle in disguise. It must be understood as both: both secular and religious. Needless to say, that cannot very well be done without an understanding of nature and reason that does not simply place secular reason in opposition to religious faith. It seems to me

74 On such continuities going all the way back to antiquity see Nirenberg, *Anti-Judaism*.

that Wittgenstein's concept of natural history offers just such an understanding. Yet how the modern church could teach that understanding without putting itself at risk of disintegration in cataclysms analogous to those in which the medieval church expired is a question to which I can unfortunately not imagine a good answer.

Empire the Modern Way

"Sovereignty and Heresy" supplied something that had been missing in "Visions of Order in the Canonists and Civilians": a longer temporal perspective and what seemed to me to be a better account of the relationship between the modern state and the medieval church. In that account the modern state looked like a modern kind of church. That raised an obvious question: Might there not be a similar relationship between the modern state and the medieval empire? Might the modern state not be a modern kind of empire, not because some modern states built empires that reached across the globe, but rather because the concept of empire is written into the very essence of the state, regardless of its size and the number of its colonies? Might the most telling feature of the modern state not be its ambition to combine the roles of empire and church under the aegis of Leviathan?

Modern accounts of medieval empire suffer from the same conceptual disability as modern accounts of the medieval church: they oscillate uncomfortably between two equally unsatisfactory alternatives. For some historians, medieval empire differs from modern empires only in its lack of power to enforce obedience to its will. From their perspective, medieval empire was merely weak, but otherwise the same as its modern equivalent. That is fine, because it is perfectly true that medieval empire was just as much a matter of power as modern empire, and because medieval empire really did not manage to harness the kind of power harnessed by modern states. Yet it is also unsatisfactory, because it does not capture what is actually new about empire in the modern world. It treats all empires as if they were the same. Cynicism is its characteristic vice; it leans too far in the direction of continuity.

For other historians, medieval empire constitutes an altogether different kind of political organization. From their perspective what matters about medieval empire is not its weakness in terms of military or political efficiency, but what are often called the mystical qualities allowing it to reach for a kind of universal harmony beyond the possibilities of modern politics. That view, too, is fine, because universal harmony does in fact play a role in medieval empire that it does not play in the modern world. Yet it is still equally unsatisfactory. It celebrates nostalgia, leaning too far in the direction of discontinuity and not reckoning with the eagerness of modern states to sport mystical qualities

and aspirations to universal harmony. As in the case of sovereignty, both views have something to commend themselves, and both suffer from the opposition in which they stand to each other.

In order to see the relationship between medieval and modern empire more clearly, it helps, I think, to focus on the concept with which medieval jurists explained the nature of empire to themselves. That concept was universal jurisdiction, which is to say, the kind of jurisdiction that was the singular prerogative of the emperor—when it was not claimed by the pope, the emperor's chief rival.

Universal jurisdiction must not be confused with the enforcement of any law, especially not enforcement of law in any particular territory over particular people. It must rather be understood as the right to declare for the entire world what is law and counts as just. To use the terms of Wittgenstein, the emperor was responsible for, not what people said or did, but their agreement in form of life; not their agreement in legal definitions, but their agreement in judgments of what qualified as law. As was memorably suggested by the legend of Frederick Barbarossa hidden inside the Kyffhäuser mountain biding his time, the emperor could be imagined to have vanished from the face of the earth and yet continue to watch over his people—just as Ockham believed that the true church needed only a single faithful individual in order to survive, and that Mary may have been the only individual in whom the church survived the day that Christ was crucified. This does of course not mean that law enforcement did not matter. It merely means that law enforcement was not the point on which the emperor differed from other rulers.

Perhaps one could accordingly consider medieval empire a form of universal government in search of territorial significance. There was nothing 'mystical' about that form of government. What prevents us from recognizing it as a perfectly rational form of political organization is that the changes by which medieval empire was eventually eclipsed have made it difficult for us to grasp the sense it made. Those changes are perfectly well known. They turn on the failure of medieval emperors to secure obedience to their will and on the emergence of territorial states whose rulers were defined by their ability to enforce laws that were precisely not universal. Jurisdiction came to be so closely linked to law enforcement that jurisdiction without enforcement became a meaningless idea. What, a modern person might well ask, could possibly be the meaning of jurisdiction if there is no way to enforce whatever judgment has been made? That spelled an end to empire in the medieval sense. But the history of modern states shows only too clearly that it did not by any means spell an end to the search for universal harmony. What changed was rather that enforce-

ment and universality traded places in the grammar of politics: henceforth enforcement came first, and universality came second.

That reversal changed the nature of power. What had once been treated as a variable was now held constant, and what had been held constant was turned into a variable instead. Wittgenstein might have said that a symptom of medieval empire (its lack of territorial power) was turned into a criterion for the absence of real government, and a criterion of territorial power (its lack of universal jurisdiction) was turned into a symptom of modern states. In both cases the symptoms kept spurring demands for reform. But the reforms were different: reform of medieval empire required giving it the power to enforce its will; reform of modern states required endowing their power with universal legitimacy. In both cases the validity of the criterion depended on the success with which the symptoms could be held in check. But the success was different, too: medieval empire succeeded by insisting on its legitimacy to a point at which its powerlessness could be forgiven, while modern states succeeded by raising their power to a height that made resistance futile.

On this logic modern empire turns out to be the same as medieval empire, only turned inside out: not a form of universal government in search of territorial power, but a form of territorial power in search of universal significance. If the chief problem for medieval emperors was how to secure obedience to their jurisdiction, the chief problem for modern empires is how to secure universal significance for the power they exercise so effectively at home and abroad. For medieval empire, universal significance was given; its Achilles heel was lack of power. For modern empire it is the power that is given, and the meaning of power is its Achilles heel. That makes it seem likely that the fate of modern empires does not depend nearly as much on their ability to marshal power as their ability to marry power to significance.

The Limits of History *in Brief*

Each of the three preceding studies focused on the contrast between medieval and modern views of law, justice, and politics. That contrast is not to be confused with history. It is just one among a countless multitude of matters that went into the passage from medieval to modern times. It gave me a nice conceptual grid, a scaffold, a set of criteria with which to analyze the history, but not the history itself. What was that history?

I had no answer to that question. But once I had worked out the logic of Hermann Conring's disagreement with Bartolus, I did know this: the methods I had been taught were not up to the job. They had exploded in my face—not because I had been careless, but because they were part and parcel of the very

history I was trying to write. I had happened upon a short-circuit in the wires supposed to link the evidence to history. The craft of sublimating evidence into pure knowledge of the past had proved to rest on an illusion.

That was a disappointment—but only in the sense in which it is a disappointment to be confronted with reality. It was also a source of great relief and even joy. Precisely because it dashed every hope of going forward in the direction I had been taught to go, it freed me from any obligation to keep going there. It also told me precisely what I had to do next: establish beyond a reasonable doubt that the illusion really is an illusion.

That was the purpose of *The Limits of History*, and that was the problem too. Assume the craft of sublimating evidence into pure knowledge of the past does rest on an illusion: How can one prove it does? How can it be established beyond a reasonable doubt? I knew that the pursuit of objectivity kept driving historians from pride in their ability to grasp the past itself into a meaningless dead end where they lost hope of knowing anything about the past at all and often tried to justify their hopelessness by proving the futility of knowledge. I knew the pride and hopelessness were equally unjustified. But how could that be proved? How was I going to rebut the pride without seeming to justify the hopelessness? How was I going to encourage hope without resuscitating pride?

It was of course not difficult at all to say outright that pure knowledge of the past is an illusion. I did:

History cannot establish the origin of modern politics any more than it can validate historical thought itself. It can only clarify what we already know from other sources. Far from establishing a temporal perspective, history presupposes one. It shelters us from the experience of time; it comforts us with the illusion that subjects can be defined by their historical conditions and that change over time can be explained by historical developments. “God wants it,” the old crusaders would have said. The truth only begins where that illusion ends.⁷⁵

Those were the closing words of *The Limits of History*. They made my point. But how were they to be prevented from lending further strength to the illusion they were intended to expose? Did they not make it seem that there is something there that really does need to be examined, because it really does constitute the origin of modern politics, only, we cannot examine it because it lies beyond our reach—when there is nothing there at all? Did they not treat

75 Fasolt, *Limits of History*, 231–2.

the illusion as a subject worth examination if only we were able to examine it? Did they not endow the illusion with a dignity that it did not deserve?

