

## Widows and Justice: Law, Narrative, and Identity Discourse

As the widow of Er, or the betrothed of Shelah, Tamar is guilty of adultery, and it falls to Judah as head of the family to bring her to justice.  
John Skinner, *A Critical and Exegetical Commentary on Genesis*

The biblical law codes reflect an uncompromising construction of prescribed gendered behavior, and ironically but deliberately, set beside them are narratives that subvert them.

Deborah F. Sawyer, *A Question of Sex? Gender and Difference in the Hebrew Bible and Beyond*

### Reasonable Doubt

The traditional interpretation of Genesis 38 points to underlying assumptions about widows, the nature and function of biblical law collections, the relationship between law and narrative, and the discourse<sup>1</sup> that each establishes. The story of Tamar and Judah challenges assumptions that law and narrative agree with, contextualize, and provide meaning for one another. Within the interpretive history of Gen 38, Tamar's widowhood is thought to motivate all of her actions in the story, while Judah's widowhood is scarcely mentioned. Yet, the death of his wife is a primary turning point in the story. This is a story as much about Judah as it is about Tamar, a story that equally deconstructs both characters' sexuality within a larger genealogical and covenantal scheme.<sup>2</sup> This study explores the conjunction of narrative and law in the history of interpretation of Gen 38 and how this process constrains how scholarship thinks and writes about widows.

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<sup>1</sup> I am using the term "discourse" in this paper to refer to the implied author's ideological stance encoded in texts.

<sup>2</sup> Deborah F. Sawyer, "Gender Criticism: A New Discipline in Biblical Studies or Feminism in Disguise?" *A Question of Sex? Gender and Difference in the Hebrew Bible and Beyond*, ed. Deborah W. Rooke (Sheffield: Sheffield Phoenix Press, 2007), 6.

The story of Judah and Tamar in Genesis 38<sup>3</sup> is a rich, complex, and enigmatic narrative. Temporal markers transition among the three primary parts of the story in v. 1, 12, and 24 and in one instance, v. 12, create a narrative gap that interpreters almost always fill in the same way. In the first part of the story in brief, uncomplicated prose, Judah settles near an Adullamite named Hirah (v.1), sees an unnamed daughter of the Canaanite Shua, takes her and goes into her, and they have three children together: Er, Onan, and Shelah (v. 2-5). In v. 6, Judah takes a wife for Er, his first-born, whose name is Tamar. In the next verse, Er's death is communicated in a simple, straight-forward manner. Judah then commands Onan, "Go into the wife of your brother, be a levir to her, and raise descendants to your brother" (Gen. 38.8). Onan's subsequent death is presented as unproblematic, and Judah tersely commands Tamar, "Return [as] a widow [to] your father's house" (Gen. 38.11). Through precise, unambiguous language, the narrator portrays Judah as a man in control and in v.11, shares Judah's interior thoughts and motivations. He sends Tamar away to protect Shelah, "lest he also die like his brothers" (Gen. 38.11). Yet, the narrator says nothing of Tamar's thoughts and feelings; she wordlessly goes and settles in her father's house.

Verse 12 begins a separate section of the story with the temporal marker "The days were many" and a cluster of repetitions: that the daughter of Shua, the wife of Judah dies; that Judah was sorry (the second glimpse into Judah's interior life), and that he goes to shear his sheep with Hirah, his friend, the Adullamite. When it is reported to Tamar through indirect discourse that her father-in-law is going to Timnah to shear his flock, the implied audience is told only of her actions and what she sees. Though the same verbal

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<sup>3</sup> For this study, I have omitted the birth account in v. 27-30.

root, רָאָה, is used of Judah (who *saw* the daughter of Shua and took her and went into her (Gen 38.2) and in v. 15, *sees* Tamar, covered and enwrapped by the side of the road and *thinks*, חָשַׁב, she is a prostitute), Tamar sees her situation: “For she saw that Shelah was grown but she had not been given to him as a wife” (Gen 38.15). In striking contrast to the reported inner thoughts of Judah, the narrator does not relate Tamar’s thoughts, her motivations or her intentions. Control of the situation shifts to Tamar at v.15 when Judah asks to “come into” her. Tamar agrees by asking what Judah will give her, and negotiates not one pledge but three items that specify Judah’s identity. When Hirah unsuccessfully returns with Judah’s payment, Judah the taker in this story, tells Hirah to let her keep the items so that they are not laughed at.

