



A University of Sussex PhD thesis

Available online via Sussex Research Online:

<http://sro.sussex.ac.uk/>

This thesis is protected by copyright which belongs to the author.

This thesis cannot be reproduced or quoted extensively from without first obtaining permission in writing from the Author

The content must not be changed in any way or sold commercially in any format or medium without the formal permission of the Author

When referring to this work, full bibliographic details including the author, title, awarding institution and date of the thesis must be given

Please visit Sussex Research Online for more information and further details

UNIVERSITY OF SUSSEX

*Regulating Gender Stereotypes in Advertising:
A Socio-Legal Analysis*

David Davies

A thesis submitted to the Department of Law of the School of Law, Politics and
Sociology for the Degree of Doctor of Philosophy

Brighton, July 2018

DECLARATION

I certify that the thesis I have presented for examination for the PhD degree of the University of Sussex is solely my own work. I hereby declare that no portion of the work that appears in this study has been used in support of an application of another degree in qualification to this or any other university or institutions of learning. The copyright of this thesis rests with the author. No quotation from it should be published without prior written consent and information derived from it should be acknowledged.

Signature

Thesis Abstract

This thesis analyses the European Union's powers to challenge gender discrimination in the private sphere by combatting harmful gender stereotypes in advertising. It evaluates various forms of 'good practice' through legislation, regulation and policy at member state level and conceptualises what a unified code of regulation might look like in the light of the European Commission's failure to incorporate a provision on advertising in the Goods and Services Directive of (2004). The thesis investigates the European concern to challenge gender stereotypes in advertising through 'soft law' measures such as action programmes, roadmaps and parliamentary opinions and critiques the lack of progress at both European and national levels. Thus, demonstrating the inadequacy of the Audio-Visual Media Services Directive (2010) (currently under review) which has failed to achieve a unified code on gender stereotypes or indeed to provide effective mechanisms to tackle what the Commission deems to be harmful advertising in an age of pervasive online activity.

This thesis seeks to address the gaps left by the two Directives by scrutinising the ways in which gender stereotypes are tackled at the national level in three jurisdictions: United Kingdom, Spain and Sweden. Taking a comparative and socio-legal approach, the thesis analyses the effects of European level regulation within the domestic systems given their different legal frameworks, legal cultures and differing attitudes to gender equality and regulation of advertising. Against the backdrop of the sociological theory of Erving Goffman, and the concept of performativity developed by Judith Butler, the thesis explores the intersection between law and sociology; the interface between regulation and the performance of gender in everyday life. Drawing upon interview and focus group data from the three countries, the thesis exposes the gaps between theory, law and practice in the failure to regulate adequately advertising imagery and to ensure gender equality in Europe. Notably, focus group data will be presented to demonstrate how teenagers in the three member states feel about the use of gender stereotypes in advertising with data from interviews of academics, practitioners and regulatory bodies exploring how individual member states are tackling the problem. Bringing together discourses from the self-regulatory bodies, NGOs, academics and focus group participants, the thesis offers recommendations for best practice to tackle the negative effects of gender stereotyping in Europe.

List of Images

- Figure 1 'Feminine Touch' taken from Gender Advertisements (1979)
- Figure 2 Dolce and Gabbana Advert (2015/16)
- Figure 3 Coca-Cola Christmas Advert 2015
- Figure 4 Chanel Advert (2015)
- Figure 5 Dolce & Gabbana Advert (2015)
- Figure 6 Dolce and Gabbana Advert (2016)
- Figure 7 Gillette Venus Razor Advert (2015)
- Figure 8 Lego Advert (2013)
- Figure 9 Patek Philippe Advert (2014)
- Figure 10 Nivea Cream Advert (2015)
- Figure 11 'The Focus Group' from Mad Men (2010)
- Figure 12 Tomato Ketchup Advert (1952)
- Figure 13 Banned UK Advert 'Courage Bitter' from (2010)
- Figure 14 Protein World Advert (2015/16)
- Figure 15 Stills taken from the Asda Advert (2013)
- Figure 16 Fiat 500 Motherhood advert (2013)
- Figure 17 Schutzman's work on Hysteria
- Figure 18 Screen shot from UK focus group Visual Diary (2015)
- Figure 19 The Birth of Venus by Botticelli circa (1484)
- Figure 20 Frida Kahlo Self Portrait (1938)
- Figure 21 L'Oreal Advert (2015)
- Figure 22 Media Markt Advert from (2011)
- Figure 23 Screenshot from Kellogg's Special K Advert (2010)
- Figure 24 DKNY Advert (2015)
- Figure 25 RyanAir Calendar Advert (online) (2014)
- Figure 26 Picture from the London Underground September (2015)
- Figure 27 Yves Saint Laurent Advert (2015)
- Figure 28 Multiópticas Protest in Seville May (2015)
- Figure 29 RyanAir Advert that featured in three UK newspapers (2011)
- Figure 30 RyanAir online banner advertisement. 'Click here to buy the RyanAir crew's calendar (2011)
- Figure 31 RyanAir online banner advert '*the fares are red hot and so are the crew*'
- Figure 32 Screen Shot from Cillit Bang Advert (2015)
- Figure 33 Screen shot taken from American Apparel Instagram (2014)
- Figure 34 Figure 1 Screen shot taken from American Apparel Instagram and Website (2014)
- Figure 35 Screenshot from Pretty Little Thing Advert (2017)
- Figure 36 Screen Shot from Twitter handle @A_MaurerPrager depicting 4 separate graffitied adverts from London Underground (2015)

Figure 37 Protein World Kardashian Advert (2017)

Abbreviations

ASA	(UK) Advertising Standards Authority
AVMS	The Audio-Visual Media Services Directive
BPfA	Beijing Platform for Action
BCAP	The UK Code of Broadcast Advertising
CAP	Committee of Advertising Practice
CEDAW	Convention for the Elimination of All forms of Discrimination against Women
CJEU	Court of Justice of the European Union
EASA	European Advertisings Standards Alliance
EESC	European Economic Social Committee
EC	European Commission
ECHR	European Convention of Human Rights
ECtHR	European Court of Human Rights
EP	European Parliament
EEC	European Economic Community
EU	European Union
EWL	European Women's Lobby
FEMM	The Committee on Women's Rights and Gender Equality
MEQR	Measure having equivalent effect
OIM	Women's Image Observatory (Spain).
OfCom	Office for Communication (UK)
PSOE	Spanish Socialist Party
RO	Reklamombudsmannen (Sweden's advertising regulator)
SDP	Swedish Social Democrat Party
SRO	Self-Regulatory Organisation (i.e. the UK's ASA)
TEU	Treaty on the European Union
TFEU	Treaty on the Functioning of the European Union
TWFD	Television without Frontiers Directive

Contents

Chapter 1	10
Introduction.....	10
1.1 Context: Gender Stereotypes as Contemporary Legal Issue	10
1.2 Themes and Frameworks	12
1.3 Mixed Methods	15
1.4 Elite interviews.....	17
1.5 Focus Group Interviews	17
1.6 National Perspectives and Legal Cultures.....	18
1.7 Chapter Outline and Research Questions.....	20
Chapter 2	25
Gender Stereotypes: A New Challenge for the European Union's 'Gender Regime'	25
2.1 Introduction	25
2.2 Contextualising the 'gender regime' within Europe: Gender Equality Competence.....	26
2.3 Gender and the Emerging 'Competence Catalogue'	28
2.4 Lisbon and Beyond.....	31
2.5 An Emerging 'European' Media Competence	35
2.6 EU Media and Advertising Competence.....	37
2.7 Advertising Regulatory Standards and Free Movement Case Law	41
2.8 Conclusion.....	46
Chapter 3	48
The EU Gender Regime: Stereotypes as a Form of Discrimination.....	48
3.1 Introduction	48
3.2. The 'Gender Directive'	54
3.3 Curbing Gender Stereotypes: Soft Law Approaches	58
3.3.1 The Roadmap to Equality Programme (2006-2010).....	60
3.3.2 FEMM Report on Eliminating Gender Stereotypes in Advertising and the Media	63
3.3.3 The Draft Report on Eliminating Gender Stereotypes in the EU 2013.....	64
3.3.4 Opinions from the Parliament	65
3.3.5 The European Advertising Standards Alliance	68
3.4 The Audio-Visual Media Services Directive	69
3.5 Conclusion.....	72
Chapter 4	75
Theoretical Framework	75
4.1 Introduction	75
4.2 Performative Identities	77
4.3 Gender as Script	79
4.4 We 'Do' rather than 'Are'	79
4.5 Dramaturgy: 'All the World's a Stage'	81
4.6 Exit This Way: 'Front' and 'Back' Stage.....	82
4.7 Parameters of the Performance	85

4.8 Front Stage as a Gender(ing) Performance	86
4.8 Advertising: Making the Familiar Strange.....	92
4.9 Re-coding Gender Displays	98
4.10 Observing Themes in Gendered Advertising.....	104
4.11 Conclusion.....	106
Chapter 5	108
Methodology	108
5.1 Introduction	108
5.2 Socio-Legal Research: Strange Bedfellows or Obvious Companions?	108
5.3 Bridging the Gap: Qualitative Sociological Research Methodology.....	111
5.4 Listening Beyond the Mirror: Developing a Feminist Perspective.....	112
5.4.1 Images and Imaginations.....	117
5.4.2 Sampling Strategies: Size and Natural Selection.....	122
5.4.3 Selecting Participants: Autonomy, Novelty, Surveillance and Class.....	123
5.4.4 Autonomous Actors and Creative Agents.....	124
5.4.5 Surveillance.....	126
5.4.6 'Fitting in'	128
5.4.7 Cohesion and Solidarity	131
5.5 Language barriers, conflict and solidarity.....	133
5.6 Elite Interviews and National Perspectives.....	134
5.7 Revisiting Goffman: Encoding and Decoding	135
5.8 Conclusion.....	137
Chapter 6:.....	139
Teenage Critiques of Advertising	139
6.1 Introduction	139
6.2 Revisiting Goffman's Gender Display Codes.....	140
6.3 Theme One: Mothers.....	141
6.3.1 The Mother – The Multitasker	145
6.3.2 Motherhood as irony	150
6.4 Theme Two: Women on the Verge.....	153
6.5 Theme Three: The Objectified Self.....	167
6.5.1 Ritualization of Subordination	168
6.5.2 Resistance and Mockery.....	175
6.6 Conclusion.....	178
Chapter 7	181
Ambulance or Fence? National Perspectives on Regulating in Advertising	181
7.1 Introduction	181
7.1.1 Normative Legal Instruments.....	181
7.1.2 Towards Democracy-Driven Freedom of Expression.....	184
7.2 Sweden.....	185
7.2.1 The Swedish System of Government.....	187
7.2.2 Conflicting principles: The 'freedom of expression constitution' vs Gender Equality	189
7.2.3 The 'Golden Child' of Gender Equality.....	190
7.2.4 Self-Regulation in Sweden: Prohibition to Pillory.....	197
7.2.5 Reklamombudsmannen	198
7.3 Spain.....	202

7.3.1 System of Government and Constitution	203
7.3.2 Criminalising <i>Machismo</i> : Gender Equality and ‘La Nueva Via’	206
7.3.3 Gender Violence Act 2004	207
7.3.4 Background to the Act	207
7.3.5 Ryan Air Calendar Case	210
7.3.5.2 Reification of women	211
7.3.6 Self-regulation	214
7.3.7 Cillit Bang Case	218
7.4 The UK	219
7.4.1 Self-Regulatory System	221
7.4.2 The Codes	222
7.4.3 The American Apparel Ruling	226
7.4.4 Asda Christmas Advert	234
7.4.5 Future of the Advertising Standards Agency	236
7.4.6 Who’s Watching the Watchmen? The Impact of Brexit on UK Advertising Regulation	237
7.5 Conclusion	240
Chapter 8	242
Conclusion	242
8.1 Findings	242
8.2 What does a best practice look like?	245
8.3 The Fence or Ambulance?	246
8.4 Regulating the Objectified Body	248
Bibliography	253
Articles and Books	253
Case Law	266
Appendices	268
Elite Interview Question List	268
Participation Information Sheet and Consent Forms	Error! Bookmark not defined.

Acknowledgments

This thesis is the product of countless conversations with friends and colleagues who have, in one way or another, helped me overcome hurdles along the way. I would like to express my sincere gratitude to my two supervisors, Sue and Susie for their unwavering support throughout the process. Our conversations throughout the PhD made me feel like I had something to say and I

I also wish to thank my fellow PhD colleagues and Staff at LPS who have made me feel at home over the years. There are far too many to name, but I want to express particular thanks to Marias, Mary-Frances, Gill, Pedro, Haydar, Gizem, Po-Han and Ciara.

Thank you to all my family too. My mum and dad and my two sisters Corinne and Rhiannan – you have always supported me in your own way. Also to my dog, Dot, the perfect companion when writing up – you didn't judge me once.

Last but not least, I would like to thank Sarah, a kindred spirit I met along the way.

Chapter 1

Introduction

1.1 Context: Gender Stereotypes as Contemporary Legal Issue

This thesis is a socio-legal analysis of the European Union's powers to challenge gender discrimination in the private sphere by combatting gender stereotypes in advertising. It evaluates various forms of good practice from three case studies: Sweden, Spain and the UK, by focusing on legislation, regulation and policy at Member State level and conceptualises what a unified code of regulation might look like. The genesis of the thesis is interconnected with the European Commission's failure to incorporate an article on advertising¹ and the media in the Goods and Services Directive ('The Gender Directive') of 2004.² The Directive's original aim was partially a symbolic one: a move to tackle the deep-seated and numerous forms of institutional sexism and discrimination that citizens encounter whilst pursuing access to services such as education, advertising and mass media. At the time of drafting, the UK and Germany were heavily involved with the overall tone and outlook of the Directive and subsequently lobbied for the removal of any language that sought to prohibit gender stereotypes in advertising. The Directive was eventually finalised and transposed into UK law in 2007 with very little fanfare.³ Since the article's dethronement, the European Commission – in unison with the European Parliament – retreated on the omission and persevered in challenging gender stereotypes in advertising through 'soft law' measures such as action programmes and

¹ Caracciolo Di Torella, E. (2006). The Principle of Gender Equality, the Goods and Services Directive and Insurance: A Conceptual Analysis', *Maastricht Law Journal* 339 and Masselot, A., (2007). The state of gender equality law in the European Union. *European Law Journal*, 13(2), pp.152-168. See also (unpublished) Masselot, A. (2007). The Future of Gender Equality Outside the Workplace, in S. Millns and M. Mateo Diaz (eds.) *Gender Equality and the Future of the European Union*

² Council Directive 2004/113/EC of 13 December 2004 implementing the principles of equal treatment between men and women in the access to and supply of goods and services [2004] OJ L 373

³ At the time the Directive did cause quite a stir in the British media with regards to its indirect implications towards gender discrimination and access to car insurance. See for example: Simon Reed 'European sex ruling on car insurance should not drive women over the edge' *The Independent* (London 5 March 2011)

roadmaps.⁴ The political arm of the EU has since dominated the discourse on regulation of the portrayal of gender within advertising for the past decade but there has been very little progress in terms of substantive law. National governments,⁵ advertising regulators⁶ and non-state actors alike have postured on combatting the traditional forms of advertising on buses, metro lines⁷ and billboards, yet there has been little progress in the UK and many other EU Member States.⁸ Moreover, there has been less focus on the evolution and pervasiveness of online advertising which includes social media apps, video on demand and catch-up TV. In 2012 the Audio-Visual Media Services Directive⁹ went some way towards addressing some of these concerns but has thus far remained redundant in achieving a unified code on gender stereotypes or indeed proving for what the Commission deems ‘harmful’ advertising.¹⁰

This thesis therefore seeks to address these gaps left by these two Directives. It is concerned with the EU’s competence to combat gender stereotypes in advertising but also explores the technological advancement and pervasiveness of online and ‘traditional’ forms of advertising. The research looks towards the EU’s Member States, how they combat gender stereotypes and

⁴ See Part 5.3 in the Roadmap to Equality (2006-10), The Opinion of the European Economic and Social Committee and follow up strategy [2010/C354/0] and Advisory Committee on Equal Opportunities for Women and Men Opinion ‘Breaking Gender Stereotypes in the Media, The Parliament Resolution (3 September 2008) on how marketing and advertising affect equality between women and men [2008/2038] and ‘The Liotard Report’ on eliminating gender stereotypes in the EU [2012/2116 (INI) 06.12.12] and the subsequent adoption of the report on 12th March 2013.

⁵ As part of Spain’s social reforms under President Zapatero, the Spanish Parliament passed a national law on Gender Based Violence which incorporated amongst other elements a ban of certain gender stereotypes in advertising. See EIGE report on the 2004 Act: <<http://eige.europa.eu/gender-based-violence/resources/spain/ley-organica-1-2004-de-28-de-diciembre-de-medidas-de-proteccion-integral-contra-la-violencia-de-genero>> (accessed 21st January 2018)

⁶ In 2011 The European Advertising Standards Alliance, a pan- EU quasi watchdog sought to ‘encourage’ Member States of the EU to take the International Chamber of Commerce’s ‘social responsibility’ code seriously and implement rules that limit the use of gender stereotypes in advertising. See also the ‘Portrayal of Gender’ report by the EASA in 2008 <<http://www.easa-alliance.org/issues/gender>> accessed 20 April 2018

⁷ For Example, London Mayor Sadiq Khan moved towards banning adverts that featured or promoted unrealistic bodies and ‘fat shaming’ techniques. See Jasper Jackson ‘Sadiq Khan wants to ban body shaming ads from London Transport’ *The Guardian* (London) 13 June 2016

⁸ At present the UK Advertising Standards Authority is in the process of banning ‘gender stereotypes’ from traditional forms of advertising. The ASA have launched a public consultation on the issue. Such a ban would be limited to certain forms of ‘traditional’ advertising practices such as billboards/bus tops in public spaces. see <<https://www.asa.org.uk/news/consulting-on-a-new-rule-to-tackle-harmful-gender-stereotypes.html>> accessed 18 April 2018

⁹ Council Directive 2010/12/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audio-visual media services (Audio-visual Media Services Directive) [2010] OJ L95/1

¹⁰ Op.cit., Masselot A. (2007) p.151-555

what a European code of best practice may look like. The void in EU law will be scrutinised and evaluated by looking at three national perspectives – the UK, Spain and Sweden. Firstly, this investigation will evaluate the Member State’s national legislation, policies, regulation, and self-regulation of advertising. Sweden and Spain are frequently¹¹ seen as ‘spearheading’ the prevention of harmful gender stereotypes in advertising and therefore act as a guide in constructing a regulatory code. The UK national legislation and policy on regulating advertising will also be explored in the research. In recent years other member states have progressed in tackling harmful gender stereotypes. Unsurprisingly, these are Nordic countries, Finland, Iceland and Denmark are heralded as leading the way in self-regulation and legislation. I have chosen Sweden as a case study as it problematizes the ease of transferring gender equality policies and legislation from one state to another. It should be relatively easy for one Nordic country to follow the lead from its neighbours, however with Sweden’s case, this transfer has transfer of law has been complicated by numerous political and legal barriers. On the other end of the spectrum, Spain would at first appearance not seem to be a state at the forefront of gender equality and legislation, particularly sexist advertising. However, in contrast to Sweden, Spain as a case study offers insight in to how the removal of harmful gender stereotypes requires radical reform and political will to remove the legal barriers that have marred Sweden’s attempts. Secondly, empirical research from these three Member States will inform an analysis of the social context and consequences of stereotypes in advertising. Focus groups with teenagers from across the three Member States have been used to develop a richer understanding of attitudes towards advertising exploring how teenagers feel about the use of gender stereotypes in advertising. Elite interviews with academics, practitioners and regulatory bodies informs analysis of how the individual Member States are tackling the issue. Discourse from the self-regulatory bodies, NGOs, academics and focus group participants from the three Member States contributes to the development of a ‘solution’ towards adopting a unified regulatory code.

1.2 Themes and Frameworks

¹¹ Op.cit., EASA Report (2008); ‘Reklamera’: Sexist Advertisements in the Nordic Countries – An Evaluation of Regulations and Implementations Report (2016) and European Parliament Report: Women and Girls as Subjects of Media Attention and Advertisement Campaigns: ‘The Situation in Europe, Best Practices and Legislation’ (2013)

The central framework of the research focuses on the broader question of EU powers and supremacy concerns¹² surrounding the EU's capacity to legislate on gender and advertising.¹³ The thesis focuses on two EU competences – gender and media – and the wider evolving 'competence catalogue'. The scope of 'shared competence' and the EU's role in shaping wider media and gender-based law is explored in the literature and through analysis of the jurisprudence of the Court of Justice of the EU. The second area of the literature concerns the two main Directives within this research. The first group of commentators have criticised the negotiations process of the two main Directives embedded within this thesis. The Gender Directive¹⁴, including the controversial lobbying process¹⁵, the removal of its advertising article and general analysis and evaluation.¹⁶ Scholars have commented on the drafting of the AVMS Directive¹⁷ and its shortcomings.¹⁸ This literature largely falls within three categories: the first is the EU media competence,¹⁹ the 'gender regime'²⁰ of the EU and secondly soft law approaches²¹ to combatting gender stereotypes and third parties that are instrumental in promoting the issue.²² The third part of the legal literature falls within the analysis of national perspectives. Here, I look towards three case studies: Spain, Sweden and the UK and how they have sought to combat gender stereotypes in advertising. Legislation, policies, advertising regulation, and self-regulatory advertising models will be discussed and analysed in the final

¹² Pollack, M.A. (2000). The end of creeping competence? EU policy-making since Maastricht. *JCMS: Journal of Common Market Studies*, 38(3), pp.519-538.

¹³ Susan Millns in Irving, H. ed., (2017). *Constitutions and Gender*. Edward Elgar Publishing. pp.253-254

¹⁴ Op. cit. Masselot, A. (2007) p.155

¹⁵ Calvero, S. and Galligan, Y. 'Justice, Democracy and Gender' in Galligan, Y. (ed) (2012). *Deliberative Processes and Gender Democracy* (No. 1/12). Case Studies from Europe, ARENA Report.

¹⁶ Op. cit., Carraciolo Di Torella, E. (2005) p. 339

¹⁷ Little, V. (2008). Audiovisual Media Services Directive: Europe's Modernization of Broadcast Services Regulations. *U. Ill. JL Tech. & Pol'y*, p.232

¹⁸ Lorna Woods, 'What would the impact of Brexit be on U.K media regulation?' (LSE Law Blog 13 September 2016) <http://blogs.lse.ac.uk/mediapolicyproject/2016/09/13/what-would-be-the-impact-of-brex-it-on-uk-media-regulation/> (accessed 18 October 2017)

¹⁹ Ward, D. (2002) *The European Union democratic deficit and the public sphere: an evaluation of EU media policy*. Vol. 8. IOS Press and Ferrés, J. and Piscitelli, A., (2012). Media competence. Articulated proposal of dimensions and indicators. *Comunicar*, 19(38), pp.75-81..

²⁰ MacRae, H. (2006). Rescaling gender relations: The influence of European Directives on the German gender regime. *Social Politics*, 13(4), p.530 and Kantola, J. (2010). *Gender and the European Union*. Macmillan International Higher Education p.6

²¹ Trubek, D. M., & Trubek, L. G. (2005). Hard and soft law in the construction of social Europe: the role of the open method of co-ordination. *European Law Journal*, 11(3) p.351

²² For example, the EASA's code on gender representation in advertising see <<http://www.easa-alliance.org/ad-standards/what-are-ad-standards/codes>> accessed 18 April 2018

chapter along with the voices of regulators, legal commentators and experts from each country. This thesis aims to underline what best practice may look like and think towards better guidelines for advertising regulation.

The theoretical framework combines two broad interlocking sociological theories: Erving Goffman's conceptualisation of dramaturgy,²³ frame analysis²⁴ and 'gender display' in advertisements²⁵ to understand visual representations of gender alongside social constructionist feminist theorisations of gender as performative²⁶ through the work of Judith Butler. The theoretical framework explores Butler's theory of performativity and Goffman's dramaturgical approach in conjunction with social constructionist and feminist theory to highlight the issues surrounding gender stereotypes in advertising. Performativity is used in this thesis to conceptualise gender as merely a performance, connecting the notion of 'doing' gender to Goffman's 'gender display' and West and Zimmerman's 'doing gender'.²⁷ I locate these concepts within a social constructionist approach to gender where gender is understood as produced through the repeating of the same gendered performances based on accepted gender stereotypes learned from everyday life. In the thesis I draw upon Goffman's conceptualisation of 'gender display' which centres on analysing the content of gendered representations in adverts and how these representations appear natural but are in fact distorted versions of reality. By identifying numerous 'gender display' typologies, Goffman questions the use of 'commercial realism', how advertisers attempt to present gender to audiences through familiar yet truncated codes or displays. In this thesis I argue for 'making the familiar strange' and advocate the applicability of Goffman's coding schema in contemporary advertising. Utilizing his codes, I highlight the unnatural representations of gender stereotypes in advertisements. Focusing particularly on the codes 'feminine touch', 'ritualization of subordination' and 'licensed withdrawal' I reassess Goffman's typologies within the context of contemporary forms of advertising. The empirical data collected from teenagers from across three Member States tests Goffman's coding scheme by mapping it on to contemporary modes and methods of advertising. My aim is to reassess but also adjust the

²³ Goffman, E. (1959). *The presentation of self in everyday life*. New York Press. p.32

²⁴ Goffman, E. (1974). *Frame analysis: An essay on the organization of experience*. Harvard University Press. p.10

²⁵ Goffman, E. (1979) *Gender advertisements*. Macmillan pp. 1-9.

²⁶ Butler, J. (1990) *Gender Trouble* Routledge. p.10

²⁷ West, C., & Zimmerman, D. H. (1987). Doing gender. *Gender & society*, 1(2), 125-151.

codes emphasise that little has changed since Goffman's work in *Gender Advertisements* in 1979. The data collected from the fieldwork is a snapshot of emerging forms of advertising through smart phone technology, social media apps and catch-up TV. This data therefore also tests the application of Goffman's typologies to a new and emerging context.

1.3 Gender Stereotypes

Throughout this thesis I discuss the pervasiveness of gender stereotypes and how they are embedded within different forms of advertising, in particular when promoting certain gendered services or products. I define the term gender stereotypes broadly from a social-psychological perspective and apply Cook and Cusack's definition who provide that the term refers to a set of social norms and conventions that help shape performative nature of gender.²⁸ '[a] stereotype is a generalized view or preconception of attributes or characteristics possessed by, or the roles that are or should be performed by, members of a particular group.' This definition has been adopted by the UN, the Court of Justice of the EU and the CEDAW committee. Cook and Cusack's work has its roots in social psychology, and the term gender stereotypes should be read as a set of preconceived and arbitrary ideas or beliefs about the physical, biological and personal characteristics of women and men.²⁹

1.4 Mixed Methods

The thesis is an integration of doctrinal legal research and sociological research methods and sits within the broader methodology of socio-legal research. I follow in the tradition of socio-legal methodology which benefits from extensive dialogue from sociological theory and research methods. As a method it significantly differs from traditional 'black letter' legal analysis as it attempts to understand the law as a reflection of the society from which it emerges. As 'black letter' legal researchers are generally concerned with analysing technical legal text, its routes, amendments and progress, this thesis is more concerned with the 'law in action'

²⁸ Cook, R., & Cusack, S. (2011). *Gender stereotyping: transnational legal perspectives*. University of Pennsylvania Press. pp. 20-21 see also The European Institute for Gender Equality definition taken from Cusack, S. (2013). *Gender Stereotyping as a Human Rights Violation: Research Report*. Prepared for the UN Office of the High Commissioner for Human Rights. Available at: <http://www.ohchr.org/Documents/Issues/Women/WRGS/StudyGenderStereotyping>

²⁹ Ashmore, R.D. and Del Boca, F.K., 1979. Sex stereotypes and implicit personality theory: Toward a cognitive—Social psychological conceptualization. *Sex roles*, 5(2), pp.219-248.

rather than ‘law in books’.³⁰ This research chimes with Wheeler and Thomas suggestion that the ‘socio’ in the term represents the ‘interface with a context within which law exists’³¹ rather than the study of sociology as a science per se. Therefore, the thesis examines law as the product of society and how law does not – and cannot – operate within a vacuum, rather it is formed in interaction with the norms and values that prevail in society.

Socio-legal studies perceive law for its purpose and function in society. The questions that law asks of society, and the reasons that society needs law – in this case, a comprehensive regulatory code of gender stereotypes in advertising. It looks beyond the detailed analysis of legal rules and attempts to locate those rules ‘within the context of the other social practices which constitute their immediate environment’.³² Simultaneously, this thesis intends to be both evaluative and reform-oriented.³³ It seeks to assess shortcomings of the Gender and AVMS Directives and identifies strategies to overcome the gaps omitted of the drafting and look to new ways to combat gender stereotypes.

Despite the socio legal methodological underpinning of this thesis, the analysis is a mixed method approach. The thesis aims to scrutinize national perspectives, its legislation, regulatory systems and high-profile cases. The empirical research element enters in the form of researcher led focus groups and semi structured interviews. The focus group aims to look at those individuals – teenagers to whom the law is projected on to. As Lacey states, socio-legal research aims to ‘scrutinize not merely the legal articulation of the relevant rules and processes but the meaning and effects of those rules and processes as interpreted and enforced, and as experienced by their subjects’.³⁴

³⁰ Banakar, R., & Travers, M. (Eds.). (2005). *Theory and method in socio-legal research*. Bloomsbury Publishing.

³¹ Wheeler, S., & Thomas, P. (2002). Socio-legal studies. *Law’s Future (s)*. Oxford: Hart Publishing, 267-80.p.276

³² Lacey, N. (1996). Normative reconstruction in socio-legal theory. *Social & Legal Studies*, 5(2), p.132.

³³ Dodinson, I and Johnson, F. ‘Qualitative Legal Research’, in McConville and W.H. Chue (Eds) *Research Methods for Law* (Edinburgh Uni Press 2010) p.20-33

³⁴ Op. cit.,Lacey, N. (1996) p.132.

1.5 Elite interviews

Elite interviews to ask questions and probe practical issues that a theoretical analysis cannot extrapolate. The elite interviews question self-regulatory advertising bodies to understand not just how those organisations operate but also shed light on the practical shortcomings of regulating gender in advertising. Gender, in some Member States is not regulated – ‘taste and decency’ for example may replace such terms and the interview process enables an understanding of how such terms can incorporate gender stereotypes, sexism or misogyny. Interviewing self-regulatory bodies’ staff is a process which can identify gaps in legislation, codes or indeed why there is lack of will to regulate in the first place.³⁵ Here, my research looks not just towards regulators but also legal professionals, academics, NGOs and advertising agencies themselves. Elite interviews have proven to be important for this thesis in collecting data that would otherwise not be understood from the Directives or national legislation. For example, in chapter 7 I look towards the tight regulation of stereotypes in certain markets in Spain and the RyanAir calendar case of 2015. Interviews of academics, NGOs and practitioners will shed some light not only on the historical development of the case but also personal stories of complainants not willing to come forward. Other examples included NGOs providing internal data of the number complaints received, regulatory bodies sharing internal policy and academics sharing first hand experiences of the lobbying of the Directives. The semi-structured interview allows for flexibility and for participants to shape the discussions. Advertising as an industry and gender stereotypes as legal terminology are very broad, the flexibility of semi structured interviews meant that both parties could establish new perspectives.

1.6 Focus Group Interviews

Socio-legal research encompasses sociological research methods as a means to comprehend social reality and the ‘the strange in the familiar’ and ‘place the individual in the social context’.³⁶ The focus groups in this thesis are employed to discover these ideas: making the familiar (advertisements) strange and locating recipient’s views of those adverts. The focus group is employed in my research to unravel my two main research questions: how do gender stereotypes in advertising affect young adults and what can be done to regulate advertising ensuring that rights are safeguarded. The focus groups aim is to understand how advertising

³⁵ Kvale, S. (2008) *Doing interviews*. Sage p.28

³⁶ Macionis, J. (2001). *Sociology*. New Jersey. pp. 2-5

affects its subjects and produce data (magazine cuttings, online adverts or TV ads) on the key advertisements that resonated with the participants.

Researcher led focus groups ³⁷ are designed to research ‘small group development’ and I apply Tuckman’s four stages of interaction development in the focus group structure. Firstly, the ‘forming’ of the focus group, is where I tested out ideas and definitions such as the difference between gender and sex, what is meant by gender stereotypes and how they are pronounced in advertising. Secondly, ‘storming’ where there is inter-group conflict and criticism of the main questions and concepts. This produced data on what one national perspective would deem distasteful or harmful, but another would deem reasonable. The ‘storming’ allowed the participants to probe and clarify the definitions are put forward in the analysis chapter. Thirdly, ‘norming’ process occurs through the development of group cohesion, working within the parameters of the research questions that have been proposed to the participants and avoiding conflict through fear of putting forward controversial or ideas that may conflict with the norms that have been agreed so far. This produced common norms in advertising and the core themes within the research: women as mothers/cleaners, sexualisation, notions of numbness towards advertisements and neuroticism. The final phase, ‘performing’, speaks to notions of functionalism, cohesiveness, agreement and consistency. Consensus was established in the focus group at this final stage and informed the thesis of what adverts were deemed inappropriate, arcane or discriminatory. The normative focus group method provides the participants the opportunity to engage with the language of advertising regulation at a basic level. The method also allowed participants to respond with ideas but also physical examples of harmful advertising. For example, in Chapter 6, the Swedish group looked at Facebook comments underneath an online advert.

1.7 National Perspectives and Legal Cultures

³⁷ Tuckman, B. W., & Jensen, M. A. C. (1977). Stages of small-group development revisited. *Group & Organization Studies*, 2(4), 419-427.

Whilst the thesis is not methodologically a comparative analysis of legislation, regulation or codes I do draw upon the comparative legal method ‘toolbox’³⁸ when exploring conceptualising what ‘best practice’ may look like at an EU level. I am critical of positivist ‘mainstream’ legal comparisons which lack reflexivity and disregard the politics, ethics, culture, economy, norms and values that underpin any given state.³⁹

Instead, I advocate David Nelken’s socio-legal comparative method⁴⁰ of borrowing ideas,⁴¹ collaborating on shared legal problems⁴² or amending one element of a legal system in light of another. As with the broader framing of socio-legal research methods, this approach replaces ‘black letter’ method – that is usually symbiotic with traditional comparative legal scholars – with *legal culture*. Although the term is somewhat vague,⁴³ concept captures the ‘socio legal’ component which is concerned with the scholarship of ‘law in action’ and not ‘law in books’.⁴⁴ Legal culture is not necessarily about the active ‘doing’ but includes the general public’s attitudes and feelings towards the laws that govern them. This is synonymous to the notion that law is part of society and is developed by Friedman’s concept of external/internal legal cultures,⁴⁵ i.e. those that produce the law (legislators) and those that are recipients of it (the general public but critically, minorities). The term also refers to the wider methods of achieving and maintaining social order, beyond institutions, legislative procedures and personnel that maintain the law.⁴⁶ Socio-legal comparative law is therefore interested in the Hobbesian informal modes of social control: the social structures, customs, social norms and values rather than formal and traditional modes. Legrand and Cotterrell’s notion of ‘legal culture’ is the law

³⁸ Van Hoecke, M. (2015) Methodology of comparative legal research. *Law and Method*, pp.1-35.

³⁹ Frankenberg, G. (2016). *Comparative law as critique*. Edward Elgar Publishing. pp.6-7

⁴⁰ Nelken, D. (2007) Comparative law and comparative legal studies. *Comparative Law: A Handbook*, Oxford, Hart, pp.3-42.

⁴¹ For example, Scotland’s ‘Baby Box’ draft legislation 20th June 2017 whereby all new mothers in Scotland will receive box full of essentials for the first 6 months of the child’s life. The box itself acts as a crib (mattress included) for the initial months of the baby’s life. This policy was adopted by Scotland from Finland, a nation that has offered the baby box to all expectant mothers since 1932. See <http://www.gov.scot/Publications/2017/06/8891/1> (accessed 17 October 2017)

⁴² See for example ‘Obama Care’ and Mexico/USA comparative health care law.

⁴³ Legrand, P. (2003) ‘The Same and the Different’ in Legrand, P and Munday, R (eds) *Comparative Legal Studies: Traditions and Transitions* Cambridge University Press at 240-311. And Cotterrell, R. (2006). ‘Comparative law and legal culture’ in Reimann, M., & Zimmermann, R. (Eds.). *The Oxford handbook of comparative law*. OUP Oxford.

⁴⁴ Nelken, D. (2004). Using the concept of legal culture. *Austl. J. Leg. Phil.*, 29, 1.

⁴⁵ Friedman, L.M., 1975. *The legal system: A social science perspective*. Russell Sage Foundation.

⁴⁶ Op. cit., Nelken (2007) p.11

as ‘embedded within culture’⁴⁷ rather than an isolated notion apparent only in law textbooks. Thus, as Frankenberg argues with the ‘Cinderella Complex’⁴⁸ it is not necessary for the comparatist be a specialist or ‘insider’ of the legal culture to pass comment on a wider legal problem, for example how do different states regulate advertising.

Legal culture(s) inevitably differs across legal families and individual states. The legal style, the constitution, the courts, the personnel and most importantly, political framework shapes legal culture reflecting social norms and values. Following Banakar and Travers cyclical notion that laws are a reflection of the society they produce ⁴⁹ reflects a nation’s history, the people’s principles, morals and the political and economic philosophy that underpins the system. Law reflects the current society as well as the past⁵⁰; it reacts to social change⁵¹ or shifts technologically and therefore is not a stagnant set of rules.

1.8 Chapter Outline and Research Questions

My main research question is whether the EU has the competence to tackle gender stereotypes in advertising and if so, what would the outcome of this look like. My secondary research question, relating to the first, is what does ‘best practice’ look like and how can the EU, going forward improve its regulation of advertising.

I begin with a broad overview of the EU and international law legal frameworks by locating the EU’s obligations under the Convention for the Elimination of All forms of Discrimination against Women (CEDAW) ⁵² and Beijing Platform for Action (BPfA).⁵³ I then look towards the emerging ‘creeping’ competence of advertising by merging the two more established areas

⁴⁷ Op. cit., Cotterrell, R. (2006) pp. 7110-11

⁴⁸ Frankenberg, G. (2016). *Comparative law as critique*. Edward Elgar Publishing. p.6-7

⁴⁹ For example, neo Marxists would argue that capitalist societies produce laws that benefit not just the ruling class but also support legal doctrines such as consumer rights, free movement of goods and persons

⁵⁰ Graziadei, M. (2009). Legal transplants and the frontiers of legal knowledge. *Theoretical Inquiries in Law*, 10(2), pp. 723-743

⁵² The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). The text of the Convention is annexed to the United Nations General Assembly Resolution 34/180 18 December 1979

⁵³ The Beijing Platform for Action (1995) annexed to the United Nations Fourth World Conference on Women at www.un.org/womenwatch/daw/beijing/platform

of gender and media competence. Here, I propose that the challenge of the EU is the regulation of gender stereotypes in advertising by contextualising the EU's 'gender regime', highlighting its blind spots, namely private sphere concerns such as advertising regulation. I provide a historical overview of the gender regime, outlining the emergence the gender competence and secondary legislation that has so far worked towards remedying work-based discrimination concerns. The second part of the chapter scrutinises joint EU and ECHR efforts to regulate cross border broadcasting with a historical lens with the advent of satellite TV, cable TV and presently, video on demand and online TV. I then form a bridge from the wider 'European' media competence to a strictly EU competence and provide analysis of the European Court of Justice use of free movement of goods/services case law to 'carve out' the advertising competence.

Chapter 3 further explores the EU's 'gender regime' and focuses on legal and political instruments that the EU has sought to tackle the use of harmful gender stereotypes in advertising. The chapter begins with the Access to Goods and Services Directive (The Gender Directive)⁵⁴ and the European Commission's (EC) failure to incorporate an article on eradicating stereotypes in education, media and advertising. I pick up on traces of regulation that are found in secondary legislation such as the Audio Visual Media Services Directive (AVMS Directive)⁵⁵ and soft law approaches such as the use of European Parliament reports⁵⁶, Roadmaps to Equality Programmes⁵⁷ and the use of non-state actors such as the European Advertising Standards Authority (EASA).⁵⁸

Chapter 4 provides the theoretical framework(s) that underpins the thesis and examine the underlying 'problem' that is embedded within the research question, conceptualising how and why gender stereotypes in advertising are harmful. The chapter begins by dissecting the meaning behind gender stereotypes and I use feminist theory to shine a light on the dichotomy

⁵⁴ Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services [2004] OJ 373

⁵⁵ Council Directive 2010/12/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audio-visual media services (Audiovisual Media Services Directive) [2010] OJ L95/1

⁵⁷ Communication from the Commission to the Council, the European Parliament, The European Economic and social Committee and the Committee of the Regions. 'A Roadmap for equality between women and men 2006-2010'. Document 7034/06 not published in the Official Journal.

of gender and sex and how – if used interchangeably – they lead to discrimination. The first part of the chapter is an exploration into the social construction of gender through feminist theory – positioning these two theories together to act as a foundation of understanding contemporary notions of gender. From this foundation I draw upon and Erving Goffman's and Judith Butler's theorisation of performance (and performativity) and think with and against notions of 'doing gender', gender as performance, and dramaturgical approaches to gender to build upon current feminist conceptualisations of gender as a social construct. Finally, the chapter closes with an exploration of Goffman's work on Gender Advertisements, revisiting (and reimagining) his pictorial coding system.

Chapter 5 outlines the methodological approach, framing the thesis within a socio-legal context. Drawing upon the contemporary works of socio-legal scholars Banakar and Travers and Lacey, I think towards the benefits of socio-legal research methods and set out the parameters the approach. The chapter details the mixed methods approach of the research discussing on feminist approaches and critiques of the focus group and interview method and exploring the ethical considerations of working with participants in an education setting. Finally, the chapter draws to a close with a discussion and summary of comparative legal method and how I have advanced the comparative element of the thesis with a 'law in culture' perspective beyond the doctrinal 'black letter' comparatist methodology.

