

BOOK REVIEW

The Rise of Mass Advertising: Law, Enchantment, and the Cultural Boundaries of British Modernity. By Anat Rosenberg (Oxford: Oxford University Press, 2022. xx plus 406 pp. £70.00).

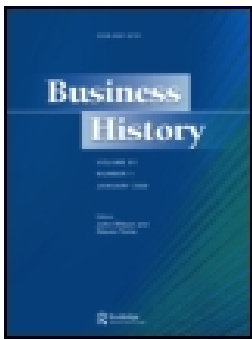
In this work of dazzling scholarship, Anat Rosenberg provides not only a detailed and fascinating history of advertising in Britain between 1840 and 1914, but also a new way of conceptualizing the relationship between advertising, capitalism, and modernity. The book successfully recaptures what is easily overlooked or forgotten given our (over-)familiarity with it today: the tremendously disruptive impact of advertising, in particular the way in which it destabilized existing categories such as news, art, and science. Consequently, several of its chapters reconstruct the protracted boundary work which eventually established advertising as a legitimate but inferior form. Particularly insightful are chapters showing how useful advertising was in acting as a lightning rod for unease about the possibly corrupting influence of the profit motive in modern media (chapter 2) and medicine (chapter 4). In each case, advertising acted as the “dark alter ego”—“puffery” and “quackery” respectively—to the superior categories of trustworthy news and rational science (26). Advertising was something to be denigrated, but not into oblivion: its existence was essential to create and sustain the credibility of these other fields of activity. Law plays a marginal role in other histories of early advertising, the assumption being that these were advertising’s “wild west” years, when attempts at regulation were minimal and mostly ineffective. Rosenberg, a legal historian, takes a very different approach, marshalling evidence from a large set of court cases, many of them hitherto unstudied, to document the centrality of law to the boundary work she describes. In doing so, she makes the intriguing argument that common ideas we have about advertising—that it is biased, vulgar, exaggerated—are not axiomatic but “legally constructed” (32).

The “inferiorization” of advertising involved disavowing its ability to enchant—in other words, ignoring much of what made it appealing to consumers. In a long opening chapter, Rosenberg uses a diverse mix of often neglected sources, including some wonderful scrapbooks, to explore people’s reactions to—and interactions with—advertising. In advertising, she argues, people found “possibilities for transforming their social and private selves,” sometimes playfully, sometimes excitedly, often—especially in the case of patent medicines—desperately (65). Rather than being inflicted on them by manipulative businesses, enchantment “was often a willed condition” in which consumers had

some agency, and which advertisers could not necessarily control (39). But the law saw no value in fantasy, or in dreaming, and insisted upon defining advertising as an absence of knowledge, a failure of rationality. Ironically, however, law's disavowal of enchantment ultimately freed advertisers from the constraints of rationalism, allowing them to claim enchantment as their own special domain. In a final chapter, Rosenberg explains the specific form this took around the turn of the century: the eager embrace of the science of psychology. Psychology provided advertisers with a powerful means of self-branding, giving them a language to explain, both to themselves and to others, what they were already doing, and in the process, to reinvent themselves as "the sorcerers of capitalism," a myth which has been swallowed by nearly everyone—supporters and critics alike—ever since (356).

The book—which is well produced and contains over a hundred illustrations—corrects tendencies which have restricted the reach of other studies. It takes the reception of advertising seriously, as well as its production. Rather than focusing on a handful of "iconic" ads, brands, or campaigns, it considers the cumulative impact of the mass of advertisements, in all their manifestations. Indeed, it encompasses all kinds of advertising media—including the forms usually written off as "gimmicks" or "stunts"—rather than focusing exclusively on newspapers and periodicals. It does not treat advertising as synonymous with "commodity culture," recognizing that much advertising was for events and services as well as products. It avoids the trap of ignoring text ads in favor of those containing flashy imagery, understanding that reading is as important as seeing in advertising history. Above all, it grasps that an interdisciplinary approach, combining perspectives from economics, law, culture, and different methods of analysis, is the best way to account for the multifarious appeals of advertising.

Unfolding confidently and elegantly through the course of seven chapters, the argument poses invigorating challenges to ingrained ways of thinking about advertising and its place in capitalism more generally. Some might balk at the weight placed throughout the book on the concepts of enchantment and disenchantment, especially when this was not a language much used before Max Weber. But the terms are never deployed crudely, and Rosenberg is at pains to specify exactly what she means by them at different points in her account. It is impossible to do justice to Rosenberg's complex and highly nuanced thesis in a short review. Its combination of conceptual sophistication and empirical richness is hugely impressive, and its implications for a wide range of scholars—historians of modernity, of science, of capitalism—are profound and too extensive to be immediately digested. *The Rise of Mass Advertising* is a landmark history whose influence is likely to be felt for years to come.



The Rise of mass advertising: law, enchantment, and the cultural boundaries of British modernity

By Anat rosenberg, oxford, oxford university press, 2022, xx + 406 pp., illus., £70.00 (hardback), ISBN 978-0-19-285891-7

Astrid Van den Bossche

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BOOK REVIEW

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The Rise of Mass Advertising traces the growth and legitimization of print advertising practices in nineteenth and early twentieth century Britain. Rosenberg has structured this history around two arguments: First, as opportunities for mass advertising proliferated, cultural and legal boundary work sought to distinguish it from other domains such as the press, the arts, and the sciences. Each of these domains is examined in Chapters 2–4, and each had an uneasy relationship to the role that advertising played in their own development. Newspapers, for example, benefitted from casting advertising as an inferior type of information, thus creating both a source of revenue and a set of vague delineations that insulated journalistic content from discrediting profit motives (Chapter 2). A similar discrediting dynamic resulted from the legal disentanglement of quackery from a nascent medical profession, again with the aim of preserving the credibility of the latter (Chapter 4). Both created avenues for the legitimization of exaggeration and excess in advertising practice, though the appearance of hoardings, endemic in the urban visual landscape and full of artistic potential, illustrates how billboard trading sought to conciliate the aesthetic and promotional dimensions of public spaces (Chapter 3). All three chapters show how advertising was a serious force in the organization of these cultural fields, but that due to its construal as informationally, aesthetically, and scientifically inferior, it was not to be taken *too* seriously.

Throughout these chapters, Rosenberg starts hinting at her second argument, which is that this boundary work evidences a continuous disavowal of the enchantments mediated through the market. To demonstrate how prevalent enchantment was to the everyday consumer, Chapter 1 details the kinds of flights of the imagination or enchanted travel that advertising could engender, as well as audiences' persistent 'will to enchantment' in the face of an intensification of advertisements across print media. This will did not imply a lack of scrutiny on the reader's part; fantastical expectations of what the market could offer were measured up against background and local knowledges, as well as discerning and specialized modes of reading. Negotiation was key here, and Rosenberg shows how its apparent failures (leading to, for example, legal proceedings or press outrage) offer a window onto the development of a market society. Readerly discernment was bred, in part, in response to puffery, which Rosenberg argues in Chapter 5 was tolerated in law as a necessary market phenomenon, but this stance also cast legal ridicule over advertising more generally, and diverted attention from its capacity to enchant. Debates on gambling advertisements and 'indecent' messaging (Chapter 6) could have engaged enchantment head-on, but the recourse to censorship equally stymied deeper theorization thereof. As a result of these disavowals, advertisers began embracing a professional identity as market enchanters whilst attempting to frame their expertise in rationalist explanations of persuasion and promotional practice (Chapter 7). Rosenberg therefore demonstrates that enchantment far from dissipated in the wake of rationalist modernity: it became an uncomfortable undercurrent in popular, legal,

and professional discourse, and its everyday manifestations are palpable in the book's sources.

Rosenberg's empirical work is rooted in wide-ranging reception evidence from personal ephemera (e.g., scrapbooks) to cultural works (e.g., fiction and paintings). More uncommonly, she also draws on legal archives, including court case documentation and transcripts, legal treatises, and case reports. These sources are of particular note: upholding a cultural theory of law, Rosenberg dissects legal judgement and debate as a way to unravel the norming of advertising environments. Far from succumbing to legalese, however, Rosenberg's expository style foregrounds the human implications—for the consumers, but also for the publishers, advertisers, judges, and pundits—of the experiences that led to these legal proceedings.

The Rise of Mass Advertising is an expansive endeavour—but it is delivered with astute specificity. Besides providing an extensive account of the formative decades of British mass advertising, the book engages and complements works that question sweeping narratives of modern disenchantment such as Jane Bennett's *The Enchantment of Modern Life* (Princeton University Press, 2001) and, more recently, Eugene McCarragher's *The Enchantments of Mammon: How Capitalism Became the Religion of Modernity* (Harvard University Press, 2019). Rosenberg shows how drawing out the experiential, material, and mystical qualities of promotional culture can illuminate advertising as more than a brute force in the march of capitalism, and restore its place as a site of institutional and societal negotiation of the profound changes brought on by British modernity.

Astrid Van den Bossche 

King's College London

 astrid.vandenbossche@kcl.ac.uk

 <http://orcid.org/0000-0003-0790-6799>

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ANAT ROSENBERG, *The Rise of Mass Advertising: Law, Enchantment, and the Cultural Boundaries of British Modernity*. Oxford: Oxford University Press, 2022, pp. 406, ISBN 9780192858917, £70 (hbk).

In 2008, the website Psychology Today posted a blog titled “Advertising is Magic” (Hutson, 2008). The first line read: “It’s been said that advertising is a form of sorcery”. The historical foundations of this idea – that advertisers wield magic – are critically examined in *The Rise of Mass Advertising: Law, Enchantment, and the Cultural Boundaries of British Modernity* by Anat Rosenberg. Her analysis shows how key cultural beliefs about advertising, including what it was and what made it different to other cultural outputs, formed during the growth of mass advertising in Britain c 1840–1914. Her book is therefore an in-depth study of the cultural history of advertising, but it is more than that. It is, specifically, a cultural *legal* study. The law, as argued by Rosenberg, was a constitutive force in the creation of these ideas and beliefs. Those with a vested interest in advertising – including newspaper owners, public authorities, businesses, and professional advertisers – all mobilised law as the place and nature of advertising in modern society was contested, formalised and ultimately theorised. Law thus became a “compound element of cultural dynamics” (p. 30).

It is important, though, to clarify what “law” means in *The Rise of Mass Advertising*. Law is understood as a “diffuse mode of activity” used by multiple actors to “formulate social meanings, resolve cultural dilemmas, and frame normativity with the backing of legitimate coercive power” (p. 30). As such, the law discussed in this text includes legislation, litigation, contracts, actions of committees, policies, rights of ownership and administrative legal powers. Having such an expansive understanding is central for the role that Rosenberg ascribes to law: performing boundary work that differentiated advertising from other cultural domains, thus shaping the status of advertising in the process. Such boundary work resulted in the view that advertising was legitimate and indispensable, but also worthy of ridicule and critique.

Equally significant in Rosenberg’s analysis is the way in which law supported “modernity-as-disenchantment”, which is a concept informed by the theories of Max Weber. Enchantment (as opposed to disenchantment) can be described as “possibilities for metamorphoses, magical efficacy, animated environments, affective connections between humans and things, imaginary worlds and fantasies informing mundane life” (p. 10). Such opportunities were rampant in advertising in the nineteenth and early twentieth centuries, as the book illustrates. Yet mastery of reason and a rational outlook on life,

both disenchanting forces, became associated with modernity at this time as well. Rosenberg seeks to uncover how law, in performing boundary work, focussed on advertising's rationalist qualities. This constituted a legal "disavowal of enchantment" that, ironically, allowed enchantment in advertising to flourish free from direct legal attention (p. 12).