The final temporal marker “and it happened that after three months” (Gen. 38.24) marks when Tamar’s pregnancy is reported again through indirect discourse to Judah. Although Judah tries to exert control over Tamar’s life and death, she produces the signifying markers and he admits his wrongdoing. He declares Tamar “more righteous than me because I did not give her to Shelah my son” (v. 26). Verse 26 ends “and he did not add again to her knowing,” forming an inclusio with v. 5 where the daughter of Shua “did again and she bore a son,” and ending this part of the story on a sexual note.

### **Tamar’s Betrayal and the History of Interpretation**

A brief history of interpretation of Gen 38 reveals an interpretive pattern where each interpreter applies individual law provisions to Gen 38 in order to make sense of the story. E. A. Speiser describes Tamar as “resolutely following the intent of the law,” although by “unorthodox and hazardous means.”<sup>4</sup> He identifies Tamar’s ability to “be the

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<sup>4</sup> E. A. Speiser, *Genesis*. The Anchor Bible Commentary (New York: Doubleday, 1964), 300.

mother of a virile clan” as the primary theme of the story supported by “the institution of levirate marriage.”<sup>5</sup> He appeals to Deut. 25.5-10 and Ruth 3 to support his contention that “[b]iblical law upholds this obligation” and asserts that “Judah sought to live up to this practice.”<sup>6</sup> Later, Judah “absolves” Tamar of guilt, emphasizing his role as one who has judicial authority.<sup>7</sup> This interpretation understands Deut. 25.5-10 as the interpretive frame for explaining Tamar and Judah’s actions, that levirate marriage was a significant and established practice, and that Judah was not only familiar with this law but also considered it binding.

Gerhard von Rad appeals to a wider range of laws<sup>8</sup> but begins in the same way: “According to the practice of levirate marriage, the second son took Tamar as his wife. This family regulation, widely practiced outside Israel, is regulated by law in Deut. 25.5 ff. and is presupposed in the Book of Ruth as binding.”<sup>9</sup> Like Speiser, von Rad combines Deut. 25.5-10 with the Book of Ruth to argue that Tamar was married to Onan, that this law was operative in the Ancestral Narratives. That levirate marriage was “widely practiced outside Israel,” implies that it was also practiced but regulated within Israel.

Von Rad next applies the law provision in Lev. 22.13 to explain that Judah was wrong to send Tamar back to her father’s house, because “only one who was *really* a widow returned to her father’s family (Ruth 1.8ff.; Lev. 22.13) [emphasis mine].”<sup>10</sup> Lev. 22.13 rather than outlining the conditions under which a widow returns to her father’s

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<sup>5</sup> Speiser, *Anchor*, 300.

<sup>6</sup> *Ibid.*, 300.

<sup>7</sup> *Ibid.*

<sup>8</sup> Deut. 25.5-10; 22.23; 23.17; Lev. 20.16; 21.19; 22.13.

<sup>9</sup> Gerhard von Rad, *Genesis: A Commentary*, rev. ed. (Philadelphia: Westminster, 1972, 1974), 358.

<sup>10</sup> von Rad, *Genesis*, 358.

house, addresses who may eat a priest's food.<sup>11</sup>

He also cites Deut 23.17 to make sense of Tamar's actions.

In the ancient Orient, it was customary in many places for married women to give themselves to strangers because of some oath...Tamar thus does not pretend to be a harlot as we think of it, but rather a married woman who indulges in this practice, and Judah too thought of her in this way.<sup>12</sup>

Yet, he translates the two different terms in Gen 38, זונה and קַדְשָׁה, with the single word "harlot."<sup>13</sup> Next, he brings in two laws pertaining to adultery, Deut. 22.23 and Lev. 20.16, to try to make sense of Judah's rash declaration of punishment. (Von Rad's use of Lev. 20.16 is puzzling for several reasons, including the fact that it does not mention stoning.) Von Rad considers the confrontation between Judah and Tamar a legal case underscoring Judah's authority to exercise judicial power.