Chapter 6 is a presentation and discussion of my empirical research findings. Outlining three themes developed through thematic analysis of the focus group data. The chapter begins by revisiting (and politicizing) Goffman's 'Gender Advertisements' typologies and pictorial analyses to deduce the three main themes from the data: The Mother, Women on the Verge, and The Objectified Self. Each of the themes are reflexive responses to Goffman's typology and coding practice, developing his work on representations of women as hyper sensitive, as subordinate beings, as vacant and withdrawn and finally advertisements as a reflection of the family.

Chapter 7 is, broadly speaking, a quasi-comparison of the three case studies. I unpick the individual Member States regulatory codes, legislation and policy that intersects varied legal notions within gender stereotypes in advertising (for example freedom of expression, right to dignity, harm and offence and violence against women). Utilising the 'law in culture'

methodological approach, I construct the constitutional personality of each case study through analysis of historical-cultural factors, legal principles, doctrines as well as the state's political reach/will to tackle gender stereotypes in advertising. The majority of the chapter is dedicated to the national perspectives towards advertising regulation, each Member State's regulatory system and code and how it challenges gender stereotypes in advertising. I draw upon some of the key case law, campaigns and lobbying from each of the Member States to produce a critical analysis of the wider regulatory codes and remits. The chapter is punctuated with interview data from each case study from academics, regulators and legal personnel that work with or towards the removal of gender stereotypes in advertising. I close the chapter with a commentary on the future of the UK's advertising code and regulators, asking questions about the forthcoming review of harmful stereotypes facet of the revised code and some questions surrounding advertising regulation in post-Brexit UK.

Chapter 2

Gender Stereotypes: A New Challenge for the European Union's 'Gender Regime'

2.1 Introduction

The first part of this chapter introduces the two main EU competences that underpin this thesis: those concerning gender policy and the regulation. I start with my fundamental research question – does the EU have the authority to introduce secondary legislation on gender and advertising and if so, does it have the capacity to legislate specifically on the use of gender stereotypes in advertising? The answer to this question requires a socio-historical analysis of each of the EU competences, the political will of the institutions and the Member States. As with many of the current areas of law that have been carved out by the EU over the last 50 years, there was no mention of competences around gender equality, sex discrimination, media law or advertising regulation in the founding Treaty of Rome in 1957. These areas have developed as the internal market has flourished, as the Union has enlarged and social and technological shifts that have compelled the EU to act. There are of course numerous problems¹ with the term competence, particularly issues concerning *ultra vires* and subsidiarity. Essentially, the issue who has the capacity to introduce legislation, the Member State or the EU? This in turn has led to further issues such as ‘turf wars’² and questions such as which of the Director Generals of the EU Commission has the authority to draft secondary legislation or policy? For example, with legislation concerning gender equality, is it for the Directorate General of Social Affairs or Employment to provide secondary legislation? There are also questions around the semantics of the term, does it mean ‘power’ or ‘legal authority’ or something broader?³ These issues have by and large been rectified by Treaty of Lisbon (2009) provisions which provided some guidance on who-does-what through the introduction of a

¹ Barnard, C. and Peers, S. eds., (2017). *European Union law*. Oxford University Press. pp. 105-107 and Pollack, M. A. (2000). The end of creeping competence? EU policy-making since Maastricht. *JCMS: Journal of Common Market Studies*, 38(3), 519-538.

² Mastenbroek, E. (2005). EU compliance: Still a ‘black hole’?. *Journal of European Public Policy*, 12(6), 1103-1120. p.1112.

³ Op. cit., Barnard and Peers (2017) pp. 104-105

‘competence catalogue’.⁴ These two treaties (Rome and Lisbon) therefore act as bookends to the story of competence and as the Lisbon Treaty reaches its 10th birthday and the UK heads for Brexit, the first section concludes with a discussion on the UK’s future outside of the EU.

The second part of this chapter provides an overview and analysis of secondary legislation, soft law and politics that have derived from the mixture of the two competences that aim to combat gender stereotypes in advertising. The latter half of this chapter takes an in-depth evaluation of the various EU and non-state organisations and the legislative tools that are co-ordinating change in this area of policy: the European Commission, European Parliament, Parliamentary reports, Directives, advertising regulators and NGOs. Again, this will be discussed through the prism of Brexit and future relations with the EU.

2.2 Contextualising the ‘gender regime’ within Europe: Gender Equality Competence.

The gender equality dimension of the EU developed in part as an economic consideration in the wording of the Treaty of Rome and was never intended to enter the social level of Union.⁵ As the main thrust of that original treaty was to create peace, foster economic growth and prosperity within Europe, it is evident that there was no real intention to include grand issues such as human rights and gender equality within the Treaty. Despite this, the EU has managed to play a progressive role in ensuring that gender equality is safeguarded within its Member States through the use of Article 119 (now 157 TFEU) of The Treaty of Rome which is firmly anchored in the treaty’s labour market provision. Article 157 provides that the then European Economic Community (EEC) would promote ‘equal pay for men and women for work of equal value’. The intention of this treaty provision however is not one based on protecting fundamental right, as Millns states, article 157 should not be mistaken as an effort to actively promote gender equality – rather it should be read as principle to ensure fair competition within the common market amongst the original founding Member States of the EU and curb wage

⁴ Zeitlin, JH. (2005) in De Búrca, G. (ed). *EU law and the welfare state: in search of solidarity*. Oxford: Oxford University Press

⁵ Masselot, A. (2007) The state of Gender Equality Law in the European Union *European Law Journal*, 13: 2, p.154 and Sarikakis, K., & Nguyen, E. T. (2009). The trouble with gender: Media policy and gender mainstreaming in the European Union. *European Integration*, 31(2), 201-216. p. 204

inequality.⁶ Despite the original treaty provision, it has nonetheless provided a green light to the commission and – more importantly the Court of Justice of the EU (CJEU) – to play a more active role in developing gender policy throughout the 1970s. Article 157 was quickly picked up and developed by the CJEU through the single market ideology of the provision. In the *Defrenne II* judgment⁷ the CJEU argued at the time that the article acted as a social as well as economic objective and comprised of twin aims:

First, in the light of the different stages of the development of social legislation in the various Member States, the aim of article 119 is to avoid a situation in which undertakings established in states which have actually implemented the principle of equal pay suffer a competitive disadvantage in intra-community competition as compared with undertakings established in states which have not yet eliminated discrimination against women workers as regards pay.

Secondly, this provision forms part of the social objectives of the community, which is not merely an economic union, but is at the same time intended, by common action, to ensure social progress and seek the constant improvement of the living and working conditions of their people, as is emphasized by the Preamble to the Treaty.

This aim is accentuated by the insertion of article 119 into the body of a charter devoted to social policy whose preliminary provision, article 117, marks, 'the need to promote improved working conditions and an improved standard of living for workers, so as to make possible their harmonization while the improvement is being maintained'.⁸

The European Commission was equally quick to grasp the potential ramifications of article 157 and did so by adopting secondary legislation in the form of Directives. In the 1970s the Commission pushed through Directives on equal pay,⁹ protecting equal treatment in workplace,¹⁰ and social security.¹¹ During the 1990's further secondary legislation provided

⁶ Susan Millns (2017) in Irving, H. (eds)., *Constitutions and Gender*. Edward Elgar Publishing. pp.253-254

⁷ Case C-43/75, *Defrenne v. Sabena*, 1976 ECR I 455.

⁸ *ibid* paras 8-10

⁹ Council Directive 75/117/EEC 10 February 1975 on the approximation of the laws of the Member States relating to application of the principle of equal pay for men and women OJ L 045

¹⁰ Council Directive 2000/78/EC 27 November 2000 establishing a general framework for equal treatment in employment and occupation OJ L 303

¹¹ Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security OJ L 6

further rights covering pregnant workers¹² and parental leave. In 2002, the EU provided a consolidation of the equal treatment Directives and adopted the Equal Treatment in Employment Directive¹³ which extended the legislation to cover sexual harassment in the workplace and indirect discrimination. In 2004, for the first time, the Commission sought to tackle sex discrimination outside the workplace by introducing the goods and services (gender) Directive.¹⁴ As Millns notes, the EU's policy surrounding gender equality is 'rather like the development of the Treaties underpinning EU law, a piece-meal, ad-hoc and incremental process'. This assessment is a common held view amongst most EU gender commentators¹⁵ with contemporary legal feminist critiques¹⁶ of the EU gender policy suggests that the EU is yet to fully tackle gender equality outside of the workplace and in the private sphere.¹⁷ The 'amending' treaties of Amsterdam (1996) and Lisbon (2009) help in remedying this criticism but more importantly ossifies the gender competence.

2.3 Gender and the Emerging 'Competence Catalogue'

Between the 'amending' treaties, the EU sought to strengthen its gender equality competence. There was also a shift in semantics of the competence with the 'limited language' of sex-discrimination replaced with the language of human rights and gender equality.¹⁸ It could now be argued that the gender competence has become burrowed amongst the broader system of human rights protection of EU/ECHR. Since 1999 The EU has had the competence to take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, and age or sexual orientation. Amsterdam positioned gender equality as a priority and it now enjoys an elevated position amongst the other EU goals and values.¹⁹ The

¹² Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding OJ L 384

¹³ Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation OJ L 303

¹⁴ Council Directive 2004/113 EC 3 implementing the principles of equal treatment between men and women in the access to and supply of goods and services OJ L 373

¹⁵ Op. cit., Masselot, A. (2007) p. 160. and Walby, S. (2004). The European Union and gender equality: Emergent varieties of gender regime. *Social Politics: International Studies in Gender, State & Society*, 11(1), pp.5-6

¹⁶ Bleich, E. (2003). *Race politics in Britain and France: Ideas and policymaking since the 1960s*. Cambridge University Press p.26

¹⁷ Op. cit., Kantola, J. (2010) p.6

¹⁸ Op. cit., Millns (2017) p.255

¹⁹ Gender equality is now perceived as an 'aim' and 'task' of the EU under Article 8 TFEU (ex-Article 3 EC). Article 10 TFEU confirms this approach by applying gender equality principle horizontally: "in defining and implementing its policies and activities, the union shall aim to combat

promotion of gender has had an important effect on the initiation of representation in advertising policy which is rooted in the wider scope of Article 19 TFEU (ex 13 EC). Rather than the neutral reactive tone of the treaty Directives of the past, Amsterdam worked towards a proactive stance to help shape future secondary legislation and EU policy, with the notion that equality is only achievable if individuals *claim* their rights by reacting to a discriminatory issue. In contrast, the proactive model of gender mainstreaming seen today provides that all EU institutions at all levels are obliged to promote equality.²⁰ From a theoretical perspective, it is apparent that the EU has moved towards a more substantive approach in achieving gender equality post-Amsterdam, with top-down positive action and further engagement with NGOs, women's groups and other non-state actors. A good example of this shift in approach can be seen in the reactive equal pay Directive with its foundations in market-orientated ideology, arguably what is necessary are more substantive, proactive methods such as the controversial boardroom quota (proposed) Directive.²¹ Therefore, the introduction of Article 19 can be seen as a 'new' non-discrimination gender competence that has the scope to prohibit discrimination beyond the economic limitation of the internal market.²² Equally, it can be seen as an extension of article 157 (ex 141) and there are some understated differences here.

Between the two bookends of the amending treaties of Amsterdam and Lisbon, the EU had made a further attempt to constitutionalise gender equality through the creation of the Charter of Fundamental Rights (the Charter) and the Constitutional Convention (with its ensuing Constitutional Treaty) of the European Union. With both came the repositioning of gender equality and women's rights, further cementing the notion of a solid competence. The overall initial aim of the EU was to showcase the disorganised 'list' of fundamental rights that had accumulated over the previous decades into a single document. The Charter's third chapter is devoted to equality. Article 23 specifies that equality between men and women shall be ensured 'in all areas' with quasi-limitation 'including employment and pay'. Although this is a

discrimination based on sex, racial or ethnic origin, religion, belief, disability age or sexual orientation".

²⁰ Gender Mainstreaming became part of the mandatory 2020 EU Gender Action Plan (2016-2020). It concludes the promotion of gender equality in all EU development projects, policies and EU institutions that may affect the rights of girls and women.

²¹ European Commission Draft Directive of the European Parliament and of the Council on improving gender balance among non-executive directors of companies listed on the stock exchanges and related measures. COM (2012) 614.

²² Op. cit., Carraciolo Di Torella, E. (2005) p.339

departure from the traditional setting of gender equality that has historically been tied in to the workplace, the Charter appears to regurgitate a mere statement of equality that does not create a specific legal right.²³ Moreover, article 23 provides for ‘positive action’ but is merely a repeat of article 157 TFEU. The constitutional treaty is a slightly different pathway. As a reaction to the EU enlargement of 2004 with 10 new Member States, the EU sought to further bolster women’s rights by providing a European Constitution to reinforce the core values of the Union, the drafting of the original constitution initially omitted gender equality but was included after intense lobbying via Commissioner Viviane Reding.²⁴ Both France and Netherlands returned a ‘no’ vote in respective referendums and so the brakes were pulled on project. From the ashes of the failed constitution came the Treaty of Lisbon, including very much the same content as the constitution and the core values of the EU in article 2. During the period between the failed constitutionalisation of Europe and Lisbon, there was some concern and confusion²⁵ on the positioning of the gender equality as a right and shared value of the EU. Furthermore, for some time there had been loud criticism from Member States of the ‘competence creep’²⁶ – that the EU, by any means, always manages to legislate or act in areas where there is not a conferred or a specific competence.²⁷ To rectify this problem, the emergence of a clear competence catalogue was produced to provide a clear guidance on EU powers. The catalogue inclusion is one of the most substantial shifts towards a constitutional approach to gender equality particularly with regards to providing for a clear gender competence. Lisbon delivers a comprehensive list of competences that are to be enjoyed by the EU institutions and a clear set of rules on demarcation of competences that shall be enjoyed by the EU Member States.²⁸ Prior to Lisbon, competences were not entirely explicit, and the EU previously relied on the principle of conferred power, as Rossi states:

“...competences between the EU and the Member States were not included in the founding Treaties, probably because at the beginning of the European integration the principle of conferred power— as a cornerstone of international law— was so obviously implicit in every

²³ Op. cit., Millns, S. (2017). p. 257

²⁴ Op. cit., Millns, S. (2017) p.259

²⁵ Op. cit., Masselot, A. (2007) p.158

²⁶ Konstadinides, T., & Dyson, T. (2016). Enhancing Energy Security in the European Union: Pathways to Reduce Europe’s Dependence on Russian Gas Imports. *European Law Review*.

²⁷ Weatherill, S. (2014). *Cases and materials on EU law*. Oxford University Press, USA. p.291

²⁸ De Witte, B in Ripley, S. (2012). *EU law after Lisbon*. OUP Oxford. p.86

international convention establishing an international organization that it was not necessary even to mention it in the EEC Treaty”.²⁹

Competences and the principle of conferral post Lisbon raises more questions than provides answers when it comes to EU involvement with gender equality. The principle of conferral is a chaotic subject but article 3-5 TEU sets out guidance on whether it is the EU or the Member States that wields the competence to legislate in certain issues. Article 5(1) and 5(2) provides that there are limits to what can be acted on under the EU treaties and where the Member States retain their own competence. Article 26-197 TFEU provides for further specific areas or the ‘nuts and bolts’ of what the EU can do.³⁰ Article 3 TEU lists exclusive competences (areas where the EU alone has competence to act (i.e. customs union, competition rules and fisheries), article 4 lists shared competences (internal market, consumer protection public health) and article 5 lists ‘supporting’ competences (those where the EU can intervene to support Member States). Hence, there is a clear ‘precedent’ of the EU acting in gender related issues and it is for the legislative arm of the EU to define where gender fits amongst the conferred competences. For example, the regulation of gender stereotypes in advertising can fit in numerous (shared) competences: sexist content advertising could potentially be ‘dressed up’ as a health issue, an internal market issue or a consumer protection issue. This notion is addressed in the Section 3 of Chapter 3 when considering the drafting of ‘Gender Directive’.

2.4 Lisbon and Beyond

The last two decades have brought fresh concerns which have been retained gender equality in the EU agenda, with the European Parliament, women’s organizations and NGOs raising issues such as violence against women,³¹ trafficking³² and representation and decision making in board rooms. However, when considering the wider anti-discrimination policy or ‘institutional gender regime’³³ of the EU, there yet remains numerous challenges both inside and outside of EU labour market with the latter still remaining a priority for those concerned with gender

²⁹ Rossi, LS. in Ripley, S. (2012). *EU law after Lisbon*. OUP Oxford. p.107

³⁰ Weatherill, S. (2014). *Cases and materials on EU law*. Oxford University Press, USA. p.35

³¹ Case C-115/15 NA (Pakistan) [2016] ECR not yet published

³² Directive 2011/36/EU 5 April 2011 on preventing and combatting trafficking in human beings and protecting its victims OJ L 101/1

³³ MacRae, H. (2006) Rescaling Gender Relations: The Influence of European Directives on the German Gender Regime’ *International Studies in Gender, State and Society* 13:4 p.530

justice. As outlined, the original gender equality concern cited in the Treaty of Rome, equality in the workplace, is still an enduring concern. This manifests in a segregated job market where ‘women’s work’ makes up most of the public-sector workforce and men predominantly in the private sector.³⁴ Moreover, ‘women’s jobs’ and ‘men’s jobs’ are still visible, with women acting as carers, primary educators, and making up the majority of primary health care.³⁵ This segregation is amplified by the EU pay gap which currently stands at 16-25%³⁶ despite half a decade of secondary legislation³⁷. The pay gap has widened slightly due to the 2007/8 economic crisis³⁸ and austerity measures of the following decade disproportionately pushing more women into part time and/or precarious work.³⁹ This has left female workers and unemployed outside of national social security policies, smaller pensions, and increases the risk of poverty or socially exclusion⁴⁰. Similarly, political inequality still remains throughout Europe, in both underrepresentation in cabinet, government and national parliaments⁴¹. The inequalities that remain are not necessarily linked to the political, economic or social rights that

³⁴ See EuroStat News Release on Employment 16th January 2018

<http://ec.europa.eu/eurostat/news/news-releases> (accessed 17th October 2017)

³⁵ See Eurostat News Release 8th March 2013. In 2011 of women in EU27, 32% were managers, 85% of primary education teachers whereas the proportion of female academic staff was 40%.

³⁶ See EuroStat 7th March 2017 Gender Pay Gap http://ec.europa.eu/eurostat/statistics-explained/index.php/Gender_pay_gap_statistics See also Eurostat Gender Pay Gap Statistics (2011) Women's gross hourly earnings were on average 16 % below those of men in 2011 in the European Union as well as in the Eurozone area. Across Member States the gender pay gap varied by 25 percentage points, ranging from 2 % in Slovenia to 27 % in Estonia (accessed 21 February 2018)

³⁷ See Council Directive 75/117/EEC on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women (1975) OJ L045, Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation

OJ L303 and Council Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation

³⁸ See for example in Spain: Gago, E.G. and Kirzner, M.S. (2013) Women, gender equality and the economic crisis in Spain in Karamessini, M. & Rubery, J. (Eds.) *Women and austerity: The economic crisis and the future for gender equality* (Vol. 11). Routledge. p.228.

³⁹ Op. cit., EuroStat In 2011 in the EU27, almost a third (32%) of employed women aged 25 to 54 having one child of less than 6 years worked part-time, while for employed women with three children or more, where the youngest is aged 6 or less, half (50%) worked part-time.

⁴⁰ See Eurostat ‘The European Union Statistics on Income and Living Conditions’ EU 27 People at risk of poverty or social exclusion by age and sex 2012 Women 25.3%

⁴¹ See European Commission Database on women and men in decision making

<http://ec.europa.eu/justice> and Committee on Women’s Rights and Gender Equality (FEMM) report on women in political decision-making – quality and equality (2011/2295(INI)). The gender balance in national Parliaments across the EU remains unchanged at 2nd Quarter 2013: 27 % women and 73 % men, with women accounting for only 23 % of ministers overall. The European Parliament is slightly better with 36% women and 64% men and Finland the only m/s with slightly more female than male MEPs.

have evolved in the last two decades; they are increasingly linked to civil rights: domestic violence,⁴² gender violence,⁴³ reproductive rights,⁴⁴ and sexual orientation remain issues within the EU Member States. The symbiotic relationship between the economy and equality remains unchallenged within European Law where little attention is made towards why business ‘trumps’ the remaining inequalities that face women across the European Union⁴⁵.

Gender stereotypes in advertising and the media falls within this categorisation, and as a gender competence issue, it is part of the EU’s shopping list⁴⁶ of contemporary forms of gender inequality that have emerged in the last decade. These ‘new’ social or private-sphere inequalities can be seen as a departure from what can be deemed as the ‘old’ EU legislative agenda that has espoused a lengthy list of Directives, action programmes and policy frameworks that protect ensure equality through an economic prism. The very recognition of new forms of gender inequality in itself would seem to denote progress to some extent.

The ‘old’ and ‘new’ inequalities are two sides of the same coin, one cannot be solved without the other. With this analogy in mind, gender stereotypes in advertising and the media is a form of discrimination promoting traditional conservative gender roles ⁴⁷ that dramatically affect the education, career choices and inevitably a segregated job market increasing the pay gap between men and women throughout Europe.⁴⁸ Gender stereotypes, although legally considered as a private sphere issue, have a direct effect on the market-based equality concerns of the EU. The second section of the chapter charts the slow acknowledgment and incorporation of gender stereotypes as a new policy area of the EU gender regime by locating

⁴² EU wide survey of 42,000 participants in 2014 found that one in nine women have been a victim of domestic violence. Full report can be found at European Union Agency for Fundamental Rights: <http://fra.europa.eu/en/publication/2014/violence-against-women-eu-wide-survey-main-results-report>

⁴³ Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JH *OJ L 315*,

⁴⁴ See for example Sexual Health and Reproductive Rights Education Programme from the EP [http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/599301/EPRS_BRI\(2017\)599301_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/599301/EPRS_BRI(2017)599301_EN.pdf) (accessed 17 October 2017)

⁴⁵ Fredman, S. F. (2011). *Discrimination law*. Oxford University Press p.36

⁴⁶ Communication from the Commission to the Council, the European Parliament, the European Economic and Social committee and the Committee of the Regions - A Roadmap for equality between women and men 2006-2010 COM/2006/0092 final

⁴⁷ Op. cit., Masselot (2007) pp.155-156 and Caracciolo Di Toerella (2007) p.341

⁴⁸ Explanatory statement from the Committee on Women's Rights and Gender Equality report on how marketing and advertising affect equality between women and men (2008/2038(INI)) at www.europarl.europa.eu (accessed 17 October 2018)

the heightened role and influence of social partners in the legislative process and the enhanced and strengthened use of ‘soft law’ that has gained ground in recent years.

The EU has been relatively successful in carving-out a gender competence and it is yet to be fully realised or reach its limits. EU institutions have been effective in gently coaxing its Member States to promote gender equality, both a political and legal endeavour that has accumulated a catalogue of secondary legislation. It is clear that the EU has come a long way in creating a stable competence, for example, eradicating sex discrimination in the work place is dominated by EU law. However, concerns such as trafficking are yet to be fully realised. As such, the gender competence is limited and is resilient only in certain areas, namely those that are unambiguously inclusive in its economic competence, with sex discrimination predominantly fought within the work place through equal pay, social security and maternity measures.

The EU’s commitment towards gender equality has witnessed recent changes too, both in the guise of the Charter and Lisbon treaty which have both sought to bolster the principle of gender equality and gender mainstreaming which has allowed the EU to further promote and ensure gender equality in its Member States. Yet this commitment is very much based on the political will of the Union and its institutions. Political will is too often a fragile affair and as Brexit negotiations move onwards, it is evident that perhaps the UK risks losing a layer of women’s rights that has protected its citizens for the last 40 years. Without the safety net of the EU’s gender competence, it would seem that the UK citizens potentially in serious risk of losing the protection that the EU has fought to achieve. As Guerrina and Masselot concede, it is both difficult to forecast the full extent of the damage that Brexit will cause to the wider EU gender regime or indeed fully envisage what a post-Brexit gender regime may look like.⁴⁹ The most significant and inevitable factor is that as Brexit begins to dismantle the scaffolding provided in the foundations of treaties it may become evident that the soft law approaches that have the biggest impact on the UK⁵⁰ will be diminished.

⁴⁹ Guerrina, R. and Masselot, A., 2018. Walking into the footprint of EU Law: unpacking the gendered consequences of Brexit. *Social Policy and Society*, p.9

⁵⁰ Kantola, J. and Nousiainen, K., (2012). The European Union: initiator of a new European anti-discrimination regime?. In Krizsán, A., Skjeie, H. and Squires, J. (eds). *Institutionalizing intersectionality: The changing nature of European equality regimes*. Springer. Palgrave Macmillan, London.

2.5 An Emerging ‘European’ Media Competence

Unlike the gender dimension of EU law, ‘European’ law has sought to regulate cross-border broadcasting since the inception of the European Convention of Human Rights (ECHR) in 1949 and the Treaty of Rome in 1957. The main question in those early days of the two authorities was which body will act first? Neither document explicitly contained a reference to media and nor was there any reference towards advertising. For the initial phase of the ECHR, early cross-border broadcasting case law found itself in the European Court of Human Rights (ECtHR) with legal questions from signatory states over censorship and the restriction of ‘ideas and information’.⁵¹ At this point there was little case law in these early days except cross-border broadcasting of radio and it is not until the late 1980s, with the access to satellite broadcasting, that cross-border broadcasting (including advertising) regulation begins to formulate. These early cases on freedom of information and radio broadcasting did however remind European states that they must ensure they can justify any legislation that hinders or restricts freedom of expression (article 10 ECHR). Through the rise of satellite dishes and cable TV operators, the ECtHR piecemeal approach buckled, and a common television framework was initiated through the European Convention on Trans-Frontier Television (the television convention). Nevertheless, the bulk of the effort towards regulating cross-border broadcasting – and specifically competence on advertising has been initiated by the EU’s jurisdiction.

Another reason for ECHR intervention is partly due to technological changes and shared languages between European states. The traditional printed press and radio was the most popular format of 1950s, with television for the masses still in its infancy. Up until this point it was common courtesy between the states to share the radio waves. As more countries with a common language joined the European community, the notion of media regulation became ripe. German and Austria, The Benelux and France, Portugal and Spain had always enjoyed cross-border broadcasting and printed press but due to satellite technology and customer subscription, cross-border broadcasting became an obvious oversight. The case law throughout the late 1980s and early 1990s – which runs parallel to the jurisdiction of the CJEU – exposes not just the change of media consumption but equally highlights the courts insistence to remind European governments that they would have to be able to justify any laws that would restrict

⁵¹ Barendt, E., Hitchens, L., Craufurd-Smith, R. and Bosland, J., (2013). *Media Law: Text, Cases and Materials*. Pearson Higher Ed. pp. 195-6

cross border technology and broadcasting. For example, in *Groppera Radio AG and Others v Switzerland* ⁵² the applicants challenged a national ban on a radio station (featuring advertisements) claiming that such a ban would infringe upon their freedom of expression rights and overstep the right to ‘impart information and ideas regardless of frontiers’ under article 10 ECHR. In *Autronic* ⁵³ the court found that the Swiss governments ban on broadcasts received in un-encoded format also contravened article 10 ECHR highlighting that it is not merely just the content but the means of transmission. Almost 20 years later, in *Khurshid Mustafa* ⁵⁴ the ECtHR held that a tenant’s private tenancy agreement, which prohibited the applicant from positioning a satellite dish on the front of his flat, contravened article 10. In parallel to the ECtHR case law, the European Convention on Trans Frontier Television 1989 began the process of a common framework on European Broadcasting ensuring that freedom of expression rights is to be ensured in broadcasting. In brief, the convention lays down a legal framework ensuring the free circulation of TV programmes and advertising in Europe. The convention provided, for the first time, some common minimum standards and rules, most importantly it opened the door to advertising sponsorship (product placement) and the protection of minorities (i.e. women and minors). The Convention’s main friction lies between the freedom of expression rights and the rights of individuals i.e. incitement to hatred/protection of minors. This friction will be discussed further in Section 2 of Chapter 7 which looks at national perspectives on combatting gender stereotypes in advertising. In terms of advertising standards, the common rules are very basic and feature very little towards women’s rights. Tobacco, gambling advertising and medicine are the three main products and services at play. Simultaneously, the EU was working on this same area and some of the gaps within the Convention are now plugged by EU secondary legislation and soft law across both the gender and media competences.

⁵² *Groppera Radio AG and others v Switzerland* App no 10890/84, A/173, (1990) 12 EHRR 321

⁵³ *Autronic AG v Switzerland*, Merits and just satisfaction, App no 12726/87 (A/178), (1990) 12 EHRR 485,

⁵⁴ *Khurshid Mustafa And Tarzibachi v Sweden* ECHR (Bailii, [2011] ECHR 1277

2.6 EU Media and Advertising Competence

As television and satellite technology generated much ECtHR case law⁵⁵ and consensus grew amongst its signatory states, the EU Media competence is a much more strained affair as it moves beyond the language of freedom of expression rights of article 10 ECHR and its complainants. Media and advertising are now – broadly speaking – secured within the EU’s competence catalogue despite the two terms not being mentioned in the original EEC Treaty of 1957. The EU’s power to legislate in this field is ‘considerably controversial’⁵⁶ due to the initial lack of competence and unlike the EU’s competence in gender regime, there was no mention of media regulation in the establishing treaty. Media and advertising entered the lexicon of EU law through the EEC’s efforts to establish a common market and four freedoms in articles 34-56 TFEU (goods, services, persons and establishment). With the increase of cross border trade and free movement of persons and workers, it was inevitable that the Court of Justice of the EU (CJEU) would be forced to react to Member States that were seen to be breaching the four freedoms. As I have previously outlined, the ECtHR were equally forced to act to market forces and cross border advertising, the CJEU would likewise be coerced into reacting to free-market principles and an ever-enlarging European Union. As Member States joined the EU, competition within the media and broadcasting industries increased and in 1974 the CJEU received its first preliminary question from Italy on the issue. *Sacchi*⁵⁷ is now regarded as the opening of the court’s involvement in the area. Sacchi, the owner of a cable company that received transmitted TV programmes in Italy, refused to pay the Italian state licence fee. At the time, the Italian government had provided Radio Audioszione Italiana (RAI) a monopoly on broadcasting and in refusing to pay, Sacchi argued that such a monopoly in the market restricted the reception of foreign TV shows in Italy and therefore acted as a barrier to free movement of goods. The CJEU rejected Sacchi’s argument but acknowledged for the first time that media (and indirectly advertising) was a service and consequently covered within the then EEC treaty provision. Under EU law, media products are now generally covered under services or goods and scrutinized by the free movement principles that underpin EU law. *Saachi* solidifies the link between the media, law and EU competences, however it left some areas wide open. For example, over the last four decades there has been a wider discussion

⁵⁵ Castendyk, O., Dommering, E. J., & Scheuer, A. (2008). *European media law*. Kluwer Law International. p.18

⁵⁶ Op cit., Barendt et al (2013) p.201

⁵⁷ Case C-155/73 Italy v Sacchi [1974] ECR I-409

whether domestic goods and services can directly discriminate against foreign goods/services. Case law in this area is guided by article 36 TFEU (goods) and 52 TFEU (services). For the last 4 decades the dominant discourse in both advertising and media (but also the internal market more broadly) is whether something is a good or service, this is something that will be looked at later in the chapter. Articles 36 and 52 TFEU both allow for Member States to justify their measures, for example foreign products may be legitimately banned if they can be objectively perceived as contravening public health or morality.⁵⁸ For such a justification to be accepted by the CJEU, they must be shown to be proportionate. In *Bond Van Adverteerders*, the Dutch government argued that the aim of limiting foreign satellite channels that were broadcast in the Netherlands was justifiable.⁵⁹ The Dutch argument was based on ensuring plurality: that political, cultural and social strands of Dutch society were guaranteed a certain amount of public air time on Television. Dutch authorities ensured this through the regulation of TV airtime and arranged advertising time limits across the different services providers. Cable and satellite network providers considered the state's advertising code far too strict and to circumvent their adverts the broadcasters decided to leave the Netherlands and operate out of neighbouring Luxembourg and Belgium where the regulatory code and state measures were more relaxed.

EU media law has not only sought to catch directly discriminatory measures or national laws that impede free movement of TV services, it has also caught rules that apply without discrimination to foreign or domestic services. For example, it has also caught rules on the limitation and length of advertising that appears on terrestrial television as well as measures that ensure that the broadcaster allots a certain amount of time and that the programmes are in the national language or autonomous dialect/language. Such examples could quite easily hinder free movement rights across EU televisions and satellite markets. The CJEU has also ruled on 'indistinctly applicable' measures, rules that are effectively indiscriminate, affecting both domestic and foreign advertising. In such instances, Member States are allowed a certain amount of leeway to justify their laws or advertising codes and regulatory standards. The most notable case from this area is on the protection of minors. In *De Agostini*, the court agreed with Sweden's ban on children's television advertising, which the state justified on public health

⁵⁸ Case C-120/78 *Rewe v Bundesmonopolverwaltung für Branntwein* [1979] ECR I

⁵⁹ Case C-25/85 *Bon Van Adverteerders and Others v The Netherlands* [1988] ECR I-2085

grounds.⁶⁰ The case involved television advertising which was relayed to Sweden by satellite via the UK by Swedish state television company TV3. The content was then shown on TV3, TV4 and Home Shopping Channel in Sweden. The claimants, the Swedish advertising regulator, argued that the advertising consortium's adverts had breached the Swedish advertising regulatory code. At the time the Swedish regulator scrutinised the content of adverts that could be shown to children. The advert in question was a weekly magazine 'collect them all' dinosaur where subscribers were sold a magazine that included different part of a dinosaur each week. At the time, the Swedish code specifically prohibited advertising that was directly aimed at children under the age of 12. The Italian magazine producer, *De Agostini*, argued that the state regulatory code had breached EU free movement of services provisions by effectively blocking an Italian company from penetrating the Swedish children's magazine market. The CJEU held that the Swedish ban on advertising aimed at minors did amount to a breach of free movement rights but agreed with the Swedish ombudsman's claim that such advertising was justifiable on public health grounds relating to the protection of minors.

Post-Sacchi, Bond Van Adverteeders and *De Agostini*, the EU has focused on harmonising Member States regulatory standards and principles. This was galvanised by both the European Parliament⁶¹ and later the Commission.⁶² The Commission's green paper set out some basic hopes (harmonisation and standards) but also highlights some fears (the U.S satellite completion) and was therefore, not altogether about harmonisation but more to do with competition. The harmonisation of EU standards is well known for its complexity and co-ordinating rules across as diverse media and broadcasting landscape that have within them conflicting regulatory standards, the Commission at the time were left with a near impossible task. Like other harmonisation programmes, the EU imposed minimum standards which all Member States must abide by but could – if they wished to do so – impose higher standards, including banning certain goods or services (i.e. advertising) from other Member States that do not conform to the host's regulatory code. For example, certain Member States may choose to set higher standards for their domestic services (i.e. the UK and the BBC) compared with imported services (cable/satellite TV). In 1989, simultaneous with the Television Convention,

⁶⁰ Case C-34/95 *Konsumentombudsmannen (KO) v De Agostini (Svenska) Forlag* [1995] ECR I-179

⁶¹ European Parliament Report drawn up on behalf of the Committee on Youth, Culture, Education, Information and Sport on radio and television broadcasting in the European Community. Working Documents 1981-1982 Doc 1013/81

⁶² Television Without Borders Green Paper COM (84) 300 FINAL

the EU's Television without Frontiers (TWFD) sought to regulate EU Member States satellite broadcasting and advertising. The TWFD received stark criticism from academics who suggested that the Directive was regulating European television but also watering down cultural difference amongst and within the Member States.⁶³ Also, from individual Member States with media lobbying such as the UK and Germany whose criticism came at a time when both were seeking to liberalise the market at a much faster speed.⁶⁴ Overall, this shift towards harmonisation should be read through the prism of technological change, a political-economic shift towards neo-liberalisation of the market (particularly UK, Germany and Luxembourg) and increased competition from the USA. Gibbons and Humphreys have argued that the TWFD is a 'classic piece of negative [EU] integration' blaming Member States such as the UK (who strongly supported the Directive) for the liberalisation of media and advertising markets. The timing of the TWFD which came into force in 1990 (one year after the Television Convention) is also relevant, as the two instruments covered same areas: advertising and the protection of minors.⁶⁵

With the foresight and power of the internet, catch up TV/Online services, the TWFD was radically amended in 2010 and renamed the Audio-visual Media Services Directive (AVMS Directive). The Directive will be looked at more closely when scrutinizing secondary legislation in the second section of this chapter. However, it is worth noting a few of the transitions from TWFD to AVMS and the current media law that now operates as a regulatory framework within the EU. Unlike the TWFD the Directive covers audio-visual content and more importantly, covers content irrespective of the technology that is used to deliver it. This is a significant transformation as there has been a black hole in EU and International media law on this area. In the face of new technology and developments in an information society, new players have positioned themselves against the 'old guard' for example, younger audiences tend to consume news and media through social media platforms such as Facebook and

⁶³ Kleinsteuber, H. J., & Sonnenberg, U. (1990). Beyond public service and private profit: international experience with non-commercial local radio. *European Journal of Communication*, 5(1), 87-106

⁶⁴ Gibbons, T. and Humphreys, P. (2012). *Audiovisual regulation under pressure: Comparative cases from North America and Europe*. Routledge p.37

⁶⁵ In 1997 the TWFD was amended to clarify on the rules protecting minors. See Directive 97/36/EC mending Council Directive 89/552/EEC on the co-ordination of certain provisions laid down by law regulation administrative action in Member States concerning the pursuit of television broadcasting activities [1997] OJ L 202/60

Twitter.⁶⁶ It is these younger audiences that the EU have been keen to protect⁶⁷ via the Directive and in April 2017 the European Parliament's Committee on Culture and Education voted to amend a proposal for a modified AVMS.⁶⁸ The current Directive's net is therefore cast wider and the content which is regulated by the Directive can be audio-visual in nature but may be accessed through smart phone, tablet or TV. The regulated content is also live, on catch-up TV or video on demand (VOD). It is at this juncture that the AVMS Directive makes a clear distinction – catch up TV/VOD is now covered by the Directive as well as traditional broadcast services. In terms of advertising regulation, the Directive has also simplified the rules (article 3e AVMS Directive) to sponsor content. The monitoring of advertising, particularly product placement adverts have been a major cause for concern for the commission and the AVMS Directive goes some way in regulating such advertisements.

2.7 Advertising Regulatory Standards and Free Movement Case Law

The EU's media competence was initially manufactured through the ECHR case law involving satellite transmission and cross border broadcasting. The CJEU has equally been instrumental in this area, shaping cross border advertising regulation and policy.⁶⁹ In the guise of free movement provisions on the treaties in article 34 and 56 TFEU. As the single market has expanded, Member States have rightfully restricted certain forms of advertising content to certain times of the day, limitations on length and frequency and more recently personalised advertisements. Advertising regulation is diverse across the EU Member States and some have legitimate purposes to protect the public for different reasons: public health, promotion of ethics and moral standards, taste and decency and the protection of children. Nevertheless, such regulatory standards have been deemed as not just an obstacle to free trade but also a distortion of competition between Member States and within the advertising market, favouring domestic

⁶⁶ Jane Wakefield 'Social media 'outstrips TV' as news source for young' BBC (London 15 June 2016) <http://www.bbc.co.uk/news/uk-36528256> (accessed 19 February 2017) and Hermida, A., Fletcher, F., Korell, D., & Logan, D. (2012). Share, like, recommend: Decoding the social media news consumer. *Journalism Studies*, 13(5-6), 815-824.

⁶⁷ See European Commission report 'Social media companies need to do more to fully comply with EU consumer rules' http://europa.eu/rapid/press-release_IP-18-761_en.htm

⁶⁸ European Parliament Briefing Paper on The Audiovisual Media Services Directive April 2017. See [http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/583859/EPRS_BRI\(2016\)583859_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/583859/EPRS_BRI(2016)583859_EN.pdf) (accessed 2nd February 2018)

⁶⁹ Kraft, D., 2007. Advertising Restrictions and the Free Movement of Goods - The Case Law of the ECJ. *European Business Law Review*. 18, p.517.

over foreign goods.⁷⁰ Member States with stricter advertising codes, such as the Nordic countries (i.e. Finland and Denmark), have sought to protect children and young adults through their advertising ombudsman compared to other Member States with a more liberal approach to advertising (i.e. the UK). In these instances, the CJEU has shown little reluctance (particularly in cases involving advertising) in intervening if a Member State's advertising code has hindered free movement. In the next section, I will provide a brief overview and some analysis of the free movement rules that govern the single market and case law that dissects free movement, advertising regulation and justifications that the CJEU have considered.

Article 34 prohibits quantitative restrictions (QRs) on imports and all measures having equivalent effect (MEQRs) with the supplementary Directive 70/50 EEC providing a fuller definition of an MEQR: all measures that 'prohibit or limit publicity in respect of imported products only, or totally or partially confine publicity to domestic products only'. Article 3 of the Directive also controls measures governing the marketing of products which apply to domestic and imported goods alike. The European legislator has thus made clear that article 34 catches all rules, regulations (hereon measures) which place additional burdens on the marketing of imported goods, whether they discriminate on their face value or in their effect (distinctly and indistinctly applicable rules).⁷¹ In addition to secondary legislation, the CJEU has over the years pursued the task of defining an MEQR, ensuring that any barrier to trade must be removed to ensure the free movement treaty provisions operate fully.

The case of *Dassonville* provided the seminal definition that an MEQR covers 'all trading rules ... capable of hindering, directly or indirectly, actually or potentially, intra community trade'.⁷² In *Cassis* the court developed the definition further and provided legal tests for the national courts to apply ad-hoc. In *Cassis* a German piece of legislation, prescribed minimum alcohol content of 25%ABV on fruit-based liqueurs and in doing so prevented German importers and supermarkets from selling French liqueur (marketed and advertised at 15-20%ABV).⁷³ The

⁷⁰ See for example 'Buy Irish' advertising case C-249/81 Commission of the European Communities v Ireland [1982] ECLI:EU:C:1982:402

⁷¹ Kraft, D. (2007). Advertising Restrictions and the Free Movement of Goods-The Case Law of the ECJ. *Eur. Bus. L. Rev.*, 18 .p.517.

