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cont.
When asked, a century ago, who introduced the feudal system into England, Frederic William Maitland's rather surprising response was Sir Henry Spelman (1562-1641). To the question of what the feudal system actually was he replied: 'an early essay in comparative jurisprudence.' And finally, asked when it had reached its peak, he answered, in the nineteenth century.¹ This could be read as a summary of the book being debated here. It is true that the Middle Ages produced many separate institutions, and that bringing them together into a coherent whole was largely achieved by lawyers, mainly of the modern period, who were trained in systematic thinking. Others have seen the situation in similar terms. Heinrich Mitteis, for example, pointed out that feudal law had been dogmatized and ossified in the legal books of the late Middle Ages.² These, he suggested, had used the categories of learned law which had been developed by the Italian legists and feudists, especially those from Bologna, since the twelfth century. These categories had spread with jurisprudence via France to England. And ever since, he claimed, they had created havoc in the work of the feudists and their victims, the historians. Elizabeth A. R. Brown reiterated and developed Maitland's views on a subject which, until then,

* Susan Reynolds's response will be published in the November 1997 issue of the Bulletin.


hardly a scholar of feudalism had even regarded as a problem. These opinions now also inform the work of Susan Reynolds. She attempts to verify Maitland’s views more expansively and with greater certainty than Brown. According to Reynolds, a naive, anachronistic, and inadmissible use of terms, a hopeless confusion of words, concepts, and phenomena have misled most historians (pp. 13, 480-1) and made a reinterpretation necessary.

The result, if it holds, will necessitate a thorough revision not only of existing notions of feudalism (in the non-Marxist sense), but also of the social and political order of the early Middle Ages as a whole. In reality, claims Reynolds, this sort of feudalism did not exist at this period of European history. Everything must be reconsidered. ‘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’ (p. 3). Feudalism, she suggests, was not derived from relations between early medieval war-leaders and their followers; it did not start from ‘personal’ vassalage and then become ‘territorialized’ through the grant of ‘fiefs’; the fiefs did not become hereditary while obligations to render military and other forms of service remained attached to them (cf. p. 475). Instead, Reynolds argues, since the end of the eleventh century feudal norms had gradually developed out of the practice of granting loans, for example, of ecclesiastical property. Lawyers adopted these practices when bureaucratizing the state. Having systematized them, they used them as the building blocks of a new state order. Military service was added later. ‘Nobles and free men did not generally owe military service before the twelfth century because of the grant of anything like fiefs … They owed whatever service they owed, not because they were vassals of a lord, but because they were subjects of a ruler. They owed it as property-owners’ (p. 477). Nothing remains of early medieval feudalism. According to Reynolds, it was all the invention of the medieval jurists. Property ownership, wealth, and obedience regulated relations between rulers and subjects. Reynolds has undoubtedly written a fascinating and stimulating book, one which forces historians

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to remember their methods and epistemic foundations. At the same time, it is a book that provokes contradiction, thus rendering unto scholarship the service to which it owes its existence.

Are the most important historians of the early Middle Ages, including Maitland and Mitteis themselves, really poor victims of ‘the tyranny of a construct’? If Reynolds’s argument is correct, they completely misunderstood the Middle Ages. Can this be? Can whole generations of historians have made such fundamental errors, thought so incorrectly, interpreted their sources so wrongly? Indeed they can, and Thomas S. Kuhn has shown why. Revolutions in thought, he suggests, hide the innovations that they bring forth in a paradigm shift that allows pre-revolutionary conditions to appear only in the light and the perspective of the new paradigm, while the rest is ‘forgotten’ and ‘lost’. When he was developing these ideas, Kuhn was thinking primarily of scientific revolutions. Yet who would deny that the jurisprudence that emerged in the twelfth and thirteenth centuries had a similarly revolutionary quality? Its methods and systems, and its ability to construct a social and political order in a rational, clearly argued way stand out as a pioneering new paradigm. And the scientific revolution that took place under its influence from the twelfth century very likely – as is commonly the case with such revolutions – prevented its heirs from seeing things as they had been before. Can early medieval political, property, and social relations, and with them, feudalism itself, somehow have been affected by this invisibility, and have remained afflicted by it for centuries, right down to the present day? And has Reynolds’s research restored the visibility of pre-revolutionary conditions? How can something that has been forgotten, something that has become invisible as a result of a paradigm shift, be uncovered and made visible again?

