

SUSAN REYNOLDS

de hys qui feodū dare vult



FIEFS AND VASSALS

The Medieval Evidence Reinterpreted

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SUSAN REYNOLDS

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To Peggy Brown

Homage and fidelity

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THE PROBLEM OF FEUDALISM

I. I. *The nature of the problem*

FEUDALISM, to any members of the general public who ever refer to it, stands for almost any hierarchical and oppressive system. Bosses or landlords who bully their employees or tenants are being feudal. If they bully them fiercely they are worse: they are positively medieval. Medieval historians may dislike this hostile sidelight on their period but they are not on the whole much more precise in their use of the words feudal and feudalism. As E. A. R. Brown and C. van de Kieft both pointed out independently in 1974, feudalism can mean a lot of different things.¹ A good many medievalists have, however, continued to maintain that, whatever the difficulties of describing medieval society in general as feudal, there is a narrow, technical, more precise sense to feudalism which retains its utility. This is characterized by such words as 'the system of feudal and vassal institutions', *les liens féodo-vassaliques*, *i rapporti feudo-vassallatici*, or *das Lehnswesen*, for which I shall use the rather ugly and clumsy, but convenient, expressions feudo-vassalic relations or feudo-vassalic institutions.² Of course, no one agrees about just what these relations or institutions involved: some, for instance, think that either jurisdiction or military service or both were essential components, while others see either or both as peripheral or occasional.³ Definitions, explicit or implied, also vary because some who propound or imply them assume that the character of an institution is determined by its origins, some rely on what is assumed to be its fully developed form, and yet others postulate some kind of ideal type or platonic form as lying behind empirical formations. The reference in the previous sentence to assumptions and

¹ Brown, 'Tyranny of a Construct'; van de Kieft, 'De feodale maatschappij'; cf. Ward, 'Feudalism'.

² e.g. Ganshof, *Feudalism*, pp. xvi-xvii; Brunner, "'Feudalismus": ein Beitrag', 156, 179-82; Le Goff, *La Civilisation*, 594; van Caenegem, 'Government, Law and Society', 198; cf. the survey by Cammarosano, 'Le Strutture feudali', 837-69.

³ Jurisdiction was considered inessential by Ganshof, *Feudalism*, 156-8, but has been stressed in Italian historiography: Tabacco, 'Fief et seigneurie'; M. Tangheroni, 'La Sardegna prearagonese', 525-6. On military service, e.g. Stephenson, 'Origin and Significance of Feudalism'.

implications is not made lightly: those who define or discuss medieval feudalism seldom want to get bogged down in what I suspect they see as mere matters of terminology which get in the way of concentration on Real History.⁴ Impatience with what is seen as mere theory or mere semantics may be the reason why some discussions seem to slither from one sort of implied definition to another, or focus at different points on ethos or *mentalité*, politics, economy, or law, so that feudalism in its 'narrow sense' sometimes broadens out to imply other senses too.⁵ Recently it has become customary to distinguish *féodalité*, or feudalism in the narrower, feudo-vassallic sense of relations between lords and vassals within the noble class, from *seigneurie* or manorialism, that is, relations between lords and peasants. As Brown and van de Kieft showed, this has not eliminated confusions, while it may raise some doubts about the extent to which a set of institutions that concerned only the noble class, and was not, it seems, essentially linked to the economic system, could have shaped a whole society.

This book is concerned only with feudalism in its supposedly more precise sense. Its object is to establish how far vassalage and the fief, as they are generally understood, constituted institutions which are definable, comprehensible, and helpful to the understanding of medieval history. My argument will be that in so far as they are definable and comprehensible they are not helpful. Brown, in her seminal article of 1974, thought that 'feudal' had some meaning when it had specific reference to fiefs because it was relatively easy to say what 'fief' meant.⁶ As a result of work which started under the inspiration of her article and has since been punctuated by discussions with her, I shall argue that on that point she was too optimistic. Fiefs and vassalage, as they are generally defined by medieval historians today, are post-medieval constructs, though rather earlier than the construct of feudalism. Historians often refer to both fiefs and vassals when neither word is in their sources. They sometimes refer to them in ways that, irrespective of terminology, seem to me to distort the relations of property and politics that the sources record. Even when the historians follow the terminology of their documents and take pains to establish the phenomena recorded, they tend to fit their findings into a framework of interpretation that was devised in the sixteenth century and elaborated in the seventeenth and eighteenth. Learned as were the scholars of those

⁴ Cammarosano, 'Le Strutture feudali', 846-7, cites examples. Cf. Lloyd, *Explanation*, 4.

⁵ Many recent formulations correspond more or less with J. O. Ward's 'focus VI', though some slide into other foci: Ward, 'Feudalism'. On types of definition: Fischer, *Historians' Fallacies*, 277-81.

⁶ Brown, 'Tyranny of a Construct', 1080, 1081, 1086.

times and much as we owe to them, they knew less than we know about the middle ages and much less about the differing ways that societies may be organized. We cannot understand medieval society and its property relations if we see it through seventeenth- or eighteenth-century spectacles. Yet every time we think of fiefs and vassals we do just that. Feudalism in its 'narrow sense' of relations within the noble class seems to me a much less important subject than feudalism in its Marxist sense, which involves not only relations between nobles and peasants but consideration of the whole economic structure of society and the reasons for economic and social change. At present, however, study of the broader subject seems to be impeded by its inheritance from the narrower one of the idea that fiefs and vassalage were central and defining institutions of medieval European society. In particular, the comparative use of feudalism in study of non-European societies, although generally conducted in what is intended to be a Marxist sense, is gravely hindered by a tendency to bring fiefs and vassals into the discussion in 'the Cinderella's slipper strategy' of trying to fit one whole society into a conceptual model derived from a quite different one.⁷ That seems peculiarly unfortunate when the model was constructed so long ago at such an early stage of comparative social science.

1.2. *The historiography of feudalism*⁸

The eighteenth-century idea of the middle ages as the time of 'feudal government', 'feudal society', or the 'feudal system' was derived from discussions of the previous two centuries about 'feudal law'. From the early sixteenth century humanist scholarship in France was concerned with law, notably with the history of Roman law and its authority in France, and thus with the origin and authority of the feudal law or law of fiefs that had been studied in medieval universities along with Roman law.⁹ This academic law about fiefs needs to be distinguished from the customary law of the middle ages that historians often call feudal law. It was based on a composite treatise, the *Libri Feudorum*, which had been compiled in Lombardy in the twelfth and early thirteenth centuries and remains one of the most extraordinarily neglected texts of the middle ages. It became attached to the books of Roman law in the thirteenth century and accumulated glosses and commentaries by many of the same academic lawyers who glossed and commented on the *Corpus Juris Civilis*. The resultant academic law of fiefs

⁷ Jeffcott, 'Feudalism in China', 158; Reynolds, 'More about Feudalism'.

⁸ This is to be much more fully discussed by E. A. R. Brown, from whose unpublished work I have profited greatly.

⁹ Kelley, *Foundations*; Huppert, *Idea of Perfect History*, 40-1, 185-93.

was concerned only with the law about properties called fiefs, whose holders it called vassals. Its connection with the law actually practised in the courts of the supposedly feudal kingdoms of medieval Europe was for the most part rather tenuous and indirect. The university-trained lawyers who, except in England, dominated higher courts from the fourteenth century on, occasionally introduced the terminology of fiefs and vassals that they remembered from their university days into some legal documents. Occasionally they used words and phrases from the literature of the law of fiefs along with those from Roman law to make their arguments look better. The substance of property law and the procedures of the courts in northern Europe were, however, not very seriously affected by the academic law of fiefs. In one respect court procedure and academic law became more divided from each other just at the same time as knowledge of the academic law was spreading: while writers on the law of fiefs continued to discuss procedures using the judgement of peers (*judicium parium*), the dominance of professional lawyers and judges in the courts of late medieval Europe eliminated the collective judgement that had earlier been traditional and with which judgement by one's equals had originally been connected.¹⁰

The legal historians of sixteenth-century France quickly decided that the academic law of fiefs had no authority in France.¹¹ Charles du Moulin opened his discussion of the custom of Paris with a *titulus* on fiefs, which he said belonged at the beginning because fiefs were the peculiar property and creation of the ancient Franks. The Lombards learnt of fiefs from them in *Germania* before taking them to Italy. That the *Libri* were merely local custom, with no general authority, was shown, among other things, by the notorious variations in feudal customs.¹² However hostile to medieval writing on the law of fiefs the sixteenth-century French scholars might be, their study of it and argument about it imprinted its vocabulary and categories on their minds and the minds of their successors. That was because the literature on it provided the framework they needed to make the kind of sense they wanted of what seemed to them the shapeless chronicles of medieval history. It did so especially well when it was combined with the idea of the Germanic or Gothic nations, and their distinctive contribution to European culture and history. The law of fiefs could be explained as having originated in the law of all these barbarians, though

¹⁰ See index: peers.

¹¹ Kelley, *Foundations*, on whom I largely rely, seems at times to conflate the academic law of fiefs with customary law: some of the sixteenth-century scholars may have compared the two more than my brief reading of some of them suggests.

¹² Du Moulin, *Opera*, i: *Commentarius*, 3-5, 21-2.

French scholars soon decided that it owed more to the Franks than to the Lombards, despite the Lombard origin of the work which inspired them even while they rejected its authority. The twelfth-century *Libri Feudorum* had included a brief piece of conjectural history to explain how benefices or fiefs had originated in grants by lords which had at first lasted only as long as the lords chose, then were extended to the life of the grantee, and were eventually made hereditary by the emperor Conrad II.¹³ I shall argue that the properties of French (or any other) nobles had not been called fiefs before the thirteenth century, except in contexts where the word had a quite different meaning, but the sixteenth-century antiquaries could not know that. It was natural for them to assume that noble properties had always been called fiefs, as they were in their own time and in their texts. The *Libri Feudorum* thus seemed to provide an account of the origin of fiefs that offered both a hypothesis to guide research into medieval history and a framework for discussing the constitutional relations of king and nobles in the historians' present. The key place occupied by Conrad II in the original story could be filled well enough by a French king: Hugh Capet, for instance, would fit quite well. Remarks in the *Libri Feudorum* about the rights and obligations of vassals and the judgements they made as peers of their lords' courts were stimulating in the constitutional context. There is no doubt that the conjectural history of the *Libri Feudorum* did indeed serve as a very fruitful hypothesis. The relations of barbarian soldiers to their leaders were envisageable, with the help of Tacitus, as an early form of vassalage, while fiefs seemed a natural consequence of the barbarian settlements. With further research, a period of 'allodial' property was interposed, during which nobles had held their lands with full (alodial) rights, rather than as dependent fiefs.¹⁴ The introduction of fiefs was postponed to the time of the Carolingians, while the stages by which they became hereditary were debated and connected to different episodes of French history. The framework and the terminology, however, survived all amendments—as they still do.

The contention of this book is that, while the sixteenth-century legal historians were right in their formal denial of the authority of the law of fiefs in France, and while they made very productive use of the hypotheses they nevertheless drew from it, their use of late medieval learning has misled medieval historians in several important ways ever since. Both the academic law of fiefs and the actual law practised in the courts of France were the creations of the later middle ages and of a culture of academic and

¹³ Lehmann, *Consuetudines*, 8.

¹⁴ Although the spellings 'alod, allodial' are more common in the literature, I use 'alod, allodial' throughout this book: see chapter 3 n. 1.

professional law and of professional, bureaucratic government that had developed since the twelfth century. This cannot be appreciated until the text of the *Libri Feudorum* is studied and related to the context of the customary law of property in eleventh- and twelfth-century Italy so that its original character and purposes can be disentangled from those of the later writings that were based on it.¹⁵ My argument is that the law of property embodied in the academic and professional law—what I shall call the expert law—of the later middle ages did not develop out of the customary law that governed noble property in the early middle ages, either in the way that the sixteenth-century scholars supposed or in the various ways that most historians of feudalism now seem to assume that it did. To some extent, of course, it did develop out of earlier custom and law, but, in so far as it did, it was from the custom and law created by the arrangements made rather by great churches for the management of their lands than by lay nobles for theirs. The relation between a bishop or abbot and the tenants of his church's land was different from the relation of a king or lord and his warriors that is postulated by the idea of vassalage and the 'union of vassal and fief'. The link between vassalage, as a relation that developed from that between kings or other lords and their warriors, and fiefs, as deriving from general grants of land made by lords in return for military service, cannot therefore explain the origin of the complex of rules that came to be understood as characteristic of 'feudal tenure'.

