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Still Fussing about Feudalism

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I must stop writing about feudalism, on which I have little to say that is new. But there are three reasons for tangling with it once more. First, I want to write something in honour of Chris Wickham. Second, he is one of the very few historians who seem to me to write sense on the subject. Not that we agree about it altogether, but I think that we both see it as a question as much about historiography as about medieval history. As far as I can see, the traditional focus on fiefs and vassalage does not fit the medieval evidence about the parts of western Europe that I have tried to study. My third reason is that I think that feudalism, particularly in its traditional non-Marxist version, still casts a fog of vagueness and misunderstanding over a lot of medieval history, even in the minds of some of those medievalists who say either that they are following the Marxist version or that they no longer use the word at all.

In 1974 E. A. R. Brown demonstrated the ludicrous range of meanings attached to 'feudalism' and 'feudal' and in an unpublished paper of 1987 traced the history of the use of both noun and adjective.¹ Chris has since divided the various concepts that the words seem to represent into three main categories.² The purpose of this chapter is to explore the implications of what both of them have written by trying to trace the origin and change of the ideas from which I suggest that the various modern uses and concepts have grown. This may run the risk of seeming too teleological, so as to imply that the process was a purposive, or at least inevitable, development. My argument, on the contrary, is that the modern concepts have derived from a series of unjustified assumptions and apparent misunderstandings. The most important assumption of many medieval historians, which I shared until about twenty-five years ago but now question, has been that the early twelfth-century work known as *Consuetudines* (or *Libri Feudorum*) was so irrelevant to the history of property and society, except possibly in Italy, that we did not need to read it.³ I read it only when I came to work on Italian fiefs and vassalage. It then

¹ Elizabeth A. R. Brown, 'The Tyranny of a Construct: Feudalism and Historians of Europe', *American Historical Review*, lxxix (1974); Brown, 'Reflections on Feudalism: Thomas Madox and the Origins of the Feudal System in England', in Belle S. Tuten and Tracey L. Billado (eds), *Feud, Violence and Practice: Essays in Medieval Studies in Honor of Stephen D. White* (Farnham, 2010).

² Wickham, 'Forme'.

³ *Consuetudines Feudorum*, ed. Karl Lehmann (Göttingen, 1892, repr. Aalen, 1971). Steffen Patzold, *Das Lehnswesen* (Munich, 2012), 51–8 summarizes the *Libri* and most of my arguments about it very well.

took me another twenty years to realize that, though the work is indeed a poor reflection of norms and practice at the time it was written, it has since the sixteenth century been extremely important to the historiography of medieval Europe. That is, at least, what I now argue.

I start from north Italy in the eleventh century. This may seem odd, both because the focus on feudalism normally starts from the Franks and then France, and because, as Chris has pointed out, the tenth century has often been regarded as Italy's "feudal age" *par excellence*.⁴ The eleventh century may thus seem too late. But the prehistory of all the ideas or concepts of feudalism, as I see them, started from an ordinance issued by the Emperor Conrad II in 1037. Its purpose was to resolve a dispute between the archbishop of Milan and the laymen who held bits of the archbishopric's lands.⁵ This sort of dispute was common, since great churches needed to grant land to useful and able-bodied laymen while still preserving their own inalienable rights to it, but as yet seldom kept adequate records about their grants. Since the nobles and other free men who received these grants normally had land of their own that they had inherited or acquired in other ways and kept even fewer records, they must often have forgotten that they held this particular land on more limited terms. Conrad's ordinance laid down general rules about the inheritance of such land and said that it should be confiscated only by judgement of its holder's equals. All this conformed to existing customary norms and was to apply to all *milites* under his rule who held royal or church lands as *beneficia*. What made the ordinance important was that it was issued with royal authority and recorded just when a significant number of men in north Italy were studying the texts of Roman and Lombard law and finding them intellectually stimulating.

Early in the twelfth century a collection of mini-treatises was produced in Lombardy that seems to reflect academic discussions of problems in fitting different cases into Conrad's rules. It became known as the *Consuetudines Feudorum* or sometimes the *Libri Feudorum*, which seems to me a better title since the compilation looks to me less a statement of custom than a record of efforts to solve problems about its application. The coincidence of the ordinance with the rise of academic and professional law focused the attention of the new sort of lawyers, who found plenty to argue about in the varying interpretations of Conrad's prohibition of arbitrary confiscation as well as in the already varying rules and limitations of inheritance. The text of the *Libri* begins with a list of those who can give a fief (*feudum*), starting with the higher clergy: an archbishop, bishop, abbot, abess, or *praepositus* could give fiefs, if they had been accustomed to do so. A marquis (*marchio*), or count could also give them, and so could some other laymen

⁴ Wickham, *Mountains*, xvi.

