

1 Introduction

In February 2019, Joanna Hardy, a junior barrister at the criminal bar, tweeted, "We talk a lot about retention of women at the criminal bar. We wring our hands and shake our heads ... But what can we actually do?" She followed with a list of suggestions that received 280 retweets and was featured in news outlets including the *Daily Mail*, *Telegraph*, and *Standard*. Of Hardy's nine ideas, six related not to professional policies or procedures but to the culture of the bar. Hardy insisted that male barristers should not expect female colleagues to fetch coffee or organize case dinners. Men should not "make repetitive jokes about breasts or skirts," communicate in innuendo, or make comments like "You're worse than my wife." Her pithy sixth suggestion read, "Do not behave like you are on a stag-do."

That male barristers might comport themselves like a group of ribald bachelors is deeply in keeping with the history of the legal profession. For the five centuries leading up to women's admission to the bar in 1919, law was an exclusively male occupation with a culture that emphasized eating, drinking, and fraternization in the truest meaning of the word. Nothing about the bar's masculine culture was accidental or incidental – all elements were carefully cultivated by the Inns of Court – the institutions that regulated, and still regulate, the upper half of the English legal profession. The Honorable Societies of the Inner and the Middle Temples, along with Lincoln's Inn and Gray's Inn, controlled the qualification for and discipline of practice as a barrister. The societies provided only limited aspects of legal training because they were guild-like professional associations dating back to the Middle Ages, not law schools. All barristers had to belong to one of the four societies, however, and many barristers practiced out of sets of chambers at the Inns.

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¹ Joanna Hardy (@Joanna_Hardy), "We talk a lot about retention of women at the criminal bar. We wring our hands and shake our heads as females leave and leave and leave. But what can we actually do? A wee thread," Twitter, February 12, 2019.



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As Hardy's list of recommendations indicates, to understand and overcome workplace discrepancies, we need to examine workplace culture. Yet most studies of professional inequality by sociologists and historians focus on the legal or institutional structures that created inequity and the formal processes by which women and minorities worked against these hurdles. They center around parliamentary acts or educational opportunities and in so doing consider women's and minorities' access to particular professional pathways. These studies cannot explain, however, why elite white male regimes persist after formal obstacles have been cleared away. Likewise, studies that acknowledge the importance of gender and race as operational categories often suffer from myopia, focusing solely on women and minorities.² Yet the fabric of legal culture, its very warp and weft, was made of ideas about and performances of Englishness and masculinity. To unravel it, scholarly enquiry needs to begin when the bar was composed entirely of men of almost exclusively British origin.

Taking the mid-nineteenth century as its starting point, *Brotherhood of Barristers* argues that the Inns of Court fused historicist ritual and Victorian strictures of gentlemanliness to cultivate everyday performances of professional masculinity. The societies then preserved institutional culture by adapting these principles to everything from demographic shifts to ethico-political questions of personal conscience in the face of metropolitan and imperial transformations across the early twentieth century. By anchoring its analysis in the Inns of Court, this book aligns itself with a wave of cultural historians who have reapproached institutional history to ask questions about gender, space, and materiality. These works move beyond one-dimensional renderings of institutions as totalizing, utilitarian, or stagnant to show the dynamic, uneven, and sometimes antipragmatic ways that institutions shaped individuals and society.³

³ Jane Hamlett, At Home in the Institution: Material Life in Asylums, Lodging Houses and Schools in Victorian and Edwardian England (Basingstoke: Palgrave Macmillan, 2014); Deborah Cohen, Family Secrets: Shame and Privacy in Modern Britain (Oxford: Oxford University Press, 2013); William Whyte, Unlocking the Church: The Lost Secrets of Victorian Sacred Space (Oxford: Oxford University Press, 2017); Amy Milne-Smith, London

² Richard L. Abel, The Legal Profession in England and Wales (New York: Blackwell, 1988); Jenny Daggers, "The Victorian Female Civilising Mission and Women's Aspirations towards Priesthood in the Church of England," Women's History Review 10: 4 (2001): 651–670; Carol Dyhouse, Students: A Gendered History (London: Routledge, 2006); Anne Logan, "Professionalism and the Impact of England's First Women Justices, 1920–1950," Historical Journal 49: 3 (2006): 833–850; Mary Jane Mossman, The First Women Lawyers: A Comparative Study of Gender, Law and the Legal Professions (Portland, OR: Hart, 2006); Patrick Polden, "Portia's Progress: Women at the Bar in England, 1919–1939," International Journal of the Legal Profession 12: 3 (2005): 293–338.



