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Ancient Israelite population economy: ger, toshav, nakhri and karat as settler colonial categories

Abstract

This paper looks in detail at the often studied categories for aliens and foreigners, together with the karat ("cutting off from his people") command in the Pentateuchal legal materials from the perspective of ancient Israel as a settler society. In conversation with previous approaches to these categories, the paper explores how relating them to concepts of a population economy in settler colonial societies can help better understand the text. Such issues as the tripartite division to a settler community, indigenous and exogenous others are considered, and comparisons with other corresponding societies are made as part of the paper. The paper then also looks at how these categories could fit in with various potential settings in ancient Israel, including pre-exilic and postexilic times.

Introduction

Previous analyses of foreigners in the Hebrew Bible/Old Testament have typically concentrated on the variety of differences in the presentation of the various categories of alien and foreigner, especially in relation to the Pentateuchal law codes.[1] In the tradition of Wellhausen, the analyses then tend to trace diachronic developments in the conceptualisation of these categories.[2] In such approaches, there is an assumption of development over centuries from simpler forms of religion into more complex ones. In terms of the Pentateuchal materials, the main identified legal codes are the Covenant Code (CC; Ex 20-23, often seen together with the so-called Ritual Decalogue

[1] I will concentrate on the Pentateuchal law codes here as these contain the most of relevant information and are also the most studied group of texts.
[2] See Reinhard Achenbach, Rainer Albertz and Jacob Wöhrle, eds., *The Foreigner and the Law: Perspectives from the Hebrew Bible and the Ancient Near East*, BZABR 16 (Wiesbaden: Harrasowitz, 2011).

in Ex 34), Deuteronomic Law Code (D) and the Priestly (P) and Holiness Codes (H).[3] As the Covenant Code is simple and short, it was taken by Wellhausen to be the earliest of the codes. The Priestly and Holiness codes can be considered as the most precise terminologically, and Wellhausen saw them as the most evolved ones, even if at the same time as restrictive and legalistic. Consequently he dated them late, more specifically, to the exilic-postexilic periods. Deuteronomy provided a midpoint in terms of its complexity and precision, and was dated in between these two codes.[4]

As regards issues that relate to the concept of foreigners and related social categories, typical analyses assume the Wellhausenian chronology and overall development from simple to complex in these respects. The main categories of foreigner are *ger*, *nakhri* and *toshav*. Of these, *ger* and *nakhri* appear in all three of the main identified Pentateuchal law codes (CC, D, P/H). *Toshav* appears only in the priestly law codes.[5] Typically it is considered that the *ger* is seen as a *persona miserae* in the Covenant Code but becomes a more independent person in the priestly legal materials. And yet, it is clear that the *ger* can also be a *persona miserae* in the priestly corpus (see Lev 19:9-10; 23:22), it is just that he can also be a more independent person there, ostensibly even predominantly so.[6] In any case, the introduction of *toshav* as a category is unique to the priestly materials. The actual exact meaning and scope of these categories is somewhat debated, but, broadly speaking, it is generally agreed that *nakar* is a pure foreigner and *ger* a person that tends to be residing in and with Israel on a

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[3] The Priestly and Holiness Codes are generally seen as separate but interrelated. While Wellhausen and other 19th century scholars generally saw H as earlier than P, most now think that H is later than P (see Cristophe Nihan, *From Priestly Torah to the Pentateuch: A Study in the Composition of the Book of Leviticus*, Forschungen zum Alten Testament 2, Reihe 25 [Tübingen: Mohr Siebeck: 2007]).

[4] There were of course also other reasons for dating Deuteronomy to this period, most notably a certain interpretation of the concept of centralization of worship. Overall, see Julius Wellhausen, *Prolegomena zur Geschichte Israel*, sechste Ausgabe (Berlin: Druck und Verlag Georg Reimer, 1905; first published 1878); ET: *Prolegomena to the History of Ancient Israel*.

[5] For details, including tables listing all occurrences, see Reinhard Achenbach, '*ger* – *nakhri* – *toshav* – *zar*: Legal and Sacral Distinctions regarding Foreigners in the Pentateuch', in Achenbach, Albertz and Wöhrle, eds, *The Foreigner and the Law*, pp. 29-51 (28, 43, 46).