These key arguments are set out in the book's introductory section. The remainder of the book is divided into seven substantive chapters. Chapter One explores the centrality of enchantment in experiences of advertising during the nineteenth and early twentieth centuries. Through a variety of sources – including plays, novels, testimonials of consumers in fraud cases, and newspaper content – Rosenberg shows how mass advertising "brought forth a range of experiences based in non-rational ontologies and a sense of mystery" for many people (p. 35). One example is a 1904 newspaper advertisement that informed readers of buried medallions which – if found – could be exchanged for cash. This inspired a number of readers to become treasure hunters (p. 52–55). Chapter One emphasises that advertising's ability to conjure enchantment depended on factors including the sheer accumulation of mass advertising and consumer's own "will-to-enchantment". This information provides important context for the ensuing discussion.

Chapters Two to Six are where the bulk of discussion concerning law's boundary work takes place. Each chapter focusses on advertising's interaction with a different domain, and how law was used to distinguish advertising from it. Chapter Two concerns advertising and news. It examines the tussle for control of newspaper content that took place between newspaper owners and advertisers following the abolition of advertising duties in the 1850s. Newspaper owners, supported by industry circulars, utilised their proprietary power to characterise advertising as "biased information" that was distinct and inferior to "news" (although still necessary to publish). Chapter Three reveals a similar legitimisation and inferiorisation of advertising, this time in relation to art. The chapter focusses on hoardings: outdoor surfaces utilised by billposting companies to display poster adverts. The billposting trade aspired to sustain hoardings as aesthetic spaces and used legal means (such as contract) to achieve this. Yet this posed a potential threat to art, leading to the enactment of the Advertisements Regulation Act 1907. This legislation created a regime that characterised hoardings as "low aesthetics", appropriate in urban areas yet inferior to "art".

Chapter Four deals with advertising and science, particularly tensions over "quackery" in relation to adverts that promoted medical products and services. The chapter discusses a cultural division where "science" was characterised by logic and restraint, as evidenced by ethical codes that warned doctors not to advertise. By contrast, the consumer "market" – where advertising of unregulated medicine existed – became associated with excess and lack of seriousness, as revealed by defamation and fraud litigation. Advertising consequently came to be perceived as exaggeration. Chapter Five extends this discussion by analysing the doctrine of puffery, a defence used in multiple areas of law (including contract and tort) to excuse a speaker for what they had said when the language was used to promote a sale. Rather than assuming the doctrine represented preference for the seller over the buyer, Rosenberg instead argues that it was a form of legal ridicule that showed the "markdown in the cultural capital of advertisers" (p. 238).

Rosenberg thus establishes that, in differentiating advertising from other domains such as news and science, law was appraising advertising against rationalist values such as truthfulness and restraint. Law consequently failed to engage with or conceptualise advertising's enchanting qualities, which constituted a "legal disavowal" of enchantment. Chapter Six, however, explores advertising's interaction with issues concerning morality, where the law did, at times, come close to recognising enchantment – although ultimately failed to do so. Gambling is first considered, with a focus on litigation that examined whether advertisements for prize competitions constituted illegal lotteries. Gambling was redolent with enchantment, yet the "courts confirmed that the advertising culture of competitions was not the same as gambling and therefore was not enchanted – it was just low culture" (p. 265). Censorship of indecent posters and advertisements for abortifacients is also examined, with a similar conclusion: that the law minimised enchantment in relation to these forms of advertising too.

All of the various threads presented in the previous chapters come together in Chapter Seven, where Rosenberg shows how law's neglect of enchantment actually attracted and enabled professional advertisers to mobilise advertising's enchanting qualities, as they could do so without direct legal attention. In particular, advertisers utilised the emerging field of psychology to "attain cultural authority" (p. 326) and brand advertising as expertise in the human mind. Early advertising professionals, therefore, laid the foundations of an important cultural myth: of "advertisers as the sorcerers of capitalism" (p. 356). Yet Rosenberg is keen to point out that professional advertisers were not sole authors of enchantment but were instead "participants in a structural phenomenon that depended on the advertising environment as a whole, and on consumers' own will to enchantment" (p. 357). This highlights the insights of Chapter One and the reasons set out there for the potent enchantment exerted by advertising, so bringing the discussion full circle.

The Rise of Mass Advertising thus delivers a carefully constructed and layered cultural legal history of mass advertising in Britain c 1840–1914. It is unique as it is the first to do so in book form. Rosenberg has already published some of this material in various journal articles, but combining this research into a single text allows the component parts to build upon each other and tell a more developed story, particularly about enchantment. The book is not, however, an exhaustive analysis of the cultural history of British advertising: by her own admission, Rosenberg has concentrated on areas where anxieties around cultural boundaries were most acute (p. 20–21). Her book nonetheless displays the multifarious legal issues posed by historical advertising, which engage public law, intellectual property, criminal offences, contract and leases, among others. It draws these together into a seamless whole by focussing on the boundary work performed across multiple legal loci in sustaining "modernity-as-disenchantment". Clarity is also maintained by the large number of images in the book (over 100 in total), many in colour, which show the historical advertising being discussed and are an excellent visual aid.

The Rise of Mass Advertising is also notable for the role it conceives of law in relation to culture. In some studies, "law" and "culture" are autonomous concepts (Wagner, 2018, p. 196–198). Rosenberg has a different vision, however. "Law" (as explained earlier) has a diffuse, expansive meaning. It is conceived not as a predefined institution or mere adjudication from above but as "a dynamic part of cultural negotiation" (p. 10). This interpretation, which sees multiple actors "create, adapt, and perform normativity" in legal


environments (p. 30), reminds us that “particular social norms are embedded in particular cultures, from which legal culture cannot be easily separated out” (Gross, 2001, p. 687). Moreover, Rosenberg does not treat it as inevitable that law would disavow or minimise enchantment in advertising, even if utilised in this way (p. 30). This suggests a fluid, flexible approach to identifying and discussing law in the context of cultural studies.

The result – particularly for aspiring legal historians like the reviewer – is that *The Rise of Mass Advertising* has tremendous value in showing how research into historical law can be extended beyond a purely doctrinal analysis and unearth fresh perspectives. Take the example of *Carlill v Carbolic Smoke Ball Company* [1893] 1 QB 256, a well-known English contract law case which is analysed in Chapter Five for what it reveals about puffery (p. 246–248). *Carlill* is typically seen as an authority for when an advertisement can, exceptionally, constitute an offer rather than an invitation to treat for contract formation (MacQueen and Thomson, 2020, p. 64). Rosenberg’s analysis, in locating *Carlill* within a cultural history of advertising, shows a new way to read this case: as symptomatic of the way the law legitimised but also demeaned advertising. Such an analysis, by taking account of law’s boundary work in cultural debates, also unveils the historically constructed nature of seemingly axiomatic views about advertising that still resonate today (for example, that it contains biased or exaggerated information). *The Rise of Mass Advertising* consequently makes an important contribution not only to historical understandings of advertising, but in illustrating the insights offered by cultural legal history. In this way, it performs its own kind of magic.

ALICE KRZANICH 

University of Aberdeen, Scotland

ORCID iD

Alice Krzanich  <https://orcid.org/0000-0002-2958-6530>

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“democratic moment” as fleeting (p. 158). Widely held short-term securities quickly matured, and the burgeoning marketplace for railroad securities was barred to small-scale investors (p. 199). Did Cooke mine the “sort of emotional commodity” of confidence in the Union, or manufacture it (p. 8)? Its “strange surge” likely correlated to battlefield outcomes but also, argues Thomson, to the “faith” that salesmanship instilled (pp. 195, 132).

A new culture of finance in America, and the success of war bonds, then, were mutually dependent processes. Several questions come to mind: whether intent or opportunity determined civic investment, what kind of profitability patriotism required, and what ideals replaced the Civil War’s financial citizenship in the Reconstruction era. Regular readers of this journal might criticize that institutional changes and business innovations get short shrift in the growth of American finance, or that Thomson only hints at the immensely important function of credit. And the profitable globalization of US financing, not least, may leave one wondering about the transnational marketing of the Union, the national and imperial attachments of capital networks, or the increasingly crucial role of railroad, state, and municipal debt in nation-building. These questions, however, merely evidence the fact that *Bonds of War* is a deeply researched and neatly argued book that successfully retells the Civil War moment in financial history, repositions Wall Street firmly within transatlantic networks, and enables further work.

CHRISTOPH NITSCHKE, *University of Stuttgart, Stuttgart, Germany*

Christoph Nitschke is a visiting lecturer in business history at the University of Stuttgart and postdoctoral visiting fellow at the German Historical Institute in Washington, D.C. His book Boom and Bust Diplomacy: The Transatlantic Financial Reconstruction of the United States, 1862–1878 is under contract with Columbia University Press.

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The Rise of Mass Advertising: Law, Enchantment, and the Cultural Boundaries of British Modernity. *By Anat Rosenberg.* Oxford: Oxford University Press, 2022. 432 pp. Illustrations, bibliography, index. Hardcover, £70.00. ISBN: 978-0-19-285891-7.

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Reviewed by Cynthia B. Meyers

In her study of nineteenth-century British advertising, Anat Rosenberg deliberately places her analysis of emerging advertising practices

within a network of other social worlds: the law, journalism, art, science, and medicine. Lavishly illustrated, with over one hundred images, and drawing on extensive primary sources—including civil and criminal legal cases, legislation, contemporaneous periodicals, government documents, and contemporaneous commentary—Rosenberg’s book paints a detailed picture of how people in that time and place responded to the emergence of mass advertising and debated its boundaries.

Rosenberg describes how law, defined as “a dynamic part of cultural negotiation” and a “normative enterprise” designed to disseminate “the view of modernity-as-disenchantment,” helped create boundaries between advertising and other fields (pp. 10, 11). But the very necessity of such legal efforts to distinguish news, art, and medicine from advertising also suggests just how much in common advertising has had with those fields. Like Eugene McCarragher’s *The Enchantments of Mammon: How Capitalism Became the Religion of Modernity* (2019), Rosenberg’s overall agenda is to critique the Weberian notion that capitalism replaced people’s dependence on “enchantment” (religion, superstition, and irrational beliefs) with rationality, or “disenchantment.” According to Rosenberg, advertising in nineteenth-century Britain, then primarily experienced in newspapers and on walls covered with posters (bills), straddled enchantment and disenchantment. On the one hand, she notes, “Advertising enlivened capitalist life with some experiences that supernatural entities had once supplied” (p. 92). But on the other hand, advertising was attacked and defended for its adherence to facts and reason, to the claims of science and medicine. It was thus both rational and irrational.

In the 1840s, for example, the Stamp Act of 1712, which taxed every newspaper advertisement, was attacked as an undue penalty on the essential information that merchants sought to communicate to the public. Once the tax was rescinded, the number of newspapers in Britain grew from 563 in 1851 to 2,421 in 1916; ad revenue clearly made this enormous expansion of newspapers possible (p. 106). But these claims came also with a cost: if ads were information, they could not be easily and clearly distinguished from news. Some newspaper publishers, advancing what Rosenberg calls the “pecuniary view,” argued that the information in ads was more biased than news because the advertiser was motivated only by the hope of profits (p. 110). But newspapers, obviously, were profit-motivated businesses too. So, in order to distinguish themselves from their advertisers, some newspaper publishers adopted what Rosenberg calls “the professionalist view,” in accordance with which they created divisions and hierarchies of labor separating news from advertising and, eventually, outsourced many advertising functions (sales, copywriting, collections) to advertising

agencies (p. 110). Meanwhile, however, the distinction between news and advertising could be problematic. A news account of a drowning might turn out to be “an invention of the advertisers of the watch allegedly found on the body,” or an altercation at a theater over a lady wearing a too-tall hat and blocking the view might turn out to be a “put-up job” to draw media attention to the theater (pp. 121, 123). While newspaper publishers sought to increase sales and profit margins through sensational stories, they often worked to distinguish this “news” from paid placements by refusing to accept ads that resembled news stories. But publishers could not go too far in delegitimizing advertising, notes Rosenberg, “without undermining their own financial viability” (p. 132).

