

## Introduction

I first learned about intellectual property in law school. The conversation comes back to me quite vividly. I was speaking with a friend who was taking a course in patent law. She had studied engineering in college, and therefore had the requisite technical background for a career in patent law. She introduced me to the legal conception of patents as a type of property. I vaguely knew about copyrights, trademarks, and patents but had never considered them *as property*. The notion that such abstract things could be property was completely fascinating, but I set the interest aside and continued along my own path, which I hoped would take me to a career in human rights law.

What I found instead was a career in state and local government law, specifically the law that governs fiscal, economic, and financial affairs of municipal governments. I came to see governmental organizations – like counties, cities, and states – in a whole new way, as economically rooted communities that are formed in specific historical contexts to accomplish social and political goals, some of which are so complex, controversial, and challenging that they need specialized attention and leadership. And I learned something about the long historical path along which these kinds of economically rooted, political communities – I will call them *governing communities* – have been traveling, a path that I believe can help to shed light on the way our governing communities of today might work.

This is a book about intellectual property, and about a long historical trajectory of governing communities. I believe they are two sides of the same coin.

Property depends on governing communities. Without organized groups of people who work together to protect property rights, at most we would have temporary possession of things. With organized political communities that endure over time, which recognize and defend legal definitions of property, we can have rights to property that persist even when we grant temporary possession to others, and even after we die. Once property rights are legally defined to enable property to continue across generations, and that definition is upheld within an enduring, organized community, we have property ownership

in the fullest sense that we recognize (and perhaps tend to take for granted) today.<sup>1</sup>

As I see it, intellectual property is the latest in a long string of developments linking property to governing communities across time. In the economic sociology of Max Weber, I have found a theoretical framework that makes this make sense. Trained as both a lawyer and an economic historian, Weber had a breadth of historical vision that encompassed communities and societies from antiquity to modernity, east to west. And he had a theory of property that I think is true.<sup>2</sup>

For Weber, things become property because they are first enclosed, appropriated, and protected by a group. By taking something over (e.g., a piece of land), creating boundaries against outsiders, and protecting those boundaries, a group controls and essentially monopolizes the thing. And, when we see groups and things with the breadth of vision that Weber had, we see that almost anything can be monopolized by a group: not only land and money, but also rights to wear certain kinds of clothes, rights to eat particular kinds of food, rights to worship particular gods, and rights to use knowledge in particular kinds of ways. Once a group has appropriated and monopolized a thing, whatever it may be, the group can define rights of access and use within the group, and it can privilege certain members of the group by giving them exclusive access and use. The group can even go so far as to say that privileged persons have rights to freely exchange the appropriated things, and to pass them down to their descendants by a formal declaration of intention (a “will”). According to Weber’s theory of property, we have full-fledged ownership (*Eigentum*) at this point – the point at which property rights are freely transferable and are passed across generations through inheritance.<sup>3</sup>

A concrete example of this type of group-based appropriation, one that played an important role in the emergence of intellectual property, is the guild. Guilds are social organizations (communities) that govern craftsmanship of various kinds, ranging across history from artisans in ancient Greece to printers in early modern London. Typically, in order to exercise a particular type of craft – for example, the

<sup>1</sup> This is essentially a summary of Max Weber’s sociological theory of property, a theory that Weber developed in the earliest parts of his encyclopedic project in economic sociology, which was published after his death as *Economy and Society (Wirtschaft und Gesellschaft)*. Weber retained and refined this theory of property in the chapters of *Economy and Society*, which he completed right before his death in 1920. Max Weber, *Economy and Society*, edited by Guenther Roth and Claus Wittich, 2d ed. (Berkeley: University of California Press, 2013), 43–6, 339–48. See also Richard Swedberg, *Max Weber and the Idea of Economic Sociology* (Princeton: Princeton University Press, 1998), 39–45.

<sup>2</sup> Weber, *Economy and Society*, 43–6, 339–48; Swedberg, *Max Weber and the Idea*, 39–45 and passim.