⁵ *Die Urkunden Konrads II*, no. 244, ed. H. Bresslau, *MGH DD* (Hanover, 1909), 335–7. The connection with the troubles in Milan is discussed in works cited in Susan Reynolds, *Fiefs and Vassals* (Oxford, 1994), 199, nn. 79–80. I have already cited most of the medieval evidence that I shall use here in *Fiefs and Vassals*, 'Tenure and Property in Medieval England', *Historical Research*, lxxxviii (2015), 'The Historiography of Feudalism in France' in Jean-Loup Lemaitre (ed.), *Entre texte et histoire: Mélanges en l'honneur de Shoichi Sato* (Paris, 2015), and 'The History of the Idea of Lehnswesen', *German Historical Institute London Bulletin*, 39 (2) (2017). I therefore cite here only what I want to correct or add.

who are harder to categorize but were also apparently of fairly high status.⁶ Then follows a brief passage of apparently conjectural history about the origin of fiefs. Fiefs, it says, had at first been held at the will of the grantor, then for life, and then hereditarily. It attributes the grant of (apparently limited) rights of inheritance to Conrad but, without mentioning the trouble in Milan, says that he made his grant at the request of men in his service on his journey to Rome.

The *Libri* later became attached to the books of Roman law that law students with ambition (and enough money) studied in some of the universities that were now being established.⁷ Academic lawyers from the twelfth century on studied the *Libri Feudorum*, glossed it, and wrote commentaries on it.⁸ But though both political relationships and law about landed property were beginning to undergo great changes, these changes came at least as much from professional practice as from academic works.⁹ The spread of literacy in western Europe, alongside the growth of population, wealth, and trade, allowed government, estate administration, and law to become more systematic and professional. Some of the professionals who began to dominate the assemblies that were now turning into more specialized law-courts had attended universities in Italy or southern France and some heard lectures on the law of fiefs as well as on Roman law. Universities taught little or nothing about law in practice,¹⁰ but arguments about it were sharpened by habits of making distinctions and definitions that percolated out from the schools. The most obvious evidence that at least some professionals who drafted documents about property or argued about it in court had read or heard lectures on the *Libri* is the way that two of its key words got into their vocabulary. These were 'fief' and 'vassal'. Both had been used earlier in varied senses, mostly different from their senses in later academic and professional law. Conrad's ordinance had not used either of them, but the *Libri* often calls the properties it discusses *feuda* and those who held it *vasalli*. *Vavassor*, which Conrad's ordinance had used, also seems to have gained a new sense, probably as a result of its use in the *Libri*.¹¹

By the thirteenth century the word fief was being used in charters and law-courts in France, not just for the particular kind of property that Conrad II had ruled on, but for noble and free property in general. 'Vassal' seems, I think, to have got into legal practice in the south during the thirteenth century, but in the

⁶ On *capitanei*: Reynolds, *Fiefs and Vassals*, 201, and Hagen Keller, *Adelsherrschaft und Städtische Gesellschaft in Oberitalien 9. bis 12. Jahrhundert* (Tübingen, 1979), 22, 30, 51, which I should also have cited there.

⁷ Gérard Giordanengo, 'La littérature juridique féodale', in J.-F. Nieuw (ed.), *Le vassal, le fief et l'écrit* (Louvain, 2007).

⁸ Magnus Ryan, 'Ius commune feudorum in the Thirteenth Century', in Andrea Romano (ed.), *Colendo iustitiam et iura condendo: Federico II legislatore del Regno di Sicilia nell'Europa del duecento* (Rome, 1997).

⁹ I argued this in 'The Emergence of Professional Law in the Long Twelfth Century', *Law and History Review*, xxi (2003).

¹⁰ Helmut Coing, *Gesammelte Aufsätze zu Rechtsgeschichte, Rechtsphilosophie und Zivilrecht*, 2 vols (Frankfurt, 1982), ii, 140.