Advertising also threatened the autonomy and prestige of art and science. In her discussion of the boundaries between advertising and art, Rosenberg focuses on laws and regulations that created new property rights for billposting. Who had the right to post bills (posters) and where? Debates over hoardings covered with multiple bills often revolved around aesthetics; thus, as the billposting industry expanded, trade organizations developed standards and boundaries, drawing distinctions between the city and the country, or between places of commerce and natural landscapes. As for science, legal cases concerning “quackery” in advertising arose from the rapidly professionalizing field of medicine. Rosenberg considers several patent-medicine fraud and libel cases in which courts viewed the ads as “an epistemologically doubtful but not illegal field of exaggeration” (p. 236). Advertisers defended themselves by claiming that their puffery, or unconvincing hyperbolic speech, wasn’t meant to be taken seriously; it was “inherently ineffective, rather than dangerous” (p. 243). Rosenberg concludes with a discussion of the “market enchanters,” the professional ad makers who “self-branded as modern magicians” (p. 321). Ad makers turned to psychological theories in order to promote themselves to their clients as manipulators of consumer desires. She argues that the logic of law, intended as a force of disenchantment, had the ironic effect of unleashing its opposite in advertising.

This reviewer, unfamiliar with nineteenth-century British history, law, or advertising, finds many of the richly detailed narratives fascinating and the illustrations illuminating. However, as a historian of American advertising, I have some questions. Is the Weberian thesis of disenchantment so generally accepted as to require debunking? Does framing the study as a critique of Weber risk overlooking other useful perspectives on how and why advertising developed in this period? Would there not be factors other than the use of law that could help explain ad practitioners’ interest at the turn of the century in psychological theories and irrational appeals? Stephen Fox argues in *The Mirror*

Makers: A History of American Advertising and Its Creators (1984) that the ad industry has swung back and forth between claiming to appeal to consumers through rationality, focusing on product information (this soap will clean your clothes), and irrationality, emphasizing the consumer's emotions (this soap will make you feel loved). Is advertising the only cultural form that produces the mix of the rational and irrational that Rosenberg documents here? Advertising's interactions with and roots in a myriad of forms— theater, literature, visual art— might indicate that there are still rich veins to mine here.

CYNTHIA B. MEYERS, *College of Mount Saint Vincent, New York, NY*

Cynthia B. Meyers is the author of A Word from Our Sponsor: Admen, Advertising, and the Golden Age of Radio (2014) and journal articles such as “Advertisers and American Broadcasting: From Institutional Sponsorship to the Creative Revolution” (*Business History Review*, 2021). She is professor emerita, College of Mount Saint Vincent, New York.

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Coconut Colonialism: Workers and the Globalization of Samoa. By Holger Droessler. Cambridge, MA: Harvard University Press, 2022. 304 pp. Photographs, maps. Cloth, \$39.95. ISBN: 978-0-674-26333-8. doi:10.1017/S0007680523000156

Reviewed by Janne Lahti

Scholars today increasingly see the world of colonial empires in the nineteenth and twentieth centuries as constituting movements within and between empires. There has been a shift in focus toward tracking transnational and transimperial flows and networks of peoples, commodities, and ideas. Scholars such as Sebastian Conrad, Roland Wenzlhuemer, Tony Balantyne, Antoinette Burton, among many others, have followed global forces shaping local realities, and vice versa, through multidirectional connections arising from diverse and intricate policies and actions, revealing multiple voices, engaging numerous locales, and crossing great distances. In doing so, they have uncovered interconnected, interactive, and globally entangled colonial spaces. But seldom has Samoa been the center of these investigations. Holger Droessler's *Coconut Colonialism: Workers and the Globalization of Samoa* places the country at the confluence of a global colonialism making demands on the Indigenous Pacific but challenged and contested by those local energies it sought to control.

Coconut Colonialism makes a valuable contribution to scholarship on German and US colonialism and on histories of colonial globalization

Roy Kreitner: Enchanted Market Logic

The Docket / Law and History Review

Roy Kreitner

Roy Kreitner is Professor of Law at Tel Aviv University. He is the director of the Berg Foundation Institute for Law and History at Tel Aviv University. He writes on the legal history of American capitalism, the history and theory of money, private law, and law and political thought.

Anat Rosenberg's *The Rise of Mass Advertising* is a multi-dimensional, multi-media exhibition. There is an overarching narrative, complete with a number of side plots; there are case studies, often with their own stand-alone lessons; there are illustrations, some lush and colorful, others in small type; there are poems, anecdotes, even jokes, complete with descriptions of audience laughter. But through it all, there is a richly detailed history constantly grappling with a conceptual puzzle that retains analytical clarity. The backdrop to the conceptual puzzle is the tension between the familiar Weberian idea that modernity is characterized by disenchantment, but mass advertising, while central to modernity, thrives on enchantment. In writing a cultural history of mass advertising, Rosenberg aims to show how advertising could occupy a central role within such a modernity without undermining its self-perception. And show us she does. To become a central character in the market culture that characterized modernity, advertising had to walk a fine line. Its effect relied on affect; to work, advertising had to appeal to something beyond strict economic rationality, beyond a cold ends-means calculation. But the appeal had to remain, somehow, within bounds. Enchantment had to be contained, so as not to threaten the image of a calculating individual holding center stage in the drama that would legitimize a market society ostensibly organized around dispersed consumption decisions, or individually rational choice.

The Rise of Mass Advertising takes its readers in on several levels, rare in succeeding both in deep detail and in constant conceptual abstraction that moves quickly among several theoretical registers. Readers interested in theory will have much to chew on, whether they are thinking about the construction of the Victorian subject, the tensions within British modernity, or the methodological questions of how to deal with such generalizing terms. Alternatively, readers interested in history of advertising, or of consumption, or of law's role in markets, will receive the best developed and detailed version of how advertising rose to prominence and even centrality, during the long nineteenth century in England. Both sets of readers will be endlessly engaged. In an ideal world, it would be off limits to try to comment on the book in one register only, because taking on a conceptual claim without analysis of the concrete (or the other way around) necessarily misses the mark. But constraints of time and space

make a joint grappling impossible, so what follows will attend primarily to the conceptual aspect of the book, and indeed, to one idea that appears there and seems worth extension.

I'll begin by restating, in extremely reductive form, the rich conceptual claim that drives the book, which is the claim of "legally supported disavowal of enchantment." (11) Rosenberg sums up the claim crisply late in the book, writing:

The case studies I examine differed in their subject matter, social tensions, institutional locations, legal frameworks, dominant ideological viewpoints, and scope... From differing directions and with no unified perspective, legal engagements reveal that enchantment in advertising was being disavowed. It inevitably intruded again and again only to be recast as low culture or reduced to discrete occurrences. Disavowing the systemic quality of enchantment and its proliferation allowed British culture to live with its capitalism, where avowal would have transformed capitalism's very image. (265)

In other words, there are two parts to the claim, dealing with *what* (enchantment exists in advertising, but is disavowed), and with *how* (through a series of legal engagements). Fleshing this out just a bit, the summary narrative is as follows:

From the 1840s on, advertising in England explodes, as it were, becoming ubiquitous and economically and culturally important. In the process, it generates cultural anxiety because it appeals, at times unapologetically, to enchantment (fantasy, magical thinking, transformative experience), while the dominant culture is busy establishing disenchanted rationality as its master trope. And so, advertising, as a central cultural practice, part and parcel of the expansion of business, of consumerism, of urban environments, threatens wherever it appears. News, art, and science, must differentiate themselves from advertising, leading to an economy of appropriation and distance. On the one hand, advertising is accepted as legitimate, but on the other hand, it is disavowed, denigrated, always subjected to a lowering of its status, with law and legal discourse being a central locus of disavowing rhetoric. Law becomes the language in which the threat of enchantment dissipates, enchantment is in a way dismissed by presenting it as a remainder, a low form parasitically but harmlessly tagging onto valuable, rational market activity, and ironically (eventually), one that can be left in the hands of the advertisers.

Now, aside from being engaging (including at times funny), Rosenberg's narrative is especially convincing – the combination of detail in the service of a complex conceptual claim succeeds in explaining what would otherwise seem chaotic and internally contradictory. This is no small feat, because trying to make sense of the rise of advertising without dipping into conspiracy theories or their correlate in theories of false consciousness is no mean trick. But the concrete analysis of how these various fields manage to come to terms with advertising remains so well grounded that it is genuinely hard to resist. Much of the persuasive force of the book, beyond Rosenberg's gifts as a writer, lies in her methodological choice to pursue a history that

is “reception-based” and shows that “while enchantment was pervasive, it was not a unidirectional force controlled or even acknowledged by advertisers,” and that enchantment “depended on an active involvement of advert readers” with their own “will to enchantment.” (19).

The way this argument generates so much power is by showing over and over and in widely divergent contexts how much advertising actually works – not because the populace is engaged in a resistance movement that denies the image of disenchanted rationality, but rather because people – as consumers, as city dwellers, as readers of newspapers (or buyers of multiple copies of newspapers) – navigate seemingly chaotic appeals to their attention, framed across the entire spectrum from hyper-rational to deeply enchanted, with relative aplomb. Cultural anxiety isn’t really an anxiety of the masses: the masses are pretty resilient, and understand themselves as such – but rather of people (typically relatively elite people) who have serious stakes in the advancement of a particular cultural form, one dependent on the image of rationality. And within the cultural elite, there are varying stakes: some groups are interested in bolstering their cultural authority; others may be more interested (at least for some immediate conflict) in short term gains; some have wider theories about the extent to which decision making power should be dispersed, others may have only more local stakes.

What the story succeeds in showing is that enchantment worked, in various ways, on consumers of advertisement, and that such a success had to be culturally digested. Law was an important locus for that process, and its mode of address was one of disavowal. Law had a specific voice, a soothing story committed, not to the particular place where the line between enchantment and rationality would lie, but rather to the idea that such line-drawing (or boundary work) was precisely the routine and achievable work of legal discourse.

Nonetheless, there is always the possibility of some additional remainder, something that escapes the successful work of containment to which legal discourse devoted itself. What I would like to concentrate on here, then, is an extension of the argument about the cultural digestion, if you will, of advertising’s enchantment. Now, I present this as an implication drawn from Rosenberg’s claims, but to be honest it is actually a question; I think there is more than a hint of the argument already in the book, but I’m not quite sure whether Rosenberg would agree. The point of entry for this question is Rosenberg’s own expansion of the argument from consumers to advertisers, when she writes:

The uncomfortable position between enchantment and rationalism needed careful management not only in the stories told about consumers, but equally about advertising professionals themselves. Practitioners craved the respectability of rational experts, yet introduced the forbidden element of enchantment, supposedly rejected in capitalism, into the heart of the system.

(340)

The question is what it means for enchantment to reside in the heart of the system. When Rosenberg begins delving into the period's own reflections on the threat of enchantment, she turns to contemporary economists and their internal disagreements. Rosenberg offers an analysis of Canon Masterman and Alfred Marshall's concerns that advertising might be "wasteful" because "it persuaded people to buy things they were not conscious of wanting." (342) Advertisers (and economists who sometimes spoke for them) answered this charge by claiming it was good to develop the consumer's desires beyond his "elementary conscious wants," so actually advertising was solving an information problem. But in this framing, the specter of wastefulness seems relatively contained, and focused still primarily on whether individual consumers will be able to act rationally. Economic discourse here plays the same role as legal discourse.

