

Geoffrey P. Miller

The Ways of a King

Legal and Political Ideas in the Bible



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“When he takes the throne of his kingdom,
he is to write for himself on a scroll a copy of this law.”

Deut 17:18

For Allison

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Preface

Max Weber said more than sixty years ago that it would take “more than a lifetime to acquire a true mastery of the literature concerning the religion of Israel.”¹ That statement is even more valid today. During the past century biblical scholarship has made enormous strides, both in the analysis of texts and also in the evaluation of the society of ancient Israel from the perspectives of history, archaeology, anthropology, and sociology. The corpus of scholarship today is awesome in its breadth and impressive in its sophistication.

Although this literature is daunting, it does not fully bring to bear the insights of modern legal, economic and political theory. Biblical scholar David J. A. Clines observes that “as the culture of those who read and interpret the Bible becomes more pluralist, it becomes less and less plausible to lay claim to determinate interpretations and more valuable to read the Bible afresh from the perspectives of different readers.”² As a legal scholar whose areas of research include economic and political theory, I hope to contribute to one of those new points of view.

I have developed this approach over the past two decades in journals and books concerned with biblical and ancient Near Eastern society as well as publications focused on legal and economic issues. The present volume, however, represents a new set of ideas, not presented before either in my work or, to the best of my knowledge, in the work of any other scholar. The thesis of the book is both simple and far-reaching: the great history of Israel presented in the books of Genesis through Second Kings contains a systematic, comprehensive, and remarkably astute analysis of political obligation and governmental design – in short, a political philosophy – and one, moreover, which may have been written earlier than the works of Plato and Aristotle.

I could not have written this book without inspiration from many wonderful scholars and students of the Bible and ancient law whose work I have studied and admired over the years. Some of the most important have been Robert Alter, Alan Avery-Peck, Calum Carmichael, David Cohen, Mary Douglas, Michael Fishbane, Baruch Halpern, Adriaan Lanni, Niels Peter Lemche, Bernard Levinson, Susan Niditch, Martha Roth, Jack Sasson, Mark S. Smith, Thomas Thompson, James W. Watts, and Raymond Westbrook.

1 Hans Gerth/Don Martindale, introduction to *Ancient Judaism*, by Max Weber (ed. and trans. H. H. Gerth/D. Martindale; Glencoe, N.Y.: Free Press 1952), ix.

2 David J. A. Clines, *What Does Eve Do to Help? And Other Readerly Questions to the Old Testament* (JSOTSup 94; Sheffield: JSOT Press, 1990). See also Clines, *Interested Parties: The Ideology of Writers and Readers of the Hebrew Bible* (JSOTSup 205; Sheffield: Sheffield Academic Press, 1995).

Levinson's work has been particularly influential in shaping my thinking. I profited from the opportunity to present aspects of my work in workshops and seminars at Chicago-Kent Law School, Cornell Law School, DePaul Law School, George Mason Law School, Georgetown Law School, Harvard Law School, New York University Law School, University of Chicago Law School, University of Minnesota Law School, University of Haifa, University of Pennsylvania Law School, University of Toronto Law School, Yale Law School, University of Zurich, and meetings of the Society for Biblical Literature and the American Society for Legal History. In addition to my home institution of New York University, where much of the work on this book was completed, I thank Harvard University, where I was the Robert B. and Candace J. Haas Visiting Professor of Law in the Fall of 2009. Some of the finishing touches were added while I was serving as Visiting Chair on Private Actors and Globalisation at the Hague Institute for the Internationalisation of Law and visiting scholar at the European University Institute in Florence. I thank Reinhard Achenbach, Bruce Adelstein, Greg Alexander, Alan Avery-Peck, David Cohen, Samuel Estreicher, Linda Findlay, Michael Fishbane, David Friedman, Abner Greene, Stephen Holmes, Bernard Jackson, Larry Kramer, John Leubsdorf, Bernard Levinson, Nelson Lund, Timothy Lytton, Harvey Minkoff, Dennis Patterson, Eric Posner, Richard Posner, J. Mark Ramseyer, Eric Rasmussen, Martha Roth, Gordon Schochet, Geoffrey Stone, Lawson G. Stone, Lloyd Weinrib, and Raymond Westbrook for generously reading or commenting on portions of the book in its various iterations, and especially Calum Carmichael, whose detailed review corrected many errors. Moshe Halbertal, Stephen Holmes, Richard Pildes, and Jeremy Waldron provided invaluable advice about political theory. I am grateful to Marissa Elgrissy and Debra Klein, excellent research assistants who located sources, helped with technical editing, and assisted with biblical Hebrew, and to my exceptionally capable assistant, Jerome Miller, who was an indispensable help throughout. Sarah Shectman provided an invaluable technical and substantive edit of the completed manuscript. Needless to say, responsibility for remaining errors is mine alone.

