

Sovereign Subjects, Feudal Law, and the Writing of History

Kathleen Davis

Princeton University

Princeton, New Jersey

Forty years ago, the Renaissance legal historian Donald R. Kelley suggested that medievalists take an interest in “de origine feudorum,” the philological and historiographical pursuit of the origin of feudal law by sixteenth-century legal scholars. For Kelley, the “pioneering mediaevalists” who began the historical study of feudalism deserve attention for their contribution to the development of historical writing, for their links to the Enlightenment and later philological nationalisms, and for their role in shaping historical knowledge, on which he cites Herbert Butterfield’s maxim: “Our knowledge of the past is seriously affected if we learn how that knowledge came into existence and see the part which historical study itself has played in the story of the human race.”¹ Ironically however, feudalism’s central importance to historiography has itself deterred critical investigation of this search for feudal origins, which not only laid the narrative basis of all subsequent concepts of feudalism, but also—and more importantly—mediated the theorization of sovereignty and subjection by some of Europe’s most influential sixteenth-century jurists at a crucial moment of empire, slavery, and colonialism. Long before feudalism’s denomination as an “ism” in the eighteenth century, the spatio-temporal concept of a feudal European past “came into existence” as an argument over the nature of sovereignty and the history of *imperium* (in its related senses of executive power and supreme territorial rule), culminating in a theory of slavery and of a social contract.² To this conjunction we owe the later, persistent association of the Middle Ages with subjugation, as well as the role of the Middle Ages as the enabling figure of exclusion in much philosophical and political thought.

The early historiography of feudal law coalesced as the point of articulation for a discourse of time (the rejection/reclamation of a “barbaric” past) and a discourse of power (the theorization of the sovereign relation), and ultimately yielded a period concept foundational to “modern” theories

of state. It was driven by conflict, and its history is a tangle of contradictions for three reasons, which I will set out briefly here and explain in the course of this essay. First, it was the medium for competing origin stories: French legists interested in forwarding France's claims to legal independence usually argued for a Frankish origin of feudal law, while Italian and German legists, interested in defending the authority of Roman civil law and the continuity of empire, argued for a Roman origin (these have been called "Germanist" and "Romanist" positions, respectively). Legists on both sides wished to claim feudal law because, for reasons I will explain below, it occupied a privileged position in legal textual history and it offered a way to connect this textual authority to contemporary legal agendas. Second, the main players in this controversy ("feudists" as they called themselves) stood in a conflicted relation with the humanist movement that united them. They embraced, on the one hand, the Petrarchan dictate to purge texts of postclassical barbarisms, but refused, on the other hand, an outright rejection of postclassical legal codes and commentary. Indeed, an insistence upon Frankish origins sometimes required a paradoxical embrace of "barbarian" etymology. Third, commentaries on the feudal relation (of lord and vassal) soon became an important foundation for competing theories of sovereignty, particularly in regard to absolutism.

As this argument shifted from the hands of legists to those of political theorists such as Jean Bodin, it became key to theorizing the relation of sovereignty and slavery in domestic and international law. In this new role the historiographical condensation of a "feudal" past both facilitated the transference of the "problem of slavery" from the contemporary slave trade to a brutal past, and grounded arguments regarding the "free" political subject and a social contract. The *becoming-feudal* of the Middle Ages, in other words, is the narrative and conceptual basis of what has become known as "modern" politics.

By the close of the sixteenth century, the narrative of a "feudal" European past was securely entrenched in political and historical thought, and the initiating performance of its early historiography disappeared. As a *symptom of this effacement* we are left with feudalism's central but always conflicted role in mediating theories of power and temporality, signaled most obviously, perhaps, by the enduringly contested status of "feudalism" itself.³ More telling, however, is the centrality of feudalism to conceptualizing a *shift* in power relations—for example, the cry to abolish *la féodalité* on the eve of the French Revolution, feudalism's linchpin role in the Marxist paradigm, and accusations of feudalism against "destabilizing" nations today.⁴

Crucial to these processes is feudalism's productive relation with historicism (handled most interestingly by Hegel, to whom I will return), which on the one hand underwrote linearity by bonding "feudalism" and "the Middle Ages," and on the other hand loosed feudalism to roam across time and space, but always as a *temporal* marker, a tick on the clock of development.⁵ Early feudal historiography operated in conflicting modes, one that depended upon and identified with the materiality of a "feudal" past, and one that repudiated material detail as it strove to conceptualize a universal "spirit of the law." The temporal boundaries that it constituted were therefore aporetic, secured by an incipient positivism and idealism that together convey the legacy of periodization.

As a way of approaching feudal historiography, we may begin with the simple but salutary reminder that medieval people—even medieval lawyers—did not think of their time as feudal any more than they thought of it as medieval. There were "fiefs" of course, at certain times and certain places, as well as laws governing fiefs. (A fief was a right over, not ownership of property, which was often a portion of land but could also be, for instance, a right to collect a certain tax.) These laws comprised one aspect of medieval contract and property law, and addressed relations between property holders, mainly aristocrats, such as the rules for inheriting, securing, or alienating fiefs. "Feudal law" did not appear *as* law until the twelfth century, when it became important for negotiating and defining sovereignty, and after which royalty, popes, and nobility could draw upon an academically rarefied group of texts (commonly referred to as the *Libri feudorum*) to exert pressure and gain political advantage.⁶ Feudal laws did not, however, address the status of nonproperty holders, such as serfs. The centrality of property to any analysis of social and political history argues, of course, for the extension of these laws to consideration within a socioeconomic system, but such late analysis did not arise until the eighteenth-century legal and economic syntheses of thinkers like Montesquieu, William Blackstone, and Adam Smith. By then, the politically fraught concept of a feudal past had been at work for centuries, and these late analyses owe enormous debts to—and have in turn regenerated—the constitutive work of early feudal historiography.⁷

This essay focuses mainly on the crucial early decades of feudal historiography's long, conflicted story, and on just a few of its most dominant characters: François Hotman, a fiery Huguenot and Gallic nationalist, famous as a proponent of resistance theory and an important supporter of Henry de Navarre; Ulrich Zasius, Germany's leading legal scholar and practicing magistrate, intimate of the Hapsburgs and close friend of Eras-

mus; and Charles Du Moulin, “the prince of legists,” staunch French royalist under Henry II and vociferous antipapist. These legists and their contemporaries narrativized the fief and established the feudal relation as a *universal* category of sovereignty, thus preparing for its extension to a theory of slavery and its contrast to citizenship in the work of Jean Bodin, with which I will conclude.

There has been scant attention paid to feudal historiography, and not inconsequentially that which does exist came through a search for the origins of modern historical method. In his important essay on the feudists, Kelley argues that we must look beyond their ideological agendas to their role in shaping historical method: “What is far more interesting” than their political agendas, he argues, “is the way in which our problem [of feudal origins] illustrates the awakening of historical consciousness and the enrichment—or should we say adulteration?—of historical writing by the technicalities of legal scholarship.”⁸ Reading Kelley’s statement against the grain, I want to suggest that the feudists’ merger of legal technique and historical narrative, rather than illustrating an “awakening of historical consciousness,” formed political conditions and concepts of temporality that have privileged early modernity as the moment of such an “awakening.”

Temporal contradictions

To a surprising degree, the story of feudal historiography leans upon the strange history of a particular medieval book. The narrative of a feudal past did not begin, as one might think, from study of a broad array of medieval documents and laws, but from the commentary tradition on the twelfth-century Italian *Libri feudorum*, an eclectic collection of treatises, statutes, and northern Italian legislation regarding fiefs. The *Libri* started as a private, mostly Lombard collection, and accumulated in various recensions throughout the twelfth and thirteenth centuries in the context of the revival and teaching of Roman law.⁹ In the early thirteenth century, the influential glossator Hugolinus appended a recension of the *Libri* to the corpus of Roman law, and from that point on it circulated with the standard manuscripts of civil law used throughout Europe for teaching, and to a lesser degree for practice. After the legist Accursius glossed it along with the entire Roman code in his authoritative thirteenth-century *Glossa ordinaria*, the *Libri*’s place in the corpus of Roman civil law was secure, although its nonclassical Latin sometimes prompted commentators to question its authenticity—that

is, the veracity of its ancient Roman heritage.¹⁰ The *Libri* thus existed in a fairly stable but sometimes vexed relation with the Roman law from which it drew authority, and when jurists took it up in the sixteenth century, this relation would provide the wedge for debate. Ironically, then, feudal law entered legal historiography's mainstream with an ancient Roman passport, by virtue of a twelfth-century humanism that both enabled and put a fold into the "Renaissance" cleansing and recuperation of a legal past.

The history of the *Libri* and its commentary tradition challenges many standard concepts of a feudal timeline. The onset of the *Libri*'s immense popularity and the initiation of its burgeoning commentary tradition in the thirteenth century is "astonishing," Kenneth Pennington notes, and "presents a historical puzzle for two reasons":

First, by the thirteenth and perhaps as early as the twelfth century, the system of personal and property relationships that historians have denominated feudalism was distinctly on the wane. Medieval society was no longer structured around warrior vassals holding fiefs in return for military and other services. Mercenary armies and professional civil servants were instead the new key piece of a changing economic and administrative world. Second, what feudal custom did remain in use varied from place to place. The Lombard customs in the *Libri feudorum* had no necessary similarity to the customs anywhere else in Europe. Yet not only was the *Libri feudorum* the second most popular private law collection after the *Decretum* of Gratian, but it also continued to be published, consulted, and commented on by academics and practitioners throughout Europe well into the early modern period.¹¹

This contradiction within feudalism—that is, the temporal contradiction between the written tradition that ultimately generated the conceptualization of feudalism and that which feudalism came to describe—finds its parallel in the many contradictions that scholars now acknowledge as inhabiting the term. Pennington offers two explanations for the disparities he identifies. First, "written feudal law was largely an academic creation" perpetuated by the pedagogy and tradition of law schools, a suggestion that coincides with Susan Reynolds's argument in her *Fiefs and Vassals* that the academic law of fiefs was a creation "of a culture of academic and professional law and of professional, bureaucratic government that had developed since the twelfth century," upon which she builds her contention that this law, read retroactively,

has disproportionately influenced feudal historiography.¹² It is worth noting that the emphasis of these academic laws on bonds of fidelity, sometimes with explicit reference to sexual liaisons, suggests intriguing intersections with the contemporary development of “courtly love.”¹³

Second, Pennington observes that the *Libri* was “a work of generalities,” and therefore flexible enough to offer lawyers a common vocabulary for disparate circumstances. Incredible as it may seem, as Ryan Magnus puts it, “A private collection of Lombard customs was often used to describe fiefs given in return for homage and fealty in Northern Europe, even though the text itself never mentions homage,” with the result that professional lawyers could override local statutes with the Roman-backed pedigree of the *Libri feudorum*.¹⁴ In his study of the *consilia feudalia* accompanying legal cases, Gérard Giordanengo, like Pennington, notes a disparity between the chronological and geographical history of the *consilia* (which began in the thirteenth century but did not expand and attract specialists until the fifteenth and sixteenth centuries, mainly in Italy) and medievalists’ expectations: “The least that one can say is that these chronological and geographical facts do not all correspond to what we know—or what we think we know?—about feudal institutions and their importance in the medieval period.”¹⁵ He argues nonetheless for the importance of these *consilia* with regard to sovereignty in an international context, a point to which I will return.