Now, consumer rationality surely is important, and fraught for economic theory. I say fraught because on the one hand, it is based on the subjectivity of value, and yet at the same time on a taming of idiosyncrasy at the heart of value-making. In other words, people must differ in their values and valuations, but they all must function under the same kind of ends-means rationality that ties their particular valuations to their own use-value for commodities. The reason, after all, is that as they shop, consumers create the meaning most important to the market place, by offering (or in economic parlance, taking) prices. Their role is that of producers of the information (the price system) that allows the marketplace to do its magic, that is, to route human effort into mutually beneficial welfare enhancement, to generate self-interested other-regarding behavior. The price system drives overall efficiency, as it were, by ensuring that everyone's subjective value is recorded, it allows all consumers to order their preferences, and it is this ordering that ensures that each voluntary transaction is a net welfare gain. So, an enchanted (read, irrational) consumer threatens to distort the price system. That is, if advertising is information, it lowers transaction costs, rather than changing preferences, and all is well; whereas if advertising changes preferences by undermining their rational comparison, it undermines the welfare calculus that justifies market ordering. That might seem like enough of a threat. But on some level, it is indeed answered by the advertisers and by the law, in a model of consumer resilience – the enchantment is contained, it becomes itself part of value, it is a bit like a taste for entertainment. Consumers willingly and rationally purchase small thrills, little experiences of wishing for special luck, they have a taste for a bit of experience of the fairy tale within life, in much the same way they are willing to buy fantasy novels (or today, spend money on fantasy role playing games).

But perhaps there is an even deeper magic at work.

Beyond the consumer, there is the question of the extent to which economy itself is enchanted, how the market is magical, or how the justification of the market is only ostensibly rational. In fact, at the very heart of this justification lies an enchanted vision, truly an invisible sleight of hand, a magic trick that turns self interest into the common good. We might be critical, or even cynical, regarding the myth of the

invisible hand, the fairy tale that markets actually succeed in advancing the common good. But even we if wholeheartedly believed in the providence of the invisible hand, advertising poses a problem. Advertising, viewed rationally, seems to undermine the possibility of such magic, or perhaps the other way around – it is only by disavowing the economics of advertising that it can be comprehended within market logic, if that logic adheres to socially beneficial magic.

I'll try to explain quickly via Thorstein Veblen's *The Theory of Business Enterprise*. Published in 1904, Veblen's book points to a gap between the modern working of the business corporation and what he considered the accepted view and justification of the corporation. The accepted view grew out of a theory developed around the time of Adam Smith, according to which market activity had the potential to harness individual self-interest to other-regarding behavior, insuring that economic activity would ultimately accrue toward the benefit of the community. The business corporation on this view simply aggregates investment toward activities too large for the wealth of a single individual, but acts within the same harmony of interests as individual market players. The corporation is just an aggregated and larger version of Smith's baker or brewer, who acts out of self interest, but in a way that benefits society. However, according to Veblen, this view "had its significance for economic theory a hundred years ago; but since corporation finance has come to pervade the management of business this view is no longer of particular use for a theoretical handling of the facts."^[1] Veblen is willing to concede, for the sake of argument, that while economic activity was organized in a regime of handicraft, corporations pursued business in much the same way as individuals: with an orientation toward livelihood. But there was little overlap between that orientation and then current business practice.^[2]

The transformation of business stemmed from a number of factors, details of which can only be presented telegraphically. Their results, however, are far-reaching indeed. According to Veblen, corporations were no longer driven by the impulse to make production more efficient in order to be able to sell their products most advantageously (as the baker or brewer in the Smithian mythology were). Instead, the goal of the corporation was to increase its stock value, or capitalization. The basis for capitalization of the corporation is not tied directly to its production capacity, but is based rather on "an ever recurring valuation of the company's properties, tangible and intangible, on the basis of their earning-capacity." This capitalization is in essence simply the price of the company's stock. But the "nucleus" of that capitalization is the corporation's intangible assets, and in particular its "good-will." The items included in good-will are "immaterial wealth," assets that are "not serviceable to the community, but only to their owners." Veblen explains with a partial list comprising "franchises and privileges, trade-marks, brands, patent rights, copyrights, exclusive use of special processes guarded by law or by secrecy, exclusive control of particular sources of materials. All these items give a differential advantage to their owners, but they are of no aggregate advantage to the community."^[3] Highlighting the role of good-will in capitalization is just a way of locating, in the practice of capital accounting, Veblen's

more general point: modern profit seeking is a matter of jockeying for position (“differential advantage”) that limits, rather than augments the production of social benefit. Importantly for our purposes here, *advertising* is itself the most prominent in a list of unproductive avenues attractive as modes of securing profit; profit-seeking loses its role as a proxy for community benefit. From a social perspective, the whole is smaller than the sum of its parts. Rosenberg’s advertisers themselves had a good idea of where the value of their activity lay, as she quotes from *Advertiser’s Review*: “The best asset of a business is a well-known trade-mark. Do you realise what that means? It means that in the convolutions of thousands or millions of human brains that trade-mark is indelibly impressed. You can’t see it, but it is there and it is property – you can capitalise it.” (354)

Veblen’s economic logic may have surprised early twentieth century readers, but today it seems undeniable. There is of course some advertising that presents consumers with new information, lubricating, as it were, their consumption decisions (in economics talk, reducing transactions costs, primarily what are called ‘search costs’). But the bulk of advertising as we know it is devoted precisely to the generating the kind of “good-will” that exercised Veblen. Advertising geared toward grabbing market share of functionally similar products (*Coke* or *Pepsi*?) is always about corporations jockeying for position. And generating trade-marks, or more generally, the work of branding, is all about creating little monopolies (think again of *Coke* and *Pepsi*: they don’t need to advertise so people know about their respective qualities – they spend billions to make it harder for unknown firms to enter the market, because competitive advertising would be impossibly expensive). These “intangible assets” raise the value of a corporation because they add to the likelihood of its profitability – but that profit is based on limiting, rather than increasing, social welfare. Corporations could produce more and sell for less, but they undermine industrial and social efficiency by doing what it takes to position themselves as profit machines. Advertising is the core activity that undermines the standard story of how corporate self interest in market activity would generate social benefit.

So perhaps the attention to advertising’s enchantment at the level of the individual is itself a bit of enchantment. The fundamental threat behind recognizing the true role of advertising lies not at the level of individual rationality, but at the normative level of justifying the market. The point would be that even if we assume that consumers retain their rationality at every stage, advertising injects an element of irrationality into the workings of the market, or more specifically, throws a wrench into the justifications of the market as a rational system for increasing welfare. Advertisers’ discourse, as well as legal discourse, perform a sleight of hand to make sure that the invisible hand remains a plausible story, and the focus on consumer rationality helps us forget that the threat to economic rationality is structural, rather than individual.

[1] Thorstein Veblen, *The Theory of Business Enterprise* 69 (1904).

[2] “Under the old regime the question was whether the community’s work was adequate to supply the community’s needs; under the new regime that question is not seriously entertained. . . . Under the old order, industry and even such trade as there was, was a quest of livelihood; under the new order industry is directed by the quest of profits.” *Id.* at 87.

[3] *Id.* at 70-71.

Erika Rappaport: The Fantasy Life of Capitalism

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Erika Rappaport

Erika Rappaport is professor of history at the University of California, Santa Barbara, where she teaches courses on Modern British and imperial history, and global histories of food, consumer culture, gender and sexuality. She is the author of *Shopping for Pleasure: Women in the Making of London's West End* (Princeton University Press, 2000) and a *Thirst for Empire: How Tea Shaped the Modern World* (Princeton University Press, 2017). She is also the co-editor of *Consuming Behaviours: Identities, Politics and Pleasure in Twentieth Century Britain* (Bloomsbury, 2015) and editor of *A Cultural History of Shopping in the Age of Revolution and Empire* (Bloomsbury 2022). She is currently writing *Talking Points: How Public Relations Sold the End of Empire*, which examines how the public relations industry managed the process, understanding, and memories of decolonization.

In 1963 David Ogilvy published the iconic *Confessions of an Advertising Man*, described in the forward as “a slender but juicy book.” *Confessions* included “commandments” or simple rules on how to get and keep clients, build “great campaigns,” and write “potent copy.” After offering such profitable advice, Ogilvy ended the book on a very hesitant note with a chapter that asked, “Should Advertising be Abolished?” The chapter seems to have grown out of ongoing conversations Ogilvy had had with his “Socialist elder sister,” Lady Hendy. No doubt she had read a draft of the manuscript and like many on the left on Britain, she was uncomfortable with advertising and mass culture in general. Even though he was one of the most famous advertisers of the day, Ogilvy too expressed a deep discomfort with a profession that skated so close to the edge of fraud. He wrote *Confessions* in part to resolve such qualms. He sought to raise the status of his profession by defining good advertising as market information. His advice urged fellow practitioners to “give up flatulent puffery” and write only “informative advertising.”^[1]

Ogilvy's misgivings also plagued the Victorians who were developing and explaining the social, economic, and cultural uses of advertising. Anat Rosenberg's wonderful new book, *The Rise of Mass Advertising, Law, Enchantment and the Cultural Boundaries of British Modernity* allows us to imagine and understand the significance of the conversations that Ogilvy must have had with his sister. She offers a genealogy of their concerns about how advertising disrupted the boundaries between fact and fiction, and the dangers and possibilities of capitalism's enchantments. We learn about the long history behind Lady Hendy's reproaches and her brother's truth claims. Rather than taking sides in this pervasive debate about the morality and power of advertising, Rosenberg has cast her critical eye on how this argument molded the content, legitimacy, and reception of advertising in Victorian England. She

demonstrates how advertising raised profound anxieties about disciplinary, social, and cultural boundaries. As it dislocated older forms of value and hierarchies of knowledge, advertising symbolized how industrial and consumer capitalism was seemingly both enchanting and disenchanting the modern world. Advocates were selling goods and detractors were denouncing their work, but together their conversation did a great deal of what Rosenberg calls cultural boundary work. Whether they were denouncing advertising as a degraded, yet powerful form of knowledge or defending it as useful information, the Victorians were attempted to draw a line between fact and fiction, news and puffery, art and industry, and science and quackery. In a variety of legal arenas, educated authorities, manufacturers, retailers, copy writers and average consumers engaged in “cultural negotiation” which articulated a variety of understandings of capitalism, modernity, and enchantment.[2]

People living in early modern and eighteenth-century Britain were certainly concerned that new material cultures and economic systems were upsetting established hierarchies and knowledge systems.[3] However, Rosenberg demonstrates the contradictory ways in which a liberalizing legal regime, beginning in the 1840s and closing with the onset of the First World War, simultaneously unleashed and contained the destabilizing nature of mass culture. The law operates on multiple levels, as Rosenberg explains, “to formulate social meanings, resolve cultural dilemmas, and frame normativity with the backing of legitimate coercive power.”[4] The law is not an abstract institution that regulates the market in a top-down manner, rather it is an everyday, socially embedded set of practices that establishes norms and truths. Rosenberg demonstrates how by defying older notions of value nineteenth-century liberal legal culture was as unsettling as the adverts that promised magical cures and transformations. The removal of the so-called “taxes on knowledge” between 1853 and 1861 set the stage for the huge expansion of the mass press and mass advertising. Rather than create a free market in ideas, the advocates of these reforms helped mainstream advertising in Victorian culture. Through a close reading of the repeal debate and the cultural work of reform groups such as the Newspaper Stamp Abolition Committee and the Association for the Promotion of the Repeal of the Taxes on Knowledge, we see how reformers pushed the notion that advertising was legitimate market information. They argued that a tax on advertising was essentially a tax on free speech and the right of trade to communicate with the public. Rosenberg demonstrates how liberals legitimized advertising and the mass culture of consumption that was emerging in the nineteenth century.[5] Although figures such as William Gladstone argued that advertisements were genuine commercial information, this position was never fully embraced. British liberals and radicals remained divided about the utility of advertising and mass culture, even as they helped establish its roots and methods.[6] Thus, Rosenberg details how advertising developed in Victorian England, how law was part of this process, how average Britons understood the new world of goods visually and materially presented in a riot of advertising signs, posters, print, and packaging, and why the British left have repeatedly argued that advertising was outside of rather than at the center of British society and culture. One of Rosenberg’s most important interventions then is

to show how critics and advocates of advertising advanced and shaped its place in Victorian society.