Again, it was not difficult to say outright that there exists a real alternative to the pursuit of an illusory kind of objectivity, namely, taking one's stand on the "point at which history and politics are indistinguishable from each other," where we meet our own "commitment to a certain view of human nature that has held sway since medieval ways of thought and action were shattered in early modern times."⁷⁶ But that only seemed to justify the conclusion "that human agreement decides what is true and what is false," when nothing could have been further from my mind.⁷⁷ So far from unveiling the illusion, it was more likely to make my readers jump from the frying pan of objectivity into the fire of subjectivity, which would only have made things worse. There seemed to be no hope of victory by charging at the problem from the front.

Now I know why: metaphysical illusions derive most of their strength from being frontally attacked. That makes them fiendishly difficult to expose. But at the time I did not understand that yet. I knew that Wittgenstein might be the sole exception to the rule that "philosophy, it seems, cannot be counted on to bail out history."⁷⁸ I recognized that he did not show any trace of the historicist convictions turning up wherever else I looked. But I had no idea how to bring Wittgenstein's grammatical elucidations to bear on history—and I still find myself awestruck by the astonishing self-discipline with which he managed to refrain from making frontal attacks at all. There was only one thing I knew for sure: a frontal attack would never do.

It followed that my attack had to be indirect. Mounting an indirect attack meant doing precisely what historians are normally supposed to do when they pursue pure knowledge of the past, except that I would do it for quite a different purpose: not to achieve such knowledge, but to reach a point at which such knowledge would stand revealed as an illusion. In other words, I needed to impersonate a historian.

And so I did. I offered the best historical account I could of Hermann Conring's life, the meaning of his *New Discourse on the Roman German Emperor*, and the significance of the conflict between his arguments and those of Bartolus. Then I pushed my account as far as possible into the familiar dead end in order to expose it as the illusion that it is. I asked my readers

76 Fasolt, *Limits of History*, xvi.

77 *PI* § 241.

78 Fasolt, *Limits of History*, 40 and 238n50.

to peer into the historical distance while looking over their shoulders to catch a glimpse of their own subjectivity—a feat of mental acrobatics that may seem unreasonably difficult. But I know of no other way to gain perspective on history than by a double entendre of whose exasperating quality I am only too well aware.⁷⁹

Neither by chance nor by design, but by a mixture of tinkering and testing I had arrived at my own version of the solution that Wittgenstein proposed to deal with metaphysical illusions:

The great difficulty here is not to present the matter as if there were something one *couldn't* do. As if there really were an object, from which I extract a description, which I am not in a position to show anyone. — And the best that I can propose is that we yield to the temptation to use this picture, but then investigate what the *application* of the picture looks like.⁸⁰

This was the very difficulty I faced: how to expose the illusion without presenting the matter “as if there were something one *couldn't* do” (namely, grasp the history of the transition from medieval to modern Europe objectively), “as if there really were an object . . . which I am not in a position to show anyone” (namely, a real past lying ineffably beyond the limits of history). This was the best I could propose: “yield to the temptation to use this picture” (that is, do what we are trained to do in order to achieve objective knowledge of the past), “but then investigate what the *application* of the picture looks like” (that is, show that doing what we are trained to do produces the illusion that there is something there about which it is impossible to say anything).

79 Fasolt, *Limits of History*, 45.

80 *PI* § 374. The difficulty Wittgenstein addresses in this paragraph concerns the metaphysical picture of a mental object that someone has, but cannot show to anyone, as, for example, the visual impression someone has when he sees an object he calls ‘red,’ but which he cannot show to anyone, and of which he can therefore never know whether it is the same as the visual impression other people have when they see something they call ‘red.’ The picture of such a mental object as actually existing in someone’s mind is of course quite different from the picture of the past as an object actually existing in the past. But it is the same in this crucial respect: it gives us the illusion that there is something there about which it is impossible to say anything. This is the chimera against which our understanding of the past must be defended.

I thought it worked well enough. I thought it explained “why I decided firmly against a title or subtitle mentioning Conring and Bartolus.”⁸¹ I thought it showed that the attempt to grasp what Conring ‘really’ thought was bound to make his real thought appear to be impossible to grasp, and the attempt to grasp what the distinction between medieval and modern times ‘really’ meant was bound to make its real meaning vanish from sight. But it did not work quite as well as I believed. I wrote:

History is a limited form of knowledge. Within those limits it can do good work. Outside of those limits it cannot exist. History needs no improvement. It is as good as it has ever been. It needs to be no better. . . . The problem is not that history has not yet gone far enough. The opposite is true: history has constantly gone too far—too far in its ambitions and too far in its claims. History is burdened with tasks it cannot possibly fulfill. It cannot tell “wie es eigentlich gewesen,” and it should never have been asked to do so. That is what saps its meaning. Expecting history to reach the reality of the past is to allow oneself to be seduced by a mirage arising not from the past but from a historical imagination run amok. . . . If history is to do well what it can do, its limits need to be affirmed. Merely describing them is not enough. They are so deeply buried beneath the scholarship daily produced by professionals who cannot afford to have their concentration interrupted by doubts about the foundations of their enterprise that they are difficult to see and easy to forget. They must be shown in the concrete, and their effects need to be driven home until they cannot be ignored.⁸²

That said exactly what I wanted to say. It said that claims to truth about the past cannot be justified without criteria of judgment; that such criteria are part of our agreement in our form of life; that such an agreement is a matter of training, teaching, and commitment; and that without such training, teaching, and commitment there is no place for reason, evidence, or proof.

But I did not say it in those terms. I had not yet read deeply enough in the *Philosophical Investigations*. I did not distinguish between, on the one hand, the straightforward sense in which the limits of history—the criteria on which we need to be agreed in order to be able to answer the question “How do you know?”—constitute the possibility of knowledge about the past and, on the other hand, the metaphysical nonsense that makes those very same limits

81 Fasolt, *Limits of History*, 45.

82 *Ibid.*, 40.

look like a veil concealing an ineffable reality from us or, worse, a prison of the mind. I was too eager to hunt the illusion down and put it out of its misery. I did not say loud and clear enough that in fact we can tell the truth about the past by practicing a certain discipline whose limits are set by nothing other than by the kind of discipline it is. I never distinguished clearly enough between the truth that we can tell and the illusion that leads us into a metaphysical morass. I said, “this book sets out to show in one instance what separates us in all instances from an adequate understanding of the past”⁸³—and I forgot to add that ‘all instances’ only meant ‘all instances in which we surrender to the allure of metaphysics.’ I made it seem as if ‘what separates us in all instances from an adequate understanding of the past’ meant the same as ‘there is something that always separates us from an adequate understanding of the past’—“as if there really were an object, from which I extract a description, which I am not in a position to show anyone.”

No wonder my readers found it difficult to understand what I had tried to say. Some did not realize I was impersonating a historian. They thought the book was about Conring, Bartolus, and the origins of modern historical thought, full stop, and were naturally puzzled by whatever else I had to say. Perhaps I ought to have made my point with greater force; a friend suggested using an axe. Some readers even seem to have believed my purpose was to demonstrate that Conring invented modern historical research, which was downright amusing. But others, who did realize that I was impersonating a historian, thought I was doing so in order to deny that we can tell the truth about the past at all. That was not so amusing, flying directly in the face of what I had tried to convey.

