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Susan Reynolds:

*The History of the Idea of Lehnswesen*

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## ARTICLES

### *THE HISTORY OF THE IDEA OF LEHNSWESEN*

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In 2010 Jürgen Dendorfer and Roman Deutinger edited a collection of essays in response to an attack on the concept of feudalism that I had published sixteen years before.<sup>1</sup> I was much encouraged by their interest and learned a lot from their book about the twelfth and thirteenth centuries, specially but not only in Germany, even if it did not quite address my problem about the content and coherence of the actual concept of *Lehnswesen*, either to reject or support my argument. What I had argued was that the words *Lehnswesen*, *féodalité*, *feudalITÀ*, or ‘feudalism’ do not represent a coherent category of phenomena in medieval law, politics, and society. Most non-Marxist historians of medieval Germany, like those of the rest of medieval Europe use these words as if their meaning is too obvious to need justification or definition. This may not be surprising since, leaving aside F. L. Ganshof’s deliberately narrow, technical, and legal treatment of the subject in *Qu’est-ce que la féodalité?*, Max Weber and Marc Bloch, both undeniable masters, gave very similar lists of the characteristics of what they respectively called *Lehnswesen* and *féodalité*. Both mentioned what Weber called the contractual nature of fiefs as the characteristic form of feudal property and also the purely interpersonal character of vassalage as the main social bond of society. The six components of both lists, however, occur in different sources from different dates and areas, too variously distributed to form a single pack-

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<sup>1</sup> Jürgen Dendorfer and Roman Deutinger (eds.), *Das Lehnswesen im Hochmittelalter* (Ostfildern, 2010); Susan Reynolds, *Fiefs and Vassals: The Medieval Evidence Reinterpreted* (Oxford, 1994).

age, let alone anything like Weber's own idea of an Ideal Type.<sup>2</sup> This objection does not apply to Marxist feudalism, which is relatively simple and well attested: there was surely an inherent conflict between the interests of landlords and peasants, which was exacerbated by the landlords' superior position in government.

The incoherence of non-Marxist *Lehnswesen*, on the other hand, raises serious problems. They may not seem so obvious if one concentrates, as most European medievalists do, on the history of the modern state one belongs to and on just one part of the thousand years of medieval history, but they make it hard to fit together the different aspects of the single phenomenon they assume. Two items in both lists raise questions which explain the title of my book and my concentration on what medieval historians call vassalage and fiefs/*Lehen*. The first is the supposedly close interpersonal relationship between lords and those whom historians call their vassals. This seems to be attested chiefly in reports of rituals which may not have always taken place or have represented very real interpersonal emotions and commitments, specially when a king or other lord had many vassals whom he seldom, if ever, saw. The second item, fiefs, are seen as the standard form of property of nobles and free men, which were 'conditional property', with less complete rights and more obligations than are normally attached to property in capitalist societies today. This comparison, however, seems to be based on very little analysis of property rights and obligations in real practice either in the middle ages or now. All property in any society is conditional in so far as its rights and obligations are subject to judgement: claims can only become rights in any society, whether in land or anything else, if they are acknowledged by some sort of authoritative judgement.

There are also serious problems about words. We must each use our own, in our own various languages, but we need to think whether either similar or different words that we find in our sources were always understood in the same way by different people, or

<sup>2</sup> Ganshof's definition and the two lists are set out in Susan Reynolds, 'The Use of Feudalism in Comparative History', in Benjamin Z. Kedar (ed.), *Explorations in Comparative History* (Jerusalem, 2009), 191–217, repr. in Susan Reynolds, *The Middle Ages without Feudalism: Essays in Criticism and Comparison on the Medieval West* (Farnham, 2012).

referred to the same phenomena, in different contexts and times. The relationship between words, concepts, or notions, and the actual phenomena to which they seem to refer is vital to my argument, and I shall return to it later.

*The Origin and Development of the Idea of Lehnswesen*

In order to make sense of the concept of feudalism or *Lehnswesen* and its meaning in the social and political history of the European middle ages, we need to start by thinking about the way that it first appeared and developed its vocabulary. It seems to have started from discussions among academic lawyers in sixteenth-century France about the authority of Roman law in France and whether the noble properties that they called fiefs had derived from Frankish or Roman law. The arguments were not based on the records of French law as it had been practised in early medieval France, but from the academic law in which the more ambitious lawyers of the later middle ages had been trained. This derived from a twelfth-century legal compilation now known as the *Consuetudines Feudorum* or *Libri Feudorum*.<sup>3</sup> The second title seems preferable since the work is clearly not a statement of custom. It looks more like the product of discussions among the new kind of academic and professional lawyers who had appeared in north Italy by 1100. It starts, after listing those who can give a *feudum*, with a short passage of conjectural history – that is, history invented to make sense of the present and explain it – about the origin of *feuda*. However slight and unsupported by evidence, this must rank as the first, as well as most influential, item in the historiography of feudalism, *féodalité*, *Lehnrecht*, *Lehnswesen* – and Marxist *Feudalismus* too. According to the author of this part of the *Libri feuda* were first granted to be held at the lord's will, then for life, and only later became hereditary.

