

18 — Mishpatim: This Is What Incrementalism Gets Us

Content notes: *slavery, old-fashioned patriarchy, and colonialism, and mentions of racism and the carceral system.*

Lulav: Welcome to Kosher Queers, a podcast with at least two Jews and generally more than three opinions. Each week, we bring you queer takes on Torah. They're Jaz.

Jaz: And she's Lulav.

Lulav: And she's Cassidy! And today we're going to talk about Mishpatim.

[Brivele intro music]

Lulav: So, Cassidy Mosity is a graduate student at the University of Minnesota, where she is pursuing a PhD in the Religions in Antiquity program. Her studies focus on the Hebrew Bible and the Ancient Near East, especially on the ideological and conceptual transformations taking place between the imperial and the imperialized. In 2016, as an undergrad, she presented a paper at the regional meeting of the Society of Biblical Literature on the flood narratives in Bereshit, and how they utilize and transform Assyrian and Babylonian flood narratives. She is also very concerned with making academia — and knowledge in general — accessible and free. And as for how she is related to me, Cassidy and I are tied for the “Most Angry About Paul of Tarsus” award, *(Cassidy laughs)* and speaking of similar tastes, we are connected in multiple ways on the relationship chart of life via both her wife and my best friend.

Jaz: Aww.

Lulav: So, hi, Cass.

Cassidy: Hello.

Lulav: It's such a delight to have you on the show.

Jaz: Yeah, welcome!

Cassidy: I'm so excited.

Lulav: Also, you said before the episode that it was kind of wild to be on a call with me for a reason that wasn't tabletop role-playing games? *(Jaz laughs)*

Cassidy: Yes, this is true. I cannot play a martial arts kobold who skateboards on this podcast.

Lulav: *(laughs)* Well...

Jaz: Oh but that'd be so cool. All I want is to be a martial arts kobold who has opinions on Torah.

Lulav: Yeah, no, that was like literally her character. *(Jaz laughs)* I'm so glad about Leilyn. *(laughs)* So, Cass, why did you want to come on for this episode specifically?

Cassidy: Well, I feel like a lot of the time when the laws in the Tanakh and the Torah more specifically come up, it's mostly dismissed as like really boring stuff that's not as interesting as all of the narrative stuff and also there's a lot of, um — hold on, are we allowed to curse on this podcast?

Lulav: No, generally *(Jaz laughs)* I think you can say hell.

Jaz: Yeah, sure.

Lulav: You can say hell, right?

Jaz: Yeah.

Cassidy: There's a lot of awful stuff in these laws. *(Lulav laughs)* And that's true. But there's also some interesting stuff that goes on with these laws that I think is worth looking at.

Lulav: That's really cool.

Jaz: I am excited for you to sell me on this because I think the laws are fascinating and also I get really mad at them all of the time.

Cassidy: Oh, for sure.

Lulav: Yeah, and I don't always do a lot of reading before when I have to talk about things, so hearing about the intricacies of laws will be very interesting to me.

Jaz: Cool. Lulav, do you want to summarize this parsha for us?

Lulav: I would love to. Can I get 30 seconds?

Jaz: Sure can, one moment. Ready, set, go!

Lulav: We start with some codifications on slavery, felony and tort, as well as some general moral instructions including but not even mostly about bloodlust for witches. We establish chagim and a little bit of kashrut. There is the proclamation of a guiding warrior angel?! The structure of the Temple is prefaced a bit by worship instructions and Moshe writes everything he just heard in a book. Then, Moshe goes up a mountain over the course of 47 days to receive more instructions. Done.

Timer rings.

Jaz: So prompt, so timely.

(Lulav laughs)

Lulav: These last two have been good for just like *(she snaps her fingers)* knocking out a summary.

Jaz: Yeah, although your summary was real short because you skipped all of the content, all of the laws. *(Jaz laughs)*

Lulav: Yeah, but like...listen, slavery, felony and tort *(Jaz laughs)* really does summarize the first two chapters here.

Jaz: Um...

Lulav: I'm just saying.

Cassidy: I just looked up tort and that's an interesting term that I had not encountered before that really works for these.

Lulav: Yeah, I learned about that as a teacher because we had to learn about responsibility for things. Like, "don't leave a kid alone in your classroom because if they get injured, their parents can sue you"?

Cassidy: Hmm mm.

Lulav: Yeah, so tort is a fun word that I say a lot.

Jaz: It's good. I can start us at the beginning.

Lulav: Yes, please.

Jaz: *<singing> A very good place to start.* Okay, so, last time Moshe had just gone back up the mountain after receiving the ten commandments, and now these are more commandments that we've gotten and the first thing we establish is a jubilee year. If you have slaves, the slave is freed in the seventh year.

Lulav: Yeah; that's cool.

Jaz: Sort of.

Lulav: Well *(laughs)* it's better than the alternatives.

Jaz: It is, and then there are more details about what if that person has children, and what if that person is married, and what if they don't want to leave their spouse and children? Their spouse and children aren't allowed to be free with them but they are allowed to stay and be with them...and stay enslaved.

Cassidy: Unless the slave was married before being acquired by this person.

Jaz: Right.

Lulav: Hey! I just processed the thing about if the slave gets married while under service, the wife and children continue to be the master's slaves and that's, uh, something.

Cassidy: Yeah

Jaz: Sure is. Also the thing that I found when I was reading this, 'cause I was like - "what if I look in the Hebrew; what if that's better???"

Lulav: No!