This argument significantly redirects British scholarship on advertising, which until the 1990s had been exceedingly limited.^[7] In the United States historians have long placed advertising at the center of the study of U.S. culture, demonstrating how, for example, advertising and advertisers helped Protestant America come to terms with and contain the desires unleashed by the growth and transformations in capitalism since the nineteenth century. American advertisers made mass culture equivalent to American culture, a fact acknowledged within and outside of the U.S.^[8] In Britain, the assumption that advertising was American meant that few historians focused on the topic at all. Literary scholars did, however, interrogate how advertising formed class, gender, and racial identities in Victorian England.^[9] Such work inspired historical inquiries into advertising and urban landscapes, gender and class formation, and the myth of Victorian sensual and sexual repression.^[10] It also launched interest in advertising as a form of imperial culture or a vector which brought the empire home, legitimized imperial expansion, and solidified notions of racial differences. Soap and tea advertisements, for example, promised personal renewal and revival by relying on racial binaries and fantasies of imperial conquest.^[11]

Rosenberg builds on such studies but provides a reading of advertising through the lens of intellectual history, and considers how advertising manifested fundamental problems about knowledge, modernity, and disciplinary boundaries. Chapters therefore address critical questions such as how do we know the difference between news and puffery? What is art and where does it belong? What are medical ethics? What is indecency? Through a close reading of court cases, legislative debates, and regulatory conversations, Rosenberg masterfully shows us how average consumers participated in these intellectual conversations. While most scholars of advertising have asked the ads to speak for themselves, the legal archive that Rosenberg introduces uncovers how ordinary men and women read advertising, used goods, and understood markets.^[12] Rosenberg's method thus illuminates the everyday worlds of consumer capitalism.

Given the imperial and global turn in British history, we might ask how would Rosenberg's conclusions look different if she had studied imperial rather than domestic Britain? In this book the empire is a source of commodities and a topic in Orientalist and racist narratives in advertising, but further research could explore further how and why the empire shaped the culture of advertising in domestic Britain, and whether colonial legal systems influenced, copied or departed from metropolitan examples? ^[13] Rosenberg's book provides a method and archive for detailed comparisons of law, capitalism, and modernity. She introduces tools and a new legal archive for understanding the cultural work of advertising in colonial settings, and for re-conceptualizing anti-colonial movements. Since at least the American Revolution consumer boycotts rejected British imperialism, but other anti-colonial movements could also be read as cultural and intellectual critiques of capitalism, advertising, and

the mass market. Capitalism and its enchantments contributed to the transformation of colonies into nation states so can we also explore how anti-colonial movements did similar cultural and disciplinary work that it did in the Victorian metropole?[14] For example, in a small 1935 essay entitled “Untruthful Advertising,” Mohandas Gandhi condemned the British owned tea industry and its large and harmful advertising campaigns in India as particularly problematic forms of colonialism. To reject colonialism, Gandhi wrote, Indians needed to learn how to read advertising critically and thus avoid assuming that “the printed word in a book or a newspaper” is the “gospel truth.” As an example, Gandhi quoted a recent advertisement in a Bengali newspaper that had proposed, “tea helps retain a youthful look and energy.” The ad then described how a forty-eight-year-old man looked a mere thirty-four because since he was fourteen, he had drunk nearly thirty cups of tea daily. This ad, which looked like “a report from the paper’s own correspondent,” provided a clear example of what Gandhi presented as the fictional world of commodity culture.[15] Such advertising was dangerous because it broke the implied contract between reader and text by mimicking the style of the news sections of the paper and because it invited consumers to commit self-violence by buying things they did not need. With its state support and wide reach, the tea campaign stood out as a particularly egregious example of how commodity culture was a form of colonialism.[16] Gandhi’s critique was similar to that Rosenberg explores throughout her book. He was concerned about advertising that exaggerated health claims, that physically looked like fake news, and which bewitched uneducated readers.

If we take Anat Rosenberg as our guide, we can see Gandhi’s essay and the *swadeshi* movement more broadly as a rejection of colonial capitalism and its modern enchantments. We can place Gandhi in conversation with David Ogilvy and Lady Hendy and see how these three were engaged in fundamental cultural work. They were not merely selling or rejecting goods or advertising but wrestling with the boundaries of truth and falsehood that we all confront every time we look at social media, read a newspaper, watch a television show, or simply walk down the street. Advertising, as we see in Rosenberg’s book, is a window into how we all participate in the fantasy life of capitalism as consumers and critics.

[1] David Ogilvy, *Confessions of an Advertising Man* (1963; London: Southbank Publishing, 2013), 9, 167-69.

[2] Anat Rosenberg, Anat Rosenberg, *The Rise of Mass Advertising, Law, Enchantment and the Cultural Boundaries of British Modernity* (Oxford: Oxford University Press, 2022), 10.

[3] There is a huge literature on early modern consumer society that examines how new commodities from trade, empire, and shifting modes of production at home disrupted the idea of stable boundaries between luxury and necessity. Key works

include Neil McKendrick, John Brewer, J.H. Plumb, *The Birth of a Consumer Society in England* (Bloomington: Indian University Press, 1982); Colin Campbell, *The Romantic Ethic and the Spirit of Modern Consumerism* (Oxford, Oxford University Press, 1987); John Brewer and Roy Porter, eds. *Consumption and the World of Goods* (London: Routledge, 1994); Ann Bermingham and John Brewer, eds. *The Consumption of Culture, 1600-1800: Image, Object, Text* (London and New York: Routledge, 1995); Maxine Berg and Helen Clifford, eds. *Consumers and Luxury: Consumer Culture in Europe, 1650-1850* (Manchester: Manchester University Press, 1999); Linda Levy Peck, *Consuming Splendor: Society and Culture in Seventeenth Century England* (Cambridge: Cambridge University Press, 2005); John Styles, *The Dress of the People: Everyday Fashion in Eighteenth-Century England* (New Haven: Yale University Press, 2007); and Jan de Vries, *The Industrious Revolution: Consumer Behavior and the Household Economy, 1650 to the Present* (Cambridge: Cambridge University Press, 2008).

[4] Rosenberg, *Mass Advertising*, 30.

[5] Rosenberg, *Mass Advertising*, 105

[6] For studies of how British liberals and radicals attempted to channel the desires they assumed were unleashed by mass consumption, see Peter Gurney, *Co-operative Culture and the Politics of Consumption in England, 1870-1930* (Manchester, Manchester University Press, 1996); Lawrence Black and Nicole Robertson eds., *Consumerism and the Co-Operative Movement in Modern British History: Taking Stock* (Manchester: Manchester University Press, 2009); Matthew Hilton, *Consumerism in Twentieth Century Britain: The Search for a Historical Movement* (Cambridge: Cambridge University Press, 2003); Frank Trentmann, *Free Trade Nation: Commerce, Consumption, and Civil Society in Modern Britain* (Oxford: Oxford University Press, 2008). On the interwar debate on mass culture, see D.L. LeMahieu, *A Culture for Democracy: Mass Communication and the Cultivated Mind Between the Wars* (Oxford: Clarendon press, 1988). The Second World War altered the place of advertising in British culture, see David Clampin, *Advertising and Propaganda in World War II: Cultural Identity and the Blitz Spirit* (London: Bloomsbury Academic, 2014), but after the war cultural critics still cautioned that advertising was an American import infecting and colonizing “authentic” forms of British culture. The most famous example of this critique is Richard Hoggart, *The Uses of Literacy* (Middlesex: Penguin, 1957). In truth postwar advertising was a transatlantic institution. See Sean Nixon, *Hard Sell: Advertising, Affluence and Transatlantic Relations, c. 1951-69* (Manchester: Manchester University Press, 2013).

[7] The two most comprehensive works prior to this time are E.S. Turner, *The Shocking History of Advertising!* (New York: E.P. Dutton & Company, Inc. 1953) and T.R. Nevett, *Advertising in Britain: A History* (London: Heinemann on behalf of the History of Advertising Trust, 1982).

[8] Some foundational texts include, Stephen Fox, *The Mirror Makers: A History of American Advertising and its Creators* (Urbana and Chicago: University of Illinois Press, 1984); Roland Marchand, *Advertising the American Dream: Making Way for Modernity*,

1920-1940 (Berkeley: University of California Press, 1985); Susan Strasser, *Satisfaction Guaranteed: the Making of the American Mass Market* (New York: Pantheon Books, 1989); T. Jackson Lears, *Fables of Abundance: A Cultural History of Advertising in America* (New York: Basic Books, 1994); Pamela Walker Laird, *Advertising Progress: American Business and the Rise of Consumer Marketing* (Baltimore: Johns Hopkins University Press, 1998) and Charles McGovern, *Sold American: Consumption and Citizenship, 1890-1945* (Chapel Hill: The University of California Press, 2006), especially part I. Outside of the U.S. the advertising industry was perceived as spreading Americanization. See Victoria De Grazia, *Irresistible Empire: America's Advance through Twentieth-Century Europe* (Cambridge, Mass: Belknap Press of Harvard University Press, 2005).

[9] The seminal works include Rachel Bowlby, *Just Looking: Consumer Culture in Dreiser, Gissing and Zola* (London: Methuen, 1985); Thomas Richards, *The Commodity Culture of Victorian England: Advertising and Spectacle, 1851-1914* (Stanford: Stanford University Press, 1990) and Andrew H. Miller, *Novels Behind Glass: Commodity Culture and Victorian Narrative* (Cambridge: Cambridge University Press, 1995).

[10] I explored this point in my first book, *Shopping for Pleasure: Gender in the Making of London's West End* (Princeton: Princeton University Press, 2000). For an overview of this scholarship, see Erika Rappaport and Julie A. Johnson, "Sexuality and Consumerism in the Modern World: The Business of Pleasure," in Merry Wiesner-Hanks and Mathew Kuefler, ed. *The Cambridge World History of Sexualities*, vol. IV (Cambridge: Cambridge University Press, forthcoming 2024).

[11] Much of this work was inspired by John MacKenzie, *Propaganda and Empire: The Manipulation of British Public Opinion, 1880-1960* (Manchester: Manchester University Press 1984) and feminist scholarship seeking to show how imperialism shaped European bourgeois culture. See especially Anne McClintock, *Imperial Leather: Race, Gender and Sexuality in the Colonial Contest* (New York: Routledge, 1995). For a global treatment of British imperial advertising and market culture, see Erika Rappaport, *A Thirst for Empire: How Tea Shaped the Modern World* (Princeton: Princeton University Press, 2017).

[12] In this sense, Rosenberg departs from scholars such as Richards, *Commodity Culture* and Lori A. Loeb, *Consuming Angels: Advertising and Victorian Women* (Oxford: Oxford University Press, 1994). The tendency to read ads in isolation is in part an artifact of libraries typically removing the ads from nineteenth-century periodicals before binding. As a result, many scholars have had to rely on advertising archives such as the [John Johnson Collection of Printed Ephemera](#) housed at the Bodleian Library, Oxford University, parts of which have recently been digitized.

[13] Scholars are increasingly looking at such topics. For two excellent examples, see Timothy Burke, *Lifebuoy Men, Lux Women: Commodification, Consumption, and Cleanliness in Modern Zimbabwe* (Durham, NC: Duke University Press, 1996) and Douglas E.