To make sense of the *Libri Feudorum*, however, we need to go even further back: to a diploma about the holding by laymen of ecclesiastical and royal property that the emperor Conrad II issued in 1037

<sup>3</sup> Karl Lehmann (ed.), *Consuetudines Feudorum, Compilatio Antiqua* (Göttingen, 1892), 8, repr. with *Das Langobardische Lehnrecht* (Göttingen, 1896) as Karl August Eckhardt (ed.), *Consuetudines Feudorum* (Aalen, 1971).

while he was besieging Milan.<sup>4</sup> Conrad cannot have known that he was creating a new sort of law that would come to be called feudal law/*Lehnrecht*. He simply intended to deal with trouble that had broken out between the archbishop of Milan and the laymen who held lands belonging to his church. Common as were disputes like this between great churches and those to whom they granted land in return for the protection and service that armed laymen could provide, Conrad's diploma started something new because he made his judgement in Lombardy, where it was formally recorded just at the time when the new kind of academic and professional law was emerging there. It gave the new kind of academic lawyers a basis for argument about the disputes that continued to arise between churches and their lay tenants.

Historians often call Conrad's diploma his *Lehngesetz*, but the word *feudum* is not used in it, though *beneficium* is – probably in the sense of favour rather than as the synonym for *feudum* that would be used later by German lawyers. Nor is the word vassal used. The diploma refers to those whose rights it was defending against their lords as *milites* and *maiores vasvassores*. This last word does not seem as yet to have had the sense of 'vassal of a vassal' that was later attributed to it. When *vavassores* were referred to elsewhere at about this time they seem to have been people of moderate status, above the ordinary *milites*, and that may be what Conrad or his advisers intended.<sup>5</sup> The diploma protected the archbishop's tenants against arbitrary confiscation by subjecting it to the judgement of their equals (*pares*) and added that this should also apply to the tenants of all royal or church land under Conrad's authority. That merely gave them a right that belonged by custom to freemen in general:<sup>6</sup> Conrad seems therefore to have meant his judgement to confirm to tenants of royal and

<sup>4</sup> H. Bresslau (ed.), *Die Urkunden Konrads* (Mon. Ger. Hist., 1909), no. 244; on which see Hagen Keller, 'Das Edictum de Beneficiis Konrads II und die Entwicklung des Lehnswesen in der ersten Hälfte des 11. Jahrhunderts', *Settimane di Studio del Centro Italiano di Studi sull'alto Medioevo*, 47/1 (2000), 227–57.

<sup>5</sup> Timothy Reuter, 'Valvassor', in Adalbert Erler and Ekkehard Kaufmann (eds.), *Handwörterbuch zur Deutschen Rechtsgeschichte*, 5 vols. (Berlin, 1984–90), v. 643.

<sup>6</sup> E.g. Susan Reynolds, *Kingdoms and Communities in Western Europe, 900–1300* (2nd edn. Oxford, 1997), 23–38.

church land the same security as freemen had in their own land. His diploma did not introduce any new principle or 'feudal privilege'. How far the diploma was known in the kingdom of Germany before the mid twelfth century seems uncertain.

During the twelfth century more texts became attached to the original compilation of the *Libri Feudorum* and the whole compilation then became attached to the texts of Roman law studied in universities in Italy and southern France that ambitious young lawyers, including Germans, might attend.<sup>7</sup> Some students may have done no more than attend one or two lectures on it, if that, but using its vocabulary suggested the sort of expertise that might impress a court of law. Along with the words *feudum*, which was in Conrad's diploma, and *vassallus*, which was not but crept into later versions, lawyers started to use other bits of technical legal vocabulary like *dominium directum* and *dominium utile*. They could show it off in any secular court since, I suggest, separate systems of law with separate courts did not as yet exist except for canon law. There were no regular and separate 'feudal courts' in France any more than there were, I suspect, in the kingdom of Germany.<sup>8</sup> Disputes about fiefs came to the court of whatever person or community had some level of civil and criminal jurisdiction over the area in which the land lay. The law applied differed, I suggest, because higher courts with more professional lawyers adopted the vocabulary and rules of Roman law and the *Lehnrecht* attached to it, not because lords' courts were 'feudal' courts which therefore used 'feudal' law.

When the French academic lawyers of the fifteenth and sixteenth centuries who started the historical study of *Lehnrecht* were concerned about the authority of Roman law in France, the origin of fiefs in Roman or Frankish law, and the rights of nobles in their fiefs, they picked up those few sentences of conjectural history from the opening of the *Libri Feudorum* and accepted them as authoritative. Then from the seventeenth century French historians integrated what came to be

<sup>7</sup> Helmut Coing, *Römisches Recht in Deutschland (Ius Romanum Medii Aevi, 5/6)* (Milan, 1964), and 'L'Application des "Libri Feudorum"', in *Diritto Comune e Diritto Locali della Storia dell'Europa* (Milan, 1980), 15–23; Gerhard Dilcher, 'Das lombardische Lehnrecht der Libri Feudorum im Europäischen Kontext', in Karl-Heinz Spieß (ed.), *Ausbildung und Verbreitung des Lehnswesens im Reich und in Italien im 12. und 13. Jahrhundert* (Ostfildern, 2013), 41–91.