The concepts of vassalage and of the fief, moreover, as they have been developed since the sixteenth century, originated in the work of the sixteenth-century scholars rather than in the late medieval texts they studied. The texts talked about fiefs but they contained very little that amounted to anything like a concept of the fief as a category of property that could be distinguished from other sorts of property, let alone be seen as an organizing principle of government or society. Their authors were discussing the law of fiefs, not property in general or the structure and bonds of society. They sometimes explained the obligations of vassals—that is, fiefholders, the only people they were interested in—in terms of gratitude to their lords or of the noble obligation to military service, but these brief moralizing rationalizations served a far more significant purpose in the works of sixteenth-century and later historians than they did in those of the medieval lawyers. The idea of vassals as noble warriors who brought the ethos and solidarity of the warrior band into the structures of medieval government, who owed fidelity in return for the fiefs they were granted, and whose relation with their lords was contractual in a way that that of non-fiefholders

¹⁵ A start on this is attempted in chapter 6.8.

was not—the whole idea, in short, of vassalage both as fiefholding and as the cement of medieval society—could be read between the lines of the texts of the law of fiefs, but only between the lines. It was the sixteenth- and seventeenth-century scholars who found it there.

The value of the law of fiefs for the study of history was soon appreciated outside France. In German universities it was studied in the seventeenth and eighteenth centuries alongside the thirteenth-century and later 'mirror' literature (*Sachsenspiegel*, *Schwabenspiegel*, etc.) on *Lehnrecht*, which gave further opportunities for deducing early medieval ideas and values from later literature and practice.¹⁶ Before the end of the sixteenth century the Scottish lawyers Thomas Smith and Thomas Craig had taken up the subject, and in the seventeenth Henry Spelman brought it to England.¹⁷ The law of fiefs, as interpreted and used by the French scholars, could be used in other countries, as it had been in France, to organize the past and provide arguments for the present so that ideas about it gradually spread to a wider public.¹⁸ When what modern historians call 'feudal tenures' were abolished in England in 1660 the word 'feodall' was used only in an annexe to the act of parliament and only about titles to peerages.¹⁹ By the late eighteenth century Francis Hargrave, editing the writings of the early seventeenth-century lawyer Edward Coke, marvelled at Coke's ignorance of what Hargrave called 'this interesting subject' and at the absence from Coke's *Institutes* of 'any thing like an historical illustration with the least reference to the *general* doctrine of feuds'. Without it, to Hargrave, it was 'scarcely possible to have a just and proper idea of our law of tenures, the greater part of which is founded on principles strictly feudal'.²⁰

By the eighteenth century increasingly close and learned study of historical sources, combined with an increasing taste for abstraction and an increasing sense of the strangeness of the past, evoked a need to characterize and analyse medieval phenomena in general that found striking expression in the thirty-first book of Montesquieu's *L'Esprit des lois*. The way that so much historical study had started from the *Libri Feudorum* made it natural that historians should now characterize the whole of the middle ages as feudal. Feudal government and feudal society were the obvious counterparts of feudal law. Consequently, when Adam Smith and others in the Scottish Enlightenment developed the idea of different stages of

¹⁶ Burmeister, *Studium*, 131-7; Brunner, 'Feudalismus, feudal', 339-40; Theuerkauf, *Land und Lehnswesen*, 88-122.

¹⁷ Smith, 'Sir Thomas Smith'; Craig, *Jus Feudale* and *Scotland's Sovereignty*; Spelman, *Reliquiae*, 1-46, 216-21.

¹⁸ Pocock, *Ancient Constitution*.

¹⁹ *Statutes of the Realm*, v. 260 (12 Chas II, c. 24, cl. 10).

²⁰ Coke, *Institutes, part I*, iii: *Notes*, note on I. ii. 85.

history marked by differences in political economy, the agricultural stage (after the hunting and pastoral stages and before the commercial) was represented primarily by the middle ages, the age of feudal government. In Smith's description of feudal government the framework of the sixteenth-century discussions is still clearly visible. Feudal government had succeeded the alodial government of the barbarians when military *beneficia* became 'altogether hereditary, in which state they were called *feuda*'.²¹ For Smith, feudal government in Britain had, it seems, already been effectively superseded, largely by the introduction of arts, commerce, and luxury.²² To lawyers and intellectuals of the French Enlightenment it survived in France and would do so until *les droits féodaux et censuels* were abolished in 1789.²³ For the German, von Justi, common sense demanded the abolition of a system that shortage of cash had made necessary in a bygone age.²⁴ The French Revolution brought the package view of feudalism as a past stage of history to a wider public and accentuated the tendency to attribute to the middle ages whatever seemed most irrational and oppressive about the Ancien Régime, like the classification of society into distinct orders with a defined and legally privileged nobility. Ideas of progress suggested that such deplorable arrangements must have been archaic survivals. The package view of the middle ages as feudal and of feudalism as oppressive then got a new lease of life when Marx took it over, along with a newer version of the four-stage theory. He put new driving forces behind the beginning and end of what was now called simply feudalism, and concentrated on aspects of the middle ages that narrower or more romantic views had ignored or played down, but his knowledge of medieval history, despite wide reading, was still conditioned by the framework within which all scholars had seen it since the sixteenth century.²⁵

The point of this rapid survey of the progress from sixteenth-century expositions of the law of fiefs to full-blown feudalism is to show how, while the idea of what was feudal expanded as the knowledge and interests of historians expanded, the fundamental concepts and the framework in which they were set remained virtually unaltered. Even Adam Smith and Marx did not change perceptions of what was feudal as much as they should have. For many non-Marxist medievalists (and even more oddly for a good many Marxists) feudalism still seems to inhibit post-Marxist—or post-Smithian—insights: society can apparently be changed

²¹ Smith, *Lectures in Jurisprudence*, 249; cf. 14, 28–9, 49–55, 244–65; cf. Blackstone, *Commentaries*, ii. 44–58; Lieberman, *Province of Legislation*, 139–40.

²² *Lectures in Jurisprudence*, 261.

²³ Sagnac and Caron, *Comités*, 172–81, 767–76; Mackrell, *Attack on Feudalism*.

²⁴ Cited by Brunner, 'Feudalismus, feudal', 340.

²⁵ Müller-Mertens, 'Zur Feudalentwicklung', 56–9; Levine, 'German Historical School'.

from the top by military conquest or royal patronage, as happened, supposedly, with the Norman Conquest of England. But how significantly could the Normans have changed English society when they could not change its economic base and when, moreover, they themselves, seen in a wider comparative context than medieval historians before this century could see them, had much the same economy, kinship system, religion, legal system, and values in general as the pre-conquest English?

Ever since the sixteenth-century scholars borrowed the law of fiefs while denying its authority in France, discussions of feudal law and feudal society have combined eclecticism with nationalist preoccupations in an extraordinarily unselfconscious way. Nearly everyone investigating supposedly feudal phenomena, and especially those feudo-vassalic phenomena that were the concern of the early scholars and are the subject of this book, has tended to concentrate on one country or region while being ready to interpolate evidence or organizing concepts from elsewhere at every turn. Some see the feudalism of their own area as the most typical or complete, some stress its exceptional qualities, but none seems ready to question whether the various phenomena are all part of the same thing. In England and France feudalism, like the feudal law before it, is used to describe, and by implication to explain, quite different situations. In seventeenth-century England feudal law was first used to explain the origins of the monarchy's rights over those who had come to be called tenants in chief. In France the features of law which by the eighteenth century had come to seem most archaic and oppressive and in need of historical explanation, and therefore of an explanatory label, were the rights of nobles over peasants. As a result feudalism in England has ever since been associated with a strong central power, and particularly with military service, but not with noble jurisdiction over peasants, while feudalism in France, as in Germany, has been seen in terms of a weak monarchy and a nobility holding 'immunities' of jurisdiction over their tenants—what is sometimes called feudal anarchy. These anomalies have stimulated much historical ingenuity but little serious rethinking. Just as the image of feudal society was composed syncretically to fit a thousand years of the history of all Europe, so the vast increase of knowledge about the middle ages has since then gone on being accommodated syncretically to fit an image which changed by accretion but not by radical revision. The middle ages have been taken as the time of feudalism, and so whatever does not form part of the image of feudalism is filtered out of the view or adapted to fit into the background.²⁶ Words

²⁶ I discussed the filtering out of important aspects of collective activity, for instance, in Reynolds, *Kingdoms and Communities*.

which come from the Lombard *Libri Feudorum* are assumed to have central and technical significance, and medieval people are assumed to have thought in the categories derived over the centuries from those terms. If medieval sources use words we consider feudal then they meant by them what we mean. If they never use them they must have implied them.

The power of the feudal paradigm is demonstrated in the treatment of the so-called 'feudal aids'—dues paid to lords when they had extra expenses, such as the knighting of a son, the marriage of a daughter, or their own ransom or crusade. Although these aids have not been traced before the late eleventh century and although then and later they were taken (except in England) from non-fiefholding commoners rather than from noble fiefholders (and in England they were taken from both), this does not seem to have raised doubts about the origin of such aids in the primitive obligation of a vassal to render aid to his lord.²⁷ Neither evidence nor the lack of it nor alternative explanations, it seems, need to be considered.

Some historians defend the continued use of the construct of feudalism, whether used in its supposedly more narrow and precise sense or in any of its wider senses, as an ideal type which does not lose its utility merely because all the details of empirical forms do not correspond to it. Max Weber, the inventor of ideal types, certainly discussed feudalism as one of them, but even in his hands it is not a very convincing one. Ideal types, like Marx's social formations, seem to be most useful when they come in contrasted pairs.²⁸ Marxist feudalism is easiest to envisage when it is contrasted with capitalism, whereas Weber's contrast of his with patrimonialism and hereditary charisma is less clear. That is not only because a three-way comparison is more difficult. It is because, not surprisingly, since his ideas about it were based on information about medieval Europe derived from the historiographical tradition that I have described, his feudalism has too many defining characteristics.²⁹ Ideal types need to be reasonably simple, not only so that they can be contrasted, but so that they do not get cluttered up by characteristics which may be merely superficial epiphenomena that are not structurally related to each other. They are no use if they are merely bundles of characteristics that have been put together under a single label by successive generations of historians with different

²⁷ Though see chapter 7 n. 264 (though, for various reasons, none of the works cited there addresses the issue of origins) and chapter 9 n. 365.

²⁸ Weber, *Social and Economic Organization*, 152.

²⁹ Weber, *Economy and Society*, 255, 1070–1109. Among much literature on ideal types, the most appealing to medievalists may be Power, 'On Medieval History', and Watkins, 'Ideal Types and Historical Explanation'; cf. Leach, *Feudalism*, 7–11; Martindale, 'Sociological Theory'; Bendix and Berger, 'Images of Society'.

interests and different understandings of the past. We hold them together in a bundle that we have tied up with the string of our ideas or words, but this is only useful if there is some kind of core to which they are all related.³⁰ That is particularly important if one is using feudalism to compare different societies. Too many models of feudalism used for comparisons, even by Marxists, are still either constructed on the sixteenth-century basis or incorporate what, in a Marxist view, must surely be superficial or irrelevant features from it.³¹ Even when one restricts oneself to Europe and to feudalism in its narrow sense it is extremely doubtful whether feudo-vassalic institutions formed a coherent bundle of institutions or of concepts that was structurally separate from other institutions and concepts of the time. If one chooses to put them in a bundle it is a modern bundle, held together by the string of our ideas—or the ideas of past academic lawyers and historians—not by the essential interdependence of its contents. It is not just that all the phenomena and notions of feudo-vassalic institutions never existed together anywhere, but that they are too incoherent, too loosely related, and too imperfectly reflected in medieval evidence to be envisaged as anything like an ideal type.

Some devotees of feudalism of one kind or another avoid the rigours of ideal types by claiming that, all the same, we must have some generalizations. They are, of course, right, but generalizations are propositions that can be verified or falsified, rather than abstract nouns that we use as labels to save us from having to look at the contents of the bundle. It has been suggested that the concept of feudalism may be used as what Abraham Kaplan called a 'descriptive generalization' that may 'inform us of what manner of creature we may expect to encounter on our travels without purporting to lay bare the nature of the beast'. Kaplan, however, also said that descriptive generalizations stem from fairly direct observations and are on a low level of abstraction.³² That does not apply to feudalism in any of its senses. What the concept of feudalism seems to have done since the sixteenth century is not to help us recognize the creatures we meet but to tell us that all medieval creatures are the same so that we need not bother to look at them. Put another way, feudalism has provided a kind of protective lens through which it has seemed prudent to view the otherwise dazzling oddities and varieties of medieval creatures. The prescriptions of the lenses can vary—feudal anarchy, military centralization and 'feudal incidents' imposed on nobles, or a Marxist dominant mode of production—or we can

³⁰ An example of the discussion of feudalism as an ideal type without any 'core' or contrasted type is Hall, 'Feudalism in Japan'.