¹¹ Sooner than I suggested in *Fiefs and Vassals*, 23 n. 21, though cf. 218. *Consuetudines Feudorum*, 29 (*Antiqua* VIII. 16), 163–4 (Vulgate II. 34) suggests that legal arguments in north Italy gave it new significance in the twelfth century.

north, where Roman law and the *Libri Feudorum* were less studied, not until the fourteenth.¹² France from now on matters to my argument more than Italy, because it was in France that the idea of feudalism would begin to grow out of the academic law of fiefs. That did not happen until several centuries later but, in the meantime, the higher courts of *les pays de droit coutumier* came to be as much dominated by their own professional lawyers as were those of *les pays de droit écrit*, while northern *coutumiers* seem to have been compiled by professionals. Even in the south, moreover, it was the keeping and use of records, not direct influence from academic law, that defined the rights and obligations of property. Just calling landed property fiefs and its holders vassals did not mean that they lost rights any more than it meant that most lawyers had read the *Libri* or its commentaries. The French professionals who used the vocabulary of the *Libri* used it for their own purposes, not merely for the properties of churches or kings that had been covered by Conrad's ordinance but for the lands that nobles and free men had inherited or acquired, generally without implying that they derived from an original grant from a king or other lord. The words had acquired technical legal meanings that they could not have had before there were professionals to use them, but the meanings changed as different professions developed in different jurisdictions.

Allods illustrate the way that professionals began to develop a technical vocabulary and make distinctions and definitions without much evidence of influence from the academic texts. Before the twelfth century the word allod or (more often) alod, which seems to have had Frankish origins, meant inherited property irrespective of its obligations. Later additions to the original *Libri Feudorum* alluded to allods merely as different from fiefs.¹³ By the thirteenth century, however, great lords in France were getting allods formally converted to fiefs, presumably so as to impose obligations on them. Arguments that Gascony and later Béarn were allods were used to preserve their quasi-independence from royal control. Useful ideas about allods spread to other areas where bits of the new professional law of fiefs spread, whether or not along with Roman law. That did not include England, where professional lawyers worked in a different intellectual tradition, arguing inductively from cases to rules and categories. Allods were unknown there until antiquaries met the law of fiefs in the late sixteenth century through reading the works of contemporary French scholars.¹⁴ It was only from the seventeenth century that legal historians in England developed the 'doctrine of tenure', which maintained that there were no allods in England, since all land since 1066 had been 'held of' the king.¹⁵

From the thirteenth century kings of France, like other rulers, increased their subjects' obligations both by more systematic and demanding government and by using their better means of communication to appeal to regnal solidarity. It was easier to increase obligations than to reduce customary rights, especially the rights

¹² For its use in Spain: Angus MacKay, *Spain in the Middle Ages* (London, 1977), 98.

¹³ *Consuetudines Feudorum*, index: *allodium*.

¹⁴ On the use of *alodium* in Domesday: F. W. Maitland, *Domesday Book and Beyond* (Cambridge, 1907), 153–4.

¹⁵ Reynolds, 'Tenure and Property in Medieval England'.

of government and jurisdiction that their greater subjects had established in regional and local lordships over centuries. Traditional ideas about kings and kingdoms nevertheless allowed kings to develop a hierarchy of jurisdictions with their own court at the top. It was this hierarchy, rather than a hierarchy of what we might classify as rights of property in land, that was the essence of what would come to be called the 'feudal hierarchy' of medieval France. The 'feudal hierarchy' in Germany and Italy also looks as much or more like a hierarchy of government, jurisdiction, and status as of property rights.¹⁶ It was only in England, where virtually all jurisdiction over free land was reserved from the twelfth century to royal courts, that the 'feudal hierarchy' has come to seem so clearly a hierarchy of property. Only in England did 'feudal incidents' come to be owed by those who acquired free property not to the holder of jurisdiction over it but to the person or institution from whom they acquired it. The courts of medieval lords do not seem to have been generally called feudal courts. The law practised in them dealt with more than what would now be called feudal cases.

The crucial stage in the evolution of ideas of feudalism came in the sixteenth century. Humanist lawyers had by then begun to think about Roman law more historically, and now French academics extended the historical approach to the law of fiefs on which some of them lectured alongside Roman law. Although the general opinion came to be that neither Roman law nor the *Libri Feudorum* had formal authority in France, academic lawyers still lectured on both. Those who were interested in the history of French property evidently took the conjectural history with which the *Libri* opened as authoritative, assuming that fiefs in France had originally been held at the will of the lord or king, and had only later become hereditary and alienable. Tracing the stages became central to the history of French law and politics. A few academics noted that the law about fiefs in their own day differed from that in the *Libri* and its commentaries. No one, however, seems to have enquired about the way that the difference had arisen or whether the conjectural history on which they had lectured was maybe not a very good source for the history of property in France.¹⁷

From the seventeenth century historical interest in France broadened to focus more directly on the rise of the monarchy after the age of what became known as feudal anarchy. As the *Libri Feudorum* dropped out of view its vocabulary and conjectural history remained unquestioned, so that legal historians continued to think of what they called fiefs as created by grants from above. When historians outside France began to apply the French model to their own countries, adapting and modifying it to fit their particular concerns, they started from the same unquestioned assumptions. For the English, the Norman Conquest made a perfect example of a king giving out what had, indeed, soon come to be called fiefs, while it could also be fitted into a narrative of Norman oppression, baronial opposition

¹⁶ On Germany: Patzold, *Das Lehnswesen*, 108.

