CHAPTER 1

The *Libri feudorum* in Modern Historiography

No lawbook has stirred up so broad a debate involving modern ideas of medieval society as has the *Libri feudorum* (the 'books of fiefs', hereafter LF). This is even more remarkable since until the 1990s the LF were part of the relatively narrow field of studies of the feudal law of Italy; the tracts that constituted the earliest known version of this collection were composed in Lombardy about 1100 and the collection was implemented and stabilised in northern Italy in the following one and half-centuries. After an initial period of irregular textual adjustments, in the mid-thirteenth century a standard version was established and eventually copied at the end of the new editions of Justinian's Novels, then known as the *Authenticum*. This step was pivotal, as it is the only example of a body of legal texts deeply anchored in local custom to be attached to the *Corpus iuris civilis*, against all the dogmas of the legal doctrine of the time, which saw in the immutability of the *Corpus* the cornerstone for its objective interpretation and thus for the very existence of law as a science. In this way, the book's content and its exegesis became extremely important for the creation of feudal law as a branch of Civil law and played a critical function in shaping modern notions of feudalism, over nine centuries of European history.

Seen today, the striking trajectory of these mostly customary texts would lend itself to the question of how a localised body of norms might relate to developments in society, politics, and law in the various contexts in which these norms were studied and discussed. Yet, a thorough debate over these matters, perhaps one of the most intense that medieval history has known in the past decades, had to wait until 1994, with the radical deconstruction proposed by Susan Reynolds in her famous book *Fiefs and Vassals. The Medieval Evidence Reinterpreted*. The book was explicitly inspired by Elizabeth Brown's provocative article, 'The Tyranny of a Construct' (1974), which conveyed the common 'unhappiness of historians with the terms "feudal" and "feudalism"' and outlined their implications, their contradictory definitions and uses.[1] According to Brown, after generations of inconsistent utilisation, the notion of feudalism had become overreaching, being too often unreflectively applied to medi-

1 Elizabeth A.R. Brown, 'The Tyranny of a Construct: Feudalism and Historians of Medieval Europe', *American Historical Review*, 79 (1974), 1063–1088.

eval society as a whole—a critique that paved the path for Reynolds's broader deconstruction.

As Chris Wickham has outlined, historians generally refer to three models of feudalism, which can be seen as ideal types.[2] Firstly, the quite simple but very broad Marxian notion of feudalism as a 'mode of production' based on the hegemony of the landed aristocracy over a subject peasantry, an intermediate stage between slave-economy and capitalism in which the working class was allowed to own, or at least possess, some means of production—a broad notion that has mostly served attempts at comparisons on large-scale economic developments.[3] Then, there is the more complex type proposed by Marc Bloch in *La société féodale*, which defined feudalism as a social structure—more precisely, as a form of social cohesion—resting on at least six elements: (1) the subjection of the peasantry; (2) the broad diffusion of service tenements in the form of fiefs in place of salaries; (3) the hegemony of a class of specialised warriors; (4) the diffusion of ties of obedience and protection binding man to man, which within the warrior class assumed the form of vassalage, sealed through a ritual of homage and investiture; (5) the fragmentation of political powers; (6) despite the previous point, the survival of other types of association, such as kinship and the state.[4] This model distinguished between a first feudal age (c. 850–1050) when these distinctive elements would emerge in an inchoate form, and a second feudal age (c. 1050–1200) characterised by their fuller development, especially in the heartland of the Carolingian empire. Later scholars directly inspired by such model would reject Bloch's bipartition and insist on the emergence of feudalism only in the eleventh century, following the weakening of central powers and the rise of new forms of rural lordship and landed aristocracy.[5]

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2 Chris J. Wickham, 'Le forme del feudalesimo', in *Il feudalesimo nell'alto medioevo* (Settimane di studio del Centro italiano di studi sull'alto medioevo, 47; Spoleto: CISAM, 2001), 15–46; Levi Roach, 'Feudalism', *International Encyclopedia of the Social & Behavioral Sciences*, 2nd edn., ed. James D. Wright (Oxford: Elsevier, 2015), 111–116. On the convergences between Bloch's epistemology and Max Weber's ideal-types: Otto G. Oexle, 'Marc Bloch et la critique de la raison historique', in *Marc Bloch aujourd'hui*, ed. Hartmut Atsma et André Burguière (Paris: Editions de l'EHESS, 1990), 419–433.