³¹ Reynolds, 'More about Feudalism'.

³² Saltman, 'Feudal Relationships', 515; Kaplan, *Conduct of Enquiry*, 114.

have multifocals combining everything. However feudalism is defined, many medieval historians feel uncomfortable without their feudal sunglasses. Nicely shaded, the 'feudal anarchy' of eleventh-century France or fourteenth-century Germany can seem to belong to the same species as the system that formed the bastion of a strong central government in twelfth-century England or Sicily. For many historians who apparently think of feudalism in a feudo-vassalic, non-Marxist sense, monarchies can still count as feudal however much authority kings exercised over those of their subjects who were not their vassals, provided only that they exercised some over people who look like vassals according to some definition or other—and provided that the kings lived at the time which has already been labelled as the age of feudal monarchies. Some historians have left off their feudal spectacles and gone over to contact lenses: that is, they think no one will know that they are wearing them if they abjure the 'ism' and use the adjective feudal without defining it. Undefined, feudal sometimes seems to mean little more than medieval—as in feudal lord, feudal law, feudal government—much as it did in the eighteenth century.

One of the chief troubles with most discussions of feudalism in the narrow sense of feudo-vassalic institutions is that they tend to confuse words, concepts, and phenomena.³³ Historians who define fiefs generally say that they are defining the 'concept of the fief', but they nearly always start by discussing the word and its etymology and origins, while what they are really concerned with is neither the word nor the concept or notion that people may have in their heads when they use the word, but the phenomena that word and concept represent. The *word* fief is the normal translation of *feodum*, *feudum*, *fevum*, et cetera. These words were used in a variety of contexts and senses in the middle ages, so that they relate to rather different phenomena and presumably reflected a variety of concepts or notions in the minds of those who used them. The *concept* of the fief, as I have argued and as I hope will appear from my analysis of the medieval evidence, is essentially post-medieval: it is a set of ideas or notions about the essential attributes of pieces of property that historians have defined as fiefs, some of which may not appear in the sources under any of the words that we translate as fief. There is nothing wrong with that, any more than there is anything wrong with using our own words.³⁴ We may often legit-

³³ I am deliberately talking of words, concepts, and phenomena rather than signs, signifiers, and signified, partly because I think the terms are clearer and partly because I do not wish to use the terminology of a discussion (or should I say discourse?) in which I do not feel at ease. Although, when I originally worked out how the confusion of the three bedevils medieval history, I painstakingly reinvented the wheel, I am aware that others had invented it long before for use in other disciplines: survey in Lyons, *Semantics*, 95–114.

³⁴ See Maitland, *Township and Borough*, 21–2.

imately want to investigate the history of concepts or phenomena of which people in the past were not aware, like vitamin C deficiency or the doctrine of incorporation. But when the subject under investigation involves notions or attitudes held by people in the society concerned it is vital to distinguish whether a concept is ours or theirs. How far the ideas or notions about property that are involved in our concept of the fief correspond to any of the notions held by medieval people in any of several centuries, countries, and contexts when they used either that word or any other word is a subject that needs investigation. Lastly, after word and concept, there is the *phenomenon* of dependent noble or military tenure, with its varying conditions. Much of the discussion of fiefs, as of vassalage, seems to me to assume the identity of words with concepts, our concepts with medieval concepts, and all three with the phenomena. That is particularly dangerous with something like the medieval historian's concept of the fief, which embraces a whole lot of other concepts, similarly conflated with particular words, such as investiture, homage, or oaths of fidelity. How far each of these words had consistent meanings and how closely the phenomena they represent were connected with fiefholding is another problem which cannot be solved by imposing modern definitions of 'the concept of the fief' on the medieval evidence.

Of the trio, word, concept, and phenomenon, the least significant for the historian of society is the word. Starting our investigation of phenomena by focusing on particular words is a sixteenth-century habit that needs to be dropped. In one sense historians who work from written sources have to begin with words: they are all we have. But it may be more rewarding not to attempt definitions until after one has looked at usage and thought hard about what is being discussed (the phenomena) and about what may be implied about the notions of the time. If we start by discussing words we are liable to assume that words like *feudum* were used in the sense we expect unless the contrary is specified: many of the examples cited by Du Cange or Niermeyer are much less specific than the definitions they illustrate. Discussions of terminology, moreover, generally start from the assumption, not only that certain words are particularly significant for feudalism, but that such words have core or technical meanings and that these technical meanings were somehow more real and more significant than the others. To do this is to ignore how language works. Words used in real life, especially abstract nouns, do not have core meanings which are more central or more right than others. Dictionary makers deduce meanings from usage. They do not control usage. It varies from place to place, even from speaker to speaker, as well as from time to time. Words are used precisely or technically only within particular disciplines in which precision is

necessary. In the context of property, political relations, or legal status and capacity, precise and consistent usage could come from lawyers, but it could be achieved over a wide area and long period only if they are professional lawyers working in a legal system which has acknowledged authorities, written documents in which authoritative pronouncements are recorded, and some system of publishing and enforcing those pronouncements. Even then, of course, laymen will continue to use words in ways which lawyers deplore, and their usage may get into the records which historians use.³⁵ Until after the twelfth century most of the medieval law of property, including the law of noble property, was customary law in which uniformity and consistency of vocabulary were impossible. After the twelfth century usage became more uniform within the various legal systems which evolved wherever governments could establish a hierarchy of courts with defined jurisdictions, but greater consistency within systems was accompanied by greater variation between them. The concept of the fief, like the concept of vassalage, awaited historians who thought they could understand the middle ages through understanding the phenomenon of the fief. It was not a bad idea, as far as it went, but it has not worked very well when it has taken the form of tracing the history of words and assuming that each word represented both a distinct concept and a consistent phenomenon.

1.3. *The plan of the book*

The object of this book is most emphatically not to prove that feudo-vassalic relations or institutions were less important than is generally thought, nor to trace their rise or say when and where they appeared, nor to judge which part of Europe was most truly feudal. These seem to me meaningless subjects. My object is to explore the relation between the modern concepts of the fief and of vassalage on the one hand and the evidence of property law and of social and political relations that I find in medieval sources on the other. I start in chapters 2 and 3 with attempts to say what seems to be involved in the modern concepts of vassalage and the fief respectively. For those who think of jurisdiction as a third defining element of feudo-vassalic relations I should point out that both here and in the rest of the book I deal with jurisdiction over free people as a variable accompaniment of property rights. No one will be contented with my attempts to characterize the modern concepts. Some will repudiate some

³⁵ For a characteristic illustration: Maitland, *Collected Papers*, ii. 305.

of the features I describe, some will think I have missed out vital features, some will say that the whole thing is a caricature. All I can say is that some kind of characterization seemed necessary as a starting-point and that I have tried to do my honest best. The greater part of the two chapters then looks at information about the middle ages and about other societies that was not available when the two concepts were invented: in chapter 2 ideas about medieval political and social attitudes against which the concept of vassalage needs to be evaluated, and in chapter 3 ideas about property that need to be considered if one is to evaluate the concept of the fief.

Chapters 4–9 deal with phenomena and words: that is to say, with a survey of what seems to me the most important evidence I have found about the law of free or noble property and the political and social relations associated with it. Fiefs will loom much larger than vassalage here, because, for reasons that will emerge in chapters 2 and 3, the concept of the fief seems to me to deserve much more attention than the comparatively vacuous concept of vassalage. My survey does not claim to be anything like comprehensive. I have deliberately omitted almost all of the vast and important subject of relations between lords and peasants—in other words the whole subject of feudalism in its Marxist sense. Such relations seem to be of only indirect relevance to the concepts of fiefs and vassalage as they have been understood since the sixteenth century. I have also, deliberately but regretfully, omitted large areas of Europe. The omissions I specially regret are Spain and—considering it as an honorary bit of western Europe—the kingdom of Jerusalem. I had intended to include both but my project turned out too big, too difficult, and too slow. Within each of the areas I have covered I have ignored a great deal of material: I have found most of the sources I cite through footnotes in secondary literature and I have read only a fraction of the relevant literature. I have also ignored a mass of local variations. I feel less ashamed about this when I consider how often close study of particular regions has not precluded the imposition of general or national stereotypes on local material. Although there was much mutual influence between my areas (as well as much variation within them) my determination to avoid the serendipitous eclecticism traditional in the history of feudalism forced me to consider them separately. The division I chose, though it may look teleological, has the advantage of enabling me to look at the way that some of the different national traditions of writing about feudalism have both produced different national views of apparently similar medieval phenomena and have prevented anyone from noticing a few apparently genuine medieval differences. My areas also correspond roughly to kingdoms which at one time or another had a significant degree of political unity. This played a significant part in shaping property law

in each of them and constitutes another argument for looking at them separately.

Most readers of this book will be more interested in one or at most two of the areas and only part of the period it covers. I should, however, point out that this is not a collection of separate essays. The argument is continuous. Chapters 2 and 3 set out the premisses from which the later chapters start. To avoid undue repetition, moreover, I have sometimes either curtailed or omitted discussions in the later chapters of matters that I have already covered earlier, notably in chapters 4 (on the Frankish kingdom) and 5 (on the kingdom of France, 900–1100) and on which nothing significantly different needs to be said in other connections. The Carolingians and the ‘feudal anarchy’ of post-Carolingian France have contributed so much to the image of feudalism that the importance of these chapters is obvious. The contribution of the *Libri Feudorum* to the image of feudalism in general has been so much underrated that the general significance of chapter 6 (Italy) to the later chapters may need more emphasis. It is impossible to understand both how French and German property law developed in the later middle ages, and how the modern image of feudalism has been distorted by unconscious reliance on the academic law of fiefs, if one does not look hard at the academic law and try to understand how it arose and spread, and how it was related both to the forms of professional law that developed in different countries and to the realities of society and politics in each. Chapter 6, while it needs chapter 4 before it, is therefore essential to the later chapters, and particularly to chapters 7 (France, 1100–1300) and 9 (the kingdom of Germany). England too contributed several features to the image of feudalism, notably a stress on military service and the hierarchy of tenure, the ‘feudal aids’, and wardship, so that chapter 8, which deals with it, is less detachable from the rest than traditional ways of studying the middle ages might suggest.

VASSALAGE AND THE NORMS OF MEDIEVAL SOCIAL RELATIONS

2.1. *The concept of vassalage*

BEFORE one can criticize the concept of vassalage as it is used in discussions of feudo-vassalic relations it is necessary to indicate as clearly as possible what it means there. This section is therefore intended to describe the main features of vassalage as it seems to be understood by those who use the word or who talk about vassals as a general category within medieval society. On occasion I shall note differences of opinion among those who use the concept, but I shall not at this stage say anything about those who reject it or criticize it radically. The first necessity is to get clear what it is that they or I reject. Clarity—or relative clarity—in this case may produce crudity and over-simplification, combining together views which some hold and others reject, but I do not intend to produce a caricature or straw man in order to make it easy to knock him down in later sections. In order to avoid clumsy repetitions I have not inserted phrases like ‘some historians say’, ‘it seems to be generally thought’, or ‘vassals are (or have been) held to be this or that’ in every sentence. The whole section must nevertheless be taken as a kind of indirect speech, even if it is more like rumour—and perhaps out-of-date rumour at that—rather than the accurate report of any one historian’s views.

Historians use the words vassalage, *vassalité*, *Vasallität*, *vassallaggio*, et cetera to denote the relation between a lord and his free or noble follower—his vassal. Because the vassal was a free man they see the relation, although unequal, as having had a voluntary and reciprocal quality that distinguished it significantly from that of a lord with his peasant tenants or subjects. Mitteis went so far as to characterize Carolingian vassalage as a genuine partnership between equals, but that idea seems to be unusual.¹ The loyalties and obligations of vassalage are held to have been derived from those of the barbarian war-band, but these are obscure and I propose not to get involved in them here. It is generally agreed that by the end of

¹ Mitteis, *The State in the Middle Ages*, 56: he was presumably thinking of *pari suo* in *Formulae* 158 (Tours, 43): cf. Mitteis, *Lehnrecht*, 34.

the eighth century the *vassi* or *vassalli* of both the Frankish kings and other great men in their kingdom were free men who had entered into vassalage by a ritual known as commendation and by taking an oath of fidelity. Commendation and oath bound them to the service of their lords for life and they could normally leave only if the lord committed certain crimes against them. In return for the vassal's service the lord offered protection and some form or degree of maintenance, either by making the man a member of his household or by providing some kind of wage, whether in kind, in money, or in land.

