

Cambridge University Press
0521800854 - Aliens in Medieval Law: The Origins of Modern Citizenship
Keechang Kim
Frontmatter
[More information](#)

ALIENS IN MEDIEVAL LAW

The Origins of Modern Citizenship

This original re-interpretation of the legal status of foreigners in medieval England boldly rejects the canonical view which has for centuries dominated the imagination of historians and laymen alike. Keechang Kim proposes a radically new understanding of the genesis of the modern legal regime and the important distinction between citizens and non-citizens. Making full use of medieval and early modern sources, Kim offers a compelling argument that the late medieval changes in legal treatment of foreigners are vital to an understanding of the shift of focus from *status* to the *State*, and that the historical foundation of the modern State system should be sought in this shift of outlook. The book contains a re-evaluation of the legal aspects of feudalism, examining, in particular, how the feudal legal arguments were transformed by the political theology of the Middle Ages to become the basis of the modern legal outlook. This innovative study will interest academics, lawyers, and students of legal history, immigration and minority issues.

KEECHANG KIM is the David Li Fellow in Law and College Lecturer at Selwyn College, Cambridge.

Cambridge University Press
0521800854 - Aliens in Medieval Law: The Origins of Modern Citizenship
Keechang Kim
Frontmatter
[More information](#)

CAMBRIDGE STUDIES
IN ENGLISH LEGAL HISTORY

Edited by

J. H. BAKER

*Downing Professor of the Laws of England
Fellow of St Catharine's College, Cambridge*

Recent series titles include

Roman canon law in Reformation England

R. H. HELMHOLZ

Law, politics and the Church of England
The career of Stephen Lushington 1782–1873

S. M. WADDAMS

The early history of the law of bills and notes
A study of the origins of Anglo-American commercial law

JAMES STEVEN ROGERS

The law of evidence in Victorian England

CHRISTOPHER ALLEN

A history of the county court, 1846–1971

PATRICK POLDEN

John Scott, Lord Eldon, 1751–1838

The duty of loyalty

ROSE MELIKAN

Literary copyright reform in early Victorian England

The framing of the 1842 Copyright Act

CATHERINE SEVILLE

Cambridge University Press
0521800854 - Aliens in Medieval Law: The Origins of Modern Citizenship
Keechang Kim
Frontmatter
[More information](#)

ALIENS IN
MEDIEVAL LAW

THE ORIGINS OF MODERN CITIZENSHIP

KEECHANG KIM



CAMBRIDGE
UNIVERSITY PRESS

Cambridge University Press
0521800854 - Aliens in Medieval Law: The Origins of Modern Citizenship
Keechang Kim
Frontmatter
[More information](#)

PUBLISHED BY THE PRESS SYNDICATE OF THE UNIVERSITY OF CAMBRIDGE
The Pitt Building, Trumpington Street, Cambridge, United Kingdom

CAMBRIDGE UNIVERSITY PRESS
The Edinburgh Building, Cambridge CB2 2RU, UK <http://www.cup.cam.ac.uk>
40 West 20th Street, New York, NY 10011-4211, USA <http://www.cup.org>
10 Stamford Road, Oakleigh, Melbourne 3166, Australia
Ruiz de Alarcón 13, 28014 Madrid, Spain

© Keechang Kim 2000

This book is in copyright. Subject to statutory exception
and to the provisions of relevant collective licensing agreements,
no reproduction of any part may take place without
the written permission of Cambridge University Press.

First published 2000

Printed in the United Kingdom at the University Press, Cambridge

Typeface Imprint 10/12 pt *System* 3b2 [CE]

A catalogue record for this book is available from the British Library

ISBN 0 521 80085 4 hardback

Cambridge University Press
0521800854 - Aliens in Medieval Law: The Origins of Modern Citizenship
Keechang Kim
Frontmatter
[More information](#)

TO PETER G. STEIN, MY TEACHER

CONTENTS

<i>Preface</i>	<i>page</i>	ix
<i>Table of statutes</i>		xii
1 Introduction		1
PART I HISTORY		
2 Foreign merchants		23
3 Foreign clerks		60
4 Foreign religious houses		89
5 Birth beyond the sea		103
6 Faith and allegiance		126
PART II HISTORIOGRAPHY		
7 Thomas Littleton, John Rastell and Edmund Plowden		147
8 <i>Calvin's case</i> (1608)		176
9 Conclusion		200
Excursus		212
<i>Bibliography</i>		228
<i>Index</i>		244

PREFACE

On what ground do we maintain a legal distinction between citizens and non-citizens? Some would regard this as a futile attempt to doubt the obvious. 'How could you *not* draw a distinction between citizens and non-citizens?' they would reply. When a concept or a categorical division has been widely and frequently used for a long period, one is tempted to think that the concept or the categorical division is somehow 'branded' in the very nature of human beings. Each and everyone would then be born with it. The division between citizens and non-citizens is perhaps one such categorical division. Even those who would firmly reject the legal distinction and discrimination based on all other criteria will have no difficulty in accepting the legal discrimination based on nationality. When a division becomes so persuasive, it becomes inescapable as well. Our imagination falls prey to this categorical division in the sense that any alternative arrangements one could possibly imagine would simply look 'unnatural' and absurd.

The present work is an attempt to study the *historical origin* of this categorical division often regarded by many as wholly natural and inescapable. Why, is there anything more to be said about the beginning of the legal distinction between citizens and aliens (non-citizens)? Do we not already know that feudalism in medieval Europe was an antithesis of the State structure? Is it not obvious that in the fragmented political and legal environment of medieval Europe, the personal legal division requiring a clear concept of the State (citizen vs. non-citizen) was unimportant and un(der)-developed? Is it not equally natural and inevitable that as feudalism gave way and the State structure was put in place, the legal distinction between citizens and non-citizens acquired greater prominence?