I was therefore delighted when the editors of *Historically Speaking* decided to publish a forum on *The Limits of History* that gave me an opportunity to rule out some of the most basic misunderstandings.⁸⁴ I was not yet in a position to bring Wittgenstein’s distinctions to bear directly on what I had meant to say—and if I had been, I could not very well have done so in that setting. But there were two things I could do: one was simply to repeat as succinctly as possible what I had tried to say, and how I had tried to say it in *The Limits of History*; the other was to make it perfectly clear that

83 Ibid., 45.

84 Fasolt, Megill, and Spiegel, “An Exchange.” I would like to thank Donald Yerxa and Joseph Lucas for giving me the opportunity, and Allan Megill and Gabrielle Spiegel for making me think harder.

I share none of the gloom arising from the view that language is a self-referential system, such that its signs do not allow us to gain access to reality itself, but only to linguistically constructed reality. . . . I could not agree more that our knowledge is linguistically constructed. But far from making it unreal, that is what makes it knowledge.⁸⁵

“All Sorts of Slogans”

What next? I might have gone on to look more closely at the damage we are doing to our understanding of the past by fighting with chimeras. But I was reaching a point of diminishing returns and tired of focusing on the negative. At the same time I did not want to spend my energy on new historical investigations without knowing how to resolve my doubts. From this point forward I focused increasingly on looking for the light the *Philosophical Investigations* can shed on history.

I was of course far from the first: historians and social scientists have paid significant attention to Wittgenstein ever since the *Philosophical Investigations* were published in 1953. Since the 1970s their writings have turned into a veritable flood, and concepts like “language-game,” “family resemblance,” and “form of life” have become well-nigh ubiquitous. Had it not been for Wittgenstein, some of the deepest changes in the study of history and society in the last fifty years would scarcely have taken place. That goes not only for specific cases, like the attention lavished on individuals and their ideas in their specific contexts under the leadership of Quentin Skinner and J. G. A. Pocock in what is often called the Cambridge School, or the “thick description” advanced by Clifford Geertz and cultural anthropologists, but also for the whole change in intellectual climate often referred to as the “linguistic turn” that sharpened the conflict between quantitative and qualitative studies and deepened long-standing doubts about the very possibility of a true science of society.⁸⁶ Wittgenstein figures prominently in that turn, and he deserves much of the credit for the great progress historians and social scientists have made in studying individuals (free, unfree, male, female, young, adult, single, married, literate, illiterate, . . .) in their respective contexts (economic, social, political, cultural, intellectual, linguistic, . . .) and thereby reshaping the humanities and social sciences in their entirety.

85 Fasolt, “Limits in Brief,” 10.

86 See, for example, Jay, “Intellectual History,” Toews, “Intellectual History,” and Spiegel, ed., *Practicing History*.

At the same time it seems to me that the most fundamental lessons of the *Philosophical Investigations* have been ignored or misconstrued.⁸⁷ As recently as 1999, almost half a century after Wittgenstein's death, Stanley Cavell deplored the "immunized state" of philosophy in America and insisted that Wittgenstein had had virtually no "public or historical effect on this philosophical culture."⁸⁸ A few years earlier Newton Garver put it more strongly:

On the one hand [Wittgenstein's] prestige is enormous, and his presence as a figure in the philosophical landscape cannot be overlooked; on the other hand his impact has been minimal. . . . Wittgenstein has no significant following. People recognize him, read him, cite him, and discuss him; but few take up philosophy in his manner, or modify their thinking in line with the main thrusts of his work. . . . This curious state of affairs is to be explained, I believe, by a combination of three factors. The first is a concentration on subordinate details, such as the nature of objects, the picture theory, family resemblance, and the private-language argument. It is not that these details are not important: details are always important. But they are also subordinate to main thrusts. The second factor is that the main thrusts of his works have been ignored—the holism and the ethical thrust of the *Tractatus*, and the representation of philosophical remarks in the *Investigations* as part of the natural history of mankind. This leads into the third factor, for the neglect of main thrusts almost inevitably leads to a distortion of Wittgenstein's thought.⁸⁹

This is not to gainsay the progress made under Wittgenstein's inspiration. But it is to say that our progress has done nothing to shake our attachment to historicism, by which I mean the doctrine that anachronism must be avoided at all cost; that it cannot be avoided unless we put past human thought and action into the context of its specific time and place; and that the context of that specific time and place exists as such, out there, in the splendid isolation of a past whose essence has nothing to do with our present. That doctrine

87 As Wittgenstein himself suspected would be the case: "It is not impossible that it should fall to the lot of this work, in its poverty and in the darkness of this time, to bring light into one brain or another – but, of course, it is not likely." *PI*, 4^e.

88 Cavell, *Claim of Reason*, xviii, xx.

89 Garver, *Complicated Form of Life*, 73–4. One need not agree with Garver's understanding of Wittgenstein or with every detail of the evidence with which he documents his claims, *ibid.*, 74–85, in order to agree with his conclusion. Crary and Read, eds., *New Wittgenstein*, provides a great variety of arguments supporting the same basic point.

has been the common wisdom of historians ever since the nineteenth century. Ranke put it succinctly: "Every epoch is immediate to God, and its worth is not at all based on what derives from it but rests in its own existence, in its own self. . . . The historian thus has to pay particular attention first of all to how people in a certain period thought and lived."⁹⁰ This is as clear a statement of the metaphysical autonomy of the past, and as firm an admonition to avoid anachronism, as anyone could wish. We are admonished to respect the sanctity of every epoch's immediate relationship to God and to abstract from the historical context in which we happen to be living, so as to focus on that "certain period" to which we need "to pay particular attention first of all." The admonition draws its strength from the belief that the sole effect 'our' context can have on our knowledge of 'their' context is to pollute its purity. Historicism is supposed to preserve that purity. It makes a categorical distinction between 'our' present and 'their' past. It reduces our knowledge of the past to two basic elements: the (past) facts and their (present) interpretation. It demands that we divide our reading into primary (past) sources and secondary (present) sources, so that we can then place the primary sources into 'their' context. Historicism makes us forget entirely that 'their' context is 'our' past and that 'our' present is part of the context into which we must place the sources. It takes us out of the history we study.

The problems involved in taking a historicist position have long been understood. They take shape in such questions as how to reconcile the 'narrative' or 'diachronic' method favored by Ranke with the 'structural' or 'synchronic' method favored by Burckhardt; how to speak in present terms about past phenomena without committing anachronism; how to understand the relationship between the evidence and its meaning; how to account for the difference between 'intellectual' and 'social' history; what to make of the distinction between history in the sense of 'books about the past' and history in the sense of 'the past that actually happened'; and so on. Notwithstanding the obvious differences in emphasis and terminology, these problems already preoccupied Herder, Humboldt, Ranke, and Burckhardt long ago. They are the same problems with which historians, anthropologists, political theorists, sociologists, and other social scientists still struggle today. These same problems are equally visible in attempts to reconcile the 'qualitative' with the 'quantitative' social sciences; the dysfunctional desire to 'fuse' the historian's horizon with the horizons of the past, as Gadamer would have it in one the most sophisticated versions of historicism; and the hostilities provoked by post-structuralism, deconstruction, and gender studies. No doubt that we have made much prog-

90 Ranke, *Theory and Practice*, 53.

ress in the name of Wittgenstein. By now Ranke's advice has been taken to lengths that would astonish him. But we have solved none of the fundamental problems with which we have been saddled by taking his advice. The "crisis of historicism" remains as acute today as when it was diagnosed as such by Troeltsch early in the twentieth century.⁹¹ So far from having made a turn, we live in the most recent and most prolific phase in historicism's long career.⁹²

Whether this phase will be the last is utterly unclear. Clear is only that "on both sides of the Atlantic we still have the impact of Wittgenstein's thought to look forward to," for Wittgenstein did break with historicism.⁹³ He did not merely counsel historians to place past people in their contexts and study the language-games they played. Much less did he prohibit anachronism, or promise that we can somehow rise above past people to see something they could not see because they lacked some concepts we possess. To the contrary, he kept insisting that it is nonsense to imagine a given language as lacking anything at all. He never practiced the subtle forms of condescension that constitute the original sin of historicism. He recognized fully how deep the differences between the languages we speak can go, and he may have attributed greater importance to context than any other philosopher. But he also pointed out that there is a "system of reference by means of which we interpret an unknown language," and that system of reference is precisely not the context of a particular time and place, but our "shared human behaviour" (*die gemeinsame menschliche Handlungsweise*).⁹⁴ He thus leveled the playing field between the ages in ways that differ categorically from Ranke's, and tried to take us to destinations quite different from those envisioned by historicism. He broke through historicism's basic creed and for good measure cast more basic doubt on the distinction between culture and nature than anyone since ancient Greek sophists first put it to systematic use. He thought of language as a "spatial and temporal phenomenon" that is "as much a part of our natural history as walking, eating, drinking, playing."⁹⁵ Note that the history of which he speaks is both "natural" and "ours." He showed how to undo what the historicists have done.