[6] See Christophe Nihan, 'Resident Aliens in the Holiness legislation', in Achenbach, Albertz and Wöhrle, eds, *The Foreigner and the Law*, pp. 111-134 (esp. 119).

longer term basis, and with *toshav* a category between these two. The full-fledged Israelites are often simply *beney Israel* or may be called as *ezrach* (native), often in combination of *ger we ezrach*. We thus have a continuum of categories from native to a foreigner across the materials.[7]

One clear weakness that current approaches have is that they do not incorporate an analysis of an important sociological category. This is the category of the native Canaanites and other people indigenous to the land. Interestingly, the biblical materials are silent about the indigenous peoples when discussing *ger*, *nakhri* and *toshav* in relation to native Israelites at the level of the related individual laws. At the same time, all these law codes do give clear indication otherwise that the indigenous peoples are to be destroyed, generally by killing or by expulsion (Ex 23:20-33; 34:11-16; Lev 18:24-30; 20:22-26; Dt 7). It thus appears that they are a non-category and non-existent for the ancient Israelites in terms of the kindness that is to be shown towards the *ger* and the *toshav*, and at least commercial dealings that are stipulated for the *nakhri*. Academic scholarship seems to mirror this silence. That is, interestingly, in scholarly discussion that directly examines the historical background of the texts, the destruction of indigenous peoples in the biblical materials is largely relegated to the realm of fiction, even if postcolonial scholarship can also assume historicity for the narratives, at least in a *de facto* sense.[8] Whatever the case, a wholesale destruction

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[7] Note that another category that occurs in the law codes, zar, would be more of a signifier of an 'outsider' in general terms, such as an outsider to the Levitical office, etc (see Achenbach, '*ger – nakhri – toshav – zar*', pp. 45-46). Accordingly, it does not seem necessary to include the category here.

[8] On postcolonial scholarship in the latter sense, see e.g. Robert Allan Warrior, 'Canaanites, cowboys, and Indians: deliverance, conquest and liberation theology today', *Christianity and Crisis*, 49 (1989): 261-265 as a seminal contribution. Cf. also more recently e.g. Roland Boer, 'Of Green Ants and Gibeonites: B. Wongar, Joshua 9 and Some Problems of Postcolonialism', in *idem*, *Last Step before Antarctica: The Bible and Postcolonialism in Australia* (Atlanta: SBL, 2008) and the articles by Davidson and Miles in *idem* ed., *Postcolonialism and the Hebrew Bible: The Next Step* (Semeia Studies 70 (Atlanta: SBL, 2013). And yet, such postcolonial works as *Michael Prior, The Bible and Colonialism: A Moral Critique*, The Biblical Seminar, 48 (Sheffield: Sheffield Academic Press, 1997), Mark Brett, *Decolonizing God: The Bible in the Tides of Empire*, The Bible in Modern World 16 (Sheffield: Sheffield Phoenix Press, 2008) and Keith W. Whitelam, *The Invention of Ancient Israel: The Silencing of Palestinian History* (Abingdon: Routledge, 1996) would see things in the former sense. All in all, postcolonial scholarship also often tends to be about how the bible has been read in more modern times (and/or should now be read) in interaction with

certainly does not fit in the postexilic period, also considering that the Israelites were under Persian rule. A related issue is that, as the Israelites were under Persian rule in the postexilic period, how could they, at least ultimately so, have regulated against such people as Persian imperial officials who wanted to stay in the land?[9] Surely such people would have been under Persian imperial laws while in Judah rather than any Jewish legislation that could override their status in the imperial context.[10]

In light of these difficulties, there certainly should be room for any potential explanations that might fit the evidence better. In this respect, I on my part have previously argued against a Wellhausenian development from simple to complex and for a potentially earlier provenance of these law codes than is often thought based on an examination of the concept of centralization of worship in these law codes.[11] A case against an evolutionary development has recently also been argued otherwise in detail, based on examining the interplay of the Pentateuchal law codes.[12] In addition, I have more recently argued that the provenance of the law codes, and the Pentateuch as a whole, together with the book of Joshua, can be better understood if Genesis-Joshua is understood as a document that reflects the efforts and programmatic concerns of the ancient Israelite tribes that settled in the Canaanite highlands from the Late Bronze-Early Iron Age era on.[13] According to such an interpretation, the accompanying process of

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perspectives on colonialism, and particularly from a critical standpoint at that. But, this can of course bring potential insights for reading the texts in their original context.

[9] Cf. Nihan, 'Resident Aliens', 131-132.

[10] Thus, in contrast to Nihan, 'Resident Aliens', 131-132, would the redemption laws in Lev 25 have been realistic (in terms of redeeming from Persian officials as *gerim*)? Of course, it is possible that the legislation is meant to be theoretical than practical, as may have been with ancient Near Eastern law more generally in many cases.

[11] See Pekka Pitkänen, *Central Sanctuary and Centralization of Worship in Ancient Israel: From the Settlement to the Building of Solomon's Temple*, reissue with a new introduction by the author (Piscataway, N.J.: Gorgias Press, 2014, first edition 2003, second publisher's edition 2004).