In her controversial *Fiefs and Vassals*, Reynolds insists upon the need to revisit and to account for the influence of early feudal historiography. *Fiefs and Vassals* aims, in part, to prove that the late medieval academic laws of fiefs did not develop out of earlier customary laws, and that this academic tradition (mainly based upon the *Libri feudorum*), along with the sixteenth-century interpretation of it, has led to a generalized, homogeneous, and misleading “construct of feudalism.” Her book attends as well to the retrospective authorizing strategies of the medieval academic laws of fiefs, which had long been read simply as the codified reflex of centuries of feudalism. Reynolds marshals great quantities of documentation in an effort to show that “fiefs and vassalage,” as well as the later “feudalism,” are “post-medieval constructs” of little use in approaching medieval history.¹⁶ Reynolds is certainly right to insist upon the need to revisit the tradition(s) of feudalism with an eye to the effects of its historiography. Empirical evidence, however, will never settle the arguments over feudalism, which can *only* be a contested category, in that it developed as a medium for conflicts over sovereignty and *imperium*, which inhabit feudalism and sustain it as a contradictory and politically active term. Attempting to come to grips with the writing of a

feudal past is one way of questioning what David Lloyd calls “the reasons of state that are embedded in the rationalities of history.”¹⁷

Augean writing

“Quid sit feudum?” the teacher Hostiensis asks rhetorically in the mid-thirteenth century. “Nunquam audiui convenientem diffinitionem,” he answers, and adds, “satis potest magistraliter describi” [What is a fief? Never have I heard a suitable definition . . . for teaching it can be explained well enough].¹⁸ As this pedagogic moment attests, the “fief” never admitted definition, which availed medieval teachers space for interpretation and medieval lawyers malleability in application. This indeterminacy in turn enabled sixteenth-century feudists such as François Hotman (1524–1590) to describe the law attested in the *Libri* as “ambiguous” and “incertam,” and to imagine himself a juridical Hercules who braved its Augean stable of “barbarous writing” in order to produce his *De Feudis Commentatio Tripartita*.¹⁹ The narrative flow of his feudal historiography, in other words, purges as it proceeds, and leaves in its wake a recuperated edifice of the law—an apt figure of the feudists’ writing of history as they simultaneously rejected and relied upon centuries of medieval legal commentary.

For legists like Hotman, the *Libri* occupied a pivotal position in legal discourse, offering on the one hand the value (or the liability) of a Roman pedigree, and on the other hand a barbarous language and an affinity with local, contemporary custom. For scholars imbued with the ideals of humanism and the sense of innovation that it brought to legal teaching, as most of the feudists were, this doubleness corresponded to the philosophical and political tensions inherent to their discipline. They approached the study and reform of law with an admiration for Roman legal principles, but also with an acute awareness of the historical difference between cultures. They therefore acknowledged an irreparable disjunction between antiquity and the present, not simply in terms of an intervening “dark ages,” but also according to the terms of their conviction that laws were culturally specific and thus not transferable. They agreed therefore, with Petrarch’s sense of being cut off from the light of antiquity, as well as with the criticism, forwarded by the “grammarians” gathered behind Lorenzo Valla, that medieval jurists had naively attempted to apply Roman law directly to their own world. The desire of legists like Hotman to cleanse and recuperate the laws of the *Libri*, then, redoubled the larger legislative project at hand.

Most professional jurists were not content simply to relegate the

Roman corpus to antiquarian status, but instead turned to reestablishing its text and to studying its principles within a project of comparative jurisprudence that included, even embraced, the recent “barbarous” past. Thus, while Petrarch, Valla, and their “grammarian” followers wanted to expunge the obviously unclassical *Libri* from the Roman legal corpus, and scorned medieval commentaries such as those of the prominent fourteenth-century legist Bartolus of Sassoferrato (to the extent that “barbarisms” were sometimes nicknamed “Bartolisms”), most professional jurists rejected this strict approach, and insisted upon the centrality of the *Libri* (even if they refused its authority for political reasons) and the value of the earlier commentaries.²⁰ This was true, for instance, even of Andrea Alciato, the Italian scholar hailed as the leading innovator in legal teaching, of whom Kelley writes:

Alciato denounced the ignorance of the glossators (*Accursiani*), but he had little more use for the irrelevant “folly” (consciously using the term of his friend Erasmus) of grammarians, especially of their “emperor” Valla; and he celebrated the work of Bartolus and such later professional interpreters as his own teacher Giason, “without whom . . . we should have no science.”²¹

As they took up legal historiography from various points of indebtedness to state power, then, these legists were compelled by a conflicting set of temporal discontinuities. They were separated by a gap in time from the valorized principles of Roman law, and they were distanced, by virtue of its “barbarism,” from the more recent past upon which they depended, and that, with some reservations, they reclaimed. The *Libri* could be said both to analogize the tensions propelling sixteenth-century jurisprudence, and to occupy an especially conflicted place within it.

The irresolvability of the “barbarous” European past within legal discourse at this crucial moment in the history of empire and nation-state belies the idea that medieval/modern (or medieval/Renaissance) periodization emerged simply through the “consciousness of a new age” that established a relationship between the ancient and the modern at the expense of the Middle Ages.²² Periodization, if it is to have a historical legacy, results from a *double* movement, the first a contestatory process of identification *with* an epoch that it simultaneously constitutes (as we see in the feudists under study), and the second a rejection of that epoch identified in this reduced, condensed form (as we will see in Jean Bodin).²³ I will be arguing in part that the conflicted relation of feudal legal historiography with the

past, along with the doubleness inherent in any attempt to theorize sovereignty, generated the temporal boundaries of “the Middle Ages” as sites of contest that took concrete form with the mapping of sovereign power.

Barbarian places

The tensions within this legal study, particularly when it comes to feudal law, abound in the work of Hotman, who describes feudal law in the preface to his *De Feudis* as “ambiguitatem, repugnantiam, et absurditatem,” and as written in “barbarica scriptione.” Yet, he had only disdain for the “grammariens purifiez” who would reject medieval law and commentary as “nec lex sed faex” [not law but excrement], an accusation poignantly at odds with the Augean metaphor he applies to his own cleansing efforts, and an explicit reminder of the inescapable relation of *fundament* and *fundamental*.²⁴ Hotman writes here as one of France’s leading jurists, as a Calvinist revolutionary and proponent of resistance theory (i.e., justification of political resistance to a regime in power), and as a French patriot. Extreme though his politics were, Hotman in many senses was a typical feudist, in that he took up the topic of fiefs within the larger humanist projects of reorganizing and systematizing law, considering laws in terms of their historical specificity, and undertaking comparative study ultimately aimed toward distilling universal principles of equity—the *mens legum* or the “spirit of the law.”²⁵ In his thinking, as Ralph Giesey puts it, “the tension remained between those two coexisting attitudes to law which saw understanding in terms of history and yet demanded the demonstration of absolute values,” a tension clearly evident in the preface to his *De Feudis*, and one that would be important in the political application of the feudists’ work.²⁶

Hotman claimed a Germanic origin for the feudal law attested in the *Libri*, but he also considered it, like Roman law, to have been corrupted by centuries of sophistic editing. He undertook its explanation and organization both for teaching and for advancing a program of legal reform aimed toward a national code for France—a program he outlines most explicitly in his polemical *Antitribonian* (1567).²⁷ As its title indicates, *Antitribonian* attacks Tribonian, the sixth-century editor of Justinian’s *Digest*, for his misunderstanding and corruption of the legal code.²⁸ It also, however, emphasizes that Roman law had no authority in France, both because the Roman code was specific to ancient Roman culture, and because Hotman (as a protestant and a French nationalist) defended France’s independence from the emperor. By contrast, as Giesey remarks in summing up his position, “feudal

law *must* be studied, because it is germane to French institutions of public law, whereas Roman Law has no direct application to them.”²⁹ Nonetheless, Hotman holds fast to an idealizing project, and concludes by insisting that the principles of Justinian’s code still offered a priceless guide for a program of legal reform. He thus offers an effective description of the process through which conflicting legal practices were cleansed of their literal pertinence, yet were retained and made to yield a universal Roman spirit.

This universalism was of course bound up with colonialism, as *Antitribonian* quickly attests. In an imaginary scene meant to display the absurdity of applying Roman law to France, Hotman stages the centrality of colonialism to this juridical discourse. *If*—he proposes—a lawyer meticulously trained in Roman law but ignorant of French customary law were to present himself “en un palais ou autre siege de ce Royaume,” then it would be as though he had come among the savages of America:

qui ne sçait qu’il y sera presque aussi nouveau et aussi estrange,
comme s’il estoit arriué aux terres neuues entre les sauuages de
l’Amerique? Car là il n’orra jergonner que d’heritages cottiers ou
surcottiers, des droits seigneuriaux, de iustice directe, censiue,
recoignoissance, de retraits lignagers ou feodaux. . . .³⁰

[who does not know that it would be nearly as novel and as
strange as if he had arrived in the new world among the savages
of America? For only jargon is heard there—cottar and surcottar
tenancies, seignorial rights, immediate jurisdiction, jurisdiction
over quitrenters, assizes, first right of redemption based on kinship
or lordship. . . .]

Almost as strange, new, and implicitly as “savage” as the inhabitants of the New World, the French court stands as distant from classical Rome as does America from sixteenth-century France. Hotman’s conjunction of “estranger” and “sauuages” fleshes out the full implications of the “barbarism” attributed by humanists to postclassical law, its foreignness defining the very limits of civility and civil law. Despite the estrangement in this passage of French customary terms and classical law, as Pocock observes, “it is clear that these uncouth vocables, ‘barbarous’ according to all humanist standards, are being contrasted favourably with the classical clarity of Roman law.”³¹ Like an early version of the “noble savage,” Hotman’s French court challenges the outmoded mores of classical civilization with autochthonous strength, defying their universal span in space and time, usurping the claim to empire.

But this demonstration of the law's limits only demands its supersession by absolute values, the *mens legum*, or "spirit of the law." Thus mediated by the American savage, who is nonetheless kept safely distant by "presque," French barbarism can authorize and be assimilated into a new European universal. As David Wallace has put it, the "discovery" and colonization of the "New World" has always been a principal historical determinant behind configurations of the Renaissance.³² Engaging and furthering this point, Walter Mignolo argues that this European "discovery" precipitated a "discontinuity of the classical tradition" ultimately constitutive of Renaissance universals:

The foundation of colonial difference, in the sixteenth century, implied the discontinuity of the classical tradition: Indigenous people of the Americas could not be accommodated within the secular history of the world initiated in Greece. And it was also difficult to incorporate them into the macronarrative of world creation provided by the Bible.³³

Mignolo rightly finds that this breach forced a reevaluation of universal categories, resulting in a redefinition of humanity coupled with racism. But this redefined humanity so crucial to colonial rule and the logic of empire also depended upon a reworked identification of and with a European "past," which was articulated in minute detail yet superseded by a historiographical idealism that ultimately bonded—in the breach, so to speak—the "Middle Ages" and the colonial subject.

Hotman's triangulated scene thus miniaturizes the disciplinary interests and constraints within which legists engaged the "barbarism" of feudal law, sometimes to cleanse it of troublesome discontinuity, but more often to insist upon its "barbarism" in order to reclaim it. This last position, part of the beginning of the "Gothic" rehabilitation that would have such a long political (not to mention literary and architectural) life in the name of nationalisms, participated in an already developing debate in which the *ius feudale* performed as a historical ground for political arguments and territorial claims. I'll turn now to the work of several feudists who preceded Hotman, and who delineated the stakes of this search for feudal origins.

Barbarian etymology

The rubric "de origine feudorum" dates from the fourteenth-century legal commentator Isernia, who raised the etymological point that *feudum* and its

related terms are not classical. Fourteenth- and fifteenth-century commentators like Isernia were interested in the legal authenticity of the *Libri* within the Roman corpus, and in the continuity of imperial authority that this authenticity would insure.³⁴ In the sixteenth century, this historical question of etymology shifted to a question of origins bearing upon the legal ancestry of particular states and their claim to *imperium*, both in the sense of the translation of power from Rome, and in the juridical sense of the ownership of power.³⁵ The fundamental point dividing the French position from the Italian position, for instance, was “whether the king of France recognises the emperor as superior” — a question framed by the larger claim, invoked and debated with reference to imperial and colonial ambition from the first to the eighteenth centuries, that “the emperor is lord of the whole world” [*dominus totius orbis*].³⁶ Supporting or refuting this claim required historical evidence and a current theory of sovereignty, both of which were supplied, in part, through the historiography of feudal law. Etymology remained a focus of analysis in the sixteenth century, and thus became a cutting edge for history as it laid claim to imperial power and to jurisdiction over territory.