<sup>8</sup> Reynolds, *Fiefs and Vassals*, 454.

called *féodalité* into the history of France itself, to show how the rise of their monarchy ended ‘feudal anarchy.’ In France ever since then the stages by which fiefs became hereditary have continued to figure in discussions of the earlier middle ages, while the whole subject of feudal history has generally continued to be focused on the nobility. In the late eighteenth century the story was enriched – or confused – by the study of the medieval *chansons de geste*. There the vernacular word *vassal* had been used to mean a warrior or valiant man, with no implications of landholding or relationship to a particular lord.<sup>9</sup> Assimilating the landowners whom lawyers had since the later middle ages been calling *vassalli* to the knights of chivalric literature gave vassalage a new aura of romance. Paradoxically, *les droits féodaux* that were abolished in the Revolution just at this time were not about relationships between lords and their noble vassals at all, but about the rights of landowners over their peasant tenants.<sup>10</sup>

Scholars in seventeenth-century England took up the subject from the French and tried to apply the laws and words of French feudal law to medieval England, with its entirely different legal system and vocabulary. They focused on the difference between what one of them called the right of property, which they thought ‘inherent in every Englishman’ in their own day, and what they called the mere ‘tenure’ of medieval ‘fees’, which they thought dated from 1066.<sup>11</sup> From the twelfth century virtually all jurisdiction in England both over free land and over serious crimes was reserved to the king. The lord of what historians call a vassal thus became merely the person from whom he or she acquired land and the English ‘feudal hierarchy’ became a hierarchy of property rights, or what English histori-

<sup>9</sup> T. Venckeleer, ‘Faut-il traduire vassal par vassal?’, in *Mélanges de linguistique, de offerts à J. R. Smeets* (photog. typescript, Leiden, 1982), 303–16; Lionel Gossman, *Medievalism and the Ideologies of the Enlightenment* (Baltimore, 1968), 273–84.

<sup>10</sup> On the need to distinguish these see Dominique Barthélemy, *L’Ordre seigneuriale: XIe–XIIe Siècle* (Paris, 1990), 1–12, and ‘Seigneurie’, in *Dictionnaire Raisoné de l’Occident médiéval* (Paris, 1999); Susan Reynolds, ‘The History of Feudalism in France’, in Osamu Kano and Jean-Loup Lemaitre (eds.), *Entre Texte et Histoire: Études d’Histoire médiévale offertes au Professeur Shoichi Sato* (Paris, 2015), 293–308.

<sup>11</sup> Susan Reynolds, ‘Tenure and Property in Medieval England’, *Historical Research*, 88 (2015), 563–76.

ans call ‘tenure’, rather than the hierarchy of jurisdiction that it was in France and Germany. As for vassalage, historians of England are as sure of its importance as are historians in France, even though the word is almost never in their sources. Bloch in France and Maitland in England defined a feudal society as one in which the characteristic or main bond was the relation between a man and his immediate lord (*un chef tout proche*).<sup>12</sup> Great historians though they both were, any suggestion that medieval society could be considered feudal in this sense ignores the vast evidence of the collective element in medieval society and government.<sup>13</sup>

The difference between the historiographies of feudalism in France and England may help to explain how the story of what is supposed to have been a Europe-wide phenomenon seems to be different again in the kingdom of Germany. Lawyers and historians in each country who took up the idea of feudal law and then broadened it to feudal government and society seem to have adapted it to suit both their evidence and the preoccupations of the law and politics of their own time. That applies to the kingdom of Germany as much as to France and England, though I must point out that I know even less about Germany after the middle ages, when the texts that I have read were written, than I know about medieval Germany. My suggestions may nevertheless spur someone on to correct them, which would advance at least my knowledge.

### *Lehnswesen before the Nineteenth Century*

The first German writing about the history of feudal law/*Lehnrecht* that I have read comes, like the first French, from the sixteenth century. Ulrich Zäsy (Zasius), who died in 1535, explained how the *Usus Feudorum* set out in the *Libri Feudorum*, though unknown to civil law and separate from it, had come to Gaul and Germania from the Romans. It was, he said, useful and necessary even though it had become complicated by *doctores feudistae*, and though Germans had

<sup>12</sup> Marc Bloch, *La Société Féodale*, 2 vols. (Paris, 1939–40), ii. 247; Frederick William Maitland, *Constitutional History of England* (Cambridge, 1946), 141, though cf. Frederick Pollock and Frederick William Maitland, *History of English Law*, 2 vols. (2nd edn. Cambridge, 1911), ii. 234.