Table of Abbreviations

AB	Anchor Bible	CKLR	<i>Chicago-Kent Law Review</i>
ABD	<i>Anchor Bible Dictionary</i> . Edited by D. N. Freedman. 6 vols. New York, 1992	CLJPP	<i>Cornell Journal of Law and Public Policy</i>
ABR	<i>Australian Biblical Review</i>	CLR	<i>Columbia Law Review</i>
AER	<i>American Economic Review</i>	ConBOT	Coniectanea Biblica: Old Testament Series
AJCL	<i>American Journal of Comparative Law</i>	FAT	Forschungen zum Alten Testament
AJSL	<i>American Journal of Semitic Languages and Literatures</i>	FOTL	Forms of Old Testament Literature
ASORDS	American Schools of Oriental Research Dissertation Series	GLR	<i>Georgia Law Review</i>
BA	<i>Biblical Archaeologist</i>	HBT	<i>Horizons in Biblical Theology</i>
BAR	<i>Biblical Archaeology Review</i>	HJLPP	<i>Harvard Journal of Law and Public Policy</i>
BASOR	<i>Bulletin of the American Schools of Oriental Research</i>	HLR	<i>Harvard Law Review</i>
BEATAJ	Beiträge zur Erforschung des Alten Testaments und des Antiken Judentums	HSM	Harvard Semitic Monographs
Bib	<i>Biblica</i>	HTR	<i>Harvard Theological Review</i>
BR	<i>Bible Review</i>	Int	<i>Interpretation</i>
BTB	<i>Biblical Theology Bulletin</i>	JANESCU	<i>Journal of the Ancient Near Eastern Society of Columbia University</i>
BULR	<i>Boston University Law Review</i>	JAOS	<i>Journal of the American Oriental Society</i>
BW	<i>Biblical World</i>	JBL	<i>Journal of Biblical Literature</i>
BZABR	Beihefte zur Zeitschrift für altorientalische und biblische Rechtsgeschichte	JBQ	<i>Jewish Bible Quarterly</i>
BZAW	Beihefte zur Zeitschrift für die alttestamentliche Wissenschaft	JITE	<i>Journal of Institutional and Theoretical Economics</i>
CALR	<i>California Law Review</i>	JJS	<i>Journal of Jewish Studies</i>
CardLR	<i>Cardozo Law Review</i>	JLE	<i>Journal of Law and Economics</i>
CathULR	<i>Catholic University Law Review</i>	JLR	<i>Journal of Law and Religion</i>
CBC	Cambridge Bible Commentary	JLS	<i>Journal of Legal Studies</i>
CBQ	<i>Catholic Biblical Quarterly</i>	JNES	<i>Journal of Near Eastern Studies</i>
		JNSL	<i>Journal of Northwest Semitic Languages</i>
		JQR	<i>Jewish Quarterly Review</i>
		JR	<i>Journal of Religion</i>

