The Rise of Mass Advertising 1840–1914: Law, Enchantment, and the Cultural Boundaries of British Modernity. By ANAT ROSENBERG. [Oxford University Press, 2022. xx + 393 pp. Hardback £70.00. ISBN 978-0-19285-891-7.]

Advertising is a central symbol of the consumer society. Its pervasiveness and high visibility, along with the use of sophisticated marketing techniques, make its regulation a continuing, if controversial, topic. Critics argue *inter alia* that it manipulates consumer preferences, undermines rational choice, and may create or sustain damaging images of social groups, including women and minorities. In response, others point to the important role of advertising as information, reducing consumer search costs, and argue that consumers are not duped by advertising but may actively engage with it, finding idealised self-images an important source of individual self-development (e.g. C. Campbell, *The Romantic Ethic and the Spirit of Modern Consumerism* (Oxford 1987)). Some students of culture view consumers as active subjects playing with and challenging dominant cultural meanings embedded in ads. In all this the law, defined broadly, has often played an important constitutive role in determining the limits of advertising (see e.g. I. Ramsay, *Advertising, Culture and the Law: Beyond Lies, Ignorance and Manipulation* (London 1996)).

Anat Rosenberg's *The Rise of Mass Advertising 1840–1914: Law, Enchantment, and the Cultural Boundaries of British Modernity*, makes an important historical contribution to these debates through a deeply researched cultural legal history of the rise of mass advertising in the UK since the 1840s. Drawing on a wide range of primary and secondary sources, the book illustrates how state and non-state actors used different fields of law to shape ideas about advertising and set the boundaries between advertising and news (ch. 2), aesthetics (ch. 3), and medical science (ch. 4). A central theme, repeated throughout the book, concerns the relationship of mass advertising to Max Weber's depiction of modernity as a rationalising process of disenchantment. Advertising is a form of enchantment, but law's conception of consumption as individual rational choice has difficulties in addressing advertising as enchantment. Ironically, law's shaping of advertising as an inferior form of information (ch. 2) or mere puffery (ch. 5), liberated advertising to engage in magical thinking such as image advertising and other forms of imaginative activity associated with consumption.

Chapter 2 charts the rise of mass advertising's non-rational appeals to mystery, such as the possibilities of personal and financial transformation. Using the examples of advertisements for treasure and fortunes, Rosenberg argues that these advertisements relied on consumers often adding meaning of their own to the advertisement such as imagining oneself as a detective. Chapter 3 addresses the distinction between advertising and news in the context of debates over the abolition of taxes on the press and the subsequent attempts by newspapers to distinguish advertising from information, ultimately resulting in a conception of advertising as an inferior form of information.

The pervasive nature of exaggerated claims for patent medicines throughout the nineteenth century challenged the distinction between quackery and medical science. In Chapter 4 Rosenberg traces the legal developments through libel cases by patent medicine advertisers against newspapers which had denounced their cures as quackery, and the difficulties of the courts in fastening on a definition of the distinction between quackery and science. The consequence was that exaggeration seemed to be a legitimate aspect of advertising. Rosenberg argues that consumers

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bought such medicines for imaginaries of a balanced and healthy life. Quackery provided dreams of well-being.

This chapter leads logically to analysis of puffery and the celebrated case of *Carlill v Carbolic Smoke Ball Co.* [1893] 1 Q.B. 256 in Chapter 5. Rosenberg argues that lawyers have misconceived the puffing doctrine as an aspect of *caveat emptor*. Rather the courts saw puffing as futile speech, as legally meaningless, on the assumption that it was ineffective rather than dangerous. Ironically, this exemption of puffing from legal scrutiny provided the opening for the expansion of image advertising and other forms of fantasy in advertising, and the subsequent development of advertising as psychological expertise, exploiting the emotional and subconscious. The judgment in *Carlill*, focusing on the seriousness of the promise of a reward, did not affect the puffing claim, namely the claims to cure influenza. The Smoke Ball Company continued its advertising, and other well-known brands such as Bovril advertised explicitly or implicitly the ability of their product to address influenza. Just before the First World War the proprietary medicine industry was spending £2,000,000 on advertising preparations based on bogus testimonials and "invented opinions" with the law powerless to prevent them (Report of the Select Committee on Patent Medicines, with Proceedings, British Parliamentary Papers, 1912–13, x).