[12] Benjamin Kilchör, *Mosetora und Jahwetora: Das Verhältnis von Deuteronomium 12-26 zu Exodus, Levitikus und Numeri*, BZABR 21 (Wiesbaden: Harrassowitz, 2015). This does not deny a prehistory for the law codes, nor a potentially differing time for their origins, but development from simple to complex as it places P/H before Deuteronomy.

[13] See Pekka Pitkänen, 'Pentateuch-Joshua: A Settler-Colonial Document of a Supplanting Society', Settler Colonial Studies 4/3 (2014), 245-276.and *idem.*, 'Reading Genesis-Joshua as a Unified Document from an Early Date: A Settler Colonial Perspective', *BTB* 45.1 (2015): 3-31.

settlement can be compared with known similar processes that have occurred elsewhere in the world and have been labelled as settler colonialism based on a social scientific analysis.

I will however explicitly note here that I agree that there are enough differences between the law codes so as to assume their existence as entities that can be at the very least conceptually separated. And, I think it is fair to think that the law codes have been developed by the Israelites based on an already existing ancient Near Eastern legal tradition.[14] Therefore, the analysis here largely relates to producing and considering an alternative view of the provenance and relationship of these codes. The following treatment will also not go into all the minutiae of the differences between the legal codes, this said, it simply could be expanded and nuanced further through an analysis that incorporated more detail.

Ancient Israel as a settler colonial society

From a theoretical perspective and as a phenomenon, settler colonialism should be seen as separate from "ordinary" colonialism, even though the two often overlap and help define each other.[15] Settler colonialism is a specific complex social formation.[16] One important defining characteristic for this form of colonialism is the concept of a settler. Settlers come to stay, whereas colonial sojourners, such as administrators, military personnel, entrepreneurs and adventurers return.[17] There is also a crucial distinction between settlers and migrants. Settlers are *founders* of political orders and carry their sovereignty with them, while migrants are *suppliants* who face a

[14] Cf. e.g. the data and considerations in Yitzhaq Feder, *Blood Expiation in Hittite and Biblical Ritual: Origins, Context and Meaning*, Writings from the Ancient World Supplement Series 2 (Atlanta: Society of Biblical Literature, 2011) and Kenneth A. Kitchen and Paul J.N. Lawrence, *Treaty, Law and Covenant in the Ancient Near East*, 3 vols (Wiesbaden: Harrassowitz, 2012).
[15] See Lorenzo Veracini, *Settler Colonialism: A Theoretical Overview* (Basingstoke, Palgrave MacMillan, 2010), pp. 1-15.
[16] See Patrick Wolfe, 'Settler Colonialism and the Elimination of the Native', *Journal of Genocide Research* 8(4) (2006), pp. 387–409 (pp. 390, 401)
[17] Veracini, *Settler Colonialism*, p. 6.

political order that is already constituted.[18] In addition, as one leading theorist of the field describes it, "while settlers see themselves as founders of political orders, they also interpret their collective efforts in terms of an inherent sovereign claim that travels with them and is ultimately, if not immeditely, autonomous from the colonising metropole".[19] A further characteristic of settler colonialism is that whereas colonialism is a master-servant relationship where the colonised people are often used for exploitative purposes, in a settler colonial situation, the indigenous person is characterised by their *dispensability*.[20] Indigenous peoples can, and in fact are actively made to "vanish", and this is effected by a varying set of actions called *transfer*.[21] These range from liquidation and deportation to various ways where indigenous peoples are in effect assimilated to the settler collective, whether culturally, administratively or conceptually.[22] Settler colonialism is a structure rather than an event where an initial invasion gives rise to a prolonged process of eliminating the indigenous population.[23] The dynamics of the settler colonial situation are further defined by a tripartite division between the settler collective and indigenous and exogenous others. In this population economy, the exogenous others are made of immigrants and representatives of metropolis.[24] While indigenous others are a threat to the existence and legitimacy of the settler collective, there can be a selective inclusion of exogenous others as there is the possibility of collaboration.[25] However, there can also be undesirable