Whatever the status of vassals or their predecessors before the eighth century, their status was by then rising. One reason for this was that the Carolingians bound counts, bishops, and other great men more closely to themselves by commendation so that they too became vassals. Vassalage thus became, in Ganshof's words, 'a coveted status, a mark of honour, at any rate where direct vassalage to the king was concerned and where the vassal obtained a benefice in return'.² Ganshof's reference to a benefice introduces the other reason for the rise in status of vassals. Not only the king but all lords with vassals were beginning to provide the maintenance that they owed to their vassals in the form of a landholding which became known as a benefice or fief. This marked a crucial stage in the creation of 'classic feudalism'. Scholarly opinion is divided on the date when vassals in general became fiefholders. Ganshof, for instance, thought that the 'union of benefice and vassalage' became general under the Carolingians, while Duby has argued that in the Mâconnais it did not happen until the eleventh century.³ Benefices or fiefs were at first granted for life only, but later gained increasingly secure rights of inheritance. The new prosperity and independence that this brought to the humbler vassals confirmed their noble status and marked the beginning of what is often called the 'rise of the knights' and the growth of the ethos of chivalry. The conditions of fiefholding will be discussed in the next chapter, but here it must be noted that they are generally considered to have been shaped by the already established rights and obligations of vassalage. In the words of Heinrich Brunner, repeated by Mitteis, vassalage was the driving force (*der treibende Faktor*) in the history of feudalism.⁴

Because vassalage was, at least in theory, a freely contracted relation, and because the period when it emerged was one of formalism and ritual, every man who became a vassal is assumed to have undergone the ritual of com-

² Ganshof, *Feudalism*, 19.

³ Ganshof, 'Note sur les origines de l'union' and other articles listed in the bibliography; Duby, *Société mâconnaise*, 151.

⁴ Brunner, *Deutsche Rechtsgeschichte*, ii. 368; Mitteis, *Lehnrecht*, 16. Ganshof's 'Les Liens' and 'L'Origine', *passim* and esp. n. 1 in each, suggest that he agreed.

mentation, later alternatively known as homage (*hommage*, *Mannschaft*, *omaggio*). Bloch described how the prospective vassal commended himself or did homage. Sometimes but not invariably kneeling, he put his hands between the lord's hands and declared himself the 'man' of his lord. They then kissed, 'symbolizing accord and friendship. Such were the gestures—very simple ones, eminently fitted to make an impression on minds so sensitive to visible things—which served to cement one of the strongest social bonds known in the feudal era.'⁵ Immediately after doing homage the vassal took an oath of fealty or fidelity. At first that was slightly less important, since similar oaths might be taken by subordinates who were not vassals, while an oath, as distinct from the rite of commendation, could be repeated and did not need any direct personal contact. For Kienast, homage without the physical contact of the lord's and vassal's hands would have been meaningless, while it was the ritual of homage or commendation that marked off vassalage from other, less close relations of subordination in the Carolingian age.⁶ Later, however, after the rituals of vassalage had become established while Carolingian royal power had declined so that subjects in general ceased to take oaths of fidelity, homage and oath came to seem part of a single, indivisible rite almost everywhere.⁷ One notable exception was north Italy, where commendation is rarely mentioned after the tenth century and the rite of homage seems to have been unknown or insignificant in the twelfth and thirteenth.⁸

The rite of commendation bound the lord to protect and maintain his vassal. Once vassals became tenants, the rights that went with the lord's duty gave him some control over the inheritance of the fief and protection or control of the tenant's widow and any minor heirs. These duties or rights, like the fiefholder's corresponding obligations, derived from the original relation of vassalage, which also explains why each heir had to renew homage on his succession and sometimes also on the succession of the lord. Even when the link between lord and vassal ceased to be merely personal and was 'territorialized' by the grant of fiefs, an element of personal commitment survived. The fiefholder's duties could at their simplest be expressed as honourable service, but they are often summarized as aid and counsel (*auxilium et consilium*), the aid being primarily military and the counsel being performed through attendance at the lord's court. Another way of summarizing the obligations of the vassal is to say that he was to be faithful: he owed fidelity or fealty. Magnou-Nortier distinguishes the general moral obligation to faith (*fides*) from oath-bound fidelity (*fidelitas*) and

⁵ Bloch, *Feudal Society*, 145–6; cf. Le Goff, 'Rituel symbolique'.

⁶ Kienast, *Vasallität*, 48.

⁷ Poly and Bournazel, *Mutation féodale*, 152.

⁸ Brancoli Busdraghi, 'Formazione storica', 271–8.

sees the two as combined in the 'unilateral vassalic bond'.⁹ Subjects who were not vassals were also required to be faithful and they too might be described in the Carolingian age as *fideles* but, as the bond of vassalage eclipsed other ties, the word *fidelis*, like the word 'man' (*homo*), became a synonym, or almost a synonym, for vassal. Fidelity—the bond of mutual fidelity between an individual lord and his individual follower—has been seen as the distinctive value of the feudal ethic, whether or not one derives it, or stresses its derivation, from the *Treue* of Germanic barbarians. A letter written by Bishop Fulbert of Chartres around 1020, which was later incorporated into the *Libri Feudorum*, is often cited as the best illustration of feudo-vassalic ideals. Asked by the duke of Aquitaine to write something about the nature of fidelity (*forma fidelitatis*), he replied that anyone who swore fidelity to his lord was obliged not to injure the lord, betray his secrets or fortresses, impede his justice or any business pertaining to the lord's honour, or cause him to lose his possessions. If the *fidelis* were to deserve the grant of a holding or fief (*casamentum*) he would have to go beyond these negative duties and faithfully give his lord aid and counsel. The lord in return should act in a corresponding way to his *fidelis*, lest he be censured for bad faith and perfidy.¹⁰ The author of the twelfth-century English lawbook known as *Glanvill* maintained that the bond of fidelity deriving from lordship and homage (*dominii et homagii fidelitatis connexio*) ought to be mutual, so that the lord owes as much to the man as the man to the lord, saving only reverence.¹¹

What made vassalage so important was that the time when it arose was one when, it is thought, there was no idea of the state and very little idea of impersonal, public obligations at all, and when kinship ties may have been becoming weaker. It was 'a state of society in which the main social bond [was] the relation between lord and man'.¹² Germanic barbarians did not have the Roman sense of *res publica*. Their loyalties were personal. Merovingian kings treated their kingdom as their own private property and, though the church kept alive some ideas of abstract good, people were only just beginning to think in terms of a 'transpersonal' state in the eleventh century. It was only with the twelfth-century Renaissance that ideas of the public good and public interest began to develop significantly.¹³ Even in the great days of the Carolingian empire it was the personal bond, rather than high ideas of Christian empire, that worked: it was commendation that really bound counts to the king or emperor, while

⁹ Magnou-Nortier, *Foi et fidélité*, 12; cf. Kienast, *Vasallität*, 23 n., 114; Poly and Bournazel, *Mutation féodale*, 108.

¹⁰ Fulbert, *Letters and Poems*, no. 51.

¹¹ *Glanvill*, 107.

¹² Maitland, *Constitutional History*, 143.

¹³ Beumann, 'Zur Entwicklung transpersonaler Staatsvorstellung'.

the oaths of fidelity that subjects at large had to take gained their force by seeming to create a personal bond with him.¹⁴ But the king was too distant for the bond to hold. Inevitably, in the circumstances of the time, vassalage worked much more to the advantage of counts and other local lords: they could offer more effective protection to their vassals and their relations with them could be genuinely personal. As this suggests, while kings could make use of vassalage, they did so, not primarily as rulers of a kingdom or state, but as lords like any other lord. Vassalage was essentially a personal relation—what a modern sociologist might call an interpersonal, affective, dyadic relation. The element of affect is important. Men—vassals—were supposed to die for their lords. Boutruche pointed out that the union between lord and vassal could even, exceptionally, be expected to prevail over that between man and wife.¹⁵ But the bond between lord and vassal did not supersede or undermine all other relations. Joint vassalage maintained the solidarity of the war-band among the vassals—a solidarity that is most famously exemplified in the *Song of Roland*, in which, incidentally, as Boutruche's remark might lead one to expect, Roland's betrothed plays a very minor part. Solidarity and sense of parity between vassals led to the 'judgement of peers' by which free and noble vassals gave counsel in their lord's court and joined in its judgements.

In practice, of course, obligations were not always fulfilled and the bond did not always hold. In the ninth and tenth centuries, partly because of the desire for benefices and partly because political troubles brought conflicts of loyalty, men began to commend themselves to more than one lord. Later, to cope with the problems of 'multiple vassalage', liege homage was introduced by which each vassal was supposed to have only one liege lord to whom he owed a single, primary loyalty and whose service took precedence over the others. In the mean time, during Bloch's 'first feudal age' before the late eleventh century, the competing claims of lords against each other and the conflicts between lords and vassals brought much disorder. That the values and norms of vassalage nevertheless retained a hold over people's minds, even when they were so often being betrayed and broken, is shown by the rules that emerged for ending the relation. Either side could end it legally if he had been betrayed by the other. By the twelfth century we know about a ritual for doing this.¹⁶ By that time, however, as the 'second feudal age' developed, as abstract ideas of political obligation began to grow, and as something like states began to appear, the personal bond of vassalage was becoming less exclusively important. Hereditary rights in fiefs meanwhile undermined its personal and affective nature. The

¹⁴ Ganshof, 'Charlemagne et le serment', 261, and 'Charlemagne et les institutions', 388-9.

¹⁵ Boutruche, *Seigneurie et féodalité*, 177-8.

¹⁶ Bloch, 'Les Formes'.

relation between lord and man was turning into a matter of property rights to be adjudicated, if necessary, in the increasingly formal courts of law that characterized the period. Nevertheless most kings and princes had significantly restricted authority over their vassals' vassals and little direct contact with them. Kings were still overlords or suzerains rather than sovereign rulers in the modern sense. Many of the traditional values of vassalage survived. The relation with their immediate lords was what counted with many vassals, so that a vassal was likely to side with his immediate lord against the king or an intermediate overlord if they came into conflict with each other. In the words of the thirteenth-century French jurist, John de Blantot, 'the man of my man is not my man'.¹⁷

2.2. *Some problems of the concept*

The first problem is terminological. References to *vassi* or *vassalli* are not nearly so common in the sources as one might suppose from reading modern works on medieval history.¹⁸ They occur frequently in Carolingian documents and were exported by Frankish conquerors to Italy and Germany, while contemporary contacts and influences produced a few occurrences in England. From the tenth century on, however, while both Latin words continued to be used in Italy, they gradually went out of use in France and Germany, and did not return until they were brought back from Italy by lawyers trained in the academic law of fiefs. From the thirteenth century the occurrence of forms of 'vassal' in deeds, governmental documents, or legal texts in both countries seems to indicate the spread of the new academic law. In England, where legal education was different, the word remained rare throughout the middle ages. Meanwhile, to judge from literary texts, it passed into the vernacular in France without any necessary connotation of a specific relation to either lord or land. In the *Song of Roland* it generally seems to mean something like 'man of valour' and the same kind of sense looks likely in other texts.¹⁹ Here the point that needs to be emphasized is that, when vassals are mentioned in modern works about the history of northern Europe between about 1000 and 1300, in

¹⁷ Acher, 'Notes', 160. On John, see index: John de Blantot.

¹⁸ References for most of the statements about the middle ages in this section will be given in later chapters. Those for particular words can be found through the entries for those words in the index.