<sup>3</sup> Weber, *Economy and Society*, 43–6, 339–48; Swedberg, *Max Weber and the Idea*, 39–45. I see close analogues to this way of theorizing property in the new institutionalist theories of Yoram Barzel, Douglass North, and Elinor Ostrom. See, for example, Yoram Barzel, *Economic Analysis of Property Rights*, 2d ed. (New York: Cambridge University Press, 1997); Douglass C. North, *Structure and Change in Economic History* (New York: W. W. Norton, 1981); Elinor Ostrom, *Governing the Commons* (Cambridge, UK: Cambridge University Press, 1990). I also see close connections to recent, neo-Aristotelian legal theories of property. See, for example, Gregory S. Alexander, *Property and Human Flourishing* (Oxford: Oxford University Press, 2018).

craft of printing – a person would have to be admitted into the local guild. If the person was not a member of the guild, he could not exercise the craft, and guilds have often had powerful ways of enforcing their rules, for example, the power to search houses and destroy machinery (like a printing press) that, according to the guild's rules, should only be used within the guild. The guild, in other words, monopolized the craft and controlled access to the craft. The guild also controlled the exercise of the craft, ideally ensuring that all persons admitted to the guild were provided with a minimal level of work and maintaining an overall level of quality in the guild's products. Guild officers distributed work, policed the quality of finished products, and often provided forms of insurance and pensions for dependent family members. From the perspective of Max Weber's theory of property, a guild is a governing community that appropriates and monopolizes a craft, which often means monopolizing both art and technology. In fact, as we will see, intellectual property emerged when the monopoly of a printers' guild – called the Stationers Company – was being taken over by an English and nationalizing state.<sup>4</sup>

The nation-state, as I see it, is a specific type of governing community and monopolizing/appropriating group, in Weber's sense. It is at once a cultural community, a political community, a military community, and an economic community, one that insists on being the primary appropriator within a defined territory, and that therefore seeks to control the existence of other governing communities (like cities and guilds) within the defined territory. As Weber famously argued, the nation-state fundamentally asserts a monopoly in the exercise of violent force within a defined territory. As the primary appropriator and monopolizer of violent enforcement in the modern world, the nation-state is the social condition that makes intellectual property possible, the *sine qua non* ("without which not") as lawyers sometimes say. What is it, though, about the nation-state that brings intellectual property into existence? This book is my effort to answer that question. The answer has everything to do with the historical trajectory of the nation-state, as a governing community, and as a monopolizing/appropriating group.<sup>5</sup>

<sup>4</sup> For a general introduction to the role of guilds in the economic history of early modern Europe, see S. R. Epstein and Maarten Prak (eds.), *Guilds, Innovation and the European Economy, 1400–1800* (New York: Cambridge University Press, 2008). For legal historical approaches to the role of guilds in the emergence of intellectual property, see, for example, Lyman Ray Patterson, *Copyright in Historical Perspective* (Nashville: Vanderbilt University Press, 1968); Ted Sichelman & Sean O'Connor, "Patents as Promoters of Competition: The Guild Origins of Patent Law in the Venetian Republic," *San Diego Law Review* 49: 1267–82 (2012). For Weber on guilds (and cities) as monopolizers and appropriators, see *Economy and Society*, 45–6, 339–48; Max Weber, *General Economic History*, translated by Frank H. Knight (Mineola, New York: Dover Publications, 2003), 115 ff. On the complexities of national identity in the British Isles, see Krishan Kumar, *The Making of English National Identity* (Cambridge, UK: Cambridge University Press, 2003). When we are speaking of a "United Kingdom of Great Britain," I am focusing on the period after 1707.