⁷² Case C-8/74 Procureur de Roi v Dassonville [1974] ECR 837

⁷³ Case C-120/78 Rewe-Zentral AG v Bundesmonopolverwaltung für Branntwein[1979] .ECR I 649

German rule was found to be ‘indistinctly applicable’ to both the domestic and imported goods alike. The court, as in *Dassonville*, found that the German measure fell within the scope of the article and therefore amounted to an MEQR. The ruling established two vital concepts, firstly, the principle of mutual recognition of regulatory standards, whereby if a product has been treated to one set of regulatory standards in the country of origin it should then be allowed access to the importing country without another set of regulatory standards applied a second-time round. Any additional statutory or regulatory controls were therefore deemed contrary to EU law and caught by article 34. Secondly, *Cassis* opened the door for Member States to objectively justify their regulatory restrictions. Although eventually rejected by the court, the German defence argued that the measure served to protect public health, signalling to the average German consumer that fruit liqueurs are high alcohol content and lower ABV would mislead the consumer. Notwithstanding the justification, the court was forced to acknowledge that the intent of Germany’s advertising and labelling law was genuinely aimed at protecting the consumer rather than restricting trade and distorting competition in the drinks market. The German argument did not pass the proportionality test as better labelling or guidance for consumers would be sufficient. This argument has been successfully applied in other cases, for example *Commission v Germany* where a German regulatory standard prohibited the marketing of beer hops, barely and water only.⁷⁴ Similarly, in *Commission v Spain* the regulation prohibited the marketing and advertising of bleach with chlorine greater than 35g per litre.⁷⁵ As Kraft notes, national advertising and labelling measures ‘aimed at protecting ill informed, unobservant or reckless consumers were rendered incompatible with the single market’.⁷⁶

Further legacy of *Cassis* is found in the Misleading Advertising⁷⁷ and Unfair Consumer Practices Directives⁷⁸. Both introduced harmonization and minimum standard measures for advertising, aiding both companies wishing to penetrate new markets but also protect consumer rights. The broad definition (and justifications) built into *Dassonville* and *Cassis* has equally caused a lot of uncertainty in the jurisprudence of free movement, specifically the

⁷⁴ Case C-178/84 *Commission v Germany* 1987 ECR 1227

⁷⁵ Case C-385/01 *Commission v Spain* [2003] ECR I-13145

⁷⁶ Kraft, D. (2007). Advertising Restrictions and the Free Movement of Goods-The Case Law of the ECJ. *Eur. Bus. L. Rev.*, 18, 517.

⁷⁷ Misleading Advertising Directive 84/450 EEC

⁷⁸ Unfair Consumer Practices Directive 2005/09 EC

reach of article 34.⁷⁹ Post-*Dassonville* and *Cassis*, the courts were awash with free movement litigation with companies testing whether national laws amounted to a hindrance to free movement provisions with the CJEU left unaware of how to deal with trade complaints made by or against national regulatory bodies.⁸⁰ The jurisprudence and rules that derived from *Keck* acted as a sieve and remedy the relentless case law flooding the CJEU. Paragraphs 16 and 17 of the decision ruptures the original definition of an MEQR by providing that national laws or regulations that are seen to restrict or prohibit ‘certain selling arrangements’ that apply to traders ‘operating within the national territory’ will not be caught by article 34. *Keck* has had a profound effect on advertising rules and regulation has since found advertising cases under the banner and categorisation of ‘selling arrangements’. For example, in *Gourmet International Products* the Swedish advertising ombudsman placed a blanket ban on adverts featuring alcohol with more than 2.5% ABV (except at point of sale) on radio, TV and print. A total ban clearly restricted free movement provisions, if the state prohibits non-national producers of alcoholic beverages, the consumer is less aware and therefore less likely purchase non-Swedish alcohol.

Advocate General Jacobs opinion in *Leclerc Siplec*⁸¹ is often regarded as a shift in the courts argument or as the ‘beginning of a different interpretation of article 34 in relation to advertising’ as it acts as an important tool in developing a free market economy that allows for fairer competition.⁸² Prior to the landmark ruling of *Keck*, the CJEU had always held that advertising restrictions should be caught by article 34 as indistinctly applicable measures unless they could be justified.⁸³ For example, restrictions on advertising of alcoholic drinks were held to be counter to single market principles and accordingly a breach of article 34.⁸⁴ *Keck* did not reverse the jurisprudence of the court entirely, rather AG Jacobs’s opinion in the case marked a shift in the reading of article 34 by emphasising that rather than a hindrance, advertising was an aid to competition and free trade ideology by allowing new products and services to penetrate untapped markets and consequently accessing trade in new Member States.

⁷⁹ Steiner, J., Drawing the Line: Uses and Abuses of Article 30 EEC’ (1992). *CML Rev*, 29, p.749.

⁸⁰ See for example cross border price fixing advertising case C-362/88 GB-INNO-BM v Confederation du Commerce Luxembourgeois [1990] I ECR 667

⁸¹ Case C-412/93 *Leclerc Siplec Société d’Importation v TFI Publicite & M6 Publicite* [1995] ECR I-00179

⁸² Enchelmaier, S., Jarvis, M., Johnston, A. C., Norberg, S., Oliver, P. J., Stothers, C., & Weatherill, S. (2010). *Oliver on Free movement of goods in the European Union*. Bloomsbury Publishing. p.158

⁸³ Case C-286/81 *Oosthoek's Uitgeversmaatschappij BV*. free gifts were considered as an MEQR

⁸⁴ Joined cases C-1/90 and C-176/90 *Angonesá de Publicidad Exterior SA and Publivía SAE v Departamento de Sanidad y Seguridad Social de la Generalitat de Cataluña*

According to AG Jacobs, advertising provides variety and mobility for the single market and Member States that seek to regulate or prohibit certain forms of advertising are directly or indirectly hindering free movement within the single market but also limiting the consumer's habits and behaviour. Post-Leclerc, AG Jacobs opinion and the decision in *Keck* have been influential in the CJEU jurisprudence. Thus, advertising regulatory standards is generally considered as 'selling arrangements' i.e. the way in which a product or service is sold rather than the products characteristics or qualities. Or, as per paragraph 16 of *Keck*, selling arrangements fall outside of article 34 if they affect 'in the manner in law and in fact, the marketing of domestic products and those from Member States'.⁸⁵

In the late 1980s and early 1990s the CJEU found numerous national measures that amounted to 'selling arrangements' and the jurisprudence of the time paints a broad definition. For example, national legislation limiting the time at which goods can be sold may not amount to a selling arrangement and therefore not a breach of article 34.⁸⁶ Other examples include the opening of petrol stations,⁸⁷ Sunday trading times,⁸⁸ retail sale licences⁸⁹ and measures that ensure infant milk must be sold in public pharmacists.⁹⁰ At this stage the court had suggested that national measures which place certain advertising restrictions (or regulation that is higher than already guaranteed at EU level) on advertising amounts to a selling arrangement and falls outside article 34. Examples of advertising as a selling arrangement are somewhat dated but wide ranging: German regulation on banning private pharmacies from advertising para-pharma products outside of the shop,⁹¹ French regulation which prohibited fuel companies advertising on TV and a blanket ban on advertising of alcohol across all forms of media.⁹² In the case of *Garner* the court clarified its view on advertising, claiming that '[P]rovisions and advertising of those products as well as certain marketing methods are provisions governing selling

⁸⁵ Join cases C-267 and 268/91 Bernard Keck and Daniel Mithouard [1993] ECR I-6097

⁸⁶ Joined Cases C-69/93 and C258/93 Puno Casa [1993] ECR I-02355

⁸⁷ Joined cases C-401/92 and C-402/92 Tankstation 't Heukske vof and J. B. E. Boermans ECR I-02199

⁸⁸ Case C-418/93 Semeraro Casa Uno Srl gegen Sindaco del Comune di Erbusco [1993] ECR I-02975

⁸⁹ Case C-20/03 Marcel Burmanjer and Others [2003] ECR 687

⁹⁰ Case C-391/92 Commission v Greece [1995] ECR I-01621

⁹¹ Case C-292/92 Ruth Hünermund and others v Landesapothekerkammer Baden Württemberg [1993] ECR I-06787

⁹² Case C-405/98 Konsumentombudsmannen (KO) v Gourmet International Products AB (GIP). [2001] ECR I-01795

arrangements...’⁹³ and *Gourmet International Product* (prohibition of advertising alcohol) the Swedish regulator had raised questions whether the state could protect its consumers from other Member States advertising when it did not meet the national regulatory standards. In *Gourmet*, the blanket ban of alcohol advertising was found to be a clear breach of article 34. This is due to a total ban having a disproportionate impact on non-national/foreign imports accessing the market. The consumer will be less aware and therefore less likely to purchase non-national products. In both cases the court states that whilst bans on advertising space and air time would potentially breach article 34, Sweden’s public health justifications could be accepted but only if the national court found the measure to be proportionate and that there were no less restrictive ways of achieving the public health objectives of the bans could be met. AG Geelhoed’s opinion in *Douwe Egberts*⁹⁴ has appeared as a slight departure from the *Keck/Leclerc* interpretation as the court abandoned selling arrangements altogether⁹⁵ and yet still argued that advertising should be caught by article 34 TFEU.

2.8 Conclusion

In this opening chapter I have sought to introduce the two main competencies that bind this thesis together, gender and media, and to investigate the core question of if (and when) the EU has the capacity to regulate gender stereotypes in advertising. I began to formulate an answer to this question by conceptualising the ‘gender regime’ of the EU and the changing landscape of EU law from the very early notion of gender equality at the Treaty of Rome and the patchwork of legislation that the institutions have developed from the 1970s onwards. Through the emergence of the ‘competence catalogue’ the two competences of gender and media have become fixed allowing the EU to legislate in both areas, taking advantage of the political and technological shifts that have taken place since the 1990s across Europe. The EU has taken considerable steps to safeguard women’s rights in all manner of areas, starting within the workplace but more recently in the private sphere where soft law approaches seem *de rigueur*. The Lisbon Treaty has encouraged EU institutions (in particular the CJEU and the Parliament) to take a more hands-on approach in these areas, especially within gender equality where the

⁹³ Para 38 of Case C- 71/02 *Herbert Karner Industrie-Auktionen GmbH v Troostwijk GmbH*. [2004] ECR I-0302

⁹⁴ Case C-239/02. *Douwe Egberts NV v. Westrom Pharma NV and Others* [2004] ECR I-07007

⁹⁵ Op. cit., Enchelmaier et al (2010)

use of gender stereotypes in (and out of) the workplace is seen as an equal threat to gender equality as much as substantive barriers such as work-based discrimination.

This chapter has also indicated that soft-law options may remain the EU's most realistic tool for accelerating the regulation of gender stereotypes in advertising, especially within the gender competence. As I have underlined in the final section of the chapter, the CJEU has not hesitated in shaping advertising regulation in the guise of a single market concern via the free movement articles of TFEU and through the wider remit of free movement case law. However, this is an area of case law that is currently dormant and has been since the rise of AG Jacobs 'market access test'. It is apparent that the EU certainly has the capacity and political will to legislate on gender stereotypes in advertising as both areas have dominated the EU agenda for some time, and, as I will show in the following chapter, the EU have taken considerable steps to push for the removal of gender stereotypes in advertising through soft law approaches. Therefore, Chapter 3 will move on to a critical examination of how gender stereotypes in advertising as a policy area has been pushed further up the EU agenda and an examination of the actors that have played a part in bringing this issue to the fore.

Chapter 3

The EU Gender Regime: Stereotypes as a Form of Discrimination

3.1 Introduction

In this chapter, I will provide an overview and evaluation of the two main international instruments – the Convention for the Elimination of All forms of Discrimination against Women (CEDAW) and Beijing Platform for Action (BPfA) and the obligations that lie therein to tackle gender stereotypes. This will be done in order to position the national and EU obligations in the context of the international arena. I then look towards EU secondary legislation (Directives) focussing on the shortcomings of the Goods and Services Directive ('Gender Directive') and the future forecasts of the AVMS Directive as the commission looks towards regulating advertizing. Finally, I will consider the soft law approaches adopted by the EU institutions to combat gender stereotypes in advertising. The EU Directives and soft law policy have accumulated from the two competences discussed in the first section of this chapter but have also been shaped by EU institutions (primarily the Commission and Parliament) and NGOs, charities and advertising regulatory organisations. The evaluation of these will be discussed through the prism of the ongoing Brexit negotiations and the UK's future relationship with the EU.

The acknowledgement of gender stereotypes as a form of discrimination within the EU's gender regime has been a gradual one. For Timmer, this response has been slowed down by the very foundations of the EU, by its institutions but in particular by its court.¹ For example, in some of the early gender equality case law the CJEU actively reinforced gender stereotypes in some of its decisions.² As discussed in the previous chapter, the founding treaty of the European Union showed no indication of a gender based competence and the roots of recognising gender stereotypes as a problem stem from two United Nations documents: the

¹ Timmer, A. S. H. (2016). Gender Stereotyping in the case law of the EU Court of Justice. *European Equality Law Review*, (1), p.38

² See for example Case C-20/71 Louisa Sabbatini (Nee Beroni) v European Parliament [1972]

Convention for the Elimination of All forms of Discrimination Against Women³ (CEDAW) and Beijing Platform for Action⁴ (BPfA). CEDAW provides a ‘bill of rights’ for women and although the EU is not formally signatory to CEDAW, the majority of Member States are, which has steered the EU in recent years towards a heavily human rights-based approach of tackling sex discrimination and gender discrimination.⁵ One of CEDAW’s core obligation is to end discrimination against women with Article 5(a) addressing gender stereotypes, their persistence and the effect that they have on wider society⁶. Article 5(a) declares:

‘State parties shall take all appropriate measures... [T]o modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women’.

The article has two aims, initially obliging state parties to eliminate harmful practices that are based on superiority and inferiority of both sexes based on stereotyped roles of men and women and secondly safeguarding that state parties eliminate the pretext that women’s role is within the family.⁷ Fundamentally, subsections (a) and (b) act together to ‘modify gender stereotypes and fixed parental gender roles in order to realise full equality of women and men’.⁸ The CEDAW committee’s opinion⁹ of Article 5 reflects the true significance and purpose of the instrument, that it is a tool that should be used to remove gender stereotypes in all structures of

³ The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). The text of the Convention is annexed to the United Nations General Assembly Resolution 34/180 18 December 1979

⁴ The Beijing Platform for Action (1995) annexed to the United Nations Fourth World Conference on Women at www.un.org/womenwatch/daw/beijing/platform

⁵ Holtmaat, R., & Tobler, C. (2005). CEDAW and the European Union's Policy in the Field of Combating Gender Discrimination. *Maastricht Journal of European and Comparative Law*, 12(4), 399-425. p 401

⁶ ‘States Parties shall take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women’

⁷ For Example, the Irish Constitution makes an explicit reference to ‘motherhood’ and the role of women. Article 41 of the Bunreacht na Éireann (which deals specifically with the rights of women) declares in 41.2.1 that ‘the state recognises that by her life within the home, woman gives to the State a support without which the common good cannot be achieved, 41..2.2 The State shall, therefore, endeavour to ensure that mothers shall not be obliged by economic necessity to engage in labour to the neglect of their duties at home.

⁸ Op. cit., Holtmaat (2005) p.422

⁹ CO Burndi, CEDAW/C/BDI/CO/4 (2008)

society. The EU and individual Member States lack of ratification and implementation of the Convention reveals an underlying anxiety to legislate in the private sphere but the very existence of the CEDAW is at the very least influential.¹⁰ The ratification of Article 5 has been a positive step in some Member States but overall, the willingness to articulate the removal of gender stereotypes in legislation does not look promising. CEDAW precisely picks upon the paradox of ‘old’ and ‘new’ inequalities faced by women in the EU in that it aims to tackle the larger issues by reviewing the social structures that lead to the perpetuation of gender stereotypes.

Academics have consistently laid claim that gender stereotypes remain embedded in education,¹¹ advertising and the media.¹² In curricula and the social structure of the school gender stereotypes influence the courses and interests that young boys and girls select. This will eventually reflect the employment options and income, consequentially leaving women with a narrow range of possibilities in work. CEDAW sees the eradication of gender stereotypes in education very much the same way as in media and advertising, industries which are pervasive and harmful to all ages but particularly the young. The eradication of gender stereotypes in advertising and the media, which depicts women as sex objects, primary carers and often underweight has the potential to bring change with the larger issues in both the public and private sphere such as violence against women, segregation in the labour market and eating disorders respectively.¹³ EU Member States that are signatories wield the strongest influence as they are legally bound to put its provisions into practice, and report regularly to the CEDAW committee.¹⁴ From a feminist perspective CEDAW appears to do more in combatting sex-

¹⁰ Op. cit., Holtmaat (2005) p.399

¹¹ Haines, E. L., Deaux, K., & Lofaro, N. (2016). The times they are a-changing... or are they not? A comparison of gender stereotypes, 1983–2014. *Psychology of Women Quarterly*, 40(3), 353-363. . See also the European Institute for Gender Equality ‘Report on gender stereotypes in education’ 20th January 2017 <http://eige.europa.eu/news-and-events/news/education-key-breaking-gender-stereotypes> (accessed 19 February 2017)

¹² Grau, S. L., & Zotos, Y. C. (2016). Gender stereotypes in advertising: a review of current research. *International Journal of Advertising*, 35(5), pp. 761-770. See also UK Advertising Standards Authority Report ‘Depictions, Perceptions and Harm: A Report on Gender Stereotypes in Advertising’ July 2017 <https://www.asa.org.uk/resource/depictions-perceptions-and-harm.html> (accessed 3 January 2018)

¹³ CO Finland CEDAW / C / FIN 5 and 6 (2008) at para 177.

¹⁴ Article 3 CEDAW that signatories are bound to take ‘appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on the basis of equality with men’

discrimination in its sophisticated, all-encompassing approach. Its overarching tactic is threefold: to bring complete equality, improve the position of women in society and combat negative gender stereotypes.¹⁵ There is evidently difficulty in ascertaining how state parties could implement the obligations set out in article 5 and it is perceived as one of the most difficult articles of CEDAW to implement.¹⁶

State parties that have signed CEDAW have five main obligations to perform on the basis of Article 5. Firstly, to address and redress negative gender stereotypes that form the basis of direct and indirect discrimination in law and in private relations and violence against women in society; secondly, to examine whether their own laws and public policies are based on gender stereotypes presumptions, and if so, remedy the structured and systemic discrimination against women that follows such gender stereotyping; thirdly, to address gender stereotypes in the media and advertising, disregarding at the very least the most degrading and sexualised images of women; fourthly, to encourage and facilitate the sharing of parental responsibility between men and women through legislation and social policy and finally, to launch information campaigns where maternity is seen as a positive contribution to society.

The United Nation's Beijing Platform for Action (BPfA) contains the same aims and aspirations for greater equal opportunities for women and the removal of all obstacles in women's participation in economic, social and political decision making. The removal of gender stereotypes features as one of BPfA's 12 critical areas of concern and with technical and communication system advances, this area of concern is aimed at Government, non-Governmental organisations and the private sector. Under the other 12, the BPfA promotes actions aimed at removing and regulating gender stereotypes by raising the awareness of the media's responsibility in promoting non-stereotypical images of women and men that encourage gender violence,¹⁷ encouraging the media to look at the influence and impact of gendered stereotypes in advertisements which cultivate gender-based violence¹⁸, the removal

¹⁵ Burrows, N. (1985). The 1979 convention on the elimination of all forms of discrimination against women. *Netherlands International Law Review*, 32(3), p.419. and Kathree, F. (1995) 'Convention on the Elimination of all Forms of Discrimination Against Women' *South African Journal of Human Rights* 11:3 p.422

¹⁶ Cook, R. (1990) 'Reservation to the Convention on the Eliminations of all forms of Discrimination Against Women' *Virginia Law Journal* p.644

¹⁷ Title D, Violence against Women Para. 125 (j)

¹⁸ Para 129(d)

of gender stereotyping of men and women in the media (which tends to reinforce the notion that political decision making continues to be dominated by men)¹⁹ and finally, encourages the media to develop guidelines, codes and self-regulation to promote non-stereotyped images of women²⁰.

Although not legally binding, the BPfA goes some way in committing its signatory states to exercise diligence to prevent and sanction, through legislation, acts of violence against women. Crucially it also sets a benchmark for all signatory states to adhere to and by signing the BPfA, the EU has at the very least acknowledged that it is obliged to carry out the specific measures and actions set out within the text. The BPfA does place emphasis on NGOs and non-state actors in playing critical roles, but it is palpable that it is the primary responsibility of national parliaments and government to implement the actions of the 12 critical areas for concern and related objectives. The European Parliaments subsequent 'follow-up' resolution implementing the BPfA in May 2000 began the Parliaments acknowledgement, albeit a weak one, that effort must be made to combat gender stereotypes and adopted the measure to '...strongly supports a more positive and realistic portrayal and image of women in the media'.²¹

To a large extent stereotypes are part of the human condition and prevalent across all cultures and societies. They are the way in which a society groups' together individuals to form categories that in return help us understand the complexity of the world we live in. When we stereotype, we produce an over-simplification or generalisation of a group based on certain attributes, characteristics or the particular role that the group performs in society without considering any of the group members individual's skills, desires or situation. Stereotypes effect both women and men and may be intersected by class, ethnicity or sexual orientation. We are expected to behave normally in society and not step outside our closed stereotypes. For example, fixed parental roles dictate that men are expected to be the breadwinners, women are the primary carers in the family who stay at home and look after the children, this is just one of the many forms of stereotypes that inhibit men and women in society. Therefore, gender stereotypes conflict with the very foundations on which human rights legislation was built on – that each individual has the ability to make independent decisions about his or her life. Gender

¹⁹ Title G Women in Power and Decision-Making Para. 183

²⁰ Title J 'Women and the Media' paragraphs. 235 and 244

²¹ Paragraph 18 European Parliament resolution on the follow-up to the Beijing Action Platform (2000/2020(INI))

stereotyping has a particularly stronger effect on women, especially when the stereotype ascribed to women positions them into passive roles in society. Allowing such preconceptions of what women should be and the stereotyped roles assigned to women that appear 'natural' culminates with disrespect and devaluation of women in society.

The term 'gender stereotype' is formulated on the theory that the roles men and women perform are assembled through their social construction based on the physical and psychological differences between the sexes. Consequently, gender stereotypes are a structured set of views and beliefs about men and women, which are seemingly unproblematic – the gender stereotype only becomes an problematic when it fails to cogitate the individual characteristics, abilities, needs, wishes and circumstances that deny the individual their rights and fundamental freedoms.²² As with all forms of socialisation there are numerous proxies at play with gender socialisation starting within the family unit ²³ and then school and then other influences such as the mass media and advertising. The media, in its various forms, expresses resilient gender stereotypes. For example, the study of gender representation in television and film alone produces unbalanced results with men outnumbering women in news coverage²⁴ and film²⁵. Gender representation in advertising is a similar concern with the majority of advertisements featuring women promoting products and services that are linked to the home, housekeeping, children, motherhood and beauty.²⁶ Adhering to such gender stereotypes and the gender expectation of beauty²⁷ – thinness for women, strength for men – is related to a host of eating disorders and addiction²⁸. The dominance of negative gender stereotypes in advertising and the

²² Cook, R., & Cusack, S. (2011). Gender stereotyping: transnational legal perspectives. University of Pennsylvania Press p.20-22

²³ Raag, T. (1999). Influences of social expectations of gender, gender stereotypes, and situational constraints on children's toy choices. *Sex Roles*, 41(11-12), pp.809-831.

²⁴ See The European Federation of Journalist Survey (2012) Women Journalists in the European Integration Process - www.ifj.org (accessed 17 October 2017)

²⁵ Eschholz, S., Bufkin, J., & Long, J. (2002). Symbolic reality bites: Women and racial/ethnic minorities in modern film. *Sociological Spectrum*, 22(3) p.39

²⁶ Global Media Monitoring Project (2010) p. 8. The Global Media Monitoring Project (GMMP) exclusively covers news and was done on one day in 1995, 2000, 2005, 2010 and 2015 see <http://whomakesthenews.org/> (accessed 19 February 2018)

²⁷ Andreoni, J and Petrie, R. 'Beauty, gender and stereotypes: Evidence from Laboratory Experiments' (2008) *Journal of Economic Psychology* 29 (2008) 73–93 at 82

²⁸ Eckermann, L. 'Theorizing Self-Starvation Beyond Risk, Governmentality and the Normalising Gaze in in Malson, H and Burns, M (eds) 'Critical Feminist Approaches to Eating Disorders' (London: Routledge 2009) 18

media promotes a very narrow image of beauty for women²⁹ and it is one that leads many women, especially young women, to be distressed about their body image. Millions of women engage in constant dieting with fearing being ‘fat’ or overweight, even when they are well within or below healthy weight standards. Many women develop eating disorders by purging themselves of food or cycling through various commodified diets – behaviours that lead to serious health conditions. Whilst it is not uncommon that eating disorders derive from emotional traumas or sexual abuse from an early age, gender stereotypes and the promotion of ideal body type in advertising³⁰ as an ideal still play a large part, particularly through the pervasiveness of adverts on social media platforms.³¹

EU anti-discrimination legislation has thus far centred in labour law, setting a high standard in protecting women from discrimination in a range of work-related issues such as maternity pay, sexual harassment and equal pay. Legislation does not reflect the third wave feminist agenda that encompasses violence against women, trafficking, body surgery, self-mutilation, body image and the overall “pornification” of the media.³²

3.2. The ‘Gender Directive’

The Treaty of Amsterdam positioned gender equality as a priority and it now enjoys an elevated position³³ amongst the other EU goals and values. This promotion has had an important effect on the initiation of gender stereotypes as policy, which is rooted in wide scope of Article 19 TFEU³⁴ (ex Article 13EC). Amsterdam assembled the desperately needed ‘proactive’ stance as opposed to the reactive tone of the Directives that had derived from the treaties in previous

²⁹ Wolf, N. (1991). *The beauty myth: How images of beauty are used against women*. New York: William Morrow and Company. Inc, 348, 5. pp45-47

³⁰ Harrison, K., & Cantor, J. (1997). The relationship between media consumption and eating disorders. *Journal of communication*, 47(1), 40-67

³¹ Holland, G., & Tiggemann, M. (2016). A systematic review of the impact of the use of social networking sites on body image and disordered eating outcomes. *Body image*, 17, 100-110. p102

³² Krollokke, C., & Sorensen, A. S. (2006). *Gender communication theories and analyses: From silence to performance* (No. 50). Sage.17

³³ Gender equality now perceived as an ‘aim’ and a ‘task’ of the EU under Article 8 TFEU (ex-Article 3 EC). Article 10 TFEU confirms this approach by applying gender equality principle horizontally: “in defining and implementing its policies and activities, the Union shall aim to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation”.

³⁴ Article 19 TFEU (ex Article 13EC) allows the Council of the European Union to “take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.”

years. This reactive/proactive shift can be monitored in the early years of equality with the notion that gender equality will only be achieved if individuals claim their rights by reacting to a discriminatory problem, whereas the proactive stance on the other hand provides that all EU institutions at all levels are obliged to achieve equality. From a theoretical perspective, the EU has moved towards a more substantive approach to achieve equality, with positive action coming from the top and further engagement with NGOs, non-state actors and women's groups. A good example of this shift can be seen in the (reactive) Equal Pay Directive with its foundations in the market-orientated ideology, whereas what is necessary are more substantive, proactive methods such as the proposed 'female boardroom quota' Directive.³⁵

Formed by the newfound competence under Article 19 TFEU to provide further scope on anti-discrimination policy, the Commission had previously used the same Article for the employment³⁶ and race³⁷ Directives and eventually drafted what is now the Gender Directive³⁸. The introduction of the Article at Amsterdam can be seen as a new non-discrimination competence that has the scope to prohibit discrimination beyond the economic limitation of the internal market.³⁹ The Article can also be viewed as an extension of Article 157 (ex-Article 141 TFEU) but there are some understated differences, which provide for the collapse of the gender Directive, which, in its final version, omitted gender stereotypes. Firstly, there is a much tangible link between gender and the market in Article 157 TFEU which was initially brought in to calm the French reservations of uncompetitive salaries, rather than to tackle gender equality as a societal issue. Secondly, 157 TFEU is more effective as it refers to adopting measures that safeguard equal treatment between men and women, whereas Article 19 TFEU bears a more generic undertone to merely 'combat discrimination'. Finally, there are bureaucratic differences between the two Articles. An adopted measure under Article 19 TFEU requires unanimity from the Council whereas article 157 TFEU requires a qualified majority vote, which increases the chance of any such adoption. Article 157 TFEU would have also

³⁵ European Commission Draft Directive of the European Parliament and of the Council on improving gender balance among non-executive directors of companies listed on stock exchanges and related measures. COM(2012) 614

³⁶ Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation [2000] *OJ L 303*

³⁷ Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin [2000] *OJ L 180*

³⁸ Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services [2004] *OJ 373*

³⁹ Carraciolo Di Torella, E. 'The Goods and Services Directive: Limitations and Opportunities' (2005) *Feminist Legal Studies* 13. 337-347 at p. 339

benefited from the European Parliament's involvement, which is widely regarded as the 'guardians' of gender equality legislation. Accordingly, it is clear from the inception that the gender Directive seems somewhat misplaced by the commission if gender stereotypes were in any way to be included in the final version of the Directive.

Despite this procedural error, the Commission's pilot Directive had initially sought to implement a CEDAW inspired, human rights-based instrument, specifically covering anti-discrimination *outside* of the work place which would contain a comprehensive provision on the representation of gender in various areas including education, the media and advertising, taxation and social security. Initiated by DG Social Affairs, and with guidance from NGOs and legal academics, the Commission moulded a Directive which also comprised of the BPfA provisions such as domestic violence, trafficking and decision-making. The roots of the Directive can be traced back to as early as 2000 when the Commission consulted interested parties, with the European Women's Lobby (EWL) elevating 10 particular areas of interest that should form part of the draft Directive including, amongst others, 'images of women and men portrayed in advertising and the media'. By February 2002 the EWL and Advisory Committee on Equal Opportunities prepared an opinion with the majority of the original 10 proposals from EWL – including advertising and the media – remaining unscathed. At the same time the Commission produced an alternative draft with a narrower tone and attenuated content. Nonetheless both the opinion and draft legislation preserved some of the core areas (education, taxation and gender stereotypes in advertising and the media) on par with the Race Directive, the Gender Directive's nearest comparable piece of legislation. During the development of the Commission's draft, and due to a media leak in the summer before the Directive's airing in December 2004, particular industries – namely Media and Insurance ⁴⁰ – expressed hostility towards the gender representation proposal. The media industry provided the strongest reactions claiming that the removal of gender stereotypes was a step away from complete censorship that inevitably clashes with freedom of expression, a cornerstone of the EU.⁴¹ The insurance industries cited the proposal to remove sex difference as a factor in the calculation for car insurance would have a catastrophic effect on industries and consumers across the EU. Commissioners at the time, including Mario Monti, and larger Member States (UK and Germany) raised strong opposition to the inclusion of advertising and the media to the

⁴⁰ Op. cit., Caracciolo Di Torella, E. (2005)

⁴¹ *ibid* p.340

Directive. This was met with by a string of MEPs (the Women's Rights and Gender Equality Committee – FEMM), the European Women Lawyers Association (EWLA), the EWL, the Association of Women in Southern Europe (AFEM) clung on to the core demands set out initially: insurance, social benefits, education, advertising and the media.

Despite relentless lobbying from the interested parties and specifically EWL's desire to retain the core areas covered in the Race Directive (education, taxation and advertising and the media), the Commission was left with no choice but to re-draft a new Directive and withdraw its initial proposals⁴². The reason for the exclusion of these areas is based on the limitation of the nature of the legislation and the scope of the initial Gender Directive was to be limited to the access and supply of goods and services only. The redrafted Directive and narrow scope of its content was severely criticized by the Economic and Social Committee⁴³ and by the FEMM in the European Parliament which disputed the decision to go ahead with the Directive due to lack of proper consultation and not being informed of the changes.⁴⁴ During this period the Commission refused to accept any of the amendments and nor were they considered by the Council with the majority of discussion spent on the insurance policy question. The Directive was finally agreed by the Commission, Parliament and Council on 13th December 2004 with the requirement for all Member States to transpose the legislation into national law no later than 21st December 2007. After a flurry of leaks, exposes and lobbying in the UK and Germany, the final outcome of the draft resulted in the Goods and Services Directive.⁴⁵ A more enfeebled version of the original draft with the obligation of equal treatment between men and women outside the work place, however, only within the context of the access to supply of goods and services.

Overall, the Directive makes little effort in protecting gender equality outside the workplace, where no such legislation exists, and as it is merely confined to the access to and supply of goods and services, the Directive falls short of its original intention to combat the

⁴² *ibid* p.342 and *Op. cit.*, Masselot, A. (2007) p. 156

⁴³ See the full report and comment here <http://www.eesc.europa.eu> (accessed 17 October 2017)

⁴⁴ See for example FEMM and EWL's Annual report 2003 www.womenlobby.org. FEMM eventually proposed 34 amendments on the draft Directive which received a strong backing in the European Parliament plenary session on 30th March 2004 (313 votes for, 141 against 47 abstentions). Accessed 21 January 2018

⁴⁵ Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services [2004] OJ 373

representation of gender in educational materials, taxation and in the media and advertising.⁴⁶ Moreover, substantive equality appears to have been thrown out of the window⁴⁷ and the gender Directive is not in-line with the other equality Directives that were born out of the Amsterdam initiative. The gender Directives nearest comparable piece of legislation, the Race Directive seems marginally enhanced by including a provision on public bodies, social protection and education⁴⁸ which at the very least places gender lower in a hierarchy of equality. The Gender Directive, as clearly stated in its preamble, is only linked to the access and supply of goods and services, which means two things: firstly, there must be an economic link to the market as defined by EU law, and secondly limits undertakings carried out by public bodies, both of which limit the Directives use outside of the workplace. Some commentators⁴⁹ have stated that due to the failure of the Commission to press ahead with the initial proposals, gender equality takes a back seat in the wider equality programme and is less important than other forms of discrimination. Certainly, the removal of these provisions within the gender Directive is particularly vexing as in the years after the adoption of the Gender Directive the Commission, along with Parliament, persistently attempt to hang the idea of combatting gender stereotypes through constant soft law provisions which will be looked at in the next section.

3.3 Curbing Gender Stereotypes: Soft Law Approaches

Following the critical evaluation of hard law initiatives in tackling stereotypes, the next part of the chapter demonstrates how ‘soft law’ has nevertheless influenced the introduction and integration of gender stereotyping into the gender regime. In contrast to the somewhat fruitless Gender Directive, soft law approaches to tackle gender stereotypes in advertising and the media

⁴⁶ Calvero, S. and Galligan, Y. (2012) ‘Justice, Democracy and Gender’ in Galligan, Y (ed) ‘Deliberative Processes and Gender Democracy: Case Studies from Europe’ p.28

⁴⁷ Article 6 of the Directive appears to be the only sufficient form of substantive equality with reference made to Member States taking ‘positive action’. Similarly, Article 12(1) has a more practical tone ensuring that Member States harmonize the implementation process of gender equality by creating bodies that ‘may form part of agencies charged at national level with the defense of human rights or the safeguard of individuals’ rights, or the implementation of the principle of equal treatment’.

⁴⁸ *ibid* Article 3(1) includes equal treatment in the access to education, vocational training, social security and access to healthcare

⁴⁹ *Op. cit.*, Caracciolo Di Torella, E. p.340, and Brennan, F. (2003) ‘The Race Directive: Recycling Racial Inequality?’ *Cambridge Yearbook of European Legal Studies* p.322

are in abundance, which, through the powers set by the treaties⁵⁰ grant the commission approval to formulate a strong stance on the issue. Whilst soft law may ‘lack features such as obligation, uniformity, justiciability, sanctions, and/or an enforcement staff’,⁵¹ the Commission’s efforts to remain on course with the task of adopting *any* measure to remove negative gender stereotypes in advertising and the media nevertheless are through various soft law instruments. In this chapter, the soft law instruments that are laid bare do not so much develop EU legal order as fill a void where the EU has relatively weak competence and they are exhibited as mechanisms that aim to make advancements in the subject of gender stereotypes. Soft law has been effective in various areas of EU law, particularly in the European Employment Strategy (EES) via the contemporary Open Method of Coordination (OMC) but there have also been various actors who have cleared the pathway for gender stereotypes which will be discussed further in this part of the chapter.

The characteristics of soft law can be construed either widely as a source of EU law⁵² – endorsed by not just the EU institutions but also the CJEU⁵³ or it can be interpreted narrowly, as ‘complementary’ to EU legislation⁵⁴ which is a problematic affair as it is neither legally-binding and is limited in the development of legal order⁵⁵. As opposed to hard law measures, soft law measures vary throughout the EU but generally reflect the Commission’s intent on most future policy areas⁵⁶ and ‘tests the ground’ in Member States for future ‘hard law’ measures.⁵⁷ This generalization of soft law’s nature is reflected in processes that are adopted by reluctant Member States that initially reject entering into legally binding obligations but eventually reach a consensus to agree wide reaching goals, principles and targets.⁵⁸ This

⁵⁰ Article 17(1) TEU states that the Commission shall ‘promote the general interest of the Union and take appropriate initiatives to that end . . .’

⁵¹ Trubek, D. M., & Trubek, L. G. (2005). Hard and soft law in the construction of social Europe: the role of the open method of co-ordination. *European Law Journal*, 11(3), 343-364.

⁵² Article 288 TFEU (ex-Article 249 EC)

⁵³ Senden, L. (2005) *Soft Law in European Community Law* Hart Publishing p. 36

⁵⁴ Senden, L. (2005) Soft Law Self-Regulation and Co-Regulation in EU Law: Where Do They Meet? *Journal of Comparative Law*, 9:1

⁵⁵ Dawson, M. (2013) ‘Soft Law and the Rule of Law in the European Union: Revision or Redundancy?’ In Vauchez, A and De Witte, B (eds) ‘In Lawyering Europe’ 221-222

⁵⁶ Beveridge, F. ‘Implementing Gender Equality and mainstreaming in Enlarged EU: Prospects and Challenges’ in Beveridge and Velluti (2008) *Gender and the Open Method of Coordination* pp. 11-12

⁵⁷ *ibid* p.14

⁵⁸ Snyder, F. (1993) ‘The Effectiveness of European Community Law: Limitations, Processes, Tools and Techniques’ (1993) *Modern Law Review* 56:1 p.33

appears to be particularly true when dealing with sensitive or cross-border issues such as the EES and environmental policy.⁵⁹ Ultimately, soft law performs as a perfect agent in the field of gender equality where very little action has been taken by the Council to shift policy from the economic to the social sphere. The Commission, along with the Parliament are time and again more than willing to pick up the baton and accelerate a new agenda within the gender regime.⁶⁰ This void is where soft law's advantages flourish; it is coercive, even to reluctant Member States, it is self-regulatory and provides for flexibility as well as the awareness that no single Member State will face formal sanctions. Finally, and most importantly, the void between the economic and social sphere that soft law occupies is a mirror to the future of EU policy.⁶¹

3.3.1 The Roadmap to Equality Programme (2006-2010)

Commission's efforts in encouraging gender stereotypes policy at Member State level is placed at the heart of the Roadmap to Equality 2006-2010⁶² and is subsequently defended by the Commission's report on Equality between Women and Men⁶³. From the Roadmap's six priority areas, gender stereotypes are positioned alongside the eradication of gender-based violence and equal representation in decision-making. Funded by the newly established European Institute for Gender and the European Social Fund, the communication explicitly demonstrates the Commission's determination to make significant changes, albeit through soft law, in restructuring the EU's equality policy. Likewise, the 2008 Gender Equality Report is

⁵⁹ EU Environmental policy has placed soft law measures at the heart of its evolution since the 1970s. 'Roadmaps' and Action Programmes as starting points – based on scientific fact – are often later upgraded to legally binding targets. There have been 6 Environmental Action Programmes since 1973 with the most recent (7th EAP 2012-2020 is centred around Climate Change) being the first containing mandatory measures for all Member States.

⁶⁰ Mazey, S. (2000). The emergence of gender mainstreaming in the EU: policy succession in hard times. In *Mainstreaming Gender in European Union Public Policy: A Workshop at the University of Wisconsin-Madison* Presentation at the 'Mainstreaming Gender in European Union Public Policy: a Workshop at the University of Wisconsin-Madison', October 14th -15th 2000

⁶¹ Op cit., Velluti (2008) at p.225

⁶² Communication from the Commission to the Council, the European parliament, The European Economic and social Committee and the Committee of the Regions. 'A Roadmap for equality between women and men 2006-2010'. Document 7034/06 not published in the Official Journal. The Commission's objectives under this heading include: eliminating gender stereotypes in education, training and culture by, eliminating gender stereotypes in the labour market through and eliminating gender stereotypes in the media by, for example, encouraging them to avoid portraying women in a degrading way.

⁶³ Report by the European Commission on Equality Between Women and Men (2008) Directorate-General for Employment, Social Affairs and Equal Opportunities p.10

peppered with references to the negative use of gender stereotypes and their barrier to gender equality. Listed in the report's challenges 'tackling stereotypes, support for individuals' reflects the European Commission's arduous battle of removing negative stereotypes in certain areas or indeed moving the issue further up the agenda. Once again, the Commission lays out the significant but brief strategic actions that are paramount in combatting stereotypes – the removal of stereotypes at a very young age, access for men and women to non-traditional work roles (including decision making positions), adopt two-way training schemes where the guidance and the trainee disregard gendered roles, and finally promoting realistic images of men and women in the media. This final point from the report on the use of media is very weak if compared to the initial draft set out in the gender Directive which called for the removal of stereotypes in advertising and media. The key actions listed in the communication are considerably weaker than that of the gender Directive, with the Commission's response merely 'hoping' to develop dialogue with citizens through Plan D⁶⁴ and the 'Your Europe' portal⁶⁵. Both are citizenship-esque promises of open debate and participation. Plan D appears to tackle gender stereotypes from the opposite position of the Gender Directive by targeting 'young' people through mass media, television and the internet, which effectively passes blame from the advertising agencies to the young consumer.