Chapter 6 discusses attempts by the law to address social and cultural issues raised by advertising through an analysis of regulation of lotteries and indecency. The obscenity test of "the tendency to deprave and corrupt those whose minds are open to such immoral influences" in *R. v Hicklin* (1868) L.R. 3, 360 (Q.B.) opened up the possibility of greater scrutiny of the social effects of advertising. However, Rosenberg argues that no general theory of regulation developed here, rather the focus was on formal characteristics, such as the presence of nudity. An influential argument developed that the question of censorship of ads was best determined by professional expertise. The Poster Censorship Committee (PCC), an industry self-regulatory body, established in 1890, applied potentially broad censorship categories of impure in suggestion (sexual references) and sensationalism, but in practice this often was reduced to the removal of discrete aspects deemed objectionable, such as the presence of a dagger, or a bed. If pressed on a general theory the PCC would appeal to standards such as "the healthy mean of public opinion" or "the preponderance of right minded persons".

Chapter 7 describes the attempts by the advertising professionals at the beginning of the twentieth century to provide an account of their industry, branding advertising as expertise in the human mind, an attempt to attain cultural mastery of scenes of enchantment left unregulated by the law. Within this vision advertising was a combination of magic and reason, not only concerned with immediate sales, but rather creating interest and impressing brand name on memories, encouraging a positive approach to the accumulation of commodities.

The book has several strengths. First, it represents exemplary interdisciplinary research, drawing on a very wide range of primary and secondary sources, and its periodisation from the 1840s extends our knowledge of advertising and its regulation in nineteenth century England. Second, it exposes the difficulties of legal regulation based on a paradigm of individual rational decision-making in addressing the emotional and psychological impact of advertising including its cumulative impact over time. This limitation is implicit in Rosenberg's critique of conventional legal understanding of the puffing doctrine where as Avner Offer suggests the law applies the test of reason to claims that are designed to bypass the filter of reason

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(A. Offer, *The Challenge of Affluence: Self-control and Well-being in the United States and Britain since 1950* (Oxford 2006), 109). Finally, it suggests some regulatory continuities in areas of cultural impact or questions of image advertising, where self-regulation is justified in terms of industry expertise. The Molony Committee in 1962, in response to concerns about the psychological and cultural impact of advertising, recommended that self-regulation by the advertising industry might address advertising claims which involved issues of taste and decency, were not objectively true or false, or which played on emotional weakness.

Although Rosenberg does not elaborate a normative position on the issues raised at the outset of this review concerning the social and cultural impact of advertising, noting in a brief conclusion that "advertising remains contested", this historical account is essential reading for all interested in the continuing debates on the role of advertising and its regulation, or those teaching and researching contract and consumer law.

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Carl Schmitt's Institutional Theory: The Political Power of Normality. By MARIANO CROCE and ANDREA SALVATORE. [Cambridge University Press, 2022. viii + 158 pp. Hardback £85.00. ISBN 978-1-31651-138-1.]

In this excellent book, Mariano Croce and Andrea Salvatore persuasively place in question the still prevalent assumption that Carl Schmitt's main contribution to legal thought is the "exceptionalist decisionism" of *Political Theology* (1922). While it is "pointless" to seek a single consistent theory of law in Schmitt's *oeuvre* (p. 1), Croce and Salvatore contend, it is nonetheless guided throughout by the question as to how the state can "secure the stability of the political community" and promote a "fixed set of loyalties and allegiances" (p. 2). Schmitt's central contribution is "an institutional theory of law and politics that exalts legal science as a jurisgenerative practice that shelters a community's institutional practices and its institutional identity" (p. 2).

Croce and Salvatore's argument builds on their earlier scholarship, including *The Legal Theory of Carl Schmitt* (New York 2013). One impressive feature of the current book is that it combines a rigorous and astute synoptic perspective on Schmitt's legal thought, inclusive of neglected earlier and later works, with an in-depth grasp of particular texts, their political and historical context, and their complex connections and modifications. Croce and Salvatore flag clearly that they find many of Schmitt's assumptions and commitments reprehensible (see, e.g., pp. 5, 120). Notwithstanding their ambivalence on Schmitt's juristic contribution, Croce and Salvatore's reconstruction leaves the overall impression that it contains insights that are still worthy of close critical engagement.

The structure of the book reflects its overarching argument that the guiding thread of Schmitt's legal thought is the institutional "concretisation" of normality, rather than exceptionalist decisionism. Chapter 1 proposes a "revisionist" reading of *Political Theology* as a primarily jurisprudential work concerned with the theme of legal order and unity (p. 9). For all its seductive rhetoric and intriguing

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