<sup>5</sup> Weber, *Economy and Society*, 385–98, 901–40. I have incorporated Michael Mann's four ideal types of social power – ideological/cultural, economic, military, and political – into this discussion. As discussed later, I anchor aspects of my analysis throughout this book in Mann's theoretical framework, but I do so in the service of elaborating the more basic conception of nation-states as governing

To borrow from Hannah Arendt, I see the nation-state as a *project*, as a future into which we have politically willed ourselves. It is the latest in a very long series of efforts to build enduring, peaceful, and prosperous governing communities. It was designed to a very great extent by legal thinkers who drew on what they considered to be centuries of accumulated wisdom about how to build human communities and govern them justly. The US Constitutional Convention of 1787 is emblematic of the nation-state project, both in its transcendent hopes and in its devastating moral compromises. Intellectual property was built into the Constitution that Convention produced, and into the larger project of will that Convention entailed.<sup>6</sup>

The nation-state project, as I see it, places hope in accumulation of national wealth for future prosperity. It is a project of national, economic investment. Innovation in science, art, literature, and technology is seen as the key upon which a vision of economic growth and future prosperity depends. Intellectual property – the temporary ownership (by individuals or corporate groups) of innovative technologies and original creations – is seen as the great enabler of innovation and wealth creation. According to the prevailing economic theory of *public goods*, which is rooted in long historical experience, people will innovate and create more if they believe they can own, at least for a limited time, that which they originate. We moderns hope and believe that innovation and creativity are good for our national future, and so we authorize a temporary property – a temporary monopoly, backed ultimately by the nation-state’s very real threat of violence – in innovation and creation in order to incentivize the things that we value. Nation-states have been built to be generators of innovation, for purposes of wealth-accumulation, and intellectual property is a legal engine that runs the generator (to borrow and adapt a metaphor from Abraham Lincoln).<sup>7</sup>

communities. I return to the language of governing communities in Chapter 12, and in the Conclusion to the book.

<sup>6</sup> On projects of the will, see Hannah Arendt, *The Life of the Mind* (San Diego: Harcourt, Inc., 1977–78). On the legal-rational state as the creation of legal thinkers (“jurists”), see Max Weber, “The Social Psychology of World Religions,” in H. H. Gerth and C. Wright Mills, *From Max Weber: Essays in Sociology* (New York: Oxford University Press, 1946), 299. I describe the way in which intellectual property was built into the US Constitution in Chapter 9. The short summary is that Article I, Section 8, Clause 8, of the Constitution empowered Congress to enact legislation that would grant time-limited property rights to authors and inventors.

<sup>7</sup> I describe the economic theory of public goods that gives substantive legitimacy to modern intellectual property in Chapter 1. The belief that innovation is a key driver of economic growth is very widely shared not only by economists but also by policy-makers, as seen, for example, in a policy brief from the Organisation for Economic Cooperation and Development. OECD Policy Brief, “Science, Technology and Innovation in the New Economy,” September 2000, available at [www.oecd.org/science/sci-tech/t918259.pdf](http://www.oecd.org/science/sci-tech/t918259.pdf) (accessed April 19, 2018). For Abraham Lincoln on intellectual property as a legal engine, see Chapter 1 and “Second Lecture on Discoveries and Inventions,” first delivered February 11, 1859, in *Collected Works of Abraham Lincoln*, Volume 3, edited by Roy P. Basler (Brunswick, NJ: Rutgers University Press, 1953), 357–63, available at <https://quod.lib.umich.edu/lincoln/lincoln3> (accessed September 8, 2017).

But, just as mechanical engines were designed from centuries of learning about physical forces, legal engines like intellectual property require centuries of learning to develop. As it turns out, governing communities have been in the business of incentivizing desirable activities for a long time, and they have done so using legal instruments that look a lot like intellectual property. Intellectual property, after all, is basically a privilege that is granted to the member of a group, because that member has done something that is valuable to the group. But it is a privilege that comes in the form of property, and this means that it comes with all the deep semantic (meaningful) resonances – together with very real political powers – that property has in western culture and political life. To understand those resonances, and therefore to understand why intellectual property is such a powerful legal engine, we have to reach deeply into a complex and multifaceted cultural tradition that has been powerfully formative for large parts of the world, including Europe, north Africa, western Asia, and the Americas: a cultural tradition formed from a synthesis of Roman and Biblical law.<sup>8</sup>