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This book insists that the study of the Inns and the legal profession is not a parochial pursuit but rather a means of unpacking the gendered logics that undergirded much of Victorian society. It holds masculinity as an essential category of analysis not just for understanding the bar but, more broadly, for making meaning of the operations of other venerable power centers such as parliament or the church. Indeed, this work serves as a methodological model for explaining enduring conservatism and the ways that ancient, elite institutions have survived and thrived in modern Britain.

That a history of the bar would reapproach legal institutions by looking to the Inns of Court, rather than the law courts, may seem counterintuitive. Time at the Inns, however, was *the* universal experience among all members of the bar, regardless of the kinds of law they practiced – if they practiced – or where. Examining the institutional power of the Inns, societies whose extra-legality made them uniquely invested in maintaining the status quo, reveals the epicenter of the deep-seated conservativism and resistance to change within legal culture. A focus on the Inns also grounds the study in two interrelated lines of inquiry: analysis of the built environment and of the gendered performances that took place within it. Indeed, one of the major preoccupations of this work is to advocate for the central importance not of men but of masculinity in shaping professional culture, as well as urban, imperial, and political history.

Unlike highly compartmentalized studies of the bar, therefore, Brotherhood of Barristers considers the Inns of Court from a variety of perspectives: as legal societies regulating access to an elite profession; as territories in London that maintained uneasy and contested relationships with the neighborhoods that bordered them; as artifacts of cultural heritage that took on national importance; and as producers of the gentlemanly liberal subject in the midst of Britain's great empire. The breadth of my chronological scope, from roughly 1840 to 1940, allows

Clubland (New York: Palgrave Macmillan, 2011); Vicky Long, The Rise and Fall of the Healthy Factory: The Politics of Industrial Health in Britain, 1914–1960 (Basingstoke: Palgrave Macmillan, 2011); Louise Hide, Gender and Class in English Asylums, 1890–1914 (Basingstoke: Palgrave Macmillan, 2014); Douglas Melvin Haynes, Fit to Practice: Empire, Race, Gender, and the Making of British Medicine, 1850–1980 (Rochester, NY: University of Rochester Press, 2017).

⁴ Ben Griffin, The Politics of Gender in Victorian Britain Masculinity, Political Culture and the Struggle for Women's Rights (Cambridge: Cambridge University Press, 2012); Lucy Delap, "Conservative Values: Anglicans and the Gender Order in Inter-war Britain," in Brave New World: Imperial and Democratic National Building in Britain between the Wars, ed. Laura Beers and Geraint Thomas (London: University of London, 2011), 149–168; Timothy Jones, "'Unduly Conscious of Her Sex:' Priesthood, Female Bodies, and Sacred Space in the Church of England," Women's History Review 21: 4 (2012): 639–655.



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me to trace transformations with mid-Victorian roots that bore fruit in the early twentieth century and beyond. This chronology also allows me to consider women and colonial subjects in the same study, which other works on the bar have not done. The book employs sources utilized by other legal historians, such as institutional records and the legal press, but combines them with letters, diaries, memoirs, guidebooks, fiction, and the popular press to consider a broader context than most existing legal histories. The book incorporates a diverse array of voices and historical actors, from the most successful and high-flying members to struggling law students, disbarred barristers, political radicals and dissidents, and women's rights campaigners.

This work examines institutions that, despite lying outside the realm of parliament or government bureaucracy, were deeply connected to powerful positions within the British state. In the nineteenth and early twentieth centuries, these four legal societies controlled access to the upper reaches of the legal profession in Britain and its colonies. As gateways to law, the judiciary, parliamentary, and cabinet positions, the Inns of Court were uniquely entrenched in the power structures of Great Britain and its empire. Other European nations, for example, did not divorce legal education and the regulation of the bar from the universities and the state. In a split legal profession, barristers, who pleaded cases in court, held more prestige and higher salaries than solicitors, who interacted with clients. With specialized knowledge in law and the processes of using the courts, as well as professional connections to the governing elite, many leading politicians began their careers as barristers.