The French philologist Guillaume Budé (1468–1540) — France’s most famous early humanist (considered by contemporaries as the equal of Erasmus), a Gallican nationalist and professional servant of the monarchy (although not a professional jurist), and an aggressive champion of French cultural independence — addressed the issue of feudal law in his influential *Annotations on the Pandects* (1508), a sprawling collection of notes on the first twenty-four books of the *Digest*.³⁷ As a humanist dedicated to the task of recovering the text of Roman law distorted by centuries of “barbarous” editing and commentary, and more dedicated than the professional jurists who followed him to Valla’s dictum that doctrine was inseparable from eloquence, Budé adopts a *translatio* approach in order to negotiate the tension between his Gallicism and the supremacy that he yielded to ancient Rome. In other words, he concedes the point of a Roman origin and argues for a transfer of leadership to France, which would emerge from the “barbarous shadows” of the past into cultural superiority and independence.³⁸

Budé therefore grants a Roman provenance for the fief, which he defines in a way that accords with his support of absolute monarchy, and that limns the process by which feudal historiography performed as a sixteenth-century discourse on sovereignty and subjection. The provincials and allies of the Romans often pledged themselves as clients to Roman noblemen, he argues, and “these clients were then obliged to keep themselves and their fortunes forever subjected to their patron and to keep and to venerate

his customs.” With an eye toward restoring local feudal custom to a position of classical eloquence, Budé then performs a reverse translation: “nobody, I think, can avoid the conclusion that *nostram feudorum consuetudinem* arose from the relation of client to patron. Wherefore, I usually apply the Latin term ‘clients’ to those called vassals and ‘clientele’ to that relation and ceremony called ‘homage.’”³⁹ This linguistic reversal places the French laws of fiefs, like French culture, in a position to emerge from the shadows of the barbarous past and to claim the translation of Roman power. The language of fiefs thus operates for Budé, as it would for continental as well as English jurists over the next century, as a cutting edge in the writing of a political history executed through the principles of philology. For the professional jurists following Budé this edge would far more explicitly align with *imperium*, both in struggles over absolutism within states as well as in international conflict over the claim that the emperor is “lord of the whole world.”

Few of Budé’s compatriots would follow him in declaring a Roman origin for fiefs.⁴⁰ The leading German jurist Ulrich Zasius (1461–1535), however, found Budé’s client-patron theory, as well as the principle of classicizing vocabulary, suitable both to his support of Charles V’s hegemony, and to the larger project of his full treatise on “feudal customs.”⁴¹ Writing after the Roman *ius civile* (including the *Libri feudorum*) was “received” in Germany, Zasius, an intimate of the Hapsburgs, opens his 1535 *Usus feudorum epitome* by insisting upon the central importance of *feudales consuetudines*, which, he insists, his students must learn even if its “sordid” and “barbarous” language did offend their fine sensibilities. He promises, nonetheless, to ameliorate this law’s offensive diction.⁴² Zasius adopts the client-patron theory (“Nos credimus feuda a vetustis Romanorum moribus orta” [We believe that *feuda* arose from the ancient customs of the Romans]),⁴³ but, far less inclined toward absolutism than Budé, he tells the story differently: the Romans, having conquered the provinces of Gaul, Germany, etc., left behind a large part of the *militae*, who invited many of the inhabitants, largely peasants, to become “clients,” granting them lands and property as “clientele.” From this beginning, in the course of time, a variety of feudal customs developed.⁴⁴ However variable they may be then, for Zasius feudal customs attest to the continuity of empire linked to a common history for Europe.

Zasius also had different motivations than Budé for classicizing the barbarous language of fiefs (although despite his client-patron story he usually did not substitute “client” for “vassal”) — not only because he linked a Roman origin to contemporary empire and thus to his Hapsburg patrons, but also because he wished to validate the imperial authority of feudal cus-

toms, past and present, upon which he would base a contractual theory of sovereignty (which I will discuss below). Like Budé, he understood the point of classical rhetoric that dictated the inseparability of doctrine and eloquence. Rejecting the theory that the *Libri* was merely a collection of private law, he insists upon the legal authority of feudal customs in both the lay and ecclesiastical spheres: it was not without reason, he says, that this law was inserted into the *corpus Iuris Civilis*.⁴⁵ In contrast to Budé, Zasius rejected the “grammarian” approach of Valla and defended the Accursian gloss and “Bartolist” commentaries, retaining their position in legal history even as he recognized and attempted to purge their barbarous shortfalls.⁴⁶ In Zasius’s *Usus feudorum*, then, the translatability of the *Libri* and its commentaries into classical diction validates the origin and the continuous participation of feudal customs in imperial history, and their linguistic transposition is ultimately a statement about the foundation of power.

For precisely this reason the famous French jurist Charles Du Moulin (1500–1566) railed against it. In the long treatise *De Fiefs* (1539) that opens his *Commentarii in Parisienses consuetudines*, Du Moulin strenuously refutes the legitimacy of the classicizing tactics of Budé, who “barbara feudorum vocabula latinis commutavit” [converted the barbarous vocabulary of fiefs into Latin], and even more strenuously criticizes Zasius’s imitation of this practice.⁴⁷ For Du Moulin, it was necessary to reclaim and to embrace barbarian etymology in order to insist upon a *difference* in feudal origin that would open the foundation of this law and allow for a competing narrative of sovereignty based on its terms. As Kelley puts it, “Dumoulin protested that his objections to such classicizing rested on no mere verbal quibble; the point was not a change in terminology but a difference in historical origin.”⁴⁸ Du Moulin effectively positions the “barbarous” language of fiefs as a shibboleth that reveals ethnic distinctions and enforces a territorial claim to sovereignty. Although he dismisses Zasius’s linguistic *translatio* as mere fondness for elegant diction, his response points to the increasing importance of this language in legal debates over the nature of European institutions and monarchy, and signals the role it was beginning to play in nationalist historiography and international law.

Du Moulin’s embrace of barbarian etymology allowed for an innovative and consequential move, announced in his first sentence: “Merito priore loco ponitur hic materiae fedalis titulus, quum feuda sint proprium et peculiare inventum veterum Francorum.”⁴⁹ Fiefs were an invention of the Franks, and from them spread south, first to Gaul, then to Lombardy (with

the Lombards, who had learned feudal practices from the Franks), the two Sicilies, Apulia, and many other regions.⁵⁰ He rejects the *Libri* entirely as Lombard, late, and derivative—nothing, in fact, except local Italian law, introduced well after the compilation of the Roman corpus (which in any case had no authority in France).⁵¹ Reversing the movement of *translatio imperii*, Du Moulin exploits the cultural capital that had accrued to feudal historiography through the *Libri*'s incorporation in the Roman code, and appropriates it for the Franks. Combining an already established French rejection of the *Libri*'s authenticity (i.e., its authority in France) with a rejection of its claim to historical priority, he merges feudal historiography—now broken free from the *Libri*—with the swelling tradition of Gallic nationalist historiography. Turning to Parisian custom as authority, he effectively builds up an *ius commune* based on feudal custom that could stand up to the Roman *ius civile*. His “Germanist” thesis would quickly link with the project of Gothic rehabilitation, later advanced for instance by his friend Hotman, which would carry the politically charged, chauvinistic banner of “feudalism” for centuries and that would, in the eighteenth and nineteenth centuries, become both a heuristic and a tool for colonial enterprise.⁵²

De Fiefs thus simultaneously expands feudal custom as a capacious legal and social category, and secures it as an origin myth for French sovereignty—both in the sense of declaring French supremacy and independence from the empire, and in the sense of defining *imperium* as the prerogative of the king, a double-edged argument already developed for feudal custom, although less explicitly, by Zasius for the imperial side. Combining an insistence that only local custom can provide the basis of legitimate law (“Ergo consuetudines nostrae sunt ius commune”)⁵³ with an argument that the sovereign relation encapsulated in the fief had its basis in the *ius gentium* (the “law of nations”), Du Moulin, like Zasius, formulates a theory of sovereignty based upon the fief that exhibits the tension, to quote Giesey again, “between those two coexisting attitudes to law which saw understanding in terms of history and yet demanded the demonstration of absolute values.”⁵⁴ The implicit universalism of the fief finds resonance in Hotman’s savage scene, and a generation later will provide a basis for Jean Bodin to theorize relations of dominance and subjection on an international scale.

So far, I have focused primarily on the process by which sixteenth-century jurists narrativized feudal law as they developed and justified historical and geographical claims to sovereignty. Even more important to the process of periodization, however, is the role of this narrative in struggles

over the definition of sovereignty and subjection, slavery and freedom, to which I will now turn.

Feudal sovereignty and the “law of nations”

The contrasting views of Zasius and Du Moulin regarding sovereignty are well known, and both are based upon a theory of the fief.⁵⁵ Zasius held, as Steven Rowan puts it, “that the Roman prince, far from being freed from the law’s bonds, was in fact bound by feudal contracts in the same way as a private person (*Princeps Romanus ligatur contractibus sicut privata persona*).”⁵⁶ Just as the reciprocal contract of the fief bound lord and vassal equally, the prince—or the emperor when Zasius passes judgment in a specific case—was bound by constitutional agreements, including certain legal decisions by his magistrates.⁵⁷ For Du Moulin, in contrast, the feudal contract both illustrated and grounded the executive independence of the prince in matters of state, even though he agreed that the prince must keep private contracts. These sixteenth-century struggles over sovereignty were often phrased, in a continuation of a long medieval tradition with classical roots, in terms of the *merum imperium*—sheer power, or the “power of the sword”—ultimately the right to inflict the death penalty. *Merum*, or “pure” *imperium* was power held by right of office, exercisable according to the holder’s discretion without reliance upon a superior. Delegated *imperium*, by contrast, was subject to the prince’s control and was thereby considered a form of subjection. Royalists tended to define the *merum imperium* as indivisible and vested solely in the king, with magistrates holding *imperium* only by delegation; those resisting absolutism argued for its divisibility, and distributed fully vested power between king and magistrates.⁵⁸

In their arguments regarding the *merum imperium* Zasius and Du Moulin are grappling, as are their contemporaries, with the conceptual limit of sovereignty, the paradox that, as Giorgio Agamben observes, “consists in the fact the sovereign is, at the same time, outside and inside the juridical order.”⁵⁹ Classical and medieval political theory explicitly recognizes this paradox, typically expressed in the imperial formula that the prince is simultaneously lawmaker and unbound by law (*legibus solutus*). The “pure” possession of power encapsulated in the *merum imperium* operates at precisely this point: its holder is, by law, outside the reach of law. It thus succinctly captures the basic political problem of the constitution of sovereignty: “the sovereign is the point of indistinction between violence and law, the threshold on which violence passes over into law and law passes over into vio-

lence.”⁶⁰ Drawing on the political theory of Carl Schmitt, Agamben phrases the paradox of sovereignty in terms of the sovereign exception: just as the sovereign is both inside and outside law, sovereignty resides in the power to suspend the law, to declare the state of exception. The exception to a rule of law (for instance imposing the death penalty for the crime of homicide) defines and maintains even as it suspends the rule, which exists as a relation to the form of its suspension. In his work on sovereignty, Georges Bataille describes the temporality of this link between death and sovereignty not as suspension but as dissolution (a suggestion that coincides nicely with the sovereign’s status as *legibus solutus*) of the epistemological and political economy that binds humans to servitude. As a refusal of the limits imposed by the fear of death and of the always anticipatory labor of knowledge, Bataille’s sovereign moment is aporetic, an “un-knowing” that usefully connects both with the feudists’ concern with the relation of sovereignty and servitude, and with the structure of periodization.⁶¹

In their struggles over sovereignty, sixteenth-century legal scholars were competing to define the *location* of sovereignty, the “power of the sword” that operated as law but also superseded law. Feudal historiography, conflicted in its relation to the past and characterized by its insistence upon both local specificity and universal ideals, emerged as a means of negotiating the sovereign paradox as legists sought to restrict or to empower absolutism, and to legitimize nationalist and increasingly expansive imperial agendas. The feudal relation, in turn, became the basis for theorizing the sovereign *subject*.