Jaz: And the thing I actually found is a word "adonai" — not like "yud-hey-vav-hey but we're saying Adonai", but like, written-out "adonai" — and learned that means master. That this is referring to the slavemaster as adonai and that's like, when we say it for G-d, we're using it in a sense of like G-d is our master, so it was just more upsetting to me. I learned a new upsetting thing.

Lulav: Speaking of things that are safe for work and profoundly evil

Jaz: Yeah, yeah. Cassidy, do you have thoughts on this?

Cassidy: *(sighs)* I don't like it.

Lulav: Yeah.

Jaz: Yeah, so there's more things about what to do on that but the next thing is what happens if a parent sells their child?

Lulav: Which I think was quoted in *The West Wing* like 20 years ago?

Jaz: Oh really?

Lulav: Yeah, there's a part about Biblical literalism where the president is — nevermind. *(Cassidy laughs)* This is not a *West Wing* podcast. *(laughs)*

Jaz: No... although it does remind me — 'cause I've heard other things like that on there, like on places like that, maybe even that particular episode, which have

occasionally made me mad because it's usually about, like, talking to Christians and it's like, "well, do you sell your daughter into slavery?" And the next one is like, "do you eat shellfish?" (*Lulav and Cassidy sigh*) And that those are not equivalent things, and I actually do refrain from eating shellfish, and we don't need to make fun of things that Jews actually do do, when we're ridiculing people for doing evil things.

Lulav: Right.

Jaz: But yes, and also it says basically, like, if you sell a daughter and she's not treated properly, she gets to go free because you still have obligations to treat her as a person.

Lulav: Yeah.

Jaz: So.

Lulav: And I think I mentioned last week some stuff about how, when we talk about adultery, I interpret it more as like, right treatment for people? If the master takes another wife to himself, he doesn't diminish her food, clothing or marital rights. He still has to treat her as a full wife.

Jaz: Mmm...yeah.

Lulav: And so I think this is just an expansion on parts of the ten commandments.

Jaz: Hmm, okay. I mean I like that interpretation. The next bit is about death, and there are conditions under which people can be put to death. And I would refer to this too...that the rabbis drastically, drastically limit all of these? But they start out as, if you kill somebody else, capital punishment. If you hit your parents, capital punishment. And if you kidnap someone, capital punishment. And if you insult your parents, capital punishment. You know, like, so there's all of those.

Lulav: I feel like one of those is not like the others (*laughs*).

Cassidy: Yeah, the kidnapping one is really interesting to me. Because from the wording of it — I'm using the New Jewish Publication Society translation here — "He who kidnaps a man, whether he has sold him or is still holding him, shall be put to death."

Lulav: Mhm.

Cassidy: Which seems to me that kidnapping is to enslave somebody and they seem to be trying to prevent that.

Jaz: Hmm.

Cassidy: And yet that comes right after that first part, where owning slaves is perfectly fine.

Lulav: Yeah.

Jaz: That is really interesting. What do you make of that?

Cassidy: I want to say that this law and others might be responding to that, while not making it obvious that they are responses to those laws saying “now wait just a minute.”

Lulav: Okay. So you're saying that there shouldn't be a way into slavery in Jewish society based on this line?

Cassidy: Possibly, yeah.

Jaz: That maybe it establishes a legalistic basis for someone to say, “well, they shouldn't have been there in the first place; it's kidnapping that they're even in slavery.”

Cassidy: Possibly.

Jaz: That's interesting. Lulav, you had feelings about the "one who insults one's father or mother shall be put to death?"

Lulav: Oh no, I was actually talking about the kidnapping one when I said —

Jaz: Oh!

Lulav: One of these things is not like the others, because it's "whoever hits their parents or curses them will be put to death", and then in between that it's "if you straight up kidnap a dude you will also be put to death" (*Jaz laughs*) No, I think you shouldn't hit your parents except in self-defense and just not — not cursing on people — like, I don't think that the father and mother are special. You just shouldn't hit people or curse them.

Jaz: Yeah.

Lulav: IMO.

Jaz: Sure!

Lulav: But the text focuses on, like, familial relations.

Jaz: Yeah. My understanding about this text is that like, they interpret it very narrowly so that when it says something about like...in order to prove it sufficiently that a person could be put to death for it, it only applies when they're at a certain age which is very specific and small, because they have to be able to be legally culpable for their actions — but there's also a max age I think that's there, and also there needs to be a certain number of witnesses, and it needs to be with a certain degree of intention — like, that there was just like a lot of restrictions such that it would be very very difficult to actually be like, "oh we should kill somebody for that".

Lulav: Yeah. (*radiator clank*) That seems sensible.

Jaz: Yeah.

Lulav: And I don't think that's in this text, but like, I like that there are people sitting in the Sanhedrin who were able to call a lizard clean.

Jaz: Aw. Yeah.

Lulav: That's a bit of Talmud.

Jaz: It is!

Lulav: Thanks Svara.

Jaz: Yeah. Always. And then, you have to avenge people's deaths, including slave deaths, although only sometimes; and then we get fetuses are not people.

Lulav: Yeah! (*chuckles*)

Jaz: That's what happens. When two or more people fight and a pregnant person gets pushed, and miscarries, you have to pay a fine for it, but if someone who's an actual person dies, that gets much more serious punishment.

Lulav: Mhm.

Cassidy: Yeah. And this law is very very interesting to me, because there's a direct parallel to this law in the laws of Hammurabi.

Jaz: Mmmm.

Lulav: Can you tell us a little more about that?

Cassidy: Should I just read out the section of this law?

Jaz: Yeah.

Lulav: Heck yeah.