Reynolds, however, does not base her thesis on Kuhn. She goes back to Spelman and his concept of feudal law as ‘a hierarchical system imposed from above as a matter of state policy’. She transfers this concept from England back to the Continent, whence it had once

crossed the Channel. Reynolds does not analyse the birth of feudalism as the breakdown of an old, that is, medieval paradigm, but – as a consequence of her own hypothesis – describes a normal scientific or academic process. She argues that the feudo-vassalic institutions were produced by ‘the increasingly bureaucratic government and expert law that began to develop from about the twelfth century’ (p. 479). She conceives of this product as a new political, social, and property order created by learned jurists with specific aims. And she contrasts these new developments with the different conditions that obtained throughout the centuries before their creation. According to the thesis implicit in Reynolds’s comments, whatever terms such as vassus, feudum, beneficium, fidelitas, and commendatio had meant before the era of jurisprudence, they had been declared feudal institutions by late medieval and early modern legal scholars in an inadmissible, because anachronistic, procedure. And historians, Reynolds suggests, have accepted this uncritically to the present day. ‘Fiefs and vassalage … are post-medieval constructs, though rather earlier than the construct of feudalism’ (p. 2).

This thesis stands and falls by its method. Reynolds presupposes a clear-cut concept of feudalism which is easily identified as that offered by the Lombard Libri Feudorum, their medieval exegetes, and their modern successors. Before this, there had only been landed property deriving from various sources and bearing different encumbrances. It should be emphasized that this argument also allows things to disappear, not because of a paradigm shift and a scientific revolution but as the result of the definition, not further justified, of the relevant subject, that is, feudalism. The implications of this definition dominate Reynolds’s reinterpretation of the medieval evidence of fiefs and vassals. Maitland, Mitteis, and Brown were all concerned with the development of systems which had been made possible by twelfth-century jurisprudence. Reynolds’s main aim, however, is to attribute material rights to their owners in the early and the high Middle Ages. She is interested in changing forms of property ownership, in the

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Not enough, however, has yet been said about method. Although Reynolds criticizes her predecessors and their anachronistic deductions, she does not examine the epistemological ground beneath her own feet. But it is necessary to do this because any attempt to conceptualize social terms and to understand ‘social and political relations’ involves social theories and their verification. Every statement at this level is conscious or subconscious, but it necessarily requires theory and is permeated by it. If a feudal society exists, then a theory of feudalism is required to perceive it; if such a society does not exist, then the theory is dispensable, indeed, inappropriate. But any attempt to perceive feudal society without a theory of feudalism is simply impossible. To delete the theory means to block out the phenomenon, or whole groups of phenomena. And the consequences soon begin to show.

For example, Reynolds assumes (without, incidentally, an adequate investigation of the historical meaning of the term) that in the early Middle Ages the word *vassus* was a general, imprecise, generic term for a wealth of divergent social relations, and did not stand for a specific concept ‘vassal’ (p. 33). She therefore has to operate with terms such as ‘property’, ‘tenure’, and ‘ownership’ (cf. p. 15 and ch. 3), which undoubtedly had the same legal basis as the feudal concepts whose validity for the early Middle Ages she contests. Reynolds is thus subject to the same conceptual constrictions that she believes she has observed in the work of the historians she criticizes. This latter point is crucial. Reynolds accepts as feudalism exactly what jurisprudence has presented as feudalism; everything earlier she turns into some nameless other. But in her opinion those historians naively and anachronis-

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7 Instructive in this context is Klaus Schreiner, ‘“Grundherrschaft”: Entstehung und Bedeutung eines gesellschaftswissenschaftlichen Ordnungs- und Erklärungsbegriffs’, in H. Patze (ed.), *Die Grundherrschaft im späten Mittelalter*, i, Vorträge und Forschungen, 27 (Sigmaringen, 1983), pp. 11-74.
tically transferred the same scholastic and post-scholastic construct to pre-scholastic times. The reinterpretation that she undertakes consists of deleting all traces of feudalism from the early Middle Ages, and making a clear separation between the feudal age, which she believes began in the twelfth century, and the previous centuries. All this adds up to a clear and concise concept of feudalism. But is it appropriate and convincing?