<sup>13</sup> Reynolds, *Kingdoms and Communities*.

always been too naturally free to have had true *servi*.<sup>14</sup> According to Johannes Schneidewein, writing a little later, the *Libri Feudorum* was originally a private work, but had secured public authority not only by imperial decisions, but by having been edited by doctors of Bologna on the order of the emperor, Frederick the Younger (*Friderici Iunioris*).<sup>15</sup> Having ‘public’ authority did not, of course, mean being what is now called ‘public law’. Legal historians have sometimes read the distinction between public and private law back into the middle ages, but it apparently only began to be made in German law from the end of the fifteenth century and did not become reasonably clear until the early nineteenth.<sup>16</sup>

In the seventeenth century, German scholars, including lawyers, like those of France and England, became increasingly interested in wider constitutional and social history. Nearly all, like European historians ever since, were primarily interested in the history of their own ‘peoples’ or ‘nations’.<sup>17</sup> In the middle ages most people probably took it for granted that their nation formed a kingdom. For Germans things were less simple. At one level they knew that they were all Germans, living in an empire that had gloriously succeeded to that of Rome and was ruled by an emperor who had precedence over all the mere kings of Europe. But they also believed in their own separate peoples or nations within the greater German nation. Writing probably in the early 1640s, Hermann Conring, who has been

<sup>14</sup> Udalricus Zasius, *Opera Omnia*, 7 vols. (Lyon, 1550; repr. Aalen, 1964–6), i. cols. 444, 973; ii. col. 267; iv. (1) cols. 243–7, 253, 257, 276, 326–7; Steven Rowan, *Ulrich Zasius* (Frankfurt, 1987), 6–10.

<sup>15</sup> This suggests Frederick II, but it should surely be Frederick I: J. Schneidewein, *In Usus Feudorum Epitome* (Hanover, 1595), 14. I am very grateful to the Bayerische Staatsbibliothek, Munich, for supplying the text online and to the Institute of Historical Research, London, for getting it and even printing it out for me.

<sup>16</sup> Lucien Hölscher, ‘Öffentlichkeit’, in Otto Brunner, Werner Conze, and Reinhart Koselleck (eds.), *Geschichtliche Grundbegriffe*, 8 vols. (Stuttgart, 1972–97), iv. 427–30; Brigitte Kasten, ‘À propos de la dichotomie entre privé et public dans les testaments des rois francs’, in François Bougard et al. (eds.), *Sauver son âme et se perpétuer* (Rome, 2005), 159–201.

<sup>17</sup> Susan Reynolds, ‘Nations, Tribes, Peoples, and States’, *Medieval Worlds*, 2 (2015), 79–89, online at <[http://medievalworlds.net/medieval\\_worlds](http://medievalworlds.net/medieval_worlds)>, accessed 23 June 2017.

called the founder of German legal history, accepted that the common laws of Germany in his own day were undoubtedly Roman, but pointed out that all its provinces nevertheless had their own laws and *feudalia instituta*, with those of the Saxons and Swabians particularly well recorded. He cited different opinions of scholars in putting the introduction of the Lombard feudal laws (that is, those derived from the *Libri Feudorum*) in the thirteenth or fifteenth century.<sup>18</sup> It now seems likely that knowledge of it, or at least its vocabulary, had been spreading gradually among professionals since the twelfth century, but whenever it came, adoption of the vocabulary and some of its rituals helped to explain and justify the relation of emperor to princes and princes to their subjects.

During the eighteenth century some German scholars quickly took up the new Scottish and French idea of stages of human history, starting with hunting and fishing, and then an agricultural or feudal stage, which was now generally thought of as past. This posed a problem for German scholars: feudal law was apparently still in force in Germany although, as Johann Justi said, it no longer fitted society and was in ruins. By his time, however, the turning of fiefs into allods, and then the spread of codification, were beginning to consign *Lehnrecht* to that past age in which Justi thought it had fitted society.<sup>19</sup> In Prussia its relics were by 1781 being cared for in a much more modern way in the *Lehnsdepartement* of the Ministry of Justice.<sup>20</sup> Other lawyers, of course, still wrote about the history of *Lehnrecht* as if nothing had changed, perhaps regarding learning about it as good discipline for law students. The word *Lehnswesen* is generally used now to represent a broader view of society and politics than just law, but the first use of it on which I have happened came in F. A. Sorgen's *Chronologie des teutschen Lehnwesens mit anmerkungen und beilagen* of 1764. He thought that the *Lehnrecht* of his own day came out of the oldest German customs, but his chronology simply lists emperors and bits of their legislation. He mentions Conrad II, but not 1037, and

<sup>18</sup> Hermann Conring, *Opera*, 6 vols. (Brunswick, 1730), vi. 77–164 (*De Origine Juris Germanici*, at 77, 167–73); Alberto Jori, *Hermann Conring (1606–1681): Der Begründer der deutschen Rechtsgeschichte* (Tübingen, 2006).