Cassidy: Sure. This is Laws 209 through 214 of Hammurabi's Code. "If a nobleman has struck the daughter of a nobleman and has made her lose her unborn child, he shall pay 10 shekels of silver for the fetus. If that woman has died, they shall kill his daughter. If he has made a commoner's daughter lose her unborn child by the violence, he shall pay five shekels of silver. If that woman has died, he shall pay half a manna of silver. If he has struck a nobleman's slave girl, and made her lose her unborn child, he shall pay two shekels of silver, and if that slave girl has died, he shall pay a third of a manna of silver."

Lulav: Huh.

Cassidy: So I find it interesting, in the Torah there is no class distinction.

Lulav: Oh!

Jaz: Hmmm.

Lulav: Oh that's good. I like that.

Cassidy: In Hammurabi's law, the guy who does the striking is never personally punished except for the financial fee.

Lulav: Mm.

Cassidy: His daughter could die, if he killed someone else's daughter of an equal status to him.

Lulav: But in the Torah, it's: "if any harm follows, then you shall give life for life," et cetera.

Cassidy: Yeah.

Jaz: Well, that's specifically if you hurt the pregnant person, like not the —

Lulav: Right.

Cassidy: Yes.

Jaz: Yeah.

Cassidy: And it's interesting also that in the law, it's a woman, but the pregnant person is never in consideration really, as a person in the Hammurabi Law.

Lulav: Great. Love that. I think there is still a little bit of a class distinction in these laws because, like, in line 20, talking about when a slave owner strikes a slave and they die immediately, the owner shall be punished?

Cassidy: Yeah.

Lulav: And like, if the slave survives, there's no punishment, no matter how much damage is done, because the slave is the owner's property? And that's different from, like, if a (*radiator clanks*) regular person is injured...

Cassidy: Yeah.

Lulav: Which I don't like, but apparently in Babylonian law, the worth of a slave is 1/5th that of a noble person, so...I guess this is an improvement.

Cassidy: Ugh. Reform.

Lulav: Say a little more on that?

Cassidy: I was just struck by the thought that this is where reforming laws can get us . We will still accept the inherent premise of the law, even as we try to improve it.

14:43

Lulav: Ooh, yeah.

Jaz: Oooh. This is where incrementalism gets us.

Cassidy: Mm.

Lulav: So, you've talked about the relationship to Hammurabi's Code here. Is there any particular way in which we should be viewing this entire parsha in the context of like, Babylonian, Assyrian, and so on, laws?

Cassidy: Nothing necessarily specifically for the whole thing with specifically another law code?

Lulav: Mhm.

Cassidy: But more in general — and I'm paraphrasing one of my professors here mostly I think when I'm talking about this — law codes in the, uh, so-called Ancient Near East, weren't really what we think of as law codes, like, you would cite them in court if this has

happened, then the judge would say, “oh I rule in the favor of this person according to this law.”

Lulav: Mhm.

Cassidy: But it's more of, um, statements of political philosophy?

Lulav: Mmm! Mhm.

Cassidy: So it's like, almost somebody saying “society should be like this”, or “not quite, society should actually be like this”, and it was kind of a common genre of literature in the realm at the time.

Lulav: I remember getting really into rewriting the Constitution when I was like 12 so that it made more sense.

Cassidy: Exactly.

Jaz: Like, what were you doing? Were you just getting rid of the words "more perfect?" Like, what's happening? (*Cassidy laughs*)

Lulav: No, like I was at Redacted Scout Camp —

Jaz: (muttering) Oh my G-d.

Lulav: And my friend and I were talking about...just like, “Hey, some of this stuff doesn't make that much sense. Maybe we should look into what a better system of government would look like as established by the basic Constitution.”

Jaz: That's adorable.

Lulav: Right? This was also in the same period where I had like a...Civil-War history phase, (*Jaz laughs mockingly*) so it's maybe less adorable in that context, but (*claps*)

Cassidy: Makes me think of a phrase: "a more perfect Torah" (*Lulav laughs*)

Jaz: Oh my G-d. Beautiful. So after the “what do you do if you damage a fetus”, and then we said if somebody else is hurt, “the penalty shall be life for life, eye for eye, tooth for tooth, hand for hand, foot for foot, burn for burn, (*Lulav’s radiator clanks*) wound for wound, and bruise for bruise.” I-I-I don’t know. I just appreciate the- the rhythm of it. (*Lulav chuckles*) And then, Lulav, in contrast to the thing they said earlier about like, if the enslaved person isn’t killed, the person isn’t punished at all? That seems to be true but it also seems to be true that if it says they strike at the eye or tooth or whatever of an enslaved person, then the person has to be let free.

Cassidy: Hm.

Lulav: Yeah, it’s interesting that an eye and a tooth are equivalently compensated with the freedom of this person?

Jaz: Right.

Cassidy: And um...I read this and connected it to that same one about striking a slave with a rod?

Lulav: Mhm.

Cassidy: And it made me wonder if this was somebody in the text also going, “now wait just a second”, (*Lulav laughs*) and kind of going, “no it should be like this.”

Lulav: Mhm. Oh, also I guess in context of verse 21, where there’s no punishment, freedom is not viewed as a punishment here?

Jaz: Mmm.

Cassidy: Hm.

Lulav: It’s a compensation.

Jaz: It’s like a worker’s comp deal.