If one examines the legal aspect of the case, its difficulty becomes apparent. On the basis of what fact was the complaint made at all? Because of a widow's prostitution or that of an engaged girl?...Judah assumes competence as a judge...In no case was Tamar herself competent. As a wife, she was dependent, so that no legal proceeding took place at the gate, where such cases were tried when a complaint was made against a free citizen. It is very ancient for the word of the family head to be decisive with no appeal possible. (Deut. 21.18 ff, is similar but combined with a compliant before the legal community.) The entire legal community then takes part in the administration of the punishment, as always in the case of an execution...The later law recognized burning only in an extreme case of prostitution (Lev. 21.9). The custom was death by stoning for such offenses (Deut 22.23 ff.; Lev. 20.16).<sup>14</sup>

After this long excursus on the legal nature of the situation, he still wonders if Tamar is married to Shelah or Judah.<sup>15</sup> Although von Rad cites individual law provisions, his

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<sup>11</sup> Dale Patrick, *Old Testament Law* (Atlanta: John Knox Press, 1985), 171.

<sup>12</sup> von Rad, 359-360.

<sup>13</sup> Ibid., 356. For the conflation and sexualizing of both of these two terms, see Phyllis Bird, " 'To Play the Harlot': An Inquiry into an Old Testament Metaphor" in *Gender and Difference in Ancient Israel*, ed. Peggy L. Day (Minneapolis: Fortress, 1989).

<sup>14</sup> von Rad, 360-361.

<sup>15</sup> Ibid., 361-362.

conclusions combine these provisions with historical reconstruction of Near Eastern practice as well as the legal process thought to be operative in the Ancestral Narratives.

The *Women's Bible Commentary* also appeals to law provisions to make sense of Gen 38. In the section entitled, "Tricksters, Israelites, and Women," Susan Niditch includes the Tamar and Judah story and again appeals to Deut 25.5-10. She explains:

On the one hand, this law might be interpreted as a male-preserving, male-protecting law... Within the confines of this male-centered world, however, the law of the levirate (brother-in-law) is also important to the widow herself... The law of the levirate suits a male-centered symbol system in that it neatens up that which has become anomalous... But the law must have also saved young childless widows from economic deprivation and from a sort of social wilderness, no longer under father, but having no husband or son to secure her place in the patriarchal clan.<sup>16</sup>

In an earlier study also about Gen 38, Niditch explicitly states in a footnote her methodological perspective concerning the relationship between law and narrative.

We will have occasion to cite various laws preserved in Leviticus and Deuteronomy but will do so with the qualification and realization that dating for individual laws is extremely difficult. The narrative itself provides boundaries as we apply legal formulations to the discussion of Genesis 38. That is, when the biblical source portrays the participants in the story as acting in accordance with certain rules or as judging one another according to certain rules, we feel confident in noting the parallel between their actions and the appropriate legal formulation as preserved in the Bible.<sup>17</sup>

She goes on to appeal to Deut 22.21 (stoning as punishment for a woman who has sex outside of marriage), Lev 20.10 (punishment of the male for sex with a married woman) and Deut 22.23-24 (the virgin did not cry for help) to argue that only two roles are available for women in Israel: "unmarried virgin" or "faithful child-producing wife."<sup>18</sup>

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<sup>16</sup> Susan Niditch, "Genesis" in *Women's Bible Commentary Expanded Edition with Apocrypha* (Louisville: Westminster John Knox Press, 1998), 25.

<sup>17</sup> Susan Niditch, "The Wronged Woman Righted: An Analysis of Genesis 38" *Harvard Theological Review* 72 (1979), 143-149.

<sup>18</sup> Niditch, "Wronged Woman," 145-146.

Not only do these laws make sense of Gen 38 but also prescribe the only two options thought to be available to Tamar in order to explain why she did what she did.

Tikva Frymer-Kensky in an entry entitled “Tamar 1” in a dictionary of women in the Bible does not explicitly mention Deut 25.5-10 but alludes to this law and levirate marriage by referring to Onan as the levir through whom Tamar would “be assured a place in the family.”<sup>19</sup> Judah’s wronging of Tamar is explained in reference to Near Eastern custom found in Middle Assyrian Law (MAL) thought to be the predecessor and counterpart of Deut 25.5-10: “if a man has no son over ten years old, he could perform the levirate obligation himself; if he does not, the woman is declared a “widow,” free to marry again.”<sup>20</sup> She concludes that although Tamar’s behavior seems to break incest laws in Lev 18.15 and 16, the union is legal in that “in-law incest rules are suspended for the purpose of the levirate.”<sup>21</sup> Though not mentioned explicitly, Deut 25.5-10 permeates the discussion of Tamar in Gen 38 but is supplemented by MAL to exonerate the sexual encounter between a daughter-in-law and father-in-law.