<i>JRH</i>	<i>Journal of Religious History</i>		Writings from the Ancient World
<i>JSOT</i>	<i>Journal for the Study of the Old Testament</i>	<i>SBT</i>	Studies in Biblical Theology
<i>JSOTSup</i>	<i>Journal for the Study of the Old Testament: Supplement Series</i>	<i>SJOT</i>	<i>Scandinavian Journal of the Old Testament</i>
<i>JSS</i>	<i>Journal of Semitic Studies</i>	<i>UCLALR</i>	<i>University of California at Los Angeles Law Review</i>
<i>JTS</i>	<i>Journal of Theological Studies</i>	<i>UCLR</i>	<i>University of Chicago Law Review</i>
<i>LP</i>	<i>Law and Philosophy</i>	<i>UPLR</i>	<i>University of Pennsylvania Law Review</i>
<i>MdB</i>	<i>Le Monde de la Bible</i>	<i>USQR</i>	<i>Union Seminary Quarterly Review</i>
<i>MLR</i>	<i>Michigan Law Review</i>	<i>WLR</i>	<i>Wisconsin Law Review</i>
<i>MSJ</i>	<i>Masters Seminary Journal</i>	<i>VLR</i>	<i>Virginia Law Review</i>
<i>NDLR</i>	<i>Notre Dame Law Review</i>	<i>VT</i>	<i>Vetus Testamentum</i>
<i>OTG</i>	<i>Old Testament Guides</i>	<i>VTSup</i>	Supplements to <i>Vetus Testamentum</i>
<i>OTL</i>	<i>Old Testament Library</i>	<i>YJLH</i>	<i>Yale Journal of Law and the Humanities</i>
<i>PEQ</i>	<i>Palestine Exploration Quarterly</i>	<i>YLJ</i>	<i>Yale Law Journal</i>
<i>PPA</i>	<i>Philosophy and Public Affairs</i>	<i>ZA</i>	<i>Zeitschrift für Assyriologie</i>
<i>PSB</i>	<i>Princeton Seminary Bulletin</i>	<i>ZAW</i>	<i>Zeitschrift für die alttestamentliche Wissenschaft</i>
<i>QJE</i>	<i>Quarterly Journal of Economics</i>		
<i>RB</i>	<i>Revue Biblique</i>		
<i>SBLMS</i>	<i>Society of Biblical Literature Monograph Series</i>		
<i>SBLWAW</i>	<i>Society of Biblical Literature</i>		

Chapter One: Method

Human societies cannot function unless some people are given the power to coerce others. Basic to all societies, therefore, are the twin questions of when individuals legitimately exercise power over others and how that power should be embodied in social institutions. Together, these questions constitute the problem of authority.

The problem of authority is central to the work of contemporary political and legal philosophers such as John Rawls, Robert Nozick, Joseph Raz, Ronald Dworkin, and H.L.A. Hart. It is central as well to the work of many of their predecessors—Marx and Mill in the nineteenth century; Kant and the authors of *The Federalist Papers* in the eighteenth; Locke and Hobbes in the seventeenth; Hooker and Machiavelli in the sixteenth. Christian, Jewish, and Arab thinkers of the Middle Ages—Aquinas, Maimonides, Al-Farabi—occupied themselves with the topic, as did Cicero and others in the Roman Empire. Ultimately, systematic exploration of the problem of authority is traced to the Greeks—Plato and Aristotle—active in the fourth century B.C.E.¹

This book argues that the ancient world has bequeathed to us another work, possibly more ancient even than Plato and Aristotle, which offers a systematic account of the problem of authority. The author of this work is one of the great political thinkers of history—possessed of remarkable capacities of organization, abstract thought, and analytical focus, balanced in judgment, profound in insight, and capable of setting out a coherent justification for the authority of law and a conceptual framework for strong but limited government.

What is this ancient work of political theory? It is not one that has lingered in the dusty obscurity of a library of ancient books. Nor was it recently unearthed in an archaeological expedition and translated for the world. It is, in fact, a book with which nearly all of us are familiar, at least to some extent. It is the Bible—the collection of writings that recounts the history of Israel from earliest times and the mighty works of God that made that history possible. The Bible, not the Greeks, may be the West's oldest political philosophy.²

1 Strauss and Cropsey's history of political philosophy is controversial in other respects, but it is in the mainstream of opinion when it concludes that the "political works of Plato and Aristotle are the oldest works devoted to political philosophy which have come down to us." Leo Strauss and Joseph Cropsey, *History of Political Philosophy* (3rd ed.; Chicago: University of Chicago Press, 1987), 1–2.

2 See Bernard M. Levinson, "Deuteronomy's Conception of Law as an 'Ideal Type': A Missing Chapter in the History of Constitutional Law," in *"The Right Chorale": Studies in Biblical Law and Interpretation* (FAT 54; Tübingen: Mohr Siebeck, 2008), 84–85 (contrasting ancient Greek po-

Subject

This study focuses on the books of Genesis through 2 Kings. For simplicity I refer to these as the “Bible,” even though the Jewish and Christian Scriptures include other materials.³ The Bible, so defined, begins at the beginning, describing how God created the heaven and the earth, formed a man and a woman, and set them up to live in a wonderful garden that provided for all their needs. Adam and Eve eat the forbidden fruit of knowledge of good and evil and are expelled by God into a world of “thorns and thistles.” Their son Cain kills his brother Abel and is condemned to a life of wandering.