Lulav: So like, then there’s stuff about oxen goring people? (*Cassidy chuckles*)

Jaz: Yeah. Now we move into negligence cases. *(Lulav giggles)* Now it says you can't have an ox that's dangerous around. You do have to pay people if you destroy their property. If it hurts people, you have to get rid of it. Also — let's move on from the ox and then come back to the ox, but in moving on — if you dig a pit, you have to mark it very clearly, *(Lulav laughs)* because if somebody falls into it or something falls into it, you're responsible for it.

Lulav: Mhm. That's good.

Jaz: Yeah. It also reminds me very much of that Winnie the Pooh thing *(Lulav laughs)* where they...they dig a pit to catch a heffalump and forget where they did it *(Lulav mumbles along)* and then they all fall in! *(laughs)*

Cassidy: Oh I remember that.

Lulav: And then Piglet tries to rescue them with rope but cuts the rope into a bunch of short pieces, one for each person?

Jaz: Yeah!!

Lulav: *(laughs, as does Cassidy)* *The New Adventures of Winnie the Pooh* was good.

Jaz: It was.

Cassidy: Yeah.

19:05

Jaz: Is there equivalent in other legal codes about the negligence stuff? There's a lot about the negligence stuff.

Cassidy: I'm glad you asked! *(Lulav chuckles)* Actually, in Hammurabi's code once again, there is an entire section about the goading ox.

Lulav: Okay!

Cassidy: And I don't have the exact law here — somehow it ended up in some other document maybe — but the gist is that if the ox kills a person, just randomly as its going through the street, there's no case — no recompense at all.

Lulav: Hmm.

Jaz: Hmm.

Cassidy: If the ox goeres somebody and the ox was a known gorer before that point and this person was notified, then they have to pay a fee.

Lulav: Okay.

Cassidy: And then it lists the various classes of people and the lower and lower fees.
(*Lulav chuckles*)

Jaz: And so once again we don't have that.

Cassidy: Yeah. In the, uh, Torah law here, if there is a death, that death cannot be automatically equivalent to a financial amount.

Lulav: Hm. Oh like there's- there's no mandatory minimum or maximum?

Cassidy: Yeah. The way I've seen it put — and I'm not sure I entirely agree with this, but — the value of a human life isn't just monetary in the Torah law — in this particular one at least — unless the family decides that a financial compensation would be good enough or whatever.

Lulav: Yeah.

Cassidy: Yeah. "If a ransom is laid upon him, he must pay whatever is laid upon him."

Jaz: Hmm. That's super interesting.

Lulav: That's cool.

Cassidy: But then we have verse 32: "But if the ox gores a slave"

Jaz: Uh huh. And that one, just to own what that one says, says "but if the ox gores a slave, male or female, the owner shall pay thirty shekels of silver to the master and the ox shall be stoned."

Lulav: Which, to be fair, is 15 times as much as the Babylonians were doing. But also —

Jaz: But also bad!

Lulav: I hate this (*laughs*)

Cassidy: Yeah, reading through this was why I changed my display name to "thanks, I hate it" in Hebrew. (*Jaz and Lulav laugh*)

Jaz: So I do like the negligence stuff — you're responsible for your actions — and then we move into stealing! (*Lulav chuckles*) And then there are specific payments you do for stealing, but also — I was talking about this last time I was at a Svara thing too because I was really upset about it and arguing about it — on 22:1, "if the thief is seized while tunneling and beaten to death, there is no blood guilt in that case."

Lulav: Hm. Okay. (*laughs*)

Cassidy: Yeah. Tunneling is the NJPS translation. According to the lexica I looked at, um, that word is just like, "breaking in or going through", so like, if they get caught while trying to break in; tunneling under the house to get inside of it or something like that?

Lulav: Yeah.

Jaz: Yeah. We were having a discussion about it because we were really upset. We were trying to figure out if there was an alternate translation, like, if we were missing something, in the part of this one that came up in the Talmud —

Lulav and Cassidy: Mhm.

Jaz: Because we were like, "why is there a Stand Your Ground thing in the Torah?" (*Lulav laughs*) I don't have a better alternate version of it and I still don't like it, but there

was a version that they said, where this was used actually as a case for the proof of pikuach nefesh, when they were coming up with pikuach nefesh as a concept?

Lulav and Cassidy: Mm.

Jaz: Because it's not a concept that starts in the Torah. It's a concept that starts in the Talmud. And they were saying the fact that you could do this to protect yourself even on Shabbat, when we know that Shabbat is so so sacred, means that definitely of course you could take any actions to save a life, because that's infinitely more sacred.

Lulav: And this is the one about a thief?

Cassidy: Yes

Jaz: Uh huh.

Lulav: Who's beaten to death?

Cassidy: The next line is "if the sun has risen on him," i.e. the thief, "then there is blood guilt, if he is beaten to death" so I was reading it as, if this happens in the middle of the night and you don't know who this person is, but that's still —

Lulav: *(laughs)* That's wild.

Cassidy: I don't think you need to go all the way to "beat someone to death".

Jaz: No.

Lulav: And Jaz, you were talking about how this shows up in the Talmud, so like, the rabbis were interpreting it as *(radiator clanks)* being on Shabbat?

Jaz: Well, the rabbis were saying a lot of different things, *(Lulav chuckles)* but as connected to this particular one, they were saying that yes, if it shows up on Shabbat, you're still allowed to save your life; and that there was this assumption that if somebody was breaking in in the middle of the night, that you could sort of proceed with the assumption that your life was at risk and act accordingly, and that they were using this as a proof text mostly to say, if we think that it is permissible to act in such a way that it

would harm somebody, even though we know that harming somebody is a terrible thing, then definitely you could also take any actions that would save a life, because we know that that is not a terrible thing, it's a good thing, and so you should definitely be able to break other ritual laws for the sake of saving a life.