In May 2008, the Council adopted conclusions on Svensson report on 'Eliminating Gender Stereotypes in Society'⁶⁶ in which it critically assessed the influence of the media and advertising and concluded that both industries 'contributed in the reproduction of culturally transmitted stereotypes and images' and although freedom of expression must be taken into consideration, the media must at the very least play a part in combatting stereotypes in advertising and the media. The Council concluded that the onus would be on Member States to improve national media and education materials at all levels in schools and engage with the mass media (including advertising agencies) on the detrimental effects gender stereotypes have on young people. The Council conclusions are on the one hand weakened by the uncertainty surrounding exactly how the right balance can be struck between freedom of expression, the right to a free press and harmful stereotypes, nor is it clear in how this can be achieved at

⁶⁴ Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions. "The Commission's contribution to the period of reflection and beyond: Plan-D for Democracy, Dialogue and Debate" [COM (2005) 494 final - Not published in the Official Journal].

⁶⁵ See 'The Europe Portal' at www.europa.eu/youreurope (accessed 1 September 2015)

⁶⁶ Council Conclusions on Eliminating Gender Stereotypes in Society Doc. 7034/06

Member State level. On the other hand it is somewhat encouraging to see that the Council is willing to accept that gender stereotypes need to be tackled at a young age through children's toys, advertising and education, which cements the Road to Equality's assertion that the onus should be on educators rather than state media and advertising agencies.

Parallel to the Commission's and Parliament's efforts, the EU presidencies have been instrumental in encouraging debate and getting the topic off the ground by providing a platform for research and transforming the issue into mainstream dialogue. There are three documents that are worth analysing. Firstly, in conjunction with the European Women's Lobby (EWL), the Slovenian Presidency presented various papers⁶⁷ on the path forward and the need for eliminating stereotypes in childhood and advertising. The Slovenian conference identified various forms of gender stereotypes that not just hinder gender equality but also highlight the harmful link they have with gender violence, eating disorders and self-harm. The fundamental theme running throughout the EWL conference is the need to combat stereotypes from the very beginning – from birth and early childhood and then at primary education level. The trend for placing onus on educators rather than advertisers is once again sustained, and, not for the first time, discourse surrounding a ban on gender stereotypes used in the media and advertising takes a back seat and early intervention is seen as crucial. The EWL's continuous point in the debate up until now is that early intervention is not news to child psychologists or sociologists but is fundamental only if policy makers that can attempt to shape society at all levels from toys, clothing and education systems. What remains paramount is legislation or regulation of the media and advertising agencies. Building upon both the Roadmap's guide and the Slovenian Presidency, the Czech Presidency of 2009 followed up the EWL's conference by concentrated on 'New Ways in Overcoming Gender Stereotypes'.⁶⁸ Rather than looking at the 'roots and mechanism' of the formation of gender stereotypes, the conference delved into how Member States and the EU can use soft law instruments to overcome them. Educational tools⁶⁹, media/advertising bias, and the decision-making process are all comfortable topics but very

⁶⁷ Slovenian Presidency of the European Union 'Elimination of Gender Stereotypes: Mission (Im)Possible? 28-29th Jan 2008

⁶⁸ The European Conference on New Ways of Overcoming Gender Stereotypes, Prague 27 May 2009. See further: hwww.eu2009.cz/event/1/722/

⁶⁹ *ibid.* pp12-21. Ideas span from The Colouring book, improved kindergarten and primary school education programmes and harmonized gender stereotype education courses across the Member States.

little is discussed as to what soft law mechanisms have the potential to work across the diverse European education systems and public and private media agencies. One of the main conclusions to come from the conference is self-regulation, but rather than endorse a wider test at Member State level, it is EU's job to increase citizen's awareness of state self-regulation mechanisms,⁷⁰ which would lead to legal action. Finally, sandwiched between the two presidencies, the 'Trio Declaration', as signed by France Czech Republic and Sweden, is a fundamental document in the pursuit of legislating against harmful stereotypes. Prior to the Czech presidency, the declaration was accepted and approved in an informal meeting of ministers responsible for equal opportunities on 14th November 2008.

3.3.2 FEMM Report on Eliminating Gender Stereotypes in Advertising and the Media

In May 2008, the European Parliament overwhelmingly adopted a highly critical report by the Committee on Women's Rights and Gender Equality (FEMM) on how marketing and advertising affect equality between women⁷¹ by 504 votes to 110. Although the report is non-binding, the parliaments proposed four recommendations aimed at motivating the EU institutions and Member States.⁷² The final report lacks some of the recommendations that are in the original text, unsurprisingly the recommendations omitted are potentially the more potent and effective clauses in combatting stereotypes. Nonetheless, what remains are in the report shifts some responsibility on advertising and media agencies through paragraphs 9 and 25 that call for regulatory control by recommending national media monitoring bodies and an EU-wide 'Code of Conduct' set up by the Commission. Paragraph 15 looks at sexual services advertising and its visibility and availability for young adults and children. Finally, paragraph 18 supports the idea of education, training and employment of women and equal access for women in all areas of the media. Overall the report is thorough, with reference to various issues within the gender stereotypes debate, namely the primary socialisation process of children and the impact of gender stereotypes in the social construction of gender. One of the

⁷⁰ *ibid* p.36

⁷¹ Committee on Women's Rights and Gender Equality Report on how marketing and advertising affect equality between women and men. 29th May 2008 (A6-0199/2008)

⁷² Adhere to the guidelines adopted in various Community Programmes, exploit the text's research and results, monitor existing provisions on sex discrimination and incitement to hatred on the grounds of sex and develop awareness in zero tolerance of sexist insults and degrading images of women in the media

more important elements of the report highlights the link between the economic and social spheres by stating how advertising not only shapes the functioning of the internal market but also shapes public behaviour and opinion. Moreover, gender stereotypes are significant to the functioning of the single market and the gender pay gap, reinforced by advertising, they divide the labour market of Europe, leaving each profession with a gendered identity and ultimately women earning less.⁷³ Of the more pejorative sections of the report, recital R criticises certain Member States weak national advertising codes and ethics, where rules are either ‘not respected’ or ‘do not even exist’. This report is of high importance and cannot be understated in its significance in unlocking the void between the market and the social sphere of the EU. It has also opened up debate, at least in the EU institutions which have continued the consideration into the second half of the current parliamentary term.

3.3.3 The Draft Report on Eliminating Gender Stereotypes in the EU 2013

The second report from FEMM – drafted in June 2012⁷⁴ – provides the Parliament with another opportunity to strengthen its position on combatting gender stereotypes in advertising and the media. At present, the amended report includes two major additions. Firstly, it appeals for the EU to provide legislation to ensure equality between women and men in education and media⁷⁵ and secondly urges Member States to develop ombudsmen and/or media authorities to ensure ‘codes of conduct’ are put in place to monitor media and advertising agencies⁷⁶. It is uncertain how the codes of conduct and media monitoring will differ from national advertising self-regulators and watchdogs all of which are present in the EU28.⁷⁷ However, with the cross-party support from the Parliament, this is the strongest position that any of the EU institutions have taken since the gender Directive. With the aforementioned amendments, the draft resolution’s content is marginally improved by placing emphasis on action needed in media and advertising industries compared to FEMM’s initial report in 2008, which still saw a large part of the

⁷³ *ibid* (n 71). Recital N

⁷⁴ Committee on Women’s Rights and Gender Equality Eliminating gender stereotypes in the EU 2012/2116 (INI). The European Parliament adopted the report through a plenary vote on March 12th, 2013 (368 for, 159 against, 98 abstentions).

⁷⁵ *ibid* para 17b

⁷⁶ *ibid* para 17c

⁷⁷ The European Advertising Standard Agency’s Report on Advertising Self-Regulation and the Portrayal of Gender Across Europe May (2008) www.easa.org.eu (accessed 17 October 2017)

responsibility with educators and curriculum. Paragraphs J-N of the report highlight the core problems with gender stereotypes⁷⁸ and raises 12 areas that require attention and action by the EU and Member States. Of these 12 areas, some are worth mentioning. The main theme that runs throughout the areas is that Member States, their advertising regulators, media and advertising agencies must acknowledge that gender stereotypes are not only a problem but there is an indirect link with the gender pay gap, domestic violence and segregation of the labour market. The language of the report is also very distinctive in comparison to other soft law measures of the same period. With firm undiminished targets aimed at Member States and state actors, the report signals for a change of how self-regulatory bodies operate to combat discrimination in the media and advertising to ensure effective sanctioning for those who promote the sexualisation of women. Since the committee's referral in Parliament in June, the report was somewhat overshadowed by the reference made to pornography in the draft version and although this reference was eventually removed, the report has lost its original momentum.

3.3.4 Opinions from the Parliament

There are two final documents issued by the Commission that are important to remark upon. Firstly, the opinion delivered by European Economic Social Committee (EESC) in December 2010⁷⁹ provides numerous economic-based recommendations for the Commission surrounding gender stereotypes in the media, education and advertising. None of the recommendations are unexpected or new: the need for education and training at all levels is required throughout the media and advertising industry, eradication of stereotypes in the workplace and the link between gender stereotypes and domestic violence against women are all cited. In the recommendations the EESC dedicate a whole section on eliminating sexist stereotypes and provides further nuanced recommendations for the Commission on how to tackle gender stereotypes in the workplace. Amongst these, EESC recommend the eradication of sexist stereotypes from the media and advertising industry with particular reference to 'the portrayal

⁷⁸ Paragraphs include issues such as adverts that contain housework, cleaning, cooking and child care are predominantly women (60%), advertisements aimed at young children, the need for stronger educational content rather than self-fulfilling gender roles in adverts aimed at young adults, TV programmes, computer games and advertisements show provocatively dressed women and promote violence against women and the 'mainstreaming of pornography' whereby pornography is slipped into our everyday lives through mainstream media (magazines, websites and music videos aimed towards young audiences) and is normalized, evermore accepted and idealized.

⁷⁹ Opinion of the European Economic and Social Committee on 'The Roadmap for equality between women and men (2006-2010) and follow-up strategy'. (2010/C 354/01).

of violence and degrading images of women'. This opinion follows on from the Liotard report with the inclusion that alludes to the link between gender stereotypes in advertising and the causes of domestic violence.

Secondly, the Advisory Committee on Equal Opportunities for Women and Men also provided an opinion for the Commission on 'Breaking gender stereotypes in the media'.⁸⁰ Unlike the EESC recommendations and FEMM report, the Advisory Committee's position provides a lengthy and comprehensive analysis of how the media and advertising industries could work in collaboration with the EU institutions rather than a blanket ban on gender stereotypes. Unlike the FEMM reports and other soft law instruments, the opinion is more prescriptive and locates areas in the media and advertising industries that can learn from the good practice set by Member States that are spearheading negative stereotypes. Part 5 of the opinion reflects this prescriptive tone through proactive gender equality measures such as more 'realistic images' of women and men should be made through actively promoting women into senior positions in media and advertising companies. This model has been illustrated in Germany where female employees in decision making capacities have increased by 40% in the last 20 years, albeit only within media agencies and not advertising and newspaper companies. The Committee cite that further proactive gender equality measures are essential in the representation of women as experts on TV and radio panels or as individual experts that are invited to discuss a topic. Once again, this could be achieved by simple thematic databases⁸¹, as pioneered in Finland, of female 'experts' or professionals that could be accessed rather than the 'usual suspects' repeatedly being contracted. Part 6 of the opinion suggests more can be done in creating diverse portrayals of men and women in the media by establishing a European Media Monitoring group at EU level with a gender equality subdivision made up of gender equality professionals. The monitoring aspect in the recommendation is a dominant theme and a potentially important advancement in soft law instruments. Throughout the opinion the committee state that an EU-wide monitoring group should have the ability to set benchmarks for defining 'degrading, 'sexist' and stereotypical images with the competence to 'receive and consider' individual complaints from the general public as well as women's groups, NGOs and charities. The

⁸⁰ Advisory Committee on Equal Opportunities for Women and Men Opinion on "Breaking gender stereotypes in the media" 28th December 2010

⁸¹ For the UK perspective see <http://thewomensroom.org.uk/> and Caroline Cerido-Perez 'Women in 'leadership' The Guardian 2 May 2013 <http://www.theguardian.com/women-in-leadership/2013/may/02/power-of-media-women-in-frame> (accessed 17 October 2017)

committee recommend that national monitoring organisations should also play a part at Member State level with emphasis on balancing the presence of different groups of women: ‘invisible women’ (poor, ethnic minorities, disabled or older) receiving more air time and ‘overrepresented female groups less. Part 6 of the report finally recommends that Member States must promote non-stereotypical situations, such as women in non-traditional roles and interestingly ‘women from the past’ must be seen in a different light as many throughout history have been ignored or forgotten. Part 7 is as much a formal olive branch for media and advertising companies as is a push for them to take the promotion of gender equality seriously. The committee recommends that the media companies must play a part in wider goal of removing gender stereotypes in advertising. This is the crux of the committee’s argument – the phasing-out of gender stereotypes can only be achieved through the partnership of media groups and regulation: the respect of human rights and dignity of the individual and the respect of an independent press can be compatible rather than mutually exclusive. To achieve this, the committee states that all media players should raise their game – from media owners to journalists – they should be made aware of their social responsibility and best practice should be promoted. Recommendations on regulation are minimal in the opinion and any recommendation mentioned is either self-regulation or ‘light-touch’.

Both Committee opinions unquestionably reignite the regulation of stereotypes in advertising and the media as part of the EU’s gender regime. The opinions both place some emphasis on the recognition that a comprehensive ban on gender stereotypes is unfeasible considering the two industries lack of desire and will to collaborate during the gender Directive’s drafting. This shift towards a ‘light touch’ influence of media and advertising practices is indeed appealing to both the EU institutions and the industries as it is a common ground where all can engage with the industries ‘contributing to’, rather than feeling ‘obliged to’, the eradication of gender stereotypes. The tone of the opinions is also very significant in that they centre on the self-regulation of industries with calls for legislation minimal – this again can be traced back to the realization that the Commission has no legislative competence with media or advertising content. The tone of the Committee’s opinions and FEMM’s reports chime with the theoretical approach that the gender regime has woven in the last two decades. The shift from reactive to pro-active is reflected in some of the soft law instruments. For example, the ‘naming and shaming’ of poor practice, but the reality is more humble mix within the recommendations and opinions of formal (increased self-regulatory emphasis based on offended individual

consumers⁸²⁾ and substantive equality (gender data bases). Part 9 of the opinion's recommendations overlap with the now implemented AVMS Directive which is the final soft law instrument that tackles gender stereotypes in advertising and the media.

3.3.5 The European Advertising Standards Alliance

The European Advertising Standards Alliance (EASA) has gradually gained prominence in the area of 'gender portrayal' since 2004 when it presented its charter⁸³ to Commissioners and the EESC as a form of EU-wide self-regulation.⁸⁴ The charter is a set of commitments to all EU Member States endorsing moral and financial support for the creation of an advertising self-regulatory network. Overall, the charter's initial commitments can be collectively viewed as a strict code of conduct that reflects technological and societal changes across Europe, but what is important is that the code shows that the Commission is willing to accept self-regulation as an instrument to combat gender stereotypes in advertising. The charter's code is furthered by the EASA's Portrayal of Gender Report in 2008⁸⁵ which provides an overview of how the self-regulatory organizations (SROs) across the EU combat the issue of gender stereotypes in advertising. The report targets 4 main issues that arise from the analysis of Member States that participated in the report. Gender stereotypes, which falls under the ICC⁸⁶ code's 'taste and decency' heading, has been interpreted widely by the Member States with the term's definition inconsistent throughout all countries scrutinized. The portrayal of both men and women feature separately due to the increasing sexualisation and 'dumbing down' image of men⁸⁷ in advertising and 'nudity and sexual innuendo' is a common theme throughout all Member States.

⁸² See The EASA's European Trends in Advertising Complaints, Copy Advice and Pre-clearance (2009) www.easa-alliance.org (accessed 17 October 2017)

⁸³ See EASA's self-regulation charter: http://www.easa-alliance.org/about_easa/en/Charter.html (accessed 17 October 2017)

⁸⁴ See The EurActiv Website: <http://www.euractiv.com/pa/advertisers-claim-code-conduct-e-news-212481> an

⁸⁵ The EASA Portrayal of Gender: Report on advertising self-regulation across Europe May 2008

⁸⁶ Article 4 (2) 'Social Responsibility' indicates 'human dignity' but not gender stereotypes of The International Chamber of Commerce Commission on Marketing and Advertising (2006) <http://www.iccwbo.org/advocacy-codes-and-rules/areas-of-work/marketing-and-advertising/>

⁸⁷ The number of complaints received by SROs on the portrayal of men have increased since 2003 to 1.9%

The gender portrayal report throws out some insightful observations that are common amongst Member States – firstly, self-regulation is the norm within Europe and there are few legislative initiatives with sanctions (with the exception of Finland, Denmark and Spain), secondly there are very few complaints made towards the SROs on gender portrayal⁸⁸, sexualisation of women and gender violence, finally and unsurprisingly, most Member State regulators appear to be sceptical not just towards EU legislative instruments but what constitutes ‘taste and decency’. These findings from EASA are not surprising based on the general rejection from the media and advertising industries during the drafting of the gender Directive. Moreover, the hostility shown against the notion of an EU-level ‘taste and decency’ definition runs with norm that the margin of appreciation test seems to be the standard recourse in the EU. However, what is interesting is the lack of complaints from consumers across all Member States. This lack – and often fluctuation – of complaints received can be attributed to various theories. The most common concept, is that a taste and decency / gender portrayal advert receives augmented attention from media outlets which then leads to further consumer complaints.⁸⁹ The UK Asda Christmas advert ⁹⁰ of 2013 is a good example of the concept in that it initially received little complaints until reported widely in the UK press which spurred the total complaints to 620. The Asda advert represents a further problem with SROs in the EU, as some advertisements are rejected at the first hurdle and are not therefore formally registered on the annual EASA or national SROs statistics.

3.4 The Audio-Visual Media Services Directive

Having considered the soft law provisions, the final legal instrument to be considered in this chapter is the Audio-Visual Media Services Directive (AVMS Directive) which, on the face of it seems very much like substantive law, but unfortunately (like soft law) it has a relatively mild effect on advertising regulation.⁹¹ The Directive’s main aim is to co-ordinate national

⁸⁸ Overall SRO 2010 statistics place gender portrayal in ‘taste and decency’ which overall generated 21,825 complaints across the EU with gender stereotypes amounting to 19%. SRO complaints have increased steadily since 1998 (0.5% of taste and decency complaints against the portrayal of women)

⁸⁹ ASA Adjudication Renault YouTube Advert 17 July 2013 Case A13-226910
<https://www.asa.org.uk/rulings/renault-uk-ltd-a13-226910>. accessed 1 March 2014

⁹⁰ ASA Adjudication Asda Stores 13 January 2013 see also the Guardian 30 January 2013
<http://www.theguardian.com/media/2013/jan/30/asda-christmas-ad>

⁹¹ Introduction to EU internet Law pp. 57-58

laws on all audio-visual media, incorporating traditional broadcast and contemporary services such as online/catch up TV. By its very nature and application, it is ‘tech-neutral’⁹² and so therefore applies to contemporary modes of advertising on streaming media networks such as YouTube, Amazon, Netflix and Google Play.

The Audio-Visual Media Services Directive⁹³ derives from the Commission’s target in the Lisbon Agenda to remain buoyant with the expanding market and demand for online, on-demand and ‘catch-up’ TV on mobile phones, tablets and laptops as well as monitoring the free circulation of the audio-visual services that vary from each Member State.⁹⁴ The Directive is also a retaliation to the increasing trans-border audio-visual service disputes and since two key decisions⁹⁵ concerning televised football matches and cross-border digital media. Subsequently, the Commission has endeavoured to address the shortcomings surrounding the failure to adopt rules on cross-border audio-visual services. The relationship between the AVMS Directive and gender stereotypes is the common aim to aid the functioning of a ‘Single European TV Market’ with common rules controlling the use of advertising. The Directive’s content primarily lays out the free-movement rules surrounding AVMS but also provides guidelines concerning the distribution of AVMS as the vast majority of internet TV (or ‘online TV, TV on demand’) is saturated with advertisements, aimed at the optimal consumer of the specific programme – for example children’s television. There are convoluted areas that the Directive does not cover such as website that share very short commercials (i.e. YouTube), blogs that do not use advertising and any website where the audio-visual content is ‘ancillary’ to the website such as cartoons or graphic illustrations. Finally, online newspapers and radio broadcasts are excluded from the scope of the Directive as well as advertising agencies that are registered outside the frontiers of the EU.

The important element from a gender stereotype perspective is Article 9(c) of the Directive which prohibits discrimination based on sex in commercial communications (advertisements).

⁹² The same EU regulations shall apply irrespective of the technology used.

⁹³ Council Directive 2010/12/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audio-visual media services (Audiovisual Media Services Directive) [2010] OJ L95/1

⁹⁴ Little, V. (2008) ‘Audio Visual Media Services Directive: Europe’s Modernization of Broadcast Services Regulations’ *Journal of Law, Technology and Policy* 223-236 at p.232

⁹⁵ Joined Cases C-403/08 FAPL v QC Leisure and Others and C-429/08 Murphy v Media Protection Services [2008] ECR I-11519

Article 9 asserts that advertisements cannot use any technique that helps ‘promote discrimination based on sex, age or sexual orientation’. This is a broad approach to content and thus should be read in conjunction with Articles 29-33, which outlines a contact committee that will be composed of Member State representatives and chaired by a representative of the Commission who shall set guidelines on exchanges of information on advertising between the commission and the Member State competent authorities. This Commission can be viewed as the regulator of the transposition and implementation process of the Directive, however, the Member State ‘monitoring groups’ will be paramount in reporting back to the Commission with the findings of advertisements. The AVMS Directive is clear that the Contact Committee should also tackle issues related to gender equality and breaking stereotyping, inviting experts to an exchange of views. Article 27 relates to the protection of minors but only in as far as protecting mental health and moral development which is a clear link to pornography and violence and not sexualisation and objectification. Interestingly, the Directive lists the ‘physical, mental and moral development’ of minors without any reference to dieting advertisements, links between advertising and eating disorders or body dysmorphia.

The wider aim of the AVMS Directive is reflected in the neo-liberal / ‘light touch’ tone of the EU’s approach in that it merely sets out to liberalize the media market, support self-regulation over autonomous regulation and then adjust the rules only when there is a market failure. Considering the articles that cover discrimination there is no clear indication that the Directive will pose a threat towards media service-providers or broadcasters across the EU. Up until 2004 stereotyped images were dealt with by the DG for Education and Culture whereas now the issue is predominantly dealt with the DG Employment and Social Affairs. Sarikakis and Nguyen argue that the Directive merely follows on from the gender Directive’s outlook: the DG Employment Social Affairs neo-liberal stance will always limit the potential of any drafted legislation, as the onus will always be on the consumer to complain rather than the media being regulated or controlled.⁹⁶ This amplifies the distinction and void between soft law and legislative instruments that aim to tackle gender stereotypes in the media and advertising – the ‘proactive’ substantial equality that is stable throughout the ‘soft’ instruments such as the recommendations from the Committee on Equal Opportunities Opinion evaporates. The

⁹⁶ Sarikakis, K., & Nguyen, E. T. (2009). The trouble with gender: Media policy and gender mainstreaming in the European Union. *European Integration*, 31(2), 201-216.

coerciveness of good practice and positive action is replaced with individual complaints through a self-regulatory system that reflects the formal ‘reactive’ gender equality.

The Commission’s first report in May 2012⁹⁷ on the Directive’s implementation actively assesses gender stereotypes in two ways. Firstly, the Directive’s methodology of qualitative data is similar to previous monitoring techniques⁹⁸ however, the AVMS Directive sets out to assess the content and presentation of the advert and, more importantly, the effectiveness of implementation at Member State level – effectively acting as a watchman over state regulators. Secondly, the report sets aside the aims of Article 6⁹⁹ of the Directive by stating that discrimination amounts to ‘the systematic association of a certain category of the population with specific roles or attitudes’. The Commission’s analysis of ‘advertising spots’ (advertisement periods during TV programmes) across all 27 Member States found that stereotyped representation amounted to 21% to 36% of all advertising time, with no Member States resistant to the portrayal of gender stereotypes. The report also found that women fill the majority of ‘subordinate’ positions and ‘sexual presentation – the sexualisation of the product is characterised using a female body, unconnected to the product itself, therefore rendering the female body as the commodity itself.’¹⁰⁰

3.5 Conclusion

This chapter has provided an evaluation of the EU’s approach to eliminating gender stereotypes in advertising against the backdrop of its limited competences in this area but also the context of expanding international obligations. The chapter provides a critical overview of the EU’s secondary legislation, notably the Gender Directive and Audio Visual Media Services Directive that have both fallen short of promised regulation when crossing the bulwark market-driven principles of the EU and advertising lobbying of its Member States. It has, therefore, been left to the EU to strike a happy medium – a compromise through soft law – to either cajole

⁹⁷ First Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the application of Directive 2010/13/EU Audiovisual Media Service Directive 7 May 2012 *COM(2012) 203*

⁹⁸ Council Directive 89/552, Television Without Frontiers Directive, Recital, 1989 O.J. (L 298)

⁹⁹ ‘Member States shall ensure by appropriate means that audio-visual media services provided by media service providers under their jurisdiction do not contain any incitement to hatred based on race, sex, religion or nationality’.

Member States into submission, to name and shame those that fall below the standard expected or establish quasi-regulatory standards through the EASA. As such, soft law approaches from the EU have kept the prospect of regulating gender stereotypes in advertising afloat and the pursuit of such regulation has been kept alive – and just – on the fringes of the Commission's agenda. Due to the inherent characteristics of soft law, most instruments lack the sanction mechanisms or political will to be greatly effective and ultimately a Pan-EU regulatory code is required to move beyond the status quo.

I have discussed how the gender regime is made up of actors and organisations beyond the standard institutional framework and by concentrating on Action Programmes, Recommendations and Opinions I have shown that there are numerous dialogues and narratives that help frame gender stereotypes. Such framing reflects both the lack of political will and the neo-liberalist orientation of the EU where industry and free-market ideology 'trumps' fundamental rights. This, along with the EU's low-level competence in gender equality, can be deduced from the gender Directive's drafting in 2003 to 2004. The subsequent measures that transpired in the following decade have dramatically advanced the position of gender stereotypes and this has been developed thanks to the guidance of the Parliament. However, such committee recommendations and opinions are not binding and lack teeth rendering the Council able to disregard any opinion. It would therefore seem apparent that the decade following the gender Directive has acted as a sticky plaster rather than a call for regulation.

Nonetheless, the history of the gender regime and soft law approaches tells an encouraging story as 'soft' law tends to precede 'hard' law. This has been seen in many EU gender related policy areas, for example, the recent EU plight for regulating trafficking ¹⁰¹ – soft law pre-empts fundamental change and inevitably shapes future legislation.¹⁰² Likewise, the effects that soft law has on Member States should not be undervalued. When pressure has been applied in other areas of the gender regime the results have led to shared practices and norms in response to the pan-European problems. Indeed some ¹⁰³ argue that soft law can have more

¹⁰¹ Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA

¹⁰² Op. cit., Kantola, J. (2010). p.17

¹⁰³ Guiraudon, V. 'Anti-Discrimination Policy' in Graziano, P., & Vink, M. (Eds.). (2006). *Europeanization: new research agendas*. Springer. p.305

impact than secondary legislation. In the next chapter, following on from the analysis of the legal framework surrounding the regulation of gender stereotypes in advertising, I look towards the theoretical framework of the thesis and in particular a theorisation of gender stereotypes and their problematic effects in advertising.

Chapter 4

Theoretical Framework

4.1 Introduction

This chapter offers a theoretical discussion of Erving Goffman's work on *Gender Advertisements* and 'interaction order' and his micro-sociological interrogation of symbolic interactionist approach to identity, gender differentiation and how adverts present a distorted reflection of gender. Goffman points out that the coding of 'gender displays' that are apparent in advertisements should be scrutinized for their persistent distortion. Throughout this chapter, I draw upon the sociological theorisations of gender identity, performance/ performativity,¹ dramaturgy² 'doing' gender,³ and frame analysis⁴ and locate these terms within the broader contexts of social constructionism through the work of Judith Butler and symbolic interactionism through the work of Goffman. Both Goffman and Butler perceive gender identity as a phenomenon that is constantly being 'done' in the social world, something that is attained as opposed to something that is essential or innate. Thus, the 'doing' of gender identity is part of a societal effort rather than an individual endeavour and takes place through interaction and social construction through social norms and values that allows individuals to take part in some actions but prohibits or 'polices' others.

Before embarking on a theoretical discussion of Butler and Goffman's work in this area, I wish to begin this chapter with some dominant post-structural feminist positions on gender/sex. Such positions have supported the drive to critique essentialist notions gender⁵ inherent in psychological and cognitive neuroscience-based approaches that have revived in recent years.⁶ Such a distinction underpins both Goffman and Butler's work on gender. This distinction is necessary at a time where there is a resurgence or renaissance of *sex* and *gender* being used

¹ Butler, J. (1990) *Gender Trouble* Routledge.

² Goffman, E. (1959). *The Presentation of Self in Everyday Life* New York.

³ West, C. and Zimmerman, D.H. (1987). Doing gender. *Gender & society*, 1(2), p.126

⁴ Goffman, E., 1974. *Frame analysis: An essay on the organization of experience*. Cambridge, MA, US: Harvard University Press.

⁵ Fine, C. (2010) *Delusions of Gender* pp. 4-5

⁶ How Dangerous is Jordan Peterson? 07 February (2018) Dorian Lynskey

<<https://www.theguardian.com/science/2018/feb/07/how-dangerous-is-jordan-b-peterson-the-rightwing-professor-who-hit-a-hornets-nest>>

interchangeably as a means to legitimize and validate beliefs about the sexes that inevitably feed into our understanding of gender stereotypes. For example, essentialist ideas of gender⁷ equate it to the individual's sex, suggesting the terms are one of the same and that they are both natural, innate and unchallengeable. Post-structural feminist theorists such as Butler dispute and deconstruct this thinking: the two terms are disparate – gender does not naturally flow from sex – and thus deconstruct gender difference. In doing so, one can assume that gender is social constructed – socially produced through the enactment and enforcement of gender stereotypes.

This Chapter looks towards some of the key ideas of Butler and Goffman, where they correspond and diverge. In this section, I will look at the core notions of dramaturgy, performance/performativity. As *Gender Advertisements* and the 'interaction order' is one of Goffman's final works and ideas, there are a litany of Goffman terms across his career that have influenced his work on gender. Looking back over Goffman's work one finds traces of evidence that have shaped the interaction order and theory within *Gender Advertisements*. For example, Goffman's work on dramaturgy, the metaphor of the theatre, which allows us to see the world as a stage and where we can study the trivial *everyday*⁸ and how identity is shaped through 'front' and 'back' stage regions. I will unravel Goffman's earlier work and interest to understand patterns of 'interaction order' which are governed by social norms and values. These resources allow us as 'actors' to design and co-ordinate our performances to shape our identity as well as 'frame' the situation that we find ourselves in. The chapter then looks more closely at Goffman's theoretical approach to gender identity in *Gender Advertisements* and the coding of 'gender displays' in advertisements. The codes are understood in this thesis as moving beyond the basic assumptions of gender stereotypes, to foreground the subtle minutiae presentations of gender. Goffman's codes will be revisited and reimagined through contemporary advertisements in Chapter 6 and Chapter 7.

⁷ For example, Ian Hacking Psychological Essentialism Social Construction of What? Hacking, I. (1999). *The social construction of what?*. Harvard University Press. pp.16-17

⁸ Scott, S. (2009). *Making Sense of Everyday Life*. Polity Press p. 34

4.2 Performative Identities

The social construction of gender ⁹ posits that gender is a product of society and as such society defines what is masculine or feminine, what is 'ladylike', what is 'macho' and what the expected roles of men and women are. The social construction of gender can be understood by declaring what it is not – essentialist: 'common sense' ideas of biological difference and mapping an individual's gender onto their body. Thus, essentialist ideas of gender perceives it through the correlation of sex organs and gender – that maleness or femaleness are the consequences of genitalia and an individual's sex determines their gender.¹⁰ Binary perceptions of gender is based on sex assume something essential about the individual: what their desires, talents, and needs are.¹¹ Through the essentialist prism, one will see what legal rights that individual will be granted, what opportunities should come their way, what role they will play in society and what work they will eventually carry out. To base gender on sex or to 'map gender' onto an individual's sex organs is to assume that gender is innate, it is that individual's essence, and their decisions are based on their sex and their sex is their 'destiny'.¹²

Theorisations of the social construction of gender suggest it is, as Lorber states, 'created and re-created out of human interaction, out of social life, and is the texture and order of that social life.... that depends on everyone constantly "doing gender"'.¹³ The process of 'doing gender' chimes with socialisation theorists and cognitive development theory ¹⁴ as the 'doing to' commences at the very beginning of life when parents discover the child's sex, talk to the baby in a certain way and decides to dress the baby in distinct colours.¹⁵ The 'doing' continues

⁹ Op. cit., Butler, J. (1990) and Lorber, J. (2004) 'Night to His Day' in Tracey Ore (eds) *The Social Construction of Gender The Social Construction of Difference: Race, Class, Gender and Sexuality*. McGraw Hill Humanities pp.1-8

¹⁰ Baron Cohen, S. *Autism: The Empathizing–Systemizing (E-S) Theory* the Year in Cognitive Neuroscience 2009 pp. 68-80

¹¹ Ellis, L. (2011). Identifying and explaining apparent universal sex differences in cognition and behaviour. *Personality and Individual Differences*, 51(5), pp.552-561.

¹² DeCecco, J.P. and Elia, J.P., (1993). A critique and synthesis of biological essentialism and social constructionist views of sexuality and gender. *Journal of Homosexuality*, 24(3-4), p.17

¹³ Op. cit., Lorber (2004) pp.55-56

¹⁴ See for example; see Talcott Parsons' Psychoanalytical approach functionalist-socialization processes. Parsons, T. and Bales, R.F. (1956). *Family socialization and interaction process* (Vol. 7). Psychology Press or Jean Piaget's theory of cognitive development see Wadsworth, B. J. (1996). *Piaget's theory of cognitive and affective development: Foundations of constructivism* p.19

¹⁵ Paoletti, J. B. (2012). *Pink and blue: Telling the boys from the girls in America*. Indiana University Press. p. 32

through to the naming of the child and other ‘gender markers’¹⁶ such as length of hair, choice of toys, and dress code.¹⁷ If gender markers are missing, unknown ambiguous or indeed vague then as Butler observes, one might feel uncomfortable or raise questions such “is it a boy or a girl?” until the gender is recognised or understood.¹⁸ Once the gender markers have made the child’s gender apparent to the world, both the behaviour of the child and parents’ responses to that behaviour are shaped.¹⁹ For the child, gender markers are learnt to help them understand gender distinctions, and for the adult, parenting is gendered with different expectations placed upon mothers and fathers which in turn shapes the career and work that the parents perform outside parenting.²⁰

I wish to avoid cognitive or psychoanalytical theorisations of gender and move towards a sociological framing of ‘doing gender’. I will question why gender and gendering are ‘done’ or appear in a state of ‘doing’ from birth into early childhood and beyond and probe the conceptualisation of gender as a social institution and structure. As a backdrop to this discussion, I have begun to apply Lorber’s notion of ‘doing’ as explored in *Night of His Day* and will continue this narrative through Butler and then Goffman. For Butler, the dismissal of essentialist legitimisations of gender through claims that it is mapped by physical difference between men and women is further dislocated by transgender and intersexuality.²¹ Here, Butler shows that gender is constructed and learned. The Gender boundaries of male/female masculine/feminine are ruptured by individuals who transfer from one gender to another: ‘these odd or deviant or third genders show us what we ordinarily take for granted-that people have to learn to be women and men....’.²² Lorber’s assertion dovetails with Butler’s theorisation as well de Beauvoir’s adage that ‘one is not born but rather becomes a woman [...] it is civilization as a whole that produces this creature [...] which is described as feminine’.²³ As I will later go on to dissect, this also chimes with Goffman theorisations of (gendered) identity, which is something that is achieved rather than innate. All of these theorisations are ultimately

¹⁶ Lorber, J. and Farrell, S.A. eds., 1991. *The social construction of gender* (pp. 313-337). Newbury Park, CA: Sage.

¹⁷ Op. cit., Fine (2010) p. 212

¹⁸ Op. cit., Butler, J. (1990) pp.10-12

¹⁹ Op. cit., Lorber (2004) p.54

²⁰ Op. cit., Butler, J. (1990) p.8 and pp.185-193

²¹ *ibid* p. xxvii

²² *ibid* p.57

²³ De Beauvoir, S. (1949) *The Second Sex* p. 267

concerned with the performativity of gender – taking on a role or acting in some way that we present or ‘display’²⁴ to the rest of society.²⁵ Each of these theorisations of gender will be analysed accordingly, but for now the significance of this discussion is that, broadly speaking, social constructionists dispute sex/gender essentialist discourse and offer that individuals have to be shown how masculine or feminine is ‘done’ or ‘doing’.

4.3 Gender as Script

Similar influential theorisations of gender walk the same semantic pathway, as West and Zimmerman note, ‘doing gender’²⁶ follows once gender has been recognized and ascribed in early childhood. Throughout childhood, individuals test gender through interaction with either their parents or siblings that are of the same and opposite gender through expressing ‘gender appropriate behaviour’.²⁷ In adolescents, the ‘gendered script’ formulates through social interaction at different institutions such as the school, peers and mass media, all of whom guide young adults into their gendered lives. Gendered scripts can extend as far as the gendered norms such as the way individuals walk, gesture and eat.²⁸ The institutionalization of gender occurs when ‘doing gender’ is performed appropriately, individuals ‘sustain, reproduce, and render legitimate the institutional arrangements...’²⁹ For Erving Goffman, gender is seen as a social (and faux-spontaneous) script which is a performed based on society’s imagining of innate feminine/masculine assumptions and stereotypes. The social script is then played out ‘on stage’ for the real (or perceived) audience who are equally refined in the language of performance and script. With such notions of ‘doing’, performing, acting and the scripting of gender, I now turn to theorisations of performativity and dramaturgy.

4.4 We ‘Do’ rather than ‘Are’

Mirroring Lorber and West and Zimmerman’s theorisation of ‘doing’, Butler conceptualises gender as a performance, claiming that no one true identity or ‘core essential self’³⁰ exists

²⁴ Op. cit., Goffman, E (1979) pp.1-11;

²⁵ Op. cit., Butler, J. (1990) p.10-12

²⁶ Op. cit., West and Zimmerman (1987) p. 142

²⁷ *ibid* p. 143

²⁸ Goffman, E. (1959) p.32

²⁹ Op. cit., West and Zimmerman (1987) p.14

³⁰ Scott, S. (2015) *Negotiating Identity* pp.15-16

behind the gender and that it is neither stable nor absolute.³¹ The claim is that gender is not natural; it is merely naturalized through repetition with individuals believing in the ‘correct’ performance of their own designated gender. Being of a gender is therefore the side effect of cultural and social constructions and thus, Butler’s theorisation of gender is analogous to West and Zimmerman’s notion of script. Butler’s extension of West and Zimmerman’s position evokes Simone de Beauvoir’s locus that individuals have agency in becoming a gender and that gender is mere performance. Butler conceives gender performance as taking on a role which is an act that is crucial to the gender that is presented to the world, but the presentation of that gender is not merely a performance, as this would assume the existence of an actor who is ‘doing’ that performance, or ‘doing gender’. Instead, Butler’s assertion is that the performance is everything, and most importantly precludes the existence of the performer.³² This is something that will be discussed later through Goffman’s work on identity and the ‘core self’ or the ‘actor behind the character’.³³

At this juncture there is a diversion in Butlers’ understanding of gender identity. Gender as performance and gender as *performative* are different – the latter principally as the ‘process of invoking the subject, not a performance by a subject’.³⁴ These are the ways in which we amalgamate the *impression* of being either a man or being a woman. According to Butler, individuals act as though being a man or being a woman is an ‘internal reality’. Accordingly, gender identity is a phenomenon – an experience – that is ceaselessly (re)produced over time. Thus, Butler’s assertion that gender is *performative* is to claim that from birth no one has a gender identity. To substantiate the claim, Butler disputes hegemonic constructs of gender as binary and offers up subversive and disruptive examples from the third-genders or identities that fall outside the ‘heterosexual matrix’ (i.e. ‘sissy boys’, ‘tom-boys’ or transgender, queer, pansexual or genderless) and in doing so attempts to demonstrate the performativity of these genders. Subverting gender, gender roles and stereotypes are a hard task, with at least the fear of being bullied or physical threats of violence being made. Thus, Butler substantiates performativity through the Foucauldian ‘policing’ of gender norms and the nuanced inquiry of the social construction of gender: how do these gender norms manifest in the first place,

³¹ *Op. cit* , Butler, J. (1990) p. 11

³² Salih, S. (2002). Judith Butler: Routledge Critical Thinkers. p.11

³³ Scott, S. ‘Erving Goffman’ (2013) in Stones, R (ed) Key Sociological Thinkers

³⁴ Brickell, C., 2005. Masculinities, performativity, and subversion: A sociological reappraisal. *Men and Masculinities*, 8(1), pp.24-5.

how do they persist, how are they policed and what are the ways to disrupt them or perhaps subvert the policing? Some answers come in the form of examples from the social constructionist literature; for example, social intervention in childhood and adolescence by grimacing at behaviour that is deemed outside the gendered norms or psychological intervention: ‘maybe you should get some help’ or ‘why can’t you be normal?’ Amongst these structural/institutional and informal practices (bullying, ridiculing and ostracizing) that keep individuals fixed in their gendered position, media and indeed advertising are instrumental. Advertising therefore takes on a structural position, providing gender codes, norms and values that appear innate for feminine/masculine boundaries and order. By providing stringent norms, the viewer can be left in a state of powerlessness, unable to resist ‘policing’ of advertising companies. This is something that both Butler and Goffman refute. Goffman, in his understanding of micro-politics of power in the everyday, focuses on and interrogates individual agency and posits the possibility of resistance. I will now start to map out some of Goffman’s fundamental claims, beginning with the metaphor of performance and the stage.