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[18] Veracini, *Settler Colonialism*, p. 3, also with reference to the work of M. Mamdani.
[19] Veracini, *Settler Colonialism*, p. 53,
[20] Veracini, *Settler Colonialism*, p. 8.
[21] See Veracini, *Settler Colonialism*, pp. 16-17; italics mine. This relates to the concept of "logic of elimination" or "structural genocide" (rather than simply genocide) as expressed in Wolfe, 'Settler Colonialism and the Elimination of the Native', pp. 401, 403. Note also that while the exploitation of the labour of the indigenes is not the primary objective of the colonizers, such exploitation can take place as part of the process of elimination (see Patrick Wolfe, *Settler Colonialism and the Transformation of Anthropology: The Politics and Poetics of an Ethnographic Event*, Writing Past Colonialism [London: Cassell, 1999], p. 29).
[22] Veracini, *Settler Colonialism*, pp. 35-51, listing 26 different forms of transfer.
[23] Wolfe, *Settler Colonialism and the Transformation of Anthropology*, pp. 2, 163; *idem.*, 'Settler Colonialism and the Elimination of the Native', p. 402.
[24] Veracini, *Settler Colonialism*, p. 123n13.
[25] Veracini, *Settler Colonialism*, p. 26.

exogenous others who may be subject to deportation or segregation,[26] and abject others who are permanently excluded from the settler collective and have lost their indigenous or exogenous status.[27] A "successful" settler society, then, "is managing the orderly and progressive emptying of the indigenous and exogenous others segments of the population economy and has permanently separated from the abject others".[28] In many ways, the whole process involves replacing an old society or societies with a new one(s), in other words, a settler colonial society can also be called a supplanting society.[29] The study of settler colonialism can also help understand some innersocietal assimilation and eliminatory processes, such as the Nazi genocide and the elimination of witches in medieval Europe.[30] The study of settler colonialism in its historical context is a new emerging area of study, at the very least arguably with an increasing reach and influence.[31]

If one considers the narrative of Genesis-Joshua,[32] it indicates that Abraham, Israel's forefather, migrated into the land of Canaan from Mesopotamia and that his descendants subsequently migrated to Egypt to protect themselves from a famine. The Israelites became a nation in Egypt but were enslaved. They were later liberated and left Egypt under the leadership of Moses. They then traversed a wilderness and arrived at the edge of the land of Canaan where Moses died, and it was left to his successor Joshua to lead the Israelites into the land of Canaan in order to

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[26] Veracini, *Settler Colonialism*, p. 27. The African slaves in the Americas (segregation), and the French Acadians in colonies taken over by the British (deportation) would belong to this category.
[27] Veracini, *Settler Colonialism*, pp. 27-28 (cf. below for a potential biblical example).
[28] Veracini, *Settler Colonialism*, p. 28.
[29] See David Day, *Conquest: How Societies Overwhelm Others* (Oxford: OUP, 2008).
[30] See Wolfe, 'Settler Colonialism and the Elimination of the Native', p. 403. Speaking somewhat metaphorically, we may suggest that the external and internal are ultimately two sides of the same coin.
[31] See Veracini, *Settler Colonialism*, pp. 1-15 for the history of study till 2010.
[32] On the relationship of the narrative of Genesis-Joshua and the law codes to history based on a settler colonial analysis, see Pitkänen, 'Reading Genesis-Joshua as a Unified Document from an Early Date'. The results of analysis are assumed here. Basically this reads Genesis-Joshua as a legitimating document for ancient settler colonialism, with the legal codes providing a blueprint for the new Israelite society in place of the older Canaanite societies (cf. just below). Genesis-Joshua also for example provides legitimation for the Israelite possession of the land through the narratives about the promises to the patriarchs.

conquer it and settle it. At the outset, this immediately sounds like settler colonialism. In express settler colonial terms, the Israelites, especially towards the end of Genesis-Joshua, became an autonomous collective that claimed both a special sovereign charge and a regenerative capacity. Also, they vied for a piece of land to claim for themselves under their sovereign charge where they would establish a new society, and, as a case in point, we may recall that the Holiness Code (Lev 17-26) and Deuteronomic laws (Dt 12-27) particularly focus on land.

Foreigners and aliens in ancient Israel as settler colonial categories

If we can consider ancient Israel as a settler colonial society, it would seem that we can analyse its societal features in the light of commonalities amongst settler colonial societies. It is the tripartite division of a settler society (settler community, exogenous others and indigenous others) that should prove most useful for the analysis of the role of foreigners in relation to the Israelite natives and the indigenous peoples, our focus here.[33] Clearly the *beney Israel* (sons of Israel) and *ezrach* (native) are members of the settler collective. Importantly, the settler collective claims that it is now native to the place, even if its origins lie elsewhere. These members are the full-fledged participants of the society upon whom full powers, rights and responsibilities reside. Naturally this society has its own leadership and societal structures, consisting of priests and Levites (Ex-Num), and of various other functionaries such as tribal leaders (e.g. Num 7), judges and prophets, and possibly a king (Dt 16:18-18:22). The Israelite society, or the settler collective, is often referred to as an assembly (*qahal*; e.g. Dt 23:1-8) or a congregation (*edah*; e.g. Josh 22:9-34). The word *ʿam* can also be used.

