

the English people.<sup>14</sup> Landowners who had previously been under the jurisdiction of a lord were regarded as his tenants, as holding their lands of him in the truly feudal sense. This theory was applied universally, from the lowest levels of society up to the king at the apex of the feudal pyramid.<sup>15</sup> The king was not just the sovereign of his subjects and the territory within his realm, but lord paramount as well as over all landholders and their lands. As the common law developed, it thus became a maxim that all lands in the hands of subjects are held, either mediately or immediately, of the Crown.

However, this feudal theory required factual justification. Descent aside, at common law possession generally had to be taken for a right of property to be acquired.<sup>16</sup> For this reason the rights attached to the king's paramount lordship needed a possessory base. According to feudal doctrine, then, the king must at one time have been in possession of all lands in the realm, some of which he granted out to subjects in return for services.<sup>17</sup> Those services, together with the incidents of tenure, including escheat,<sup>18</sup> constituted the king's lordship, which though incorporeal was possessed and owned by the king as a thing, separate from the land to which it related.<sup>19</sup>

<sup>14</sup> See Vinogradoff, *Growth of the Manor*<sup>2</sup>, 293–6. Blackstone thought Norman feudalism had been freely accepted by the English: *Commentaries*, II, 48–51. See also Reeves, *History of English Law*<sup>2</sup>, I, 207.

<sup>15</sup> Simpson, *History of Land Law*<sup>2</sup>, 2–3.

<sup>16</sup> See Maitland, 'Mystery of Seisin', 2 *LQR* 481, at 489–95; Smith, 'Unique Nature of Concepts', 46 *CBR* 191, at 200–2.

<sup>17</sup> See *Co. Litt.* 65<sup>a</sup>. At common law, if the king was not in possession, he could not grant land, but at best a right to acquire possession of it, assuming he had such a right, and then only expressly: *Winchester's Case* (1583) 3 *Co. R.* 1<sup>a</sup>, at 4<sup>b</sup>–5<sup>a</sup>.

<sup>18</sup> See *Veale v. Brown* (1868) 1 *NZCA* 152, at 156–7; *A.-G. of Ontario v. Mercer* (1883) 8 *App. Cas.* 767, at 772, 777–9; Hardman, 'Law of Escheat', 4 *LQR* 318, esp. 322–5.

<sup>19</sup> See *P. & M.* II, 3–4, 38–9, 125–8, 152; Simpson, *History of Land Law*<sup>2</sup>, 47–8. Though the king was said to possess his kingdom (see Honoré, 'Allegiance and the Usurper' [1967] *Camb. LJ* 214, at 214–15), this was as a unit which, like a manor, consisted of demesne lands and services: on manors see *Delacherois v. Delacherois* (1862–4) 11 *HLC* 62, esp. 102; Williams, *Seisin*, 13, 30; *P. & M.* II, 127–8. The king's paramount lordship thus constituted the feudal aspect of his sovereignty, which in that respect did not differ in kind from the authority which mesne lords exercised over their tenants. There was thus little qualitative distinction between the king's lordship over the whole