Haynes, *The Emergence of Brand-Name Capitalism in Late Colonial India: Advertising and the Making of Modern Conjugality* (London: Bloomsbury Academic, 2022).

[14] Manu Goswami, *Producing India: From Colonial Economy to National Space* (Chicago: The University of Chicago Press, 2004).

[15] Mahatma Gandhi, “Untruthful Advertisements,” *Harijan* (24 August 1935) republished in M.K. Gandhi, *Drinks, Drugs and Gambling*, edited by Bharatan Kumarappa (Ahmedabad: Navajivan, 1952): 140-4. For a fuller discussion see Rappaport, *A Thirst for Empire*, 252-53.

[16] Gandhi, “Untruthful Advertisements,” 141. For a study of Gandhi’s theory of reading and self-rule see Isabel Hofmeyr, *Gandhi’s Printing Press: Experiments in Slow Reading* (Cambridge, MA: Harvard University Press, 2013) also see Lisa N. Trivedi, *Clothing Gandhi’s Nation: Homespun and Modern India* (Bloomington: Indiana University Press, 2007) for a discussion of how anti-consumerist nationalism could also promote Indian capitalism.

Peter Mandler: Enchanting Capitalism

The Docket / Law and History Review

Dr. Peter Mandler

Peter Mandler is Professor of Modern Cultural History at the University of Cambridge and Bailey College Lecturer in History at Gonville and Caius College. From 2012 to 2016 he served as President of the Royal Historical Society and from 2020 to 2023 as President of the Historical Association. He is a Fellow of the British Academy and of the American Academy of Arts and Sciences. Professor Mandler writes on the cultural, social and intellectual history of Britain since c. 1800 and on the history of the humanities and the social sciences in the English-speaking world.

Once upon a time there was a burgeoning field called ‘Victorian studies’. Its roots can be found in the 1950s, it flourished in the 1960s and ‘70s, but since then it has withered. Given how tight disciplinary constraints can be, the emergence of such an interdisciplinary field usually betokens some powerful new motivations. In this case they were, perhaps unpredictably, liberal and social-democratic motivations, reflecting a mounting social conscience among academics in both the US and the UK. This social conscience drew attention to the social problems of the Victorian period, notably problems of poverty, proletarianization, urban sprawl and, latterly, sexual repression and gender differentiation. You can see these motivations in the surge of interest in the ‘Condition of England’ novels and social criticism of the 1830s and 1840s and in the ‘Dyos’ school of urban history, topics which intersected in that great climactic document of Victorian studies, the lavishly illustrated two-volume ‘Victorian City’ project edited by Dyos and Wolff and published in 1973.^[1]

It may be controversial to say that ‘Victorian studies’ has since withered; the journal of that name still flourishes; so do ‘Victorian studies associations’ in both the US and the UK; there are ‘Victorianists’ aplenty still in literature departments, though fewer in history departments. But the interdisciplinary project has faded, perhaps with fading hopes in the social conscience of the period. Those tight disciplinary constraints have blown apart many fledgling ‘Victorian studies’ programmes and no-one now hires in the field, and not so many even in Victorian literature or history. Nevertheless, if the field doesn’t exist as it once did, there are scholars who carry on its spirit. Notably there is a loose cluster of scholars, more often with literary than with historical origins, who continue to study Victorian liberalism – or, now, more often recognised explicitly as capitalism – as not just a political affiliation or a form of political economy but as a way of life. I am thinking of the likes of Elaine Hadley, whose book *Living Liberalism* (2010) states its intentions in the title^[2], Lauren Goodlad, author of among other books *Victorian Literature and the Victorian State: Character and Governance in a Liberal Society* (2003)^[3], Amanda Anderson, whose

book *Bleak Liberalism* (2016)^[4] follows a similar path to Hadley's, and Clare Pettitt, whose ongoing trilogy^[5] proposes seriality as a new way of living (and reading) for ever-growing populations in the Victorian city.

Anat Rosenberg is one of these scholars. Unusually she combines history and literature with the law. I say unusually but in this context it is not incongruous. The law offers an obvious alternative text to literature as a window on Victorians' ways of living in a liberal society. Among the scholars I've mentioned, Anderson cites Derrida and Agamben as taking a view of law as an external authority, an act of violence or exception that dehumanises and demoralizes, whereas Anderson wishes to see the law as part of lived experience, a challenge to be met at least, and possibly also a context within which 'truth and justice' might be maintained. (She is keen to insist that for her liberalism is not just a challenge but an opportunity for active and constructive engagement.^[6])

Rosenberg too sees the law as embedded in life. In her first book, *Liberalizing Contracts*, she posited a 'relational liberalism' that was not a Polanyian defence against liberalism, or living in a capitalist society, but rather 'a form of implementation of a market economy' in which older ideas of status and relationships were preserved, not destroyed.^[7] Her exemplary case is the marriage contract which both in literature and in the law is hardly a simple matter of rational choice between atomistic individuals but embeds status relations of class and gender and could perhaps even incite new understandings of mobility and authority.^[8] In this, although she doesn't cite him, she seems to be aligning with Durkheim's view of the marriage contract as indicative of the 'noncontractual foundations of the contractual', and perhaps also with Melinda Cooper's recent, harsher evocation of the exceptional terms of the marriage contract, involving some forms of irrevocable consent and 'the imperative of inalienable labour'.^[9]

In Rosenberg's new book, the one to hand, similar questions are at stake in the way in which advertising broaches both matters of rational choice between atomistic individuals and also extra-rational promises of fantasy and imagination (if not often love): in fact, Rosenberg explicitly proposes that advertising incites some similar fantasies of mobility and democratized authority that she attributed to the marriage contract. Here she contributes to a burgeoning literature on the enchantment or re-enchantment of capitalism that challenges Weber's theses on the disenchantment of capitalism by asserting the persistence of enchantment in everyday life and its entanglement with rather than distinction from protocols of rationality. Consumption is never a matter simply of meeting needs or securing value for money. It always invokes fantasy – what Rosenberg calls 'the will to enchantment' – and in the age of mass advertising fantasy is promoted to hitherto unimaginable levels.

The place allotted to the law here is however very different to its place in her account of the marriage contract. Rather than embracing and accommodating the 'noncontractual foundations of the contractual', the law's approach to advertising is a straightforward piece of boundary work, the disavowal of enchantment. The law did

not deny the scope for enchantment in market relations but ruled such adventures as outside its own province. In this the law allied not with market-makers but with experts (especially scientists) and professionals who sought to rope off legitimate, rational claims from the necessary free play of fantasy involved in market exaggerations. Rosenberg illustrates this most vividly through the application of the doctrine of puffery: a puff is not an actionable promise (a puff for patent medicine is not, for example, a promise of cure).

The irony, as she shows, is that the law, by roping off the realm of rationality for itself (and also as Rosenberg says helping to constitute the idea of modernity as disenchanted), left both advertisers and consumers largely free from the constraints of law to enchant, fantasize and imagine. Advertisers seemed aware of this risk; as she argues in her final chapter, they developed regimes of self-regulation aimed at checking enchantment, constituting their own forms of expertise in psychological science and allocating more of their resources to branding and reputation management. The law did not worry. Why not? Presumably because its course was dictated by some of its own internal preferences and path dependencies. It was simply not equipped to police human psychology or even to fathom it as late-stage advertisers did. Its belief in the legitimacy of the profit motive drove it to accept all sorts of non-rational (and socially damaging) consequences of greed and avarice as outside its remit.

There is an interesting contrast here with the marriage contract. The non-contractual elements of the marriage contract were accepted and clung to in the law well beyond the nineteenth century. (This is again the point of Melinda Cooper's book, which argues that even neoliberal legal scholars of the Chicago School hold that 'freedom of contract cannot exist without the ostensibly natural, noncontractual obligations of family'.^[10]) It must have helped that for most of the nineteenth century the property implications of the marriage contract were minimized by the preponderance of the unpropertied and even in the middle class the exclusion of married women from property rights. There was a consumption dimension to this too; under coverture married women were entitled to contract debts for 'necessaries', but not for anything else their fevered, fragile imaginations might covet.^[11]

But these exclusions no longer applied at the end of the nineteenth century and must surely have troubled legal thinkers who saw enchantment running 'rampant' outside their province. Rising living standards for the mass of the people and married women's property rights were bringing millions more people into the ambit of 'luxurious' consumption and thus of advertising. Perhaps surprisingly, given her general sensitivity to issues of class and gender, Rosenberg does not press much on this issue. In the *Carlill* case, which helped to establish puffery as a defence, the suggestibility of the female plaintiff was itself a point of interest – as one commentator put it, mind had a habit of triumphing over matter, 'especially the female mind'^[12] – but that hazardous suggestibility did not in any way impugn puffery, as it might have done.

As Rosenberg shows, it was only when suggestibility led directly to criminal acts – abortion, say, or gambling – that it came under the cosh. Otherwise it was just a matter of human nature to be accepted resignedly, even humorously. Perhaps this is another illustration of ‘relational (or, perhaps, more properly affective) liberalism’, now stretched to include fully women and the working class, but with the law playing the role not of supporting the non-rational but of stepping aside and letting it rip. Or perhaps the law came to embed an assumption that people – even women and the working class – would become progressively more rational over time, such that their desires and behaviours would increasingly fall within rather than outside the purview of the law? But didn’t the prior assumption that non-rational behaviours were ineffective in the market evoke growing anxieties about the law’s ability to govern that marketplace as ever larger numbers of ‘non-rational’, ‘suggestible’ consumers entered it? It is a besetting sin of commentaries on ambitious books that they always tend to ask, ‘what happened next?’ (or, alternatively, ‘what had happened previously?’), but I’m sure Rosenberg has answers to this one.

[1] H.J. Dyos and Michael Wolff (eds.), *The Victorian City: Images and Realities* (London: Routledge & Kegan Paul, 1973).

[2] Elaine Hadley, *Living Liberalism: Practical Citizenship in Mid-Victorian Britain* (Chicago: University of Chicago Press, 2010).

[3] Lauren M.E. Goodlad, *Victorian Literature and the Victorian State: Character and Governance in a Liberal Society* (Baltimore: Johns Hopkins University Press, 2003).

[4] Amanda Anderson, *Bleak Liberalism* (Chicago and London: University of Chicago Press, 2016).

[5] So far, Clare Pettitt, *Serial Forms: The Unfinished Project of Modernity, 1815-1848* (Oxford: Oxford University Press, 2020); *Serial Revolutions 1848: Writing, Politics, Form* (Oxford: Oxford University Press, 2022).

[6] Anderson, *Bleak Liberalism*, 7-10, 15.

[7] Anat Rosenberg, *Liberalizing Contracts: Nineteenth Century Promises Through Literature, Law and History* (Abingdon and New York: Routledge, 2018), 10.

[8] *Ibid.*, ch. 5.

[9] Melinda Cooper, *Family Values: Between Neoliberalism and the New Social Conservatism* (New York: Zone Books, 2017), 88.

[10] Cooper, *Family Values*, 117.

[11] Though it might be argued that middle-class women's ability to manipulate the law of necessities counts as one of those noncontractual exceptions that rendered liberalism 'relational': see the discussion in Margot Finn, 'Women, Consumption and Coverture in England, c. 1760-1860', *Historical Journal* 39 (1996), 703-22.

[12] Anat Rosenberg, *The Rise of Mass Advertising: Law, Enchantment, and the Cultural Boundaries of British Modernity* (Oxford: Oxford University Press, 2022), 246.