As for the second division of the tripartite situation, the exogenous others, we can see that the *ger, toshav* and *nakar* fit to this category. A broad comparison and parallel with a more modern settler society, the United

[33] I will largely apply that theory here, however, some of the comments below may offer certain nuancing to it.

States, may help illuminate the situation. If one considers US citizens as the settler collective, we could perhaps roughly equate *ger* with a foreigner who has a green card, a *toshav* with one who has a working visa and a *nakar* with a non-citizen foreigner who is visiting the USA or is otherwise outside US territory. In this way, one can think that the association with the settler society increases together with increased rights and responsibilities in relation to it. That the ancient Israelite law codes have a slightly differing vision of these categories (*ger*, *toshav*, *nakar*) does not change the basic conceptualisation that ranges from a foreigner to a native. Perhaps the fact that the priestly materials (esp. H) included some very detailed ritual and socio-economic legislation about the *ger* also called for an immediate category *toshav* in this code. Whatever the case, the label *toshav* is not used frequently in this material anyway,[34] and all this may be a reason why the Deuteronomic law code did not include it. One may keep in mind that Deuteronomy has an exhortative nature and may therefore not be interested in terminological scope and precision in a manner of the priestly materials.[35]

As for the third part of the division, the indigenous others are the Hittites, Girgashites, Amorites, Canaanites, Perizzites, Hivites and Jebusites (e.g. Dt 7:1), a formulaic and representative group of nations in the land where the Israelites settle.[36] In the Israelite vision, these nations are to be eliminated.[37] Accordingly, it seems natural that the ancient Israelite legal codes that stipulate about exogeneous others (*ger*, *toshav*, *nakhri*) are not concerned about indigenous others. At the same time, things are not quite as simple as this. In reality it is possible for indigenous others to be "uplifted" to the settler collective by assimilation. The harlot Rahab (Josh 2; 6) and the Gibeonites (Josh 9) seem to have been dealt with in this way (cf. Ezra 3:7;

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[34] See Achenbach, '*ger – nakhri – toshav – zar*', esp. p. 46.
[35] Notably, the Deuteronomic code does not include fully detailed information about priests and levites, an issue extensively discussed in academic scholarship, including by Wellhausen in the nineteenth century (see Wellhausen, *Prolegomena*).
[36] Cf. the "nine bows" as traditional foes of Egypt in ancient Egyptian documents; cf. e.g. Mu-chou Poo, M.-C., *Enemies of Civilization: Attitudes toward Foreigners in Ancient Mesopotamia, Egypt and China* (Albany: State University of New York Press, 2005), p. 21 (Poo notes that similar "lumping" took place also in China).
[37] Cf. above.

7:25 where Gibeonites appear to be described as Israelites centuries later). There are clues that assimilation could often be effected by grafting a person of a non-Israelite background into the Israelite genealogies, this certainly seems to be the case at least for Caleb the Kenizzite who is also a Judahite (Numbers 32:12; Joshua 14:6, 14), even if Caleb should more properly be considered an exogenous other. Many indigenous people may in fact have been assimilated by linking them to the eponymic forefathers of Israel who are considered to be the ancestors of the twelve tribes, each associated with a territory.[38] If so, eponymic assimilation based on geographical areas could then have contributed towards ancient Israelite ethnogenesis.

The criteria of undesirable and abject others should further help illuminate the situation. These categories can be considered as additional to the basic tripartite division in a settler society. In the Israelite society, slaves can be considered as belonging to the category of undesirable others. Except for the obvious explicit reasoning about having been slaves in Egypt and resulting calls for avoidance of slavery, it is now from a social scientific perspective (and, as part of that, from the designation "undesirable other") immediately clear why the Israelites largely discourage the taking of slaves from native Israelites, or at least seek to mitigate its effects. Such mitigation includes the seven-yearly slave release in the Covenant Code (Ex 21:2-11)and in Deuteronomy (Dt 15:12-18) and the Jubilee year in H (Lev 25). At the same time, restrictions really only apply to the members of the settler collective, and to such exogenous others that are closely integrated with the Israelites (see Lev 25:44-45). Otherwise, slaves may be taken from among some of the exogenous others, and freely from foreigners (see Lev 25:44-45). But, slaves could in effect be taken from indigenous others also. The Gibeonites are described as becoming slaves in the book of Joshua after they have averted extermination through trickery by pretending to be people from a distant land. In other words, the Gibeonites really seek to be treated as exogenous

[38] Cf. Margalit Finkelberg, *Greeks and Pre–Greeks: Aegean Prehistory and Greek Heroic Tradition* (Cambridge: CUP 2005), esp. pp. 24-41 for evidence for similar genealogical developments in an ancient Greek context.

others rather than as indigenous others.[39] Otherwise, Judges 1 describes the Israelites as subjecting those nations that they could not drive out into forced labour. In addition, notably, Solomon is described as having put the remnants of indigenous peoples into forced labour (1 Ki 9:20-21). This would have taken place at a time when the Israelite society seems to have been well established, including through the unifying and conquering acts of David. In this case, it would seem that these peoples could be assimilated into a slave class rather than exterminated as they did not any more present a realistic threat to the existence of the Israelite society as was the case before.[40] Conversely, their labour could also be exploited for public projects.