4.5 Dramaturgy: ‘All the World’s a Stage’

Erving Goffman’s theorisation of dramaturgy is the foundation on which his life’s work rests. Evoking William Shakespeare’s ‘Seven Ages of Man’ passage from ‘As You Like It’, Goffman’s dramaturgical approach to performance is the claim that social life is the theatre and that ‘all the worlds a stage and all the men and women are merely players [...] one man in his time plays many parts’. In *Presentation of Self in Everyday Life*, Goffman positions individuals as ‘actors’ upon a stage where various performances are constantly taking place. Each actor is perpetually performing the role for self-presentation, relying on other ‘actors’ to maintain the performance(s) and to keep ‘the show’ going. Like Butler, Goffman’s observation is one of perpetual regulation of behaviour; to paint the best version of ourselves by adapting and adopting different masks to diverse situations. Thus, the term ‘impression management’ is the name of the game in social life: we tailor certain moves, routines, scripts and gestures to fit the various settings and actors we encounter in our everyday lives. Ultimately Goffman argues that it is quite difficult to ever truly know or understand our true self as the actor struggles to move from one performance to another, thus never really knowing which persona is the ‘true self’.

Branches of Butler's work on gender identity and performativity resonate with Goffman's work on dramaturgy, ritual,³⁵ frame analysis and gender display.³⁶ These concepts predate Butler's work on gender norms with Goffman's work in *Gender Advertisements* and *Gender Display*, influencing West and Zimmerman's and Lorber's theorisation of 'doing gender'.³⁷ This Butler-esque tone in Goffman's work is testament to his clear nod towards gender as performance:

‘One might just as well say there is no gender identity. There is only a schedule for the portrayal of gender [...] there is only evidence of the practice between the sexes of choreographing behaviourally a portrait of relationship’.³⁸

Grasping Goffman's route into gendered identity, the gender 'schedule' for the portrayal and choreography is rooted in *The Presentation of Self in Everyday Life*. Performance, ritual and display are all positioned at the core of this. Goffman highlights the importance of interaction between actors and how it is to be understood sociologically through the metaphor of a theatrical performance. Goffman painstakingly categorises such performances and codes which requires cooperation from audiences and other 'performers' or 'actors' to 'define the situation'.³⁹ This next part of the chapter will map some of the key concepts that ground Goffman's work on performance. From here, the chapter will then move on to look at the links between performance, gender display and finally gender codes in advertisements.

4.6 Exit This Way: 'Front' and 'Back' Stage

The substantial part of Goffman's work focuses on symbolic interaction and dramaturgy. The focus is on the often-subtle interactions in social life that are omnipresent – yet omitted – in the everyday, or as Goffman puts it: 'all the world is not, of course, a stage, but the crucial ways in which it isn't are not easy to specify'. For the notion of performance, Goffman turns the question on its head and asks, 'why do individuals perform' rather than 'where does the

³⁵ Smith, G. (2006) *Erving Goffman* Routledge p.94

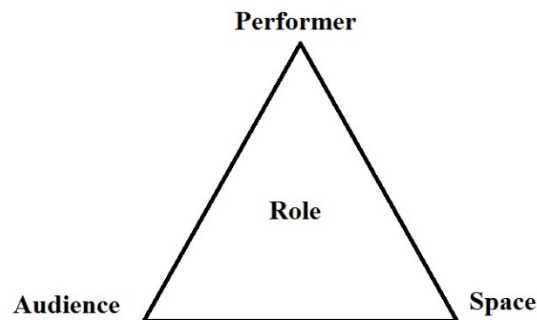
³⁶ Goffman, E. (1979) *Gender advertisements* pp.1-11;

³⁷ Op cit., Smith, G. (2006). p.94

³⁸ Op. cit., Goffman, E. (1959) p.8

³⁹ Thomas, D. S. (1928). *The Child in America: Behavior Problems and Programs*. p.18

performance come from' or 'what is the performance'.⁴⁰ At the centre of his analysis is the notion that individuals are 'always and everywhere' consciously playing a role: we obtain a character (through performance), become individuals and don various 'masks' depending on the situation and our audience.⁴¹



Interpretation of Erving Goffman's Dramaturgy

Dramaturgical analysis focuses on how individuals 'act' in certain situations. Seeking interaction, we gain 'stock knowledge'⁴² through experiences and constantly developing reality through the interactions we encounter in our everyday lives. At the worst end of the spectrum, we could perhaps be labelled as con-artists, devious in our 'acting' and personas as we seek to guide and control others. Or at best, we paint ourselves in the best light for how we want others to perceive us. The presentation of the self is therefore vital – the way we dress, walk and talk differently according to whom we are with. The metaphor is taken further when Goffman evokes the demarcation and imagery of the 'back stage' and 'front stage'. In these two very separate yet connected worlds we learn to present ourselves in certain situations. Our presentations are always different if we are to compare it to how we operate when we are alone 'back stage' or with other actors 'front stage'. Goffman's thinking of the front is the

⁴⁰ Op. cit., Goffman, E. (1959) p.28

⁴¹ *ibid* pp. 30-31

⁴² Schutz, A. (1970). *Alfred Schutz on phenomenology and social relations* (Vol. 360). University of Chicago Press. p.12

performance we give on the stage or ‘setting’; this fixed space/place is where we encounter our fellow actors with ‘props’ and ‘appearance’. Contrastingly, the back stage is a private space/place where actors relax ‘out of character’⁴³ to perhaps rehearse their ‘spontaneous scripts’ mindful of what has just occurred front stage with their performance. The back stage allows the actor some time for reflection and contemplate their performance before re-entering the front stage. Such back/front stage movements are omnipresent in everyday life. Consider the role of the University Lecturer at home: in the evening reflecting upon how their lectures and seminars went during the day. Or perhaps they might take a few moments to freshen up ‘backstage’ in the toilet to think about how they will proceed with their performance (and inspecting their props: lecture notes, laptop, glasses) in the impending lecture theatre that they are about to enter. When exiting the back stage for the front, the performance immediately begins: a repertoire of performances (or masks) to choose from (the nice caring lecturer, the displeased and irate lecturer), we select one according to the situation and the performance starts.

Ensuring that we create the best presentation of ourselves is paramount if we are to obtain the fruits of life: friendships, jobs, careers – to be liked and loved. Impression management as the tool for success, we ensure we are more appealing to other people whilst front stage. The dramaturgical metaphor helps us understand and shape the presentation by asking how do we use the stage and the setting, what does this stage say to others and what does it say about us? Goffman argues that when we find ourselves in a social setting, we are on the front stage behaving like actors, accessing and utilizing impression management at will to ensure the best version of ourselves is projected on to the audience. It is almost as if it is our job to ensure that others like us, and by selecting from the repertoire of roles we keep stored away back stage so that we can manipulate the audience into liking us. Exiting the front stage may occur when we are no longer required (i.e. the lecture is over), or indeed when the other actors have exited, and we have no one else to interact with. Panic may ensue when faced with not enough material or lines to use for the interaction. But we are safe back stage, we can relax and learn how we should be on the front. Once here, with no one else to monitor us, our performance is dropped, and we no longer need to perform as there is no one else to interact with. ⁴⁴

⁴³ Op cit., Scott, S. (2015) p.17

⁴⁴ Op. cit., Goffman, E. (1959) p.121

4.7 Parameters of the Performance

There are limits to Goffman's conceptualisation of dramaturgy, backstage and the self and how far the allegory can be taken. This ultimately leads to existentialist crisis and raises the question, can anyone know who the actor truly is, as no one is party to knowing how one behaves backstage? Butler disputes the notional 'true self' and such back stage regions are 'rare privileges'.⁴⁵ Goffman is lucid too: there is no authentic self at the core of who we are, nor is there any notion maleness or femaleness – the self is born out of the individual's incessant management and self-impression towards other actors.⁴⁶ The front stage is not entirely improvised, we have rehearsed it, meticulously, over the years, crafting a representation of ourselves and what we want others to think who we are. Impression management and self-presentation can be viewed as an individual enhancing certain aspects of their character whilst muting other elements to achieve the desired result. The performance in this way is not entirely scripted backstage, it is at least part-improvised or spontaneous due to the selection of roles we may select from the backstage. The repertoire of crafted roles is rooted in the experience of interaction that goes back to early childhood through to adulthood. Thus, Goffman's conceptualisation of 'performance' has limitations, as we can never really know what is going to happen when we go 'live' on the stage. One can never rehearse for every potential situation or eventual interaction. Goffman does however maintain the notion of a 'core self' and when referring to the relief that is felt back stage: 'Behind many masks and many characters, each performer tends to where a single look, a naked unsocialised look'.⁴⁷ Here Goffman admits to the existence of an underlying actor designed the performance.

⁴⁵ Op. cit., Scott, S. (2015) p.17

⁴⁶ Op. cit., Goffman, E. (1971) p.26

⁴⁷ Op. cit., Goffman (1959) p.235

It is at this juncture where the success of impression management relies on a consensus and support from the other actors; they must keep the situation (as joint performance) alive, avoid embarrassment and 'save face'. If one of the actors puts a foot wrong, then the interaction has the potential of breaking down. Goffman calls this 'performance team', or as Scott notes, 'teamwork' relying on the 'tact' of a collective 'defining the situation' ensuring that the routine performance appears effortless. The Team may need to pull together to save face, a poor performer, a slip of the tongue – any backstage slippage must be brushed under the carpet. Like Butler's use of Foucauldian panopticon imagery, there is an element of surveillance in Goffman's work as the actor wants their audience to see consistency between the expected behaviour and the idealized (stereotypical) self. There's a risk that if an idealized performance is inconsistent, the audience will see behaviour that belongs in the back stage enter the front stage and the performance may collapse entirely. This is true in institutions of power, two parents united or a group of teachers perhaps appearing in stereotypical roles ensuring discipline – any signs of weakness in the performance and the game is over. Again, Goffman's notion of the performance, self-presentation and the theatre metaphor are not wholly synonymous. Theatre is an illusion, we know that *real* actors have time to perfect performance (though may be awkward and shy backstage)⁴⁸ to rehearse their roles, backstage before they play out their roles. In real life one can prepare their own personal role for the best performance they want to achieve but the performance is constantly changing, improving based on previous experiences and knowledge. One can rehearse their own front stage as much as they like but the performance is constantly being improved based on previous experience and knowledge. Another distinction to be made is that in the theatre there is 'me' the actor, there's the audience and other actors – three components. In symbolic interaction there is merely 'me' on front stage and the other actors all striving to keep the performance going through consensus. Goffman's work chimes with Butler's performativity in that there is improvisation and spontaneity which suggests there is some autonomy of the performance, independent of the actor.

4.8 Front Stage as a Gender(ing) Performance

Goffman suggests that the ‘front stage’ performance can be broken down into three interlocking parts: setting, appearance and manner.⁴⁹ Firstly, the static setting, i.e. the physical arrangement is the stage. A setting might be a living room, which comprises of furniture, décor and scenery that assists the performer’s role.⁵⁰ Props can also be summoned in this space: the TV remote control, newspapers and magazines can assist the performance. Here the performers can identify themselves in the setting and follow their fellow performers, for example family scripts: the role of mother/father/child/grandparent etc. Secondly, the appearance and manner make up the ‘personal front’. This is the expressive equipment that informs the audience of the performer’s gender: clothing, looks, size, posture, speech patterns, facial expressions, bodily gestures (embodiments age, race, class) some of the personal front is fixed whereas some can and will change over one’s lifetime. As Goffman describes it as:

‘...different routines may employ the same front ...a social front tends to become institutionalized in terms of abstract stereotyped expectations to which it gives rise and tends to take on a meaning and stability apart from the specific tasks which happened at the time to be performed in its name. The front becomes a ‘collective representation’ and a fact in its own right’.⁵¹

The personal front is therefore a selection of performances designed to avoid embarrassment, taboo or breaching a social norm and so not entirely agentic or based on free will. Due to fear of breaching societal norms Goffman asserts that the actor is forced into selecting a social/personal front, and as they are chosen rather than created, certain performers may run into trouble when they are forced to choose a front that is appropriate for that particular moment. For Goffman there are correct ways to act, and ‘acting out’ will result in others ‘saving’ the actor to avoid embarrassment or shame.⁵² Similarly, I argue that there are consequences if one breaches gender ‘norms’. As Butler suggests, the surveillance and policing

⁴⁸ Scott, S. (2017). Transitions and transcendence of the self: stage fright and the paradox of shy performativity. *Sociology*, 51(4), pp.715-731.

⁴⁹ Op. cit., Goffman, E. (1959) p.32

⁵⁰ Ibid p.32

⁵¹ Op. cit., Goffman, E. (1959) p.35

⁵² Goffman, E. (1956). Embarrassment and social organization. *American Journal of sociology*, 62(3), pp.264-271.

of gender norms come from external and internal sources. Goffman's use of the props, scenery manner and appearance help shape stereotypical idealisations of gender: hair, make-up, handbag, voice – each take on a meaning to provide 'stereotyped expectations'.

This idea is extended in *Frame Analysis*. Goffman advocates that performances are often involuntary or constrained by the 'principles of organization which govern events'.⁵³ The metaphor of how individuals use frames (structures) to understand the picture (context) is invoked here. Goffman's work in *Frame Analysis* draws upon notions of cognitive organization of experience and the process of deciphering what is happening – and what is significant – in any given experience to build frames to produce our perception of reality. Drawing upon phenomenology and notions of 'stock knowledge',⁵⁴ Goffman claims that individuals are able to 'frame' experiences in order to organize their current understanding of the world but also to guide their future actions. However, we are not necessarily wilfully manufacturing these frames, they are unconsciously adopted and adapted depending on the social situation.⁵⁵

Therefore, reading gender as a *social front* the performer can present some statements for their audience and shape their performance of gender accordingly. In this regard the performance is a presentation that is 'moulded and modified' to the idealized 'expectations of the society in which it is presented to'.⁵⁶ Goffman's works on *Gender Display* and *Gender Advertisements* amalgamate the aforementioned ideas surrounding impression management, framing and dramaturgy with the guiding notion of gender as *social front* and social construct. Goffman asserts gender is interactionally consequential and that the consequences of repeated gendered practices formulate gender as a social institution. In *Gender Display*, through an analysis of gender as difference, Goffman arrives at the anti-biological essentialist pathway and endorses the view that gender is socially produced through interaction.

'Women do, and men don't gestate, breast-feed infants, and menstruate as part of their biological character. So, too, women on the whole are smaller and lighter boned and muscled than men. For these physical facts of life to have no appreciable social consequence would take a little organizing, but, at least by modern standards, not much'.⁵⁷

⁵³ Op. Cit., Goffman, E. (1974) p.10

⁵⁴ Op. cit., Schutz, A. (1970)

⁵⁵ Op. cit., Goffman, E. (1974) p.10

⁵⁶ Op. cit., Goffman, E. (1974) p.45

⁵⁷ Goffman, E. (1977). The arrangement between the sexes. *Theory and society*, 4(3), p.301

Unlike his earlier work on symbolic interactionism, Goffman is not interested in the specific interactions themselves, but in the *consequences* of gender practices in the interaction order.

Just as Lorber, Butler and West and Zimmerman question why social difference should reflect 'natural' differences, Goffman, in *Arrangement between the Sexes* similarly asserts that gender does reflect sex in society, and it is unnatural when a society claims it as truth or natural. 'Social difference' therefore defines an individual's role, traits and social position. Goffman builds on this template by referring to 'institutional reflexivity' ('a newish phrase for an old social anthropological doctrine').⁵⁸ For contemporary sociologists who have developed the term such as Giddens and Beck,⁵⁹ reflexivity requires the individual to perceive themselves as an agent within a wider structure that is open to the socialization of that social structure. The more reflexive the agent, the more inclined they are to shape their structure. In contrast, the less reflexive one is the more malleable they are and thus shaped by the structure. Goffman uses reflexivity to shine a light on how society treats men and women differently based on myths and gender stereotypes. Applying institutional reflexivity Goffman refers to it as 'whenever an environment is manipulated so that it exaggerates sex differences in order to justify gender inequalities'.⁶⁰ This differential treatment is vindicated and normalized by 'folk beliefs' about what are essentially known about the two genders (biology, physiology, temperament, traits etc.). However, these physiological and biological differences do not account for the *social difference* or disparate treatment that men and women receive in their everyday lives. The notion of biological difference rationalizes and (over) simplifies difference (via the use of gender-based stereotypes) and so the question is, why should it account for the unequal social and legal treatment of the two genders – i.e. status, rights and opportunities? It is here that Goffman contributes to the social constructionist / essentialist debate arguing that there are numerous institutionalized social practices (that are justified, excused, and deemed as 'natural' through the essentialist differences between the sexes) at play and these practices (re)produce gender differences. The crux of the theory rests on the simple question: if the biological difference is x, why does this account for social difference? Goffman's answer is that

⁵⁸ Op. cit., Goffman (1977). p. 301

⁵⁹ Beck, U., Giddens, A., & Lash, S. (1994). Reflexive modernisation. *Polity*. p.21

⁶⁰ Op. cit., Goffman (1977) p.323

institutionalized social practices (or institutional reflexivity) are always presented as 'natural' or 'normal' and are a way of producing and honouring social difference. To conclude, repeated social practices through interaction order produces 'gender'.⁶¹

Goffman's response to the cultural difference vs. natural debate is an account that describes how social environments are constructed to amplify and exaggerate gender difference. Differential treatment is a result of this process and the differential treatment is justified or excused through reference to innate biological differences between the sexes. Goffman offers some basic five examples of institutional reflexivity: gendered division of labour, siblings as the socializer, the gendered division of toilet arrangements, selective job placement and finally the identification system: an actor being 'gendered' by their audiences through sight, tone of voice, title, clothes etc.⁶² According to Smith, this analysis is critically overlooked by feminists⁶³ and is crucial in understanding Goffman's work on social difference but also *Gender Advertisements*. In each of these five examples, Goffman stresses that biological and essentialist discourse disguise the phenomenon that they produce – gender difference. Gender difference is the production of institutionalised reflexivity. Gender difference is therefore produced and then reproduced through institutionalized social practices via folk lore, long-held unshakeable beliefs and myths about the differences between men and women and the interaction that they undergo, sustain and endure. It is these beliefs that are the real source of the presumed differences between the sexes. These practices are problematic when they are projected on to interactional fields and the resulting scenes 'do not so much allow for the expression of natural differences between the sexes as for the production of that difference'.⁶⁴ One of the institutions that project these practices is advertising, and I now turn to this institution and how Goffman attempts to disrupt what is taken for granted in gendered advertisements.

I have so far outlined some of the broad(er) similarities and differences between Goffman and Butler's theorisations of gender, exploring gender as dramaturgical, formed in dialogue between the back stage and front stage, and performative, constituted through 'repetitive attempts of being'. Butler's concept of 'performativity' offers up similarities and parallels to

⁶¹ Op. cit., Goffman (1977) p.313

⁶² Op. cit., Goffman (1959). pp.301-314

⁶³ Op. cit., Smith, G. (2006). p.93

⁶⁴ Goffman, E. *Arrangement between the sexes* (1977) p. 324

Goffman's emphasis on the performance within the theatrical characteristics (dramaturgy) of social behaviour. There are some differences and limitations to these theorisations of gender that are worth briefly discussing before moving on to the next section where I will outline the specifics within Goffman's coding of advertisements. Unlike Goffman's interpretation of gender, Butler leaves little room for notions of agency which is apparent in the concluding chapters of *Gender Trouble*:

"My argument is that there need not be a 'doer behind the deed', but that the 'doer' is variably constructed in and through the deed."⁶⁵

Butler's claim here – 'there is no doer behind the deed' – or no performer behind the act limits the possibility of change. Since *Gender Trouble* emerged many critics of Butler remain sceptical of the term "performativity" and whether it instils or excludes notions of agency within the subject. Benhabib has questioned the underlying argument that draws Butler and Goffman together: whether or not that there is a 'self' behind the mask and if there is no gender identity behind the 'the expressions of gender' then how can women change these expressions?⁶⁶

"If we are no more than the sum total of the gendered expressions we perform, is there ever any chance to stop the performance for a while, to pull the curtain down, and let it rise only if one can have a say in the production of the play itself?"⁶⁷

Here, Benhabib is questioning whether we really transform if we have little or no agency in the process. Salih takes this notion further:

'Butler is not suggesting that the subject is free to choose which gender she or he is going to enact. "The script," if you like, is always already determined within this regulatory frame, and the subject has a limited number of "costumes" from which to make a constrained choice of gender style'⁶⁸

⁶⁵ Op. cit., Butler (1990) p.195

⁶⁶ Op. cit., Salih, (2003) p.60

⁶⁷ Benhabib, S., (2017). *Feminist contentions: A philosophical exchange*. Routledge. p.21

⁶⁸ Op. cit., Salih (2003) p.56

This is where Goffman and Butler diverge, for Goffman the backstage ‘script’ indicates agency, though sometimes spontaneous, it is constructed and crafted. The (im)possibility for change within Butler’s work has been critiqued by Nussbaum⁶⁹ who argues that Butler’s notion of ‘i’identity is unstable, relying on the constitutive outside, thus removing the possibility of one desiring and subscribing to an identity-based subject in terms of formulating social relations. As Benhabib argues, this impossibility for change is problematic for the subject:

‘Given how fragile and tenuous women’s sense of selfhood is in many cases, how much of a hit and miss affair their struggles for autonomy are, this reduction of female agency to “a doing without the doer” at best appears to me to be making a virtue out of necessity’⁷⁰

The question is whether Butler and Goffman deny agency through the deconstruction of the self or whether their contribution is a critique of normative constructions of agency, where claims to an ‘I’ are always claims of power and therefore inherently relational – I can only claim an identity through the constitution of an unspeaking other.

4.8 Advertising: Making the Familiar Strange

In *Gender Advertisements*, Goffman applies institutional reflexivity of gender difference to billboard and magazine advertising.⁷¹ At the core of this materially vast book is his conceptualisation of *gender display*, which Goffman believes features in all forms of advertising where there are male and/or females present. Gender display is the way in which advertisers choreograph gender difference in advertisements.⁷² The subconscious displaying of gender tricks the consumer – or as Goffman states, the audience are not even aware of it – into believing that this is true display of gender. Moreover, once the gender display has been decoded, adverts featuring men and women together will appear bizarre to the audience. These

⁶⁹ Nussbaum, M., (1999). The professor of parody: The hip defeatism of Judith Butler. The New Republic <https://newrepublic.com/article/150687/professor-parody>

⁷⁰ Op.cit., Benhabib p.22

⁷¹ Goffman, E. (1979). *Gender Advertisements* pp.10-12

⁷² ibid p.8

taken-for-granted and accepted ways in which the advertiser conducts gender are mere representations: they are the ‘hyper-reality’⁷³ of gender difference that exists in the everyday. Through pictorial analysis and in true Goffman attention-to-the-minutiae fashion, the scrutiny moves beyond broad gender-stereotypical themes of adverts and to the subtler compositions within the ‘frame’. Goffman’s coding is vast in terms of volume of photos and there are hundreds of examples of ‘gender display’ explanations in the work. Therefore, only the four dominant codes will be used in this thesis. These are: ‘feminine touch’, ‘licensed withdrawal’, ‘family’ and ‘ritualization of subordination’. There are also a further two codes that aid these dominant typologies: ‘function ranking’ where men are in an executive role and the woman merely in a functional position and finally, ‘relative size’, where the woman is smaller or lower than the man. Goffman’s core typology, ‘feminine touch’ is often portrayed in adverts whereby the woman is lightly touching themselves, the product or:

“...using their fingers and hands to trace the outlines of an object, or to cradle it or to caress its surface (...). This ritualistic touching is to be distinguished from the utilitarian kind that grasps, manipulates, or holds”⁷⁴

The light touch of the woman’s hands can also involve self-caressing, touching the cheek, hair, shoulders or mouth. This code positions the body as both soft and a ‘precious thing’,⁷⁵ as delicate and fragile, all the while in contrast to the adverts displaying the masculine clenched fist, tight grip or waving finger. The woman is positioned as the sexualized object, lightly touching her mouth, hand, arm crotch or breast. This is to accentuate not just her femininity but display that she is sexually available, accessible and tempting for the consumer. ‘Licensed withdrawal’ refers to the positioning of the woman as ‘withdrawn from the situation’, in a dream like state, looking away into the distance, down at the ground, bashful or perhaps covering her face with her hands. This code alludes to notions of infantilization, how advertisers portray the woman as child-like in her approach to the world or quite simply psychologically removed or absent in the situation. Licensed withdrawal is similar to feminine touch as it reveals undertones of vulnerability, fragility and upholds that women are often gripping on to the man, clutching their arm, looking for physical support whereas he is confident in his stance and position within the frame – Goffman notes the man often holds his

⁷³ Baudrillard, J., (1988). *Simulacra and simulations* pp. 166-184

⁷⁴ *ibid* p.29

⁷⁵ *ibid* p.31

'hands in his pockets' or is looking 'directly at the viewer', always in control, always anchored and either gripping someone or something. Goffman's coding speaks to lack of agency; the way in which the woman is often found in a dream-like state suggests that the portrayal promotes indecisiveness or the will to act independently. In licensed withdrawal, coded advertisements, the woman is in need of constant reassurance of the male counterpart to command or physically manipulate the woman. 'Ritualization of subordination' is the representation of the woman as physically lower in the frame in terms of position when compared to her male counterpart. This typology often includes a woman laying passive on the ground, on one knee or kneeling-down on all fours. The woman may also be standing on one leg, with a bended knee or tilting her head to one side as if to look into the distance (slight overlap with 'licensed withdrawal'). Once again, there are sexual undertones present within this categorization of the woman's sexual availability, subservient or promiscuous positioning. Moreover, locating the woman lower demotes her as weaker, in terms of strength but also symbolic power and position in society. The fourth typology, 'the family' incorporates the portrayal of everyday domestic family life and the symmetry in the traditional nuclear family. For example, quite often the mother and daughter will look similar (or indeed the exact same) irrespective of age when they are participating in a similar activity, such as cooking, cleaning, or applying make-up. In these hyper-reality mocked images ⁷⁶ or adverts, there are '...devices [that] are employed to exhibit the presumed special bond between the girl and the mother and the boy and the father, sometimes in the same picture'.⁷⁷ The same notion applies to the father and son who are often participating in a highly gendered activity or game. ⁷⁸

As an introductory theme, 'feminine touch', Goffman explores the 'gender display' where the woman 'more often than not' is positioned as 'doe-eyed, passive or in confused state'. The woman will also be looking away into the distance, out of the frame and with her mind elsewhere.

⁷⁶ Baudrillard, J. (1993) *The Hyper-realism of Simulation*. in: Charles Harrison and Paul Wood. (eds) *Ideas* Malden, MA: Blackwell. p.21

⁷⁷ Op. cit., Goffman (1979) p.37

⁷⁸ Within the 'family' coding, Goffman observes there is often an overlap with 'relative size', the father will always be taller or in a powerful position in comparison with his son, whereas mother and daughter will be of equal size (unless the daughter is much younger).

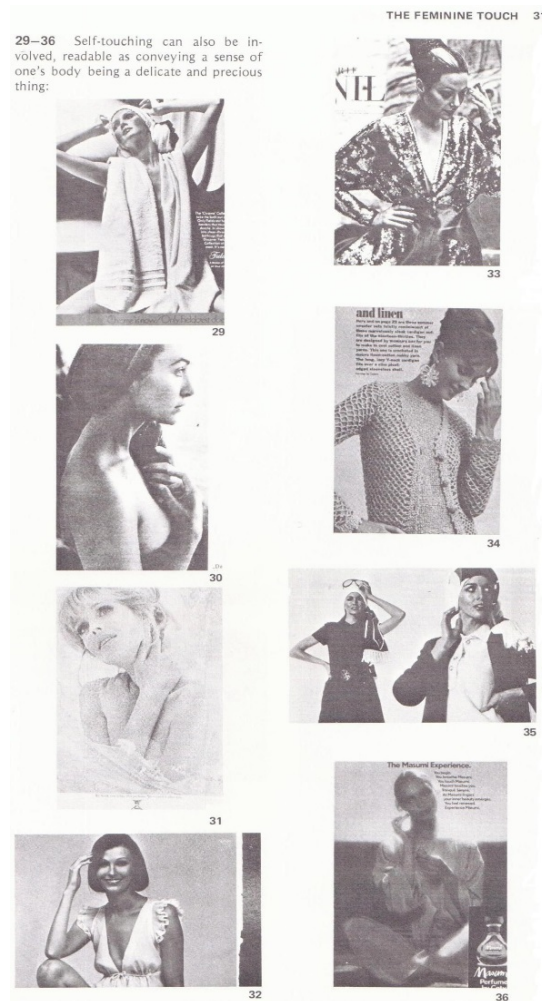


Figure 1 Example of Goffman's coding from 'Feminine Touch' taken from Gender Advertisements (1979)



Figure 2 Dolce and Gabanna Advert (2015/16)

'Feminine touch' will be looked at later in this chapter and recoded and imagined in chapter 6, however it is worth noting the 'gender display' that Goffman is interested in here but also the depth of pictorial analysis. The subtle touch to the face, neck or hip (figure 2) is repeated over

15 pages with each image almost identical to the previous shot – the woman is looking away or into the distance as if she is withdrawn from the situation. I have used a contemporary D&G advert from 2015 to begin the process of updating Goffman's code to show that the same display is similar to Goffman's original analysis: hand to the head and face, eyes to the side, gazing away from the camera. Figure 8 (on page 99) shows the male equivalent (and opposite to female): eyes and hands fixed on the product (Lego), clutched and active. Thus, as Goffman notes, gender display in advertisements is not a consequence of evolution between the sexes, nor is it inextricably linked to essentialist ideas that these displays are natural; instead there are 'schedules' for the gender in advertising. This is reminiscent of Goffman's dramaturgical approach ('back stage' and 'front stage') and performance: it is all an act.

In *Gender Advertisements*, Goffman revisits dramaturgical approaches to social norms and cultural values and uses the example 'a family on holiday' and how they may follow the cues for 'having a nice time'. This act may well indeed come from the self, but they may also come from external schedules of 'having a nice time' as seen, for example, in a Coca Cola advert (figure 3).



Figure 3 Coca Cola Christmas Advert 2015

This cyclic approach can also be applied to displays and schedules of gender, as Gornick states, 'men and women take their cues about "gender behaviour" from the image of that behaviour that advertising throws back at them, and they contrive to become the "people" in those ads'.⁷⁹

⁷⁹ Op. cit., Goffman (1979) p. viii

It is this engineering of the self that is relevant in Goffman's work, the cyclical nature of individual 'actors' taking cues from advertisements and replicating the 'act' in their real life 'performances'.

Goffman's approach here is reminiscent of the dramaturgical theorisations of performance and identity, or for social constructionist ideas of performance where advertising (and perhaps mass media) is one of the many structures for the conditioning of gender. At the core of the book is the term 'depicted femininity' or the adult-child relation (this is also turned into a code) seen in a lot of adverts that feature men as the dominant figure, paternalistic in stance and the woman as the maternal. Goffman states that one of the best ways to understand advertising is if one compares the gender display to the parent-child relationship where the man in the advert will almost always take on the role of the parent whilst the subjugated woman behaves (or appears to behave) like a child. This will be discussed towards the end of chapter, but two examples are worth noting: women's hands barely touching or grasping an object (compared to the strong and confident grip of the man's handling of an object) or touching their own bodies or faces in a strange way. There are inevitable overlaps with the themes (i.e. feminine touch) but this strand of thought applies where there is a male/female composition in the advert. The woman will also be seen to be in a daze whilst under the control of the male gaze or clutch of hands. This may be shown by a finger to the lips, or the woman cuddling into the man as if to require protection, just like a child would. As Gornick adds:

[Women posing as] children, acting like children, looking like children: utterly devoid of the natural sobriety which one associates with the adult men. Grown women are seen standing with the head cocked away over to the side parallel to the shoulder, face front, eyes and mouth: smiling; or the head tucked into the shoulder, face-front, eyes looking up from under lowered lids, seductive-gamin style; or hands twisted behind the back; or the toes of one foot standing on the toes of the others in a 'aw gosh gee' posture; or arms and legs flying off in all directions like a clown; or hands dug deep into the pockets, the facial expression 'wicked' or 'merry'; and on every last face that damned 'dazzling' smile.⁸⁰

⁸⁰ *ibid* Gornick, V. (1979) in *Gender Advertisements* p.viii

Feminist research has extensively developed this area of enquiry over the past four decades.⁸¹ However, what remains novel is the intricate detail, the mundanity, the everyday, the overlooked features – they are brought to the foreground by Goffman: clutched hands, jagged posture, arm(s) to waist or hip, finger biting, bended knees, sucking of fingers, rolled eyes; but also the over-aggressive men: shaving, pointing, grabbing, looking directly at the camera, reassuring smile, confident laughter, arms folded, bended knee on an object. All of these ‘hidden’ codes are assessed and reassessed until the reader is fully aware that the poses are not coincidental. Goffman argues that these displays of gender that advertisers tirelessly regurgitate should appear (out of context) peculiar and strange (‘commercial realism’) but in fact we merely take them for granted as an innate truth. Through the analysis of just over five hundred pictures of gender display, the outlook is critical of the positioning of the female body and the limitations of femininity that is presented in adverts. The catalogue and typologies capture the mundane from various US adverts depicting genders in ‘everyday life’ with a split between masculine and feminine. What is immediately apparent is the choreography of the gender displays: that men and women are depicted in completely opposing ways. For example, in the typology ‘licenced withdrawal’ the woman is ‘kept in her place’ whereas the man is seen dominating the product or space. Goffman is somewhat apolitical here, yet it is clear what he sets out to achieve: to debunk the essentialist narrative, or at least portray it as a fallacy. Gender is a social construct to which advertising plays a small yet powerful part in manufacturing through codes and displays of gender.

4.9 Re-coding Gender Displays

Goffman’s pictorial analysis and coding is then divided into six key groups that I evaluate here through the use of contemporary images from the last five years. The first is ‘feminine touch’, a central category based on the notion – as outlined above – that women are often portrayed tenderly touching the product, or, lightly touching themselves (hands, legs or most often, their face and lips) in an irregular way to exert the idea that women are gentle, soft and caring. There are of course sexualised undertones present. As Gill states “while men’s touch was functional

⁸¹ Malson, H., Halliwell, E., Tischner, I., & RÚDÓLFSDÓTTIR, A. (2011). Post-feminist advertising laid bare: Young women’s talk about the sexually agentic woman of ‘midriff’ advertising. *Feminism & Psychology*, 21(1), 74-99. And Blloshmi, A. (2013). Advertising in Post-Feminism: The Return of Sexism in Visual Culture? *Journal of Promotional Communications*, 1(1).

and instrumental ... women's was light and caressing and often seemed to have no purpose at all'⁸². This phenomenon is still visible, and it was the most prevalent throughout the data in all three countries. When women were shown as touching parts of their own bodies, they were captured as if they were enjoying rapturous, private ('back stage') moments to themselves. Below, in the Coco Chanel advert, there appears to be tripartite feminine touch: the model is not only lightly holding the perfume bottle but is also delicately touching her face with the bottle, her lips are pursed and softly caressing the lid of the bottle.



Figure 4 Chanel Advert (2015)

The second code, 'function ranking', whereby the woman is in a lower position within a social structure, whether that is the family, the workplace or any other social arrangement. Goffman proposes that when an advertisement involves a type of instruction, men are always the active agent, instructing or teaching women as if they were children (lower in the composition or actively listening). Below in a D&G advert (figure 5) there is a mixture of two of Goffman's typologies. There is the 'function ranking', the man instructing (pointing) whilst the woman is slightly subordinate (arm turned inwards) but there is also the code, 'relative size', the man is looming over the woman, has his arm around her gripping her child-like, adding to the notion of instruction.

⁸² Gill, R. M. (2007). *Gender and the Media*. Polity Press. pp.79-80



Figure 5 Dolce & Gabanna Advert (2015)

The third category, ‘ritualization of subordination’ is shown when women adopt postures such as ‘bashful’ with arms or knees bent or lying down in order to indicate submission to men’s authority.⁸³ Goffman noted that in advertisements that featured someone sitting or lying on a bed or a floor, that person was frequently a woman or a child, or a woman in a childlike position or playful mood. Women are often found lying on some type of surface, whether a bed, floor, or chair, in an unnatural fashion or in an unnatural setting. The face (if shown) would be perhaps confused or – utilising another code ‘withdrawn’. It could also manifest as a dismembered body: the audience views just the legs, torso or breasts with the head cut off/out of shot. The advert below (figure 6) depicts the model in a lying position, submissive mouth slightly open (there is also presence of feminine touch with left hand caressing the head/hair and right delicately touching the neck/face area).

⁸³ In 2006 a Dolce and Gabbana advert that depicts pseudo gang rape resurfaced on twitter in February 2015. In 2006 the Advertising Standards Agency received 160 complaints claiming that it breached the ASA code that condones ‘violence or anti-social behaviour’. See: http://www.huffingtonpost.co.uk/2015/03/18/dolce-and-gabbana0gang-rape-advert_n_6893044.html



Figure 6 Dolce and Gabbana Advert (2016)

The fourth category ‘relative size’ (or sometimes ‘social weight’) portrays the phenomena whereby the man is placed in a position above the woman or is seen to be bigger in either height, size or sheer volume. He may not necessarily be above or bigger, he may be protruding or closer to the shot. This phenomenon is apparent when looking at the negative: it is rare to see the opposite, where the woman is above, in control or instructing the man. Women are often shown to be smaller than men as a way to demonstrate their vulnerability and weaker emotional states. Goffman’s analysis of this grouping centres on the height and girth of men: when compared to women they are often taller or in control. This is a prevalent theme in adverts today: where at least one man and one woman will feature, the man is often taller, the woman shorter, and this is particularly apparent when the man is displaying (or sometimes representing) power and strength. Goffman continues that, conversely, in advertisements where women are meant to be socially superior to men, the women are frequently taller than the men, which powerfully demonstrates the value that society places on height as a symbol of influence and control. There may also be an added blankness or vacuity to the face. In the Gillette Venus razor advert below the woman in a subordinate position with the man is above her is in control of the situation, his right hand on her leg, his legs wrapped around her cocooning her body.



Figure 7 Gillette Venus Razor Advert (2015)

The fifth category, 'licensed withdrawal', refers to women in advertisements who appear disoriented, psychologically removed from a social situation. Goffman states that:

'Women more than men, it seems, are pictured engaged in involvements which remove them psychologically from the social situation at large, leaving them unoriented in it and to it, and presumably, therefore, dependent on the protectiveness and goodwill of others who are (or might come to be) present.'⁸⁴

This category includes adverts where women appear to be lost, confused, in a state of surprise, shock or dumbfounded. The code alludes to notions of infantilization, portraying women as child-like in approach, often hands over mouth giggling, laughing, and hiding a smile from the viewer beneath a product, object or hand (i.e. peek-a-boo). There is somewhat of an overlap with 'feminine touch' code however, this category is unique in that it taps into the stereotypical myths about women not in control and men as alert, aggressors or superior. This category speaks to notions of vulnerability, fragility and infantilism which are in stark contrast the dominant self-aware male counterpart in the shot. Goffman notes the man often holds his 'hands in his pockets' or is looking 'directly at the viewer', always in control, always anchored

⁸⁴ Op. cit., Goffman (1979) p.270

– either gripping someone or something as a mode of announcing authority. Goffman's coding in *Gender Advertisements* does not speak of lack of agency, however, the way in which the woman is often found in a dream-like state suggests that the portrayal promotes indecisiveness or the incapability to act independently. In licensed withdrawal coded advertisements, the woman is in need of constant reassurance of the male counterpart to command or physically manipulate the woman.



Figure 8 Lego Advert (2013)

Finally, ‘family’ is a portrayal of domestic symmetry in the traditional nuclear family: mother/daughter and a father/son coupling will look similar (or indeed the same) or are participating in a similar activity (figure 8), such as cooking, cleaning, or applying make-up. In these hyper-reality⁸⁵ mocked images or films, there are ‘...devices [that] are employed to exhibit the presumed special bond between the girl and the mother and the boy and the father, sometimes in the same picture’.⁸⁶ There is overlap with ‘relative size’, the father, taller or in a powerful position, whereas women will be of equal size (unless the daughter is objectively much younger). In the advert below, for Patek Phillippe (figure 9), the father and son strike a similar pose, the son emulating the father, the same confident look exhibiting a presumed ‘special bond’ over the object (the watch). The relative size is also noticeable, the father is taller.

⁸⁵ Op. cit., Baudrillard (1988) p.168

⁸⁶ Op. cit., Goffman (1979) p.37



Figure 9 Patek Philippe Advert 2014

Similarly, in the Nivea advertisement (figure 10), the mother and daughter are exhibiting a ‘special bond’ over the desired product. This is common in beauty advertisements where the daughter is learning from the mother. Here, ‘relative size’ is the same as above, however the mother is nonetheless positioned in a subordinate position, crouched on the floor – there are also signs of ‘feminine touch’ – the fingertips of the mother delicately placing the cream on to the child.



Figure 10 Nivea Cream Advert 2015

4.10 Observing Themes in Gendered Advertising

In the previous sections I have discussed Goffman’s notions of gender display, social difference and the codes derived from Gender Advertisements. In this final section of the chapter I further

explore these advertisement gender codes which will be revisited and used to map gender display in contemporary adverts in Chapter 6. Based on his coding system, Goffman acknowledges gendered phenomena that are prominent in adverts and there are some that I wish to draw out further. As a review, it is important to note that Goffman argues that in these frames, the positioning of the bodies and displays are counter to innate biology and natural traits – they are culturally defined versions of ‘gender display’. The overarching theme in this work is gendered subordination – the idea that men are superior to women that women are in the shadow of men, often looking for or yearning for them in the frames. Essentially, advertisements are a reflection of western culture: the feminine is subordinate in relation to what is revered as masculine. As noted, before, the messages in advertising have become normal, accepted and established so much so that they no longer appear odd. Once we question these unnatural poses then we can see the subordination, the infantilization and vacancy of the feminine body.

