

**UCLA**

**Comitatus: A Journal of Medieval and Renaissance Studies**

**Title**

Aliens in Medieval Law: The Origins of Modern Citizenship (review)

**Permalink**

<https://escholarship.org/uc/item/2pq0s4s7>

**Journal**

Comitatus: A Journal of Medieval and Renaissance Studies, 32(1)

**ISSN**

0069-6412

**Author**

Turner, Wendy J.

**Publication Date**

2001-10-01

Peer reviewed

## REVIEWS

**Keechang Kim, *Aliens in Medieval Law: The Origins of Modern Citizenship* (Cambridge: Cambridge University Press 2000) 262 pp.**

In his thought-provoking work *Aliens in Medieval Law*, Keechang Kim sets out to examine “how the focus of European legal analysis shifted from *status* to the *State*.” This seems to be a threefold study for Kim. First, he examines the change in status of persons from free and unfree in the medieval world to citizen and alien at the beginning of the early modern world. Second, he questions when and how this categorical shift took place in the laws of England. Third, he investigates when and how an individual might qualify as a member of a state or as a foreigner in England. Throughout his work, although the main focus of his study is English law, Kim uses interesting comparisons from the continent, especially French and Italian sources.

Kim’s driving thesis is that the law shifted the use of existing categories of persons. Within medieval English law the terms of *liberi* (free) and *servi* (unfree) were conditions of given liberties and privileges. Kim points to a change in the feudal structure from relationships governed by and organized around land to relationships based on temporal and spiritual personal connections. This, he explains, is an altering of the process of the lord granting liberties and privileges to both his vassals and his peasants, as well as a change in the bonds that hold them all in relationship to one another, that of *ligeance*. In other words, the bond changes from one based on land to one based simply on *ligeance* to a person, namely the king, or the state.

Kim argues that this shift takes place in the second half of the fourteenth century with the statute *De natis ultra mare* (1351). According to Kim, this “statute was indeed one of the most prominent landmarks in the history of the law of personal status in Europe.” *De natis ultra mare* redefined inheritance law so that English law considered children born outside of England to English parents within the boundaries of the *ligeance* of the king and not, as previously defined, outsiders unable to inherit. Those who took their wives off to the extended war with France no longer needed to worry that their children born on “foreign” soil would be unable to inherit in England; the king, of course, had always been excepted. Later, though, this statute had interesting consequences when used in the sixteenth century to define the status of aliens or

“those born beyond the seas.” This statute made it possible for the Scottish countrymen of James Stuart, after he became king of England, to have *ligeance* with James and, therefore, with England.

Keechang Kim’s monograph raises many interesting and significant questions and answers many of them, at least in part. Kim is correct in not looking for the first occurrence within law of the term alien or some equivalent term and instead concentrating on the workings of the law to place people within or outside of the law’s own boundaries.

His analysis of the changes in legal categories of persons in late medieval and early modern English law is fascinating. Especially engaging is his chapter on “Foreign Religious Houses” in England and the problems associated with foundations holding lands, appointments to offices, and the interaction with local politicians. It looks at the history of the legal practice with regard to religious houses and not just the legal theory written by a lawyer. Also interesting is his cornerstone chapter, “Birth beyond the sea,” which examines birth rights and lack thereof when born outside of England and the changes, within the law, that take place after 1351. Although problematic, this work sheds new light on the concepts of feudalism and citizenship for historians of medieval and early modern legal, social, and political history.

Kim constantly reminds his audience that he is focusing on England and yet the title, *Aliens in Medieval Law*, belies his interest and use of legal documents from the continent. The title is further misleading in that the entire second half of the book deals with early modern law and its understanding of citizens and foreigners. The subtitle, *The Origins of Modern Citizenship*, is more closely related to the author’s investigation since legal linguistics is the nexus of his question and the core of his findings.

Potentially ground breaking research that changes the understanding of feudalism, citizenship, and statehood, Kim’s work is marred by the jarring complexity of his introduction. Expecting a work on medieval history, the reader is bombarded with alternating early modern and medieval references without the verbal markers to keep track of the century to which the author refers in any given sentence. In his opening few pages, Kim states that, “This book is not intended to be an interdisciplinary study,” choosing to focus on law in and of itself. Yet, the work would have benefited from the obvious acknowledgments of such social events as the Black Death in the winter of 1349–1350 or the Hundred Years’ War. Kim does recognize the problems produced by

the long, military stays outside of England as having had some bearing upon the legal shift. He might also drive home his point by augmenting the pure legal theories with other social, cultural, and political events that had bearing upon 1351, the year he sees as the great shift in legal thinking about the status of people.

The chapters in Part 1, "History," contain the crux of his argument and are the most clearly argued and written. Part 2, entitled "Historiography," is less about historians than it is about what happened to the late medieval legal categories of persons in early modern England. While the thesis of each chapter seems clear and Kim's overall statement becomes understandable, his presentation style clouds the relevance of individual points, leaving his overall argument buried until the concluding remarks of each chapter. The work uses the specific rhetoric of legal historians within the terminology of medieval historians; although, his definitions of terms such as "status" and "State" remain undefined. On the one hand, the introduction creates more questions than it answers. Though he does try to answer them later in the book, the tightly-packed statements at the beginning are not an overview of his research nor are they a summary of his findings. He is attempting to bring together the many threads he sees leading to his thesis. Yet many of his opening statements need more explanation, such as this sentence: "Our aim is to explain rather the end, than the beginning, of a medieval state by examining the rise of the law of alien status, which I consider as the distinctive feature of the modern State" (11). The concluding chapter, on the other hand, is quite clear and to the point. For instance, "we can conclude that the pivotal achievement of introducing the question of political subjection into the arena of private law discussion was made in the middle of the fourteenth century as revealed by the statute *De natis ultra mare (1351)*" (210). The introduction does not set the tone or pace for the rest of the work, which is argued in fragments and, while intriguing, might be convincing with augmentation.

WENDY J. TURNER, History, Augusta State University, GA