91 Troeltsch, *Historismus*.

92 For a compelling account of distinct, but closely related intellectual continuities extending from Kant to the present see Pippin, *Modernism as a Philosophical Problem*.

93 Garver, *Complicated Form of Life*, 85. Perhaps the growing success of the "New Wittgenstein" is a sign that things have begun to change.

94 *PI* § 206.

95 *PI* § 108 (boxed remark), and *PI* § 25.

In a memorable passage Wittgenstein wrote a few days before he died he pointed out what it might mean to study history without historicist assumptions:

Is it wrong for me to be guided in my actions by the propositions of physics? Am I to say I have no good ground for doing so? Isn't precisely this what we call a 'good ground'? Supposing we met people who did not regard that as a telling reason. Now, how do we imagine this? Instead of the physicist, they consult an oracle. (And for that we consider them primitive.) Is it wrong for them to consult an oracle and be guided by it? — If we call this "wrong" aren't we using our language-game as a base from which to *combat* theirs? And are we right or wrong to combat it? Of course there are all sorts of slogans which will be used to support our proceedings. Where two principles really do meet which cannot be reconciled with one another, then each man declares the other a fool and heretic. I said I would 'combat' the other man, — but wouldn't I give him *reasons*? Certainly; but how far do they go? At the end of reasons comes *persuasion*. (Think what happens when missionaries convert natives.)⁹⁶

These words are trouble for students of both culture and nature. They ought to leave us deeply disturbed. They challenge us to look beyond "all sorts of slogans" and face up to a choice that we cannot avoid by hiding behind the imaginary walls on which the logic of historicists depends. Which will it be? Should we approach the natives inhabiting the past in the same missionary spirit to which historicism owes its life? Or should we combat and conquer them? Should we deploy the weapons of modern science and scholarship to prove their ignorance and folly? Or should we humbly lower ourselves to their level of comprehension and graciously forgive them their primitive state of mind? How should we deal with people who differ from us, not because their form of life is different from our own, but because they have died? *De mortuis nil nisi bene* is how the old commandment goes: nothing but good about the dead. How can we possibly write history and not break that commandment? I know of no good answers to these questions.⁹⁷ To me they seem impossible

96 Wittgenstein, *On Certainty*, §§ 608–12.

97 One of the very best was given by Winch, "Understanding a Primitive Society." By contrast, Stroud, "Wittgenstein and Logical Necessity," shows very clearly how hard it is for us to make sense of any behavior that is not grounded in our form of life. Wittgenstein made that point in *PPF* § 327: "If a lion could talk, we wouldn't be able to understand it." Would we be able to understand the dead if they could talk?

to answer without going “the bloody *hard way*,” as Wittgenstein advised Rush Rhees to do in philosophy.⁹⁸

Trying to go “the bloody *hard way*” in history has led me to write studies that I have not included here because they belong to a new program of research that is still in its infancy.⁹⁹ But there is one exception: an essay on “Religious Authority and Ecclesiastical Governance” in which I revisited the history of the transition from medieval to early modern Europe in order to exemplify what might be gained by treating that transition as a change in criteria of judgment. I have to admit I doubt that it leads very far; in fact it may not even lead in the right direction. If it does not, at least it helps to illustrate how easy the bloody hard way is to miss.

Religious Authority and Ecclesiastical Governance

“Religious Authority and Ecclesiastical Governance” is the first study in which I ever tried to bring Wittgenstein’s ideas to bear directly on history. It begins with a brief sketch of progress from medieval oppression and the persecution of heretics to modern freedom of religion in the familiar terms of combat with the medieval past that Conring helped to invent, and to which we are still so deeply indebted that we have not been able to replace them with an equally compelling alternative. The most important feature of that history is that it depends on agreement in our form of life, and therefore goes only as far as the criteria of judgment on which we are agreed when we speak of such things as freedom and religion. This history treats what was a change in judgments as though it had merely been a change in definitions. It does not address the question how we came by the criteria on which we are agreed today, and it does little justice to the criteria deployed in medieval times.

The first thing I tried to do, therefore, was to explain what it means to be joined by agreement in judgments. The best way to do so is to give an example. The example I chose is our agreement on the standard meter bar as the criterion by which we determine length. I chose it both because it figures prominently in the *Philosophical Investigations*, § 50, and because it is one of the simplest ways to make the basic point. The point is that it is nonsense to assert that the standard meter bar is one meter long. Precisely because we use it as the criterion with which to tell *what* is one meter long, it makes no sense to say that *it* is one meter long. We can of course use other criteria to answer ques-

98 Conant, “On Going the Bloody Hard Way,” 85.

99 They are, in chronological order, “History and Religion,” “Respect for the Word,” “Saving Renaissance and Reformation,” and “Breaking up Time.”

tions of length, for example, in order to determine if the piece of metal we use as the standard meter bar is still as long as it once used to be. But in that case we are not using the standard meter bar as a criterion of length. Our measurements of length depend on our agreement on the means we use to judge what is and what is not one meter long. We are entirely at liberty to change our agreement and start using other means. Our liberty in this regard is not constrained by anything other than our consent. This does not mean that our consent determines what is and what is not one meter long, nor does it mean that the standard meter bar has some mysterious power. It means that our standard meter bar is utterly exempt from judgments of length simply because we have agreed to use it as the means with which to make such judgments.

Having tried to explain what a criterion of judgment is, I used the standard meter bar as an analogy for the criteria of judgment on which people in medieval Europe were agreed in order to distinguish what is true from what is false, particularly concerning the foundations of their society. Three of those criteria stand out: one consisted of letters transmitted in writing from antiquity, especially the letters of Sacred Scripture; another consisted of the judgment of experts capable of bringing the machinery of Aristotelian logic to bear on those letters in order to determine their meaning with scientific precision; the third consisted of the judgment of the papacy in cases of dispute.¹⁰⁰

Just as the standard meter bar loses its standing as a criterion of measurement as soon as we subject it to measurement itself, so the judgment of the papacy lost its standing as the criterion of the true faith as soon as the papacy was subjected to human judgment. It was in this sense that the papacy was utterly exempt from judgment: not because there was no means of judging it—there were plenty such means—but because judging it meant treating it as something other than the papacy. Just as the exemption of the standard meter bar from measurement is the result of our agreement to use it as a criterion for measurements of length, so the exemption of the papacy from human judgment was the result of an agreement to use the judgment of the papacy as a criterion for the true faith. Just as it is nonsense to say that the standard meter bar is one meter long—not true, not false, but nonsense—so it was nonsense to say that the pope was wrong. More precisely, it was nonsense for those who joined in the agreement. For those who did not, it was not nonsense by any

100 For the sake of simplicity I speak of the judgment of the papacy when I really ought to be speaking of the judgment of the church. The relationship between the papacy and the church, however, is such a complicated issue that I cannot address it here, and could not address it in my essay.

means, but an expression of their dissent from the agreement. That is what made them heretics.

Having prepared the ground like this, I went on to describe the history of the transition from medieval to modern history. The essence of that history consists of changes in the criteria on which the inhabitants of medieval Europe had been agreed. The details turn on the development of new forms of knowledge and education, new technologies of war and government, and new kinds of disagreement over the foundations of society. So far as they can be compressed into a brief account, they are described in the essay reproduced below. But there are two general points worth making here.