There is an alternative thesis which is also familiar and which

can be resorted to when one senses that the above-mentioned feudal fragmentation thesis is not going to work well. This applies to the situation in post-Conquest England, which was undoubtedly a unified kingdom with a relatively strong central government. According to this thesis – masterfully presented by Professor Maitland – it was inevitable that when foreigners from Normandy became the rulers of the English, the legal distinction between foreigners and non-foreigners had to lose significance. But when the Norman kings were driven out of their Continental homeland and had to settle permanently in England, they gradually identified themselves as English. When this happened, it was inevitable that the legal distinction between foreigners and non-foreigners became important again.

It all sounds like we are dealing here with an inevitable and inescapable categorical division which is ever ready to resurface and reclaim its preordained place in our minds. As soon as the dark clouds of feudalism and Norman Conquest were cleared away from the horizon, the legal division between citizens and non-citizens would shine again in all its splendour. If this type of explanation has enjoyed such a widespread acceptance until today, it only shows how much we are the products of our own time. In other words, what has so far been written about the beginning of the legal distinction between citizens and non-citizens is the clearest testimony of how completely we have come to believe in the inevitableness of this categorical division.

No one will doubt the historical importance of the rise of the modern State structure and the ascendance of the rhetoric of national identity. However, very little has been written about the rise of the legal regime which purports to divide human beings into the categories of nationals and non-nationals. Without exception, the beginning of the law of alien and subject (citizen) status has been summarily dealt with as nothing more than a by-product of the rise of the modern State structure. This book aims to offer a different perspective. It will be suggested that the rise of the law of alien status in the later Middle Ages cannot be treated as a mere reflection or an inevitable by-product of political or other non-legal changes of the time. It was, I shall argue, a crucial turning point in the history of Europe which ultimately led to the rise of the modern State structure. It was, as it were, the cause rather than the effect of the birth of the modern State.

Preface

xi

What holds together all political and legal arguments which ‘we’ moderners would regard as characteristic of the modern era is, after all, our own outlook – how we perceive ourselves, how we define our position in society, and how we understand the purpose of our existence in this universe. By looking at some of the mundane legal texts which closely record how medieval lawyers coped with various problem situations involving foreigners, we may perhaps have a glimpse of the important shift of outlook which took place towards the end of the Middle Ages and which ultimately determined the way we now perceive ourselves, others and the rest of our universe.

Coming down onto a more practical level, one can hardly overstate the significance of the State boundary in today’s law and politics. At the same time, many of us are increasingly aware of the difficulties raised by the present regime. As far as the question of the State boundary is concerned, we are living in an era of uncertainty. It is going to be increasingly difficult to be complacent about the existing arrangements. It is against this backdrop that the present work is undertaken. If no history can be written without an agenda (explicit or implicit), the need or the desire to explore the future of the nation State structure forms the underlying agenda of this study of aliens in medieval law.

Among those to whom my thanks are due, I wish to mention Professors P. G. Stein, J. H. Baker and A. W. B. Simpson in particular. My debt to these teachers is too great for words. If there is anything worthwhile in this book, it should be to their credit. The rest, of course, is mine.

It is also my pleasant duty to acknowledge the debt I owe to the following: the Posco Scholarship Foundation, Pohang, South Korea – for their generous grant which enabled me to do the research from which this book is written; the University of Chicago Law School, Chicago, USA – for allowing me to use their excellent research facilities and the Regenstein Library of the University of Chicago; the President and Fellows of Queens’ College, Cambridge, United Kingdom – for offering me a Research Fellowship and travel grants which allowed me to look at some of the manuscript sources; Frank Cass, Publishers, London, United Kingdom – for allowing me to reproduce a substantial part of my article ‘*Calvin’s Case* (1608) and the Law of Alien Status’ published in 17 *Journal of Legal History*, No. 2 (1996), 155–71.

TABLE OF STATUTES

- Prerogativa regis* (uncertain date between 1243 and 1343) 133–7
 3 Edward I, Statute of Westminster I c. 23 (1275) 50–1
 12 Edward I, Statute of Wales, c. 8 (1284) 110
 13 Edward I, Statute of Westminster II, c. 38 (1285) 109
 21 Edward I (1292) 109
 28 Edward I, *Articuli super Cartas*, c. 9 (1300) 110
 36 Edward I, Statute of Carlisle (1307) 73
 14 Edward III st. 4, c. 2 (1340) 72
 25 Edward III c. 1 (1351). *See De natis ultra mare* in the index
 25 Edward III st. 4, Statute of provisors (1351) 80–1
 25 Edward III st. 6, Ordinance for the clergy (1351) 72
 27 Edward III st. 1, Statute of *praemunire* (1353) 82
 27 Edward III st. 2 (1353) 31
 28 Edward III c. 13 (1354) 31
 28 Edward III st. 3 (1354) 153
 34 Edward III c. 4 (1361) 110
 42 Edward III c. 10 (1368) 123, 142, 153–5
 42 Edward III c. 11 (1368) 110
 7 Richard II c. 12 (1383) 83–5
 1 Henry V c. 7 (1413) 153
 1 Henry VII c. 2 (1485) 149
 4 Henry VII c. 23 (1488) 149
 6 Henry VIII c. 11 (1514) 150
 28 Henry VIII c. 7 (1536) 157
 32 Henry VIII c. 14 (1540) 149
 32 Henry VIII c. 16 (1540) 150
 33 Henry VIII c. 25 (1541) 158