Rachel Bowlby: Appreciating Advertisements

The Docket / Law and History Review

Rachel Bowlby

Rachel Bowlby, Professor of Comparative Literature at University College London, is the author of several books on consumer culture: *Just Looking* (on nineteenth-century department stores); *Shopping with Freud*; *Carried Away* (on supermarkets and self-service); and most recently, *Back to the Shops: The High Street in History and the Future* (2022). This last, in thirty micro-chapters, is about the history of British shopping; the title is also a call to keep shops, as quasi-public spaces, active and open in an online world. She has also written about the impact on ordinary parental stories of reproductive technologies, beginning with contraception (*A Child of One's Own*); on Greek tragedy and modern identities (*Freudian Mythologies*); and on Virginia Woolf (*Feminist Destinations*). Other books include *Still Crazy After All These Years: Women, Writing and Psychoanalysis*; *Everyday Stories*; and *Talking Walking*. In preparation is a book of selected essays, *Unexpected Items*, in Edinburgh UP's "Feminist Library" series, as well as a short book on Émile Zola. A Fellow of the British Academy, Rachel Bowlby was previously (2004-14) Lord Northcliffe Professor of English at UCL.

The first thing to say about *The Rise of Mass Advertising* is also the first thing that will strike any reader, of whatever kind – whether someone who, like me and the rest of us speaking today, has been studying every page, or whether someone who (let's hope) may pick it up in a bookstore, or see it online. That first thing is that this book is a thing of beauty. It is full of extraordinary images. It has glossy paper of the finest quality. Much care, much time and attention, have been lavished upon its production as a visually and tangibly attractive object. All this is quite apart from the attention devoted to the composition of its many words, the research behind them, and the sophistication of their arguments. Among the many and diverse excellent features of the book, we should congratulate both Rosenberg and her publisher on an aesthetic achievement. The book is a delightful object, and one that attracts attention as such.

But there is an irony in this beauty – or rather, to use the term that is like the *Leitmotif* of the book, there is an irony in this *enchantment*. Drawing on Weber's famous formulation about the disenchantment of the world, Rosenberg's analysis of the early British history of mass-market advertising takes as its starting point the patent enchantments of advertising, and thus its anomalous status in relation to the would-be rationality of a steady, neutral modernity. There is nothing hidden about advertising's will to win over its spectators.

From another point of view, however, this book would seem to be far away from the imagined enchantments of mass publicity. The book is long-term whereas

advertisements are almost by definition ephemeral. Both metaphorically and physically, the book—and especially *this* book—is heavy, a quality product made to last; whereas ads are lightweight and pragmatic, here today and thrown away tomorrow. The book is specialized and academic, whereas ads – the title says it directly –are for the masses. The book is high culture where ads are not just low-culture, but almost the personification of low culture. The book has depth, whereas ads are superficial. The list, and the expected contrasts, go on.

But if the book is a non-ad, set at a distance from the easy charms of advertising, it is also exactly the opposite. It is full of advertisements! Ads galore – that is what its many pictures replicate, beautiful glossy reproductions, on almost every page. But then we must ask, are they really ads, in the operative sense of the word? Those nineteenth-century images are present in the book in the role of permanent exhibits, to be studied and perhaps admired, rather than to be acted on. No one will now be persuaded by them; that is not why they are there. Or if they *are* persuaded, they are surely in the wrong century! Instead, contemporary readers will appreciate these images for what now looks like their bygone naivety, or crudeness – or whatever it may be. That is the retro-effect already beginning in the period that Rosenberg describes, when –as she documents—eager spectators began to collect and preserve the ephemeral and ubiquitous posters before they could be destroyed or pasted over, as would happen in the normal course of things. From being no more or less than an indication of the moment, the *now* of the ever-changing Baudelairean modernity, an ad could thereby be transformed into history, acquiring its own distinctive aesthetic aura as an image of present times now become the past.

It was suggested that we might begin our reflections by identifying a question within our own field of research that shows up usefully or differently through Rosenberg's book. So for me, coming out of literary studies, one such issue is that of popular versus serious literature—a putative category division which, like that of mass advertising, arose in the nineteenth century and is part of the same phenomenon. Many novels which are regarded as classics today began life as serialized and short-term formats, published in instalments, very often in the pages of daily newspapers. They were subsequently reprinted in the form of books—physical books—and some of those that survived into twentieth- and twenty-first-century editions now figure as consecrated texts, with their low-key beginnings now forgotten or irrelevant to their current high status. For literature written in English, Charles Dickens is the outstanding example here. His novels began in serial form; he is now perhaps second only to Shakespeare in the canon of English-language literature. Yet the words on the pages are exactly the same as those that appeared in the first periodical, short-term form—just as those beautiful images in Rosenberg's book are identical to those that once graced or blotted the pages and walls and hoardings of their original Victorian settings.

We can understand how a few bestselling book titles of the Victorian period have changed into enduring and often reprinted classics, as if by a process of gradual if not

natural selection. But examples from Rosenberg's book show us a parallel but different process occurring for posters and other advertising ephemera. Some posters are kept—are deliberately preserved—and through that keeping (with its change of situation) they then acquire a rarity and a value, irrespective of any real aesthetic worth that they may or may not have. They are now separated from the “mass” of similar objects with which they began, and it is that contingency, not any inherent qualities that are attributed to them, which gives them their later significance as survivals.

That is one layer or stratum to the framing of the advertisements in Rosenberg's book. It involves a pivot from low to high status in cultural valuation. But arguments that relate to the distinction between high and low culture have had their own history of prominence or decline. They peaked, we could say, in the middle decades of the twentieth century, in part through the influential works of the Frankfurt School, but also via widely read, less theoretical Anglo-American cries of cultural distress against all things “mass,” the bad word of the time. Rosenberg's book is attuned to these contexts, and the title she chose both echoes and continues the historical perspectives that were inaugurated in those mid-twentieth-century times. Semantically, “The Rise of Mass Advertising” —the phrase itself —belongs to the twentieth century, even as it points to a back-story that is located in the nineteenth.

By the same token, however, we find ourselves still, in the book, as if in a twentieth-century conceptual world of rises (and falls), of beginnings or origins; and this brings me to a second, related point about the history of the argument. Mass advertising, in its time—as a phenomenon and as an idea—appeared as relatively new, but also as foreseeably permanent. It was an aspect of a world-dominating system (otherwise known as capitalism), and it was either going to be revolutioned away into something utterly different or it was more or less there to stay. This is not the place to go into the details of Marxist and liberal arguments during what is now an earlier time to our own. But in the new digital era of the twenty-first century it appears that the scope and aims of advertising have changed. A campaign — note the military metaphor of that word — no longer needs to be armed with weapons of mass persuasion aimed at an equally large-scale target: all women, all those in social classes CD, or whatever it might be. Instead each individual consumer can receive, on their personal devices, ads that are customized to their own profile—including their ad-viewing profile. Targeting has shifted from the massive to the individual.

From one angle, and paradoxically, this represents a revival of the place where modern advertising began: with the classified newspaper advertisement, addressed by one individual to another whom they hope that their ad will find: offering situations vacant, or some particular object for sale. Rosenberg lovingly cites the example of Jane Eyre, in Charlotte Brontë's novel, herself “advertising” for a governess position: she pays for a line or two to be placed in a newspaper in which she presents herself as available for employment. (And she ultimately gets more than she bargained for: a rather complicated man, Mr Rochester, as well as a job.) Historically, the classified ad, straightforward and simple, is represented as the antithesis to the big flamboyant

advertisement of the poster or “full-color” magazine spread, designed to attract the attention of anyone and everyone. The classified ad is small-scale and tucked away in a column where it will be seen by someone already looking for such an announcement.

The classified ad, then, is sober and practical rather than over-persuasive. It is informative rather than distracting. It is there to bring about contact between a seller and a buyer who each want to find the other: the buyer is actively looking for the object according to the classification of the ads, whether rooms for rent or chimney-sweeping services. Classified ads today have many digital manifestations, such as dating or property-finding websites, when both parties, the seller and the prospective buyer, are looking to find one another. But the individually tailored advertising that appears in some other contexts is more one-sided. The consumer has no choice in what is put there in front of them, even though it is their past activity and consequent profile which has (in one sense) determined it. Such ads are personal to the point of a direct interpellation that borders on the uncanny, popping up next to an email inbox, say, on the day that the person was earlier googling some related product in what they may have naively thought was the privacy of their own time and place. Crucially, in the context of Rosenberg’s book, the ad received will be one that seeks to solicit and attract attention away from whatever task or pursuit the consumer is otherwise engaged in on their screen. A classified one-on-one ad, by contrast, will likely have no enhancement—no would-be enchantment—at all. It is plain information, no more.

Coming full circle, back to something not unlike the direct address of a classified newspaper listing, the new modalities of online listings and targeted digital advertisement now have the effect of putting mass advertising into the shade. In the twentieth century, all-dominant and ubiquitous, mass advertising looked as if it would last for ever. But today it appears as having been only one phase, the twentieth-century moment, in the long history of public informational announcement and persuasion (that’s my considered and etymological gloss on the word “advertising”).

I would like to end by talking about a question of language history. One of the oldest and most obvious points of contention around the legislative control of advertising concerns its hypothetical truth or falsity. Can the claim in the ad be justified? Is it evidence-based? The factually false can be called out, potentially; but advertising – such is its enchantment—typically works in ambiguous ways that may make it difficult to adjudicate its claim to be stating a fact. Therein lies the difficulty for the would-be regulator—and with it, much of the matter of Rosenberg’s book.

One of Rosenberg’s most memorable case studies, in this regard, is that of supposedly pregnancy-ending pills: in other words (using the nasty technical term) “abortifacient” tablets intended to bring about a miscarriage. The double bind here was that if they worked, they were doing something against the law –and the ads were advertising an illegal product. If they didn’t work, then they were not doing what they were purchased to do; but there was no possibility of comeback or protest, since that purpose was clearly against the law. Advertising for such pills avoided liability through a cloudy lack of specificity in the product description; it would obviously not make

practical sense to announce the sale of a patently prohibited product. Instead, a coded language referred vaguely to “blockages” or “irregularities,” and promised to relieve them.

Rosenberg brings out the strength of the coded language here: understood by all concerned, yet not open to condemnation on legal or linguistic grounds, precisely because there were no specifically incriminating terms. But it is not so clear what, at the time – the late nineteenth-century time —*could* have constituted a factual statement of the situation the pills were supposed to put right. Our own twenty-first-century culture refers to “a pregnancy” and its “termination,” with terms that in their own way are coded as scientifically neutral. Legal and ethical arguments relate to the age of the foetus at the time of its removal from a uterus. No nineteenth-century woman would have had or used such a vocabulary, such a conceptual framework (and nor, for that matter would a medical man or anyone else); it was not available, not part of the culture. The words or the understandings that were or might have been used by ordinary people for this delicate predicament are not even fully known, since – as with all matters close to bodily and especially to sexual experience, such understandings have left few written records; they can only be guessed at. Given that there was no visual picture of the contents of a womb –no scanning or foetal imaging, as we say it and see it today–then the view of those first weeks must have been quite different: more to do with a vague wondering or possible future expectation of an eventual baby than with the sense of a definite process taking its course. Nor was there any would-be scientifically accurate test, one way or the other, in relation to this time –let alone the over-the-counter kits that became available in the later part of the twentieth century. There were only missed periods – irregularities–at first, of a necessarily indeterminate nature. The advertising descriptions, therefore, may not have been so far from the everyday ways of thinking about this situation of what we would now refer to, in our strangely abstracted way, as the first “trimester” of a pregnancy – whether dreaded or wished for.^[1]

And as Rosenberg’s book shows many times, there is a broader issue here, which this extreme example shows up. Arguments about truth claims in advertising depend on a clear-cut notion of what counts as fact, as a neutral and unembellished description of a product and its use. But as with the changing descriptions and understandings of early pregnancy, the factual is itself a variable, even an ideological construct, and it has its own powers of persuasion *qua* fact. In that context the consumer may well be someone who likes to imagine themselves as not swayed by emotional factors but interested only in the information, stripped bare of any enhancement or enchantment.