Many of our ideas about property – ideas that have provided the foundations for modern intellectual property – come ultimately from Rome. More precisely, those ideas come from Roman legal thinkers – I will follow Max Weber in calling them *jurists* – many of whom were not from, and may never have even seen, the city of Rome. These jurists took legal notions that were relatively common-sensical in the Mediterranean world of antiquity and refined them. Between the first and sixth centuries of our era, Roman jurists built an elaborate legal edifice, one that included abstract and systematized ideas about property and legal obligation. Ironically, although the Roman empire endured for a longer time in the east, Roman legal ideas sank in deeper in the west. Roman legal thinking became part of the western cultural DNA, so to speak, and developed together with governing communities. The crucial source of continuity between ancient Rome and the modern nation-state was the western church, which, according to medieval jurists, lives by Roman law.<sup>9</sup>

<sup>8</sup> On the importance of cultural synthesis between Biblical and Roman law for Western legal traditions, see Walter Ullmann, *Law and Politics in the Middle Ages: An Introduction to the Sources of Medieval Political Ideas* (London: Sources of History Limited, 1975).

<sup>9</sup> Max Weber articulated his conception of jurists as the bearers of a particular type of legal culture in his foundational essay on the economic sociology and history of law, now referred to in English as “The Developmental Conditions of the Law.” The best English-language edition of this text is Max Rheinstein (ed.), *Max Weber on Law in Economy and Society* (New York: Simon and Schuster, 1967). The text is part of Weber’s collected contributions to an *Encyclopedia of Social Economics*, which were published after his death as *Economy and Society*. Weber, *Economy and Society*, 641–900. For the famous description of the Roman Catholic Church as living according to Roman law, see the Laws of the Ripuarian Franks 61.1, in *Laws of the Salian and Ripuarian Franks*, translated by Theodore John Rivers (New York: AMS Press, 1986), 195. For helping me to locate the source of this common phrase, and for recognition that it is often misquoted, I am indebted to Michael Edward Moore, *A Sacred Kingdom: Bishops and the Rise of the Frankish Kingship, 300–850* (Washington, D.C.: Catholic University Press, 2011), 84.

And, with the western church – a governing community that, until the Reformation, was formally ruled by priests and bishops – we encounter an overtly religious source of our ideas about property: the Bible. For it is more correct to say that the western church has lived by Roman and Biblical law together. The synthesis of these two cultural traditions – Roman and Biblical law – has been complex and contested, and it has meant, for different times and peoples, radically different things with respect to community governance and property. One early Christian attitude toward property, articulated in *The Acts of the Apostles*, looks like something that would, at first glance, please the disciples of Karl Marx. But there are also attitudes of deep conservatism with respect to property, both in the Christian New Testament and in the books of the Hebrew Bible that Christians have called, with varying levels of respect, the Old Testament.<sup>10</sup>

Property is, in fact, a fundamental part of the promise to Abraham that prominent authors of the Christian scriptures spiritualized and reinterpreted as a universal promise of hope for all the nations of the world. This means that complex and contested ideas of property are built into a religious narrative that is, in different ways, significant for all the Abrahamic faith traditions – Judaism, Christianity, and Islam, in all their many varieties – one that I think helps to account for the cultural and political power of property in our societies today.<sup>11</sup>

In Abrahamic scriptural religion, as interpreted by Christians, property and law are built into a religious narrative about the way that history moves humanity into an eschatological future, a hoped-for time and place in which humans will come home to their ultimate and final governing community, one in which we will enjoy true prosperity and well-being. This eschatological future – a community of hope – is fundamental, I believe, to the basic logic – albeit one that is mostly hidden and taken for granted – by which intellectual property works today, offering as it does a vision of national prosperity that is part of the nation-state project, and that is connected to a culturally powerful narrative about property. Intellectual property, in other words, is a legal institution that taps into deep cultural well-springs, a semantic link between national hopes for the future and a participation in well-being that is interpretively connected with property.<sup>12</sup>

During the European “Middle Ages” – a dynamic and complex period stretching from Roman late antiquity to the early modern ages of Renaissance, Reformation,

<sup>10</sup> Christian communitarian property: Acts 2:44–45, 4:31–5:11. Deep conservatism with respect to property in the Christian New Testament: Philemon; Titus 2:9–10. Deep conservatism with respect to property in the Hebrew Bible: Deuteronomy 19:14; Proverbs 22:28.