<sup>19</sup> Johann Heinrich Gottlob von Justi, *Die Natur und das Wesen der Staaten* (Berlin, 1760), 8, 269–70, 480–8.

<sup>20</sup> Carl Gottlieb Svarez, *Vorträge über Recht und Staat*, ed. Hermann Conrad and Gerd Kleinheyser (Cologne, 1957), 340, 345, 347.

Frederick I's contact with *die Rechtsgelehrten in Welschland*, but not the Roncaglia legislation of 1258 or trial of Henry the Lion.<sup>21</sup> Meanwhile, however, ever since Johann Schilter (d. 1705) had published an early text of Salic law, other lawyers had been learning much more about the middle ages. Theodor Hagemann, writing in the 1780s, thought that in Germany and Italy from the twelfth century the *Feudalsystem* replaced the earlier *Beneficialsystem*, but he had clearly read much on medieval history about more than German feudal law.<sup>22</sup> The new flexibility of ideas—and language—about it all was shown by Hegel's treatment in his stages of history of what he variously called *Feudalwesen*, *Feudalität*, or *Feudalverfassung*,<sup>23</sup> and then by Marx when he made the motor of change stages economic. Since Marxist feudalism really shares nothing but its name with the non-Marxist version, however, it falls outside the scope of this article.<sup>24</sup> The confusing use of the same word may explain how fief-holding and vassalage have even crept into some orthodox Marxist writing.<sup>25</sup>

K. F. Eichhorn, who wrote early in the nineteenth century, has been called the father of German legal history,<sup>26</sup> but if he was, Conring must have been its grandfather and have had a number of sons, like Schilter and Hagemann, born well before him.<sup>27</sup> The way that the German historiography of *Lehnrecht* started so firmly in law, including both what would now be distinguished as public and as private law, explains how it has remained more sober and better based on evidence of medieval practice than much that has been has been written in French and English.<sup>28</sup> There the tendency to stress

<sup>21</sup> Friedrich Adolf Sorgen, *Chronologie des teutschen Lehnwesens mit anmerkungen und beilagen* (Frankfurt, 1764), 3, 11–14.

<sup>22</sup> Theodor Hagemann, *Einleitung in des gemeine in Teutschland übliche Lehnrecht* (2nd. edn. Hanover, 1792).

<sup>23</sup> Georg Wilhelm Friedrich Hegel, *Vorlesungen über die Philosophie der Weltgeschichte: Die germanische Welt*, ed. Georg Lasson (Hamburg, 1923), 805–18.

<sup>24</sup> Eckhard Müller-Mertens, 'Zur Feudalentwicklung im Okzident und zur Definition des Feudalverhältnisses', *Zeitschrift für Geschichtswissenschaft*, 14 (1966), 52–73.

<sup>25</sup> Reynolds, 'The Use of Feudalism', 213.

<sup>26</sup> *Neue deutsche Biographie*, 4 (1957), 120, 266, 378–9.

<sup>27</sup> Hagemann, *Einleitung*, 91, 111–76, cites many works, esp. from the eighteenth century.

<sup>28</sup> Jürgen Dendorfer, 'Zur Einleitung', in id. and Deutinger (eds.), *Das*

and romanticize vassalage as a close interpersonal relationship—even the strongest bond of medieval society—seems to me to ignore not only the bonds of kinship and neighbourhood but the collective character and solidarities of medieval society and government.<sup>29</sup>

*The Nineteenth Century*

Much as Hagemann and others had already achieved, a splendid new age of German medieval historiography opened with the foundation of the *Monumenta Germaniae Historica* in 1819. Then the controversy between Roth and Waitz in the middle of the century both exemplified and encouraged the new critical use of legal sources, and the light they shed on society and government.<sup>30</sup> What made this so important for the history of *Lehnswesen*—and of European historical scholarship in general—was the fact that their arguments were firmly focused on the reading and interpretation of a wide range of early medieval documents. This was, I think, the first time that any European historians had thought so hard about what their documentary sources implied about society and politics. A new age of professional and, above all, critical historical research was emerging, as well as a new sort of study of *Lehnrecht*. Both Roth and Waitz started from law but Waitz's fifty years working on the *Monumenta*, the last nine at its head, gave him a wider view of the earlier middle ages than anyone had yet had. He reflected some of the French ideas when he referred to the interpersonal relationships of vassalage but, though he stressed homage and fidelity, he never (I think) suggested that the relation between lord and vassal replaced collective bonds in medieval societies. The range of sources he cited to trace the use of

*Lehnswesen*, 19–21; Roman Deutinger, 'Das hochmittelalterliche Lehnswesen', *ibid.* 471–3, though note the romantic conservatism of Adam Müller, *Die Elemente der Staatskunst*, 3 vols. (Berlin, 1809), ii. 93–4.

<sup>29</sup> Reynolds, *Kingdoms and Communities*, *passim*.