### **Comparative Methodology or How Is It that Everyone Knows Shelah’s Age Except Me?**

The application of MAL<sup>22</sup> to Gen 38 within the history of interpretation is thought to condone the levirate relationship between father-in-law and daughter-in-law and establish the marriageable age of a son to a widow. It is striking that MAL ¶ 30 and 33 both address Tamar’s very situation: a widow living in her father’s household rather than

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<sup>19</sup> Tikva Frymer-Kensky, “Tamar 1,” in *Women in Scripture: A Dictionary of Named and Unnamed Women in The Hebrew Bible, The Apocryphal/Deuterocanonical Books, and The New Testament*, ed. Carol L. Meyers (Boston: Houghton Mifflin, 2000), 161.

<sup>20</sup> Frymer-Kensky, “Tamar 1,” 161.

<sup>21</sup> Ibid.

<sup>22</sup> MAL ¶ 30; ¶ 33; ¶ 43.

her household by marriage. MAL ¶ 33 reads “If her husband and her father-in-law are both dead, and she has no son, she is indeed a widow; she shall go wherever she pleases.”<sup>23</sup> Following MAL ¶ 33, interpreters infer that Tamar is not a real widow, since she could marry her father-in-law.

Scholarship gleans the marriageable age of boys from MAL ¶ 43 which reads

If a man either pours oil on her head or brings (dishes for) the banquet, (after which) the son to whom he assigned the wife either dies or flees, he shall give her in marriage to whichever of his remaining sons he wishes, from the oldest to the youngest of at least ten years of age.<sup>24</sup>

Most interpreters stop here and justify Judah’s actions in the story, agreeing that Shelah was too young to marry. However, MAL ¶ 43 continues,

If the father is dead and the son to whom he assigned the wife is also dead, a son of the deceased son who is at least ten years old shall marry her. If the sons of the (dead) son are less than ten years old, if the father of the daughter wishes, he shall give his daughter (to one of them).<sup>25</sup>

When using comparative methodology, interpreters cite only the part of MAL that supports their interpretation of Judah’s choices;<sup>26</sup> however, MAL ¶ 43 thought to support the Deuteronomic ideal of levirate marriage actually undercuts any age requirement.

In the brief history of interpretation above, every interpreter applies biblical and Near Eastern law provisions to Gen 38 at problematic points in the story, usually those that involve sex, in order to make sense of Tamar’s actions and fill the gaps regarding her intentions and motivations. This methodological approach implicitly assumes, first, that

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<sup>23</sup> Martha T. Roth, *Law Collections from Mesopotamia and Asia Minor*, 2nd ed., SBL Writings from the Ancient World Series (Atlanta: Scholars Press, 1997), 165.

<sup>24</sup> Roth, *Law*, 169.

<sup>25</sup> *Ibid.*, 169-170.

<sup>26</sup> More problematic, however, is the assumption within the history of interpretation that MAL directly influenced Israelite culture and law. For a general critique comparative methodology, see: Meir Malul, *The Comparative Method in Ancient Near Eastern and Biblical Legal Studies* (Kevelaer: Butzon & Bercker, 1990). For a critique of comparative methodology and biblical law, see Anne Fitzpatrick-McKinley, *The Transformation of Torah from Scribal Advice to Law, Journal for the Study of the Old Testament; Supplement Series; 287*; (Sheffield, England: Sheffield Academic Press, 1999).

biblical and Near Eastern law provisions were somehow operative during the time of the Ancestral Narratives, i.e. that Judah was not only familiar with them but sought to live by them and, second, that narrative and law agree without taking into account differences in time period or context.