Members of the bar practiced all branches of law and were experts in a variety of forms of legal thought, but Victorian reflections on the power of the Inns of Court returned again and again to the unique status of precedent within British common law. Authors emphasized that the Inns governed the bar not because they were chartered to do so by the crown or any legislative body but because their uninterrupted governance of the bar from time immemorial gave them the right to continue. Similarly, they contended that the societies' centuries-old occupation and maintenance of their grounds justified the Inns' status as

Daniel Duman, The English and Colonial Bars (London: Croom Helm, 1983); Raymond Cocks, Foundations of the Modern Bar (London: Sweet & Maxwell, 1983); Richard O. Havery (ed.), History of the Middle Temple (Oxford and Portland, OR: Hart, 2011).

⁶ Michael Burrage, Revolution and the Making of the Contemporary Legal Professions (Oxford: Oxford University Press, 2006); Hannes Siegrist, "Professionalization with the Brakes On: The Legal Profession in Switzerland, France and Germany in the Nineteenth and Early Twentieth Centuries," Comparative Social Research 9 (1986): 267–298.



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independent local authorities. For these interlocutors, often benchers of the Inns, precedent acted as a bulwark against other local or parliamentary authorities that infringed upon the Inns' rights over practice at the bar or their material environs. Precedent also dictated the standards by which the Inns governed their members. Rather than codified rules, the societies pointed to examples set by their forbearers. The absence of clear statutes afforded the Inns wide latitude in interpreting standards of professional practice, allowing them to adapt legal etiquette to shifting sociopolitical contexts. The societies' constant retrospective gaze created a culture centered on a deep valuation of history and its remains and connected the ancient material lineage of the Inns with their ties to ancient law. Importantly, the societies' respect for the inheritances of the past imbued the Inns with a conservative outlook, which presumed the infallibility of preceding decisions and resisted all but the smallest, most incremental changes.

It may sound surprising, then, to declare that the Inns of Court were actively engaged in processes of liberalism throughout the nineteenth century. Let me clarify. Firstly, I am using conservatism and liberalism in the sense of two broad ideologies, ones that historians such as Lawrence Goldman argue have been set more at odds by academics influenced by a partisan present than by the thinking of the Victorian past. I take conservatism to mean an investment in tradition and its resultant hierarchies and structures of power, an investment held by the Inns of Court. This investment did not mean, however, that the Inns could ignore the increasing importance of standards of reason, economy, utility, and efficiency - that is, the standards of liberalism - to which more and more of Victorian society was held. The societies were reluctant to undertake changes that would dilute their authority over the bar, but they embraced policies that benefited public health and the well-being of their London neighbors, even at the Inns' expense. They did so in part because of the growing importance of public opinion: the best way to forestall parliamentary intervention and retain the rights they had gained as private associations was to take active steps to make it seem as if the Inns fulfilled public obligation and served the public good. In describing the Inns as at once imbued with conservative ideology but engaging in processes of liberal reform, this book stands with work like Goldman's that challenges the irreconcilability of the two concepts and pushes historians to reevaluate the approaches of public and private institutions in terms of ideological syncretism rather than polarization.

⁷ Lawrence Goldman, *Science, Reform, and Politics in Victorian Britain* (Cambridge: Cambridge University Press, 2002), 264–266.



