Note: A version of this d'var was given as part of Yeshivat Hadar's Parsha Podcast series on November 19, 2013.

Between the national outcry about police brutality against Black bodies and Black communities, and the long overdue public awareness of campus rape culture across the country and here at the University of Virginia, we have, both nationwide and in Charlottesville in particular, an opportunity to examine the ways in which disparities in power affect moral decision making. More to the point, power disparities affect not only the way those of us with more power evaluate others' moral decisions, but also the moral options actually open to those of us who have less power.

The Torah recognizes this. When you are a member of an underclass, struggling to survive in a hostile system, you have threechoices. You can acquiesce to the system, and accept your interests as less important than those of the dominant class. You can try to dismantle the system. Or, you can try to survive by eliding or subverting the rules of the system and using them towards your own interests—that is, you can become a trickster.In the words of Biblical scholar Tikva Frymer-Kensky:

> Trickery and deception have always been considered characteristics of the underclass…in large part [this] is an accurate description of a reality in which those without status have nothing to lose and may have something to gain by maneuvering, manipulating, and deceiving.[1]

Because the heroes and heroines of the Torah are themselves often members of underclasses—members of a minority tribe, slaves, younger sons or daughters,

[1]Tikva Frymer-Kensky, *In the Wake of the Goddesses: Women, Culture, and the Transformation of Pagan Myth.* New York: Ballantine Books, 1993,137.

women—tricksterdom is a state much beloved by them. Rivkah, the grand matriarch of Torah trickery,tricks Yitzhak into bestowing his blessing on Yaakov, her favored, younger son. Leah tricks Yaakov into thinking she is her younger sister, Rachel, who in turn tricks her father, Laban, out of his household idols. Yaakov himself tricks Laban out of the best of his flock, and Yaakov's own son Yehuda—about whom more, anon—tricks his father into thinking that his *own* favorite son, Yosef, is dead, when he has in fact been sold into slavery.

In *Parshat Vayeishev*, Tamar, Yehuda's daughter-in-law, uses trickery as a survival tactic to great effect.As a woman in a patriarchal society, her status officially depends on the decisions made by the men in her life—decisions which, in her case, leave her socially and economically stranded.To gain a measure of control over her own destiny, she manipulates patriarchal concepts and structures to her own advantage. What's more, in doing so, I think she and her father-in-law, Yehuda, also teach an ethical lesson about the ways in which power can change the moral force of a given set of actions.

Yehuda takes Tamar as a wife for his eldest son, Er, who dies without fathering any children. The second son, Onan, is asked to perform the duty of the levirate and father a child with Tamar in his late brother's name, but he is unwilling to do so. In an act of trickery of his own, he engages in *coitus interruptus* so that the levirate union will not result in a child. This trick backfires, however—God is displeased, and strikes Onan dead for his deception.

By this point, Yehuda has only one son left—Shelah, who is still a minor.He sends Tamar home to her father's house to wait. In fact, he has no intention of

marrying Tamar to Shelah, since he suspects by this point that any husband of Tamar's will be marked for death. But he does not free her from his household, either, which means that she is unable to remarry.With no way to pursue a marriage—and thus, to pursue economic security or a line of descent—Tamar is stuck.

As it turns out, though, Tamar knows the system as well as Yehuda does—specifically, she knows that Yehuda can also perform the levirate. Since he won't do it willingly, Tamar tricks him into it. When she hears that Yehuda's wife has died, she removes her widow's clothing, disguises herself with a veil, and waits for him by a public gate—the ironically named *Petach Eynaim*, which, as Rashi notes, is a double entendre: it also means "opening of the eyes."Indeed, while Tamar obscures Yehudah's vision with her veil, her own eyes are wide open. To get Yehuda to perform the levirate, she takes explicit advantage of patriarchal assumptions about what kind of woman is found alone, in public, waiting by the road.

And it works. Yehuda, coming back from a sheep-shearing festival, assumes Tamar is a prostitute and sleeps with her. He promises to send payment from his flock, at which point Tamar, shrewdly, asks him for collateral—specifically, his cord and staff: collateral, that is, that can identify Yehuda.

At this point in the narrative Tamar is, to quote Frymer-Kensky again, "playing a dangerous game. She must close [Yehuda's] eyes in the present, or else he won't sleep with her, but she must provide a way to open them in the future, or she

will be in serious trouble."[2] And, at first, she *is* in serious trouble. When she becomes pregnant, Yehuda orders her to burned for her (assumed) adultery. At this point, she produces Yehuda's cord and staff, identifying him as the father. Yehuda, shamefaced, admits that Tamar is in the right, declaring that she is *"tzadakah mimeni"*—"more righteous than I."

Tamar is heir to a long line of trickery. One connection deserves particular attention here: in Yehudah, Tamar is tricking someone who is, as we recall, himself something of a trickster—in fact, in sending Tamar to live as a widow in her father's house, *he* is attempting to trick *her.* But the contrasts between Yehudah and Tamar are instructive, because by this point—first as a son with a position of leadership in what has become a fairly well-off family, and later as the patriarch of his own household, Yehudah actually has a fair bit of power. He doesn't need to deceive, finesse, and manipulate, but he does so anyway. In fact, Rashi suggests that he is diminished from his position of leadership among his brothers precisely because he fails to use his power not just to save Yosef from being killed, but also from being sold into slavery: "You said to sell him. Had you said to return him to Yaakov, we would have listened to you."

The implication here is that deception and trickery have a different ethical valence for the disempowered than they do for the powerful. They are often necessary tools for members of underclasses to survive. But when the powerful use these tools, they become exploitative and oppressive. I think there is a way in which Yehudah recognizes this when he admits that Tamar is *"tzadakah mimeni"*—"more

[2] Frymer-Kensky, *Reading the Women of the Bible: A New Interpretation of their Stories.* New York: Schocken, 2002, 251.

righteous than I." In saying this, perhaps his own eyes are fully opened; perhaps he realizes that he was wrong to use the tools of the underclass to further oppress them.

If moral rules at their heart have something divine and universally true about them, they are nevertheless tied up inextricably with social hierarchy in their interpretation, implementation, and deployment in actual social structures. This, in turn, means that many times these rules work *for* the interests ofdominant classes, and *against* the interests of underclasses. So in order to survive, members of underclasses often have to break the rules, for which they are then chastised and blamed for their own victimization by members of the upper class.

We see this when women are blamed for their own rape—"why were you wearing that? Why didn't you fight back?" We see it, too, when Black people are blamed for their own state-sanctioned murders—"why did they resist? Why did they dress like that?" These questions really boil down to "why did you take up space in attempting to survive—let alone do so with a modicum of enjoyment?"

Yet, in telling stories like Tamar's, the Torah draws a distinction between the divine and constant core of morality, and its structurally entangled expression in morally flawed societies. When God delivers divine moral law in Vayyikra, God specifies *Mishpat echadyiyehl'chem*—there shall one judgment, one law, for all of you—*ca-geir, ca-ezrachyiyeh*—it shall be for the stranger as it is for the citizen. But when the Torah's protagonists find themselves living in morally flawed societies—particularly when they are members of an underclass—it is understood that *Mishpat echadyiyehl'chem* is an ideal not yet realized. And in such a case, resisting or

subverting extant rules that end up reinforcing oppressive structures may not be, in the end, a moral failing. Rather, it may demonstrate that the resister is actually *tzedakah mimenu*—more righteous than those of us who reinforce exactly those oppressive structures under the convenient pretense of respect for the law.