¹⁷ E.g. Franciscus Duarenus (François Douaren), *In consuetudines feudorum commentarius*, in *Omnia Opera*, ed. N. Ciserus, 2 vols (Orleans, 1608), ii, 311, 315, 329–30, 340–1; Jacques Cujas, *De verborum significationibus commentarius* (Frankfurt, 1595), 418; Charles Dumoulin, *Omnia quae extant Opera*, 5 vols (Paris, 1681), i. 21–4, 77, 95, 603, 659–61, 768.

to arbitrary government, Magna Carta, the rise of parliament, and English liberties. For Germans the introduction of fiefs helped to explain the loss of the liberties of early Germanic society, the rise of principalities, the decline of imperial power, and the sad division of the German nation. Since it was France that formed the model for using the law of fiefs to understand the Middle Ages, French scholars did not have the same incentive to read about what foreigners made of it as the others had for using the French model. It may nevertheless have been from English legal historians that some French historians and dictionaries later got the idea that 'tenure' had been a technical term in medieval law.

In the eighteenth century, as historical interests widened from law and politics to societies and economies, the words *féodal* and feudal acquired different connotations in the different contexts in which they were used. Adam Smith's version of 'the new Franco-Scottish view of historical development'¹⁸ attached the four stages of historical development to different modes of subsistence: hunting, pasturage, agriculture, and commerce.¹⁹ Feudal society, feudal government, and 'the feudal system', as it was beginning to be called, soon came to be seen as characteristic of the agricultural stage.²⁰ Yet, alongside this closer study of medieval society and law, the vocabulary of fiefs and vassals and the gradual establishment of heritability still remained unquestioned. At the same time, while some historians were using their idea of the feudal system to understand past societies, economies, and governments, others were beginning to focus closely on interpersonal relations among nobles. This came from study of French medieval epics and chivalric romances in which the word *vassal* meant a valiant warrior, with no apparent implication of fief-holding. For historians of the age of romanticism, medieval vassals were thus transformed from mere fiefholders into heroic warriors, and their relationship with their lords from a matter of law into the strongest bond of feudal society.²¹

Alongside all the interest in the feudal system of noble life and chivalry in the Middle Ages, the French *droits féodaux* that were abolished in 1790–3 were something quite different: they were primarily the obligations that were owed by peasants to fiefholders and enforced by the lawyers and estate managers known in the eighteenth century as *feudistes*. In 1818 Henry Hallam's *View of the State of Europe*, like François Guizot's lectures published about ten years later, nevertheless went back to discussing the feudal system and *le régime feudal* as matters of noble society, military service, and chivalry, rather than of the peasantry.²² Tocqueville's *Ancien régime* (1856) may have helped to bring *les droits féodaux* over peasants into

¹⁸ Ronald L. Meek, *Social Science and the Ignoble Savage* (Cambridge, 1976), and Meek, *Smith, Marx, and After* (London, 1977), quotation from 22.

¹⁹ *Lectures on Jurisprudence*, ed. Ronald L. Meek et al. (Oxford, 1978), 14, 459.

²⁰ E.g. Meek, *Smith, Marx, and After*, 19, quoting William Robertson (I have not found his reference, but see also for example William Robertson, *History of America*, 3 vols (Basel, 1790), i. 161, ii. 99–110); John Dalrymple, *An Essay towards a General History of Feudal Property in Great Britain* (London, 1758), 1–20, 75, 259, 226.

²¹ J. B. de la Curne de Saint-Palaye, *Mémoires sur l'ancienne chevalerie* (Paris, 1759–81); J. G. Herder, *Ideen zur Philosophie der Geschichte der Menschheit* (Darmstadt, 1966), 532–6 (XX.2).

²² I discussed these two in *Kingdoms and Communities in Western Europe, 900–1300* (2nd edn, Oxford, 1997), xx–xxv.

medieval historiography, as did the use and publication of a wide range of medieval records, about both urban and rural society. Most writing specifically about what was coming to be called feudalism, *féodalisme* (or *féodalité*²³), *Lehnswesen*, *Feudalismus*, *feudalism*, *feudalismo*, etc., however, remained focused on the nobility. As post-Roman history began to be taught in universities and historical professions developed in different countries, the idea of feudalism as an essential part of medieval history spread. Although it was everywhere based on the French model and was discussed in the terminology and chronology of fief-holding derived from the *Libri Feudorum*, historians in different states used it differently in the different teleological traditions that, as Chris has said, bedevil the historical enterprise.²⁴

The only really significant change in ideas of feudal society came from Marx and Engels. Although they both sometimes referred to *Lehnswesen*,²⁵ they and their followers generally used the word *Feudalismus* or feudalism, which for them had more to do with the *les droits féodaux* abolished in the French Revolution than with the fiefs and vassals of most writing about feudalism. Dealing as it does with the whole structure of society, I reckon that their feudalism really shared nothing but its name with the traditional version.