As he theorizes sovereignty, Zasius extends the logic of the binding feudal contract to his argument regarding the *merum imperium*. Even though the making of law comes under the eminence of the prince and jurisdiction proceeds from him, he can neither annul the rights of his subjects nor the judgments of his magistrates, who do not have the power of lawmaking but do hold *merum imperium* in certain jurisdictional areas.⁶² The contractual relation of the fief thus grounds Zasius’s attempts to limit and to disperse power, a project furthered by his argument that the fief originated with and thus had an authentic basis in Roman law. This solution does not, however, take account of the prince’s status as *legibus solutus*, and Zasius thus faced the difficulty of appearing to subordinate the prince to civil law. Zasius gets around this problem by placing the contractual obligation not under positive law but under the *ius gentium*—the “law of nations,” understood to derive more directly than positive law from the universal principles of equity and justice foundational to civilization, and therefore invoked as a moral force

both to safeguard each state's right to self-rule and to negotiate relations between states. On the basis of the *fief*, in other words, Zasius theorized a social contract that is both specifically locatable and universally valid. The *ius gentium* thus was (and is) a self-conflicted category, that, like "human rights" today, shuttled between the often contrary demands of respect for individual cultures (both tyranny and slavery, for example, were covered by the *ius gentium*) and of an insistence upon fundamental moral principles (such as human liberty), and it could of course always come to the service of politics.⁶³ As a category of law the *ius gentium* had a long and convoluted history, and sixteenth-century legists drew upon both classical and medieval theories as they contemplated national and international politics.

By placing the obligation of a feudal contract in the category of the *ius gentium*, Zasius positions it not only beyond the prerogative of individual rulers, but in a sphere of law fast becoming a medium of comparative jurisprudence in the context of burgeoning colonial enterprise—or, in Kelley's perhaps euphemistic terms, "the *jus gentium* (or *jus novissimum gentium*) represented the expanding and extra-European horizons of modern political and social thought. Most portentously," he continues, "the *jus gentium* represented the legal face of that 'universal history' in which Bodin found the basis both for his juridico-historical 'method' . . . and for his massive treatise on comparative public law."⁶⁴ The inevitable conjunction of law and violence (or consent and conquest) within any theory of sovereignty, and the obvious role of colonial conquest in Europe's expanding horizons, must be kept in mind as we consider the tension between local custom and universal values in the writing of "feudal law" as part of the *ius gentium*.

For Du Moulin, as for Zasius, the contractual relation of the *fief* provided grounds for an appeal to the *ius gentium*, although he would arrive at a different conclusion. Du Moulin, a staunch royalist, is perhaps best known for his categorical statement, made in his chapter on "homage," that the king is fully vested with all *merum imperium*, and that seignorial jurisdictions were usurpations:

For it is evident in all this realm and in any part of it whatever that the king is by common law vested with all jurisdiction and *imperium*, since he is the most high monarch of his kingdom. . . . And he is vested with these rights by specific disposition of the *ius gentium* . . . and from this it must be agreed that they are mad who think the king vested only with the final appeal, or, if I may use their words, with the last resort, because, on the contrary he is

established in every grade and species of jurisdiction in the whole realm. . . . And so by common law and *ius gentium* all jurisdiction of this realm is the king's since not the least jurisdiction may be exercised unless by him or in his name and authority.⁶⁵

To suggest, as has been done, that Du Moulin's argument here amounts to an "attack on the feudal vision of French society," or a condemnation of "feudal relationships," is in an important sense anachronistic, and entirely misses the constitutive force of feudal historiography.⁶⁶ Rather than condemning decentralized power as feudal, Du Moulin is developing an argument about sovereignty based upon what he claims to be the essence of the feudal contract, which in turn upholds his royalist theory of the *merum imperium*. As we will see below, this conjunction provides the basis for his theory of the relation between an absolute sovereign and his "free" subject. Du Moulin's *De Fiefs*, then, simultaneously establishes the "Germanic" narrative largely responsible for what will become the predominant trajectory of feudal historiography and the development of feudalism as a historical category, and it relies upon the idea of the feudal relation to theorize "absolutism" on behalf of the state, a stance that will be popular among legists for nearly a century.⁶⁷ We could say, in fact, that the *historiographical* "becoming-feudal" of the European past was a condition of possibility for an escalated departure of European nations from "feudalism" in its general sense of decentralized power.

To a degree, Marxist historiography offers an explanation for this relation of feudal theory and arguments for absolutism. In his discussion of absolutism and periodization, for instance, Perry Anderson emphasizes the importance of the Renaissance revival of Roman law to the emergence of "the Absolutist State in the West." He is careful to recognize the connection between this revival and the medieval study of Roman law beginning in the twelfth century:

The dual forces which produced the new monarchies of Renaissance Europe found a single juridical condensation. The revival of Roman law, one of the great cultural movements of the age, ambiguously corresponded to the needs of both social classes whose unequal power and rank shaped the structures of the Absolutist State in the West. Renewed knowledge of Roman jurisprudence dated back, in itself, to the High Middle Ages. The dense overgrowth of customary law had never completely

suppressed the memory and practice of Roman civil law in the peninsula where its tradition was longest, Italy. . . . Beyond Italy, Roman legal concepts gradually began to spread outwards from the original rediscovery of the 12th century onwards. By the end of the Middle Ages, no major country in Western Europe was unaffected by this process. But the decisive “reception” of Roman law—its general juridical triumph—occurred in the age of the Renaissance, concurrently with that of Absolutism.⁶⁸

Anderson argues that this “reception” of Roman law (which, in all its complications, is what we have been considering here) had a dual, conflicted provocation: it answered to property interests of the commercial and manufacturing bourgeoisie, and it served the royal governments’ drive for increased central power. The latter, abetted by aristocratic revision of law in response to changing social and economic conditions, was not a struggle *against* feudalism, but was rather “*a redeployed and recharged apparatus of feudal domination*,” which restructured but maintained aristocratic rule. Thus Anderson suggests, in a collocation taken from Marx, that the revival of Roman law enhanced “feudal Absolutism.”⁶⁹

This formulation usefully complicates the politics of medieval/modern periodization, and makes sense of Du Moulin’s theorization of centralized power on the basis of the feudal relation. And, even though it does not take account of the *Libri feudorum* and its commentary tradition within and against the Roman legal tradition, it offers an explanation for its importance, both from the twelfth to the fifteenth centuries when, appended to and glossed with Roman law, it steered the course of professionally administered aristocratic laws of fiefs, and in the sixteenth century when its postulation as an origin myth for European sovereignty demarcated a feudal past that in turn organized the content of history in the service of the state. It does not, however, account for the performance of feudal historiography in achieving the ends of “feudalism”—the process, in other words, by which *the self-effacement of the writing of a feudal past* constitutes both the possibility of its existence as a concept and its culmination in this history. Instead, Anderson undoes periodization based upon feudalism and reinscribes it on the basis of “Absolutism.” These intertwined paradigms of periodization, however, both emerge from the doubling back of feudal historiography upon itself in an act of mapping sovereign boundaries onto a universalized chronology. The medieval/modern divide is so stubborn because it describes not a passage, but an *aporia*.

This *aporia* accounts for the disappearance of feudal historiography from the temporalization of subjection, which could never have taken hold simply on the basis of a Petrarchan “dark ages” that swallowed the light of antiquity, or through the philosophical, religious, and literary projects that followed and proclaimed a new age.⁷⁰ The “dark ages” got its teeth, I suggest, largely because feudal historiography meshed with legal teaching and *practice*, and because the theorization of sovereignty and subjection on the basis of feudal law easily accommodated a discourse on slavery and transferred it to the past. Feudal historiography’s double, conflicted relation with its postclassical past (a past that it calls *antiqui*, and never, so far as I have seen, *media aetas* or its cognates) forces a rethinking of the “becoming” of the modern in terms of a historical consciousness of a new age.⁷¹ Once feudal sovereignty gained status as a concept and its conflicted narrative disappeared, the “Middle Ages” could eventuate as distinct entity, and subjection could emerge as past and elsewhere.

Feudal law and slavery

Feudal law became particularly amenable to a discourse on slavery because in the hands of royalists like Du Moulin—who generally favored what is now termed *absolutism*—its negotiation of the sovereign paradox (sovereignty is the point of indistinction between violence and law, force and consent) brought it into explicit structural alignment with the logic of slavery. As Orlando Patterson has demonstrated in his now justly famous *Slavery and Social Death*, a master’s total power or property in the slave requires the exclusion of the claims and power of others in him, and he in them: social death.⁷² I am not suggesting that feudal vassals (that is, vassals in the formal relation of fief-holding)—either before or during the sixteenth century—were slaves in an institutional sense, or in the sense of the conditions we usually associate with that term. Rather, in isolating the king as the sole holder of the *merum imperium*, Du Moulin, whom I will take as an example here, likewise isolated the political subject from all ties of political dependency other than those with the king. “Pure” sovereignty and slavery, as Hegel’s lord/bondsman (or master/slave) dialectic suggests, are inextricably paired.

In feudal historiography this discussion occurs mainly under the rubric of “homage.” Du Moulin presents his claims regarding the *merum imperium* in a discussion of *servitus*, which he defines as the “proper” (as opposed to metaphorical) sense of “homage.”⁷³ *Servitus*, he explains, may

be either “personal,” by which one is bound in personal service/servitude, or “real” (referring to real property), by which one pays rent for land in return for protection, and is free (*liberi*). He observes that the act of homage had in recent practice applied in both situations, and it is through this indistinction between liberty and bondage in the act of homage that Du Moulin mounts his argument regarding the *merum imperium*.