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Indeed, despite their engagement in liberal reforms, this study illuminates how institutions independent of the central government fiercely maintained their autonomy. William Joseph Reader and Harold Perkin have charted the nineteenth-century ascendancy of reforms emphasizing merit, training, and examination over systems such as the army's sale of commissions, the civil service's use of patronage, and the exclusivity of the Royal College of Physicians. According to this narrative, centralized control and forced adherence to rules and guidelines rationalized these professions and made them more meritocratic.8 The Inns of Court, however, firmly resisted the tide of centralization. Their ancient lineage and the exalted status of the law in Victorian culture extended unique cachet to the Inns and exempted the societies from sweeping parliamentary or press critiques. Furthermore, the societies neither needed to legitimate their existence, as did the medical establishment, nor did they experience dramatic failures in carrying out their function, as did the army. Instead, throughout the nineteenth century, the Inns forestalled parliamentary intervention through self-directed reforms. Theirs is a story of longevity and continuity of institutional power. Similarly, the societies maintained their authority on a local level. As liberties of London, legally the Inns were independent from the City of London and the greater metropolis. Centralized approaches to urban improvement in the mid-nineteenth century, such as the Metropolitan Board of Works, presented a new threat to the autonomy of the Inns. The societies warded off the City's and the board's endeavors to assert jurisdiction over the Inns through a combination of law and ritual.

This book departs from earlier studies of the professions not only in that it focuses on an occupation that bucked Victorian trends but also in its insistence on the centrality of gender as an analytic category. Historians of the legal profession rarely consider gender in their analyses, taking it as incidental that the bar remained an exclusively male preserve for five hundred years. In contrast to these assumptions, I argue that in legal culture, masculinity was not incidental but instrumental. The Victorian Inns relied on a culture of fraternity to inculcate their members with the values and attitudes appropriate to British barristers, encouraging members to take part in dining rituals, socialization in common spaces, and volunteer drill corps. Fraternal rhetoric and praxis assumed a

William Joseph Reader, Professional Men (New York: Basic Books, 1966); Harold Perkin, The Rise of Professional Society (London: Routledge, 1989).

Duman, The English and Colonial Bars; Cocks, Foundations of the Modern Bar. The bar was opened to women only via parliamentary statute, by the terms of the Sex Disqualification (Removal) Act 1919.



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fundamental similarity between barristers not on the basis of their geographic origin, wealth, class, or religion but on the basis of their standing as men. The Inns incorporated standards of gentlemanliness into both informal expectations and codified rules for members' behavior. They expected members to uphold masculine notions of honor, particularly as related to trustworthiness and honesty. The societies presupposed legal practitioners to be rational-minded and self-disciplined – qualities the Victorians understood to be inherently male.

The societies used customs and traditions to promote both a particular professional ethos and a culture of belonging based on fraternal bonds. Eric Hobsbawm and others have argued that many Victorian rituals of symbolic nature that were used to inculcate certain values and norms implied continuity with the past, but really were of nineteenth-century invention. 10 At the Inns of Court, the societies both reemphasized or revived preexisting customs and established new ones with an ancient semblance to instill a sense of brotherhood based on shared values in their members. The societies also drew on the architectural remains of their grounds, particularly emphasizing surviving medieval and Elizabethan spaces and constructing new buildings or renovating old ones to conform to these architectural styles. They used the logic of precedent to maintain the bar as an all-male preserve: women never had been admitted to the societies; therefore, they could not be admitted to the societies. The Inns were further able to take advantage of new developments in the Victorian era, such as the shift to a more robust masculinity defined by participation in sporting culture, to tout fraternity in the form of organizations like the Inns of Court Volunteer Rifle Corps.

In outlining the masculine logics of the bar, this book builds upon the work of Paul Deslandes and others to investigate the role homosocial institutions played in forging the values of the educated elite from the tenets of British masculinities. ¹¹ The Inns epitomized a "homosocial" culture of affective same-sex bonds. In the usage proposed by Eve Sedgwick, homosocial leaves room for erotic desire in relationships between men, but does not necessarily assert claims of homosexuality. ¹² Historians have deployed Sedgwick's concept of homosocial to analyze a variety of same-sex social interactions and institutions such as public

Eric Hobsbawm, "Introduction: Inventing Traditions," in *The Invention of Tradition*, ed. Eric Hobsbawm and Terrence Ranger (Cambridge: Cambridge University Press, 1983), 1.

Paul Deslandes, Oxbridge Men (Bloomington: Indiana University Press, 2005); Milne-Smith, London Clubland; John Potvin, Material and Visual Cultures beyond Male Bonding, 1870–1914 (Burlington: Ashgate, 2008).

¹² E. Sedgwick, *Between Men* (New York: Columbia University Press, 1985).