One is that the history in question can be divided into three stages: the Renaissance, in which the agreement in question was gradually extended to people other than clerics and to criteria other than sacred letters, particularly mathematics and the writings of classical antiquity; the Reformation, in which people like Luther and Machiavelli proposed new kinds of criteria for new kinds of agreement that destroyed once and for all the possibility of keeping the old agreement intact; and the age of religious wars that broke out when the lack of agreed-upon criteria made it impossible to tell exactly what was in dispute. It ended when Europe managed to form a new agreement on new criteria of judgment around the time of the Peace of Westphalia.

The other point is that this is not the history of progress from oppression to liberty. If it is the history of progress at all, then only progress from a medieval combination of oppression and liberty to a modern combination of oppression and liberty—a history in which we have committed ourselves to judgments that pit us so firmly against the Middle Ages that it would be dishonest to conceal the disagreement. It is of course quite true that religious faith was turned into a matter of individual belief, which means, it was withdrawn from the public realm—the only realm in which criteria of judgment make sense—and placed into the private realm of personal belief, in which there is no room for using criteria at all. That gave believers a new kind of liberty. But it is also true that in the public realm we came to agree on new criteria that are precisely as exempt from any human judgment as the papacy once used to be, and which no human being may dispute without putting itself at risk of being treated as a heretic. The day when we will clamor for liberty from the tyranny of the standard meter bar will probably never arrive, both because standards of measurement are too important to leave to individual belief and because it is relatively easy to agree on them. Yet there may well come a time when we will clamor for liberty from the tyranny of science, reason, and the will of the people; some of us already do.

Hegel's Ghost: Europe, the Reformation, and the Middle Ages

"Hegel's Ghost" is the final essay in this collection, both because it was published last and because it spells out some of the main conclusions to be drawn from the preceding studies. Its origins go back as far as the first time I met Eric Cochrane, late in 1982, at a meeting of the American Historical Association in Washington, for a job interview concerning the position in early modern European history the University of Chicago had opened. I cannot recall exactly what he said, but it was roughly this: "Julius Kirshner and I would like to stay south of the Alps. We need someone to teach the Reformation. Is that something you would be willing to do?"

Ever since that meeting the Reformation has occupied a great deal of my attention. I never taught anyone about William Durant the Younger or Hermann Conring. But I regularly taught courses on the Reformation for both graduate and undergraduate students. I read the secondary literature and the primary sources, I studied the history of Reformation historiography from the nineteenth century to the present, I kept up with contemporary trends in the scholarship, subscribed to the appropriate journals, and I attended the usual conferences. Every now and then I gave papers addressing the Reformation in one way or another. But I never tried to turn those papers into publications. I did not want to spend my time climbing a mountain of scholarship at the risk of having to blow it up in order to be able to say something new. I preferred moving straight into the wilds of seventeenth-century history, both because I enjoyed the prospect of roaming those wilds and because I was convinced that I could change our understanding of the Reformation without confronting it directly, by seizing control of the ground on both of its chronological flanks in order to break through the wall between the Middle Ages and modernity. That was a more basic and more important task. If that task could be completed, I thought the Reformation would take care of itself.

Three things changed my mind. The first was that I climbed much higher on the mountain of Reformation scholarship than I had ever thought I would. In the process I came to hold some definite ideas about its weaknesses. I wanted to publish those ideas. The second was that Tom Brady invited me to a conference at the Historisches Kolleg in Munich that he was organizing for the explicit purpose of considering alternatives to well-established views of Reformation history. This was an opportunity that I could not resist. The third and most important was that the conventional periodization of European history proved utterly impervious to my entreaties from the flanks. Eventually it dawned on me that it is quite impossible to change a scholarly tradition as deeply entrenched as that periodization unless you do attack it directly from the front. In this

regard a scholarly tradition is the opposite of metaphysical illusions—even if the illusions drive the scholarship. Given how many bricks in the wall between the Middle Ages and modernity were taken from the Reformation, a direct attack on Reformation historiography seemed worth a try.

At first “Hegel’s Ghost” was nothing more than a short paper for the conference Tom Brady organized. It made two basic points: one was that even today Reformation historians are much too closely identified with the ideas of sixteenth-century reformers to be able to give the Reformation the place it deserves to have in the history of Europe; the other was to assign such a place to the Reformation by treating it as an important phase in a continuous development beginning with the “First European Revolution” and the Investiture Controversy in the eleventh century.¹⁰¹

Both of these points fly in the face of two basic characteristics of Reformation historiography today. One is the palpable sense of pride with which Reformation historians tend to assert that they have finally managed to distance themselves from the ideas of sixteenth-century reformers, chiefly by establishing the pre-eminence of social and cultural history over theology. The other is that they have traced the roots of the Reformation to late medieval social and intellectual history—but certainly not to the foundation of the papal monarchy in the eleventh century. I have yet to meet a historian of the Reformation who is willing to agree with me that Martin Luther was a direct successor of Pope Gregory VII.¹⁰²

I have a fond memory of Tom Brady sitting next to me while I was reading my paper, turning to me when I had finished, and whispering with a broad smile: “You just made my conference.” What he meant, I think, was not that he agreed with me, but that my paper would provoke debate. It did, and the debate was vigorous. But it gave me no reasons to change my mind. If anything, it strengthened my belief that I had hit my target.

The paper was published in the conference proceedings under the title “Europäische Geschichte, zweiter Akt: Die Reformation.” I would probably have left it at that if Tom Brady had not prodded me early in 2003 to translate my “wondrous provocation” (his words) into English and publish the translation in order to make it more easily accessible to students in the United States.

Translating was not difficult, and neither was extending and improving the argument in light of what I had learned since 1999. Getting it published was. I sent it to the *American Historical Review* in 2004, where it got mixed reviews and was rejected in 2005. I sent it to *Past & Present* in 2006, where it got mixed

101 Cf. Moore, *First European Revolution*.

102 Historians of the Middle Ages and world historians have been more willing to agree, sometimes to the point of expressing surprise that this might be controversial.

reviews and was rejected in 2007. I sent it to the *Archive for Reformation History* in 2007, where it was instantly rejected for being too long. Each time it was rejected, I made revisions and additions suggested by the anonymous reviewers who had evaluated my submission, and to whom I am grateful for forcing me to keep sharpening my points. *Viator*, not coincidentally a journal published by a center for medieval and Renaissance studies, finally accepted it and published it in 2008 under the title “Hegel’s Ghost: Europe, the Reformation, and the Middle Ages.” In the process my short paper grew to three times its original length, and I was reminded once again how deeply the interests of the historical profession are vested in keeping the Middle Ages separate from modernity. I was also given an unexpected opportunity to realize with pleasure and amusement how thoroughly I had fulfilled the conditions on which I had been hired by the University of Chicago. I realized it in a flash when one of my most sympathetic anonymous reviewers remarked that, much though I evidently knew about early modern Europe, there was good reason to be troubled by my lack of training in medieval history.

“Hegel’s Ghost” thus differs from all of the preceding essays. It is the only piece I ever wrote that deals directly with the Reformation, and it is also the only piece I aimed directly at overturning a well-established scholarly tradition. I could never have written it without having done the research I did on William Durant the Younger and Hermann Conring, much less the *Philosophical Investigations*. But it does not bear any obvious traces of that research at all. It confirms the accuracy of Thomas Kuhn’s observation that “in history, more than in any other discipline I know, the finished product of research disguises the nature of the work that produced it.”¹⁰³

“Hegel’s Ghost” lays down a challenge to prevailing accounts of the Reformation. It focuses on the Reformation not just because my professional career happened to have turned me into something of an expert in Reformation history, much less because Tom Brady encouraged me. It focuses on the Reformation because the Reformation lends powerful support to my old enemy, the traditional periodization of European history. Ever since the days of Hegel, Marx, and Weber the Reformation has been regarded as a crucial, if not the crucial, turning point from medieval to modern history. Hegel, Marx, and Weber were of course deeply divided in their assessment of the reasons why the Reformation played that role. But they were in complete agreement that, for whatever reasons, it pointed directly to the beginning of modern history.