Reynolds has shifted the question of feudalism from the level of being to that of conceptualization and definition. This is a welcome and necessary stage of reflection. But she leaves it unawares as soon as her own arguments are concerned. She believes she is continuing to argue at the level of being without noticing that all the existence that she thinks she perceives dangles like a puppet on strings that are pulled at the other level. This is the weakness of her book. Reynolds, too, needs a theoretical model to convey her own views. Her model is also a construct, built as a bipolar concept of the state (pp. 26-7), a state of rulers and subjects, superiors and inferiors, hierarchy and authority, inequality, infinite social gradations and layers, obedience and loyalty to lords, rights and property obligations (pp. 34-47). Corporations play no part in it. Reynolds goes further, giving the following ‘definition of the state as a phenomenon, however conceptualized by those within it’. ‘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’ (pp. 26-7). Everything about this ‘phenomenon’ is a modern construct, starting with the ‘state’, going on to ‘society’ and ‘territory’, and ending with ‘control’, ‘legitimacy’, ‘force’, and the systematic interaction between these factors. In order to justify this construct, Reynolds sometimes even draws on sources that she has already rejected in discussing the concept of feudalism (for example, pp. 34 ff.). Yet nowhere does she explain why she believes that this statist construct is more appropriate than feudalism as a description of the early Middle Ages.

But in every case the differentiation, as described by N. Luhmann, of the terms and categories in which the individual ownership of real estate is elaborated is presented as the work of late medieval and early modern lawyers, regardless of whether these are depicted as ‘changing forms of property’ or ‘feudalism’. Reynolds simply swaps the legal concepts without escaping them. But how are such attributions conceived without jurisprudence, without its categories, methods, per-
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spectives, and strategies of argument, without distinguishing between legal circumstances, perhaps even without a clear concept of legality? To what extent and under what conditions can historians after the legal revolution understand the world before it? In this book Reynolds does not answer these questions; she does not even address them.

The notorious paucity of sources makes the conceptual difficulties even greater. I can illustrate this here only in relation to a few examples. Numerous instances of the use of vassus/vasallus, se commendare, fidelitas, feudum, beneficium, and other terms for feudal institutions of the high and late Middle Ages are known from the early Middle Ages, but in most cases they are rather colourless and give scholars studying the history of concepts little to work on. It is not possible to explain precisely what the user was referring to when he used them. They therefore cannot be used in any sense as evidence to demonstrate the correctness of a particular thesis or concept of feudalism. And except in very rare cases, the context does not reveal more either. Thus in order to interpret the terms in question, scholars have to take recourse to individual cases which are a little more forthcoming than most. The crucial question now is whether these represent the general rule and are thus key documents, or whether they are simply exceptions that can safely be ignored in reconstructing general conditions. The answer is crucial for the interpretation of these phenomena. Reynolds avoids this methodological difficulty which the state of the sources makes obvious. In thrall to her definition of feudalism, she simply rejects or dismisses as exceptions, without adequate discussion, almost all the more comprehensive cases from the early Middle Ages. Intertextual comparison is eschewed anyway. In general, she establishes that there is a broad range of meanings, from which she then selects only those that seem to support her thesis.

By these means the ritual of commendation is transformed into something formally and substantively indistinct and indefinable, for ‘even when someone is said to have commended himself or been commended “into the hands of” another, we cannot be sure that this