¹⁹ *Song of Roland*, ii. 256; Dufournet, *Cours*, 142–51, where the editor derives quite different uses from his study of the poem from those he takes on trust from secondary works about 'la réalité vassalique'. Cf. Bertrand de Bar-sur-Aube, *Girart de Vienne*, 318 (note to l. 1297), 404 (where the glossary suggests that *vasal* . . . 'proprement' meant vassal and only by extension 'homme noble en général'; cf. *ibid.*: '*vavasore* . . . proprement: homme pourvu d'un arrière fief; par extension: vassal en général').

translations of texts from that time, or in comments or indexes made by editors of texts, the sources nearly always use non-committal pronouns (*cum suis, ad suos*, etc.) or words like *fideles* or *homines*. *Fidelis* and *homo* may on some occasions have been used to mean much the same thing as historians mean by vassal, but both had other uses, and non-committal uses, that can also be found in contemporary sources. The idea that, when a king or noble called subordinates his men or his faithful men, their relation to him was that which historians call vassalage depends on acceptance of the premiss that vassalage was the most important, or only, political relation worth considering. The argument is circular. When Bishop Fulbert, in the letter mentioned earlier, talked of the obligations incurred under an oath of fidelity, he may have been thinking of them as incurred by someone we might now call a vassal, but he may have been thinking of other kinds of subordinate too. It does not seem right to say, as was said recently, that Fulbert used the words *fidelis* and *vassus* interchangeably and that a vassal was one who had sworn fidelity and held a fief. Fulbert does not use *vassus* in this letter or, I think, elsewhere, and he certainly makes it clear here that not all the *fideles* he was talking about had *casamenta* or *beneficia*.²⁰ We cannot be sure that we have got our ideas about vassalage right if we rewrite medieval texts in this way.

Vavassor, which is sometimes thought to mean the vassal of a vassal (subvassal, rear-vassal, *arrière-vassal*), was used in the intervening period both in France and England as well as Italy. Its derivation from *vassus vassorum* seems, however, to be late.²¹ It does not seem to be established that its original meaning had anything to do with a position in a 'hierarchy of tenure'—a concept (as distinct from a phenomenon) that, as I shall argue, was itself a relatively late development. Vavassor may generally have denoted something more like a social status: a vavassor seems normally to have been part of noble, military society, though near the lower end of it. The status seems to have varied from place to place and time to time—not surprisingly, seeing the way that words acquire connotations from their context and use.²² A word for any group will have different connotations of dignity or lowliness depending on the dignity or lowliness of the speaker and of the other groups with which the first is contrasted.

As for the word vassalage itself, forms like *vassaticum* and *vassallagium*

²⁰ I have not searched all his letters thoroughly, but he uses only *fideles* in nos. 9–10, 27, 42, 51, 83, 94, 100, and Behrends (who translates *fidelis* as 'vassal' in *Letters and Poems*) does not mention *vassus* or *vassallus* explicitly in his article 'Kingship and Feudalism'.

²¹ The first suggestion I know of is Saint Julien, *De l'Origine* (1581), 158, but this was found through Du Cange. There may well be earlier occurrences.

²² Yver, 'Vavassor'; Coss, 'Literature and Social Terminology'; cf. Bertrand, *Girart de Vienne*, l. 1207.

occur occasionally, but in documentary sources they generally suggest something more like the holding or service of a *vassus* or *vassallus* than anything more general and abstract. In the *Song of Roland* *vasselage* seems to be the qualities appropriate to a vassal, like courage and loyalty.²³ Even in the more theoretical and normative writings of later medieval lawyers remarks about vassals and vassalage cannot be assumed to imply all the norms and values that have become embedded in post-medieval discussions of feudalism. If vassalage in anything like the sense given it by those who have written about feudo-vassalic relations since the sixteenth century had been as central to medieval life and had formed as distinct and well recognized a package as they suggest, might it not have been discussed more often and more explicitly?²⁴

There are more serious problems than those of terminology. The concept of vassalage as outlined above suggests ideas about social structure and social evolution that must have looked better in the seventeenth, eighteenth, and even nineteenth centuries than they do in the light of late twentieth-century social sciences. The barbarians who invaded the Roman empire came from societies that were in some ways not unlike what are sometimes called 'tribal' societies in other parts of the world. To eighteenth- and nineteenth-century anthropologists these looked as strange and primitive as the people Tacitus called Germans did to him, but modern anthropologists see them rather differently. Students of late antique and early medieval barbarian history have revised some of the ideas about early 'Germanic' society that appeared at much the same time as ideas of feudalism developed.²⁵ As a result the supposed evolution of one into the other needs revision. The political organization of the barbarians immediately outside the empire must have been disturbed by Roman wars and machinations. Many of the bands who subsequently invaded may have been as culturally confused and politically incoherent as one would expect bands of uprooted guerrillas and their servants and camp-followers to be. Neither of these probabilities entitles us to suppose that the Germanic-speaking peoples were unaccustomed to life in settled agricultural societies with coherent social and political structures. Little as we know of the politics that the invaders came from or that survived outside the empire before they were converted to Christianity, it is questionable whether the only kinds of authority in barbarian society were those of sacral kings and the leaders of war-bands. It is also unlikely that barbarian societies were organized as exclusively, or almost exclusively, by kinship as is suggested by the

²³ *Song of Roland*, i. 208, 422-3; Dufournet, *Cours*, 151-5.

²⁴ Le Goff, 'Rituel', 359, notes the lack of systematic discussions of 'the rites of vassalage'.

²⁵ e.g. Wenskus, 'Probleme'; Murray, *Germanic Kinship Structure*.

proposition that vassalage arose because of the decay of kinship. Kinship and lordship are seldom mutually exclusive alternatives.²⁶ Finally, and perhaps most importantly, there is no reason to suppose that barbarians were incapable of distinguishing the good of individuals from the good of the community or were unaccustomed to any but the most direct interpersonal relations.

The distinction that is often drawn in discussions of early medieval society between public and private relations and obligations is at best confused—as is much talk of ‘public’ and ‘private’ within our own society—and at worst culture-bound and inappropriate.²⁷ It derives partly from a classification adopted within Roman law, which does not apply very well anywhere else, and partly from a belief that ideas of *res publica* were too intellectual and advanced for barbarians and developed only gradually during the middle ages. It seems to be thought, however, that, although barbarian societies outside the empire had largely interpersonal relations, they also had ideas of tribal welfare. The collapse of Roman bureaucracy and communications changed relations between rulers and subjects within Roman territory, while that of the Carolingian empire led to greater disorder in some, though not all, of its territories. But there is no evidence that the sense of public spirit disappeared at either stage. For what analogies are worth, the findings of social anthropologists suggest that in small, face-to-face societies such a sense may, by our standards, be suffocating. The difference between a king’s private interest and his duty to the kingdom was not much discussed in academic terms before the twelfth century, because there was not much academic discussion, but the phrase *res publica* was in fact occasionally used well before the academic explosion of the twelfth century.²⁸ Irrespective of discussion and words, the public welfare and its difference from the ruler’s welfare was probably recognized as well as it was, apparently, in traditional African societies—and perhaps better than in some modern ones.²⁹

In examining a society without an extensive bureaucracy and without our habitual (though confused) distinctions between public and private, it is necessary to look carefully at what appear to be voluntary, affective relations. The characterization of early vassalage as a ‘personal’ relation raises a number of problems. Sometimes it derives from the belief that vassalage had originated in a ‘familial’ and aristocratic, rather than a political,

²⁶ La Fontaine, ‘Land and the Political Community’, 95–6, citing earlier work.

²⁷ Brunner, *Land und Herrschaft*, 102–25, 202–5. The problem of distinguishing governmental from property relations is discussed in chapter 3.

²⁸ Nelson, ‘Kingship and Empire’; Reynolds, *Kingdoms and Communities*, 293, 325.

²⁹ Fortes, ‘Ritual and Office’, 58–60; Nelson, ‘Legislation and Consensus’, esp. n. 80; Reynolds, *Kingdoms and Communities*, 324–5.

system.³⁰ It is true that, in the earliest sources we have, *vassi* seem to be servants or dependants of fairly low status, but those we know most about were royal servants whose job was essentially to do with government: it was thus surely about politics, while everyone would presumably agree that the people whom historians call vassals and who they think held fiefs, sometimes with rights of jurisdiction, in the ninth century and later were part of some kind of political system. There is no reason to see their relations with their kings or lords as marked by having originated from an earlier relation that was more definably 'private' or 'personal'.³¹ More important is the tendency to contrast 'personal' with 'territorial' relations. This is also ambiguous, since 'territorial' is a word to which medieval historians seem to attach a variety of connotations. The cases (as in 'territorial prince', 'territorial principality') in which it is used for units of government that are defined chiefly by not being kingdoms are not directly relevant here, though they are historiographically interesting. More important is the use that contrasts the originally purely 'personal' relation of lord and vassal with the 'territorial' relation that was created by the grant of fiefs. Still more important, because of the wide range of its implications, is the contrast between the early medieval kingdom or lordship that was held together by purely interpersonal bonds (what German historians call the *Personenverbandsstaat*) and the later 'territorial state', in which the government had authority over everyone within a fixed territory (*institutioneller Flächenstaat*).³² The contrast here seems unsuitable for settled agricultural societies in which authority over people must imply authority over land. The definition of boundaries, the degree of 'institutional' or bureaucratic development, and the completeness of authority are matters of degree which do not fit well into a contrast between personal and territorial. A good many medieval historians do not merely distinguish the 'feudal state', with its personal bonds, from the modern administrative state. They prefer not to call medieval polities states at all. Since few who reject the word attempt any definition of the state that does not conflate it with modern state, nation state, or sovereign state, it is hard to know whether they do so because medieval kingdoms and lesser lordships lacked fixed boundaries, effective central authority, sovereignty (however defined), or modern technologies of communication. Most discussions, moreover, tend to confuse words (e.g. the use of *status* and its derivatives), concepts (the supposed modern concept of the state), and phenomena. A definition of the state as

³⁰ Le Goff, 'Rituel', 394.

³¹ Lewis, *Social Anthropology in Perspective*, 359.

³² Mayer, 'Ausbildung'; Reuter, *Germany*, 208; Kroeschell, *Deutsche Rechtsgeschichte*, i. 278, 298, gives a succinct summary, and cf. *ibid.* ii. 157-9 on the use of *Herrschaft* as an alternative to 'state'.

a phenomenon, however conceptualized by those within it, that will serve for comparative use seems desirable. I offer the following, which is based on Max Weber, with some modification: a state is an organization of human society within a fixed territory that more or less successfully claims the control (not the monopoly) of the legitimate use of physical force within that territory.³³ If one were to deny statehood on this definition to medieval kingdoms or lesser lordships in general, or even to those of the early middle ages, on grounds of the fluidity of their boundaries, the ineffectiveness of control within them, the autonomy, or partial autonomy, of lesser authorities within them, or their lack of sovereignty (however defined), one would have to deny it to a good many modern states as well.³⁴

When medieval polities or societies are seen in terms of non-Marxist feudalism, a further implication of emphasis on the 'personal' nature of the bonds that held them together seems often to be that the relation of lord and vassal is thought of as close, affective, and interpersonal. It is surely misleading to define any widespread relation in terms of the sentiments it is supposed to embody. One would not define marriage by the mutual affection that husbands and wives are supposed to feel or by the promises they make in ceremonies that are enshrined in tradition. When a king or lord had many vassals his relations with each of them cannot have been all that close. If vassalage was widespread it would be diluted. It could not therefore be the strongest bond in a society. When it lasted through generations it must have become more formal. In such circumstances—indeed in most circumstances—it is likely to have been less affective and less mutual than modern ideas of feudo-vassalic relations suggest or even than the medieval texts themselves imply. It seems to be quite common for humans to represent obligatory and subordinate relations as more affective and interpersonal than they may appear to an analytical observer. Rulers find it useful to call on the devotion of subjects they have never met and probably care little about; literature is full of human-interest stories about encounters between kings and peasants; and medieval academics rationalized and moralized the obligations of tenants to landlords in terms of the military ideals they had been brought up to admire. All this may be an example of a dominant ideology at its conspiratorial work, but it is not clear that the subordinates always rejected it. People often like to represent their relations with distant superiors as personal and affective, and to think that the person at the top cares about them. That people in the middle ages were brought up to obedience and loyalty as well as other military virtues

³³ Weber, *From Max Weber*, 78 ('Politics as a Vocation'), Reynolds, *Kingdoms and Communities*, 323–4.

³⁴ For sovereignty in relation to layers of authority, see next section and chapter 3.3.

is highly relevant to the understanding of their society, but it does not mean that the society really depended only on a mass of individual, dyadic, interpersonal, and affective relations. The element of prescription in the sources needs analysis, not merely because prescription is not description and rules are always broken, but because the form and emphasis of the prescriptions may not reveal the full range or nature of the norms that mattered.