Yet, the application of law provisions to Gen 38 is not entirely successful. For example, although Deut 25.5-10 does contain levirate language, **יבם**, and marriage language, **לקח**, its primary concern seems to be that of keeping the deceased brother's wife from marrying a stranger outside the family. Deut 25.5-10 does not make allowances for the father-in-law to be in this type of relationship with his daughter-in-law, and Tamar's children appear in Gen 46.12 as Judah's not Er's sons. Interpreters supplement biblical laws with MAL in order to exonerate Judah's decision to withhold Shelah and to normalize the sexual encounter between father-in-law and daughter-in-law. Although the story states that Tamar went back to her father's house and "the days were many," (Gen. 38.12) the history of interpretation depicts Tamar as a marginalized character with only one choice: re-establishing herself in Judah's household. Yet, it is precisely here that the story is silent about Tamar's intentions and what drives her actions, creating a narrative gap that interpreters fill by turning to law.

A growing body of literature in biblical studies and anthropology challenges the idea that a widow is a dependent who has no social ties in Israelite society as a stereotypical view of an under-studied group.<sup>27</sup> As biblical evidence shows, some

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<sup>27</sup> That widows are under-studied and stereotyped in scholarship is mentioned in various works but not yet widely recognized. See Mariam K. Slater, "Forward: Sons and Levirs" in *Widows in African Societies: Choices and Constraints* (Stanford: Stanford University Press, 1986), xvi; Betty Potash, "Widows in Africa: An Introduction" in *Widows in African Societies: Choices and Constraints* (Stanford: Stanford University Press, 1986), 43. Frank S. Frick, "Widows in the Hebrew Bible: A Transactional Approach" in

widows were wealthy and unattached (Judith), some managed a large household (Abigail), and some headed households (the widow of Zaraphath).<sup>28</sup> The texts that contradict the idea of a poor, vulnerable widow are discounted through a “hermeneutical move” that either considers only poor widows as real widows or characterizes all widows as poor but in varying degrees<sup>29</sup> when widows could have inhabited something more like the middle class.<sup>30</sup> A “lack of financial means” defines a widow rather than the death of her spouse, and the poor widow functions more as a cherished image than a reality.<sup>31</sup>

Recent anthropological studies that approach widowhood from a life stages perspective reach different conclusions about widows and the supposed predominance of levirate marriage. Studying widowhood from the widow’s point of view, ethnographic studies of widows in Africa show choice, variation, and economic and social independence. These studies find that widows have and make choices in their respective societies.<sup>32</sup> Rather than depending on communal support, “Many widows are self-reliant,

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*A Feminist Companion to Exodus—Deuteronomy*, ed. Athalya Brenner, The Feminist Companion to the Bible (Sheffield: Sheffield Academic Press, 1994), 143; Roy L. Heller, “ ‘The Widow’ in Deuteronomy: Beneficiary of Compassion and Co-option” in *The Impartial God: Essays in Biblical Studies in Honor of Jouette M. Bassler*, eds. Calvin J. Roetzel and Robert L. Foster (Sheffield: Sheffield Phoenix Press, 2007), 1, 5.

<sup>28</sup> Karel Van der Toorn, “Torn Between Vice and Virtue: Stereotypes of the Widow in Israel and Mesopotamia” in *Female Stereotypes in Religious Traditions* (Leiden: Brill, 1995), 4-5

<sup>29</sup> Heller, 6. Van der Toorn, 5. For examples of the construction of all widows as poor see Frank S. Frick “Widows in the Hebrew Bible: A Transactional Approach” in *A Feminist Companion to Exodus—Deuteronomy*, ed. Athalya Brenner, The Feminist Companion to the Bible (Sheffield: Sheffield Academic Press, 1994), esp. 148-151; Naomi Steinberg, “Romancing the Widow: The Economic Distinctions between the *’ALMĀNĀ*, the *’ŠŠĀ-’ALMĀNĀ*, and the *’EŠET-HAMMĒT*” in *God’s Word for Our World* ed. by J. Harold Ellens (*JSOT Supp*: New York, 2004); Mark Sneed, “Israelite Concern for the Alien, Orphan, and Widow: Altruism or Ideology?” *Zeitschrift für die alttestamentliche Wissenschaft* 111, no. 4 (1999).; F. Charles Fensham, “Widow, Orphan, and the Poor in Ancient Near Eastern Legal and Wisdom Literature,” *Journal of Near Eastern Studies* 21, no. 2 (1962).; Donald E. Gowan, “Wealth and Poverty in the Old Testament: The Case of the Widow, the Orphan, and the Sojourner,” *Interpretation* 41, no. 4 (1987).; Norbert Lohfink, “Poverty in the Laws of the Ancient Near East and of the Bible,” *Theological Studies* 1991.