3 C. Wickham, *Land and Power: Studies in Italian and European Social History, 400–1200* (London: British School at Rome, 1994), 9–12; L. Roach, 'Feudalism', 112–113.

4 Marc Bloch, *La société féodale*, 2 vols. (Paris: Albin Michel, 1949), ii. 249–250.

5 Georges Duby, *La Société aux XIe et XIIe siècles dans la région mâconnaise* (Paris: Armand Colin, 1953); Jean-Pierre Poly, Eric Bournazel, *La mutation féodale* (*Xe–XIIe siècles*) (Nouvelle Clio, 16; Paris: PUF, 1980); Dominique Barthélemy, 'La mutation féodale a-t-elle eu lieu? (note critique)', *Annales. Économies, Sociétés, Civilisations*, 47/3 (1992), 767–777; Thomas N. Bisson, 'The "Feudal Revolution"', *Past & Present*, 142 (Feb. 1994), 6–42; Dominique Barthélemy and

The third, narrowest ideal type of feudalism, perhaps the most widely used one, was formulated by the Belgian legal historian François-Louis Ganshof in *Qu'est-ce que la féodalité?* (1944).[6] According to this model, feudalism would be an ensemble of institutions (homage, oath of fealty, investiture) sustaining and regulating the obligation of service from a free man, called 'vassal', towards another free man, the lord, and latter's promise of protection and maintenance of the former. This personal relationship is called 'vassalage'. On the other hand, the lord's obligation of maintenance takes very often the form of the grant of a 'fief'.[7] Heavily influenced by the German historian Heinrich Mitteis, who had recently reintegrated feudal law, traditionally relegated to the sphere of private law, as an integral part of European public law and state-making,[8] Ganshof used the feudo-vassalic institutions as analytical tools to assess the development of European states. In a methodologically questionable narrative, he traced the independent origins of vassalage and fiefs back to Merovingian forms of patronage and military clientele, between the Loire and the Rhine. In the ninth century, the Carolingians would incorporate the feudo-vassalic institutions as constitutional elements of the rising empire. However, only later, from the tenth to the thirteenth centuries, would the system of feudal institutions arrive 'at its completest development', through the reification of the fief and its definitive union with vassalage.[9] The 'classical age of feudalism' would be characterised by the loss of its primaeval uniformity, with diverse feudal laws emerging within different polities, but this did not dissuade Ganshof from elaborating some general principles of feudo-vassalic institutions, which allowed him to determine the development of feudalism in northern France, Germany, Burgundy, and England. Oddly enough, although he broadly relied on legal sources—such as *Glanvill*, *Bracton*, Beaumanoir, the *Établissements de Saint Louis*, the *Sachsenspiegel*—and although Italy had been part of the Carolingian empire, Ganshof thought that the Italian territory developed its own peculiar institutions, 'in which the Frankish contribution represented only a single element'; therefore, its feudalism had a character 'quite distinct from that which one meets elsewhere, and one cannot use, for the study of Western feudalism, various legal compilations put together in Lombardy in the

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Stephen D. White, 'Debate. The "Feudal Revolution"', *Past & Present*, 152 (Aug. 1996), 196–223; Timothy Reuter and Chris J. Wickham, 'Debate. The "Feudal Revolution"', *Past & Present*, 155 (May 1997), 177–208; T. Bisson, 'Reply', *Past & Present*, 155 (May 1997), 208–225.

6 François-Louis Ganshof, *Feudalism*, trans. Philip Grierson, 3rd edn. (New York, 1961).

7 F.-L. Ganshof, *Feudalism*, xv–xviii.

8 Heinrich Mitteis, *Lehnrecht und Staatsgewalt. Untersuchungen zur mittelalterlichen Verfassungsgeschichte* (Weimar: Böhlau, 1933).