9 Cf. the examples, discussed elsewhere in this review, of Tassilo III of Bavaria and the sons of Louis the Pious.
implied the ceremony that Bloch described' (that is, the classic *hommage*) (p. 29; cf. p. 99). This may be true in certain cases. But these postulated exceptions and figurative interpretations of *se commendare* by no means justify ignoring this ritual and its functions. It is not a matter of any particular recommendation, but of the existence of a specific ritual gesture to which these words refer and one which played a part in establishing vassalage. General comments such as ‘human beings use their hands a lot’ (p. 29) do not help at all. This particular ritual is rare but well documented. Thus it was said of Tassilo III of Bavaria that ‘tradens se manibus in manibus domni Caroli in vassaticum’. And of Harald Klak, King of the Danes, we read ‘manibus iunctis regi se tradidit ... Caesar et ipse manus manibus suscept honestis’. To compare the two versions of the *Annales regni Francorum* for 757 is particularly revealing. The statement made in the older version – Tassilo ‘in vasatico se commendans per manus’ – is clarified further in the revised version: Tassilo ‘more Francico in manus regis in vasaticum manibus suis semet ipsum commendavit’. High status, vassalage, commendation, submission, and gesture of commendation have here come together to form a single action. ‘More Francico’ reveals, however, that this was not a unique occurrence. On the contrary, if the reinterpretations of Charlemagne’s actions towards Tassilo which P. Classen began working on almost twenty years ago, and which M. Becher has recently brought to a provisional conclusion, are correct, then Tassilo’s guilt was constructed precisely on the basis of a general interpretation of vassalage and commendation. This was certainly not the creation of lawyers in the high or later Middle Ages.

All this justifies interpreting less straightforward passages which occur within a relevant context in a similar way. Reynolds does not add

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11 Ermoldus Nigellus, In hohorem Hludowici IV, 601 and 605, MGH Poetae 2, p. 75.
13 An instructive example: MGH Capit. 1, 215, 18-8 no. 104.
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to and relativize these passages by providing equally clear counter-
examples to demonstrate that despite the similarity of context, the
usage of *se commendare* (*per manus*) is merely figurative. Her general
reference to the fact that the expression has a variety of meanings takes
us no further at all in the problem of feudalism. Nor is the comparison
she draws between an abbot who ‘commends’ himself and his abbey
to the protection of the king, and the poor man in the Tournon formulary
43 (MGH Form. p. 158) who ‘commends’ himself to his lord because he
cannot support himself at all informative for the context under discus-
sion here (p. 83). No one has ever doubted that in social historical terms
people of different status and with different legal aims could commend
themselves. Only the fact that the same legal form and, under certain
circumstances, the same ritual could be used regardless of the partici-
pants’ social status is crucial. What made self-commendation so attrac-
tive, and allowed it to be employed in so many different ways? This
attractiveness certainly does not provide an argument against vassal-
age being an essential element in the early medieval power structure.
Until the contrary has been proved, we must assume that in a context of
vassalage, *se commendare* and related expressions in principle (‘more
Francisco’!) refer to the gesture of commendation described by M.
Bloch.

But it is precisely the general dissemination of vassalage as a
personal tie between the king and his great men upon which Reynolds
casts doubt. What can be said about this? The following entry in the
*Annales Bertiniani* of 837 provides some information on the extended
application of the ritual as suggested by the case of Tassilo, its context,
and its meaning. (This piece of evidence, though generally known, is
not considered by Reynolds.) ‘Iubente imperatore (sc. Ludovico Pio) in
sui presentia episcopi, abbates, comites et vasalli dominici in memoratis
locis [i.e. in Belgarum parte] beneficia habentes Karolo (sc. Calvo) se
commendaverunt et fidelitatem sacramento firmaverunt.’ The pres-
ence of the emperor and the swearing of oaths – real, not figurative ones
– shows that an actual event is being described here. The *beneficia*
reveal the legal background to the ceremonies. Thus the commendation
cannot be understood as anything but a real ritual gesture made by
each individual involved in exchange for benefices, and as an expres-
sion of submission to the authority of the new ruler. The whole
sentence makes clear that every recipient of *beneficia*, from bishops to
the *vasalli dominici*, were treated equally in respect of their *beneficia* and
as far as the ritual was concerned. One after the other, they placed themselves in the hands of the young Charles and swore the oath of allegiance. Thus under certain circumstances and because of their beneficia bishops, abbots, and earls – that is, all the great men of the realm – were, contrary to Reynolds’s thesis, treated like vassals. But then, in a certain way they were vassals.15