<sup>11</sup> Genesis 15; Romans 4. On the spiritualization and universalization of the promises to Abraham, as seen in the writings of Paul and the author of Luke-Acts, see Luke Timothy Johnson, *Sacra Pagina: The Acts of the Apostles* (Collegeville, Minnesota: The Liturgical Press, 1992), 58. On the narrative significance of property and possession in the *Gospel of Luke* and the *Acts of the Apostles*, see Luke Timothy Johnson, *The Literary Function of Possession in Luke-Acts* (Missoula: Scholars Press, 1977).

<sup>12</sup> Cf. Laura R. Ford, “Intellectual Property and Industrialization: Legalizing Hope in Economic Growth,” *Theory and Society* 46:57–93 (2017).

and Enlightenment – Roman law and Biblical law were, together, interpreted anew, and new types of legal scholarship developed from a renewed study of Roman legal texts. At the same time, new types of governing community were built. Gradual breaks with patterns of community governance from late antiquity and the early Middle Ages were made, as communal movements channeled revolutionary social forces, implementing legal independence for Europe’s cities, triggering the foundation of European universities, and repeatedly seeking to reform the church, culminating in division of the European church into national churches. Out of this messy and violent process, the modern nation-state came into existence. And running underneath the whole series of developments was a continuous experience in legal practice, an experience in the granting of legal privileges, which are meant to enable activities that are valued by the leaders of the governing community. Through this historical experience, a new and very this-worldly salvation logic was developed, a logic linking national wealth with property in novel products of the human mind.<sup>13</sup>

This book is an effort to tell the story about how intellectual property, as we know it, was formed from older privilege-granting practices. To borrow a phrase from two leading sociological theorists of today – Dan Hirschman and Isaac Reed – the story I will tell is a “social formation story,” a story about how our modern nation-state project was formed from a combination of elements, and about how intellectual property was built into that project. It is, first and foremost, a story about the contribution of legal thinking and practice to this project. It is also, to my way of thinking, a story of great beauty and great tragedy. It involves a vision and a hope for law and legal communities that are intellectually beautiful, and it involves the tragedy of human fallibility, moral compromises, and unintended consequence, the gap between ideal and reality in law that no one yet has figured out how to close.<sup>14</sup>

Intellectual property, like law and the nation-state project, is lovely and brutal. It is very human, and this means that it involves the quest for meaning, freedom, and belonging that drives our tragic, human history.<sup>15</sup>

I will return to these tragic elements in the conclusion to this book, but to briefly preface now: the tragic aspect of intellectual property, as with all types of property, is

<sup>13</sup> On “this-worldly” salvation logics, see Max Weber, “Introduction to the Economic Ethics of the World Religions,” in Sam Whimster (ed. & trans.), *The Essential Weber: A Reader* (Abingdon: Routledge, 2004); Max Weber, “Intermediate Reflection on the Economic Ethics of the World Religions,” in Whimster, *Essential Weber*, 215–44; Weber, *Economy & Society*, 399–401, 526–29, 541–51, 576–79, 611–34. For a systematic integration of all the complex strands of Weberian sociology, focusing particularly on ethical attitudes toward the world engendered by religious traditions, see Wolfgang Schluchter, *Rationalism, Religion, and Domination*, translated by Neil Solomon (Berkeley: University of California Press, 1989). For understanding of the role played by secularization in our new and this-worldly salvation logic, I am indebted to Charles Taylor, *A Secular Age* (Cambridge, MA: Harvard University Press, 2007).

<sup>14</sup> On social formation stories, see Daniel Hirschman and Isaac Ariail Reed, “Formation Stories and Causality in Sociology,” *Sociological Theory* 32(4): 259–82 (2014).