Lulav: Yeah, okay.

Cassidy: Yeah.

Jaz: And then, the next one is like, what if somebody is just letting their goats eat your grain? And in that case, just pay them back for the grain.

Lulav: Yeah, this is much more into the tort part of it.

Jaz: Yeah. *(Jaz and Lulav laugh)* Or what if you gave somebody money and asked them to have it for safekeeping and then it's stolen from them? In that case, the thief pays both of you. This is a little bit like you gave your money to a bank and then somebody stole it from the bank.

Lulav: Mm hmm.

Jaz: The person has to pay both the bank and you. And then there's also — they have this as like, “sometimes both parties shall come before G-d and G-d will declare one guilty,” and I don't know what the ramifications of that are.

Lulav: So my copy says, “If the thief is not caught, the owner of the house shall be brought before G-d, to determine whether or not the owner had laid hands on the neighbor's goods.” And also, there's like a short footnote that says, “or ‘before the judges’” on “before G-d”. So I don't know!

Cassidy: Thanks, it's really clear. *(Lulav and Jaz laugh)*

Jaz: And then stuff about when a person borrows an animal and doesn't have it — then you have to pay them back. And then, we go into brides and widows and orphans and interesting commandments.

Lulav: Yeah, this seems to just be the miscellany part

Jaz: Yeah. But like, this is a very interesting sequence of events, right? First is like, what do you do if someone seduces a bride and hasn't married her yet? And what do you do about sorceresses? And what do you do about bestiality? And how should you treat your neighbors and the widows in your community? This is like —

Lulav: Yeah.

Jaz: Yeah.

Lulav: So a lot of this looks to be kind of explaining what's going on in the 10 commandments. So this is another part of where I get my interpretation of “you shall not commit adultery”. Like, if you do sex on a woman, thereby making her position in society more precarious, you have to take care of her?

Jaz: Mmm.

Cassidy: Mhm.

Lulav: Yeah.

Cassidy: There's some really awful laws somewhere, I can't remember where right now, that sort of follow along that interpretation.

Lulav: Mhm.

Cassidy: I think probably in the next book after this, and they sound really awful, but they were trying to think about removing that precarity threat.

Lulav: Yeah.

Cassidy: And it's really uncomfortable.

Lulav: Yeah. Better than the alternative doesn't actually mean good?! *(laughs)*

Cassidy: Yeah.

Jaz: Yeah. But there is this, like, “better than the alternative stuff” and then there is “no witches.” There’s just a “ban the witches.”

Lulav: “You shall not permit a female sorcerer to live.”

Jaz: Mine just says, “you shall not tolerate a sorceress”?

Lulav: Yeah.

Jaz: Yeah.

Lulav: But this is just wild? Like —

Cassidy: That means if there is a sorceress around, you just go, “Ugh, I can’t handle this.” (*Lulav giggles*)

Jaz: I would have to check the Hebrew to see if this joke actually works, but what if it’s in the sense that you might use in modern day, of “Listen, we’re not tolerating the sorceresses. We are celebrating them and honoring them.” (*Lulav and Cassidy laugh*)
“We can do better than tolerance!” (*Jaz chuckles*)

Lulav: Oh that’s good.

Jaz: (*laughs*) Sorceress pride. Anyway.

Lulav: Sometimes you marry a chaos magician!

Jaz: (*laughs*) And then, there is this bit about, like, “You shall not wrong or oppress a stranger, for you were strangers,” and then you have to take care — Lulav, to your point — of widows and orphans.

Lulav: Mmhm.

Jaz: And anybody who doesn’t have part of the social safety net.

Lulav: “And if you don’t, I’ll literally stab you.” (*laughs*)

Jaz: Yeah!

Lulav: Says Hashem. (*laughs*)

Cassidy: Oh, I just love verse 22: “If you do mistreat them, I will heed their outcry immediately as they cry out to me.” (*Lulav chuckles*) And that really make me think of the beginning of the exodus narrative, where the Israelites are groaning under the hard labor they're forced to do, and then Hashem hears it and remembers the covenant, and I think He is sort of evoking that in this text, as “I did this for you. Don't think that I won't do this for people you oppress.”

Lulav: Oh that's good. I like that a lot.

Jaz: It is good.

28:24

Lulav: Ooh, and here's a prohibition against usury.

Jaz: Sure is! You can't charge interest if you're lending money to people and if you take somebody's thing as collateral, you have to give it back because they need it. Specifically, they do that about, like, clothing? But the same could be true of like, you've repossessed somebody's car? They need it to get to work, give it back! (*Lulav chuckles*) So. Yeah?

Lulav: I was just going to talk about Rabbi Josh, who was like, “Hey if somebody's trying to take away your cloak, just strip down naked and show how shameful they're being.” (*Jaz chuckles*) So that was a fun little midrash.

Jaz: Cool. Okay. Yeah, and then sacrifice a kid...(*Lulav snorts*) Sorry, uh —

Lulav: Like a goat?

Jaz: Yeah.

Lulav: Okay. (*laughs*)

Jaz: No false rumors, (*page turning*) don't side with the mighty to do wrong — but also not to the poor. If you see somebody's ox or donkey wandering around, you have to take it back even if that person is your enemy.

Lulav: Mm hmm.

Jaz: No bribes...and again, we have the: strong feelings about “do not oppress strangers,” cuz you should empathize with them. You were in their position.