First, overwhelmingly the woman in the advert is hardly ever taller than – or positioned above – the man. Second, the woman’s hands are superficially always seen to be touching, holding or caressing the product, they are never clutching, grasping or manipulating the product (unlike men who appear to be in control or handling the product with vigour and force). Third, when depicting instruction, the image will show the woman being instructed by the man. This is true also if the advert involves children – the boy will almost certainly be instructing or controlling the girl. Fourth, if the advert requires someone to lie on the floor or the bed it will be the woman, who is positioned passively and horizontally whilst the man is active and standing. Fifth, women are frequently depicted as drifting – either mentally or physically. This can be either when the woman is alone or if she is with a man. If with a man, the woman will be shown as ‘dreamy’ or confused. The man in contrast will be asymmetrically alert with the readiness to compensate for the vacuous stance of the woman. Sixth, and related to this, women are pictured as lost or removed from the situation, leaving them disorientated or passive. Finally, when the man’s gaze or head is averted it is always towards something, he is superior to (whether an object, female or child) whereas when the female gaze is averted, it is towards whatever male (old, young, child) is beside her.

4.11 Conclusion

This chapter began with the theorisations of the social construction of gender through the prism of Butler and Goffman's work on performance and performativity. I then discussed Goffman's formation of dramaturgical frameworks in understanding social life, the use of frame analysis, social difference, institutional reflexivity and how his later work on gender display and advertisements have been informed by his earlier work. Focusing on gender display and gendered advertisements, I have outlined how the social structure of advertising shapes gender and how Goffman's work informs my analysis of gendered discourse in advertising. I then looked towards the numerous 'gender display' typologies that Goffman has carved out through a meticulous catalogue of billboards and newspaper cuttings and offered contemporary manifestations to fit each typology. The aim of this chapter is to lay the theoretical foundations of this thesis: to test the contemporaneity of Goffman's coding and pictorial analysis from *Gender Advertisements*, particularly through the context of how new modes of advertising are in emergence since his 'static' analysis was formulated. The chapter outlines the predominant typologies in *Gender Advertisements* as a foundation on which I build upon in chapter 6. I have sought to sketch a reimagining of Goffman's coding by introducing contemporary images and by doing so start the process of revisiting, updating and testing Goffman's typologies. The final sections of the chapter showcase the abundance of 'coding within the typology' which Goffman succinctly deploys throughout *Gender Advertisements* and the richness of his 'thick description' will be utilised in the analysis of data in chapter 6.

Chapter 5

Methodology

5.1 Introduction

This thesis is an integration of doctrinal legal research and sociological research methods and I position it within the broader umbrella of socio-legal method.¹ This chapter is a discussion of the different methods and approaches that I deploy throughout the thesis. I begin the chapter with a discussion of the dominant approaches within socio-legal research method and how this thesis brings together sociological research methods in tandem with traditional doctrinal legal research method. I move on to provide a comprehensive discussion of the sociological research methods that are incorporated into this thesis: focus groups with teenagers from three Member States and elite interviews from academics, practitioners and regulators. The findings from these two approaches are discussed in Chapter 6 (focus groups) and chapter 7 (national perspectives). The final section looks towards legal methodology and analysing the three case studies. Whilst this thesis is not a comparative review or analysis, I draw upon some of the work from legal comparatist scholars and frame the methodological discussion through attempts to understand ‘legal culture’.²

5.2 Socio-Legal Research: Strange Bedfellows or Obvious Companions?

This research is located within – and underpinned by – sociological methods which are used to bring together the two disciplines of law and sociology. On the face of it, the two may seem odd bedfellows as they not only seek different ends,³ but they approach the understanding of society in very different ways. One might argue that law on the one hand is concerned with the

¹ Banakar, R. and Travers, M. (2013). *Introduction: Law and Social Theory*.

² Cotterrell, R. (1997). *Law's community: legal theory in sociological perspective*. Oxford University Press.

³ Cowan, D. and Wincott, D. (2016). *Exploring the 'legal' in Socio-legal Studies*. Palgrave Macmillan.

practice and masculine language⁴ of rules and principles⁵ that seek to shape society by establishing or amending and then applying legislation. As John Rawls claims, the lawyer's 'concern is solely with the basic structure of society and its major institutions and therefore with the standard cases of social justice'.⁶ In practice, lawyers may often be somewhat over-zealous or righteous in trusting that their sole drive is to amend legislation and the legal system to bring about social change, regulate behaviour or radically shift opinion. Whereas the sociologist is driven by a curiosity of society, and their attempts to understand what social reality is.⁷ The sociologist's aim and influence are akin to Herbert Gans or Michael Burawoy's conceptualisation of 'public sociology'⁸ – to engage with non-academic audiences, promote and inform public debate and influence public and social policy. The connection between law and sociology is therefore perhaps the desire to bring about change, wishing to transform the lives of others and reacting to the vicissitudes in society. Thus, the two disciplines are not altogether dissimilar but are different in their *approach* to bring about social change. Socio-legal research amalgamates these two disciplines and by doing so captures various elements of each of the subjects, borrowing concepts, ideas and methods from both. Untangling the wider definition of the ever-expanding interdisciplinary method of socio-legal research is troublesome.⁹ As Banakar and Travers suggest, socio-legal research can mean different things to different researchers depending on the nature of the research, their politics and what they wish to achieve by encountering the method. Ultimately the researcher may pick and choose what parts of the method they employ. Socio-legal research as a method employs sociology, not so much for its substantive analysis of epistemological questions, such as "what is social reality"¹⁰ but as a tool for the collection of data used in sociological research.¹¹ Banakar and Travers propose that legal research could benefit from more dialogue with sociology and specifically the methods used in this field.¹² Wheeler and Thomas provide a similar suggestion,

⁴ Carol Gilligan 'In a Different Voice' where notions of justice and morality are uttered through a male voice: rules, rights and responsibilities. Gilligan, C. (1982). *In a different voice*. Harvard University Press.

⁵ Dworkin, R. (1985). *A Matter of Principle* p.32

⁶ Rawls, J. (2009). *A theory of justice*. Harvard university press. p.58

⁷ Hacking, I. (1999). *The social construction of what?* Harvard University Press.p.12

⁸ Burawoy, M. (2005). The critical turn to public sociology. *Critical Sociology*, 31(3), pp.313-326.

⁹ Fitzpatrick, P., (1995). Being social in socio-legal studies. *Journal of Law and Society*, 22(1), p.107

¹⁰ Gane, N. (2004). *The future of social theory*. p.32.

¹¹ Banakar, R., & Travers, M. (Eds.). (2005). *Theory and method in socio-legal research*. Bloomsbury Publishing. pp.10-11

¹² Ibid pp.9

that the 'socio' in socio-legal represents the 'interface with a context within which law exists' rather than the study of sociology or social science.¹³ It is the latter statement to which I interpret socio-legal research method, law does not and cannot operate in a vacuum – it is the product of the society and a reaction to the social and cultural norms and values that prevail in that society. Morris and Murphy provide a lengthier and practical definition:

[Socio-legal research is] 'Interdisciplinary, drawing on the tools and insights of disciplines such as sociology, social policy.... genders studies, economics and politics to explain and critique law and legal practices. Socio-legal research may also be theoretical.... Asking what role does law play in society or examining law as a form of power or a social system or cultural practice'.

It's helpful to note what socio-legal research is *not*. One common understanding amongst scholars¹⁴ is that it significantly differs from traditional 'black letter' legal analysis as it attempts to understand law as a reflection of the society it emerges from. If 'black letter law' researchers are concerned with analysing technical legal text, its routes, amendments and progress then socio-legal research is about 'law in action' rather than 'law in books'¹⁵. Moreover, it is an empirical study of the individuals to whom the law is projected on to. As Lacey notes, socio-legal research aims to 'scrutinize not merely the legal articulation of the relevant rules and processes but the meaning and effects of those rules and processes as interpreted and enforced, and as experienced by their subjects'.¹⁶ Unpicking these definitions is no easy task due to their ambiguity¹⁷ and that they are still not fully recognised, developed (or respected) as the correct apparatus for legal research.¹⁸ Socio-legal research is criticized for its haziness and what some researchers would call 'tawdry'¹⁹ approach to solving legal

¹³ Wheeler and Thomas in Hayton, D. (2000) *Law's Future (s)*. Bloomsbury Publishing.

¹⁴ See for example Cownie, F. (2004). *Legal Academics: cultures and identities*. Hart Publishing. pp. 55-56

¹⁵ Banakar, R., & Travers, M. (2005). *Theory and method in socio-legal research*. Bloomsbury Publishing.

¹⁶ Lacey, N. (1996). Normative reconstruction in socio-legal theory. *Social & Legal Studies*, 5(2), p.132.

¹⁷ Svensson, M. (2013). Norms in law and society: towards a definition of the socio-legal concept of norms. *Social and Legal Norms: Towards a Socio-legal Understanding of Normativity*. Pp.40-42

¹⁸ Op. cit., Banakar & Travers (2005) p.32

¹⁹ For example, see Abel, R. L. (1980). Redirecting social studies of law. *Law and Society Review*, 14, 803–829, and Hunt, A. (1978). The sociological movement in law. In *The Sociological Movement in Law* (pp. 1-10). Palgrave Macmillan, London

problems. However, I argue that socio-legal research methodology strives for deeper and critical reasoning behind rules, or for this thesis, the reasons behind regulation and codes of advertising. A further common distinction can be made between the two: black letter law is law asking questions about itself, the internal questions, the suitability or limits of legal rules and ideas. This inward-looking process in black letter law research is limiting and does not allow for external critics from other disciplines to critique the problems within law from a different perspective. Finally, I argue that socio-legal studies is functionalist in its approach, it seeks to understand the laws purpose in society and how it fits in to the wider context of other institutions. It looks beyond the detailed analysis of legal rules and attempts to locate those rules ‘within the context of the other social practices which constitute their immediate environment’.²⁰

5.3 Bridging the Gap: Qualitative Sociological Research Methodology

The bulk of the empirical research in this thesis draws upon sociological methodologies in order to bring together law and sociology and to explore the social context of advertising and its pervasiveness in everyday life. In the theoretical framework, I have discussed social constructions of gender, how identity is shaped, and gender is performed. These theorisations perceive society as repeated practices and representations that shape the individual’s identity. As such, advertising is manifestations of these dominant representations, studying them will assist in understanding the ways in which gender is socially constructed and ultimately how it (re)produces inequality within society. As suggested in the previous section, one may argue that the sociologist’s drive is their curiosity and their endeavours to comprehend what social reality is or to reveal ‘the strange in the familiar’ and ‘place the individual in the social context’.²¹ Sociological research methodologies draw upon the social sciences for conceptual and theoretical inspiration and employ social scientific ways to illuminate changes in society, explain why and how people behave, and to understand and explain everyday experiences. Qualitative sociological research methods are the tools that the sociologist employs to generate that research and to unravel why and how something is happening. My two main research methods are focus groups and elite interviews and these are applied in my research to unravel two of my two main research questions: how do gender stereotypes in advertising affect young

²⁰ Op. cit., Lacey (1996) p.132

²¹ Macionis, J., (2001). Sociology. New Jersey. pp.2-5

adults and what can be done to regulate advertising ensuring that gender equality is safeguarded. I will now develop a discussion on the two main social research methods, beginning with feminist approaches to focus groups.

5.4 Listening Beyond the Mirror: Developing a Feminist Perspective

There is a scene in the American television series, *Mad Men*, set in the 1950s that features a group of women talking about what types of beauty products they use. This group of women have been asked to visit the advertising agency's office to discuss with the sales and marketing team where they learn about their beauty techniques, how it is passed down generation-to-generation and what works best for them individually. Beyond the two-way mirror in the adjacent room, the advertising agents observe and objectify the group of women, taking notes and joke that the future of the company's sales depend on a gaggle of 22-year old women. The two-way mirror, synonymous with interrogation, experimental psychology and Foucauldian infused reality TV shows, conjure up notions of surveillance, drawing out information, underhand tactics and general deceitfulness. In this section of the chapter I wish to turn this notion on its head and present feminist arguments²² that speak to the focus group's undertones solidarity of cohesiveness and camaraderie. I wish to move away from the 'predominantly masculine model of sociology and methodology'²³ and objectification of the interviewees where their input is seen as comparative functionality rather than life story and experience. I draw upon the work of Ann Oakley and Jenny Kitzinger²⁴ to foster this application.

The irony of my research is that the roots of the focus group (or group interview)²⁵ stem from the sexist *Mad Men* era when advertising agencies employed them to develop techniques to entice the consumer, drawing upon gender stereotypes at home or sexualisation of women. I argue that the focus group can, as feminist method, side-step the exploitative two-way mirror power dynamics (researcher-participant but also participant-participant) and allows for critique of the original consumer-capitalist values and motives of the method.

²² Oakley, A (1981). Interviewing Women: a contradiction of terms. In Roberts, H. (Eds) *Doing Feminist Research* London Routledge pp.30-61

²³ Ibid p.32

²⁴ Kitzinger J. (1995). 'Introducing focus groups', *British Medical Journal* 311: p. 301

²⁵ Hardy, M.A. and Bryman, A. (2004) *Handbook of data analysis*. Sage. p.31



Figure 11 'The Focus Group' and the two-way mirror from Mad Men (2010)

The background of the focus group is not as clear-cut as the macho *Mad Men* parallel and nor does it catch-on in social research method circles. As Bryman notes, the focus group begins life as an advertising agent's tool but takes at least two decades before it is critiqued by counter-culture/consumerist sociologists in the USA.²⁶ Calder's research on testing participant's responses to ideas behind advertising demonstrates the transition from marketing research to sociological theorisations of method.²⁷ Calder's approach provides that exploratory group discussions can unravel 'everyday knowledge', experience and understanding of a certain group or a class of people. Researchers soon realised that focus group participants would already know about the area of research that is being conducted, they already hold the answers (at least partially) to the research question and it is then for the researcher to 'tease' this knowledge out of the participants. Merton et al states that participants are complicit in this 'tease' and aware of the arrangement that the researcher has selected them for the knowledge that they possess as 'valid' and experience as 'legitimate' and most importantly that the researcher must work hard to obtain it. Merton's work on focus groups 'with a certain experience' have been conducted via new modes, particularly unstructured or semi-structured

²⁶ A. Bryman, A. (2016). *Social research methods*. Oxford university press. p.345

²⁷ Calder, B.J., (1977). Focus groups and the nature of qualitative marketing research. *Journal of Marketing research*, pp.353-364.

discussions, guided only by topic guides, themes or ideas.²⁸ Since Merton et al and Calder's work in the 1950s,²⁹ researcher-led group interviews have gained prominence and recognition and used widely in sociological methodology.³⁰ Towards the 1980s, the focus group as a research tool blossomed and the work conducted by Morgan et al continued Calder's theorisation of the method, noting that the focus groups provide the researcher with insight into how individuals organise knowledge and make sense of everyday life.³¹ During the 1990s, the focus group returned to its roots and became popular in research that considers the mass media and advertising³² and how audiences consume, digest and understand the mass media, consumerism and marketing. For Morgan, a focus group diffuses power relations and allows the researcher to take a step back and attempt to understand why people feel the way they do about a certain subject. Others within that group are then able to probe one another, inevitably detaching power relations away from the interviewer/ee.³³ This, Morgan argues, is the opposite of what occurs in a standard one-to-one semi-structured interview, where the researcher wields asymmetric power in directing the interview's trajectory and subsequently the interviewee's answers. This does not mean that the interviewer cannot exercise any power within the focus group, but the power is muted or kerbed.³⁴ As group dynamics play a central role in the outcome of the focus group, the researcher can manipulate (to an extent) what they wish to interrogate and what should remain stifled. For example, one participant may state their views on a subject and then change their argument once they have heard the rest of the group's views, a common characteristic amongst groups that are fearful of allowing for more 'back stage' accounts. The researcher can question this or 'cherry pick' what they deem as domineering, simplistic or worthy. The notion of dissent within the focus group is also an important and telling characteristic as arguments allow for a more realistic answer to the research question. Understanding a complex issue comes from continuous interaction and discussion as opposed

²⁸ Merton, R. K., Fiske, M., & Kendall, P. A. (1956). The focused interview; a manual of problems and procedures. p.155

²⁹ *ibid* p.156

³⁰ Fern, E. E. (2001). *Advanced focus group research*. Sage. pp.3-5

³¹ Scott, S., 2009. *Making sense of everyday life*. Polity.

³² Soar, M. (2000). Encoding advertisements: Ideology and meaning in advertising production. *Mass Communication & Society*, 3(4), 415-437.

³³ Morgan D.L. (1997, 2nd Edition) *Focus groups as qualitative research*. London: Sage. pp.9-25.

³⁴ *ibid* p.11

to the insular interview. As Bryman puts it, focus groups reflect the ‘processes which meaning is constructed in everyday life and to that extent can be regarded as more naturalistic’.³⁵

Social interaction within the focus group is paramount for the success of ‘drawing out’³⁶ answers from the participants, moving away from asymmetrical power dynamics, building rapport and building a safe environment. This is reflected in feminist theorisation underpinning of the focus group, whereby symmetrical power leads individuals to negotiate their own views on their own terms and in their own ‘language’. Authors such as Puchta and Potter have argued that the transition from questionnaire to the focus group allows participants the space for free will, autonomy and language control to formulate opinions and narratives that are too often absent in both questionnaires and structured interviews.³⁷ The focus group process of collecting responses to advertising and its influence on gender contains potential due to the back-and-forth social interaction of the focus group. Madriz has argued that discussions amongst marginalized groups, particularly women leaves space for shared empowerment, shared life experience and shared biography.³⁸ Similarly, Richie et al have argued that this ‘back and forth’ is an important facet of the process as participants can hear one another’s views, reflect in light of the group’s wider discussion and (re)consider/develop their own position further.³⁹ In effect, the focus group works together, prompting others to reveal more through similar experiences, seek clarification and recognise ideas that are not always initially apparent. This ‘spontaneity’ derives from the participant’s social context and can often lead to their own ‘framing’ which is less likely to occur in in-depth one-on-one interactions, where the participant may be influenced by the interviewer, or ‘nudged’ by normative influences. Kitzinger notes that although there is very little research on social interaction within focus groups,⁴⁰ there are two types of social interaction.⁴¹ Firstly, complimentary – a broad agreement of the social world, understanding the framing of the phenomenon with each participant building upon the previous

³⁵ A. Bryman, A. (2016). *Social research methods*. Oxford university press. p.504

³⁶ Hennink, M. M. (2013). *Focus group discussions*. Oxford University Press.

³⁷ Puchta, C. and Potter, J. (2004). *Focus group practice*. Sage. p.23

³⁸ Madriz, E. (2000). Focus groups in feminist research. *Handbook of qualitative research*, 2, p.837

³⁹ Ritchie, J., Lewis, J., Nicholls, C. M., & Ormston, R. (Eds.). (2013). *Qualitative research practice: A guide for social science students and researchers*. sage.

⁴⁰ Op cit., Oakley, A (1981) Oakley argues that social interaction in interviews have historically been used purely for their statistical comparability that denies subjective storytelling and life experience.

⁴¹ Kitzinger, J. (1994) ‘The methodology of focus groups: the importance of interaction between research participants’, *Sociology of Health* 16 (1): 103-21. And Kitzinger J. (1995) ‘Introducing focus groups’, *British Medical Journal* 311: 299-302.

remark which eventually leads to consensus. Munday calls this consensus 'collective identity'⁴², which more frequently occurs in 'elite' or professional focus group sessions. It is the second typology – argumentative – that occurred in my sets of focus groups: participants disagree, and then it is paramount for the researcher to observe and highlight the disagreements no matter how trivial they may appear. 'Complimentary' accounts for moments of solidarity and cohesion, particularly amongst the young girls in the focus group. The amplification of the disagreement can lead the participants to revise what they have already said. Morgan holds a different position⁴³ compared to Kitzinger and states that focus groups that do not emphasise social interaction are not inferior research; it is the researcher's prerogative to highlight what they wish to validate or find interesting within the discourse. Feminist perspectives on interaction, such as Wilkinson agrees that male participants can often take control and the researcher, at some point, must reassert their authority.⁴⁴ Moreover, the researcher may need to step in when the research questions are being addressed and other participants have not discerned (or heard) what one participant has said and so the researcher must repeat back to the group. In conclusion, the moderator must intervene cautiously and do so by straddling two positions: to allow free flow of dialogue but also echo the more significant issues that are raised in the focus group. I take up the feminist position of Wilkinson et al allowing for disagreement/argumentative co-constructionist approach to the focus group, negotiating to provide meaning to social contexts and phenomena.

At the initial meeting, it was necessary to explain some of the research whilst at the same time retaining information and not 'give away' the point of the research. Here, the free flow of dialogue came towards the end of the initial sessions in all focus groups the students wanted to carry on the discussions on their way out of the room. When the focus group came to an end, some of these discussions are recorded as field notes in chapter 6. In the second sessions the dialogue became much 'looser' than the initial session, building rapport, the participants feel more comfortable and confident aided by them bringing their own material to the session.

⁴² Munday, J. (2006). Identity in focus: The use of focus groups to study the construction of collective identity. *Sociology*, 40(1), 89-105.

⁴³ Op. cit., Morgan D.L. (1997)

⁴⁴ Wilkinson, S. 'Focus groups in feminist research: Power, interaction, and the co-construction of meaning'. In *Women's studies international forum* (Vol. 21, No. 1, pp. 111-125). Pergamon and Wilkinson, S., (1999). How useful are focus groups in feminist research?

5.4.1 Images and Imaginations

My empirical research consists of three sets of focus group sessions with mixed-sex teen and pre-teen students (11-18 years old) across the three case studies within UK, Sweden and Spain. These groups took place between January 2015 and January 2016. The main purpose of the focus groups was to discuss the effects advertising had on the participants and explore how the participants interact with advertising in their everyday lives. The focus groups were mixed in order to widen the scope for diversity of discussion, which led to normative understandings of the subject matter and reduce the often pre-existing and problematic hierarchical structures that exist in secondary education.⁴⁵ The focus groups met for a second meeting (timing between each focus group was 1-2 weeks after the first meeting) in part to unravel the initial unfamiliarity of the subject matter and how advertising uses gender stereotypes to promote certain goods and services. The initial discussion highlighted alternative modes of advertising such as smart phones, social media and online TV. One of the main objectives of the two sessions was to create a 'visual diary'.⁴⁶ Here the students were asked to document their own personal experiences and interaction with advertising (on the street, online and TV) in however way they liked (for example through social media screenshots, TV recordings or magazine cut-outs) and bring with them to the next session as part of their visual diary. To confirm that the participants were aware of the definition of gender stereotypes, traditional images (such as the 1950s Tomato Ketch-up advert see figure 12) were used alongside more contemporary banned adverts (Courage advert see figure 13) in the early stages of each of the focus groups. This brought the group together in agreement of what the terms gender stereotypes might mean. In each of the sessions, I attempted to keep the definition as open as possible to allow for open dialogue. Some of the preparatory adverts that were shown in the focus groups were personally collated whilst visiting the country, allowing for cultural difference. These adverts varied from traditional newspaper and magazine images and video's that I had observed on terrestrial TV, to archived banned adverts from the regulators. Whilst conducting the focus groups I presented the groups with my own visual diary, for example screenshots from my smartphone (targeted ads from my social media accounts) and online adverts/banners as well as traditional mass media/newspaper advertisements. The 1-2 week reflexive period between the first meeting and

⁴⁵ Bloor notes that hierarchical dynamics are replicated and transferred from the social phenomena under scrutiny to the focus group. See Bloor 2008: 6

⁴⁶ Nind, M. and Vinha, H., 2016. Creative interactions with data: using visual and metaphorical devices in repeated focus groups. *Qualitative Research*, 16(1), pp.9-26.

the second allowed participants some time to think about the terms (i.e. sex, gender and stereotypes), the techniques of advertisers and to observe advertising through a new lens based on the discussions from the first focus group. This short period also provided the participants with time to not just reflect but to carry out tasks and keep a diary of gender stereotypes that they witnessed in advertising. At the second focus group session, all three focus groups provided evidence of advertisements that had appeared either online, on social media or in magazine adverts, or oral accounts of adverts that they had viewed during the break.

The Spanish focus group provided the most critical account of advertising during their break. They also brought the largest and most diverse collection of resources (newspaper cuttings were particularly prominent) with them and the second session proved to be a more fruitful discussion in comparison with the UK and Sweden. I made sense of this in two ways. Firstly, that the participants were affiliated to the university through various programmes and therefore perhaps felt a sense of duty to deliver back into the system of networks they were connected two. Secondly, the students had more time to discuss the topic in the initial session and felt additional novelty knowing that Spain had ‘spearheaded’ tackling gender stereotypes. The students felt somewhat shocked at the news that Spain was viewed as leading the way and wanted to prove me wrong by providing abundant evidence to counter the argument. The feeling of disbelief towards knowledge of the relatively high levels of regulation was also true in Sweden, however the participants were slightly more modest and thought that Sweden should do more (particularly when in the first session, neighbouring Finland was highlighted as having tighter laws and attitudes towards sexualisation in advertising). In both Sweden and Spain, the participants were more forthcoming than their British counterparts. I talk about this later in the chapter when considering novelty, surveillance and class but I believe that the students overall felt more engaged due to the knowledge that their legislative system was ‘under investigation’ from an outsider. In addition to this, the opportunity to use English in a classroom on a subject that was beyond the curriculum was clear from the very beginning. Students who were self-doubting about their language skills soon flourished as the conversation moved on. I partly felt that the Spanish and Swedish participants did not feel the same power dynamic as their British counterparts did. In fact, the Swedish group admitted towards the end of the second session that they were excited about being involved in a ‘project’ and saw the visual diary as a chance to have their voices heard. This is also linked to the Swedish attitude and assurance of free speech (discussed in chapter 7) and the right to be heard. The Spanish

participants were equally passionate about the topic, and placed it within the wider political context (one participant told me he felt that Spain was ‘going backwards’ in ‘too many ways’ socially) this could be understood through the prism of being listened to, being traded as an equal and perhaps more poignantly, the right to tell their own individual life stories. I do not wish to devalue the British student’s passion within for the focus group, however I believe that their participation in the visual diary was limited and perhaps due to power dynamics, they saw me as a teacher that would provide the visual stimulation and legwork for discussion. I provide some ideas to support this claim later in the chapter.

During the initial focus group, I provided the participants with images as examples of gender stereotypes in advertising that I had collated since undertaking the research. This provided the participants with the opportunity to grasp the subject matter but also act as a sample of what they may wish to bring to the second focus group and discuss. The benefits of using images and videos in focus groups is well documented in contemporary focus group studies, Henwood, Shirani and Finn’s research on fatherhood and masculinity⁴⁷ provides evidence that using images in qualitative interviews and focus groups is conducive for research projects where the participants find it hard to relate to a difficult concept or abstract idea. Images can often act as an anchor to address perceptions, ideas and feelings as well as ground the research questions.⁴⁸ Using photos, videos and other media serve three further roles for this research. Firstly, it helps the participant and the researcher to ground the research question(s) to simulate discussion. Secondly, encouraging the interviewee to engage with the familiar (or make the familiar strange) may help them to think about what they take for granted. This notion correlates with Goffman’s ‘commercial realism’ observation, that advertisements do not look ‘bizarre’ to the observer when in fact they really ought to.⁴⁹ Finally, images and media can help stimulate the participant to remember or imagine similar ideas, events, feelings or situations in their everyday lives that they have otherwise overlooked or forgotten about. This reawakening of the senses certainly applies with advertising, particularly when most adverts are viewed

⁴⁷ In their work on fatherhood and masculinity, when the participants were provided with an image of fatherhood and/or masculinity the discussion that followed was more fruitful than when a photo was absent. See Shirani, F. and Henwood, K. (2011). Taking one day at a time: Temporal experiences in the context of unexpected life course transitions. *Time & Society*, 20(1), pp.49-68.

⁴⁸ Harper, D. (2002). Talking about pictures: A case for photo elicitation. *Visual studies*, 17(1), 13-26.

⁴⁹ Giaccardi, C. (1995). Television advertising and the representation of social reality: A comparative study. *Theory, Culture & Society*, 12(1), p.111

passively.⁵⁰ For example, Harper, whilst interviewing farmers, suggested that some images can often appear as too familiar and do not lead to further discussion.⁵¹ However, when using historical images of farms or images from other angles (i.e. bird's eye view) the participants were far more engaged and willing to talk. As an example of how images can provide consensus to the discussion my focus groups very quickly understood the gender stereotypes displayed in ketchup advert below (figure 12)



Figure 12 1950s Tomato Ketchup Advert

⁵⁰ Leiss, W., Kline, S., Jhally, S. and Botterill, J. (2013). *Social communication in advertising: Consumption in the mediated marketplace*. Routledge. p.43

⁵¹ Op. Cit., Harper (2002) p.14



Figure 13 Banned (UK) Advert 'Courage Bitter' from 2010



Figure 14 'Beach Body Ready' Protein World Advert 2015/2016

Harper notes that interviews with photos will not necessarily deliver superior discussions as some participants may be uninterested or unstimulated by the images. This was partly true in my focus group discussions. Not all participants in the research engaged with the ketchup

advert, some cited that the advert was too obvious, historic or archaic and others stated that no such comparable adverts would exist in contemporary modes of advertising today. The participants could comprehend the second 'Take Courage', advert especially when framed as 'banned' (some questioned why) but the 'Beach Body Ready' advert caused the most discussion and debate, particularly amongst the UK participants as the advert was publicly ridiculed at the time of the focus groups. Overall, cognitive modes of learning through images provided a foundation on which to build upon. Through disagreement on the term 'gender stereotype (and its broad meaning) the participants were faced with the prospect of defining their own versions of the term through agentic power via the visual diary.

5.4.2 Sampling Strategies: Size and Natural Selection

Kitzinger observes that focus groups in which there are no pre-existing bonds work better when compared to groups with some ties, affiliation or shared interest.⁵² By contrast, Fenton et al are more cautious and claim that 'natural' groups may find it difficult to bond leaving the focus group results fruitless and that some allegiance may provide the researcher with a head start. Morgan⁵³ too states that 'natural' groups can often be problematic as participants that know each other will harbour some taken-for-granted assumptions that they all already agree on and some vital discussions are not always brought to the fore within the group's dynamics. In this next section of the chapter, I will explore the selection of participants and bring to light some of the problems and solutions that occurred during this process. Firstly, I raise notions of Kitzinger's 'natural' selection prognosis and then move to look at nuanced issues surrounding autonomy, novelty, surveillance and social class of the participants.

In each of the three countries the selection of suitable participants was decided by various third-party actors, which led to a fluctuation of contributors for the focus groups. Overall, the control of the selection of participants was varied, but the initial contact was conducted by the numerous gatekeepers: the head of a local school and college, school teachers, a local charity and administrative staff at the two universities I was based at whilst on research exchange. Kitzinger and Fenton's notion of 'natural' selection is relevant here as the method and control

⁵² Op. Cit., Kitzinger, J. (1995) p.299.

⁵³ Morgan D.L. (1988) *Focus groups as qualitative research*. London: Sage. p.19

of selection was limited – schools inevitably selected the ‘decent’ or the most willing students to ensure that the institutions representation was not tarnished. This was most apparent in the UK where the students were hand-selected by the head of sociology (most had selected sociology as a GCSE option) which led not only to preening but bias in established understanding and knowledge of the research core themes: gender, stereotypes and mass media. In Spain and Sweden, the story is slightly different. The Spanish gatekeeper, an administrator from the host University, contacted local schools through their outreach programmes and a local charity that teaches English to local school children. This resulted in a more diverse representation of the town’s teen and pre-teen students. However, as the town was so small it was apparent that the participants all knew one another and were on familiar terms. In Sweden, the process was similar, the university administrator contacted one local school with the one basic criteria in mind: walking distance to the university. Inevitably, the students from each of the schools were at least aware of one another as they were all on first name terms before formal introductions were initiated.

5.4.3 Selecting Participants: Autonomy, Novelty, Surveillance and Class

The first issue whilst screening the students centred on notions of autonomy, agency and free will. For example, I questioned whether the focus group attendance would be seen as voluntary rather than a chore or order – the latter of which is entwined with student’s prevailing educational obligations and seen as extra-curricular – an opportunity to score points. Also, as the focus groups were to be hosted at an institution (university or school buildings), this element of the selection was somewhat out of my control. Higher levels of autonomy were seen in both Spain and Sweden and there was a clear choice for the participants to partake in the research. This is in stark contrast with the lack of choice and normative approaches to education with the British school. This leads to the second issue of novelty, crossing a new freehold and entering a creative space. This centres on the idea of whether participants perceived the focus group as an opportunity to develop ideas within an innovative space or if the environment was deemed as suppressive and supplementary to the institution, they already found themselves in. Notions of creativity and imagination are linked to the third issue, surveillance. Surveillance within the space but also by other actors (teachers, fellow students, translators etc.) within that

place. Finally, I will discuss the social class of participants and how class acts as prism through which these themes can be read.

5.4.4 Autonomous Actors and Creative Agents

Notions of agency and autonomy are embedded in the selection process when considering the placing of the participants within a focus group setting. This implicit characteristic of the focus group is obvious when read through low levels of autonomy where participants have very little choice in being – let alone participating – within that space. In both Spain and Sweden, the participants presented higher levels of freedom and autonomy whilst accessing (physically and mentally) and attending the focus group. The connection with the participants from both countries was initially made through the universities I visited during my time as a visiting researcher, with the initiation stemming from at least one parent of a participant in each group. In Spain, the university had pre-existing ties in the form of outreach and language programmes with the local schools; however, close ties were apparent as one of the participants was the daughter of the office administrators within the University department. This limited the notion of absolute autonomy of all participants within the focus group, as bias and pressure for this participant is evident. In Sweden, a similar route achieved similar results: one participant's parent worked within the university and felt obliged to commit and instigate others within their social network to attend the focus groups. There was no obligation for the other participants to adhere or agree to the request and indeed, there was no obligation to attend the focus group other than through supporting that initial participant. This is reflected in how both groups accessed the location and space – a university – in which the research was conducted. Some felt familiar or indeed at ease with the setting, particularly the small village in Spain where the students routinely visited some of the University buildings for language and enrichment programmes. However, others saw access to the space (the oldest and grandest building) as an opportunity or novelty, something new and beyond their everyday. The physical access to the research space in both countries required logistical planning and initial interaction between the participants. In Spain, the student's access involved – at most – a short walk across the village where they were met in the town square by me and the university ambassador for outreach. The access in Sweden was similar; a tram ride at most, however this did affect the proceedings as participants arrived late and some after the recording had started. Nonetheless, overall the prospect of crossing boundaries was exciting for the participants in both countries. On arrival most found the whole idea interesting and conversations in English added to the novelty. What

was immediately apparent was that these students were earmarked as ‘transitional’, accessing and occupying these spaces would hopefully become a norm in their lives and there was a clear feeling of ease and ‘fitting in’.

Students from British study did not perceive the focus group as an option. The school students were selected by the sociology teacher and head of humanities. The teacher selected pupils from the GCSE groups and saw the research focus group discussions as an extension of schoolwork rather than a non-curricular activity. This was reflected in various ways: dress (school uniform), setting (the classroom) and language (formal, ‘yes, sir’ – also hands raised with a question). On contacting the school, it was evident that the focus groups would be a bargaining chip in a trade-off for extra-curricular work for the students. This fostered the idea of a lack of autonomy – more work for the GCSE cohort though in a different guise. Whilst at the school I was asked to present my research in greater detail compared to the other countries as performing the ‘professional outsider’ or ‘researcher’ and the displaying ‘practical sociology’ was important for the gatekeeper and careers office. Extra work was required for the British focus group during the initial discussions with the students: did I gain ethical approval, what methods had I used, what were the problems with the research. These were asked by the sociology teacher, hoping to frame the session as a ‘sociology-in-practice’ session. This again suppressed notions of novelty and autonomy – the students perceived the focus group not as creative but as surplus work, reminding them of their pending GCSE projects, the syllabus and exams. Overall, the British students did present some novelty in my presence – albeit from a rebellious angle. For example, common norms such as calling me ‘sir’ and raising hands for attention were quickly abolished – shouting out was seen as deviant yet permissible considering the circumstances. Jokes were made during the class that were evidently against the impression desired from the school. Formalities of school life were replaced with minor yet relatively controversial rebellious acts – calling me ‘Dave’, shouting-out to other class-mates, name calling and with the older students, swearing. Language barriers were of course challenging in both Spain and Sweden yet, as I discuss further in the chapter, most participants’ English was of a good standard. Both the Spanish and Swedish students felt more at ease in the setting, referring to me by my first name and open dialogue flowed more freely. However, the discussions overall were far more formal and measured in that the participants were not rebelling against the institution and more importantly that they were not fluent so were neither as rapid nor as blunt as their British counterparts.

5.4.5 Surveillance

I argue here that education systems and their buildings and spaces invoke notions of surveillance and panopticism both physically and symbolically. In the British school this was most obvious. Academisation of schools in the UK has physically transformed the layout and architecture of the space: two-metre-high fences with multiple turnstile entrances and exits that are only unlocked at certain times. Each break in the fence is manned by security (either teachers or a password protected camera interface). Once inside the school each corridor leading out of the main hall resembling a prison wing with its own name – each ‘wing’ of the building is given famous British writers names: ‘Woolf’, ‘Kipling’, ‘Keats’ and ‘Orwell’. The open canteen with lettered rows of chairs. Tiered levels and walkways dissecting the building was the final resemblance of a prison: teachers above on the verandas looking down on the large hall and adjacent ‘wings’.

Beyond the literal geometrics and architecture, I claim that educational spaces render its agents as docile, passive and inferior with Universities and Schools reminiscent of surveillance-led power. This again was highlighted literally and metaphorically on the second visit to the British school when the fire alarm interrupted a predictable timetable. As mock-panic ensued, the students ran into to the playground, arms flailing, fearless of their guardian’s shouts and demands (‘walk calmly!’). In the corridors: ecstatic joy written bold across the students faces with muted conversations about ‘missing class’ and ‘thank god I’m out of that’. My relationship with the sociology teacher equally buckled during these moments as he struggled to find a suitable place for me. I could not be left unattended with the students, yet I could not be left alone in the apparent burning building. So, I was to be chaperoned by another member of the ‘security team’. Once in the playground order had resumed, the students lined up in rows and then blocks in front of the head of school. The students returned a ‘yes sir’ or ‘yes miss’ as the teachers read their names. It was at this moment in early stages of the research that I realised the layers of surveillance, the multitude of power dynamics: the relationship with the students, with the lead teacher but also between the students and teacher. Irrespective of the fire alarm, notions of surveillance are palpable within the institutional settings. Within the focus group additional stances and ‘props’ and highlighted the power dynamic: standing up in front of a PowerPoint presentation, official name badge from reception (UK), a criminal record

check (UK) and smart clothes replicating a teacher or authority figure. Further ‘props’ heightened the levels of surveillance: the Dictaphone, my pen and notepad and the whiteboard marker employed to regurgitate ideas and quotes from the discussion. In Sweden there was no need for an official interpreter, however in Spain, during the initial meeting an interpreter from the university volunteered to observe the group. As Quintanilha et al have noted,⁵⁴ the regulation of language in the non-English speaking focus groups can pose problems and self-regulation may fit where English is the second language. In the focus groups in Spain and Sweden language formed part of a clear power dynamic with students that were fluent – or more ‘at ease’ with their English skills as opposed to those that felt nervous or embarrassed by the words that fell out of their mouth.

In all three of the focus groups a further layer of surveillance became apparent: how to behave in front of a stranger. Manners were maintained both by the additional observers (the teacher, the translator) but also by peers. I distinctly remember a lot of the participants’ muted sighs and when revisiting my focus group audio recordings, I was shocked at how frequent and audible the sighs were. The sighs came in different forms: exhales of disbelief, tuts, winces, groans and whispers are picked up during the transcribing process. When the participants were forced to watch some adverts from their own country and indeed from other countries, they were also being forced to reconsider the advert before them but also confront some of the denied rights that are concealed by the advertising. A lot of the adverts, whether in digital (video) format or still images caused many of the students to recoil. This withdrawal, expressed physically, is something that cannot be picked up on an audio recording, however it is a movement that came up not just in the initial focus groups but also in the second meeting. The participants saw through the advertisement’s efforts to promote liberty, freedom, and choice. Once again, when given the opportunity to reflect on their own experiences there are a medley of sounds and expressions where the participants cannot quite put into words how they feel about the advertising.

Implicit surveillance manifested in numerous forms, particularly in the UK with a teacher present: the raising a hand, answering name in register, school uniform, surveillance from the

⁵⁴ Quintanilha, M., Mayan, M.J., Thompson, J., Bell, R.C. (2015). Different approaches to cross-lingual focus groups: Lessons from a cross-cultural community-based participatory research project in the ENRICH study. *International Journal of Qualitative Methods*, 14(5), p.16

teacher (and researcher) and students walking past the class outside. How I chose to present myself was also distinct, especially in the British setting – the culture I feel most entwined with – where I wore a smart shirt and tie to replicate the school's attire. This setting also brought back memories from my own childhood and school experience: fear of saying something wrong, intimidating buildings and the general anxiety of being placed in an institution. This equally made me nervous, fearful of saying something wrong or being laughed at. These subtle yet multidimensional structures reminded the participants that they were indeed in an institution, with time constraints also acting as a further level of surveillance. As discussions began to meander and tail-off I was reminded of my authority to curtail time; quite often reminding the students that I was in control of the situation and they must give me what I needed before they were free to leave. Towards the end of the focus group discussions, just as the debate began to heat up, the group would collapse due to the time limitations, this was apparent across all case studies. It felt unnatural to call time on the discussions because of a school bell or the need to exit a room and once the recordings stopped, the discussions amongst the group – and with me – naturally flowed, again highlighting the surveillance that had existed only moments before. In the UK, school bells sounded the end, in Spain the school chaperone needed to go home and in Sweden, another lecturer required the room and the students had to return to lessons after an already extended lunch time. These in-between-moments were when the participants felt most at ease and as Morgan notes,⁵⁵ quite often beyond the peer-to-peer observation of the focus groups, the most fruitful discussions can be had during these transitional minutes when starting/wrapping up. Across all three case studies the students were happy to carry on the discussions knowing that the recorder had stopped, and the teacher was out of earshot.