The idea that vassalage was essentially defined by its rituals of initiation also needs to be looked at rather more carefully now than seemed necessary when ideas of feudalism first developed. A society without printing or broadcasting needs to use its rituals to confirm and inculcate its values more urgently than does a modern society, but some of the traditional belief that ritual is the mark of 'primitiveness' derives from a primitive and culture-bound knowledge of other societies. We notice rituals more when they are strange to us.³⁵ Some of the apparently rigid ritualism of early medieval society turns out to be an illusion of crude evolutionary thought: it is hard now to see how anyone who had been in a modern lawcourt and read some of the reports of early medieval disputes could think that their procedures were more ritualized or rigid than ours.³⁶ It is, nevertheless, highly probable that most appointments to office, agreements to perform duties, or transfers of property in the middle ages required some kind of ritual, just as they do in literate societies. The problem is to know which occasions needed rituals, what the rituals were, and how far they were different from rituals used for other purposes. From the late seventh or early eighth century we have a formula for the initiation of an *antrustio*—*antrustiones* being generally taken as prototype vassals—but none for that of a *vassus*. From the Carolingian age there are many allusions to commendations and oaths and a few descriptions of famous cases of rites of submission which may or may not be typical of the rituals of routine vassalage. Since these examples included features such as kneeling and joining hands (though not kissing) that recur in the better-recorded rites of the twelfth century and later, and are sometimes alluded to in the intervening period, it may be right to see them as part of a continuous and coherent tradition.³⁷ All the same, the honesty of scholarship requires us to note the variations that occurred later (including, for instance, about kissing), and to admit that we have little if any idea what, if any, ceremony was under-

³⁵ Moore and Myerhoff, *Secular Ritual*, 3–24; Goody, 'Against "Ritual"'; Goffman, *Interaction Ritual*.

³⁶ Davies and Fouracre, *Settlement of Disputes, passim*; Reynolds, *Kingdoms and Communities*, 23–34.

³⁷ On kissing: Chénon, 'Le Rôle juridique'; Major, "'Bastard Feudalism" and the Kiss'.

gone either by the ordinary Carolingian *vassus* or by those whom historians call vassals in the post-Carolingian period.

Bare references to 'homage' or 'commendation' cannot be used to fill in the gaps in the evidence. Neither word always referred to a rite or ceremony: both could indicate the initiation of a range of different relations, or the relation itself, without any indication of a rite. Even when someone is said to have commended himself or been commended 'into the hands of' another, we cannot be sure that this implied the ceremony that Bloch described. Human beings use their hands a lot and use them in different ways. Sometimes, having language as well as hands, they refer to them in metaphors, as we know that they did in the middle ages.³⁸ Nor, even when we have evidence that suggests a ceremony, can we assume that it was peculiar to those whom we would consider vassals. People who look like peasants seem to have undergone rather similar rites on occasion. Given that anything to do with more important people is more likely to have got into surviving records, the comparative rarity of references to commendation or homage in connection with peasants is not evidence that people who used the words (or rather their vernacular equivalents) thought of their feudo-vassalic senses as more obvious or primary. In so far as ceremonies that involved touching or taking hands and swearing oaths seem to have been common in medieval society, and to have been practised through many social and political changes, it seems likely that they meant different things to different people at different times.³⁹ The rites of subordination or submission that people performed when they entered the service of a king or other lord, or when they received office or land from him, need to be studied, but they cannot be studied if they are lumped together as a single, uniform ceremony of commendation or homage that was peculiar to that relation and that we have already defined because we assume we have understood it.

The element of voluntary and individual contract in vassalage also needs more critical examination and analysis, especially since we have evidence of any kind of agreement, contract, or rite of initiation in only a minute fraction of cases before the twelfth century. Assuming a significantly common element in these and seeing it as distinctive of feudo-vassalic relations in general, while ignoring other contractual or possibly contractual relations of the time, looks peculiarly unwise when one looks at other stratified societies. Barrington Moore suggests that some kind of contract between rulers and subjects, dominant and subordinate groups, is implied or

³⁸ See Du Cange, *Glossarium*, v (1), 248–9; Du Cange's examples under *investitura*, listed by Le Goff ('Rituel', 415–19), include cases where land is being transferred with full rights, not in fief.

³⁹ Maurice Bloch, *Ritual, History and Power*, 79.

assumed to exist within all stratified societies, and that 'the first, perhaps most essential obligation of the ruler is protection, especially protection from foreign enemies'.⁴⁰ The idea of contract, however vaguely or explicitly articulated in myths, ceremonies, traditions, or formal constitutions, serves both sides. It puts pressure on rulers to behave, while it suits governments to depict their subjects, especially their more dangerous and powerful subjects, as serving willingly, and to make it a matter of honour, dignity, and freedom for them to do so. In many societies without powerful bureaucracies it is common to stress the element of mutual obligation in relations which in reality leave little room for manoeuvre either on one side or on both.⁴¹

If it is true that medieval society was bound together by a mass of individual and explicit contracts between superiors and inferiors, rather than by the more common implied and collective contracts, then that would certainly make it distinctive, but to conclude that it was we would need to establish the prevalence of individual contracts and the absence of collective bonds. That has not yet been done. The suggestion, for instance, that all, or even most, of those who owed *commendisia*, *commenda*, *commanda*, et cetera in twelfth- and thirteenth-century France, or their ancestors, had, 'at least in principle', made some sort of individual submission or request for protection, is based on a priori ideas about the individual contractual basis of feudal ties in general and 'commendation' in particular. If people under *commendise* sometimes complained that their lord was not protecting them in return for the dues that he received from them, that need not imply that their relation was modelled on the feudo-vassalic contract.⁴² It may show nothing more than a sense of the duties of government that is so common in traditional societies. One could, of course, argue that, while free peasants could have been put under *commendisia* without their consent, noble vassals would have expected to give it. But that only takes one back to the problem of drawing a line between those whom one considers to have been nobles and vassals and those that one does not: some of the people who are recorded as doing homage and taking oaths of fidelity before about 1200 look very unlike noble vassals.

It may be that most people whom we choose to call vassals before the

⁴⁰ Moore, *Injustice*, 20, and 15-25, 438, 503-11; cf. e.g. Cohen and Middleton, *Comparative Political Systems*, p. xiv and various of the essays, e.g. that of Beattie at pp. 361, 364-5; Mason, *Patterns of Dominance*, 16-19; Lewis, *Social Anthropology in Perspective*, 313-15.

⁴¹ Mauss, *The Gift*, 3, 54-9; Gluckman, *Law, Politics and Ritual*, 48.

⁴² Duparc, 'La Commendise'. The variations of meaning between *commendare* and *commandare* apparently started early (Du Cange, *Glossarium*, ii. 468, 471-2, 476; *OED*, iii. 539; Niermeyer, *Lexicon*, 212-17). Some of those who used both forms may from quite early have been thinking of *commendisia* in more coercive and less voluntary terms than modern ideas of feudal commendation imply.

thirteenth century had gone through a rite like what we call homage, made some sort of individual profession of faith to someone, or were otherwise bound by contract more than were the freer kinds of peasants, but the evidence for it is much weaker than traditional ideas about fiefs and vassals suggest. The degree of freedom in any individual contract in a stratified society is presumably affected by the social distance between the parties: in the middle ages nobles and free men must generally have made terms with their lords more freely than did peasants, but the terms must have varied a lot. Even great men did not always have much choice about doing homage to the king if they wanted to keep their position and property in his kingdom. Defending themselves against accusations of treason by saying they had never done homage or sworn fidelity did not generally get them very far. We not only have little evidence of the rites and contracts made between kings or lords and the mass of their subordinates before the twelfth or thirteenth centuries: we have no real evidence that people at the time thought of society as bound together, or supposed to be bound together, primarily by individual contracts of the kind presupposed by modern ideas of medieval feudalism.

Fidelity, the supposed counterpart and consequence of the vassalic bond, is as hard to make specific to feudo-vassalic relations as is the idea of individual contracts. All stratified societies demand some kind of loyalty and obedience from subordinates just as they demand or hope that rulers will obey the rules and keep faith with their subjects. Although medieval lawyers liked to derive the word *feudum* from *fidelitas*, the idea of fidelity does not look very specific to feudo-vassalic relations any more than calling it *Treue* makes it look specific to Germanic tribes.⁴³ It was not only vassals who were supposed to be loyal and obedient—that is, to be *fideles*. Different kinds of loyalty, service, and obedience were, of course, demanded from different kinds of people. The investigation of these, comparing them with each other, and with the obligations imposed on people in other societies, is not promoted by using words like fidelity, *Treue*, *fides*, or *fidelitas*, as if they had obvious and established connotations or were culture-specific.⁴⁴ Labels do not encourage analysis.

The biggest problem of all about the concept of vassalage, as about its ceremonies, is that it is such a composite construct. It seems to have been devised first from the study of the *Libri Feudorum* and the later academic commentaries on it, in which vassals are simply fiefholders. Study of Carolingian records, especially the capitularies or records of legislation,

⁴³ Kaminsky and Melton in Brunner, *Land and Lordship*, pp. xxviii, xxxiv, and nn. 58, 75.

⁴⁴ For early uses of *fides*, *fidelitas*, and *triuma*: Green, *Carolingian Lord*, 67–9, 82, 117–26; cf. Kroeschell, 'Die Treue'.

then confirmed the belief that the *Libri* reflected older arrangements, and that vassals, like fiefs, had originated in the early middle ages. A good deal of the idea of the values and norms of vassalage that has since been worked out comes in fact from the records of legislation recorded in Carolingian capitularies. Ganshof, for instance, like earlier scholars, often seems to treat the capitularies as embodying norms that were generally accepted at the time.⁴⁵ But the legislation in the capitularies often dealt with particular political circumstances and the references to *vassi* there were often, though not always, to royal *vassi*. There is sometimes no reason to assume that similar rules applied to the *vassi* of other lords or that what was forbidden in particular royal laws was generally considered wrong. It cannot be right to construct a general picture of something we call vassalage by bringing together all the rules of Carolingian legislation about *vassi* with the rules stated or implied by later academic lawyers, for whom vassals were simply the holders of a particular sort of property, and with observations on the behaviour of people in the intervening period whom historians choose to call vassals. How the change of political and social conditions in tenth- and eleventh-century France affected norms and values it is very hard to say, but imposing composite ideas of vassalage on the period—let alone on the same period in other countries where conditions were different—is not the way to find out. One cannot put together remarks about allegedly arbitrary behaviour of lords in the early eleventh century with the apparently greater rights enjoyed by people we call vassals a hundred years later so as to deduce either that rules were becoming stricter or that generally accepted ideas were changing. Nor is it right either to castigate or to excuse early eleventh-century counts whom the historian considers to have been vassals of the king for not fulfilling the obligations that historians have since attached to vassalage.⁴⁶

It would be foolish to deny that components of the modern construct of vassalage and the values attached to it existed in the early middle ages: mutual loyalties between lords and their followers were clearly important, and in a good many cases the property of the subordinates was subject to controls or obligations to the lord. But we need to look more closely at the relations between superiors and inferiors in the context of other relations and values, both interpersonal and collective. Above all, I suggest, we need to get away from the word vassal, especially where it is not used in the sources. Our job is surely to try to distinguish and analyse the relations of the time, rather than to put crude labels on to them, or duck the issue by

⁴⁵ e.g. Ganshof, 'Les Liens', 159, 163-6; 'L'Origine', 56-9; Brunner, *Deutsche Rechtsgeschichte*, ii. 349-68; Stutz, *Herrenfall*, 65-9.

⁴⁶ Poly and Bournazel, *Mutation*, 147-54; Guillot, *Comte d'Anjou*, 14-18.

adding vague glosses to the label like 'men who were bound by some fairly honourable tie of subordination'.⁴⁷ The concept of vassalage, I suggest, conceals at least half a dozen different types of relation that need to be distinguished. They are those of ruler and subject, patron and client, landlord and tenant, employer and employed, general (or lesser commander) and soldier, and something like a local boss or bully and his victim. Distinctions between those who serve for wages, or for their keep, or just in hope of favours to come, also need to be made among those who might be considered either clients or employees.⁴⁸ There may well be other distinctions that I have not thought of, while any of these could, of course, be combined together, but they were not invariably combined. The idea of the 'union of vassal and fief' as introducing the age of 'classic feudalism' is at best little more than a neat but rather meaningless phrase. Mitteis was at pains to point out that even in the central middle ages there were vassals without fiefs and fiefs for which no personal services were owed.⁴⁹ To judge from the carefree way that historians use the word vassal, his reservations have been largely ignored.⁵⁰ 'Vassals' is used as a matter of course to refer to those they think held fiefs, but not only to them: it often seems to cover whole armies or any free subjects or subordinates of a lord.⁵¹ If it were always used as generally as that, with no implication that the subordinates were bound by feudo-vassalic ties, the reader could adjust to it, but that is by no means the case. The idea of the 'union of vassal and fief' was useful because, providing it was not looked at closely and all distinctions between words, concepts, and phenomena were ignored, it served to bridge the gap between Charlemagne's grants of benefices and the stage when the academic lawbooks called fiefholders vassals. Historians could go on writing about medieval lords and vassals as they had since the seventeenth century without having to rethink what they meant or might be thought to imply.