As for those who have been subject to the *karat* punishment of being cut off from their people (Lev 7:20-27; 17:4-14; 18:29 etc.), they can be considered as belonging in the category of abject others. It is not known exactly what the term being cut off (*karat*) from one's people means. However, I submit that the (often more modern) institution of imprisonment can serve at least as an illustrative comparator. I do not mean to argue that there was anything that resembles more modern incarceration in ancient Israel, just that both punishments involve a separation from society (including a settler society and settler collective) and a loss or denigration of rights.[41] The *karat* punishment might then correspond to a life in prison without a possibility

[39] Certainly, this passage links with Dt 20:10-18 where people from cities outside Israel are to be made forced labour if they surrender without a fight. But one can think that the deuteronomic law pertains to a situation of war and whole towns collectively, contrasting with a situation where individuals come from elsewhere to live with Israel. Again, perhaps the idea of a threat is important here. Indigenous others and any politically independent external groups may constitute a threat to the existence and legitimacy of the settler collective, however, individuals who are directly subjected to the laws and customs of the collective seems less likely to present such a threat.

[40] Cf. P. Wolfe, 'Structure and Event: Settler Colonialism, Time and the Question of Genocide', in A.D. Moses, ed., *Empire, Colony, Genocide: Conquest, Occupation and Subaltern Resistance in World History* (Oxford/New York: Bergahn Books, 2008), pp. 102-132 (p. 130n71).

[41] One may however note that detainment was not alien to ancient Israel and the wider Near East. For example, in addition to prisoners of war that were often displaced forcibly, the punishment on Simei in 2 Ki 2:36-46 is equivalent to house arrest, an imprisonment of a kind, and, in the patriarchal narratives, Joseph is portrayed as having been imprisoned in Egypt (Gen 39-41); cf. Karel van der Toorn, 'Prison', *ABD* V, pp. 468-469 for a wider summary. As for more modern concepts and practices of imprisonment, such issues as the goal of "reforming" clearly would not seem to have been part of ancient Israelite thinking; cf. e.g. Michel Foucault, *Discipline and Punish: The Birth of the Prison* (London: Allen Lane, 1977; French original 1975).

for a parole. It could even be equivalent to a capital penalty if that was the meaning of the *karat* command. While this overall category could be considered as something like abject settler others for those belonging to the settler collective, for comparison, the status of those in prison, and often in practice even after being released in the case of time limited sentences, should be considered as reduced and isolated in comparison to the status of those having a "normal" status in the collective itself. Those executed are of course completely eradicated from the settler collective and society at large. Notably, the punishments described in Deuteronomy 13 serve to eradicate idolaters from Israel with an innersocietal application of the concept of *herem* in such cases can be compared with the *karat* command.[42]

To help further illustrate the ancient Israelite concepts, the treatment of indigenous peoples in the Israelite society (at least from an ideological perspective) can be compared with the treatment of indigenes in the British North American colonies and then in the USA.[43] Native Americans were killed and expelled. But a number of them were also taken as slaves,[44] as were blacks from the pool of (undesirable) exogenous others. In addition, Native Americans were assimilated, especially after the frontier was closed in the late 19th century, for example through forced school programs.[45] The British North American colonies and the later USA did (and the USA still does) use imprisonment, even when its more extensive use since the early 19th century can probably more or less be associated, or at least coinciding,

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[42] Cf. our comment about the Nazi genocide and witches above.

[43] Overall, both the ancient Israelite society and the early American society can be classified as agrarian societies and also as settler colonial frontier societies. For further details, in interaction especially with the work of the American sociologist Gerhard Lenski (who himself makes an overall comparison between ancient Israel and USA, together with certain other settler societies that could also be considered here), see Pekka Pitkänen, 'The ecological-evolutionary theory, migration, settler colonialism, sociology of violence and the origins of ancient Israel', *Cogent Social Sciences* (2016) 2:1210717, pp. 1-23, http://dx.doi.org/10.1080/23311886.2016.1210717.