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schools and universities, sports teams, and gentlemen's clubs. 13 These fraternal worlds and activities would have been familiar to many members of the Inns; in fact, the societies would have been one of many homosocial spaces inhabited by law students and barristers. 14 Significantly, most studies that analyze homosociality focus on relationships cultivated outside the professional realm, arguing that spaces like clubs or secret societies provided respite from both the feminized domestic interior and the hyperrational world of the market. 15 Yet the bar was one of many professions – university professorship was another – in which friendship and sociability were as essential as, and often inextricably bound up with, learning and technical expertise. 16 The importance of affect at the Inns suggests that many Victorians did not hold clear distinctions between personal and professional relationships, and that the emotional separation between home and work may not have been as dramatic as some historians have claimed.¹⁷

Brotherhood of Barristers reveals the geographically and chronologically far-ranging impact of the bar's resolutely English, masculine culture. Located in the metropolitan center, the history of the Inns of Court simultaneously tells a story about London and a story that stretches beyond the metropole to the farthest corners of the British empire. With few exceptions, to practice as a barrister anywhere in the empire required joining an Inn and spending three years in London to qualify. No other profession demanded such centralized training. This consolidation socialized law students from across the empire into a resolutely masculine culture, and uniformly prohibited women from practicing as lawyers in all but a handful of white settler colonies. 18 At its height, the

¹⁴ Duman, The English and Colonial Bars, 24; Alexander, After Court Hours, 65; A. Munby, Munby, Man of Two Worlds, ed. D. Hudson (Boston: Gambit, 1972), 10.

Middle Class, 1780-1950. London: Hutchinson, 1987; Tosh, A Man's Place.

¹³ Deslandes, Oxbridge Men; Ben Griffin, The Politics of Gender in Victorian Britain; E. Showalter, Sexual Anarchy (New York: Viking, 1990); Milne-Smith, London Clubland.

¹⁵ Iohn Tosh, A Man's Place: Masculinity and the Middle-Class Home in Victorian England (New Haven, CT: Yale University Press, 2007); Mark C. Carnes, Secret Ritual and Manhood in Victorian America (New Haven, CT: Yale University Press, 1989); Stefan-Ludwig Hoffmann, "Civility, Male Friendship, and Masonic Sociability in Nineteenth-Century Germany," *Gender & History* 13 (2001): 224–248.

¹⁶ Christopher Hilliard, English as a Vocation: The Scrutiny Movement (Oxford: Oxford University Press, 2012); Emily Rutherford, "Arthur Sidgwick's *Greek Prose Composition*: Gender, Affect, and Sociability in the Late-Victorian University," *Journal* of British Studies 56 (January 2017): 91–116.

17 Leonore Davidoff and Catherine Hall, Family Fortunes: Men and Women of the English

Women practiced as barristers in parts of Canada, New Zealand, and Australia as early as 1900. Mary Jane Mossman, The First Women Lawyers: A Comparative Study of Gender, Law and the Legal Professions (Portland, OR: Hart, 2006), 14.



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British empire encompassed approximately one-fifth of the world's population, making this book a comprehensive examination of exclusionary legal culture and revealing antecedents to disparities within the legal profession across the globe today. ¹⁹

This study also reveals the societies' uneasy involvement in the processes of disciplining and ordering Great Britain and its empire. On the one hand, as ancient institutions that helped to mutually define and reinforce the values of the British elite, the Inns viewed themselves as responsible for shouldering certain burdens of imperial formation. As the societies understood it, admitting members from the empire would imbue colonial students with traditions and values of the Inns, eventually transporting these conservative priorities back to the empire. By instilling values central to the legal profession, such as fraternity and selfdiscipline, the Inns molded colonial subjects into what scholars have labeled the liberal individual. At the same time, however, the societies were also increasingly overwhelmed by the demands of an everexpanding empire. Particularly in the early twentieth century, when faced with a growing number of politically radical or anti-imperial members, the Inns began to question the sustainability of their role as the central node of the legal profession.