My list of the possible contents of the relations subsumed under the word vassalage is intended for consideration, testing, and improvement.

⁴⁷ Reynolds, *Kingdoms and Communities*, 223, where the gloss is made even more inappropriate and meaningless by being attached to vavassors as well as vassals.

⁴⁸ Stephen Church suggested this to me in talking of his work on King John's knights in England.

⁴⁹ Mitteis, *Lehnrecht*, 129–34, 518–31.

⁵⁰ Ganshof, 'Note sur les origines', 174, mentions it but does not explore the implications. Bloch, *Feudal Society*, 169, and Faussner, 'Verfügungsgewalt', 404 n., seem exceptional. The 'landless vassals' in Bloch's example are, presumably, the knights who hold no fiefs from their liege lords, which leaves the exact character of their relation unclear: *Rec. Philippe Auguste*, no. 229.

⁵¹ For an example, used in passing and with no detriment to the subject of the book: Southern, *Saint Anselm*, 8: Anselm's letter (*Epistolae*, col. 102) refers to his *parentes* as Humbert's *homines* and *consanguines*. The 'feudal imagery' referred to later (*Saint Anselm*, 221–7) and more significantly also seems to refer to more general or other relations of subordination (see esp. Anselm, *Opera*, ii. 118).

The words I have chosen are not intended to be precise or technical and there would be no point in elaborating precise definitions of them or looking for synonyms in the sources. The point is to suggest that, instead of starting from the premiss that we have a relation called vassalage and that we know what it meant, it might be more profitable to examine the evidence and see if we can identify what kinds of relation we have in any given case. Having distinguished the kind of relation that is at issue, or the combination of relations, we might then try to assess the element of coercion or control that entered into it. How great and how exclusive was the jurisdiction of the superior over the inferior and how far did it include coercive authority? Was it, in other words, a matter of political control and domination? We might also analyse relations according to the status of each party, the social distance between them, and the amount and type of personal contact that was involved both between the superior and his subordinates and between the subordinates themselves. Again, there may well be other points to investigate, but until we have done at least something along these lines I suggest that the words vassals and vassalage imply conceptual black holes that are liable to swallow up any historical scholarship that ventures into them.

2.3. A substitute for the concept of vassalage: some medieval norms and values

The values that historians traditionally associate with vassalage need, I suggest, to be seen in a wider context of other relations and other norms. Although I do not believe that all medieval people in all countries, periods, and parts of society shared the same attitudes, this section sets out what I consider to be broad cultural values that I think were probably quite widely shared, at least among those free men and nobles who are my concern here.⁵² While, however, I believe that they shared a good many values and norms, I do not believe that their norms formed a simple, coherent, and consistent whole, any more than do the norms of other comparably complex societies. Norms always conflict: if they did not there would be less need for them and for the resolution of conflicts between individuals and groups. One major source of conflict in medieval society, apart from what people then called sin, was that medieval culture embodied a belief in hierarchy, obedience, and loyalty on the one hand and a belief in custom,

⁵² Scott, *Domination*, offers useful cautions about the people at the bottom, though his suggestion about the discouragement of assemblies etc. (p. 63) does not suit medieval society while I am not sure I would know, in the medieval context, where to draw a line under the ruling class (p. 68).

immanent justice, mutuality of obligations, and collective judgement on the other.

Inequality in this world seems to have been the accepted premiss of almost all social and political thought in the middle ages. Medieval society was highly unequal. People owed obedience and loyalty to their immediate superiors or lords, and there does not seem to be any reason, beyond what derives from largely retrospective conjecture about Germanic barbarians, for supposing that that was the only or chief obedience and loyalty that they owed. Except in moments of acute crisis and breakdown, which may have been less common than old stereotypes of 'feudal anarchy' imply, there was always some kind of hierarchy of authority, however ramshackle, above that level. Typically its top was a king. Though the earliest barbarian kingdoms had too many kings to be called monarchies, kingdoms with single kings soon emerged. Where kingdoms went on being divided for a while, joint kings nevertheless normally divided their spheres of authority in such a way that each king stood at the top of some sort of political hierarchy or power structure. Throughout the middle ages it was a king, not some lesser kind of lord, who was the archetype of a ruler. Emperors were a cut above kings, and dukes or counts might in practice be more or less independent of them, but kingdoms were seen as the typical—indeed the highest natural—units of government and every kingdom was seen to need a king.⁵³ The normal structure was neatly expressed by that supposed theorist of feudo-vassalic values, Fulbert of Chartres. As he remarked, in what looks like an uncontroversial premiss for an argument, no kingdom could exist without three things: a land, a people, and a king.⁵⁴ All kingdoms, whether the king was described as king of a people or king of a land, involved both people and land. In agricultural societies power over people meant power, however indirect or mediated, over their land.

The assumption that kings were envisaged by contemporaries merely, or primarily, as overlords, seems to be just that: an assumption based on general ideas about feudalism.⁵⁵ It would be hard to prove from the evidence about most kingdoms most of the time. In the early middle ages kings had a different relation with their subjects from that which nobles had with their followers.⁵⁶ Legislation was always a matter for kings, and they legislated about the relations between nobles and their followers. Some who

⁵³ Nelson, 'Kingship and Empire'; Reynolds, 'Medieval *Origines Gentium*' and *Kingdoms and Communities*, 255–302, 319–23, 330–1.

⁵⁴ Fulbert, *Tractatus contra Judaeos*, 307. Cf. La Fontaine, 'Land and the Political Community', 95–6.

⁵⁵ Historians seem quite often to use 'overlord' for an immediate lord. This is confusing and, on the feudo-vassalic principles they seem to be following, tautological.

⁵⁶ See the analysis of oaths by Odegaard, 'Carolingian Oaths'.

did not issue formal law-codes nevertheless occasionally made quasi-legislative pronouncements in their judgements on particular cases with an authority that surely belonged to them as kings. For what words are worth, expressions like *superior dominus* seem to have been less common in medieval sources than in the later historical literature. Eike von Repgow, who wrote about Saxon law in the early thirteenth century, refers to the *superior dominus* or *overe herre* when he needs to refer to the lord with jurisdiction over the fiefholder's lord, while *superior dominus*, with *sovereign seignour* as the French equivalent, was used in 1291 during the Scottish succession dispute to denote the relation between two kings.⁵⁷ 'Suzerain' seems to be late and may have come into use as a term of art in the late medieval or post-medieval law of fiefs.⁵⁸ I do not have the impression that any of these words was generally used before then to express a king's relations with his own subjects: he was simply king. Kings might refer to those they ruled as their men, their *fideles*, or their subjects (*subditi*). Many whom they needed to address were those whom historians call royal vassals or tenants in chief, but not all. The words clearly had wider scope, and if they applied to some who were the men, *fideles*, or subjects of lords below the king, that did not automatically mean that they were not the king's men too. The fact that the words *dominus* and *senior* were used both of kings and lesser lords need not mean that the king's authority or *dominium* was seen as similar to theirs. God was a *dominus*, but that did not make his *dominium* over the world comparable either to the political authority or to the mere property rights enjoyed by a human lord. *Senior*, for what such distinctions are worth, may emphasize status, while *dominus* has more connotations of power, but that may be fanciful. The differing terminologies that developed in different vernaculars might reflect political or social differences but it would probably be hard to prove.⁵⁹ The distinction between the king as king and as 'feudal lord', confidently as it is drawn in modern works, is hard to find in the sources before the age of academic and professional law, and is not always very obvious then.⁶⁰

Balancing hierarchy on the other side of the equation of conflicting norms was justice. Both kings and other lords had obligations to those who were subject to them. Their obligations were not created by oaths or cere-

⁵⁷ Eike von Repgow, *Auctor vetus*, e.g. 75, 78 (I. 57, 71) and cf. *supremus dominus*, *ibid.* 112 (II. 69); *id.* *Sachsenspiegel Lehnrecht*, e.g. 45, 58 (25. 1, 38. 1) and *overste herre*, *ibid.* 34 (14. 3, 71. 6); *Edward I and the Throne of Scotland*, i. 121.

⁵⁸ It is not in Du Cange, Niermeyer, or Godefroy. The first example in Littré, *Dictionnaire*, vii. 644, is from Montesquieu. The examples in *OED*, xvii. 332 are modern, though see *ibid.* *sub* suzerainty for a fifteenth-century case.

⁵⁹ Ganshof presumably based his suggestion (*Feudalism*, 69–70) that *senior* was the general term and *dominus* 'rather rare' on the French vernacular usage.

⁶⁰ Niermeyer, *Lexicon*, 957, seems to read it into some of the sources listed under *senior*, no. 9.

monies, whether ecclesiastical or secular, though they were reinforced by them. Every ruler, everyone in a position of authority from the emperor or king down to the head of a household, was supposed to rule justly and according to custom. Every unit of government was assumed to be a community with its own customs and every ruler was supposed to consult with the senior members of the community about what was customary, right, and just. Those senior members who had the primary right and duty to declare the community's custom and advise its ruler were men who deserved respect for their high social status and wealth, and generally also for their age and the length—or supposed length—of time that their families had been prominent in the community. In a kingdom they would be its greatest nobles and landowners, together of course with bishops and abbots, but in a village they might well be no more than the more prosperous peasants: either way they should be consulted. Although for both normative and pragmatic reasons kings needed to pay more attention to great nobles than lords of villages did to peasants, the difference was one of degree. In neither case, moreover, was consultation of the great supposed to exclude care for the welfare of the less. It was the duty of the great men of a community to speak on behalf of the less. On important matters the wider the consultation was, the better—though there was, of course, no need to consult women, children, or servants. The idea of the 'judgement of peers', as embodying the collective judgement of one's fellow subjects rather than the unilateral judgement of one's ruler, did not originate from the relations of lords with their warriors but from the relations of all lords with all subjects. At this stage it did not necessarily mean that the king or lord did not join in the judgement: hierarchy and authority needed to be balanced by consultation, not negated.⁶¹ Any ruler would meanwhile have closer links with individual subjects which would in practice impose greater obligations on both sides. These were often reinforced by individual agreements and oaths, but any ruler's primary obligation was supposed to be to the whole community he ruled. As for subjects, their obligation was to the powers that be, which were ordained by God.

Ideas of justice and custom made the obligations of rulers and subjects mutual, but ideas of hierarchy and obedience meant that the reciprocity was not equal. According to the thirteenth-century *Schwabenspiegel*: 'We should serve our lords for they protect us; if they do not protect us, justice does not oblige us to serve them,'⁶² but both in preaching and in practice the emphasis on the duties of obedience and the sin of rebellion was strong. When the subjects of Merovingian, Carolingian, and many later kings had

⁶¹ Cf. Weitzel, *Dinggenossenschaft*, 914–41.

⁶² Quoted Brunner, *Land and Lordship*, 200.

to take oaths of fidelity to them they might hope that the king would protect them but the oaths did not normally go into that. A subject's infidelity was liable to fierce punishment while, as Fulbert of Chartres saw it, a lord's would incur censure.⁶³ It would have been a brave *vassus* (or one with friends in a hostile kingdom near by) who would have tried to justify leaving the service of his king by accusing him of any of the offences that were listed early in the eighth century as justifications for leaving a lord.⁶⁴ If a ruler was unjust it was the job of the senior members of the community to remonstrate with him. At what stage lawful remonstrance turned into lawful or unlawful rebellion posed problems that could never be resolved within the traditional system of values. One thing was clear: the lower down the hierarchy you were the less it was your business to resist or even remonstrate. Submission did not save you from being caught up in a conflict of loyalties and duties if those above you quarrelled. There is nothing very unusual about that: conflicts of loyalty and authority occur in most societies.⁶⁵ When they happen people at the bottom are liable to suffer whatever they do and whichever side wins. People at the middling level, like those whom historians traditionally call vassals, subvassals, or rear-vassals, have more opportunity to choose, but that gives them more problems, if perhaps less suffering. As and when medieval governments became more systematic and effective, at whatever level that happened, choices tended to be pre-empted in all but exceptional circumstances. In England, for instance, the maxim that 'the man of my man is not my man' would have been nonsensical if put in the mouth of the king, while the German Eike von Repgow would have rejected it.⁶⁶ There can have been few places or times in which the maxim was obviously true at every level. It was the product of debate about real dilemmas, not a statement of an obvious truth.