Lulav: Yeah. And going back to the “bring your enemy’s livestock back”, I think that speaks a lot to our whole thing about healing the world?

Jaz: Mmmm. (*siren in background*)

Lulav: Like, if you dislike someone and their ox or donkey is just wandering around, that messes with the community? Because they're all out of sorts, and maybe they're being meaner to you or meaner to other people around them and it's just...it's much better to just be like, “Hey, I saw your ox wandering around. We good?”

Cassidy: Yeah.

Jaz: Mmm. That’s nice. Do you have a, like, generalizable how-that-applies in, like, cases where we don't have, y’know, literal oxen wandering around?

Lulav: Okay so I will say, if an ICE van has broken down —

Jaz: Mhm.

Lulav: Uhhhhhh stab the other wheels.

Jaz: Uh huh! (*Jaz and Cassidy laugh*)

Lulav: But (*laughs*) yeah, I interpret enemy to mean, like, somebody you have quibbles with, rather than, like, the Gestapo.

Jaz: Sure.

Cassidy: (extremely quietly) Yeah. Somebody in your community, not a threat.

Lulav: Right.

Jaz: Yes. I appreciate the “here's the limit of this verse”. I just sort of meant where would your logical extension of it be? Who would you be trying to, like, metaphorically return their ox to?

Lulav: If there's just like a wallet lying on the ground and it's got the address of the person inside it, give the wallet to the person.

Jaz: Sure, yeah

Lulav: Instead of them having to fret about where it is and oh they lost all this money and who knows about the credit cards? It's just like, “hey, here's everything back.”

Jaz: And maybe give it back even if they're that rude person who keeps talking over you.

(Lulav groans, Jaz laughs)

Lulav: Yeah

Cassidy: The wording of this law makes me have a thought. It says “when you encounter your enemy's ox or ass wandering, you must take it back to him”. But it doesn't say you have to do that for people who aren't your enemy.

(Jaz and Lulav laugh)

Cassidy: So, maybe it's like, “oh, you probably should return it if it's just some stranger.” But if it's somebody who you actively dislike, you better return it.

Lulav: Yeah

Jaz: Also that tracks for me a little bit because okay listen, if my best friend leaves her sweater at my house, I might just wear the sweater, you know what I mean? *(Lulav laughs)* Or I might just hold onto it and give it back to her next time I saw her — you know, something like that?

Lulav: Hmm-mm. Yeah, depends on how gay you want to be (*Jaz and Cassidy laugh*)

Jaz: But if somebody in your synagogue who you really don't like left their sweater, you actually do have to go out of your way to give it back to them, even if you don't like them.

Lulav: Yeah.

Jaz: And then, first we get a sh'mitah year. We have, like, "six years you shall plow the ground and harvest crops, and then, you shall leave it alone, and let people who need food eat food from it, but you're not going to work it constantly." It's like another reference to Shabbos — you rest on the seventh day.

Lulav: Winter, do you know if this was borne out in, like, actual agricultural practice?

Cassidy: I've always wondered that, and I've not found that out yet.

Lulav: (*laughs*) There was a bit before how Egyptians hate shepherds, where every single text is like, "this is a little spurious." (*Cassidy laughs*)

Jaz: Well, we do know, in modern days, it is good for the ground to have a little bit of a break, to not be forced to constantly produce.

Lulav: For sure.

Cassidy: Mm-hmm.

Jaz: So it feels like a...maybe this was done in that sort of spirit.

Lulav: And I think in order to survive for an entire year, just letting a field lie fallow so that people can pluck things off of it, you need to be stockpiling and, like, making sure that you are thinking about the future.

Jaz: Yeah.

Cassidy: Yeah. Rotating plots, (*Lulav chuckles in confirmation*) and stuff like that.

Jaz: Yeah. And that does seem really plausible as a system.

Cassidy: And it's interesting that letting the land rest is just as important as letting yourself and the people who work for you and the people in your community rest.

Jaz: Yeah.

Lulav: And livestock, yeah!

Jaz: And that those are explicitly connected commandments.

Lulav: Yeah. I like that.

Jaz: Rad. Okay, and then, Passover! "There will be three times a year a festival," and one of them is Pesach, the feast of unleavened bread, and then the feast of the harvest, and the feast of ingathering. And I think we know what those are.

Lulav: Ingathering is Sukkot.

Jaz: Yeah.

Lulav: Wait is there, like, a separate harvest festival?

Cassidy: If I remember correctly, there used to be and it got collapsed into one of the other holidays.

Lulav: I feel like it got collapsed into Sukkot, right?

Cassidy: That makes sense.

Jaz: We definitely have Sukkot; Sukkot was a really big holiday...I don't remember

Lulav: Oh, Shavuot!

Jaz: Oh yeah, sure, Shavuot.

Cassidy: Oh right.

Lulav: The festival of harvest, okay.

Jaz: So we have Sukkot, Shavuot and Pesach. And the foundation for so much of kashrut — “you shall not boil a kid in its mother’s milk” — comes now. Which is interesting because I always thought it was in Leviticus, and it’s in Shemot!

Cassidy: It might be in both.

Lulav: I mean, I’m sure we will get more about that.

Jaz: I don’t think so, I think we, like, just get it here. But maybe I’m wrong.

Lulav: It does show up in Devarim 14:21.

Jaz: Great, thank you. And then there’s an angel and then there’s a promise that nobody is going to be barren; everybody is going to be able to have children? Which is definitely not the case, like, we have things happen later in the Torah about people who are barren. And, maybe later in the Tanakh; I don’t know if they’re in the Torah, but. Thoughts about either the Kashrut thing or the miscarriage thing?