<sup>30</sup> Paul Roth, *Geschichte der Beneficialwesens* (Erlangen, 1850); *id.*, *Feudalität und Untertanverband* (Weimar, 1863); Georg Waitz, *Abhandlungen zur Deutschen Verfassungs- und Rechtsgeschichte* (Göttingen, 1896); *id.*, 'Lehnwesen', in J. C. Bluntschi and K. Brater (eds.), *Deutsches Staats-Wörterbuch* (Stuttgart, 1857–74), vi. 357–67; Georg Waitz, *Deutsche Verfassungsgeschichte* (2nd and 3rd edns. Berlin, 1880–93).

words for *Lehen* and *Vasall* through to the mid twelfth century was enormous.<sup>31</sup> He started, of course, from the assumptions of his time about the consistent and technical use of words in the earlier middle ages that could, I suggest, only have come later, with professional law and record-keeping.

In the next generation another stage in the construction of modern ideas about non-Marxist feudalism came with Brunner's proposal that 'vassals' first did their military service as cavalry in Charles Martel's victory over Arab invaders at the battle of Poitiers.<sup>32</sup> Whether this turned out to be probable is perhaps less important than the impetus that it gave to the study not only of German *Lehnrecht*, but of feudalism in general. For French historians cavalry suggested something like nobility and, since Poitiers is in France, it was the Franks of France who saved Europe from the Moslem invaders. For the English the mounted soldiers at Poitiers evoked 1066, when a battle won by cavalry is held to have introduced feudalism to England.

### *The Twentieth Century*

With Brunner the historiography of *Lehnswesen* was set much as it has gone on since. Mitteis summed it up well, concentrating in the German tradition on law and constitutional relationships rather than the more romantic and less well-attested aspects of French *féodalité* and English feudalism.<sup>33</sup> This was not the only difference in what we call 'national' traditions of historiography as compulsory education was established in European states and state-supported universities multiplied. In each European state the idea of feudalism that came to be accepted has been shaped by the changing preoccupations of its lawyers, historians, and students of politics and society ever since the idea had been introduced. The unprecedented depth and breadth of

<sup>31</sup> E.g. Waitz, *Deutsche Verfassungsgeschichte*, vi. 1-138, esp. 112-38.

<sup>32</sup> Heinrich Brunner, 'Der Ritterdienst und die Anfänge des Lehnswesens', *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Germanistische Abteilung*, 8 (1887), 1-38.

<sup>33</sup> Heinrich Mitteis, *Lehnrecht und Staatsgewalt* (Weimar, 1933); Bernhard Diestelkamp, 'Heinrich Mitteis "Lehnrecht und Saatsgewalt" im Licht moderner Forschung', in Peter Landau et al. (eds.), *Heinrich Mitteis nach hundert Jahren (1889-1989)* (Munich, 1991), 11-22.

the way that the great nineteenth-century German historians used medieval sources makes their assumptions and preoccupations less obvious than those of most of their predecessors and some of their contemporaries. But one shared assumption has remained clear: that something that was described as *Lehnswesen*/*féodalité*/feudalism developed from the early middle ages as a *system* of law and politics that still forms a framework for much of the medieval history of most of the modern states of Europe. What is worrying about this is the strong tendency to teleology, tracing the development of feudalism/*Lehnswesen* largely through the use of particular words, until it reached its complete and coherent form in the twelfth or thirteenth century. This may make it harder to understand earlier medieval society: our understanding of any society at any time is surely not helped by seeing it as merely a stage in the development of something that came later.

After Mitteis the general idea of non-Marxist feudalism and its development remained more or less unchanged for the rest of the twentieth century. Within this framework university systems in different states encouraged historians to concentrate on their own ‘national’ histories, so that those concerned at all with feudalism—which means nearly all medievalists—seem to have worried less than they might have about the variations within it.<sup>34</sup> Much was nevertheless done on its origins, and also on particular aspects that can be better attested in the more abundant sources that survive from the twelfth century.<sup>35</sup>

But that abundance raises a question that historians of feudalism have not, I suggest, thought about enough. That is the effect of what is arguably the most important development in the history of human law anywhere: its change from being the customary law of a society, applied according to the consensus of assemblies, to being the business and property of professional lawyers. In medieval Europe that began in eleventh-century Italy and then spread north of the Alps from the twelfth, along with what Max Weber called bureaucracy,

<sup>34</sup> Jürgen Dendorfer, ‘Was war das Lehnswesen?’, in Eva Schlotheuber and Maximilian Schuh (eds.), *Denkweisen und Lebenswelten des Mittelalters* (Munich, 2004), 43–64, above, n. 2.