<sup>15</sup> Orlando Patterson, *Freedom in the Making of Western Culture* (New York: Basic Books, 1991).

seen most clearly in the historical fact that it is, paradoxically, both exclusive and inclusive. Intellectual property's very existence depends on the social fact that groups, like the nation-state, draw boundaries between insiders and outsiders, citizens and noncitizens. And, once intellectual property is recognized in some form, boundaries are drawn within the community, as well, enabling exclusivity on the part of the person or group that is privileged with ownership rights. This is the exclusive side of intellectual property, and it can mean excluding people from things that they desperately need, like life-saving medicines. But there is also an inclusive side. For intellectual property owners, and for those who hope to be intellectual property owners, property rights mean that they are members of a group that protects and includes them, recognizing the value of their creative contributions and liberating them to exercise a protected agency with respect to their innovative works. Property, freedom, and belonging are very closely linked, both in the cultural and semantic resonances that we connect with ideas of property and in the historical processes by which our nation-state project has been formed and has spread around the world.<sup>16</sup>

All this becomes especially evident in the history of intellectual property law, because intellectual property has emerged so recently, comparatively speaking. In telling a social formation story about how we have brought intellectual property into the world, I am also trying to say something more general about how property works in our modern world. In the ways we create property, we include some and exclude others. We use law to draw formalistic boundaries, and we orient ourselves to law – both secular and religious law – in our understandings about how this is legal, just, and reasonable. These are important social and political lessons, I believe, that we can learn from close attention to the lengthy historical development of intellectual property law.

## METHODOLOGY AND STRUCTURE

Readers should be forewarned that this book is primarily a work of historically rooted theorizing, an effort to synthesize disparate historical sources across a vast sweep of time and space, elucidating a meaningful pattern. Recollection of the ancient semantic associations with *theoria* can be both useful and revealing in this context. As Andrea Wilson Nightingale reminds us, *theoria* was originally a political custom and cultural practice, one that involved journeying for the sake of learning. For example, a citizen from an ancient Greek city-state (polis) might be sent to another polis as a kind of ambassador, observing the foreign polis's religious festivals and rituals, bringing back a firsthand witness to what was seen. Similarly, travel to an

<sup>16</sup> I am grateful to Philip Gorski for helping me to see how to articulate this tragic dimension of property ownership. The simultaneity of inclusion and exclusion with property is also highlighted by Hannah Arendt. Hannah Arendt, *The Human Condition*, 2d ed. (Chicago: University of Chicago Press, 1998), 58–73, 217.



internationally recognized oracle (e.g., the oracle at Delphi), to solicit a divine communication, would be an example of *theoria*.<sup>17</sup>

At its deepest historical root, then, the Greek-derived *theoria* evokes the learning that comes through a journey outside of an everyday social context, in the witnessing of a religious spectacle. In the Greek world of many poleis and many religious spectacles, *theoria* became a customary institution (*nomimos*), one closely connected with practical wisdom in governing political communities, and with ancient arts of diplomacy. With the entry of Platonic philosophy onto the world stage, however, *theoria* was transformed into something new: a vision of abstract truth and ultimate reality, one that nonetheless remained quite religious, in its own way.<sup>18</sup>

Sociologists – and social “science” writ large – owe more to Platonic philosophy than we like to admit. However, for contemporary sociologists, *theory* usually means something quite specific that seems to have no connection whatsoever with religion. Many sociologists, although by no means all, would want to say that theories offer a conceptual apparatus for causal explanation of social phenomena and/or events – social things that exist and/or occur. To theorize from this perspective would be to causally explain a social phenomenon at a highly generalized level. Theories are judged and compared on the basis of their explanatory capacity, that is, the degree to which they offer concepts of social action and causal processes that validly and reliably account for recurrent features of the social world, such as racial inequality, state formation, or inner-city poverty. In the ways that sociologists distinguish themselves from other scholars of the social world, particularly historians, sociological theory is often described as being more abstract and general. Unlike historians, who study events in a localized, spatiotemporal setting, sociologists offer general theories about the social world, theories that transcend localized, spatiotemporal settings.<sup>19</sup>

Historical narratives, from this prevailing perspective, are the very opposite thing from theory. Historical narratives describe particular events, whereas theories invoke general concepts and processes in offering an analytical explanation about general

<sup>17</sup> Andrea Wilson Nightingale, *Spectacles of Truth in Classical Greek Philosophy: Theoria in Its Cultural Context* (Cambridge, UK: Cambridge University Press, 2004), ll. 78–140, 536–895; also Robert N. Bellah, “The Heritage of the Axial Age: Resource or Burden?,” in *The Axial Age and Its Consequences*, edited by Robert N. Bellah and Hans Joas (Cambridge, MA: Belknap Press, 2012), 447–66.