Methodologically, this book weaves together several separate theoretical frameworks. It insists that an analysis of institutional power dynamics must be grounded in spatiality. Scholars and critical theorists have conceptualized space in a variety of ways. Inspired by the work of urban historians, art historians, and geographers, I begin this book with a focus on the built environment. ²⁰ I argue that the buildings and grounds of the Inns created the conditions of possibility for producing the gentlemanly liberal subject, or in some cases failed to do so. I analyze the symbolic meanings of the societies' historicist architecture and the ways the Inns

"A Current Glance at Women in the Law," American Bar Association, February 2013; "Trends in the Solicitors' Profession: Annual Statistics Report 2012," The Law Society, 2013; "Statistics," The Bar Council, 2006–10.

Patrick Joyce, Rule of Freedom (New York: Verso, 2003); Chris Otter, The Victorian Eye (Chicago: University of Chicago Press, 2008); Lynda Nead, Victorian Babylon (New Haven, CT: Yale University Press, 2000); Judith R. Walkowitz, City of Dreadful Delight (Chicago, IL: University of Chicago Press, 1992); Seth Koven, Slumming (Princeton, NJ: Princeton University Press, 2004); Erika Rappaport, Shopping for Pleasure (Princeton, NJ: Princeton University Press, 2000); Nancy Rose Marshall, City of Gold and Mud (New Haven, CT: Yale University Press, 2012); Donald J. Olsen, Growth of Victorian London (New York: Holmes & Meier, 1976); John M. Picker, Victorian Soundscapes (New York: Oxford University Press, 2003); James H. Winter, London's Teeming Streets: 1830–1914 (London: Routledge, 1993).



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manipulated their built environment to retain cultural prestige and power. I am also indebted to Henri Lefebvre and Edward Soja, who insist that space cannot be reduced to mental construct or physical form, but must be considered as "the habitus of social practices." Feminist anthropologists and geographers have critiqued Lefebvre and Soja for ignoring the operations of race and gender in favor of class, but nevertheless acknowledge the utility of retaining the maxim that "(social) space is a (social) product."22 Indeed, this conception compliments many queer theoretical frameworks: if cultural categories like gender are a repetition of norms - a "doing" rather than a "having" - and space is created by practice, then the same everyday embodied performances that constitute gender likewise construct space.²³ Uniting the insights of Marxist geographers with queer theorists, I consider the use of space at the Inns, asking who was permitted access to which parts of the societies, and how ritual and the activities of social and professional life created classed, gendered, or racialized norms and marginalization. I do not contend that the halls, libraries, and chambers of the Inns merely hosted performances of a particular kind of professional masculinity, but rather that the spaces we think of as the Inns of Court were in fact produced by the dining rituals and other masculinist practices of the bar.

While Lefebvre and Soja are useful for connecting the built environment to the practices within it, their Marxism results in a dialectical conception of power particularly inappropriate for analyzing institutions that disdained both industrial and finance capital. Instead, this book understands the Inns of Court as participating in the processes that Michel Foucault dubs governmentality. In Foucault's conception, social control is not achieved by top-down interventions of the state, but instead emanates from a variety of nodes, especially institutions such as hospitals and schools. These institutions encourage members to internalize their values, at which point the individuals become self-regulating,

²¹ H. Lefebvre, The Production of Space (Cambridge: Blackwell, 1991); Soja, Postmodern Geographies, 18.

Judith Butler, Bodies That Matter on the Discursive Limits of "Sex" (London and New York: Routledge, 1993), 9. For examples of analyses pairing Butler and Lefebvre, see Deirdre Conlon, "Productive Bodies, Performative Spaces: Everyday Life in Christopher Park," Sexualities 7 (2004): 462–479; Melissa Tyler and Laurie Cohen, "Spaces That Matter: Gender Performativity and Organizational Space," Organization Studies 31 (2010): 175–198.

Rosalyn Deutsche, "Men in Space," Strategies 3 (1990): 130–137, and "Boys Town," Environment and Planning D: Space and Society 9 (1991): 5–30; Doreen Massey, "Flexible Sexism," Environment and Planning D: Space and Society 9 (1991): 31–57; Gillian Rose, "Review of Edward Soja, Postmodern Geographies and David Harvey, "The Condition of Postmodernity," Journal of Historical Geography 17: 1 (January 1991): 118–121.