<sup>30</sup> Van der Toorn, 5.

<sup>31</sup> *Ibid.*, 6.

<sup>32</sup> Betty Potash, “Widows in Africa: An Introduction” in *Widows in African Societies: Choices and Constraints* (Stanford: Stanford University Press, 1986), 4, 8.

living alone and heading their own households.”<sup>33</sup> On the one hand, childlessness does affect whether a widow remarries, where she lives, and her opportunities, but on the other hand, of the ten societies studied, only three practice some sort of levirate relationship and for two of the three recognize it is not marriage.<sup>34</sup> For example, among the Luo, the levir and the widow live apart and have no domestic or economic responsibilities to each other; the levir is responsible for sex and procreation.<sup>35</sup> Returning to a natal group after her husband’s death is an option for a widow:

One of the most important variables affecting the options and power of women is the extent to which natal group ties offer alternatives to marital and affinal ties. If women have rights to return to their kin and are welcome there, they have some leverage as wives and are less subject to a husband’s control. Widows with this right may also be in a good negotiating position, requiring inducements to remain in the husband’s community.<sup>36</sup>

That widows are economically independent is one of the most consistent findings across these ten African societies, contrary to “perceptions of widows as dependents who in preindustrial societies are provided for by communal kin institutions.”<sup>37</sup> Since women’s economic activities are rarely taken into consideration,

An oral tradition has developed among anthropologists that interprets the levirate and widow inheritance partly as mechanisms that provide support of widows and their children...many anthropologists believe that this interpretation comes from classic volumes on social organization. It does not...Yet so pervasive is this oral tradition that it has been picked up by sociologists whose contrast between Western and non-Western mechanisms for the support of widows is based partly on such anthropological “findings” (Kirwen 1979; Lopata 1979; Marris 1958).<sup>38</sup>

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<sup>33</sup> Potash, “Introduction,” 4.

<sup>34</sup> Mariam K. Slater, “Forward: Sons and Levirs” in *Widows in African Societies: Choices and Constraints* (Stanford: Stanford University Press, 1986), xviii.

<sup>35</sup> Betty Potash, “Widows in a Rural Luo Community” in *Widows in African Societies: Choices and Constraints* (Stanford: Stanford University Press, 1986), 44-45, 58.

<sup>36</sup> Potash, Introduction,” 20-21.

<sup>37</sup> Ibid., 27.

<sup>38</sup> Ibid., 31.

In the same way, biblical studies considers levirate relationship the primary mode of support for widows in biblical texts, so much so that Tamar has to reinstate her marriage rights by deception. This is not to draw a facile comparison between anthropological evidence and biblical texts but, rather, to point to the possibility that perhaps biblical studies may be working with a distorted picture of widowhood resulting from an inadequate paradigm.<sup>39</sup>

### **Reading from the Gaps**

Whether an interpreter approaches Gen 38 from source criticism, form criticism, literary criticism, or a liberative hermeneutic like feminist criticism, the same methodology underpins the interpretation of Gen 38. At precisely the points where Tamar and Judah's sexual relationship poses a problem for interpreting the text, scholarship looks to individual law provisions to make sense of and normalize an otherwise uncomfortable story. This interpretive strategy fills the narrative gaps concerning Tamar's feelings, thoughts, intentions, and motivations where, in fact, the story is silent.

There is not conclusive evidence that genre alone determines the construction of widows as a group; however, if form determines function and narrative typically stands in tension with law provisions, then genre plays a significant role in the construction, as well as deconstruction, of categories of people in the Hebrew Bible. Law provisions carry rhetorical power as authoritative depictions of Israelite reality. Genesis 38, rather than supporting this rhetorical goal, stands in tension with this depiction. The Tamar and Judah story provides a discourse that problematizes that found in law collections. Evidence that contradicts the ideal of the poor widow is discounted or explained away as

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<sup>39</sup> Potash, "Luo," 43.

the exception to the rule, but, this third level of discourse, that of scholarship, creates its own narrative that limits the possibilities of widows in biblical texts and Israelite society.

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