<sup>35</sup> Erler and Kaufmann (eds.), *Handwörterbuch zur Deutschen Rechtsgeschichte*; Otto Brunner, ‘Feudalismus’, in *Geschichtliche Grundbegriffe*, ii. 337–50.

that is, professional administration and record-keeping.<sup>36</sup> This process was clearly beginning in Germany in the twelfth century, notably under Frederick Barbarossa. It was partly the result of contact with Italy, but also of economic growth and the spread of literacy, which enabled northern Europeans, like Italians, to keep more records and use them more systematically.<sup>37</sup> Not that systematic and recorded government was entirely new: tenth- and eleventh-century German kings and emperors had more competent servants, communicated more with local assemblies, and kept more useful records than has always been recognized.<sup>38</sup> Even so, and despite the beginning of changes in the twelfth century, it is difficult to imagine a work like the *Sachsenspiegel* being written much before 1200. Although Eike von Repgow does not seem to have been what we would now call either a professional or an academic, he had spent much time in court and thought hard about what happened there. However much he talked about custom, he was interested and informed about recent changes in the law that he had seen applied there and about the reasons for it all.<sup>39</sup>

From the twelfth century the law that was applied in all but the humblest secular courts in the parts of Europe about which I know anything varied not, just as it always had, as consensus shifted in different assemblies, but as custom was recorded and established in separate jurisdictions under the growing influence of professional judges and lawyers. The new professionalism of lawyers and administrators had profound effects on government and law, but how far the use merely of a new, professional vocabulary of vassals and fiefs affected the actual rights and obligations attached to the land of free men in any kingdom or lordship seems doubtful. Whatever words professional lawyers used, any ruler faced trouble if he tried to

<sup>36</sup> Susan Reynolds, 'The Emergence of Professional Law in the Long Twelfth Century', *Law and History Review*, 21 (2003), 347–66, repr. in ead., *The Middle Ages without Feudalism*.

<sup>37</sup> Reynolds, *Fiefs and Vassals*, 440–51.

<sup>38</sup> David S. Bachrach, 'Exercise of Royal Power in Early Medieval Europe: The Case of Otto the Great', *Early Medieval Europe*, 17 (2009), 389–419; Reynolds, *Fiefs and Vassals*, 409–14.

<sup>39</sup> Ruth Schmidt-Wiegand, 'Der "Sachsenspiegel" Eikes von Repgow als Beispiel mittelalterlicher Fachliteratur', *Zeitschrift für Literaturwissenschaft und Linguistik*, 51/2 (1983), 2016–26.

reduce the property rights of his free subjects, especially the greater subjects on whom he relied for advice and service.

Two questions that have been too often ignored in discussing feudal law/*Lehnrecht* are, first, how far can we read back from the procedures, rules, and, above all, the words of the age of professional law to the procedures, rules, and words of the period before 1100? Secondly, how far can we assume that they reflect real social relations and ideas after 1100? Much of the history of feudalism has ignored both, but that is rash. Words in any language are liable to mean different things to different people in different contexts and circumstances. When customary law was applied in local assemblies in countries with different vernaculars, and then recorded in Latin written in different monasteries by monks who started from these different vernaculars, there were bound to be variations. Words could not have 'technical' senses because law was not a technique until there were technicians to apply its rules, which is what professional lawyers and administrators were. It is not, moreover, just the words used in the middle ages that we need to think about but ours. Words even in one language, let alone in translation, are still understood differently by different people despite all the dictionaries that we have and they had not. To understand medieval sources, whether in Latin or any vernacular, we need to think hard about the difference between the words we find there, the notions or concepts those words represented for the scribe, and the actual phenomena he referred to, as well as what the modern dictionaries and glossaries tell us about *Lehnswesen* or *Lehnrecht*.<sup>40</sup> Ruth Schmidt-Wiegand discussed the relationship of words, concepts, and phenomena, in the context of medieval social history in 1975, years before I became obsessed with it.<sup>41</sup>

Both the words *feodum/feodum* and *beneficium* could be used in various senses: *beneficium* obviously for many sorts of gifts or favours, while *feodum*, if it was applied to land before the twelfth century, seems to have generally referred to quite small bits, not, in any area I have studied, to the estates of nobles – another word that could

<sup>40</sup> Reynolds, *Fiefs and Vassals*, 396–474, on the kingdom of Germany, needs revision at several points.

<sup>41</sup> Ruth Schmidt-Wiegand, 'Historische Onomasiologie und Mittelalterforschung', *Frühmittelalterliche Studien*, 9 (1975), 49–78; Reynolds, 'Use of Feudalism', 195–7.

also be used very variously.<sup>42</sup> What is known about the property of nobles in the earlier middle ages does not suggest that most of it had originally come from royal grants or that anyone thought it had. That idea came later, when academics started to apply the conjectural history of the *Libri Feudorum* to all noble property. In the twelfth century academic and professional lawyers began to use the word *feudum* (in any of its variant forms) or, in Germany, *beneficium*, for noble property, but nobles and free men did not lose rights in their property because of this, nor were the new words immediately recognized as having the meanings that later historians would give them. Can we be sure, for instance, that the word *beneficium* in Austria's *Privilegium Minus* of 1156 had already acquired the technical sense of what historians call a *Belehnung*?<sup>43</sup> Since the rights conveyed in the record were not those of the usual historian's model of a benefice or fief, *beneficium* here may have meant simply that it was given by royal favour. When other noble and free property meanwhile acquired new obligations, that was not because of new words but of more systematic and professional law and government. Rather than saying that Frederick Barbarossa, 'feudalized' the kingdom of Germany, I should rather say that he, or his advisers, introduced more professional law and government to it. Thanks to contacts with Italian lawyers, notably at Roncaglia, the new law used some of the vocabulary they had developed from the *Libri Feudorum* but, far from happening at a time of general 'feudalization', this happened at a time when what we call 'feudal' service, particularly in armies, was being replaced in many areas by paid service.