The first age of the world turns out badly because human beings behave violently toward one another. When the level of evil becomes unsupportable, God destroys the world with a flood. However, he saves Noah, the one righteous man of his generation, as well as Noah’s family and male and female exemplars of all the animals. Riding out the flood in an ark, Noah and his family resettle the earth and are reassured by God’s vow never to destroy the world again. Later, Noah’s son Ham uncovers his father’s nakedness. In consequence, Ham’s son Canaan is subordinated to Ham’s brothers Shem and Japheth. Humans spread across the world, but when they seek to build a tower in Babel, God scatters them into groups speaking different languages.

Many years later God appears to Abraham, who is living in northern Mesopotamia, and instructs him to go to a new land where his descendants will become a great nation. Abraham and his clan move to the land of Canaan and have many adventures. Jacob and Esau, Abraham’s grandsons, come into conflict over inheritance rights, with Jacob emerging victorious. Jacob marries the sisters Rachel and Leah and goes into business with their father Laban but leaves when relations sour. Jacob and Laban eventually make peace and establish a boundary between their territories.

Jacob’s sons attack their brother Joseph, who is taken by Midianite traders and sold into slavery in Egypt. The resourceful Joseph, however, gets appointed as chief minister to Pharaoh. He makes peace with his brothers and the whole clan moves from Canaan to Egypt to escape a famine. Thanks to Joseph’s influence the Israelites receive the land of Goshen as a residence.

Much later, a new pharaoh enslaves the Israelites and kills their newborn

litical theory with the political ideas contained in Deut); Levinson, “The First Constitution: Rethinking the Origins of Rule of Law and Separation of Powers in Light of Deuteronomy,” *CardLR* 27 (2006):1853–88, here 1859 (arguing that “Deuteronomy articulates a complex vision of political philosophy”).

³ The material from Gen through 2 Kgs is sometimes referred to in biblical scholarship as the “primary history.” See David Noel Freedman, “The Earliest Bible,” in *Backgrounds for the Bible* (ed. M. P. O’Connor/D. N. Freedman; Winona Lake, Ind.: Eisenbrauns, 1987), 29–38. Where my analysis includes other materials—Pss, Prov, the Prophets, and so on—I will indicate specifically that these works are being considered.

boys. Set adrift on the Nile in a reed basket, the baby Moses is discovered and adopted by an Egyptian princess. When he has grown up, he kills an Egyptian slave master, flees to the wilderness, and marries a Midianite woman. God appears in a burning bush and instructs Moses to return to Egypt and rescue the people from oppression. God equips Moses with magical gifts and appoints Moses' brother Aaron as his spokesman.

Moses and Aaron return to Egypt and negotiate for the release of the Israelites. With God's help they inflict plagues on the Egyptians in order to persuade Pharaoh to let the people go. Pharaoh is intransigent but relents after Egypt suffers the loss of firstborn children. The Israelites celebrate the first Passover and flee in haste, taking along jewelry and clothing obtained from Egyptian neighbors. Pharaoh pursues them with a chariot force but the fugitives escape when God parts the waters to allow them passage.

Led by Moses and Aaron, the Israelites wander in the wilderness, complaining about the hardships of the journey even though God supplies them with manna to eat and water from rocks to drink. Moses guides them to Mount Sinai, where God reveals himself and pronounces the Ten Commandments and other laws. While Moses is meeting with God on the mountain, the Israelites persuade Aaron to forge a golden calf. Returning from the mountaintop, Moses discovers the people dancing around the idol. He breaks the tablets of the law and with the help of the Levites purges the idolaters. He then returns up the mountain and obtains a new set of tablets identical to the first.

The Israelites resume their journey to the promised land. Before his death, Moses delivers a speech describing the mighty acts of God and setting forth laws and regulations. Joshua leads the Israelites across the Jordan River and into Canaan, where they defeat the peoples of the land and settle the territories allotted to them. The tribes form a confederacy for mutual protection. The people are repeatedly oppressed by foreign powers and rescued by "judges" who lead them in battle. The Israelites also come into conflict with one another, resulting in a civil war between Benjamin and the other tribes.