5.4.6 'Fitting in'

During the fieldwork it became clear that social class, or more specifically, levels of cultural capital, was an important issue in managing the focus group and discussing gender stereotypes. An issue both in terms of input of the participants but also for the outcomes, validity and critically, the reliability of the data. From personal experience through working on outreach

⁵⁵ Op cit., Morgan D.L. (1988).

projects, I was mindful of the participants, how they would interpret advertising, articulate their ideas and form opinions on gender stereotypes, considering how ‘scripted’ responses to the issues of harmful advertising may be. For example, in the UK, some of the students had recently studied gender as part of their GCSE, thus orchestrated the ‘right’ answer which might negate a more ‘raw’ instinctual response. I argue here that participants with higher levels of cultural capital⁵⁶ are perhaps able to ‘talk the talk’ in academic discourse and spaces and be seen to be able to perform notions of ‘respectability’⁵⁷ and be taken seriously, whereas those with lower levels of access to cultural and social capital are perhaps unable to ‘fit in’ to the discussion or indeed space/place. Understanding the participant’s socio-economic background is an important factor due to the notion of being able to feel at ease within the academic space and the subject matter.⁵⁸ Both Hanley’s work on respectability⁵⁹ and Tyler’s work on social abjection and ‘failed citizens’⁶⁰ speaks to these concerns and I draw upon their Bourdieusian approach to ‘distinction’⁶¹ (what counts as knowing and tasteful) and the understanding of *being knowing* ‘by a more sensuous, performative, knowing and socially engaged aesthetic’⁶² and the ability of ‘fitting in’.⁶³ Class, habitus and capital shape the way the participants behaved and accessed the institution’s space/place for example, do they feel comfortable, and do they feel they are being judged? Capital also shapes the more working class students in the UK focus group and how they interpreted the advertisements. I am careful of reading social class across the ‘European’ data as social class does not perhaps map consistently across to other cultures.

In comparison to the working class participants in the UK, the participants from Sweden and Spain are broadly defined middle class position. I wish to comment on how students that are

⁵⁶ Bourdieu, P. (1973) ‘Cultural reproduction and social reproduction’ In Brown (ed) *Knowledge education and social change*

⁵⁷ Hanley, L. (2016). *Respectable: The experience of class*. Penguin UK.

⁵⁸ Tyler, D.I. (2013). *Revolting subjects: Social abjection and resistance in neoliberal Britain*. Zed Books Ltd.

⁵⁹ Hanley, L., 2016. *Respectable: The experience of class*. Penguin UK.

⁶⁰ Tyler, I., 2010. Designed to fail: a biopolitics of British citizenship. *Citizenship studies*, 14(1), pp.61-74.

⁶¹ Bourdieu, P. (1979) *Distinction: A social critique of the judgement of taste*. Routledge.

⁶² Friedman, S., Savage, M., Hanquinet, L. and Miles, A., (2015). Cultural sociology and new forms of distinction.

⁶³ Reay, D., Crozier, G. and Clayton, J., (2010). ‘Fitting in’ or ‘standing out’: Working-class students in UK higher education. *British educational research journal*, 36(1), pp.107-124.

middle-class felt 'at ease', able to 'fit in'⁶⁴ or present higher levels of cultural capital due to their interwoven relationship with the university setting (as mentioned above) both physically and mentally. Feeling at ease with the surroundings, the discussion but also the language and topic. For example, in Spain 'at ease' meant that the participants were selected by the host university which is located in a reasonably rich town (economically and culturally) that is embedded in an already prosperous region (in terms of per capita income and GDP). The town's link both to the local Universities and local industry (renewable energy and service sector) painted the general population is affluent, aspirational and maintain higher levels of cultural capital. The participant's sense of ease with languages (all were bilingual), the university setting and confidence in the focus group allowed for an outward display of their identification as 'bright' achievers to represent the town and schools. In the Swedish data set the same applies. The participant's schools were selected by the University due to their proximity (both geographically but also through established social networks) and a readiness to attend and engage with the university. Once again, in a Bourdieusian logic,⁶⁵ the students perhaps felt more comfortable with their surroundings, each other's company and the general discussion. Whereas the British school was clearly identifiable as lower middle class/working class students and resistant ⁶⁶ to the space and format of the focus group. The class 'make up' of the secondary school is distinct as it is made up students from two local primary schools, one 'decent' local primary school and another marked as a 'failing' school. Placed together with their geographic location, these students clearly identified as 'outsiders', dislocated and on the cusp of a nearby large city but not quite close enough to be deemed 'cool' like their inner-city counterparts.

In addition to how cultural capital interlocks with the embodiment of feeling at ease or 'fitting in'⁶⁷ within the focus group setting, I argue that class and gender must be fused together in order to show how cultural capital can also affect the participants interpretation of advertising and the media. Applying Bev Skeggs work on gender, class and capital,⁶⁸ I argue that only

⁶⁴ Reay, D., Crozier, G. and Clayton, J. (2009). 'Strangers in paradise'? Working-class students in elite universities. *Sociology*, 43(6), p1115

⁶⁵ Pierre Bourdieu's work on Habitus, where habitus (i.e. one's embodiment of cultural capital) matches the 'social field' (i.e. the social structure – the school).

⁶⁶ Op. cit., Tyler (2013)

⁶⁷ Op. Cit., Reay, D., Crozier, G. and Clayton, J., (2010). p107

⁶⁸ Beverley, S. (1997). Formations of class and gender: becoming respectable. *Theory, Culture and Society series*. London, Sage.

certain groups (i.e. the middle class students in research) who are able to perform ‘respectability’ through cultural capital are objectively taken seriously, or as Skeggs claims:

‘Certain knowledges are normalized, authorized and legitimated; only certain groups are seen to be respectable, to be worthy objects or subjects of knowledge’⁶⁹

In my data analysis in Chapter 6, I argue that some of the more middle class participants with higher forms of cultural capital (i.e. from the Swedish and Spanish data) have the ability to feel at ease not only with the setting (focus group) but also the subject (gender). As will be discussed in the following chapter, some of this group were able to read irony within the ‘retro-stereotype’ advertisements (motherhood, cleaner etc) and were equally capable to laugh-off the gender stereotypes in adverts. In other cases, namely the British data, the participants are more resistant to the retro-stereotype motherhood adverts or are more accepting that these images as they reflect their lives, this is particularly true with the Daniel in Chapter 6.

I am also aware and critical of how the British participants are at risk of being ‘othered’ in relation to the Swedish and Spanish participants through their social class and access to capital, and how they digest the adverts may be different from the other case studies. As Skeggs notes:

‘We always need to know in whose interests [knowledge] has been produced and whose interests are represented by it’.⁷⁰

Therefore applying a Bourdieusian approach, some participants may be able to not only perform respectability within the focus group but also determine what adverts are considered as in good/poor taste or what is to be considered tongue-in-check.

5.4.7 Cohesion and Solidarity

Morgan has argued for fostering ‘rapport, trust or both’ in focus groups that centre on sensitive subjects or include vulnerable groups.⁷¹ Participants should ‘have enough in common to speak and share freely. An active discussion may be facilitated by similarities in background

⁶⁹ Ibid p.18

⁷⁰ Ibid p.28

⁷¹ Op. cit., Morgan, D.L (1988) p.521

characteristics such as age, gender, class, and ethnicity or culture'.⁷² This, I argue, applies to both the participants and the researcher. I claim that whilst my sampling strategy has limited the selection process, the participants possess enough shared characteristics to produce a thorough discussion on the topic of gender stereotypes. The participants' common characteristics are fundamentally based on age and location – i.e. teenagers located in secondary education. In both Spain and Sweden, the participants were selected from different schools and had a common link to the host university space, either their parents worked in administrative roles or had siblings at the university. In Spain the participants were linked to outreach and language programmes. Rapport amongst both sets was alleviated by the feeling of novelty and being placed in a new and different environment. In the UK, the participants were unified only by school and dynamics here are slightly more complicated – confrontation ensued amongst the older students, but respect and courtesy were shown between the age spectrums. In terms of gender and dynamics within the groups, Morgan et al. have commented on segmentation techniques i.e. the subdividing groups by age and sex. Whilst segmentation may make participants feel comfortable, the technique does not guarantee that the participants will disclose ideas, experiences or opinion. Moreover, confrontation (based on gender), which was particularly common in the British group led to complex and often quite sincere discussions compared to 'scripted' Swedish and Spanish groups. As Renold notes, on her work with teenage girls and sexual violence, dynamics within group discussions are important to safeguard, particularly on topics surrounding the lived experience of women. The gender dynamic became apparent in all three of the focus groups as the girls tended to feel a sense of empowerment, making sense of their social position and ousting the suppression contained within the contents of the advertising sampled in the discussions, but also the physical domination of the boys that often dominated the space. This was particularly apparent in the UK where a group of girls raised a coup d'état against a group of boys' bombardment of teasing and shoving on certain issues. The confrontation is clearly more apparent in the British group compared with the Spanish and Swedish groups where there are more moments of cohesion, solidarity and consensus. I mark this as linked to language and conforming to expectations of participating in research, particularly in Spain where the participants were seen to be representing not just the local community but the town in general (an article was shortly written afterwards in the local newspaper).

⁷² *ibid* p.519

5.5 Language barriers, conflict and solidarity

Initially I was concerned about language skills and developing a conversation with participants in Sweden and Spain. This will be discussed somewhat in chapter 6, though it is worth raising a few points here. The Swedish students, even the younger years, were fairly confident with English and most were confident in 'testing out' their language skills. In Spain the story is slightly different, an interpreter was required for the first 10 minutes in the initial focus group, though it became clear that most participants were willing to help one another in the sessions but mainly with certain words. Here's a section from the first session:

Aureliano: I don't know... it's asking mothers to share photos and that is...[asks Ursula in Spanish] ... It's shameful

Amaranta: For me it's like... woah, this is too much...[laughs] it's a joke, you know?

Ursula : Yeah, it's really bad, the message under (under the image) is like basically saying you are crazy

Aureliano: I say it's shameful because women are not doing this – and this word bonkers? It means?

David: It's like...

Ursula : It means you [are] crazy, mad.

Aureliano: So yeah, this is bad, it's shameful.

Educational social-psychologists Bruce Tuckman and Mary Ann Jensen ⁷³ assume such cohesion as normative influence approach (as opposed to interview led) discussion. They

⁷³ Tuckman, B. W., & Jensen, M. A. C. (1977). Stages of small-group development revisited. *Group & Organization Studies*, 2(4), 419-427.

identify five stages of small researcher – led focus groups in developing heterogeneous shared meaning. This is the approach that I have taken in the focus groups, considering the language and conflict issues that may arise. The approach can be seen as firstly, the ‘forming’ of the focus group, testing out ideas and definitions (language) such as the difference between gender and sex, what is meant by gender stereotypes and how they are pronounced in advertising (definitions of such terms could potentially be difficult across cultures). Secondly, the next phase of the focus group, ‘storming’ is the inter-group conflict and criticism of the main questions and concepts. This allows participants to probe and clarify the definitions that the researcher has put forward. Thirdly, the ‘norming’ process occurs through the development of group cohesion, working on the questions that have been proposed and avoiding conflict through fear of putting forward controversial ideas that may conflict with the norms that have been agreed so far. ‘Performing’ relates to the functioning of the group and taking a lead, i.e. above, Amaranta and Ursula help their friend with the term ‘shameful’ to provide Aureliano and the rest of the group with what he word means. Finally, ‘adjourning’ relates to segregation or ‘death of the group’ where conflict ensues, and separation or allies are formed.

5.6 Elite Interviews and National Perspectives

In addition to the focus groups I organised face to face semi-structured interviews⁷⁴ with academics, lawyers, advertising regulators and NGOs in order to inform the findings from Chapter 7. I argue that qualitative approaches⁷⁵ to semi-structured interviews and collecting data helps in confirming or rejecting assumptions made about legal structures, legal ‘culture’ or constitutional make-up of a state. In doing so, the data demonstrates the legal ‘gaps’ as well as understanding the wider political issues from each national perspective.

My strategy is loosely based on semi-structured interview questioning with predetermined but open ended questions exploring a range of semi-closed and open ended questions enables me to lay the groundwork for exploring the country’s attempts to tackle gender stereotypes. For example, ‘what are the national rules on gender stereotypes?’ is in stark contrast to a more

⁷⁴ Op cit., Bryman (2016) p.56

⁷⁵ Neuman, L.W. (1994). *Social Research Methods: Qualitative and Quantitative Approaches*, London: Allyn and Bacon, p.59.

informal (and perhaps personal) and open question such as ‘what would best practice look like to you?’ I am also concerned with the experiences and expertise of my interviewees, particularly practitioners and therefore ground the interviews in phenomenological philosophy, in trying to understand the legal cultures,⁷⁶ the states drive or ‘political will’ in tackling stereotypes from the case studies and simultaneously making sense of the regulatory frameworks at play in each state.

5.7 Revisiting Goffman: Encoding and Decoding

Goffman’s coding system has been reapplied and reimagined over the last four decades, mainly through pictorial analysis of magazines but more recently through an array of social media platforms.⁷⁷ For example, Belknap and Wilbert’s analysis of over 1000 advertisements from popular U.S magazines,⁷⁸ Mee-Eun Kang’s work on high-end fashion magazines⁷⁹ and Bell and Milic’s semiotic analysis⁸⁰ of two-page adverts from Australian women’s and men’s magazines. More nuanced approaches have also produced similar research, Sirakaya and Sonmez’s work on US state produced tourism brochures⁸¹ and Paul and Sheets’ work interpreting popular sport depictions of Native American Indians⁸². All of these studies substantiate Goffman’s coding categories: women are more likely to be found as touching objects or themselves, are smaller than, or in a lower position to men, as well as the family symmetry of mother-daughter and father son relationships. Ward’s work on the dating app

⁷⁶ Op. cit., Kvale (2008) pp.28-29

⁷⁷ For example, ‘back’ and ‘front’ stage performances in the digital world where the creation of the ‘idealised self’ is ubiquitous mode of presentation across Facebook, Instagram but increasingly on job search sites such as LinkedIn. See for example Ward’s work on dating app Tinder Ward, J., 2017. What are you doing on Tinder? Impression management on a matchmaking mobile app. *Information, Communication & Society*, 20(11), pp.1644-1659.

⁷⁸ Belknap, Penny, and Wilbert M. Leonard. (1991) A conceptual replication and extension of Erving Goffman’s study of gender advertisements *Sex Roles* 25(3) 103-118.

⁷⁹ Kang, M. E. (1997). The portrayal of women’s images in magazine advertisements: Goffman’s gender analysis revisited. *Sex roles*, 37(11-12), p. 979.

⁸⁰ Bell, Philip, and Marko Milic. (2002). Goffman’s Gender Advertisements revisited: combining content analysis with semiotic analysis. *Visual communication* 1(2) pp.203-222.

⁸¹ Teye, V., Ercan, S and Sevil F. Sönmez. (2002). Residents’ attitudes toward tourism development. *Annals of tourism research* 29.3:668-688.

⁸² Paul, J., & Sheets, E. (2012). Adapting Erving Goffman’s “Gender Advertisements” to interpret popular sport depictions of American Indians. *International Journal of Humanities and Social Science*, 2(24), 71-83.

Tinder found similar results with user's profile pictures reflecting some of Goffman's typologies.⁸³

For this research, I have drawn upon Goffman's coding and typologies from *Gender Advertisements* in conjunction with the adoption of Stuart Hall's reception theory and methodological approach of encoding/decoding and the construction of meaning through mass media and communication.⁸⁴ Encoding/decoding approaches have been used in unravelling meaning in advertising, for example, Back and Quaade's work decoding racist undertones in advertisements in the 1990s.⁸⁵ Their work draws upon cyclical notions of 'appropriating' consumers' dreams and selling it back to them. I take on this position and perceive adverts to be encoded dualistically – through denotation (literal meaning) and connotation (associative meaning). Therefore, using Hall's encoding/decoding framework alongside Goffman's coding I aim to show that for the meaning behind advertisements, the encoded messages must be decoded by the recipient and that there is a clear 'recognition of the codes that are present at the point of source'.⁸⁶ Back and Quaades use of Hall's methodology works alongside Goffman's coding in that encoded messages require the decoding agency of the participants.

In *Gender Advertisements*, Goffman draws upon his earlier work on presentation of self, to explore gender display(s) and ritual in static adverts. Magnuson and Dundes' work produced similar findings on social media websites such as Myspace and Facebook where profile pictures replicate Goffman's coding of gender display.⁸⁷ More recent studies show that Goffman's coding from gender advertising has seeped into 'selfies' on social media apps such as Instagram⁸⁸ and Snapchat.⁸⁹ The data (chapter 6) is therefore analysed through Goffman's coding categorizations and concludes that the typologies are still present in today's advertising.

⁸³ Op. cit., Ward, J (2017).

⁸⁴ Hall, S. (2001). Encoding/decoding. *Media and cultural studies: Keywords*, 166-76.

⁸⁵ For example, Back and Quaade utilise United Colours of Benetton's ambiguous images multiracial images to test Hall's ideas. Encoding/decoding of a group of multiracial models can lead to harmonious utopic understanding of brotherhood irrespective of racial or cultural difference (what Benetton hope for) or tactless undertones of racism.

⁸⁶ Back, L., & Quaade, V. (1993). Dream utopias, nightmare realities: Imaging race and culture within the world of Benetton advertising. *Third Text*, 7(22), 65-80. p.70

⁸⁷ Magnuson, M. J., & Dundes, L. (2008). Gender differences in "social portraits" reflected in MySpace profiles. *CyberPsychology & Behavior*, 11(2), 239-241.

⁸⁸ Döring, N., Reif, A. and Poeschl, S. (2016). How gender-stereotypical are selfies? A content analysis and comparison with magazine adverts. *Computers in Human Behavior*, 55, pp.955-962.

⁸⁹ Herring, S. C., & Kapidzic, S. (2015). Teens, gender, and self-presentation in social media. *International encyclopaedia of social and behavioral sciences*, 2, 1-16.

Reflecting upon Goffman's original work, I analyse and code contemporary advertisements according to his five coding categories: feminine touch, function ranking, ritualization of subordination, relative size, and licensed withdrawal. As discussed in the literature review, a pictorial analysis of many of today's adverts provides similar results to those in the 1970s. Most of the adverts that I have chosen that 'display' gender have caused a stir in the UK, other images, videos or screenshots come from the participants who have provided them in the focus groups. The images often simultaneously slot into one or two of Goffman's categorizations. There is no obvious coding dialogue during the focus groups but rather on inspection post-interview I reflect in chapter 6 on Goffman's coding and look towards reimagining the typologies through contemporary concerns such as sexualisation, body shaming and gender stereotypes.

5.8 Conclusion

At the beginning of this chapter, I put forward the case for an interdisciplinary and thus *socio legal* research grounded thesis. Throughout the chapter I have brought together the key methodological approaches that are applied throughout the thesis, namely drawing upon social theory in analysing my data, focus group discussions as data collection and the (re)coding of Goffman's gender displays in advertisements. I began by unravelling socio-legal research methods, on which the entire thesis hangs on. By doing so I sought to argue the reasons for seeking out alternative modes of locating the study of law and provide a wider discussion of how legal phenomena and analysing the law is interlinked with – and enhanced by – sociological methodology and discourse. I argued that by 'bridging the gap' between law and sociology the thesis is enriched by theorisations of gender, identity and by 'making the familiar strange'. The chapter then moved towards theorising and reimagining the focus group method from a feminist perspective, drawing upon Oakley's work on interviews by turning the method's origins on its head and incorporating innovative ways of understanding its relevance in sociological investigations.

The second section of the chapter is predominantly a 'nuts and bolts' discussion of how I conducted the research: the sampling and approach within the focus group. It is also a discussion of some of the issues faced when interviewing teenagers from different cultures within an educational setting – agency (or lack of), surveillance, language and 'fitting in'. Finally, in this chapter, I revisited Goffman's 'gender display' codes from chapter 5 and argued

for the reimagining of the codes through Hall's encoding/decoding method. As such, I claim Goffman's typologies are not just relevant in today's advertisements but pervasive across new modes of advertising.

The next chapter will be a summary of my findings from the three case studies that show the importance of Goffman's theorisations. Together with a reimagining and updating of Goffman's typologies I argue that his work is still applicable not only in identifying (and ridiculing) codes in advertising but also how gender advertisements are harmful and shape identity.

Chapter 6:

Teenage Critiques of Advertising

6.1 Introduction

As discussed in Chapter 4, numerous studies have indicated that Goffman's typologies are recurrent in contemporary advertising. In this chapter I will re-evaluate Goffman's typologies and further develop his cataloguing of gender display in adverts that feature female gender stereotypes. I do so by unpicking the example adverts that I have collated during the research as well as adverts taken from the participants' 'visual diaries' in the focus groups. The chapter aims to critical evaluate and develop Goffman's work on Gender Advertisements.¹ The data in this chapter is taken from the three case studies introduced in my methodology chapter: UK, Spain and Sweden and builds upon the theorisations of gender display, performativity, identity, frame analysis and the body outlined in the theoretical framework.

In the first section of this chapter, I discern the core themes produced from the focus groups. These categories concentrate on the feminine gender stereotypes that emerged from the focus group discussions as well as the 'visual diaries' that were produced by the participants in between sessions. Although the visual diaries are primarily discussed in the second focus group session, extracts in this chapter are taken from the initial focus group discussions and include my own images and adverts. In the second section of this chapter, I present my analysis of the codes within the advertisements as discussed by the participants, to explore the process in which gender identity represented in contemporary advertising. In revisiting and reflecting upon Goffman's codes, I argue that gender stereotypes in advertising are not only discriminatory and display undertones of sexism but that they also have a negative impact on audience's perception of gender identity. I argue that the data supports this hypothesis and conclude that advertising is an implicit factor within broader context of gender inequalities and subordination.

¹ Goffman, E. (1979) Gender Advertisements

6.2 Revisiting Goffman's Gender Display Codes

In addition to revisiting Goffman's coding categories, I provide four themes that have emerged from the data. As discussed in chapter 4, Goffman's typologies will help develop my data analysis and act as frame of reference to explore similarities and differences with contemporary gendered advertising. Throughout this chapter Goffman's typologies will be utilised to compare and contrast the contemporality of his codes when juxtaposed with modern adverts. In *Gender Advertisements*, Goffman's theorisations of advertising deliberately overlooked the undertones of sexualisation and objectification within his coding, this chapter aims to revisit his codes (i.e. *feminine touch*) from a more critical and politicised perspective. Thus, I wish to apply Goffman's coding to move beyond highlighting the mere absurdities of gender displays in advertising and argue that such gender displays are problematic, sexist and discriminatory towards women.

As discussed in chapter 4, the advertisements from Goffman's work stem from the 'golden age' of advertising with different style and target markets. My intention is to not only to revisit, but also update and develop Goffman's coding categories. Firstly, by considering if the coding still withstands today's modern climate of advertising and secondly, assessing whether the categories require modification. This research is not necessarily using Goffman's work to seek out new categories but rather as a catalyst to cultivate his work to demonstrate how gendered advertising leads to discrimination.

Four thematic categories emerged from the focus group data and within these broader themes, nuanced subthemes emerged. The first theme to emerge is women as mothers. This theme speaks to Goffman's 'feminine touch' and 'licensed withdrawal' – the woman's hands are superficially always seen to be touching, holding or caressing the product (i.e. cleaning product) they are never clutching, grasping or manipulating the product. The woman in the advert will sometimes be looking into the distance, i.e. away from the scene. The subcategory 'mother the multitasker' also reflects Goffman's category of the family: symmetrical patterns between mother and daughter [i.e. the classic British Fairy washing up liquid adverts]. I also develop the sub theme of neuroticism and 'women on the verge' (of insanity, hysterical or 'bonkers'). This second theme produced from Goffman's code licensed withdrawal and notions of emptiness, hysteria and lack of agency. Thirdly, 'disgusting bodies' is centred on notion of objectification and sexualisation. Here, I am influenced by Goffman's ritualization of

subordination, licensed withdrawal and feminine touch typologies. Adverts featured in this section are connected to one or all three of the codes: women presented as passive (available) agents or sexualised through the touch to face or anatomy (or product).

6.3 Theme One: Mothers

'I think that (the advertising of) these products... they are related to kitchens, to cleaning and things like that... they are more to do with women...women appear more than the man in adverts in Spain'.

(Aurelio, male, Spanish focus group).

Goffman's 'feminine touch' categorization reflects upon a trend within advertising whereby the woman is frequently portrayed as faintly touching the product, or instead lightly touching (or caressing) themselves. For Goffman, this presentation of gender seems to suggest – in unnatural and absurdist terms – that the woman is to be perceived as gentle, clean, soft and caring. Goffman's pictorial analysis focussed on advertisements that tended to feature products such perfume, toiletries and jewellery (but also cleaning products and food) – all of which provide the place and space in which to portray women in moments of private (i.e. backstage) rapturous enjoyment. When read through notions of motherhood, this phenomenon is prevalent in advertisements that feature private back-stage roles and skills assumed to be 'innate' such as the cooking, cleaning and caring for children. Rather than women's inherent 'gentleness' becoming entangled with their sexuality, here, the feminine touch is linked to their 'natural' position as mother. Similarly, Goffman's categorization of the family is a portrayal of domestic symmetry of the nuclear family which often positions the mother and daughter in traditional private activities such as cooking or intimate moments of applying make-up. By extending Goffman's pictorial analysis of the feminine touch and family, this section of the chapter locates them both in the broader inequalities of domestic chores and notions of motherhood.

Participants from across all case studies were keen to address motherhood and outdated approaches advertisers routinely deploy, such as the mother performing the domestic chores, caring or cooking. These gender stereotypes ranked highly on the list and seemed more important to the participants than Goffman's original brands and products embedded within feminine touch. Aurelio's keenness to address this issue straight away was apparent in all three of the case studies. After just five minutes with my first focus group in Spain, a participant

declares, with sincerity, that the biggest issue in Spanish advertisements is the mum is always seen in the kitchen or cleaning. This assertion is present in all the initial meetings with all of three focus groups claiming it as their strongest ‘gut’ feeling. Although it was an outdated and tired idea, the teenagers were clear that advertisers still peddled the same notion; mothers clean, cook, look after the child, organise the family, provide emotional support and overtly show love, affection and absorb catastrophe and dilemma. When challenged on this view, most participants remained unwavering in their views. Although some participants were willing to shift slightly on their initial thoughts, the majority stood by this belief – before they had conducted any empirical research themselves. I questioned all groups if there had been a change in how advertisers convey this message. The change in advertiser’s approach was acknowledged by the some of the participants but seen as either minimal, tokenistic or even shrewd, showing a strategic awareness of the consumer’s irony and consciousness:

‘No... but that is changing little by little in Spain. Now more men are appearing in cleaning’
(Josu, male, Spain)

In both the UK and Spain, the idea of ‘mother as cleaner’ is still very strong and the participants did not shift in their opinion towards the use of the stereotypical mother figure in advertising. During the two sessions, a lot of time was dedicated to discussing this subject. In the UK there was consensus within the focus groups that women in advertising are presented simultaneously as mothers and cleaners. Yet, this representation was not passively accepted, with British participants critical of how women are used in adverts to sell cleaning products:

‘It’s all the time...like, mum by the washing machine and smiling. It’s so weird. Why haven’t we moved on?’

(Carly, female, UK)

Although there was a consensus amongst the British and Spanish focus groups, the frustration with the mother figure did not lead to further debate on how the stereotype was harmful, or what specifically within the advert causes frustration. As this discussion featured early in the focus group, the participants remained within the parameters of anticipated politeness. This topic is rarely discussed in the latter half or the supplementary focus groups as broader topics open the discussion towards more pressing issues of sexualisation. The striking element of the

‘mother’ data is the lack of resistance from the participants. Here, a Spanish participant talks about her fatalistic feeling of acceptance towards the association between mothers and cleaners:

‘I used to get upset with those things but I think that we have seen that [advert] so many times that we get used to it. And that’s not ok’.

(Amaranta, female, Spain)

Resistance to advertising seemed difficult to sustain and this participant emphasises the fatigue of emotionally responding to the constant assault of advertising. In the following extract, the rest of the group laugh with Aurelio as he presents his visual diary back to the group. As he presents the advert he begins to laugh at the ridiculousness and absurdity of the it.

I took four different adverts. Look! (laughs) One is about electric brush and it (laughs uncontrollably) says ‘the most original and useful present for your mum’! And look! Then there’s a woman with this brush smiling [group laughs]. (Aurelio, Spain).

Aurelio’s advert has undertones of feminine touch and licenced withdrawal codes. The photo depicts women barely touching a toothbrush, holding it to her face. The other, a vacuum cleaner held firmly but the mother is looking away out of shot and into the distance. It is evident that Aurelio finds the advert absurd. This absurdity is understood on two levels, primarily, the way in which the model displays an unrealistic happiness towards the mundanity of an everyday task. This disconnected emotional response to the product directly feeds into feminine touch (entwined with licenced withdrawal) as a bizarre display of gender, rendering the woman as both soft, gentle but also vacuous. Secondly, the toothbrush as an *original* present for a mother reinforces the notion of women (mothers) as clean and caring but ecstatic in private Goffmanesque ‘back stage’ moments. In the following exchange between Daniel, Rachel and Skye, resistance to advertising leads to a more defiant exchange that representations of mothers as cleaners has undertones of sexism.

Rachel [pointing at someone images on the board from the diary] What’s that Mother’s Day one?

David: “Get back to the job that really matters”

Daniel: Yeah, that’s clearly a joke. [laughter and groans/sighs] It’s clearly just a joke!

Rachel: Oh Daniel!

Daniel: You people are so serious!

Mr Graham: Daniel!

Daniel: Clearly, it's a joke! [groans of Daniel and girl's laughter continues]

Becky: It's obviously a joke but some might take it seriously

Mr Graham: Is it that... I dunno with 'Mr Clean' you can get back to the real job that matters...being a mum or is it get back to the job of cleaning?

Harvey: Either way, sir – It's sexist!

Daniel: No! [again, more uproar, more laughter]

Skye: It's lose-lose, sir! Yeah, you can't get it right

Daniel: It's supposed to be Mr Clean! He's got...

Skye: No Daniel! It's sexist!

Rachel: Come on Daniel, you know that its sexist.

In this exchange, Daniel purports a cleaning product advert linked to Valentine's Day to be a joke. Rachel and Skye take the opposing view that the advert is, at best, ambiguous and at worst, sexist. Reading irony into 'mother' adverts was not just limited to British focus group. In Sweden, although the notion of motherhood was not so strongly felt, the subject was touched upon but swiftly put to one side:

'In Sweden, these [types of adverts] are becoming funnier; the mums are like...ironic'

(Eva, female, Sweden).

When probed on the subject, the Swedish participants were less concerned with the use of the stereotypical mother in advertising and felt Sweden had moved on. Eva and Daniel's ironic reading of women as mothers as cleaners or carers enables these types of representations in adverts to both continue but also leaves some space to provide a critique of such depictions. This is a move beyond the general frustration felt earlier by both Carly and Aurelio. However, in contrast to Eva's perceived ironic take on cleaning adverts, the British group have rallied against Daniel to resist and confront him on the two-fold and facetious meaning of the advert. The ability to read irony, sarcasm or humour in motherhood advertising will be discussed in the following section of the chapter.

6.3.1 The Mother – The Multitasker

In this section, I will explore representation of mothers as multitaskers² in advertisements. To explore this representation and demonstrate the way in which ‘mother’ recodes a whole range of activities as ‘chores’, I look towards two adverts that became apparent whilst discussing why the participants found depictions of motherhood sexist or out of date in advertising. Moreover, I will explore Eva’s idea of irony via Stuart Hall’s encoding theory and how if an advert is to be deemed inoffensive, there must be overt humour. As discussed in the previous section, the silhouette of ‘the mother’ appeared to the participants at first as a simple and recognisable image to hang the broad definition on. In all three countries, the participants felt at ease when discussing the overused concept of motherhood in advertising and the products that are related to the maternal position inside and outside the domestic family. Participants were quick to respond to one of my initial opening question – ‘what adverts do you think of when I say gender stereotypes?’ – by conjuring clichéd images of the mother cleaning, cooking, changing baby’s nappy, running frantically around shops, tending delicately to their toddler’s bump and everything in-between.

In 2013, these clichéd images came together in a controversial British advert. In the build-up to Christmas, the supermarket chain Asda aired their advert with the tagline ‘Behind Every Great Christmas is Mum’. To the sounds of a rocked-up version of *Silent Night*, the 1 minute 16 seconds advert follows the trials of a mother during the build up to Christmas. Sandwiched into the advert are 2-3 second segments mirroring what an average mother does during the steady build-up to Christmas. The omnipresence of the advert in conjunction with its family appeal also meant that by the end of 2013 it had received the highest amount of complaints to the Advertising Standards Agency on gender and portrayal of women.³ At this time,

² Mäntylä, T. (2013). Gender differences in multitasking reflect spatial ability. *Psychological science*, 24(4), 514-520 and Ren, D., Zhou, H., & Fu, X. (2009, August). A deeper look at gender difference in multitasking: Gender-specific mechanism of cognitive control. In *Natural Computation, 2009. ICNC'09. Fifth International Conference on* (Vol. 5, pp. 13-17). IEEE..

³ See <https://www.asa.org.uk/rulings/asda-stores-ltd-a12-213056.html> The ASA received 620 complaints by the advert made by leading advertising agency Saatchi and Saatchi Ltd. The complaints were put into three separate categories: 1. The complainants (majority) stated the advert was offensive and sexist, because it reinforced outdated stereotypes of men and women in the home. 2. The advert was likely to cause serious offence to single fathers or to men who played a primary domestic role. 3.

newspapers and social media in the UK were awash with stories on the modern tradition of supermarket chain Christmas adverts. According to these articles, the festive advert was now deemed central to which conglomerate could surpass the previous year's profit margin, and which chain of supermarket could provide the slickest yet most relatable advert. During the London Summer Olympics, big brands handpicked big names: Usain Bolt (Virgin Media), Mo Farrah (BT), Victoria Pendleton (Halfords) and David Beckham lost in the fruit aisle of Sainsbury's. In stark contrast, the Christmas advert requires subtlety, modesty and humbleness⁴ but most importantly, it must reflect the idealised 'average British family' at Christmas for consumers to relate to the brand⁵. 2013 also witnessed an increasing volume of online advertising, sponsored overpowered adverts on social media newsfeeds⁶, 'unskippable' adverts⁷ on YouTube, catch-up and on-demand TV.

The following is a list of the chores (in order) that the mother in the Asda advert completes. Selecting the correct tree, decorating the tree, writing out the Christmas cards, feeding the baby, 'fussing' with the positioning of the tree, making cakes with the children, putting more decorations up, shopping in the supermarket for the kids toys, more decorations (the untangling the dreaded fairy lights), more shopping (this time with music speeding up), more decorating, running the kids back from the school nativity ("Quick, quick in the car!"), wrapping the presents, more shopping, making the beds, collecting the shopping that is delivered to the door and then a small tea break. The music stops – mum is seen inflating the spare mattress with a tired foot pump and the bass kicks in for the song's reprisal and eventual crescendo. Vacuum cleaner in one hand and baby in the other, the kids run amok in background. More shopping, snowball fights outside with the kids, awoken by kids on Christmas day, laying of the table,

Complainants objected that the ad was offensive and distressing to children or families who had lost mothers.

⁴ Consumers tend to enjoy Christmas adverts regardless of the prior negative attitude towards the product or brand. See Cartwright, J., McCormick, H., & Warnaby, G. (2016). Consumers' emotional responses to the Christmas TV advertising of four retail brands. *Journal of Retailing and Consumer Services*, 29, 82-91.

⁵ *ibid.* Responses to notions of 'love', 'warmth' and 'nostalgia' displayed within adverts generally leaves audiences more compelled to watch the advert. There must also be elements of irony, self-deprecation and humour as audiences find excessive advertising somewhat gaudy. See also D.A. Aaker, D.E. Bruzzone Viewer perceptions of prime-time television advertising *J. Advert. Res.*, 21 (1981), pp. 15-23

⁶ Dehghani, Milad, and Mustafa Tumer. "A research on effectiveness of Facebook advertising on enhancing purchase intention of consumers." *Computers in Human Behavior* 49 (2015): 597-600.

⁷ Meyer, J., Song, R., & Ha, K. (2016). The effect of product placements on the evaluation of movies. *European Journal of Marketing*, 50(3/4), 530-549.

peeling potatoes, veg and sprouts, presenting dinner (exhausted), serving dinner and then finally sitting down at the table (on a yoga ball as there aren't enough chairs). Clearing the table, loading the dishwasher and finally with apron off, glass of red wine in one hand, mother can sit down. The tagline is finally reeled out: 'Behind every great Christmas, there's mum'. A pause. Then, finally, there are just a few seconds left for Dad to ask: 'What's for tea, love?'



Figure 15 Stills taken from the Asda Advert 2013

I played this advert in all of my focus groups as a way of introducing the notion of gender stereotyping and received a slightly different reaction from each group. In Spain the students were amused yet shocked that the UK 'still has adverts like that'. In Sweden the students felt morally outraged by the advert. The UK produced most discussion, with the participants split between feeling that the advert was original and a true depiction of family life and the advert being an outdated, hyper-reality version of Christmas. Daniel keeps his hand up almost all the way through the playing of the advert and is almost bursting to say something:

David: Go on then, what do you think, Daniel?

Daniel: I think it's good advertising! For example, in my family... I mean it's related to my family it's exactly what we're supposed to do, and it's supposed to relate to people. It's a good advert!

David: So, going back to your original point, it's a true reflection of family life?

Daniel: Yeah, my mum does all that!

Emilia: Um I was gonna say that it may be a reflection of mums but it's setting up in girls' heads and maybe women that that's what you got to do. I mean my dad does everything at Christmas.

Skye: Yeah, I just think that you should have more of a selection of families' cos everyone's Christmas day is like different. Cos there's single dads and mums and then there's like grandparents looking after their grandkids and the parents aren't around so if they were more like diverse and the kind of family then yeah... like reaches out to more audiences and that's good advertising

Rachel: I think it's like unfair on men as well, if my dad watched that he'd feel quite hard done by. Like Skye said my parents do pretty much the same round the house and on Christmas and like watching that you get that it's just giving it all to mums – that's bad for women cos like this feeling that you got all this pressure to ... so men do nothing and you're not gonna get any of the appreciation.

In this segment of the data, Daniel strongly feels that the Asda advert is illustrative of his own family and reflects his typical Christmas. The representations made throughout the advert relates to his life and particularly his mother's social position within the family at Christmas. Moreover, the advert could and should relate to 'normal' families, which is why Daniel perceives it as a 'good advert'. By reflecting upon the mundane and everyday, the advert not only reflects Daniel's life, it confirms not only his mother's role as the multitasker but also what is socially normative (what families are 'supposed to do') at Christmas. The role of the mother in the advert also corresponds of Goffman's 'family' coding. Goffman argues here that the daughter/son will almost certainly look like the mother/father but also reflect or mimic the adult's task, thus reflecting 'real life dramaturgy'. Goffman also claims that social norms and cultural values are expressed in adverts and performed as 'ceremonies', using the notion of 'a family on vacation' and how in advertisements there is a clear set of cues for 'having a nice

time' or external schedules that indicate to the audience (and other actors) 'look we are having a nice time'. The Asda advert works in the same way, a family at Christmas performing the 'having a nice time' 'ritual' whilst reflecting the everyday. Such cues, schedules and expressions are 'socially learned, socially patterned'. As Goffman notes: 'advertisements depict for us not necessarily how we actually behave as men and women but how we *think* men and women behave. This depiction serves the social purpose of convincing us that this is how men and women are, or want to be, or should be, not only in relation to themselves but in relation to each other.

Daniel's interpretation of the advert is simple: the advert is art imitating life, *his* family life at Christmas. The chores are not just what his mother is doing but what she *ought* to be doing. Daniel's symmetrical standpoint of the family is challenged by Emilia, Skye and Rachel as they all challenge his assertion with their own different personal experiences, how the advert portrays men negatively, how it lacks a presentation of modern ideas of the family that have replaced the nuclear family template. Emilia's interpretation of Christmas differs from Daniel's acceptance that the advert as a reflection of the everyday and imitation of home life on the basis that it does not resonate with experience, in particular, that her father does the work around Christmas time. This account of events at Christmas not only locates men, in particular her father, in an unfair position but also supposes that it is the only option for women to perform the multitasker role at Christmas. What is more potent from Emilia's account is that this latter location of women as the multitasker plants ideas in young girls' heads that the only option for women is to play out the stereotypical representation of motherhood at Christmas. Aside from Goffman's 'family' code and anti-essentialist arguments about the role of women and girls in the home, this exchange is also consistent with Butler's concept of performativity, 'doing' gender and gender display. Emilia's assertion that '*setting up in girl's heads and maybe women that that's what you got to do*' chimes with Butler's view that gender has, over the years, somehow 'congealed' or essentialised into a form that makes it appear as if it has been there all along.⁸

Like Emilia, Skye proves that representation of multitasking embedded in the advert is a myth – modern families within the UK are more diverse than those of previous generations. Drawing upon her own experiences, Skye unpicks the illustration of the nuclear family that is displayed

⁸ Butler, J. (1990) *Gender Trouble* Routledge p.33

in the Asda advert by listing other modes of the family: single parent families, extended grandparent families, intergenerational and reconstituted families. The advert's use of the static nuclear family therefore does not reflect 'fringe' modes of family or indeed reflect the everyday life of those families. Goffman's symmetrical 'family' typology fits less now than it did in originally, particularly due to these societal shifts in the make-up of the family, whether real or imagined. Rachel's contribution is two-fold. Firstly, Rachel agrees with both Emilia and Skye, the idea of women multitasking is far too simplistic. There is greater equilibrium within the family unit and by drawing on her own experiences (*'my parents do pretty much the same around the house'*) the myth of asymmetry with more emphasis on the mum is outdated. Beyond post-structuraist critiques of the family, contemporary modes of family at least split the division of labour equally. Secondly, the advert places a double burden on women by coercing them to do all the work at Christmas but also to deny them any expectation of appreciation for that labour. The participants' clash was part of an ongoing dispute within this focus group. During the discussion, the British participants were keen to air their ideas on whether gendered representations in advertising merely reflect their everyday life or whether the adverts inform the audience about what is expected based on gender stereotypes. In this particular exchange, the group have discussed the gendered representation of the multitasking mother (Behind Every Christmas There's Mum) and dad (What's for tea, love?) were brought to light after watching the Asda advert. This theme echoes my discussion of essentialism in Chapter 3: the participants make claims about one's gender based on their sex, but also negotiate what roles men and women play in society and what labour they undertake. Daniel is 'mapping gender' onto an individual's sex and making assumptions that the mother's gender is innate: the mother's role is based on her sex and her sex is her destiny.