This statement flatly contradicts Reynolds’s further claim that counts and other, grander royal servants ... do not ... seem to have been called vassi or vassalli’ (p. 86). This brief sentence is central to the most important arguments in the whole book (cf. pp. 100; 111). It represents the author’s justification for rejecting the notion that the Carolingian or any other early medieval empire was a Personenverband (a society composed of groups based on personal ties), and that previously socage had gradually come to resemble vassals’ fiefs in a process described, for example, by F. L. Ganshof. This, too, is of questionable accuracy. Reynolds can only take this position by applying the same selective technique that we have already observed in the case of commendation. Reynolds registers that in Carolingian times people of higher status, such as Adalhard, Abbot of Corbie, could appear in Italy as missus and at the same time as the emperor’s vassus (p. 190). Yet the fact that in the Italian Libri Feudorum, the twelfth-century work which Reynolds claims marked the beginning of feudalism (pp. 3-5), no dux, marchio, or comes is explicitly called a vassal is ignored, although these dukes, margraves, and earls received feuda (cf. 1F7). This could have made her more cautious about categorically excluding the possibility that this equation, allegedly characteristic only of the late medieval feudal system and the result of the influence of learned lawyers, had already existed in the early Middle Ages. For not even here, at the core of the feudal theory, was the equation ever made explicit. Why, then, should the lack of explanation in the early Middle Ages demonstrate that it did not exist? Reynolds, it seems, does not look at the medieval texts with an open mind.

In order to make the statement that ‘counts and other, grander royal servants’ were never called ‘vassals’ in the Frankish empire any evidence to the contrary must, as we have said, if it is mentioned at all, be discounted as an exception and swept under the carpet. This is what

15 Of course, Walther Kienast, Die fränkische Vasallität (Frankfurt, 1990), p. 557, has already established that high clergymen were ‘never’ called vassals.
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happens with respect to Tassilo III, duke of Bavaria, and the sons of Louis the Pious, whom Paschasius Radbertus once referred to as the emperor’s *vasalli* (p. 86).\(^\text{16}\) This last example is all the more revealing as these *vasalli* (*imperatoris*) of the royal blood were also treated as the emperor’s *fideles*, who would never have neglected their duty towards him.\(^\text{17}\) They were called *fideles* here not because, as Reynolds assumes on pp. 88-9, they were the king of the Franks’s subjects in a general sense or indeed his sons. Rather, this designation was their due here and now because they were *vasalli*. This suggests that the terms *fidelis* and *vassus/vasallus* could be used interchangeably. A history of vassalage should have noted this and established the circumstances under which this might have been the case. Reynolds, however, does not pursue this clue further. She takes only those paths that lead away from feudalism (cf. p. 23) – a strategy which makes it impossible to perceive feudalism even when its existence is well-documented.

In addition to the emperor’s sons and their entourages, Radbertus mentions other imperial *vasalli*, also overlooked or ignored by Reynolds, namely, those who ended up in prison or in exile as a result of their hostile machinations at the emperor’s court. Paschasius made it absolutely clear to whom these hints referred: the *primi et eximmii palatii*.\(^\text{18}\) These were certainly not ‘servants or subordinates of various sorts’, nor just any insignificant ‘laymen who served kings and lords both in their armies and for all kinds of general purposes of defence and government’, nor mere ‘followers and servants’, as Reynolds wants the *vassi* or *vasalli* of the Carolingian period to be understood (pp. 84; 85; 96). Nor were they drawn from the mass of the ordinary vassals. Rather, they were members of the leading cliques of the Frankish empire, perhaps even earls, counts palatine, bishops, or abbots, who, from the time of Louis the Pious, appear ever more frequently as vassals. Elsewhere, too, they appear as such, for example, Ruadbert, earl in the Linz- and Argengau in 816,\(^\text{19}\) or Adalbert, seneschal and

\(^{16}\) For Tassilo see note 14.
\(^{18}\) *Epitaphium Arsenii*, p. 87.
count palatine, twenty years later.\textsuperscript{20} W. Kienast pointed to this long ago.\textsuperscript{21} If these dignitaries do not appear regularly in the sources as vassals, this tells us something firstly about the quality of our sources, and secondly about the rank of these individuals’ respective offices which overshadowed the status of vassal. But it tells us nothing about the quality of (occasionally multiple) ties between earls and other dignitaries and the king or emperor.