Lulav: When we’re talking about the miscarriage thing, we’re talking about, like, the angel that goes out in front of you?

Jaz: There’s a promise that says there will be an angel that you’ll follow and also nobody will miscarry.

(Lulav chuckles)

Jaz: And I don’t know if that’s supposed to be like a time limited thing, just while the angel’s there? Or forever. I sort of read it as forever and I was like “That’s not true. What you talking about?”

Lulav: Yeah...*(radiator clanks)*

Jaz: If it’s supposed to be time-limited, I guess maybe that’s different.

Lulav: Right; I think this is the whole...how Shifra and Puah helped out the Israelite children, so they were blessed with families?

Jaz: Hmmm.

Lulav: Like having issue seems to be a really big thing so part of how I'm going to protect you is you're not going to miscarry, and you'll be super fertile.

Jaz: For this small period of time.

Lulav: Yeah, I don't think it's a long term thing, I think it's just like...in the same way that we don't have manna raining from Heaven, now?

Jaz: Right, okay, sure. Sure! Okay and then...this is such a long parsha — and then —

Lulav: Wait, no, we finished right?

Jaz: No.

Lulav: Oh g-d.

Cassidy: Ough, the part with Moshe.

Jaz: Then we have the “I will send my terror before you and I will throw into panic all the people among who you come, and I will make all your enemies turn tail before you, and I will send a plague ahead of you and it shall drive out before you the Hivites, the Canaanites and the Hittites. I will not drive them out before you in a single year lest the land become desolate and the wild beasts multiply to your hurt. I will drive them out before you little by little until you have increased and possess the land.”

Lulav: With smallpox blankets.

Cassidy: Ughhhhh...

Jaz: Like maybe you blanked it out, Lulav, because this is so horrible. (*laughs*)

Lulav: YUP!

Cassidy: Yeah. I was reading this and it's hard not to read that in light of the fact that I am in colonized land.

Lulav: Yeah.

Jaz: Yeah.

Lulav: Everything about, like, making a nation that is dependent on the ejection and slaughter of people who already live there...I just hate that.

Cassidy: Yeah.

Lulav: And that's a major part of why I am not a Zionist in even the little-z sense? You have to live with the people around you.

Jaz: Mmmmm.

Cassidy: Yeah. I am too anarchist for this law.

(Jaz and Lulav laugh)

Jaz: Like, I believe in wrestling with Torah —

Lulav: Mhm.

Jaz: And like, trying to find meaning in, like, things that don't on the face of it seem to have meaning, but it's hard for me to find a generous reading of it.

Lulav: Yeah I think it's people trying to post-hoc justify the genocides they committed —

Cassidy: Yeah.

Lulav: By having all of this foreshadowing and promises for the last several chapters.

Jaz: Yeah, I mean like...we know what happens when people are like, "this land is ours, G-d gave it"- you know, like?

Lulav: Mmhmm.

Cassidy: Also it's weird that they mention the Hittites, which are very far away from this place.

(Jaz and Lulav laugh)

Lulav: Good.

Jaz: Do you have any other thoughts about this?

Lulav: Not particularly.

Jaz: Okay.

Cassidy: And then this section where they set out, like, "oh, these are your borders," that's just very alarming to me.

Jaz: It's a weird thing to put in conjunction, it feels like to me, in the same parsha where like a *minute* ago we had "you shall not oppress the stranger and the orphan, and you have to take care of people", and then like immediately this pivot to: "but not these people".

Lulav: We talked several episodes ago about what it means to us to be the chosen people?

Jaz: Mmm.

Lulav: And I want to explicitly state that this is not part of what it means to me as a Jew.

Jaz: Yes; yeah.

Cassidy: Yeah, this is unacceptable.

Lulav: Yes. So what was Moshe doing at the top of the mountain with the 70 elders?

Jaz: Right, okay, alright, yes, so — and then, Moshe's delivered all of these things and tells them to all of the people — all of these commands — and G-d says "come up with Aharon and Nadab and Abihu and 70 different elders and they'll bow low". And only Moshe comes really close, but these other ones also come near. And then Moshe writes down all of these commands, and then there's a sacrificial altering. They sacrifice bulls and he reads all of these commandments and people said, "Yeah, what G-d says, we'll do." So last week we were talking about how the people didn't want to hear G-d's voice directly, so in this case Moshe says it to them instead. *(Lulav chuckles)* And so he splatters the people — with blood! — who are in the splash zone, and then they are bound by it.

Lulav: It's like a particularly sanguine and unsweet Insane Clown Posse concert.

Jaz: Y-Yeah.

Lulav: We're anointed with blood instead of Faygo.

Cassidy: Sinaitic moshpit.

(Jaz and Lulav laugh)

Jaz: And then Moshe goes back up the mountain and tells the elders to wait and deal with any legal matters in his absence. The cloud comes back; there is a big fire on top of the mountain; Moshe goes into the cloud and is there for 40 days and 40 nights — like the flood but in reverse, cuz fire.

Lulav: Ah yes, fire, the opposite of water. So yeah; that's the parsha.

Jaz: Yeah. Concluding thoughts before we move on to the rating?

Cassidy: I was just thinking way back we were talking about all of the laws dealing with theft.

Lulav: Mm-hmm.

Cassidy: In Babylonian law, all of the punishment for thieves is death. *(Lulav laughs)* Just flat out. And it's interesting in the Torah laws, apart from the "caught while breaking

in” part, which is really unclear and kind of unfortunate, a thief isn’t put to death. A thief has to make restitution, but then if he lacks the means, he shall be sold for his theft. And I was reading that and then I connected it to our current prison system in the United States today.