Leadership in Israel passes to the priests of the sanctuary at Shiloh—first the hapless Eli and then his more capable apprentice, Samuel. Threatened by the Philistines, the people demand that Samuel appoint a king to lead them. Samuel warns about the hardships a king will impose but the people are adamant. With God's approval Samuel anoints Saul as the first king of Israel. Saul proves unworthy, and Samuel transfers the kingship to David, a warlord from the tribe of Judah. David conquers Jerusalem and establishes a royal court there. During his long reign he faces many challenges, not the least being the rebellion of his son Absalom. He takes Bathsheba as a wife, callously dispatching her husband to be killed in battle in order to get him out of the way.

After much intrigue, Solomon becomes king on David's death. Solomon builds a rich and powerful nation and becomes famous for opulence and

wisdom. He erects a beautiful temple where the people come to perform sacrifices. On Solomon's death, however, the kingdom splits apart: Solomon's son Rehoboam becomes king of the southern kingdom (Judah), with his capital in Jerusalem, while one of his officials, Jeroboam, assumes power in the northern kingdom (Israel).

These two kingdoms remain side by side for many years, similar in culture but politically separate. Government in the northern kingdom is marked by coups, assassinations, and intrigue. Politics are more stable in the southern kingdom, where the monarchy passes virtually without interruption for hundreds of years. The northern kingdom ends when Assyria conquers its capital and deports many of its people. The deportees disappear into the mists of history; they are the "lost tribes" of Israel. The southern kingdom continues for more than a century after the fall of Israel. One of its last kings, Josiah, discovers a book of the law in the walls of the temple. Persuaded of its authenticity, Josiah suppresses rural shrines and centralizes religious observances in Jerusalem. Josiah, however, is killed by the Egyptian Pharaoh Necho. The southern kingdom survives only a short while longer before being defeated by the Babylonians, who destroy the temple and deport the nation's leadership.⁴

Theory

It is useful, before progressing further, to define what I mean by "political theory." The term refers to ideas about the nature, scope, and legitimacy of government. The ideas are *political* in the sense that they concern the processes and institutions by which people exercise power over other people, as well as the modes that societies provide for people to participate in government. The ideas are *theoretical* in the sense that they focus on general and abstract principles. It is the combination of politics and theory that defines the field of political theory. Wittgenstein's *Tractatus Logico-Philosophicus* is theoretical because it considers abstract topics, but not political because it is not concerned with governance. The 2008 platform statement of

4 Later books of the Hebrew Bible and other sources tell of the fate of the deportees and the subsequent history of the Jewish people. Babylon is conquered ca. 539 B.C.E. by Cyrus the Great of Persia, who allows some of the exiles to return and rebuild the temple. More exiles return and establish a semiautonomous government under Ezra. Persian domination lasts until that empire is toppled by Alexander in 330 B.C.E. On Alexander's death the land of Israel goes to the Seleucids. The Hasmoneans come to power in the Jewish territories as a result of the Maccabean revolt of 164 B.C.E.; they rule until ca. 64 B.C.E., when the Romans under Pompey capture Jerusalem. The Jews rebel in 66 C.E., resulting in the destruction of the second temple in 70 C.E. They rebel again in 132 C.E. under Simon bar Kokhba, but in 135 C.E. the Romans crush the rebellion and expel the Jews from Jerusalem. A Jewish state is not reestablished until the formation of the modern nation of Israel in 1948 C.E.

the United States Democratic Party is political, in the sense that it covers issues of current controversy and debate, but probably not very theoretical. Works such as John Rawls' *A Theory of Justice* or John Locke's *Second Treatise of Government* are political, in that they deal with basic questions of government and law, and also theoretical, because they develop these ideas at a high level of abstraction. Such works are sometimes classified as "political philosophy," and (to avoid style fatigue) I will sometimes use that term synonymously with the term "political theory."

It may seem odd that the Bible would contain a political theory. Questions about the proper scope of government or the legitimacy of political power may appear to be unworthy topics for a text centered on God and his great works in history. Yet one can grant that the Bible is spiritual in focus while still leaving room for other interests. The Bible is relentlessly curious. Its pages offer pithy and intriguing observations about topics as diverse as language, culture, cosmology, meteorology, farming, cooking, fashion, geography, commerce, diplomacy, history, families, wisdom, sex, warfare, architecture—and much else besides. Given that government and law were ubiquitous in ancient times, as they are today, it would be surprising if the Bible did not take an interest in these topics as well.