In discussing the two “metaphorical” applications of homage—those by reason of jurisdiction and by reason of fief-holding—Du Moulin stipulates that the act of homage, as an oath of obedience and a form of self-subjection, necessarily entails the relation of bound personal service. It may not, therefore, properly apply between a free tenant and his lord, whose relation, he insists (in a move that would separate the economic from the political), is merely a real estate transaction—a form of free exchange. The metaphorical (or “improper”) uses of homage are therefore illicit. Invoking both Frankish and Roman history, as well as the old commentators on the *Libri feudorum*, he argues that this precept is held by nature, nations, and the civil law (“iure naturali, gentium, et civili”). This extension is important for the future relationship of this theory to slavery, which had traditionally been the purview of natural law and the law of nations, and will help Bodin to extend homage, as slavery, to international politics.⁷⁴

Du Moulin ultimately insists that the only legitimate *bound* relationship is that between king and subject. Any lord who requires homage from his fief-holders or from those within his jurisdiction behaves as a tyrant, improperly subjecting those who have a free relation with him, and abusing the power that he holds by virtue of the king, who holds the entire kingdom in *dominium directum* (while magistrates and lords hold only *dominium utile*). One can be *subject* only to the king, and may therefore do homage, in the proper sense of pledging *fidelitas absoluta*, only to the king.⁷⁵ Du Moulin thereby eliminates the possibility of political interdependencies between subjects, which had occurred, in his estimation, through improper practice of “homage,” and he shifts the relation of liberty and bondage entirely to that between king and subjects. He insists, in other words, upon a form of social death, in the sense that the king’s total power requires the exclusion of the claims and power of others upon the subject, as well as the exclusion of the subject’s reliance upon others for political viability. A generation later, Jean Bodin will register the proximity of this theory to the logic of slavery by describing vassalage as “une vraye servitude d’esclave.”⁷⁶

Du Moulin thus sketches out a theory of legal subjectivity that pos-

its the constitution of the sovereign subject, whose speech (possessed of the *merum imperium*) has the literal power to do what it says precisely because of its totalized relation to the subjected subject, whose speech in the act of homage paradoxically declares itself incapable of such a sovereign speech act. Recognizing the interdependency of this relation, Du Moulin places one limitation upon the king, based on the reciprocal nature of the fief. Like Zasius, he holds that neither lord nor vassal can infringe upon the rights guaranteed by their contract.⁷⁷ Therefore, even though the king holds *dominium directum* over all honors and jurisdictions, he cannot alienate them from the kingdom, for in so doing he would effectively annihilate himself as king.⁷⁸

Du Moulin's theory of feudal sovereignty and Bodin's subsequent rendering of vassalage as "une vraye servitude d'esclave" suggest that there may be a historical, as well as a logical, relation between feudal historiography and Hegel's dialectic of recognition in the *Phenomenology of Spirit*. I want briefly to address this implication, for it signals the complex repercussions of feudal historiography's entanglement with colonialism, and this entanglement's subsequent inflection of history's temporal politics. I am not interested here in answering the often-asked question of where Hegel's lordship/bondsman relation originated—a question, I believe, that has no single answer. I want instead to emphasize that the terms and concepts he used had long histories at the time of his writing, histories deeply embedded not only in philosophy but also in legal interpretation and practice, histories that played themselves out in the vocabulary of his contemporaries as they stormed the Bastille or mutinied against slave-masters in Haiti.⁷⁹ The caveat to keep literal scenarios at bay as we read Hegel's abstract, or "allegorical" dialectic of self-consciousness becomes both more and less problematic when we consider the histories already at work in his terms, and their negotiation of sovereignty in the context of slavery both before and during Hegel's writing.

We can approach this problem through a specific translation controversy, one sparked by Alexandre Kojève's much discussed translation of Hegel's *Herrschaft und Knechtschaft* as *maîtrise et esclavage*, which Jean Hypolite reproduced in his 1939 translation of the *Phenomenology* into French.⁸⁰ Peter Osborne comments upon this translation and its consequences:

This translation replaces the feudal terms of Hegel's analysis (to which the English "serfdom" is appropriate) with a notion of slavery resonant with both the world of ancient Greece and

the heritage of European colonialism. This would prove to be a brilliant move in the years during and immediately following the Second World War, as Occupation gave way to Liberation and decolonization, revitalizing Hegel's text in hitherto unforeseen ways—as Sartre's and Fanon's appropriations of the model indicate. However, precisely because of its contemporaneity, this translation has led to serious misunderstandings of both the place of this particular dialectic within Hegel's text and its relationship to Marx's work.⁸¹

Complicated as this reception history is, it only looks one way. Lordship and bondage (in the sense that these were used in feudal historiography) had been in exchange with mastery and slavery since at least the mid-sixteenth century, particularly in the work of Bodin (which Hegel knew), and specifically in a colonial context. So had serfdom, although neither Hegel nor Bodin conflated serfs and feudal law.⁸² If we grant that Hegel's *Herrschaft und Knechtschaft* are “feudal” terms—and, as Andrew Cole has argued, there is good reason why we should—then we must also recognize that when Hegel took them up they were already heavy with historicism's negotiation of sovereignty and its negation of slavery, just as they were during and after the writing of the *Phenomenology*.⁸³

As Susan Buck-Morss has shown, the terms of the lord/bondsman dialectic intersected for Hegel with the daily events of the Haitian slave revolt, which occurred just before he wrote the *Phenomenology* (1805–6), and which he followed closely. She argues that Hegel echoed the political language of the revolt, which itself deliberately echoed French revolutionaries' cries against “esclavage antique” (which resonated with those against “la féodalité”). Condemning the failure of scholars to consider the significance of “real slavery” to Hegel's dialectic of recognition, she argues:

The problem is that (white) Marxists, of all readers, were the least likely to consider real slavery as significant because within their stagist understanding of history, slavery—no matter how contemporary—was seen as a premodern institution, banned from the story and relegated to the past. But only if we presume that Hegel is narrating a self-contained European story, wherein “slavery” is an ancient Mediterranean institution left behind long ago, does this reading become remotely plausible—remotely, because even within Europe itself in 1806, indentured servitude

and serfdom had still not disappeared, and the laws were still being contested as to whether actual slavery would be tolerated.⁸⁴

Buck-Morss is certainly right that the refusal of this significance registers the repeated effacement of slavery—a forgetting that is fundamental to “modern” Europe’s civil story. “Real slavery” and its relationship to the past are, however, already encoded in the terms of Hegel’s dialectic, though they are made invisible there too. And as long as the *writing* of feudal historiography remains occluded, its negotiation of the sovereign paradox on the basis of a superseded past, yielding a universal “spirit of the law,” will continue to regulate the pulse of history and continue the same patterns of forgetting. In this regard, Kojève’s *maîtrise et esclavage* for *Herrschaft und Knechtschaft* is perhaps most faithful, in that it faces up to the repetitive historical logic of slavery in the feudal narrative’s mediation of sovereignty.

Timing slavery

In his *Les six livres de la République*, Jean Bodin explicitly joins the feudal negotiation of the sovereign paradox to the problem of slavery and the international slave trade. His famous discussion of sovereignty in Book I, chapter 8 relies, like Du Moulin’s, upon the feudal relation, which for Bodin illustrates both the unencumbered power of a true sovereign (who does not give his oath to his vassal, despite their mutual agreement) and the absolute obedience owed by the subject to the sovereign prince.⁸⁵ This reliance upon feudal commentary in defining the mutual exclusion of oath-taking and true sovereignty will be key to Bodin’s analysis of oaths between rulers and their relation to slavery in Book I’s little-noticed chapter 9.

Chapter 9 addresses the status of feudatory princes, and opens by dividing space and time according to the initiation of feudal law: the question of feudatories “deserveth a speciall Chapter by it selfe, for that it hath no communitie with the auntient markes of Soueraigntie, which were before the right of Fees, vsed in all Europe and Asia, and yet more in Turkie than in any place of the world.”⁸⁶ This spatio-temporal claim allows Bodin to make arguments about the political relations of European states from their incipience to his own moment, while the territorial extension of “fees” to all Europe and Asia allows him to corroborate his evidence against universal standards, particularly “the Turkes.” The figure of the tyrannical Turk was well established by the time Bodin wrote, and was used by Hotman, for

instance, to contrast French freedom to the extreme of Turkish government, in which a ruler controlled men like cattle and beasts.⁸⁷ But Bodin, who rarely flinches at the implications of the sovereign paradox, uses the Turkish image here as elsewhere as a limit case for his argument that a strong monarch protects, rather than restricts, his citizen's liberties. Freedom is the point of this chapter, which asks whether tributary and feudatory princes may be sovereign, and immediately raises the issue of slavery with a quotation from Martial: "esse sat est servum, jam nolo vicarius esse: / Qui Rex est, Regem Maxime non habeat" [To be a slave it is enough, I will not serve a slave: / Who is a king, friend Maximus, no other king must have].⁸⁸ A feudatory king, in other words, is servile, and his subjects no better than *vicarii*, the slaves of a slave.

Bodin had already dwelt at length upon slavery in chapter 5, and his discussion of slavery and state governance in that chapter leaves no doubt that the contemporary threat of Spain and Portugal, figured in terms of their invasive and destabilizing reintroduction of slavery, informs the conjunction of feudal law and slavery in chapter 9. Taken together, these two chapters offer a paradigm of the process by which the intertwined politics of historiography and colonialism simultaneously demarcate temporal and territorial boundaries.⁸⁹

Slavery in chapter 5 is both past and imminent, both memory and threat. Bodin condemns slavery as immoral and dangerous to the political stability of the state, a practice contrary to nature that had been abandoned and nearly forgotten in Europe, but was now spilling back over its borders with the abuses of the Portuguese and of France's archrivals, the Spanish, as they trafficked in Africa and the Indies. Bodin's narrative suggests that the moral and territorial integrity of European states, particularly France, solidified with the eradication of slavery, first with the manumission of "true slaves" (around the twelfth century) and then increasingly with the enfranchisement of manumitted men, who had continued to live under a "bond of servitude."⁹⁰ He therefore distinguishes the status of "true slaves" from what is usually termed medieval serfdom, but nonetheless considers the latter a form of slavery inimical to the liberty of the commonwealth. Since Bodin theorizes the commonwealth on the model of the household, within which slaves form part of the family, slavery necessarily implies a divided house.⁹¹ He thus associates slave-holding with civil war, both in the Frankish past and in his own time, and the enfranchisement of slaves with "libertie" and national strength.⁹²

Early in this chapter Bodin claims that slavery exists in the whole world, “excepting certaine countries in Europe.”⁹³ The recent encroachment of slavery within Europe through the actions and example of the Portuguese, however, threatens to erase this territorial distinction by undoing time. Slavery is returning,

to the imitation of the Portugals, who first called in againe Seruitude, now for many worlds of yeares buried in forgetfulnesse in Europe; and are in short time like enough to disperse the same ouer all Europe, as is now alreadie begun in Italie.⁹⁴

The renewal of slavery would unbury the past, and reverse the process of forgetting that is necessary, as Ernst Renan observed long ago, for “the creation of a nation.”⁹⁵ Unity is only possible if the violence of past difference is forgotten, a point that accords with Bodin’s description of slavery as violent division within the household, and its effacement as the story of France’s emergence as a unified state with secure liberties. Because the unburying of the past comes as an imposition from the outside, it also threatens the violent breakdown of the borders between Europe and its others, exposing even Christians to exportation and captivity:

For now a good while ago Africa and Asia, and the Easterne part of Europe also haue accustomed to nourish and bring vp in euery citie, stocks of slaues, in like manner as if they were beasts, and of them to make a great marchandise and gaine. For within this hundred yere the Tartars (a kind of Scythian people) in great number with fire and sword entring into the borders of Moscouia, Lituania, and Polonia, carried away with them three hundred thousand Christians into captiuitie.⁹⁶

Bodin’s account of slavery’s reentry into Europe describes the violation of a double spatio-temporal border. For Europe and especially France, slavery had been *past*, and its secure enclosure through encryption and forgetting founded the very possibility of civil unity and territorial as well as moral integrity. For the rest of the world, slavery continued into the *present*, and this political, moral, and temporal difference had marked its boundaries with Europe. Portugal and Spain, as European countries that begin to practice slavery elsewhere and then reintroduce it to Europe, disrupt these borders from both within and without, invading it with its own repressed basis

of unification, and instantiating a European self-difference that confuses the delineation of its territory and raises the divisive past from its grave, thus dissolving the very distinctions that define sovereign territory and enable the exercise of true sovereignty.