[44] See W.L. Hixson, *American Settler Colonialism: A History* (New York: Palgrave Macmillan, 2013), pp. 36-42 who points out that the recognition of widespread use of native Americans as slaves especially in the 17th-18th centuries has been a recent discovery in historical research.

[45] Note the saying "kill the Indian and save the man" at this time (see e.g. Hixson, *American Settler Colonialism*, p. 141).

with the industrialising era.[46] And, these societies did (and the USA still does) execute criminals in the most serious cases. If execution was involved with abject others in ancient Israelite thinking, except for capital punishment, that would also be very close to the status of being an indigenous other. Of course, for example, there might be no opportunity for an abject other for reintegration to the settler collective, as opposed to the possibility of assimilation for at least some indigenous others. Lev 18:24-30 explicitly compares the *karat* punishment with the fate of indigenous peoples, and, perhaps taking the logic further, the curses in both Leviticus and Deuteronomy describe great collective calamities and collective expulsion in case of national idolatry (Lev 26; Dt 27).

Summary and conclusions

Coming back to the question of the provenance of the related legal materials, it would seem that the law codes can essentially be considered as representative of the ancient Israelite societal situation and thinking at a particular time. This can be the case even if a number of the laws would have had a substantial prehistory that may go back to the pre-Israelite time before their incorporation in the Pentateuch or may conversely have undergone revision as the Pentateuch was transmitted through time.[47] In terms of the mutual relationship of the law codes, a much debated issue, I have elsewhere[48] suggested that the Covenant Code was a predecessor to Deuteronomy,[49] and parts of it are likely to have influenced the Holiness Code which itself seems to have been a development on the so-called P material.[50] However, a development from simple to complex is not required, not a particularly long interval between the production of the codes. The

[46] Cf. Foucault, *Discipline and Punish*, incl. pp. 76-77.
[47] Cf. e.g. David M. Carr, *The Formation of the Hebrew Bible: A New Reconstruction* (New York: OUP, 2011); Jeffrey Tigay, *The Evolution of the Gilgamesh Epic* (Wauconda, IL: Bolchazy-Carducci Publishers, 2002, a reprint of 1982 edition published by Philadelpia: University of Pennsylvania Press).
[48] See Pitkänen, 'Reading Genesis-Joshua as a Unified Document from an Early Date'.
[49] Cf. more originally esp. B.M. Levinson, *Deuteronomy and the Hermeneutics of Legal Innovation* (Oxford: Oxford University Press, 1997).
[50] See Nihan, *From Priestly Torah to the Pentateuch*.

differences in how *ger*, *nakhri* and *toshav* were seen in the differing Israelite law codes can essentially just be about conceptual variation within a clear spectrum of societal categories that range from nativeness to foreignness in a settler colonial context. In this connection, one should keep in mind that it is not entirely clear if, to what extent, and in what contexts ancient near Eastern legal materials were meant to be understood literally and to what extent they might have had the characteristic of being "mere" scholarly exercises.[51] And, even with a postulated rigid legal framework, it does not seem impossible that the ancient Israelite population economy would have remained dynamic in its manifestations through both place and time through the variability of human agency and action, and changing historical circumstances. In line with what I have argued elsewhere, all these materials could then have already taken shape in ancient Israel as it was settling in the highlands.[52] This in itself should not be surprising from the perspective that ancient Israel was a latecomer in the ancient Near East. As a case in point, issues that relate to loans in Lev 25 also involve exogenous others. However, loans, and economic matters at large, were already a well-trodden area of concern and legislation in the ancient world, and such legislation is easily attested already in early second millennium.[53] Thus it is not necessary to consider it scandalous to propose a date that accords with the time when the ancient Israelites settled in the highlands.

Also, importantly, if these documents relate to a time when Israel was settling in the highlands, or at least was still in its land as an autonomous entity, the way the documents relate to natives, foreigners and indigenous

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[51] See e.g. F.R. Kraus, *Königliche Verfügungen in Altbabylonischer Zeit*. Studia et Documenta ad iura orientis antiqui pertinentia, vol XI (Leiden: E.J.Brill, 1984); cf. Kitchen and Lawrence, *Treaty, Law and Covenant in the Ancient Near East*. Note that the book of Joshua clearly seems an example of a work that carefully relates the Israelite actions to Pentateuchal legal materials (see Pitkänen, Joshua). Other biblical books may have less of such a characteristic. The question then would of course be if the author of those books was less familiar with the Pentateuchal materials, such materials did not exist, or whether and to what extent actual customs reflected the leagal materials if they existed, and, finally, to what extent the author themselves considered it important to follow those materials and how they interpreted them.

[52] See Pitkänen, 'Reading Genesis-Joshua as a Unified Document from an Early Date'.