Consider for instance the delightful American discussions, in the interwar period, of effective advertisements for cars, able to appeal to those who regard themselves as impermeable to specious “sexing up,” to use a term that acquired a sudden currency in twenty-first century Britain. Show the glamorous image, by all means, the big new beautiful automobile and perhaps the attractive female to take for a drive in it; but also provide all the down-to-earth specs and stats, the practical features, the

reasonable price, the reasonable gas consumption in miles per gallon. That way the prospective purchaser can imagine that he is making a choice on rational grounds; he can ignore or deny the influence of the emotional forms of persuasion in the image that surrounds the realistic factual information. Already in the 1930s this dual mode of advertisement is theorised in just this way, and by reference to two distinct “types” of consumer –the romantic (happy to see himself as seduced) and the classical (who likes to think of himself as making a sensible, thought-through choice).^[2] Versions of just the same game continue to be played in the advertising of today –not least with the marketing that highlights the environmentally beneficial (or at least not harmful) characteristics of a car or other product that is also, at the same time, being sold in relation to clearly non-rational, magical criteria.

What’s the answer and what’s the future? Rosenberg’s book gives us a wealth of material for thinking further about the questions whose concrete institutional beginnings it lays out with such dedication and clarity. Everyone should read it. Everyone should also enjoy it!—and, as Rosenberg does, should ponder and analyse the enchantments by which we continue to live, to buy and not buy, in our twenty-first century world.

^[1] On changing representations of pregnancy and abortion see Barbara Brookes, *Abortion in England 1900-1967* (1988; London: Routledge, 2014).

^[2] On the marketing of cars between the wars as either functional or fanciful, see further Rachel Bowlby, *Shopping with Freud* (London: Routledge, 1993), 97-100.



JUN20

Lyle Enright

Disenchantment and Mass Advertising



I'm grateful to Jonathan Heaps, [whose review of Reitter and Wellmon's *Permanent Crisis* here in *Genealogies of Modernity*](#) allows me to launch into this present review of [Anat Rosenberg's *The Rise of Mass Advertising: Law, Enchantment, and the Cultural Boundaries of British Modernity*](#) with a little more momentum:

Reitter and Wellmon do us the favor of spelling out explicitly how [Max] Weber conceived of "disenchantment." Certainly, it involves displacing the central role played by the "supernatural"... in modern society's sense of how the world is ordered. But... what moves in to take its place [is] a belief in the rational agency of fellow human beings to order the world. I may not know how the streetcar or

my smartphone or (more troublingly) the global economy works, but surely someone does.

Weber's concept of "disenchantment" is central to Rosenberg's massive new study, and she adds to it an important wrinkle. Disenchantment is not merely the displacement *of* the supernatural *by* the rational agency of human beings, but "the displacement of the sacral and supernatural *into* the rational, technical, and capitalistic" (emphasis mine).

If, as Heaps says, "surely someone knows" how the global economy works even if I don't, then Rosenberg is interested in how that gap in understanding creates opportunities for enchantment to reassert itself. If I am mystified by the workings of global capitalism, my fascination isn't so much bound up in the economic warp and weft *per se* but in those who claim to understand it; I am enchanted, in other words, *by expertise*.

The contests of expertise lie at the heart of Rosenberg's cultural legal history of early mass advertising, tracing its legal shaping between 1840 and 1914. Rosenberg chooses advertising as her focal point because the legal arguments around its development index the cultural changes happening as industrial Britain renegotiated its relationship to labor. The very idea of "legal expertise" emerged concurrently with efforts to defend journalistic, artistic, and scientific expertise against the perceived excesses of marketing and ad copy.

This legal history also gives us another angle for assessing the disenchantment narrative. "Advertising was criticized for its rationalist shortfalls," Rosenberg writes, "as it did not live up to the highest ideals of aesthetic appreciation, objective knowledge, and impartial information." And yet these very standards, the argument continues, did not *align* with the already-held values of a disenchanted culture; rather, they *performed* the cultural project of disenchantment in an effort to normalize it: "Languages of rationalism and its failures disavowed the significance of enchantment by advertising, and so affirmed modernity-as-disenchantment... Placing legal powers, forms, and logics behind disenchantment turned a wavering ideology into a form of normative enterprise."



This gesture, Rosenberg shows, would come with a price. For, while legal scholars disenchanted the world by helping form new ideas of expertise, certain domains got left on the table. Who, for instance, possessed “expertise” over matters of emotion and desire? Clearly, many legal decisions assumed human affect would get subsumed into the thoroughly rational domains of the emerging British culture.

But this was not, in fact, what happened. Then as now, Rosenberg says, narratives of disenchantment often fail to reckon with the persistence of enchantment in and through modernity, what she calls a “will to enchantment” that became its own realm of expertise, presided over by the “magicians, rites, and formulae” of the advertising industry. Debates about advertising’s legal status became, paradoxically, good marketing for marketers, and allowed many forms of enchantment to endure at the turn of the century.

Thus, mass advertising appears to buck traditional narratives of disenchantment. Indeed, the “will to enchantment” emerges not despite, but rather *because of* the efforts made to define and denigrate advertising alongside other forms of speech. Across these legal cases, disenchanted modernity reveals itself less as a fitting description of the time, and more as a *deliberate social project*. When advertising threatened that project through

mystification and affect, the law stepped in to regulate. It succeeded, but at the cost of producing an enchanted niche where advertisers could operate as “experts,” not of medicine, science, or even art, but as “rational tamers” who “design[ed] and control[led] the non-rational mind.” In this domain, promises of magic and miracle floated free of the rationalist inhibitions that governed other forms of information at the time.

Chapter to chapter, Rosenberg offers a reception history of mass advertising and its enchanting powers through the legal language and debates redefining British social life across the latter half of the nineteenth century. Chapter 2, for example, details the ways news printers availed themselves of legal options to distinguish the business of “information” from advertisements and enshrine their products as superior. Scapegoating advertising in this way vouchsafed journalism as a “rational” enterprise, free of profit motives, but it also reinforced the “mystical” quality of advertisements-as-information, and the role of advertising “enchanters” in the “creation of desire.”

Advertisers also ran into the need to justify themselves for the aesthetic effects they had on the environments they contested alongside other visual media (Chapter 3). As private, civil, and day-to-day law flexed its various muscles over questions of art, it “entrenched a previously unstable conceptual opposition between commerce and beauty.” Again, despite these debates around aesthetics, the so-called non-rational (re: enchanted) aspects of visual experience were not considered in these arguments and so tacitly ceded to the expertise of advertisers.

Even more than art, science was defined by ideals of restraint that typified scientific method, logic, and subjectivity. Meanwhile, their negation—in the form of exaggeration—defined advertising and the consumer market (Chapter 4). As legal debates around “quackery” ensued, medicine’s association with scientific truth became stronger through negative comparisons to market exaggerations, which further downplayed the seriousness of enchanted viewpoints among consumers.

These debates directly led to the doctrine of “puffery,” an unprecedented legal innovation which protected and governed advertising speech precisely by denigrating it and producing a hierarchy within market speech (Chapter 5). The doctrine implied that anyone who bought into such “unenforceable speech” as advertising, was, quite simply, stupid in a technical-legal sense.

Rosenberg notes puffery as a touchstone within the history of disenchantment, because it at once exposes and belies the hope that industrial capitalism would produce a new, rational culture in which reason governed the market. It was, at the time, the most explicit legal denial that enchantment still played any role in

society. These expectations would also influence laws against gambling and indecency, which at once created a rational subject and judged them for their (irrational) failings rather than holding advertising language accountable for its effects (Chapter 6).

Again and again, legal decisions in speech-related cases worked to define a perfect, rationalistic citizen who could operate in the new market—with the caveat, of course, that the citizens imagined by this project did not really exist. Taking advantage of holes in these definitions, and of actual rather than ideal human psychology, advertisers emerged as “experts” on non-rationality, partly motivated—even forced—by the many legal strategies used to curb their influence.

There is another leaner, though perhaps more divisive way of saying all this: beginning in the nineteenth century, advertising became a scapegoat against which other spheres of British social life could define themselves as “progressive, knowledgeable, and moral.” On the flip side, mobilizations of the law “disavowed [advertising’s] enchantments to such an extent that enchantment became an attractive field of action for advertisers, free from direct legal attention.” It was precisely *in* scapegoating advertising’s enchanting powers that British culture invested advertisers with expertise over the enchanting, the magical, the irrational—and yes, even the sacred.

I use the language of scapegoating deliberately here, as I think Rosenberg’s argument shares some interesting valences with Rene Girard’s theories of mimetic desire, the scapegoat, and the sacred. In Girard’s work, the scapegoat is a person, violently expelled in the name of social cohesion. Here, however, it is an *idea* that serves as an “other” to an imagined cultural ideal. British culture did not need to define its perfect rational citizen when it could, instead, denigrate the perceived irrationality of advertising and, by extension, the sort of person to whom it appealed. Yet in a process much like the deification of the sacrificial victim (Rosenberg likens it to the Freudian “return of the repressed”), advertisers latched onto the margins of this social project and claimed for themselves expertise over all those elements of human psychology that exceeded instrumental rationality.

Closing out his own reflection on disenchantment, Heaps concludes, “this belief [that “surely someone” somewhere understands what’s going on] may turn out to be no less spurious than ancient trust in the haruspex, but its object is radically more immanent.” Rosenberg’s history of the rise of mass advertising showcases a particular form of this spurious trust, and provides a keen insight into dis/enchantment along the way. We are not, it turns out, enchanted by the haruspex, the economy, or the dispositions of a sheep’s liver as such, but rather by what they might mean. And when we cannot discern these meanings for

ourselves, we become enchanted by those who can mediate meaning for us. We displace our awe onto experts.

This is perhaps the biggest hole Rosenberg punches into the disenchantment narrative: the very idea of the “expert” in disenchanted modernity seems to rely less on the meritorious work of specialists than on citizens willing to defer to the judgments of other rational human agents. And this is a spurious trust indeed when it rescues the average person from exercising their own capacity for discernment. According to nineteenth-century British legal theory, every gambler is a failed citizen on precisely these grounds, and yet the “ideal citizen” imagined by disenchantment is one who is more than willing to trust that “surely someone, somewhere” knows what’s going on.

Two hundred years later, it appears that the forms of “expertise” grown by advertisers at the margins of the post-industrial West have come to dominate our own culture. Meticulously-branded “experts” proliferate like rabbits on social media, podcast platforms, and bestseller lists. Their sheer quantity contributes to a new form of experience, a simultaneous disenchantment-through-and-of-enchancement. Mass media now overwhelms consumers with variety and spectacle to the point where they have *too much* data for decision-making and so rely on the most striking pictures or the most heart-rending stories. No less than our predecessors, we possess a “will to enchantment,” but today our affect is provoked and our finitude brought into relief not by wonder at our own understanding, but by shock over the sheer volume of our information. A shock we cope with through an overabundance of tightly tooled experiences that increasingly border on the religious, in which authority and celebrity coincide absolutely.



Rosenberg’s study reminds us that we can’t just assume modernity means a sundered sacrality. Rather, our discovery that we can *produce* the sacred means there is potentially more of it than ever before. It is not our increased understanding of the world that secularizes it, but our increasing refusal to ask questions about what the sacred is. This is, perhaps, the upshot of modernity: that it gets us to ask where the feelings of sacrality and transcendence even come from in the first place.

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

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

(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.

IAIN RAMSAY

KENT LAW SCHOOL, UNIVERSITY OF KENT

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