Chapter 5 does not mention feudal law, which for Bodin concerned relations between property holders—not serfs or slaves as he is considering them historically. The slavery he associates with the feudal relation results from a determined analysis of the logic of sovereignty, which he distills to the conclusion that any prince who holds anything in fealty is not sovereign. Like Du Moulin, he finds that homage always entails a bond of personal service and subjection:

Wherefore we conclude, that there is none but he an absolute soueraigne, which holdeth nothing of another man; considering that the vassall for any fee whatsoever it be, be hee Pope or Emperour, oweth personall seruice by reason of the fee which he holdeth. For albeit that this word *Seruice*, in all matter of fees, and customes, is not preiudiciall vnto the naturall libertie of the vassall; yet so it is, that it importeth a certaine right, dutie, honor and reuerence that the vassall oweth vnto the lord of the fee: which is not indeed a servitude reall, but is annexed and inseperable from the person of the vassall, who cannot be therefrom freed, but by quitting his fee.⁹⁷

Possession of the fee therefore constitutes the bond of subjection. In contrast to Du Moulin, Bodin differentiates the vassal from the king's natural subject, who is always bound to his sovereign and cannot be released from his oath, whether or not he holds a fee. Relying, that is, upon definitions of oath, service, and loyalty developed in feudal historiography, Bodin creates a distinction that solidifies the state by separating loyalty from the contingency of fee-holding, and at the same time shifts this contingency to the question of sovereign borders between states. It is then but a short step to demonstrate that a king who holds territory in vassalage to another loses his sovereignty. To emphasize the totality of this loss, Bodin demonstrates (with special attention to the self-subjection of English kings to the French) the humiliation entailed in homage—with poignant examples of abjection that recall the details of Hegel's struggle for recognition. He ultimately concludes that subjection to another's sovereignty through homage is indistinguish-

able from the condition of a slave—as the benchmark Turks esteem it, “une vraye servitude d’esclave.”⁹⁸

Saving the time-honored French freedom, Bodin’s comparative history eventually shows the world to be, or to have been, a tangle of dependencies. In Book II, he pursues this interweave of feudal law and slavery, suggesting that feudal bonds and homage must no longer underpin the properly governed European state, while elsewhere, rightly or not, they provide the means of territorial subjection, bondage, and tribute.⁹⁹ His contention that slavery belongs to Europe’s past (historically and by moral right), his detachment of the subject’s loyalty from property relations, and his mapping of homage as a condition of territorial enslavement both depends upon and rejects a “feudal” European past already conceptualized by the feudists’ fraught identification with feudal law as they theorized sovereignty. Ultimately, Bodin’s schema associates feudal bonds with Europe’s past and with enslavement, now located elsewhere, mainly through the exercise of European power, and thus, as an early formulation of the “denial of coevalness,” maps coordinates of dominance and subjection onto space and time. It accurately enough describes the trajectory of both the feudal image and the application of feudal law over the next several centuries—not of course because Bodin predicted it, but because he worked within a juridical tradition conflicted in its relation to the past and struggling to distill universal principles for warring states that were, simultaneously, consolidating their rule and expanding their horizons through a spatio-temporal logic that would yield the “Middle Ages” and the “Third World.”



Notes

This essay has profited at various stages from the wisdom of many readers. I am extremely grateful for the insights and assistance of my colleagues Vance Smith and William Chester Jordan, and for the very productive suggestions of Derek Attridge, Robert Bjork, Andrew Cole, Rita Copeland, John Ganim, Gyan Prakash, Paul Strohm, and the anonymous *JMEMS* readers.

- 1 Donald R. Kelley, “*De Origine Feudorum*: The Beginnings of an Historical Problem,” *Speculum* 39 (1964): 228, citing Herbert Butterfield, *Man on His Past: The Study of the History of Historical Scholarship* (Cambridge: Cambridge University Press, 1955), 1–2.
- 2 See R. J. Smith, *The Gothic Bequest: Medieval Institutions in British Thought, 1688–1863* (Cambridge: Cambridge University Press, 1987). In France, *féodalité* was coined

in the late eighteenth century. See Marc Bloch, *Feudal Society*, trans. L. A. Manyon (London: Routledge and Kegan Paul, 1961), vol. 1; J. Q. C. Mackrell, *The Attack on "Feudalism" in Eighteenth-Century France* (London: Routledge and Kegan Paul, 1973). For discussion of the different uses of the term *imperium* from the classical through the early modern periods, see Anthony Pagden, *Lords of All the World: Ideologies of Empire in Spain, Britain, and France, c. 1500–c.1800* (New Haven, Conn.: Yale University Press, 1995), 14–19 (which also discusses the implications of these uses in a colonial context); Quentin Skinner, *Foundations of Modern Political Thought* (Cambridge: Cambridge University Press, 1978), vol. 1; Barbara Fuchs, *Mimesis and Empire: The New World, Islam, and European Identities* (Cambridge: Cambridge University Press, 2001). I will discuss the issue of *imperium* more fully below.

- 3 *Feudalism*, of course, has long moderated debates over the history and development of modes of power, whether these battles rage among medieval historians interested in military, dynastic, and state formations, or among Marxists disputing the history of modes of production. The scholarship is far too vast to document, but as samples of the former one could consider the exchange in *Past and Present* 142 (1994): 6–42; 152 (1996): 196–223; and 155 (1997): 177–95. Examples of the latter can be found in *The Brenner Debate: Agrarian Class Structure and Economic Development in Pre-Industrial Europe*, ed. T. H. Aston and C. H. E. Philpin (New York: Cambridge University Press, 1985).
- 4 On the cry to abolish *la féodalité*, see Otto Brunner, "Feudalism: The History of a Concept," trans. Miriam Sambursky, *Lordship and Community in Medieval Europe*, ed. Fredric L. Cheyette (New York: Holt, Rinehart, and Winston, 1968), 32–61; Bloch, *Feudal Society*, xvii–xviii; and Mackrell, *The Attack on "Feudalism,"* 1–16.
- 5 Resistance to the idea that a "feudal society" (in a Marxist sense) is "backward" and must necessarily lead to a more "advanced" stage of capitalism is recent, and is a function of postcolonial criticism. An early, although problematic, example is Ranajit Guha's *Elementary Aspects of Peasant Insurgency in Colonial India* (Delhi: Oxford University Press, 1983). More recent critiques of developmental historicism, however, take aim at the idea of "precapitalist" forms, and avoid the term *feudal*. See Lisa Lowe and David Lloyd's introduction to *The Politics of Culture in the Shadow of Capital* (Durham, N.C.: Duke University Press, 1997), 1–32; and María Josefina Saldana-Portillo's "Developmentalism's Irresistible Seduction" in that volume, 132–72.
- 6 See, for example, the important case discussed by Walter Ullmann in "Arthur's Homage to King John," *English Historical Review* 94 (1979): 356–64. For a general discussion of the *Libri feudorum* and its history, see the works cited in note 10 below. Despite the plural grammatical form of its title, scholars typically refer to the *Libri* in the singular.
- 7 Polemics over the definition, essence, or the existence of feudalism have consumed generations of scholars, and I am not going to enter that fray. I am interested, rather, in the space of ambivalence marked not only by this persistent debate and its irresolution, but also by the enormous range of meanings covered by *feudalism*, and by the repeated confessions of historians that, while *feudalism* is a misleading and improper term, they must use it anyway. In a useful survey of the concept of feudalism from the eighteenth through the mid-twentieth century, Otto Brunner, "Feudalism: The

- History of a Concept,” observes that its uses range from a technical legal sense, to the many analyses of feudalism as a social or economic system, to the vague, popular sense of political leadership by the nobility or by landed proprietors. Susan Reynolds also analyzes feudalism’s wide range of meanings with a trenchant critique of recent historiography in the introduction to her *Fiefs and Vassals: The Medieval Evidence Reinterpreted* (Oxford: Clarendon Press, 1994), 1–16. The *locus classicus* for historians’ confessional despair over the inadequacy of *feudalism* is F. W. Maitland’s in Pollock and Maitland, *The History of English Law before the Time of Edward I*, 2nd ed., 2 vols. (Cambridge: Cambridge University Press, 1923), 1:66–67.
- 8 Kelley, “*De Origine Feudorum*,” 228. See also J. G. A. Pocock, *The Ancient Constitution and the Feudal Law*, (1957; reissued with a retrospective, Cambridge: Cambridge University Press, 1987), 1–29; and Donald Kelley, *Foundations of Modern Historical Scholarship: Language, Law, and History in the French Renaissance* (New York: Columbia University Press, 1970).
 - 9 The *Libri*’s relations to canon law were never entirely distinct, as illustrated, for instance, by the insertion of a number of treatises from *Gratian’s Decretum* (a compilation of canon law), including an eleventh-century letter by Bishop Fulbert on obligations of fidelity, into the *Libri* in the twelfth century.
 - 10 Three recensions of the *Libri feudorum* edited by Karl Lehmann are collected in *Consuetudines Feudorum*, ed. Karl Eckhardt (Aalen, Germany: Scientia Verlag, 1971). Lehmann describes 139 manuscripts of the *Libri*, most from the thirteenth and fourteenth centuries. Mario Montorzi includes a facsimile of a glossed text in *Diritto feudale nel Basso medioevo* (Torino, Italy: G. Giappichelli, 1991). For an excellent discussion of the *Libri feudorum*’s popularity, the thirteenth-century commentaries, and their use in legal practice, see Magnus Ryan, “*Ius Commune Feudorum* in the Thirteenth Century,” in *Colendo iustitiam et iura condendo*, ed. Andrea Romano (Roma: Edizioni De Luca, 1997), 51–65. For general discussion of the *Libri* and its commentary tradition, see Reynolds, *Fiefs and Vassals*, 215–30; Kenneth Pennington, “Law, Feudal” and “*Libri Feudorum*” in *The Dictionary of the Middle Ages*, Supplement I, ed. William Chester Jordan (New York: Scribner, 2004); and Kelley, “*De Origine Feudorum*.”
 - 11 Pennington, “*Libri Feudorum*,” 324, 325.
 - 12 Pennington, “*Libri Feudorum*,” 325; Reynolds, *Fiefs and Vassals*, 5–10 and 181–257.
 - 13 Scholars (mainly Italian and German legal scholars) have only recently undertaken detailed study of the *Libri* in its historical context (see the citations listed in Pennington, “*Libri Feudorum*”; and Ryan, “*Ius Commune Feudorum*”). It would reward literary study to focus on this text, which deals with inheritance laws (including the problem of women’s ability to inherit a fief), the relations of fidelity between lord and vassal, and offenses deserving forfeiture of a fief (for example, desertion of one’s lord in battle, revealing his secrets, seducing or attacking his wife or daughter).
 - 14 Ryan, “*Ius Commune Feudorum*,” 63, 57–59.
 - 15 “Le moins que l’on puisse dire c’est que ces données chronologiques et géographiques ne correspondent pas toutes à ce que l’on sait — ou que l’on croit savoir — des institutions féodales et de leur importance à l’époque médiévale.” Gérard Giordanengo, “*Consilia Feudalia*,” in *Legal Consulting in the Civil Law Tradition*, ed. Mario Ascheri,