Social status was clearly an important determinant of everyone's life chances, including, naturally, the chances of the kind of people whom historians call vassals. Vassalage is generally seen as a relation between people of noble, or at the very least free, status. Nobility and freedom, however, were much less clearly and consistently defined during the middle ages than they became later. We cannot understand the workings of the undoubted inequalities of the period if we interpret them like those of the Ancien Régime—let alone like those of textbook horror stories of the Ancien Régime. I suggest that we can best approach medieval society by seeing it as broadly divided into three categories—categories which, it

⁶³ Fulbert, *Letters and Poems*, no. 51.

⁶⁴ *Capit.* nos. 77 c. 16, 104 c. 8 (on its source cf. Ganshof, 'L'Origine', n. 52).

⁶⁵ Lewis, *Social Anthropology*, 313–19, 359.

⁶⁶ Eike von Repgow, *Sachsenspiegel Lehnrecht*, 34 (14. 3).

must be emphasized, are not intended to approximate to the 'three orders' of some medieval classifications to which historians have recently paid a good deal of attention. The threefold classification proposed here is an entirely artificial construct for the purposes of my argument, though my reason for proposing it is that I think it bears some relation to the medieval evidence as I see it. The first or top category contained those whom historians generally call nobles—or, in England, nobles and gentry. They—or the laymen among them—were the kind of people who wore swords, rode horses, cherished a military ethos, and did not push ploughs but lived off those who did. The higher clergy and monks belong in the same category because they too lived off the plough-pushers without (officially) wearing swords or thinking of themselves as soldiers, except of God. The bottom category consisted of the plough-pushers, or rather, more broadly, of those who worked with their hands and bodies, owed rents and services to the top group, and could generally be described as more or less unfree peasants. In between came another category that probably included a sizeable proportion of the population. By and large these people did not actually push ploughs themselves, but they were more closely concerned with getting their own livings than the first group and supervised their own plough-pushers more directly. Many of them owed rents and services of various kinds to people in the first category, but their rents and services were lighter and less demeaning than those of people in the bottom one. While some of them rode horses and all probably carried arms, they were not trained and brought up to think of fighting as their job, their horses were less good than those of the top category, and their arms were less effective and less valuable. Most people in this category would never have been called nobles, but many of them would at one time or another have been called free. Whatever they were called in surviving sources, many of them were free enough to make agreements, however unequal the bargain, about the services they would owe for their land, and then to take their complaints and disputes to courts not presided over by their lords. Some of them might be ranked by historians as peasants, but we have to remember that that word represents a modern construct almost as much as my classification does. The sources sometimes use the word *rusticus* or something similar, but in many cases it is their modern reader who decides who was a peasant.

The problem is not only that each of these categories, and especially the top and middle, was very wide and contained people who would not have considered themselves remotely equal in social or political terms, but that the boundaries between them are so vague. Medieval society in most areas and at most times looks like one of infinite gradations or layers rather than

one of wide social gulfs. A simile that I once used of English urban society may be useful here, since it seems to apply almost as well to medieval society at large: the layers of society were more like those of a trifle than a cake: its layers were blurred, and the sherry of accepted values soaked through. Taking the whole of society, however, as distinct from that within little English towns, one has to see it as a very rich and deep trifle with a lot of layers. Similes and metaphors are dangerous because they are not falsifiable. This one is simply meant to illustrate and emphasize the point that the boundaries between nobles and peasants, or between free and unfree, were less clear than most discussions of fiefs and vassals imply. In the earlier middle ages legal and political conditions made it impossible for any definitions of nobility or freedom that anyone might make to be consistently maintained in individual lordships or kingdoms, let alone in 'feudal society' as a whole. Nobility was a matter of wealth, prestige, and life-style—and, of course, as we meet it in the sources, it lay in the eye of the beholder. The petty local scribe who listed witnesses to a charter might describe someone as noble who would be nothing of the kind to a royal clerk. In the absence of full and reliable records 'nobility of birth' or 'nobility of blood' might be equally subjective.

The uncertainties are illustrated by the story of Stabilis, who was a man 'of servile condition' according to the monk of Fleury who wrote it in the eleventh century, perhaps seventy years or so after it is supposed to have happened. Stabilis left his home close by the abbey and settled near Troyes, where he made his fortune. He did well enough to keep horses, hawks, hounds, and servants, to marry a noble wife, and to give up paying the dues (*census servitutis*) that the monks of Fleury thought he owed them. When the prior of a nearby dependency of the abbey tried to claim the dues Stabilis protested his liberty. The case came before the count of Troyes and an assembly of nobles, but Fleury's representative was apparently unable to produce any conclusive evidence. Stabilis tried to avoid the judgement of battle that was decreed, presumably because of his pretensions to nobility, by demanding an opponent of equally free status (*ingenuitas*). The abbey produced a champion who proclaimed himself free and of noble descent, but the duel was made unnecessary by the miraculous intervention of St Benedict, before which Stabilis capitulated.⁶⁷ The case suggests that it was difficult for a man to prove his freedom from a lordship which had a long arm to reclaim him and the prestige to persuade the élite of the relevant judicial assembly (with or without a miracle) to approve its claim. It also suggests that in this area at least there were no very clear rules

⁶⁷ Certain, *Miracles de Saint Benoît*, 218–21.

or tests for proving nobility or freedom, but that in the last analysis it was freedom, or rather unfreedom, that mattered at law.⁶⁸

It is difficult to see how either nobility or freedom could have been defined at this period and in these conditions. Where wergelds (the values placed on people's lives according to their status) were in use, they could have provided a marker, but in England, where they still seem to have been used in the eleventh century, some contemporaries none the less thought of status in terms of wealth, standard of living, and particular obligations, rather than in terms of birth.⁶⁹ The rules they postulated also explicitly provided for social climbers. Doubts about nobility as a 'juridically defined status' do not mean that membership of a local élite was not useful at law: people locally thought of as noble would get better treatment from those who gave judgements on behalf of the local community. The provision in the emperor Frederick I's peace ordinance of 1152 that knights needed fewer people to help them clear themselves of charges of breaking the peace than did peasants probably reflected older, if less formal and consistent, practice.⁷⁰ People of yet higher rank, who not merely wore swords and rode war-horses but commanded others who did, had yet more legal advantages. They might be effectively in charge of the local application of custom and law. Depending on political circumstances, they might also rely to a large extent on being left alone by more powerful but distant lords. If the word noble were restricted to them it might be easier to say who was noble, but it would still not be very easy in the period before jurisdictions began to be properly classified and organized from above. In any case that is not how the word noble was generally used at the time. Before the thirteenth century at the earliest, anyone called noble in the sources may be said to have enjoyed a status which conferred legal privileges in so far as people locally thought of as noble would be likely to enjoy advantages in courts and assemblies. His advantages would come, however, from the power he wielded as an individual or from his membership of the élite that would be influential in courts and assemblies. That is a different matter from enjoying a legal privilege that belongs to a defined class or status group. One privilege that nobles do not seem to have enjoyed at this time was that of carrying arms, since that does not seem to have been regarded as a privilege or mark of status before the late middle ages. Peasants were more often called on to equip themselves for policing, defence, and

⁶⁸ For differing interpretations, as well as differing accounts of the source and content of the story: Arbois, *Hist. des ducs de Champagne*, i. 143; Bur, *Champagne*, 344; Flori, *L'Essor*, 55-6.

⁶⁹ Liebermann, *Gesetze*, i. 444, 456 (*Rectitudines, Gethinctho*).

⁷⁰ Some much earlier laws had related numbers of oath-helpers to the status of the accused, but others had not: *Leges Saxonum*, 56 (17); *Lex Frisionum*, 34-6 (1-13); Liebermann, *Gesetze*, i. 13-14, 50, 112-14, 464 (Wihtrud 20-1, Alfred 4. 2, Ine 54, Ath. 1).

military service than prohibited from having or carrying their equipment, though, of course, they might be in trouble if they swaggered about like nobles with expensive and showy arms. When efforts were made to discourage arms-bearing in the interests of peace they were often directed at people of higher status as well as at peasants.⁷¹ The anachronism of postulating rules about arms-bearing in a society where policing was a collective responsibility is matched by that of supposing that general rules about such matters could have been made or applied anyway.

The description of someone as free or unfree was in some ways as subjective and dependent on context in the earlier middle ages as the description of someone as noble. People were free or unfree from different things or to do different things at different times. Nevertheless, however variously and inconsistently the line between freedom and unfreedom was drawn, it seems to have needed to be drawn more frequently before the later middle ages than was the line between noble and non-noble. *Stabilis* was defeated because he was unfree. That he had claimed to be a noble made his impudence (as the monks saw it) all the worse, but it was the issue of freedom, not that of nobility that mattered. When freedom was a question of the right of individual peasants to leave their holdings, sell them, or resist the imposition of new dues, it was of practical concern both to them and to their lords. Being counted as free would mean first of all having the status to feel able to protest in one's lord's court and hope that people of higher status in the assembly would support one. After that it would mean being able to take one's case elsewhere. Members of my middle category would be more likely to achieve that than would members of my bottom category. But within that middle category were many people whose status must have been doubtful, though the doubts might only appear when, for instance, someone tried to leave or sell up or when the lord imposed dues that people were bold enough to resist.

Consistent definitions of both nobility and freedom depended on the reasonably consistent application of uniform rules. That came with the spread of more systematic and consistent law and of more systematic and bureaucratic government, whether at the level of a local lordship, a county or province, or a kingdom. In England the definition of freedom followed the establishment of a system of royal courts with wide jurisdiction in the later twelfth century. The royal courts were interested in prescribing tests for unfreedom because freedom was needed for access to the courts.⁷² Nobility mattered less. Though English nobles naturally had many advan-

⁷¹ See index: military service of peasants, and the sources cited (only for Germany) by Fehr, 'Das Waffenrecht'.

⁷² Hyams, *Kings, Lords, and Peasants*.

tages and though earls and barons, for instance, began in the thirteenth century to claim to be judged only by their peers—that is, each other—the royal government was strong enough to be able to avoid granting them significant exemptions from general obligations. Elsewhere, although bureaucratic record-keeping and more expert law made definition more possible than it had been, more dispersed jurisdiction left decisions about freedom and unfreedom largely to local courts. The definition of nobility came under the eye of professional administrators and lawyers sooner than did that of freedom. In twelfth-century Italy academic lawyers decided that fiefholding implied nobility, and this idea was reinforced by the association that appeared there at much the same time between fiefholding and the possession of rights of jurisdiction. A similar link between fiefholding and nobility appeared north of the Alps, partly as a result of influence from academic law but partly because of the varying workings of government. In France the demands of the royal government were becoming heavy enough by the late thirteenth century to make people with the status and influence to claim privileges want to secure exemption from at least some of those demands. Since most people with status and influence were normally thought of as nobles, nobility became a qualification for privileges. Gradually rules began to be worked out and elaborated to decide who was noble.⁷³ In Germany royal demands for military service inadvertently forged a link between benefice-holding and military status in the twelfth century, even before the word *feodum* had come into general use, but political conditions there from the later thirteenth century on must have made the formulation of general rules about qualifications for nobility unnecessary. Late medieval nobles apparently dominated the assemblies (*Landtagen*) of the principalities in which they lived, and claimed, for instance, exclusive rights to conduct feuds, but decisions about the individuals who qualified for such privileges presumably still depended on the local sense of status rather than on anything that could be called legal definitions or rules of law.⁷⁴

The attempts at definition at each level that we find from the thirteenth century on were made in quite different political and legal circumstances from those when nobles or free men had helped themselves and their friends to preferential treatment. Formal legal privileges were not the product of weak government—‘feudal anarchy’—but of government over both great and small that was effective enough to invite demands for exceptional treatment. Status mattered equally in both the old world and the

⁷³ Contamine, *La Noblesse*, 32–5; cf. Lerner, *Italy in the Age of Dante*, 83.

⁷⁴ Conze, ‘Adel’, 14–15; *Handwörterbuch*, i. 49–50.