The Reformation is obviously not the only candidate for the beginning of modern history. Many historians give equal or greater weight to other candidates: the Renaissance, the Scientific Revolution, the rise of capitalism,

103 Kuhn, *Essential Tension*, x.

the European conquests overseas, the Enlightenment, the French Revolution, the Industrial Revolution, nineteenth-century urbanization, and so on. Nor is the Reformation the only instance in which historians are struggling with metaphysical illusions. Metaphysical illusions proliferate wherever history is carried out under the banner of historicism. The history of nationalism, imperialism, colonialism, capitalism, classes, gender, sex, ideas, culture, material culture, society, economy, Christianity, religion, revolution, war—you name a subject of historical investigation, and I will show you a metaphysical illusion. But there is one way in which the Reformation does stand out. I know no other field of study—except perhaps world history and early medieval history—in which historians have mounted a more concerted, more sustained, more vigorous, and more widely recognized effort to break the shackles of the conventional periodization of European history.

They have done so in three main ways. First, they have diminished the significance of theological differences between Catholics, Lutherans, Calvinists, and other kinds of believers to a point where it is possible to treat all of them as allies—unwitting and unwilling allies, but allies nonetheless—in one and the same cause: a pan-European process of political, religious, and social development often referred to as ‘confessionalization.’ Second, they have raised our esteem for late medieval social, religious, and intellectual life to such heights that it is now difficult to tell exactly how the reformers broke with their predecessors, or even if they really did break with them at all. Complaints about the supposed ‘abuses’ of the late medieval church are rarely heard today. Third, together with their cousins in Renaissance history they have replaced what used to be a clearly marked divide between medieval and modern history with an entire ‘early modern’ or ‘late medieval and early modern’ period extending roughly from the beginning of the Renaissance to somewhere in the seventeenth century. Two hundred years ago there was almost unanimous agreement that, for better (from a Protestant perspective) or for worse (from a Catholic one), the Reformation marked a major break in world history. If there is any single theme that has held Reformation scholarship together over the last half century, it is the single-mindedness with which historians have tried to abolish that agreement.

I do not believe they have succeeded. In spite of their best efforts they remain beholden to the very understanding of European history that they are seeking to overturn. Their history exemplifies how difficult it is to exorcise a metaphysical illusion as deeply embedded in our relationship to our past and ourselves as Hegel’s belief in history as the progress of liberty and the Reformation as the herald of liberty for all. That is the point of “Hegel’s Ghost.”

“Hegel’s Ghost” makes its point in three steps. First, it reviews Reformation historiography since the nineteenth century in order to highlight a striking

paradox. On the one hand, Reformation historians have tried to diminish the significance conventionally attributed to two kinds of distinctions: the chronological distinction between the Middle Ages and modernity and the theological distinctions between Catholics, Lutherans, Calvinists, and so on. On the other hand, they continue to rely on those same distinctions in order to define their field of study. However well they have transcended confessional and chronological distinctions in other ways, they have not transcended them in the one way that really counts: they still do not include the history of the Reformation in the history of the Middle Ages, much less the history of the medieval church. This is certainly not because it would be difficult to do. To the contrary, the insights Reformation historians have won over the last fifty years demonstrate nothing more clearly than that the history of the medieval church meets every one of the criteria they have identified as characteristic of 'confessionalization': the development of clear theoretical ideas, new standards, propaganda, measures against counter-propaganda, education and training, discipline, ritual, and influence on language.¹⁰⁴ In light of those criteria the history of the Reformation really ought to begin in the eleventh century. I can think of only two reasons why no historian of the Reformation seems to agree: because in that case the Reformation would have begun in the very center of the Middle Ages and because it would have been led by the Catholic Church. If nothing else proves that Reformation historiography continues to be defined by the same chronological and theological distinctions between medieval Catholics and modern Protestants by which it was governed when Hegel declared the Reformation to have ushered in the modern world, this does.

Second, "Hegel's Ghost" examines medieval historiography in order to establish how easy it would be to do away with the conventional periodization if only modern historians could bring themselves to let it go. There is a large body of compelling scholarship leaving no reasonable doubt that it was in the century or two after the collapse of the Carolingian Empire that the foundations of European society acquired their characteristic shape. That moment was decisive for all of Europe's later history. Whatever happened later did nothing to break the frame built in those days—at least not until the nineteenth and twentieth centuries broke the frame of each and every one of the agro-literate civilizations in which most human beings had been living since agro-literate civilizations were first established in the ancient Near East roughly five thousand years ago. This is by no means to deny the significance of the Reformation. If nothing else, the Reformation allowed European states to claim spiritual authority for themselves, take more effective control of the souls and bodies of their subjects than the medieval church had ever managed,

104 Reinhard, "Pressures," 177–8.

and find new subjects for their power beyond Europe's frontiers. No doubt that was a major change. But its significance has to be seen in context. The context consists of the amazingly consistent, ruthless, and successful determination with which Europeans used an unusual combination of politics, technology, and science in order to subject humanity to their control ever since the eleventh century. So long as historians continue to take modern European history out of that context, they cannot tell just what made modern Europe tick, much less that the medieval church was the first modern state, and that it failed for reasons not unlike those wreaking havoc with the world today.

Third, "Hegel's Ghost" sketches a conjectural history of Europe beginning in the eleventh century. It has to be conjectural because we have not done the work required to turn conjecture into history. A wealth of empirical details lies right at our fingertips. But scarcely anyone is using it to show what is the same in medieval and modern European history. The reason is not that we have not yet done enough research, but that we keep looking in the same old way at every new thing we find: medievalists at medieval things, modernists at modern things, theologians at theology, and scientists at science. "One thinks that one is tracing nature over and over again, and one is merely tracing round the frame through which we look at it."¹⁰⁵

We think that the new things we find by means of empirical research will tell us what there is to learn. It never occurs to us that we must change our sight. We do not understand that looking for new things does not do us much good unless we learn to see those things in a new way, precisely as no one who has only seen the rabbit in the famous duck-rabbit drawing in the *Philosophical Investigations* can see the duck without learning a new way to see the duck-rabbit drawing—and this despite the fundamental fact that those who can see both duck and rabbit are looking at the identical 'empirical details' as those who cannot.¹⁰⁶ Many medievalists and many modernists can only see the rabbit. They need to see the duck: the modern state in the medieval church; the modern left in medieval friars; modern science in medieval theology; the modern fact in the medieval text; and vice versa for each of these. They will not learn to do so by studying empirical details.

It does not follow that seeing modern history in medieval history is 'merely an interpretation.' What follows rather is that there is no such thing as seeing only empirical details. Our knowledge of what is, and what is not, 'the same' in medieval and modern history is simply not a matter of empirical detail. It is a

105 *PI* § 114.

106 See *PPF* § 118, and the extended discussion of the concept of seeing that follows thereafter.

matter of the judgments—the grammar—on which our understanding of the past and ourselves depends.¹⁰⁷

Historians who want to understand the past without praying to Hegel's ghost must therefore make a choice. On the one hand, they can commit themselves whole-heartedly to the theological criteria from which the concept of the Reformation drew meaning since early modern times. That might be difficult to do today, but it would certainly make sense. In that case they would be justified in taking a firm stand in favor of (or against) the Reformation. Hegel would be alive and well. On the other hand, they can commit themselves whole-heartedly to the criteria by which all human beings are said to be endowed with the same rights, without respect to "race, color, religion, sex, or national origin," to quote a familiar list taken from Title VII of the American Civil Rights Act of 1964. In that case they would have to refrain from writing history in light of the criteria advanced by sixteenth-century reformers. The concept of the Reformation would lose the meaning it used to have, and the changes that came over Europe in early modern times would take their place in the context of a much longer history. Hegel could finally rest in peace. That would make sense as well. What does not make sense to me is to assert, on the one hand, that Reformation history must not be governed by theological criteria while, on the other hand, taking the Reformation out of the context of European history since the eleventh century.