- Ingrid Baumgärtner, and Julius Kirshner (Berkeley: University of California Press, 1999), 151; my trans.
- 16 Reynolds, *Fiefs and Vassals*. See her introduction, 4–5, which briefly discusses the sixteenth-century historiography.
 - 17 David Lloyd, *Ireland after History* (Cork, Ireland: Cork University Press, 1999), 37.
 - 18 Cited in Ryan, “*Ius Commune Feudorum*,” 63. Ryan provides a fascinating account of the legal flexibility of the term *fief* in the thirteenth century, which he reads through the implicit contradiction of a rubric in the *Libri feudorum*: “De feudo non habente propriam naturam feudi.”
 - 19 “Ausus etiam sum, barbarica illorum librorum scriptione offenses, in libello quondam observationum scribere, ingeniorum illam carnisicinam esse, et Augiae stabulum, in quo expurgando altero Hercule opus esset.” François Hotman, *De Feudis Commentatio Tripartita* (Cologne, 1573), 1. In his dedicatory letter to Caspar Sedlitz, Hotman discusses his work on feudal law in the context of his teaching in Germany, which had officially “received” Roman civil law. As a Huguenot whose politics were too extreme even for Calvin, Hotman twice had to flee France, and barely escaped the St. Bartholomew’s massacre. For his career, see Donald Kelley, *François Hotman: A Revolutionary’s Ordeal* (Princeton, N.J.: Princeton University Press, 1973).
 - 20 On the desire to purge nonclassical elements from the Roman legal corpus, see Donald R. Kelley, *Foundations of Modern Historical Scholarship*, 19–50; Pocock, *Ancient Constitution and the Feudal Law*, 8–11; Ralph E. Giesey, “When and Why Hotman Wrote the *Francogallia*,” *Bibliothèque d’Humanisme et Renaissance* 219 (1967): 581–611; Julian Franklin, *Jean Bodin and the Sixteenth-Century Revolution in the Methodology of Law and History* (New York: Columbia University Press, 1963). See also Donald R. Kelley, “Law,” in the *Cambridge History of Political Thought: 1450–1700*, ed. J. H. Burns (Cambridge: Cambridge University Press, 1991), 66–94; and with specific reference to Ulrich Zasius, Steven Rowan, *Ulrich Zasius: A Jurist in the German Renaissance, 1461–1535* (Frankfurt am Main: Vittorio Klostermann, 1987). All feudists were not the same, of course. Those who put feudal law to work in their juridical projects were reacting in part to scholars like Jacques Cujas, who produced a valuable edition of the *Libri feudorum*, but insisted on its purely antiquarian status. His stance did not prevent his opponents from using his work, however, and his investigations became part of the feudal narrative.
 - 21 Kelley, “Law,” 76. *Accursiani* refers to Accursius, author of the thirteenth-century *Glossa ordinaria*, taken by humanists as the prototype of a glossing practice that obfuscated the text.
 - 22 I am here citing Peter Osborne’s representation of the commonplace understanding of medieval/Renaissance periodization in his *Politics of Time* (London: Verso, 1995), 9–10. See also Reinhart Koselleck, *Futures Past: On the Semantics of Historical Time*, trans. Keith Tribe (Massachusetts: MIT Press, 1985).
 - 23 I discuss this argument fully in my forthcoming book, *Periods of Sovereignty: Law, Theology, and the Politics of the Medieval/Modern Divide*.
 - 24 Hotman, *De Feudis*, 1–2. Hotman’s comment regarding the grammarian purists is cited in Kelley, “*De Origine Feudorum*,” 209.

- 25 See generally, Ralph E. Giesey's introduction to his edition of François Hotman, *Francogallia*, trans. J. H. M. Salmon (Cambridge: Cambridge University Press, 1972), 20–37; Kelley, “Law,” *De Origine Feudorum*, and *Foundations of Modern Historical Scholarship*; and Pocock, *Ancient Constitution and the Feudal Law*, 1–25. On the transformed idea of the “old civilian formula” of the *mens legum* in particular, see Kelly's “Law,” 90.
- 26 Giesey, ed., *Francogallia*, 32.
- 27 Hotman, *De Feudis*, 1–6 and dedicatory letter to Caspar Sedlitz (unpaginated). Hotman's plans for legal reform and its relation to feudal law (as it was attested in the *Libri* and as he culled it from historical documents) and to French customs is too complex for full discussion here. See especially Giesey, “When and Why Hotman Wrote the *Francogallia*”; as well as Pocock, *Ancient Constitution and the Feudal Law*, 77–79; David Baird Smith, “François Hotman,” *Scottish Historical Review* 13 (1916): 328–65; and Kelley, *François Hotman*.
- 28 Tribonian's efforts were part of an earlier attempt at classical revival. When Justinian became emperor (of the Eastern Empire) in 527, he initiated a program to restore the ancient glory of the Roman Empire, in part through revival of classical Roman law. His *Digest* (or *Pandects*) is an anthology of extracts arranged in fifty books. See P. G. Stein, “Roman Law,” *The Cambridge History of Medieval Political Thought, c. 350–c. 1450*, ed. J. H. Burns (Cambridge: Cambridge University Press, 1988), 42–47. Justinian's *Digest* was “rediscovered” in Italy in 1070, accelerating a revival of the study and practice of Roman civil law. See D. E. Luscombe and G. R. Evans, “The Twelfth-Century Renaissance,” *Cambridge History of Medieval Political Thought*, 310–16.
- 29 Giesey, “When and Why Hotman Wrote the *Francogallia*,” 608. *Antitribonian* engages in and extends the popular criticism of Tribonian, Justinian's chosen editor for the *Digest* (said to have botched the job through interpolation and error). See Kelley, *François Hotman*, 179–204; Giesey, *ibid.*
- 30 François Hotman, *Antitribonian* (Paris, 1603). Facsimile edition in *Antitribonian, ou, Discours d'un grand et renommé iuriconsulte de nostre temps sur l'estude des loix*, ed. Henri Duranton (Saint-Etienne, France: Université de Saint-Etienne, 1980), 36. I am grateful to Bill Jordan for assistance in understanding and translating Hotman's technical terms.
- 31 Pocock, *Ancient Constitution and the Feudal Law*, 14.
- 32 David Wallace, “Carving up Time and the World: Medieval-Renaissance Turf Wars; Historiography and Personal History,” Center for Twentieth-Century Studies, University of Wisconsin, Milwaukee, working paper no. 11 (1990–91).
- 33 Walter Mignolo, *The Darker Side of the Renaissance: Literacy, Territoriality, and Colonization*, 2nd ed. (Ann Arbor: University of Michigan Press, 2003), 430–33; and see esp. 20 and his afterword, 315–34.
- 34 Kelley, “*De Origine Feudorum*,” 216–17. In the following discussion I am greatly indebted to the works of Donald Kelley already cited, as well as his “Civil Science in the Renaissance,” *The Languages of Political Theory in Early Modern Europe*, ed. Anthony Pagden (Cambridge: Cambridge University Press, 1987), 57–78.
- 35 The *Libri* itself included a brief synopsis of the development of feudal tenure: it was

- at first held at the lord's pleasure, later for the term of the vassal's life, and eventually became heritable. See the discussion in Pocock, *Ancient Constitution and the Feudal Law*, 70–90; and Reynolds, *Fiefs and Vassals*, 229.
- 36 Andreas Alciato, cited in Kelley, "Law," 77. See Pagden, *Lords of All the World*, for discussion of the deployment of this phrase in colonial logic.
 - 37 Kelley, *Foundations of Modern Historical Scholarship*, 53–85; David O. McNeil, *Guillaume Budé and Humanism in the Reign of Francis I* (Genève: Droz, 1975).
 - 38 Kelley, *Foundations of Modern Historical Scholarship*, 63, 60.
 - 39 Guillaume Budé, *Annotationes priores et posteriores . . . in pandectas* (Paris, 1556), fol. 192v, cited in translation in Kelley, "De Origine Feudorum," 218.
 - 40 Some French feudists, most notably Jacques Cujas, repeated the Roman client-patron theory, though with some discomfort, while others, like François Le Douaren, distanced the *Libri feudorum* from the empire by insisting that its origin was Lombard, even as they denied its authority in France or over the French king. Kelley, "De Origine Feudorum," 221; and *Foundations of Modern Historical Scholarship*, 106, 189.
 - 41 Zazius, Budé, and the Italian Andreas Alciato were known as the "triumvirate" of jurists who spearheaded the revision of civil law. A contemporary view of this self-conscious renovation is well shown by their contemporary Étienne Pasquier in his *Recherches sur la France*: "Le siècle de l'an mil cinq cens . . . nous apporta une nouvelle estude de loix qui fut de faire un mariage de l'estude du droict avec les letters humaines par un langage latin net et poly: et trouve trois premiers entrepreneurs de ce nouveau mesnage, Guillaume Budé, François enfant de Paris, André Alciat, Italien Milanois, Udaric Zaze, Alleman né en la ville de Constance." Pasquier has been detailing the history of French universities, and gives pride of place in the new study of law to his compatriot Budé. *Les oeuvres d'Estienne Pasquier*, 2 vols. (Amsterdam, 1723), 1:999. For a critique of the "triumvirate" conception and its historical distortions, as well as of the German "reception" of Roman law, see Rowan, *Ulrich Zasius*, 206–13 and 6–13 respectively.
 - 42 Ulrich Zasius, *Usus feudorum epitome* (Lyon, 1550), in *Opera omnia*, ed. Johan Ulrich Zasius and Joachim Münsinger von Frundeck, 7 vols. (Aalen, Germany: Scientia Verlag, 1964–66), vol. 4, col. 243; hereafter cited by volume and column numbers.
 - 43 Ibid., 4:244. Zasius does not, however, credit Budé. Zasius and Budé were personal rivals, although Zasius respected Budé's work on Roman law. When Budé accused Zasius of plagiarizing him on another point, Zasius reminded him that he was not the only person in Europe with a Latin library. See Rowan, *Ulrich Zasius*, 106 and 92–122.
 - 44 "Verisimile est, cum Romani in provinciis Gallia, Germania, et alibi victricia signa circumtulissent, bonaque pars militum Romanorum in provinciis remansisset, ipsos cum multum eis esset agri, vicinos pro clientulis invitasse, eisque agros et fundos nomine clientelae concessisse, atque ita temporis, quod omnia variat, processu, feuda, caeterasque id genus emersisse concessiones" (*Usus feudorum epitome*, 4:244).
 - 45 "Hae consuetudines feudales auctoritatem habent legalem, et ita allegari possunt; nec enim frustra in corpus Iuris Civilis inserte sunt. . . . Habent ergo legis vicem usus feudorum, non solum in foro seculari, sed etiam ecclesiastico" (ibid., 4:243–44).
 - 46 Rowan, *Ulrich Zasius*, 92–122.

- 47 Charles Du Moulin, *Commentarii in Parisienses . . . consuetudines* (Cologne, 1613), 7.
- 48 Kelley, "De Origine Feudorum," 224.
- 49 Du Moulin, *Comentarii*, 3.
- 50 "A quibus Francis primum invecum est in Gallia. Deinde dimanauit in Insubres, et in utranque Siciliam, Apuliam, et plerasque alias regions. Verum est Logobardos Insubriam ingressos anno Christi 572" (ibid., 5).
- 51 Ibid., 7, 25.
- 52 The friendship between these two polemical figures, however, did not survive the political and religious strife that was their medium. For discussion of their relationship and its political relevance, see Giesey, ed., *Francogallia*, 8–26; Kelley, *François Hotman*. Hotman follows Du Moulin in forwarding his Germanist thesis for the origin of fiefs in his *De Feudis*.
- 53 Du Moulin, *Commentarii*, 26.
- 54 Giesey, ed., *Francogallia*, 32.
- 55 See Gilmore, *Argument from Roman Law in Political Thought, 1200–1600* (Cambridge, Mass.: Harvard University Press, 1941); Skinner, *Foundations of Modern Political Thought*, 2:129–30 for Zasius, and 261–64 for Du Moulin.
- 56 Rowan, *Ulrich Zasius*, 87. Rowan is quoting from an early manuscript of the *Usus feudorum epitome*.
- 57 "Et certe quia obligatio feudalis vasalli ad dominum, et domini ad vasallum, est reciproca: unde ad ea quae iurat vasallus, et quae fidei sunt, securitatis et defensionis, ad ea etiam dominus vasallo tenebitur" [Certainly the feudal obligation of the vassal to the lord, and the lord to the vassal, is reciprocal; wherefore, with respect to those things that the vassal swears, which are loyalty, security, and defense, the lord also is held by the vassal] (*Usus feudorum epitome*, 4:278). For discussion of Zasius's decision as a magistrate in a case that found against the emperor's ability to surpass the bonds of this reciprocal relation, see Rowan, *Ulrich Zasius*, 194–95.
- 58 The *locus classicus* on the *merum imperium* is Myron Gilmore, *Argument from Roman Law*. Gilmore, however, argues for a steady teleological development, whereby medieval "feudal" forms gradually give way to concepts of private property and the national state. On the *merum imperium*, see also Julian Franklin, *Jean Bodin and the Rise of Absolutist Theory* (Cambridge: Cambridge University Press, 1973); Skinner, *Foundations of Modern Political Thought*; Howell A. Lloyd, "Constitutionalism," in the *Cambridge History of Political Thought*, ed. Burns, 254–97.
- 59 Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life*, trans. Daniel Heller-Roazen (Stanford, Calif.: Stanford University Press, 1995), 15.
- 60 Ibid., 32.
- 61 See particularly "Knowledge of Sovereignty" and "The Schema of Sovereignty" in *The Bataille Reader*, ed. Fred Botting and Scott Wilson (Oxford: Blackwell, 1997), 301–12, 313–20.
- 62 Rowan, *Ulrich Zasius*, 86–87, 100–101; Skinner, *Foundations of Modern Political Thought*, 129–30; Gilmore, *Argument from Roman Law*, 57–61. Both Rowan and Skinner find that Zasius bases his argument on the restriction of the emperor's power and the location of the *merum imperium* upon his theory of the contractual relation of the fief.