In fact, it cannot be doubted that the Bible *does* deal with legal and political topics, and in great detail. The books of Exodus, Leviticus, Numbers, and Deuteronomy contain many laws—not only the Ten Commandments (in several versions) but also detailed codes that cover a range of topics both religious and secular. Legal materials are so pervasive in these texts that Jewish tradition refers to the first five books of the Bible as *torah*—law. When the Bible is not discussing law, it is often dealing with politics. The books of Samuel and Kings tell of intrigues within the royal courts; Judges describes the political activities of charismatic tribal leaders; Joshua chronicles the history of the Israelites under military rule; Exodus, Leviticus, Numbers, and Deuteronomy recount the leadership of Moses during and after Israel's conflict with Pharaoh. Even the book of Genesis deals with political issues insofar as it concerns authority in families.⁵

The Bible's interest in politics and law, moreover, is not merely historical. It is also theoretical. Interspersed in the Bible are numerous examples of speculative thought: the book of Job, for example, is a meditation on why bad things happen to good people; the creation account in the first chapter of

5 Political themes are prominent even outside the corpus of Gen–2 Kgs. Chr retells the history of the kings of Israel and Judah, extending the account up to the decree of Cyrus permitting the exiles to return to their homeland. Prov contains numerous references to kings and advises them on how to behave (e.g., Prov 21:1; 27:23–24; 29:4, 14). Some of the psalms refer to political matters, praising the king (Pss 45; 48:2), announcing God's support for him (Pss 2:6–9; 18:50), seeking divine favor for him (Pss 20:9; 61:6–7), and extolling the king's love of God (Pss 21; 63). The prophets also were actively involved in the politics of their times and sometimes offered pungent critiques of royal policy.

Genesis still commands respect from cosmologists. There is no reason that the Bible would not also engage in abstract thinking about political themes. Indeed, explicit instances of political theorizing are found in its pages. Samuel's warning about the ways of kings is one example (1 Sam 8:11–17); Jotham's parable of the trees is another (Judg 9:7–15).

Narrative

To qualify as a theory, however, we would want to see a more extended analysis than is provided in these passages. One would like to identify a set of texts that raises issues of political theory, analyzes them, and moves on to other topics in a coherent and logical progression. In this respect, the claim that the Bible contains a political philosophy encounters difficulty. Where is this supposed theory? Aside from the occasional instances just mentioned, which are too sporadic and limited to constitute a political philosophy, there is no obvious candidate. Search the Bible and you won't find self-announced, extended inquiries into the nature of justice, the duties of kings, the obligations of citizens, the permissibility of civil disobedience, the appropriate form of punishment, the nature of the judicial function, or the role and function of law. Given the absence of an explicit political theory, how can one sustain the claim that such content is present in the Bible?

The answer is that political theory is hiding in plain sight. The Bible's political ideas are to be found not in any formalized system of discursive analysis but, rather, in the *narratives*—the familiar stories of Adam and Eve, Cain and Abel, Noah's ark, Abraham and Sarah, Isaac and Jacob, Moses and Aaron, Joshua, Deborah, Gideon and Ehud, David and Solomon.⁶ In the pages that follow, I will trace the implications of these stories for political theory and demonstrate that they contain a coherent, logical, and sophisticated analysis of the problem of authority.

Narratives may not appear to be a particularly effective means for communicating abstract ideas. When ideas are developed discursively, as in the case of Greek philosophy, the reader can follow along with some measure of confidence that he understands the nature of the discussion. When abstract ideas are embodied in narratives, however, the reader must perform an initial act of translation. He must first interpret elements of the narratives as standing for political or legal ideas. Only after performing this step can the reader

6 Biblical scholars have spilled much ink on questions of terminology—asking whether a particular text be termed a “saga,” “cult legend,” “hero legend,” “etiology,” “collection,” “myth,” “story,” “narrative,” “epic,” or something else. For purposes of this book, these distinctions are not important. I will refer to biblical passages that tell a story variously as “narratives,” “stories,” or “tales” without intending any technical meaning for these terms.