Conclusion

I started my career with a straightforward question: Can history give us a means of orientation? The program of research I have described above leaves me convinced it can, except that it does not give us the means that we would like to have.

What we would like to have, I think, is something like a compass or a map to point us in the right direction when we have gotten lost in time. We hope that all we need to do is to look up some source of information that tells us where we are and how to get from here to there. We are entirely familiar with the experience of getting lost in a strange place and looking up a map in order to get back on track in space. Why not make such a map for history? Why should it be impossible to use the records and remainders surviving from the past in order to create a map of time that we could use to plot our movement into the future? It is an eminently plausible analogy.

107 See Winch, *Idea of Social Science*, 24–39, and McDowell, "Non-Cognitivism," for more detail on what it takes for us to say that something is 'the same' as something else.

That gave me a good reason to spend my energy on studying the past. What I was being taught in history made sense to me: put your opinions on one side and do not put your trust on anything you cannot verify yourself, at least in principle. I had no reason to believe that my opinions could be relied upon to guide me out of the fog that blanketed West Germany when I was growing up. The contrary was true: because my opinions were being formed beneath that fog, I had good reason not to rely on them at all.

The records and remainders surviving from the past were quite another matter. Their meaning was often opaque, but they themselves were fixed. They did not change as soon as someone's opinion changed and could be checked by anyone who cared. That made it reasonable to believe that they could steer me straight. I did not know that I was following in the footsteps of those early modern historians whose writings I would study much later on. I imagined, as Descartes put it in a classic formulation, that

I would be imitating a traveller who, upon finding himself lost in a forest, should not wander about turning this way and that, and still less stay in one place, but should keep walking as straight as he can in one direction, never changing it for slight reasons even if mere chance made him choose it in the first place.¹⁰⁸

But walking straight in one direction led me straight into problems that were impossible to solve. One problem was the difference I noticed early on between the meaning William Durant the Younger wanted his words to have and the meaning his words did have in fact. I could not place him on the map I had in mind, not merely for accidental reasons, but for reasons embedded in the very effort to define his location with precision.

I ran into a similar problem when I was working on Hermann Conring. But Conring also gave me two other problems to stop me in my tracks. One was the injustice Conring did to Bartolus by begging the questions that Bartolus had asked. That was similar to the problem I had encountered with Durant, except that it did not concern the place in time where Conring was located, but his relation to the past. I needed to find a way of getting from Bartolus to Conring. It was supposed to lead across the boundary between the Middle Ages and modernity. But no such way seemed to exist. Each way I tried ran out in a begged question.

The other problem was that I could find no reason why my critique of Conring ought not to be turned against myself. That hit home. Like Conring, I was trying to use evidence as a control on my opinions in order to construct a

¹⁰⁸ Descartes, "Discourse on the Method," 123.

map in time. Like Conring, I seemed to be divided from the past by some abyss that was impossible to map. My research had landed me in a dead end: here was the evidence, there was the past, and there was nothing in between.

I had been familiar with that dead end for a long time. I knew that I was working with the distinction between the ‘object’ and ‘subject’ of knowledge that constitutes the basis of modern scholarship and science, and I was well aware of the critiques to which it had been subjected ceaselessly since Hume and Kant. I knew the very intelligibility of history and science were withering under the impact of Nietzsche and his successors. That was precisely why I was doing my work as a historian. I knew the theory. I knew it led into a dead end. But I did not know whether the theory was true. I wanted to test the theory. The test was putting it into practice.

If someone had reminded me of what I had read in the *Philosophical Investigations* when I was still a graduate student in philosophy—that “essence is expressed in grammar,” that “grammar tells what kind of object anything is,” and that, “when we say, *mean*, that such-and-such is the case, then, with what we mean, we do not stop anywhere short of the fact, but mean: *such-and-such – is – thus-and-so*”¹⁰⁹—it would have gone in one ear and straight out of the other. I could only have taken it to mean one of two things: either, that language constitutes a prison-house for our minds that bars our access to the reality of things so absolutely that what we take to be the facts is merely a construct of our minds; or, that somehow our minds enjoy a pre-established harmony with the reality of things so absolute that our ideas turn out to be identical to it. On the one hand, there was Roland Barthes and the “referential illusion” preventing historians from understanding that their books have nothing to do with the real past. On the other, there was R. G. Collingwood and the “a priori imagination” of historians reconstructing the real past in their own minds.¹¹⁰ Each view was equally remote from Wittgenstein; each had an alluring beauty. But neither made any sense to me.

I therefore did the next best thing: I split the difference between the alternatives and tried to make the pieces fit. I had not understood how thoroughly Wittgenstein had changed the subject “by turning our whole inquiry around.”¹¹¹ I did not realize what he was saying when he wrote that “the agreement, the harmony, between thought and reality consists in this: that if I say falsely that something is *red*, then all the same, it is *red* that it isn’t. And in this: that if I want to explain the word ‘red’ to someone, in the sentence ‘That is not red,’

109 *PI* §§ 371, 373, 95.

110 Barthes, “Discourse of History”; Collingwood, *Idea of History*.

111 “The *preconception* of crystalline purity can only be removed by turning our whole inquiry around.” *PI* § 108.

I do so by pointing to something that *is* red.”¹¹² I thought he was denying the reality of reality. I was in the grip of the distinction that had gripped Conring, too, and that keeps gripping us today: here the words, and there the things. I thought what everybody thinks: that grammar is a purely linguistic matter and that the reality of things cannot have anything to do with it. I was convinced I knew just what the question was. The question was obviously this: how to explain the relationship between our ideas and the reality of things. I had not thought it through.¹¹³ I was the fly that cannot find its way out of the fly-bottle of modern metaphysics.¹¹⁴

That did not change until the practice of writing the history of William Durant the Younger, Hermann Conring, and the passage from the Middle Ages to the modern world brought me up short. It changed because the dead end in which my practice landed me was not a matter of mere theory that I could have ignored for the time being in hopes of finding some solution later on. It was only too real, it could not be ignored. It had to be faced right then and there.

That forced me to retrace my steps and opened my eyes to the mistake I had been making all along. The mistake was “to look for an explanation where we ought to regard the facts as ‘proto-phenomena’. That is, where we ought to say: *this is the language-game that is being played.*”¹¹⁵ Instead of staking my case on the language-games that I was actually playing—reading books and evidence about the past, excerpting them, arranging the excerpts in different ways, figuring out their meaning, comparing them with other books and pieces of evidence, looking for logical inconsistencies, consulting dictionaries, consulting bibliographies, following up clues in footnotes of scholarly articles, asking colleagues for advice, writing papers, giving papers, responding to criticism, and so on—I had staked my case on the distinction between thought and reality. Here the ideas of William Durant the Younger and Conring, there the structure of their society; here the text, there the context; here the evidence, there the interpretation; here the historian, there the past. “Here the word, there the meaning. The money, and the cow one can buy with it.”¹¹⁶ I never understood that

112 *PI* § 429.

113 Conant, “Subjective Thought,” shows what it takes to think it through.

114 “What is your aim in philosophy? – To show the fly the way out of the fly-bottle.” *PI* § 309.

115 *PI* § 654.

116 *PI* § 120.

when I talk about language (word, sentence, etc.), I must speak the language of every day. So is this language too coarse, too material, for what we want to say? *Well then, how is another one to be constructed?* – And how extraordinary that we should be able to do anything at all with the one we have! In giving explanations, I already have to use language full-blown (not some sort of preparatory, provisional one); this is enough to show that I can come up only with externalities about language.¹¹⁷

No wonder I had wound up at a dead end. Right from the start I had been trying to give explanations where explanations have no place. I had kept coming up with nothing but externalities and, incredulous that my intelligence would not allow me to formulate material results, I had kept trying to endow the externalities with metaphysical reality. No wonder I had got stuck. I had rejected the grammar I needed to make sense and tried to replace it with fictions of my imagination. My very first step had led me astray.