9 F.-L. Ganshof, *Feudalism*, 59–62.

twelfth century, even though they are concerned with feudal relationships and were known under such names as *Libri feudorum* or *Consuetudines feudorum*'.[10]

Elizabeth Brown was concerned with all models of feudalism, and her critique radically questioned their usefulness as interpretative tools for historical analysis, preparing the terrain for Susan Reynolds's work. Less concerned with the broader models, but convinced as Brown that none of them was applicable to medieval evidence, she moved her attack mainly against the Ganshofian model, the narrowest and most widely diffused among historians and thus, in her view, the most pernicious and difficult to eradicate. To that effect, Reynolds pushed the boundaries of Brown's arguments by deconstructing not only feudalism as a notion but also its building blocks, fief and vassalage. These two notions, at least in the meaning traditionally attached to them by historians, would not be medieval but post-medieval artefacts which from the early modern era onwards have been deceptively projected onto the Middle Ages as a whole.

To demonstrate the 'danger of starting from assumptions about the primacy of feudo-vassallic relations and then fitting the evidence to the assumption', she sketched how the origins of this distortion lay in early modern France, where influential legal historians such as Charles Dumoulin and François Hotman gave rise to the conviction that fiefs were a distinctive element of the Frankish empire—an idea that would persist up to Ganshof and beyond.[11] As I will try to show, according to Reynolds this interpretation was the outcome of a nationalistic effort to explain the glory of the early medieval past of France through notions derived from the LF and their exegetical literature, a view that quite strikingly stuck within the main European historiographies, spreading the belief that vassalage and fiefs, and of course feudalism, were born between the Loire and the Rhine.

This deconstruction of feudalism was very timely, as it can be contextualised within a broader trend of revisionisms concerning social and institutional change and continuity in the transition from late antiquity to the early Middle Ages, and despite initial scepticism, it won to Reynolds's cause many medievalists. On the other hand, her arguments that fief and vassalage were a by-product of a new law emerging from the twelfth century onwards, based on the LF and their exegesis, therefore not reflecting the customary norms that regu-

10 F.-L. Ganshof, *Feudalism*, 60.

11 Susan Reynolds, *Fiefs and Vassals. The Medieval Evidence Reinterpreted* (Oxford: Oxford University Press, 1994), 3–14; S. Reynolds, 'Afterthoughts on "Fiefs and Vassals"', in S. Reynolds, *The Middle Ages without Feudalism. Essays in Criticism and Comparison on the Medieval West* (Farnham, 2012), 1–15, cit. at 7.

lated property law in the high and late medieval period, received much colder acceptance, especially by legal historians.[12]

To whatever degree one may agree or disagree with one or more of Reynolds's stances, one must accept how influential *Fiefs and Vassals* has been in renewing a dormant historiographical debate, drawing attention to highly relevant interpretive problems. One of them, perhaps the most discussed, concerned the LF, according to Reynolds 'one of the most extraordinarily neglected texts of the middle ages'.[13] Indeed, just like Ganshof, until 1994 historians of feudalism paid very little attention to this work,[14] even though legal historians across Europe had never actually ceased to study it, albeit either as a source of the *ius commune* or as a piece of Lombard legislation. As a matter of fact, in the years preceding the release of *Fiefs and Vassals*, two fundamental essays were published: Peter Weimar's scrutiny of the formation of the LF and their *glossae* apparatus (1990) and Gérard Giordanengo's comprehensive overview of the exegetical literature based on the LF from the twelfth to the fifteenth centuries.[15]

The fact that most modern scholars failed to notice the importance that the LF might have had in shaping the models they were using has made this composite collection of local custom and imperial legislation attached to the *Corpus iuris civilis* a stimulating object of study in the past few years.

12 A sketch of the reception of Reynolds's theses is provided in chapter 3.3.

13 S. Reynolds, *Fiefs and Vassals*, 3.

14 A notable example is the absence of mentions of the LF in David Herlihy, *The History of Feudalism* (London, 1970), despite the fact that the book offers a translation of 'Frederick Barbarossa's constitution concerning fiefs' (237–239), issued in 1158, which in the thirteenth century was included in the LF (2.54).

15 Peter Weimar, 'Die Handschriften des "Liber feudorum" und seiner Glossen', *Rivista Internazionale di Diritto Comune*, 1 (1990), 31–98; Gérard Giordanengo, 'Les feudistes (XIIe–XVe s.)', in *El dret comú i Catalunya*, ii, ed. A. Iglesia Ferreirós (Barcelona: Fundació Noguera, 1992), 67–140.