[53] See Bruce Wells, 'The Quasi-Alien in Leviticus 25', in Achenbach, Albertz and Wöhrle, eds, *The Foreigner and the Law*, pp. 135-155 (esp. 144-145).

peoples falls perfectly naturally within the framework of a settler colonial analysis. That is to say, it is clear that the new Israelite settler society could have an ideological target of getting rid of native peoples but would see other groups external to itself and external to the land it claims for itself as a possible source of people to join its society. These exogenous others would constitute the representatives of *gerim*, *toshavim* and *nakhrim*. At the same time, the categories of undesirable and abject others would exist, consisting of slaves and those subjected to the *karat* punishment. An Israelite would not be included in these categories unless they had seriously broken the law (as it were, with *karat* as a result), or if they have fallen on hard times economically (slavery), from which they would be supposed to be redeemed after a period. It is true that the native vs foreigner categories would be applicable to any society, together with the categories of undesirable and abject others. However, it is the addition of indigenous others to the equation that fits so well with a settler colonial analysis. In this, while the native versus foreigner dynamic in the Pentateuchal legislation could be accounted for through a Wellhausenian analysis in an exilic-postexilic context, it already has its difficulties at least in terms of the (lack of) autonomy of the Israelite society to enforce its own rules. However, the addition of the category of indigenous others and an ideology and capability to eliminate them cannot really be accounted for through a Wellhausenian analysis, at the very least as far as I can see.

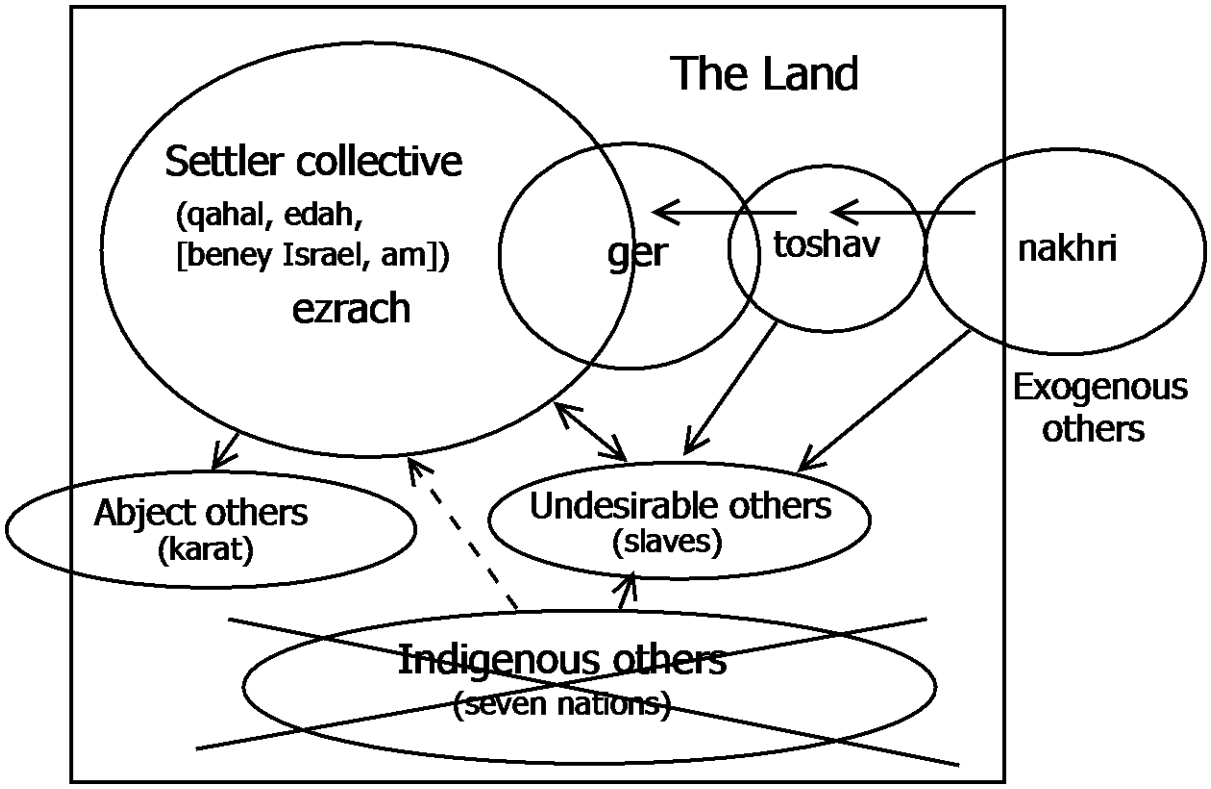


Figure 1: Ancient Israelite population economy