- 63 See Richard Tuck, *Natural Rights Theories: Their Origin and Development* (Cambridge: Cambridge University Press, 1979); Kelley, "Law"; for Zasius on the *ius gentium*, see Rowan, *Ulrich Zasius*, 99–101.
- 64 Kelley, "Law," 86, referring to Bodin's *Methodus ad facilem historiarum cognitionem* and his *Les six livres de la République*.
- 65 Du Moulin, *Commentarii*, 144. This famous passage is on page 128 of the 1681 edition of Du Moulin's *Opera Omnia*, the most commonly cited edition of his *De Feudis*. I have adopted the translation of this passage from Gilmore's *Argument from Roman Law*, 64.
- 66 I take these examples from Skinner, *Foundations of Modern Political Thought*, 263–64. They are typical, however, of the reception of Du Moulin and the feudists' work generally.
- 67 Thomas Craig, for instance, recommended the adoption of feudal law to James VI and I, to whom he dedicated his *Jus Feudale* in 1603, writing: "for, no matter how far the subdivision of the soil of Britain were carried, every acre would be held of Your Majesty in fee (to use our legal expression), and the possession of every holding would carry with it the obligations of a faithful servant." Sir Thomas Craig, *Jus Feudale*, trans. James Avon Clyde (Edinburgh: William Hodge, 1934), I, x.
- 68 Perry Anderson, *Lineages of the Absolutist State* (London: Verso, 1974), 24.
- 69 Ibid., 18–29, emphasis in original. Even though Anderson takes the phrase "feudal Absolutism" from the *Communist Manifesto*, he finds that generally Marx and Engels did not fully grasp the logic of the feudal nature of the Absolutist state (see 23 n. 12).
- 70 For a subtle, classic discussion of Petrarch and his contemporaries in this regard, see Theodore E. Mommsen, "Petrarch's Conception of the 'Dark Ages,'" *Speculum* 17 (1942): 226–42. Jacques Le Goff provides a detailed history of the terms *antique*, *modern*, and their variants in "Antique (Ancient)/Modern," *History and Memory*, trans. Steven Rendall and Elizabeth Claman (New York: Columbia University Press, 1992), 21–50. Wallace Ferguson provides useful (though heavily periodizing) discussion in *The Renaissance in Historical Thought: Five Centuries of Interpretation* (Boston: Houghton Mifflin, 1948).
- 71 Although terms such as *media aetas*, and eventually *medium aevum*, were known from the fifteenth century, they did not come into common use until the late seventeenth and eighteenth centuries. See Ferguson, *Renaissance in Historical Thought*, 73–77; Reinhart Koselleck, *Futures Past*, 12; Fred C. Robinson, "Medieval, the Middle Ages," *Speculum* 59 (1984): 745–56. Discussions of the advent and constitution of "modernity" are of course legion. I am particularly interested in those that attend to the modern as a sense of historical consciousness, or *historical time*. These are the most promising in terms of potential engagement with medievalists, in that they refuse a simple chronological or content-based concept of periods.
- 72 Orlando Patterson, *Slavery and Social Death: A Comparative Study* (Cambridge, Mass.: Harvard University Press, 1982).
- 73 Du Moulin, *Commentarii*, 142–43: "homagium tripliciter accipitur, primo ratione servitutis, vel quasi ipsiusmet personae. Secundo, ratione simplicis iurisdictionis. Tercio, ratione feudi. Primo modo proprie dicitur, secundo et tertio modis improprie et metaphrice" [Homage is received in three ways: first, by way of servitude, or virtu-

ally of one's own personal station. Second, by way of simple jurisdiction. Third, by way of a fief. The first is described in a proper sense, the second and third improperly or metaphorically].

- 74 Tuck, *Natural Rights Theories*; and Pagden, *Lords of All the World*.
- 75 Du Moulin, *Commentarii*, 143–46. Du Moulin gives as one example the evidence that churchmen may not give homage, since homage is exclusive and a pledge of fidelity to one against all others, and would therefore be a violation of their vows.
- 76 I will discuss this passage in my consideration of Bodin below.
- 77 Du Moulin, *Comentarii*, 60. See Lloyd's discussion in "Constitutionalism" of Du Moulin's view that the king was an administrator, not proprietor, of jurisdictions.
- 78 Du Moulin, *Commentarii*, 90.
- 79 See Susan Buck-Morss, "Hegel and Haiti," *Critical Inquiry* 26 (2002): 821–65. I discuss this essay further below.
- 80 See Peter Osborne, *Politics of Time*, 70–81; and Andrew Cole, "What Hegel's Master/Slave Dialectic Really Means," *Journal of Medieval and Early Modern Studies* 34 (2004): 577–610. I want to thank Professor Cole for allowing me to see this essay before publication.
- 81 Osborne, *Politics of Time*, 72.
- 82 In the *Philosophy of History*, trans. J. Sibree (Amherst, N.Y.: Prometheus Books, 1991), Hegel discusses a *Feudal System*, which he thinks of, like the feudists, in terms of the distribution of rights/power. Private power, which precluded a "sense of universality" (and hence the state), amounted to "the severest bondage" (344). When he speaks of serfs as slaves, it is not in the context of the "feudal system," although he associates the entire period (9th through 15th centuries) with "the terrible struggle and discipline of slavery," through which humanity was emancipated into a third phase of self-consciousness (405–7). Thus he confirms the sixteenth-century's sense of its universalizing, supersessionary project. For a good discussion of Hegel's position in the history of the concept of feudalism, see Brunner, "Feudalism: The History of a Concept."
- 83 Cole, "What Hegel's Master/Slave Dialectic Really Means."
- 84 Buck-Morss, "Hegel and Haiti," 850.
- 85 Jean Bodin, *Les six livres de la République*, ed. Christiane Fremont, Marie-Dominique Couzinet, and Henri Rochais, 6 vols. (Paris: Fayard, 1986); trans. Richard Knolles, *The Six Bookes of a Common-weale* (London, 1606), ed. Kenneth D. McRae, *The Six Bookes of a Commonweale: A Facsimile Reprint* (Cambridge, Mass.: Harvard University Press, 1962), 99 and 106. Further citations are to this edition and translation. As Julian Franklin explains in his introduction to *On Sovereignty*, Bodin composed a French version of *Les six livres* (1576), which he several times revised, then later produced a Latin version (1586) that differs from the French in many respects. There is no edition that takes both versions into account. In his 1606 translation, however, Knolles did work with both the revised French and the Latin texts, and Franklin points out that his "judgment is generally excellent" (*On Sovereignty*, xxxvii). An edition or translation such as Franklin's, which takes recent work on Bodin into account, would have been preferable, but Franklin translates only a few chapters. Bodin often cites Du Moulin, but almost always in a claim to refute him. As Julian Franklin

- notes, "Bodin perhaps is a little unfair to Charles Du Moulin, whom he calls, nonetheless, 'my colleague, the glory of all the jurists' . . . Du Moulin's position on the use of Roman law was much the same as Bodin's." Julian Franklin, ed. and trans., *On Sovereignty: Four Chapters from The Six Books of the Commonwealth* (Cambridge: Cambridge University Press, 1992), 132 n. 55. They do differ, however, in regard to the exclusiveness of the feudal oath.
- 86 *Six Bookes of a Commonweale*, 114; *Six livres de la République*, 1:229: "le droit des fiefs, usitez par toute l'Europe et l'Asie, et plus encor en Turquie qu'en lieu du monde."
 - 87 Hotman, *Francogallia*, 297. Henry Heller, "Bodin on Slavery and Primitive Accumulation," *Sixteenth Century Journal* 25 (1994): 53–65, argues that for most of Bodin's contemporary Frenchmen, the Turks were a negative symbol of tyranny and oppression, an orientalist counterexample of a strong monarchy.
 - 88 *Six Bookes of a Commonweale*, 114; *Six livres de la République*, 1:230: "Parquoy il est besoin d'esclaircir ceste question, qui tire apres soy le poinct principal de la souveraineté." Knolles stipulates in his marginalia that "These Vicarii were slaves commanded by other slaves." See McRae's notes to this line, *Six Bookes of a Commonweale*, 114 nn.; as well as Patterson, *Slavery and Social Death*, 300. The couplet is from Martial's *Epigrams* II, 18.
 - 89 In his *Premodern Places: Calais to Surinam, Chaucer to Aphra Behn* (Malden, Mass.: Blackwell, 2004), David Wallace offers another angle on the relationship of medieval/modern periodization, slavery, and colonialism (esp. 239–302).
 - 90 See especially *Six Bookes of a Commonweale*, 40–41. Bodin considers the lack of freedom to marry and to leave the lord's land, for instance, as characteristics of this bondage.
 - 91 Bodin makes this point vivid by telling the story of a slave who rapes his master's wife, throws his children from an upper story of the house to their deaths, and causes him to cut off his own nose and thus entirely and permanently to lose his honor (ibid., 45).
 - 92 In the eighth and ninth centuries, Bodin relates, the slaves under the Franks rebelled, inspired by the liberty given to Arab slaves if they would enlist in the wars. Likewise, Lothair "called the slaues vnto his aid with promise of libertie" (ibid., 39). Thus, slavery aligns with civil disruption, and emancipation with national strength. Henry II's enfranchisement of manumitted men in 1549 was "done in the great fauour of libertie" (41). In Book III, Bodin suggests that slavery was returning with the civil unrest of his time (see 387–88).
 - 93 Ibid., 34.
 - 94 Ibid., 43–44.
 - 95 Ernst Renan, "What Is a Nation?" trans. Martin Thom, in *Nation and Narration*, ed. Homi Bhabha (London: Routledge, 1990), 8–22. This essay was originally a lecture delivered as "Qu'es-ce qu'une nation?" at the Sorbonne, March 11, 1882.
 - 96 *Six Bookes of a Commonweale*, 44.
 - 97 *Six Bookes of a Commonweale*, 119; *Six livres de la République*, 1:238: "Par ainsi nous conclurons, qu'il n'y a que celuy absoluëment souverain qui ne tient rien d'autrui: attendu que le vassal pour quelque fief que ce soit, fust-il Pape ou Empereur, soit ser-vice personnell à cause du fief qu'il tient. Car combien que ce mot de Service en mat-

iere des fiefs, et en toutes les coustumes, ne face aucun prejudice à la liberté naturelle du vassal, si est-ce qu'il emporte droits, devours, honneur et reverence au seigneur feodal, qui n'est point une servitude realle, ains elle est annexee, et inseparable de la personne, et n'en peut estre affranchi sinon en quittant le fief."

- 98 See *Six livres de la République*, 1:243, cf. 1:240–41; *Six Bookes of a Commonweale*, 120–21. This orientalist strain in "feudalism" will continue, in Voltaire for instance, and will become a factor in colonial logic, particularly in India.
- 99 See the discussion of Bodin and subsequent theorists of sovereignty in Blandine Kriegel, "The Rule of the State and Natural Law," *Natural Law and Civil Sovereignty: Moral Right and State Authority in Early Modern Political Thought*, ed. Ian Hunter and David Saunders (New York: Palgrave, 2002), 13–26.