<sup>18</sup> Nightingale, *Spectacles*, Chapters 1–3. On the religious character of Platonic philosophy, as seen particularly in the connections between piety, holiness, and justice, and more generally in Plato’s doctrine of the “forms,” see John M. Rist, *Plato’s Moral Realism: The Discovery of the Presuppositions of Ethics* (Washington, D.C.: The Catholic University of America, 2012), 43–8 and ff.

<sup>19</sup> On the Platonic roots of social theory, see Alvin W. Gouldner, *Enter Plato: Classical Greece and the Origins of Social Theory* (New York: Basic Books, 1965). For an argument that contemporary US sociology involves a sacred, spiritual project with close connections to religion, see Christian Smith, *The Sacred Project of American Sociology* (Oxford: Oxford University Press, 2014). Max Weber offered a classic statement of the distinction between sociology and history as a distinction between levels of generality in explanation. Weber, *Economy and Society*, 19–22.

features of the social world. To tell a story is to do what is for most sociologists the very antithesis of theorizing.

I disagree. And I am not alone in doing so. In both classical and contemporary sociology, there are strong advocates for the value of narratives in sociological explanations. Indeed, according to one prominent contemporary sociologist, narratives are pervasive in contemporary sociological explanations, albeit at a meta-conceptual level that is often unrecognized.<sup>20</sup>

A defining, central feature of literary narratives is a plotline. Unlike analytical narratives that generalize to some form of “x causes y under condition(s) c,” literary plots offer a thread of connections between characters in particular settings, tied together in the end. Plots often have a central turning point and a *denouement* that resolves an escalating tension, showing how all the parts are connected. Plots can reveal an important causal sequence, one that may stretch out for a very long time and be unlikely to be repeated. Plots are explanatory in the sense that they help us to understand how and why something happened in the way that it did. In the case of a sociological narrative, a plotline will ideally help us to understand how some important feature of the social world has come to work in the way that it does. And, perhaps, in the journey through the plotline, like a Platonic theorizer, we come to see our world anew.<sup>21</sup>

What I conceive myself to be doing in this book stands somewhere between the Platonic conception and the older meaning of *theoria* that Plato redeployed. I do not claim a unitary vision of truth and ultimate reality, or an all-encompassing explanation. I am simply trying to bear truthful witness to things that I have seen along a very long path of searching in legal and historical sources. I try to synthesize what I have learned into a coherent narrative, that is, a plotline, and this involves comparisons, both within and across time. My methodology, therefore, according to the categories of contemporary sociology, is historical and comparative.

Due partly to the scale at which I am seeking to see – a scale that stretches from antiquity to modernity – I rely heavily on historical sociologists, legal historians, and other historical theorists who have provided foundational narratives of macro-historical change. In many ways the ultimate methodological question in this type of project, I believe, is about reliability and interpretation. How do we identify reliable sources and interpret them in such a way that our narratives speak truthfully (if also very limitedly) about infinitely complex social realities that nonetheless seem

<sup>20</sup> Andrew Abbott, “Process and Temporality in Sociology: The Idea of Outcome in U.S. Sociology,” in George Steinmetz (ed.), *The Politics of Method in the Human Sciences* (Durham: Duke University Press, 2005). Within contemporary sociology, Margaret Somers has been a vigorous advocate for narrative methods. See Margaret R. Somers, “Narrativity, Narrative Identity, and Social Action: Rethinking English Working-Class Identity Formation,” *Social Science History* 16(4): 591–630 (1992); Margaret R. Somers, “Symposium on Historical Sociology and Rational Choice Theory: ‘We’re No Angels’: Realism, Rational Choice, and Relationality in Social Science,” *American Journal of Sociology* 104(3): 722–84 (1998).

<sup>21</sup> On the importance of plotlines for narrative methods in sociology, see Somers, “Narrativity,” 599–603.