Reynolds’s treatment of the famous letter from Bishop Fulbert of Chartres to William, Duke of Aquitaine, is also characteristic.\textsuperscript{22} This letter found its way not only into the \textit{Libri Feudorum} (2F6),\textsuperscript{23} but also into Gratian’s Decretum (C. 22 q. 5 c. 18), and historians attempting to understand the contemporary feudal system have frequently turned to it. Reynolds notes merely that this letter uses only the term \textit{fidelis}, and not \textit{fidelis} and \textit{vassalis} interchangeably (p. 23). She points out that a subject’s infidelity was liable to \textit{punishment}, whereas, as Fulbert saw it, ‘a lord’s would incur \textit{censure}’ (p. 38).\textsuperscript{24} With reference to this letter she associates the obligation to loyalty of those who had sworn fidelity to a lord with the loyalty and obedience of all Christian people (pp. 127-8), and treats the reception of this letter by the feudists of the twelfth century as evidence for their new conception of \textit{fidelitas} (pp. 227-8; 253). Reynolds thus makes a great effort to place Fulbert’s letter into a general, non feudo-vassalic context. She makes no attempt even to begin to interpret this document as evidence for a possible feudal system and its specific forms in the late tenth and early eleventh centuries which, of course, does not invalidate it in this respect. Here again preconceived ideas prevent the author from addressing the text as a whole.

\textsuperscript{20} Philippe Depreux, \textit{Prosopographie de l’entourage de Louis le Pieux} (781-840) (Sigmaringen, 1997), no. 4, pp. 70-1.
\textsuperscript{21} Kienast, \textit{Vasalität}, p. 174; p. 557. Further, Kienast’s material suggests that \textit{vassi dominici} were by no means numerous.
\textsuperscript{24} My emphases.
In fact, the letter makes no mention of punishment or of subjects. Nor does it discuss a general Christian fidelity. Its subject is the special sworn fidelity between lord and the recipient of a fief (*fidelitas quam iuravit*). While this might have had some similarities with the general Christian variety, it most certainly did not merge with it. Fulbert looked at the closer relationship between *fidelis* (with *casamentum*, that is, *beneficium* given to him by his lord) and *dominus* as a mutual relationship of loyalty against the background of the *fidelis* accepting a fief. He had castigated the disloyal lord as ‘malefidus’, and the faithless vassal as ‘perfidus et periurus’. Fulbert was far from punishing the disloyal *fidelis* while only censuring the disloyal lord. He censured both equally as both were equally in breach of contract. There is nothing in the letter to suggest that it concerned only an insignificant petty vassal and, on the whole, this is unlikely. Once again, it is Reynolds’s selective method of using the sources that allows early medieval feudalism to disappear.

After Reynolds’s study, we see many things more precisely than before – an achievement that should not be underrated. The lack of unity and the great diversity among political, social, and property relations in the early Middle Ages are emphasized, and we see the systematizing achievement and the ossifying effect of high medieval jurisprudence more clearly than before. None the less, in my view this study does not prove the thesis that essentially it sets out to prove, namely, that feudalism should be crossed out of the history of the early Middle Ages because it was merely an invention of the late medieval lawyers. For Reynolds has not lifted the veil of oblivion that the revolutionary legal paradigm laid over earlier ages. Her concepts and constructs, like those of the feudists and their followers whom she criticizes, are firmly rooted on this side of the twelfth and thirteenth-century revolution.

Yet it is not life itself but the historian who, in retrospect, sums up the diversity of things past by subjecting them to his perspectives, criteria, and categories of order. In the knowledge of what came later, he brings isolated individual phenomena together, regardless of whether those who were actually involved were aware of the relationship or not. From this point of view, feudalism as a system was not a category with which contemporaries of Charlemagne, Louis the Pious, Otto I, or

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25 Susan Reynolds (p. 20) transposes the attributions.
Hugo Capet worked. In this respect I agree unreservedly with Susan Reynolds. None the less, these lords, too, gave fiefs to vassals who were large or small, noble or free, earls or even bishops. They allowed the *homagium* to be performed, expected a specific fidelity, and demanded the services associated with the granting of the fief. These phenomena were not called into life only by the imagination of the late medieval lawyers. These lords founded their rule largely on personal, not statist, ties. Their rule will have been as variable and vast, as random and chaotic, and as changeable as the regulations governing duties and services within the various forms of property ownership. Yet this sort of diversity does not mean that the historian must throw out the idea that feudalism existed in the early Middle Ages, and regard it as a later invention. Nor is this a reason to rewrite the history of the early Middle Ages.

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