Jaz: Yeah.

Cassidy: Which...people are constantly enslaved for various things that they are accused of.

Lulav: Yeah.

Cassidy: And it was just a bad taste in my mouth.

Jaz: Hmm.

Lulav: Yeah.

Jaz: The principle of the thing in some respects feels like — as you’re pointing out, like in contrast to those other systems — that the principle of “no they shouldn’t be put to death for it” is a good one, but then instead it’s turned into, “no, but here are all of these other ways that you can lose out.”

Cassidy: Yeah. And it’s interesting that there’s all these dissenting voices within the same text.

Lulav: *(laughs)* Yeah.

Cassidy: Where certain laws will say one thing and then a couple of laws later, it will be something that like...changes that law, or directly contradicts it?

Jaz: Mmmm.

Cassidy: And it makes me think that the preservation of dissent within the text is the important thing.

Lulav: Yeah.

Jaz: Hmmmm...that's definitely one of the things we talk about when we talk about studying Talmud, and I've never heard it applied to Torah, really, like that, but I really like that. The idea that part of what we're preserving is the minority voices in the text — and minority opinions — that like, even if they didn't win the day at the time, they had value, and we acknowledge that they had value enough that, like, we preserve them and could return to them.

Lulav: Yeah.

Cassidy: Yeah.

Lulav: So, speaking of our general opinions about the parsha, welcome to Rating G-d's Writing, where we each pick a scale for somebody else to rate the parsha on. Cassidy —

Cassidy: Yes?

Lulav: Out of 30 shekels paid as recompense, how many shekels would you rate this chapter?

Cassidy: Well it depends. Maybe 25 shekels for the good parts and maybe five shekels for the parts I don't like?

Lulav: Okay, so part of the tort decision is that it's divided up (*radiator clanks*) amongst different parties. Okay.

Jaz: Like how they give different ones for different people?

Cassidy: Yeah. Sorry, that's me being too bitter of a rater.

(Jaz laughs)

Lulav: No that's a perfectly reasonable rating!

Jaz: Yeah.

Lulav: Do you have a scale that you want to ask Jaz?

Cassidy: Out of one through forty days and nights of clouds, what would you rate this parsha?

Jaz: I would rate this parsha 14.

Lulav: Okay.

Jaz: Because that is less than half, and also 14 is my lucky number, (*Lulav laughs*) and I think that there are good things in this parsha, but there are not sufficient numbers of good things to make up for all of the things that I feel are really, really hard things?

Lulav: Yeah.

Jaz: I really appreciated Cassidy's read that, like, preserving doubt and argument is a thing that this text does? And I like that and I appreciate it, and I think there's good stuff about reduced classism and having to treat people decently and not carrying false rumors — like there's good stuff happening here, but there's also a lot of really really troubling things that we've had to grapple with for a really, really long time, and that I still don't feel like I have good answers for. So, yeah, 14

Cassidy: Yeah.

Jaz: Lulav, out of 70 elders who can't bear to hear G-d's voice directly, (*Cassidy laughs*) how many elders would you rate this parsha?

Lulav: So, I would rate this parsha: 40 elders who cannot bear to hear G-d's voice directly, but they are directly exposed to voice anyway and 15 of them die.

Jaz: Hohoooookay.

Lulav: So...going into this, I thought it was going to be like a 40/70 type parsha and...having done the close read and seen all of the injustices that are, like, carried over from practice at the time and ALSO that whole thing about, like, "We're going to do a genocide, everybody get ready!"

Cassidy: Ugh...

Lulav: I rate it a 25/70 now.

Jaz: Mm.

Lulav: So. Yeah!

Jaz: Yeah, okay. Um...that's a hard one. This is a hard week. Alright; thank you all for bearing with us, (*Lulav chuckles*) and thank you to Cassidy for joining us.

Lulav: Yes!

Cassidy: Yeah. It wasn't fun but it was interesting.

(*Lulav laughs*)

Jaz: And, if you like it, you can support us on patreon at patreon.com/kosherqueers which will give you bonus content and help us keep making this for you. You can also follow us on Twitter [@kosherqueers](https://twitter.com/kosherqueers), or like us on Facebook at kosherqueers, or email us your questions, comments, concerns — and alternate readings of the text? — at kosherqueers@gmail.com...and please spread the word about our podcast! Our artwork is by the talented Lior Gross. Our music is courtesy of the fabulous band Brivele, whose work you can find on Bandcamp. Go buy their album, they're great. Our sound production this week is done by our excellent audio editor Ezra Faust. I'm Jaz Twersky and you can find me @WordNerdKnitter on Twitter. I recorded this audio on the traditional lands of the Lenape people.

Lulav: I'm Lulav Arnow and you can find me @spacetrucksix on Twitter, or yell at me @palmliker! I recorded this audio on the traditional lands of the Wahpékute and Anishinaabeg. Gremory, where can we find you on the internet?

Cassidy: I am on Twitter [@transnausicaa](https://twitter.com/transnausicaa) — as in the Ghibli movie — and I am recording this on the traditional lands — Mni Sota Makoce — of the Dakota people.

Lulav: Have a lovely queer Jewish day!

[Brivele outro music]

Jaz: This week's gender is a cloud blowing in the wind.

Lulav: This week's pronouns are: she (*it*" spoken by Cassidy at the same time) and her ("it"
spoken by Cassidy at the same time).