<sup>42</sup> Jane Martindale, 'The French Aristocracy in the Early Middle Ages: A Reappraisal,' *Past and Present*, 75 (1977), 27–42, repr. in ead., *Status, Authority and Regional Power* (Aldershot, 1997); Reynolds, *Fiefs and Vassals*, 38–45, 444–5, 469–71.

<sup>43</sup> *Dip. Frid. I*, no. 151; also e.g. no. 187. Cf. e.g. Roman Deutinger, 'Das Privilegium minus, Otto von Freising und der Verfassungswandel des 12. Jahrhunderts', in Peter Schmid and Heinrich Wanderwitz (eds.), *Die Geburt Österreichs* (Regensburg, 2007), 179–99, and in Dendorfer and Deutinger (eds.), *Das Lehnswesen*, 468; Rudolf Schieffer, 'Das Lehnswesen in den deutschen Königsurkunden', *ibid.* 79–90; Karl-Heinz Spieß, 'Formalisierte Autorität: Entwicklungen in Lehnrecht des 13. Jahrhundert', *Historische Zeitschrift*, 295 (2012), 62–77.

As for the word vassal, though often mentioned in discussions of the *Sachsenspiegel*, it does not appear in the glossaries of either part, but it will be easier to know about its vernacular use elsewhere when the new edition of Grimm's *Wörterbuch* gets to V. In Latin, *vassus*, which had anyway had a rather different sense from that of the vassal of feudal historiography, seems to have been gradually replaced by *vassallus*, but that was rare, for instance, in royal diplomas from 1002 until 1158, after which its use multiplied, presumably as part of the vocabulary Frederick's lawyers picked up in Italy. I leave other sources to younger and better qualified Austrian and German medievalists to explore. Meanwhile I suggest that one should notice the words actually used in the source one cites and remember that in France, despite historians' fondness for the word 'vassal', it was rarely, if ever, used after the tenth century in Latin texts until professional lawyers reintroduced it from the late thirteenth, while in the vernacular it meant something quite different.<sup>44</sup> Using the word in any of our modern languages now to imply a whole structure of medieval relationship is surely misleading.

### *Conclusion*

It was very encouraging that Professor Deutinger called *Fiefs and Vassals* a *Weckruf* to resume the study of *Lehnswesen*.<sup>45</sup> *Das Lehnswesen im Hochmittelalter* and other recent German works on *Lehnswesen* have been full of learned, valuable, and thought-provoking work on the twelfth and thirteenth centuries. But the title of the book, as well as most of its contents, seems to assume that the word *Lehnswesen* represents a real phenomenon of medieval society, though without actually arguing that it was. My *Weckruf* was intended to show that it was not, but I would have no complaint about reasoned argument that either my whole argument or any part of it was wrong. That should advance knowledge and, even better, understanding. But, if it is not being too ungrateful and argumentative, I question whether Professor Dendorfer is right to think that my use of words like 'government' and 'public welfare' in the context of medieval history was

<sup>44</sup> Venckeleer, 'Faut-il traduire vassal par vassal?'

<sup>45</sup> Dendorfer and Deutinger (eds.), *Das Lehnswesen*, 463.

anachronistic.<sup>46</sup> These words can be applied to any human society, however differently from any modern societies it is or was ruled or governed and however different its ideas about welfare. Government and public welfare were as much the business of Otto I as of Angela Merkel, though his ideas about both differed from hers. Where anachronism comes in is rather in the notions or concepts in the minds of those who use key words, like *fief* and *vassal*, without distinguishing the notions those words convey to them now from the various notions that they *may* have conveyed to all the different people who used them in the middle ages.

Finally, therefore, do we need to put our study of medieval societies into the bulging, battered framework of *Lehnswesen*/feudalism that has been formed out of ideas about *feuda* expressed by an early twelfth-century academic lawyer in north Italy, then variously used in different European jurisdictions, and further elaborated by academic lawyers and historians since the sixteenth century? Does the word, with all the different notions that it has represented to different historians, help us understand the actual phenomena of the particular society, its political and social relations, and its law in practice, at the particular time we are studying? What does anyone who uses the word now mean by it? In particular, does not the whole idea distract attention from the collective, though not democratic, solidarities and action that were so fundamental to medieval society and government?

<sup>46</sup> Dendorfer, 'Zur Einleitung', 18. As for 'ownership', I mentioned the word in order to reject it as misleading for property in any period. Cf. Reynolds, *Fiefs and Vassals*, 51, 53, and ead., 'Tenure and Property in Medieval England', 563–4.

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