In the twentieth century feudalism, despite its variations, continued to be seen as a general phenomenon of the European Middle Ages, and was still focused on noble society. Some historians in the Marxist tradition (though not Chris) have even begun, confusingly, to introduce fiefs and vassalage into their feudalism, whether in Europe or elsewhere.²⁶ In the second half of the century Georges Duby began to revise the chronology of the creation of fiefs and their acquisition of rights and this has continued. His legacy has been great, but he still accepted the idea of that process and its vocabulary that originally came, not from records of medieval French property, but from the *Libri*. It still remains lodged in the story of medieval landholding.

Chris may be right that feudalism as described by Marc Bloch or Max Weber is still useful as the kind of ideal type that serves as a spyhole into real societies, but I have doubts.²⁷ It is not just that it includes apparently unconnected characteristics,²⁸ but that some—even most—of them are not derived from medieval records of property law, jurisdictions, and social relations. Most originated in ideas developed since the sixteenth century from commentaries by academic lawyers on the *Libri Feudorum*. The traditional, non-Marxist type of feudalism that this process has produced seems to me, at best, less like an ideal type than a Kuhnian paradigm,

²³ Though this sometimes seems to denote nobles as ‘the feudal class’: *Le Trésor de la langue française*, <http://atilf.atilf.fr> (accessed 18 May 2016). Usage in other languages has similar variations. Brown, ‘Tyranny’ gives many examples.

²⁴ Wickham, *Framing*, 825.

²⁵ Obscured in English translations, but see for example Karl Marx and Friedrich Engels, *Werke* (Berlin, 1956–), 40: *Sachregister, sub Feudalismus: Lehnswesen*.

²⁶ Examples in Reynolds, *The Middle Ages without Feudalism* (Farnham, 2012), VI: ‘The Use of Feudalism’, 213, nn. 53–4.

²⁷ Wickham, ‘Problems in Doing Comparative History’, in Patricia Skinner (ed.), *Challenging the Boundaries of Medieval History: The Legacy of Timothy Reuter* (Turnhout, 2009), 13.

²⁸ Reynolds, ‘The Use of Feudalism’, 193.

and one that I suggest is due for the shift to which Kuhn reckoned that paradigms are always liable.²⁹ The Marxist type is both more coherent and better based on the sources but it applies to so many pre-capitalist societies as to be of limited use in distinguishing them from each other. Altogether the variety of phenomena represented by the word feudalism seems to me to make it a fog rather than a spyhole.

It is not the only word that impedes our view of the European Middle Ages and other past societies. Others get in the way as well, including a fair amount of what has been called the ‘language of feudalism’.³⁰ This, I suggest, is a historians’ language that has developed technical meanings for words from the *Libri Feudorum* that varied greatly in meaning outside it.³¹ Some words, such as vassal, are used by historians when they were not used at all in the sources cited—or, in many cases, in other sources from the period and kingdom concerned. The consequent focus on relations between lords and those whom historians call their vassals has distracted attention from so much else in medieval societies. There is still a great deal to investigate about it all, including both rights of property and collective bonds and conflicts, and much to argue over: interpretations will always be debatable. But, having already written one book and eight articles fussing about the concept of feudalism, I shall now leave the subject, simply inviting medieval historians to look harder at the *Libri Feudorum*. We need to consider how far we have allowed it to distort our ideas about medieval societies and their law, whether by not reading it or by not thinking about it in context, about what is in it and what is not, and above all, about what its first authors were concerned about and why. I have made my guesses but they may well be wrong. All the same I shall now stop fussing about feudalism.

²⁹ Kuhn’s *The Structure of Scientific Revolutions Revisited*, ed. Vaso Kindi and Theodore Arabatzis (New York, 2012).

³⁰ J. C. Holt, *Magna Carta* (2nd edn, 1992), 127 n. and index: Feudalism, language of; D. A. Carpenter, ‘The Second Century of English Feudalism’, *Past & Present*, clxviii (2000), 31.

³¹ Wickham, *Framing*, 6–7.