The first step is the one that altogether escapes notice. We talk of processes and states, and leave their nature undecided. Sometime perhaps we'll know more about them – we think. But that's just what commits us to a particular way of looking at the matter. . . . (The decisive movement in the conjuring trick has been made, and it was the very one that seemed to us quite innocent.) – And now the analogy which was to make us understand our thoughts falls to pieces.¹¹⁸

The solution was simply not to take that first step, but go in the opposite direction. “One might say: the inquiry must be turned around, but on the pivot of our real need.”¹¹⁹ My real need was not to adopt “the theoretical attitude,” as Marie McGinn has called it, but to “*look and see*.”¹²⁰ Instead of using my reading as an occasion to make up mental fictions in order to “*see right into*

117 *PI* § 120.

118 *PI* § 308, where Wittgenstein is talking about misguided attempts to explain thinking in general. *Mutatis mutandis* the problem is the same with attempts to explain thinking about the past.

119 *PI* § 108.

120 McGinn, *Wittgenstein*, 16. Cf. *PI* § 66: “Consider, for example, the activities that we call ‘games’. I mean board-games, card-games, ball-games, athletic games, and so on. What is common to them all? – Don’t say: ‘They *must* have something common, or they would not be called “games”’ – but *look and see* whether there is anything common to all. – For if you look at them, you won’t see something that is common to *all*, but similarities, affinities, and a whole series of them at that. To repeat: don’t think, but look!”

phenomena," I had to keep reading, listen to what my reading was telling me, and then respond in my own words.¹²¹ I had to accept that there is only one foundation on which I could so much as start learning about the past, namely, my "natural human reaction," as Hannah Arendt called it in the first of the two mottos I chose for this book.¹²² My work in history was fine. My problem was that I did not believe it was, for reasons that have nothing to do with history. My scruples were misunderstandings.¹²³ So I had noticed the difference between the meaning Durant wanted his words to have and the meaning his words did have in fact. So what? That difference is precisely one of those proto-phenomena "where we ought to say: *this is the language-game that is being played.*" It stands no explanation. It does not require the invention of a hypostasized "author" who means what he means, and a hypostasized "context" that influences his meaning. It has nothing to do with evidence or data. There is no theory for it. It is part of the foundation on which we do explain whatever can be explained. Nothing could be more commonplace.

Of course there is a difference between what 'I mean' and what 'it means.' Of course the words to which I have committed myself by speaking them can be turned back on me. There is no problem there. On the contrary, that is precisely what it means to think, to speak, to mean what we have said, and to subject it to critical analysis. That is what makes it possible for us to say 'that is not what I meant,' 'I changed my mind,' 'I disagree with what you say,' 'I have no idea what to make of that,' 'I am convinced that's true,' 'that is not what you said,' 'that is not what it means,' 'that is not what happened,' and so on. That is what makes it meaningful to ask 'what do you mean?', 'what reason do you have for saying that?', and 'are you sure?' This is the point where reason and liberty begin: the point at which we say that 'I' am not to be confused with

121 *PI* § 90: "We feel as if we had to *see right into* phenomena."

122 Arendt, "Reply," 78. Note that Arendt is speaking of the "natural human reaction" of a historian studying the Industrial Revolution. This is the reaction of someone trained to read, and inconceivable without such training. Like Wittgenstein's concept of "natural history," her concept of nature thus straddles the boundary normally dividing nature from culture in the same way and it justifies an attitude to the past that is equally far removed from historicism. As she goes on to say, *ibid.*, 79: "Reflections of this kind, originally caused by the special nature of my subject, and the personal experience which is necessarily involved in an historical investigation that employs imagination consciously as an important tool of cognition, resulted in a critical approach toward almost all interpretation of contemporary history." I could not agree more.

123 "How can these observations satisfy us? – Well, your very questions were framed in this language; they had to be expressed in this language, if there was anything to ask! And your scruples are misunderstandings." *PI* § 120.

'you' or 'it' or 'they,' and exercise our right to act on that conviction. Such is our form of life.

The same goes for the disagreement that Conring had with Bartolus and the abyss that seems to separate historians from the past. Of course a disagreement cannot be given a coherent explanation. That is precisely what makes it a disagreement. It cannot be reduced to matters of definition. A difference in definition alone is not enough to constitute a disagreement. "Disputes do not break out (among mathematicians, say) over the question whether or not a rule has been followed. People don't come to blows over it, for example."¹²⁴ A disagreement turns on both judgments and definitions. It affects our form of life. It cannot be solved the way we solve equations. If it could, it would not be a disagreement. The same is true about the difference between the present and the past. Of course the difference between the present and the past is irreducible. Why else would we use different tenses? But why on earth should we believe the difference between the tenses amounts to an abyss? Should we stop using different tenses then? It is not always easy to find out what happened in the past. Fine. It is not always easy to find out what happens in the present either, and may even be happening right now in your own house. Of course we practice anachronistic self-assertion. We put the past into its place. How else could we conceivably write history?

I can well understand why grammatical distinctions like those between the persons and the tenses may come to puzzle us.¹²⁵ Like other parts of grammar they seem to have no bearing on the reality of things and lack logical consistency. I can understand why that can make us want to transcend them in favor of logic and scientific objectivity. But I cannot imagine a thought transcending the difference between what 'I mean' and what 'it means,' or that between the tenses. Much less can I imagine how such a thought could be subjected to rational critique. It is a thought no human being can actually have. Who could subject it to critique? The very desire for such a thought strikes me as diabolical—and I mean diabolical, not just absurd. It sacrifices reason to what Stanley Cavell has called the "craving for totality" and the "rejection of the human."¹²⁶ It turns us into enemies of every human being that says 'I.' The

¹²⁴ *PI* § 240.

¹²⁵ For succinct demonstrations of how difficult it is, not to use those distinctions, which we do all the time without having to give them a second thought, but to explain their meaning, consider Anscombe, "The First Person," and Anscombe, "The Reality of the Past."

¹²⁶ Cavell, *Claim of Reason*, 236, echoing the "craving for generality" attacked by Wittgenstein, *Blue and Brown Books*, 17.

history of that enmity, especially in the last hundred years, cannot be understood unless we learn to recognize that grammar, so far from being a 'purely linguistic' matter, makes up the essence of humanity.

That is the main conclusion to which I have been led by the research I started in graduate school. It means that history can very well give us a map with which to orient ourselves in time, but only so long as we remember that every history, like every map, has its own meaning, and that its meaning depends on more than evidence. Maps can be good for driving, hiking, biking, flying, sailing, climbing, fishing, hunting, walking, and finding places to eat, drink, sleep, mate, fight, and get away from it all. Each map is different from the others: its meaning changes when circumstances change, as does its reliability. Does that make it inadequate to the reality? It seems a silly question. A map of everything would be no map at all.

The same is true of history. The histories we write do not fall from the sky: someone must write them first, someone must understand them, and no one can do so without having learned to speak a language when they were growing up some time, some place. There is a great deal more to that than evidence. That has to be accepted. It constitutes no limitation on our knowledge. It rather constitutes the basis of critical inquiry. "What has to be accepted, the given, is – one might say – *forms of life*."¹²⁷

The great attraction of the form of history we have been taught since early modern times was that it promised to found our knowledge of the past on nothing but evidence. It seemed to relieve us of responsibility for the judgments to which we commit ourselves in reading and writing history. All understanding of the past for which there was no evidence was to be rooted out as mere opinion. All judgment was to be cast aside in favor of objectivity. That promise justified the division of European history into ancient, medieval, and modern periods. It made good sense in the seventeenth century, when people like Conring and Descartes were trying hard to find a reasonable way out of religious war. It still made sense in the nineteenth century. Now it no longer does. It keeps us focused on evidence when we ought to be looking for a foundation on which to write a true history of our kind. It stops us from taking responsibility for the condition of our time. Its sense is past.

¹²⁷ PPF § 345.