6.3.2 Motherhood as irony

In Sweden, the participants were lucid on advertising that featured notions of motherhood and multitasking – that the concept is outdated and is used ironically. In contrast to the Asda advert, one of the participants, Eva, mentions a recent online Fiat advert campaign, which features a tongue-in-cheek song *Motherhood*. The advert, according to Eva, appeared inoffensive as it should be interpreted by audiences as ironic and self-deprecating. Resembling the Asda advert, it engages with relatability, reflecting the everyday and mundane, but is posited somewhat lower in the hierarchy of offence when encoded/decoded as irony. For context, the Fiat advert aired across Europe (in various modes) at roughly the same time as the Asda advert and is

equally explicit in listing the chores and realities of everyday motherhood and at face-value, the two adverts should receive the same amount of complaints.⁹ However, as Eva claims, the key differences in the two adverts is humour and irony. This irony is played through various visual and verbal indicators: the self-deprecation of the white middle-class mum (through suburban social-class markers: a detached house in a leafy neighbourhood, garage, Ugg boots, designer sofa and the product itself) in juxtaposition with hip-hop rhymes and references to *gangsta* lifestyle. The protagonist's 'bitches' are the family dogs, the 'babes' are her kids and the 'hoes' is a garden hose that is kept in the back seat. The fiat advert received little negative media attention and no complaints were registered to the UK or Swedish self-regulation agencies. The commentariat criticizing the Asda advert were simultaneously praising the Fiat advert¹⁰ despite that the same multitasking stereotypes were found in both adverts.

Eva's acknowledgement of irony in advertising signifies that such advertising requires the consumer's engagement and reflexivity rather than assuming them to be passive agents. Ironic advertising is nonetheless reproducing gender stereotypes and sexism in advertising or, as Blloshmi claims, the reimagining or 'retro' stereotypes emerges.¹¹ Eva is understanding of irony within motherhood and multitasking advertisements reaches beyond this theme in the data as other participants are aware of irony (or humour) at various moments as they engage with the adverts in the group discussion. Comments such as 'this must be a joke', 'this is a good advert' or general enjoyment from advertising shows that they have agency in reading the adverts as ironic. As Blloshmi has pointed out, the re-emergence of gender stereotypes in advertising materialises in the guise of irony as women are portrayed in positions of power or where they show agency but only in an 'exaggerated or mocking way'¹² rendering them absurd or unrealistic. I therefore claim that when the portrayal of gender or the gender stereotype is amplified with irony, the audience is aware yet the gender stereotype (or sexualisation) is

⁹ In stark contrast, the Fiat advert (aired on 19th December 2012) 'went viral' and by 3rd January 2013 it had been viewed 2 million times on YouTube. See Daily Telegraph (6th January 2013) <http://www.telegraph.co.uk/motoring/news/9783709/Motherhood-car-viral-rap-get-2m-hits-online.html> (accessed 17th October 2017)

¹⁰ Sarah Ditung 'How the Fiat ad captures the essence of modern motherhood' (Guardian, 7th January 2013)

Ditung <https://www.theguardian.com/commentisfree/2013/jan/07/fiat-ad-modern-motherhood> (accessed 17 October 2017)

¹¹ Blloshmi, A. (2013). Advertising in Post-Feminism: The Return of Sexism in Visual Culture?. *Journal of Promotional Communications*, 1(1).

¹² *ibid* p.13

nonetheless reproduced and remains unchallenged. This explains Eva's ironic understanding and engagement with the motherhood advertisement but equally clarifies why the Asda advert produces a rather more negative reaction within the groups. The Asda advert provides little humour or exaggeration, it merely reflects real life (as Daniel points out) at Christmas. Stern's work has shown that irony is a key tool in advertising as it is used to deliver humour as a reward but only to elite consumers¹³. Therefore, it is evident that the consumer must be simultaneously conscious or reflexive to engage with the irony in the advert and possess the cultural capital or a 'knowing' of the cultural clues. Consumers of the Fiat advert are required to possess knowledge of hip-hop terminology and iconography: cribs, bitches, house-arrest (bullet holes in the chest) the west-coast hand sign and prison bars but also middle-class markers: wine drinking, blenders, and yoga. If consumers are to comprehend the irony embedded in advertising, then they must retain the wide-ranging depth of cultural capital in which to read the advert as 'knowing' to understand the humour in the product, branding or its language. The ironic tone must also be made explicit through popular comedic tropes to be seen as non-offensive. Ironic advertising requires a reflexive consumer to show agency and possess the capacity to critique 'retro' stereotypes.



Figure 16 Fiat 500 Motherhood advert (2013)

However, reflecting upon my data, I argue that ironic advertising is reproducing old stereotypes of motherhood and multitasking in advertising by utilizing comedic undertones with knowledge that the consumer will engage with the advert with humour yet still might feel

¹³ Stern, Barbara B. "Pleasure and persuasion in advertising: rhetorical irony as a humor technique." *Current Issues and Research in Advertising* 12.1-2 (1990): 25-42.

uncomfortable with the message. As Blloshmi notes, post-modern ironic advertising is playing with “cynical humour that draws on audiences existing knowledge of popular culture to present visual puns: stereotypes, self-mocking forms of humour”¹⁴ Irony in advertising is therefore a core characteristic of post-modern advertising that should be perceived not as humour but as a post-modern backlash to feminism.¹⁵ Understanding irony or being ‘knowing’¹⁶ was apparent in all three focus groups where participants either recognised the advert was a joke or picked up on the cultural references, innuendo, double entendres¹⁷ or hidden ‘connotative meanings’¹⁸ implanted within the advert. For example, in Spain, a participant commented on seeing a model unloading a dirty dishwasher as ridiculous and equally in Sweden a woman in lingerie basting a turkey.

6.4 Theme Two: Women on the Verge

The second theme from the data explores the depiction of women as neurotic or mad, in which I draw influence from Goffman’s typology of ‘licensed withdrawal’. I specifically underline how women appear disorientated, confused ‘unhinged’ or psychologically removed from the social situation in adverts. The woman has the opportunity to withdraw from a situation due to their dependence on – and protection of – others (usually male), and this presents itself in numerous ways: ‘tuning-out’, appearing lost, confused, in a state of surprise or shock and perhaps dumbfounded by the product itself. As a gender display code, ‘licensed withdrawal’ overlaps with the work of John Berger on ‘the dream’,¹⁹ Les Back and Vibeke Quaad’s notion

¹⁴ Op. cit., Blloshmi (2013) p.12

¹⁵ *ibid* see also McRobbie, A. (1994). *Postmodernism and popular culture*. Psychology Press. and Leiss, W. and Botterill, J. (2005). *Social communication in advertising: Consumption in the mediated marketplace*. Psychology Press.

¹⁶ Bourdieu, P. (2011). The forms of capital *Cultural theory: An anthology, I*, pp.81-93.

¹⁷ Early modern examples include Saatchi & Saatchi’s classic election poster for the UK Conservative Party back in 1979. The poster features a long dole queue with a bold headline ‘LABOUR ISN’T WORKING’.

¹⁸ See Semiotic analysis of advertising in Barthes, R. (1988). *The semiotic challenge* (p. 11). New York: Hill and Wang and

¹⁹ Berger, J. (1978) *Ways of seeing*. Vol. 1. Penguin UK

of 'utopian dreams'²⁰ and Goffman's dramaturgical conceptualisation of 'the stare',²¹ all of which I draw upon here. Akin to Goffman's licenced withdrawal, Berger's 'the dream' motif derives from female embodiment in fine art which has 'seeped' into contemporary advertising (as well as other mass media communications). It recurs in numerous ways: initially it manifests itself as sexual desire – for example, the object in the painting is often the desired woman. In advertising, the same is true, when as consumers; we are sold the idea to dream about a product or a lifestyle by faceless vacant but dream-like models. Berger suggests many other narratives in advertising: to dream of wanting the desired object (product) or lifestyle, to dream of later tonight, to dream of the far-away place (or as Goffman suggests: women gazing into the distance, lost or preoccupied by thought), to dream of romantic love, innocence or purity. Goffman's typology connects with Berger's notion of the dream-like state but also alludes to notions of disorientation, emptiness and surprise. I link this code to dominant representations in advertising that portray women not only as dream-like or vacant but also as neurotic, crazy or mad. In this next section I also draw upon the concept embodiment and theorisations of the body through Orbach,²² Showalter²³ and Busfield²⁴ as I argue that there is a clear correlation between advertising and depicting women as neurotic subjects as in a state of confusion, hysteria and as Goffman notes 'tuning out'.

Despite claims that Freud and Breuer have 'cleared-up'²⁵ the misconception of female hysteria, the voices from the focus groups show that women are routinely depicted as neurotic, hysterical or mad in advertising. Busfield's critique of Showalter's *Hystories*²⁶ and *The Female Malady* is, in part, what I will explore in this section of the chapter. Busfield's rejects the flimsy

²⁰ Back, L. and Quaade, V., 1993. Dream utopias, nightmare realities: Imaging race and culture within the world of Benetton advertising. *Third Text*, 7(22), pp.65-66.

²¹ 'The act of staring is a thing which one does not ordinarily do to another human being; it seems to put the object stared at in a class apart. One does not talk to a monkey in a zoo, or to a freak in a sideshow— one only stares.' (Goffman Behaviour in Public Places) Goffman, E. (1963). Behaviour in public places: notes on the social order of gatherings.

²² See Orbach, S. (2009) *Bodies*. Picador and Orbach, S. (1998) *Fat is a Feminist Issue: The Anti-diet Guide for Women+ Fat is a Feminist*. No. 2. Random House

²³ Showalter, Elaine. *Female malady*. 1985.

²⁴ Busfield, J. (1994) "The female malady? Men, women and madness in nineteenth century Britain." *Sociology* 28(1) 259-277.

²⁵ Gilman, S. L., Gilman, S. L., King, H., Porter, R., Rousseau, G. S., & Showalter, E. (1993). *Hysteria Beyond Freud*. University of California Press. p.viii

²⁶ Showalter, Elaine. (1998) *Hystories: Hysterical epidemics and modern media*. Vol. 2. Columbia University Press, 1998.

association between the 'hysteria epidemic' of the 19th century²⁷ and the fact that the majority of patients were women, due to lack of statistical data. Although Busfield rejects the lack of statistical proof for the female malady argument, her work provides for the gendered landscape of mental disorders and the stereotypes of such disorders are still pervasive today (for example in advertising) just as they were in Victorian England. The androcentric voice²⁸ of the medical profession at the time led to Victorian obsessions, from the historical figures such as the suicidal Ophelia²⁹ and the Salem witch trials and 'novelty' inventions such as vibrators.³⁰ As G.S. Rousseau notes, there has been no male equivalent – save melancholy – to female hysteria.³¹ This has been reflected in the group discussions on the Asda advert where one participant framed the female protagonist as looking 'a bit unhinged'. Schutzman explores the link between the language and imagery of 19th century hysteria and contemporary images in advertising of the 1990s.³² Schutzman highlights how the 19th century medical language of the *Hysterics* is openly transferred onto and performed within contemporary advertising. Her work is reminiscent of Goffman's coding, magazine adverts saturated with women depicted as hysterical, crazy or mad. The images below, taken from Schutzman's work, reflects how the medical language of hysteria has leaked into the composition and body language used in contemporary advertising.

²⁷ See Orbach, S. 'We may as well bind their feet' (Guardian 22nd July 2007)
<https://www.theguardian.com/commentisfree/2007/jul/22/comment.fashion> (accessed 17 October 2017)

²⁸ Hoagland, S.L.(1980). Androcentric rhetoric in sociobiology. *Women's Studies International Quarterly*, 3(2-3), pp.285-293.

²⁹ See Showalter, E. (2016) Ophelia, Gender and Madness Article available at the British Library Website: <https://www.bl.uk/shakespeare/articles/ophelia-gender-and-madness>

³⁰ Maines, R. P. (2001). *The technology of orgasm: "Hysteria," the vibrator, and women's sexual satisfaction*. JHU Press.

³¹ Rousseau, G. (2004). *Nervous acts: essays on literature, culture and sensibility*. Springer.

³² Op. cit., Schutzman, M. (1999) p.64



Figure 17 Images taken from Schutzman's work on Hysteria

At the time of my initial focus group in the UK, one participant had mentioned an online Persil advert that they had seen on social media, with a tag line: 'Are you a Dual Action Mum?'. The group searched for the advert and discussed the usual connotations of sexism connecting it to motherhood and the multitasking myth. Due to a strong social media presence, the advert requested its audience to comment underneath the advert by '*Sharing Bonkers and Brilliant Moments likes these*'. The Persil advert hinged on the arrangement that the audience could interact with the content to share their 'crazy moments' in the comments section. This interactive element was encouraged, as participants could win prizes such as shopping vouchers or a holiday.



Figure 18 Screen shot from UK Visual Diary Persil (2015)

When showing the screenshot to students in the other case studies, the Spanish focus group were, as with the Asda Christmas advert, shocked by the language and how unashamedly the advert presented itself. There was a lot of awkward laughter before anyone spoke about the advert and its tagline. Here, on showing the advert to the Spanish focus group, Aureliano, Amaranta and Ursula support one another in stating that the advert is halfway between humorous and offensive. The group are quick to point out that the language; image and idea are excessive rather than offensive:

Aureliano: I don't know... it's asking mothers to share photos and that is... [asks Ursula in Spanish] ... It's shameful

Amaranta: For me it's like... woah, this is too much...[laughs] it's a joke, you know?

Ursula : Yeah, it's really bad, the message under (under the image) is like basically saying you are crazy

Aureliano: I say it's shameful because women are not doing this – and this word bonkers? It means?

David: It's like...

Ursula : It means you [are] crazy, mad.

Aureliano: So yeah, this is bad, it's shameful.

In this exchange, Amaranta's pause between '*woah, this is too much*' and '*it's a joke, you know*' reflects Blloshmi et al view on irony, mockery and exaggeration in advertising. However, the group move beyond Amaranta's acceptance of irony in advertising and begin to dissect the advert critically, engaging with its undertones of neuroticism and madness. Whilst there is linguistic confusion, the group are quick to show agency and criticise the advert's suggestions of 'bonkers moments' by reflecting that whilst the advert is using humour to portray the everyday it is unacceptable to frame the woman's actions as crazy. The break in Amaranta's speech also reflects notions of reflexivity and consciousness rather than consumers as passive agents. The discussion could easily have remained innocuous in tone, but the group's cohesion and linguistic encouragement demonstrates that whilst they are *knowing* agents willing to accept the cultural cues, they are also willing to read the 'hidden' encoded meanings, decoding undertones of sexism at the root of the advert.

As Amaranta feels that that the advert is 'too much' – it is excessive or overwhelming with its portrayal of women. Pausing for a moment, her initial earnest reaction gives way to the absurdity of the advert, a quick release of laughter and 'it's a joke' signifies that she can't take the advert seriously. Amaranta is clearly struggling to not just comprehend how anyone could take this advert seriously but that it is excessive. Ursula offers some encouragement by looking beyond the image and attacking the wording underneath. This is where the term 'crazy' is first used and is further clarified (via Aureliano) that bonkers means 'mad'. Aureliano clarifies later why he feels that the advert is 'shameful' by claiming that women do not behave in this way ('*women are not doing this*') and therefore the portrayal of mums in the advert is unrealistic.

Looking at the static image 'Dual Action Mum' advert against the backdrop of the focus group data confirms that Goffman's licenced withdrawal is still present in contemporary advertising. The image positions the woman as somehow lost or 'tuned out', withdrawn from the situation and perhaps alienated from the product and action. The language of the advert and the participants critique is also reminiscent of the licenced withdrawal coding: bonkers, crazy, mad etc. The associative meaning of the advert speaks to the coding elsewhere, for example the vacant gaze into the distance, which again repeats Begrer's and Shutzman's notion of dream-like state that is depicted in advertisements. Specifically, the advert speaks to Berger's reading of concept 'dream' in renaissance fine art where the subject is viewed through the male gaze

(see figure 19). Replicated in advertising it is read as looking away, the desire to be elsewhere, 'to dream of later tonight', an unfulfilled life perhaps or as Berger claims 'a far-away place'.

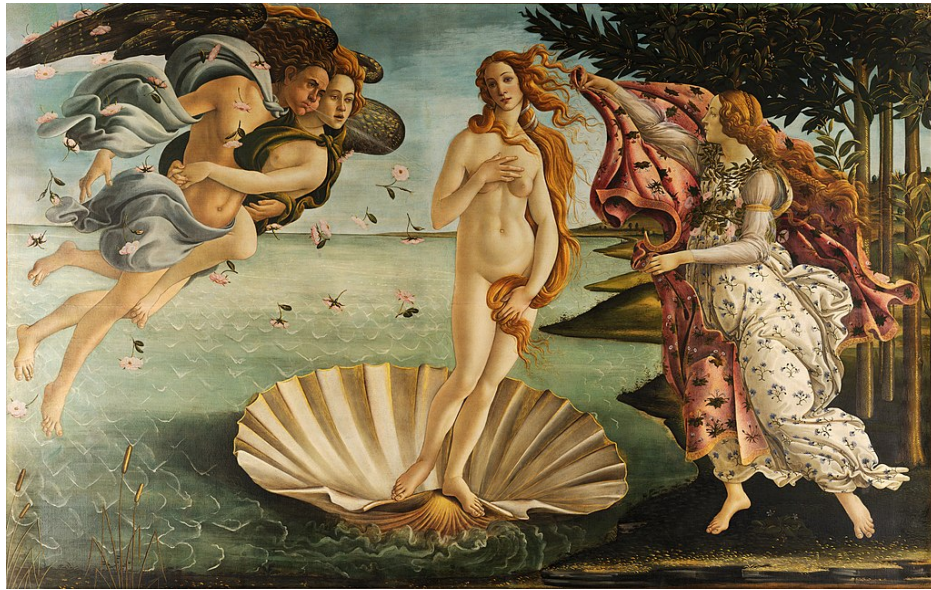


Figure 19 The Birth of Venus by Botticelli circa 1484

It is in stark contrast of the female gaze where the artist glares back at the viewer, in control of the situation and not, as Goffman would claim 'tuned out' (i.e. Frida Kahlo figure 20).



Figure 20 Frida Kahlo Self Portrait (1938)

After a reflective break to collect work for their visual diaries, the Spanish focus group returned with more ideas and contributions for this theme and returned to the notion of women portrayed as neurotic in adverts. Two participants mentioned sanitary towel, medicine and cereal adverts. According to the participants, all of these products used similar tools to the Persil advert. When asked to evidence these ideas in their visual diary, the students returned with a video link to the sanitary towel advert. The advert presented a 20-second simple 'before' and 'after' montage of a young woman carrying out some basic everyday tasks: riding the bus, going to work, gym and eating food. The two participants explained and translated the advert to me:

Meliquiades: I think that they want (us to) feel bad or maybe unbalanced.

Amaranta: Yeah! The advert says they (women) are crazy, they are not balanced. Here, take this tampon and you will feel balanced.

Meliquiades: There's this other advert in Spain ... it says... eh, take these tablets when you have period and you will be well.

Amaranta: And the advert is showing a woman who is crazy

The above exchange provides a critique to the dominant discourses of essentialism as discussed in chapter 4. In this instance, the participants dispute that there is perhaps something inherent about women whilst they are on their period. Essentialist discourse characterises women as 'unbalanced' by wielding the stereotypical view of women as having failed biology that cannot cope with their innate bodily functions. The participants within this group often demonstrated agency, particularly whilst talking about women being portrayed as crazy. This time, they do not passively accept dominant discourses that a woman's temperament is entwined with the menstrual cycle. Both Meliquiades and Amaranta show signs of discomfort with this representation of women in the advert as unbalanced or unhinged. Meliquiades clearly states that the use of this representation is solely to sell a product that can restore the feeling of balance: '*eh take these tablets when you have a period and you will be well*'. Meliquiades is therefore rejecting the stereotype that is embedded and perpetuated within this advert. Returning to Shutzman's work on performance of hysteria within advertising, this supports the idea that although advertising is no longer vulgar and direct in its links with hysteria, the gender display and performance of hysteria are still pervasive today. The advert is not directly labelling the woman as having a 'failed' biology, however the subtext is quickly seized upon by the participants. There are other moments in the British group discussion where neuroticism

and women's experiences are considered. On one particular occasion, Aaron is questioning why women are always seen as carefree in sanitary towel adverts.

I think, like they're [sanitary towel adverts] carefree and energetic, that's not like how it is when you're on your period though, right? They're not portraying it as it really is, right? You're making less than it really is. (Aaron, UK)

Aaron's comment is a little less polished or thought through than the previous Spanish dialogue. Here, Aaron argues that the advert undermines what he perceives to be women's experiences. The participants from the UK produced a much lengthier discussion on neuroticism when faced with the Persil advert but were not – at first – as surprised as the Spanish or Swedish participants. Once past the concepts of motherhood and multi-tasking the group became more interested in the idea of 'bonkers or brilliant moments'. In comparison, the response in the UK led to a small confrontation between the participants. One of the participants, Daniel, firmly asserts that it was merely reflecting home life, particularly his own life. Rachel, Skye and Emilia dissent, but only mildly:

David: 'What does this advert say to you Lottie?'

Lottie: 'You know like you're a good mum when you're like cleaning and another thing at the same time . You're multitasking and men can't multitask ... it's like mums get enjoyment out of it. They don't. My mum don't'.

Daniel: 'Yeah, I think a lot of women relate to this. Like my mum, she works part time and has to do all the cleaning. And dad works full time so... so I say an advert like that maybe... You know it's trying to get into the minds of those women and relate to them. And that's a lot of women'.

David: 'You think this is a lot of women?'

Daniel: 'Yeah! My mum likes to think that she's always busy always got to do something. She won't let you catch her sitting down... So like cleaning in the shower whilst showering is an exaggerated example and it appeals'.

David: It appeals and is a reflection of mums?

Daniel: Yeah definitely.

Rachel: Yeah but like it's trying to say that women have got like nothing else better to do ... like you're a dual action mum when you clean the shower or washing it ... it's like making out that's all mums have going for them... that all they do is wash.

David: So, is the advert just tongue-in-cheek, Rachel?

Rachel: No, you wouldn't get a man in there. If he was...what... he'd be like mowing in the shower? [LAUGHS]

Skye: I am bothered by it – I just think it's really old fashioned. It's not making me angry, it's just annoying. Cos I think from my household it's very much divided like my dad does all the cleaning.

Daniel: I just think people should be a bit light-hearted. Like, they haven't offended anyone. The fact is a lot of women do still do this. It's not saying like men can't clean.

Rachel: Yeah but like as girls are growing up, they are told ... they are like saying this is what you should be doing when you are older is cleaning, cooking. Whereas you get a lot of ads that are like saving people – so obviously when we grow up we lean more towards that.

Daniel: Yeah but maybe that's just what you want to do?!

Emilia: No Daniel, not if you have been raised that way. Daniel's saying like, "Oh it's an option", but it's not. If you've grown up with those toys and those things you do it subconsciously.

Daniel: well maybe you do it cos you want to do it? Maybe my mum does decide to raise me that way.

Aaron: Isn't that the parents' choice – the toys and all that... It's not the advertisers' fault.

This discussion centres on two core ideas. The first is how advertising 'taps into' the subconscious, sows seeds and reproduces stereotypes. The second idea is advertising as social structure and audiences as lacking (or having) agency. This second concept challenges the former: advertising is a robust informant of gender, yet the audience is not passive – they possess the agency to subvert the gender stereotypes embedded within advertisements.

Lottie continues with the notion that multitasking is an enduring belief that has become seen as an innate quality of the gendered experience. Lottie asserts that this myth both overestimates women and yet underestimates men. The unfair portrayal of the woman as the multitasker is

therefore both unfair on women *and* men: there is no enjoyment gained from multitasking nor the pressure to live up to this unreasonable expectation. It is equally unfair to suggest that men are incompetent which consequently renders them undervalued or belittled. Moreover, Lottie suggests that there's a sadistic undertone amongst all this in the advert: enjoying the 'bonkers and brilliant moments' is *fun*.

Daniel once again uses the idea of 'everyday life' to express a different opinion from the rest of the group. For Daniel, the advert is worthy of praise: his mother would understand and indeed, many women would recognise themselves in this form of advertising. In developing this idea, Daniel conjures up his mother as a lens through which to view and to understand the advert but to also comprehend how imagined audiences might perceive and react to this advert. It is here where Daniel identifies the power of subconscious manipulation within advertising. However, he asserts that the advert's audience demonstrates agency and is aware of the stereotype and content, not just in connecting with the protagonist but also in identifying with the message of 'bonkers and brilliant'. The process is therefore cyclical: the advert selects an overtly familiar scenario; the targeted audience recognise themselves within that scenario and feel engaged and committed. This pattern is evident as Daniel is willing to acknowledge that the advert is an augmented version of the familiar. This amplified version of the familiar therefore acts as a dog whistle for the target audience who already see themselves in the picture. The advert is popular, it appeals to the audience as they see themselves reflected within and embedded to the exaggerated representation that is made.

In addition to the advert reflecting 'licensed withdrawal', it reflects Goffman's concept of a schedule in advertisements – of 'having a good time' and how advertisements distort reality ('commercial realism') whilst simultaneously providing audiences with recognisable and relatable 'props', cues and front stage presentations of life. Daniel's determination to argue that the advert is a true representation the everyday does not marry up to Rachel's view of the advert. Daniel's and Rachel's argument works with Goffman's 'commercial realism' adage; adverts should appear strange when we in fact perceive them to be familiar, the 'social difference' and how genders are represented should appear bizarre. Moreover, advertising as a clear agent in 'making the familiar strange' ties into Goffman's institutional reflexivity, where 'environments are manipulated' to 'exaggerate sex differences in order to justify gender

inequalities’³³. Equally, as Goffman argues, advertising peddles ‘folk beliefs’ based on biology, stereotypes based on temperament and physiology which simplifies difference. The stereotype or ‘folk belief’ that women like to clean and are ‘bonkers’ for doing so provides for a self-fulfilling prophecy about the gendered experience.

By revisiting Daniel’s early comment *‘it’s trying to get into their minds of those women and relate to them’*, Rachel’s argument is reinforced when viewed from a structure/agency perspective. Advertising, as a social structure, provides younger audiences with representations of gender that they ought to fulfil. Rachel provides Daniel with a counter argument – boys as ‘saving people’ – and shows that there are gendered structures which instil knowledge of what it is to be a man. Emilia strongly defends Rachel’s point on the lack of agency and the socialisation of young girls which both contribute to the way in which gendered advertising enters the subconscious. Daniel’s counter argument asserts that audiences possess agency – not that young girls have a choice to subvert this dominant discourse in advertising but admit that such actions are consensual and accepted.

The discussion in Sweden was similar to those from the UK and Spain. The overwhelming response of participants moved away from the ‘outraged’ end of the spectrum towards the feeling that the advert must be at the very best, a joke. One of the participants, Martin, began actively searching for the Persil advert and read out the Facebook comments: laughing, he believed that the responses must also be ironic. In the recording there is lot of background chatter about this image and the atmosphere was one of awkwardness and discomfort. The focus group participants showed signs that they wanted to move on from hysterical elements of the advert and Eva pointed out a more obvious element to the advert – the overt notions of sexualisation and objectification:

‘But we’re not talking about the main thing – she is an object’

(Eva, female, Sweden)

The Swedish focus group establish the notion of women portrayed as *stupid* rather than ‘crazy’ or ‘mad’. During the discussion Erik mentions a large non-descript advert that he has seen in the local shopping mall in the city centre that ‘watches over the customers’. I immediately

³³ Op. cit., Goffman (1977) p. 323

remember the image due to its curious duality – vast in size yet invisible as it loomed over the shoppers in the mall. I also distinctly remembered the advert as it reminded me of the optician's advert that F. Scott Fitzgerald uses as a figurative tool in the *Great Gatsby*. Fitzgerald positions the large generic billboard as a pair of eyes menacingly watching over the occupants of the downtown district symbolizing the loss of the spiritual values and the growing commercialisation in America. The shopping mall advert in Sweden is equally generic as *Gatsby's* eyes and promotes the (brand less) forthcoming transition from winter to spring clothes selection. The advert depicts gigantic care free young woman in a long flowing dress, looking into the distance and absurdly walking over and amongst the crowds. On discussing the image, Eva was completely unaware of its presence, but others in the group are quick to confirm its existence:

Erik and Martin – yeah!

Erik: it's like 4 meters tall!

Eva: [inhale of breath] Yes! I know the one!

David yes, Blink and you'll miss it. What do you think it says about women?

Eva: That women should be more cheerful – or should be

David Should be?

Eva: Yeah, should be! We should be happy and love life! Like we are stupid or something

This exchange again speaks to the notion of making the familiar strange and the omnipresence yet invisibility of advertising in large spaces. It also speaks to hysteria, as it is projected on to – and performed within – advertisements. Eva's assumption about the advert – 'women should be more cheerful' – extends to further ideals about women being perpetually happy, loving life and carefree. It is clear that Eva understands the hidden codes embedded within the advert, how it perpetuates the notions of women –especially young women – as cheerful and carefree. When I push Eva on this idea, she clarifies her point about being cheerful as a female duty with the use of 'should'. At first, I thought that Eva would agree that this is a valid and uncritical notion of how young women feel but Eva is quick to change stance by adding the rebuttal 'like we're stupid or something'. This is the first of numerous epiphanies that Eva experiences. During an exchange about how masculinity is presented in advertising, Eva quips:

Eva: 'Yeah and women are just there, pretty... stupid... and men are more... maybe... I don't know really'.

Goran: 'That men are more.... aggressive in the way they stand but the women are usually quite model-like and bored'.

Eva: 'Yeah!'

The data corresponds with Goffman's licenced withdrawal with the large brand-less advertisement looming over shoppers depicting a woman looking away from the camera and into the distance (looking towards spring perhaps?). 'Tuned-out', 'stupid', 'bored' or in a dream-like state, the advert – much like Berger's conceptualisation of adverts imitating art – is very much like a large framed painting in a commercial gallery with unaware *flaneurs* passing underneath, dreaming of their own purchases and desires to be elsewhere. At the second session and after 5 days interval, Eva states that she has recognised these codes in advertising (both licensed withdrawal and lack of agency) as a familiar and recurring pattern in clothing, hair and beauty adverts. Eva mentions a L'Oréal advert that she noted in her visual diary and Signe quickly searches for images on her phone. Whilst discussing the image, the group agree that the portrayal of men and women is different. On 'men as doing' and 'women as passive', Eva and Signe push their interpretation that women are constantly presented as 'stupid' or 'lost' within adverts.

David: 'I think it was interesting when you said that men are 'doing' something women are just...'

Signe: 'It's always like that! Contrasting with her and... in a way... the way she's almost like vacant. She looks a bit stupid or lost'.

Eva – 'Women are just looking at something... like, totally vacant... blank.'

David: 'What does the product or brand or concept say about the gender?'

Eva: 'I think it says something like women are concerned about how they are looking and appreciated for what they are. Like we're stupid'.



Figure 21 L'Oréal Advert (2015)

This exchange continues the 'stupid' narrative of advertising with Eva from the previous session. Eva extends the 'stupid' narrative to encompass the vacant stare (this time the gaze directed back to the viewer), absent appearance and mouth open to give the overall appearance of emptiness. This advert speaks to the licensed withdrawal code and is also entwined with 'feminine touch'; hand delicately touching the models face, accentuating the sensation of femininity. Goffman calls this 'legitimised withdrawal' women portrayed either as helpless or as 'mentally absent'. Once again, the L'Oréal vacant stare is linked to Berger's 'dream' of wanting the desired product but also the desired self as well as the dream-like stare into the abyss. I revisit these notions later in the fourth theme 'comfortably numb'.

6.5 Theme Three: The Objectified Self

In this section of the chapter I explore the notions of sexualisation and objectification of women in advertising by revisiting and developing Goffman's code of 'ritualization of subordination'. I will also think towards how although certain adverts were idealised as beauty, the participants consumed and decoded sexualised adverts as distasteful and disgusting. I also and reflect upon notions of disgust, and how forms of resistance towards objectification and sexualisation in advertising are present amongst the participants.

'Media Mart, years ago was very aggressive with this [type of] advertising. They were saying... they were using women with hardly any clothes. They were provoking us. They put women almost without clothes to attract men'.

(Aureliano, male, Spain)

Aureliano's enthusiasm on the subject came towards the final moments of the initial focus group and just as everyone was leaving, he came to me alone and spoke about the Media Markt advert. His delayed and slightly muted response says something about the sensitivity of this particular branch of advertising. The same was true in UK and Sweden. Once the participants had become more settled in their groups, they all felt more at ease talking about their more personal responses to sexualisation and objectification. Just as Aureliano seemed particularly keen to express his view on the Media Markt advert at the end of the focus group, participants on realising time was running out, exerted the same level of keenness as the initial sessions came to an end.

In all three of the case studies, the participants were prepared to engage in what they imagined I wanted to hear from them. Their initial thoughts and opinions seemed like textbook definitions: the difference between sex and gender, why we stereotype, how stereotypes are useful and how gender stereotypes might be harmful. Once the discussions had surpassed the polite topics of motherhood and women as neurotic, the pertinent issues that affected the participants became more apparent: men and women used as objects or props, portrayed as stupid or positioned with no relevance or accordance to the advertised product. At times in the initial meeting, the participant's views were often muffled or constrained. Frustrated that the boundaries of the discussion must be settled (what are stereotypes? what is gender?) the group's initial polite discussion was marred by flashes of anger – either explicit or by sighs or moans – reflected what would later unravel: anger, hostility or numbness. The slow ascent towards what they deemed an obvious problem seemed, at times, tiresome. These sighs could also be read as their frustration towards the process of the methodology. It was interesting to listen to these off-the-record and unguarded discussions and the data reflects only some of the dialogue that emanates from this research. Nonetheless, this theme produced the most amount of data once the participants reached their peak.

6.5.1 Ritualization of Subordination

High profile campaigns such as Ryan Air, H&M and Unilever (beach body ready) are all present within the data and seamlessly slot into Goffman's coding. As discussed in Chapter 4, Goffman distinguishes ritualization of subordination from the other typologies as women adopting 'bashful' positions predominantly subservient to men: arms or knees bent, lying down

in order to indicate submission to men's authority.³⁴ Advertisements in this category often featured a woman on a bed or floor, positioning them as substantially inferior to the other people depicted in advert. For Goffman, this indicates that the woman's social identity and relationship to men is subordinate, submissive or inferior. Beyond the lowering to – or worshipping of – the male (dominant) body, other forms body language is incorporated in this category including social expressions (i.e. caressing, kissing, touching) towards the product or the male body. These expressions can be seen to convey another code within the advert – that the woman is figuratively a doll, a supposed 'plaything' or toy that is simultaneously vacant yet utterly available from the male gaze perspective. It is apparent that Goffman's second code, licensed withdrawal overlaps with ritualization of subordination and in sum, the theme includes an array of adverts whereby women appear to be submissive or below in ranking or position when in the presence of a man. I have not touched upon these latter codes, but 'relative size' and 'function ranking' are relevant to this section: women are often physically below the male body, or in receipt to the male function. I wish to use the words from the participants and politicise this category to include women's position as not merely submissive but objectified, sexualised, absent, detached, dissected or cut off from the advertisement, as well as in a state of confusion or surprise.

In the Spanish focus groups, Goffman's code of ritualization of subordination dominated the participants' visual diaries as most participants collected images that fitted into the typology. The diaries included images where the woman's legs were bent or torso in a childlike position, the diaries predominantly featured women in a subordinate position or laying down in a suggestive manner. I divided these visual data into two categories with the language of the participants in mind: sexualisation and objectification. The amount of data I received in Spain was particularly interesting, considering the varied regulatory codes and legislation that is aimed at combating such forms of advertising in Spain. As discussed before, Aureliano was eager to talk to me more about an advert that he saw when he was younger. He had mentioned the advert in the focus group but after the recording had ended, it seemed he could talk more freely about this experience. Aureliano told me how the adverts had affected him as a young

³⁴ A good example of this code has been analysed recently when a Dolce and Gabbana advert that depicted pseudo gang rape resurfaced on twitter in February 2015. In 2006 the Advertising Standards Agency received 160 complaints claiming that it breached the ASA code that condones 'violence or anti-social behaviour'. See: http://www.huffingtonpost.co.uk/2015/03/18/dolce-and-gabbana0gang-rape-advert_n_6893044.html (accessed 17 October 2018)

teenager, feelings of embarrassment, awkwardness as the advert came on TV and felt the need to express this. Even after walking from the university building where the focus group took place to the bus stop where the students would be picked up, the conversation was maintained. By the following week, Aureliano had managed to bring the following images into the class and had emailed them ahead of the meeting.

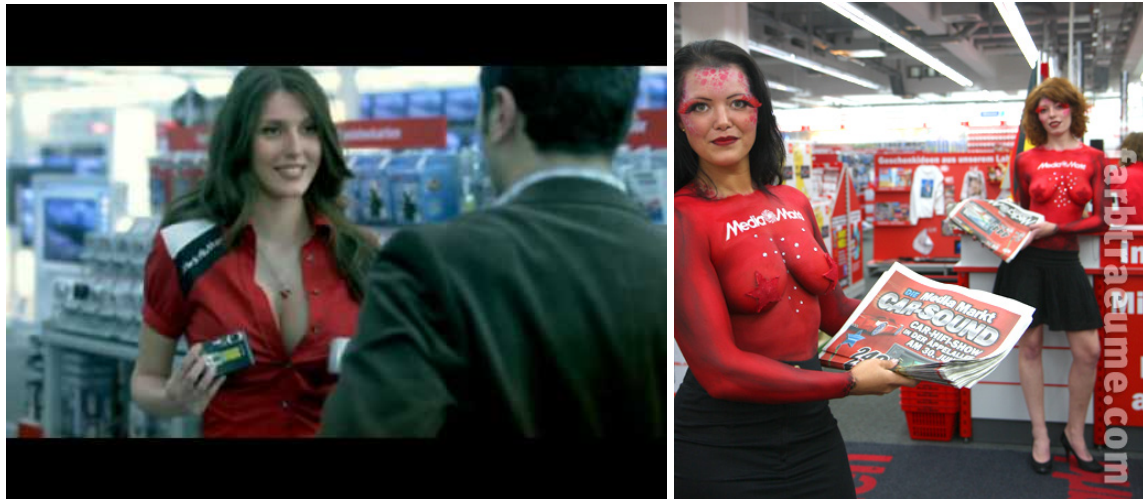


Figure 22 Media Markt Advert from 2011

Aureliano was particularly focused on one advert that displayed a woman's legs with the tagline: "this way to heaven". We could not find an image of the Spanish advert, however, the closest I could find was a Portuguese image online which translates: '30 minutes to whatever you like'.



I begin with this image as the advertising had a real effect on not just Aureliano but the collective memories of the participants in Spain. Once the adverts were put up on the projector, the participants began to speak freely (in Spanish) about the advertising that they could

remember from their youth. This advert set the tone for the remainder of the second focus group session and although the Media Markt advert was eventually banned by the Spanish regulators, the discussion of similar adverts prevailed. When I asked Aureliano what it was about this particular advert that had troubled him, he reverted to the ‘shameful’ narrative. Ursula pointed out that in all of the adverts the women were ‘not happy to be doing that job’ and looked ‘a bit stupid’. Overall, the atmosphere in the room had shifted from light-hearted discussions on the use of mothers (their mothers) to anger towards adverts that portrayed women as objects. Later on, in the discussion Aureliano is more direct about his thoughts on the Media Markt advert by asserting that:

Aureliano: ‘They [the advertisers] are just using the woman’s body... they just want to use the body to get the attention... these stupid men... look!’

Lola: ‘I think they use the girls with no clothes to attract people’s attention’

Alvaro: ‘They are also using some type of girls – you don’t see fat girls or small girls; they are all one size’.

The above dialogue moves away from Goffman’s code and the theme of subordination and moves it closer to objectification (how the advert reduces the models to mere objects to attract audiences) and sexualisation – Lola’s assertion – that the advert is using a certain type of woman to bring about that attraction. This is closer to Goffman’s ‘commercial realism’ claims and how messages have become naturalized through repetition in advertisements – unnatural poses where the woman is positioned as weak, powerless or in a position of lack when compared to her male counterpart.

Whilst Goffman’s code of subordination speaks to both of these concepts, I wish to unpack the ideas a little further and apply more contemporary adverts and voices of the participants to highlight how advertisements are more explicit. Advertisements in this category are demonstrably portraying coded hyper-feminized (or unnatural) images to audiences to attract attention and although this advertiser’s trick is no new feat, the participants decoding shows a disgust towards the advertiser’s intention. Objectification and sexualisation are to be discussed from a legal perspective in the next chapter, however I argue that the participants are aware of such terms across the three cases studies and resist such forms of adverts.

In Spain the majority of the group's discussion revolved around notions of perfect body type and allowing the audience to make connections with the particular body type to sell the product. This theme was repeated in the discussion, particularly using the woman as an object. Here, Ursula is talking about cereal advert in Spain that was based on looking 15 years younger and how she thought the use of a model in a bikini and her full clothed partner seemed to be used for manipulative means:

Ursula: 'Cereal is a daily product... in the morning, but the woman is very thin, she is only with a bikini. And if you eat you will become thinner and that... 'you are what you eat' comes to my mind'.

Aureliano: No, it's more than this. I think that she ... there to like attract people to buy but also that women think they will consume it they will look like her. Yes. But this is attracting men to the body too. She's a beautiful woman... so I don't know. I think she is there to attract. For those reasons.

Ursula: Yes and she gets the guy at the end!



Figure 23 Screenshot from Kellogg's Special K Advert 2010

The advert resonates with the subordination code in that the woman eventually appears to be under the control of the man and weak both physically and symbolically when positioned against the male equivalent. Goffman argues that advertisements never produce such performances where the male is in a position of subordination and thus proves that the arrangement between the sexes is strange.

A similar discussion takes place whilst discussing a separate advert promoting perfume:

Amaya: *'You should be like this and you will be delicious' So the apple is delicious, you are delicious, and the perfume is delicious. It's like that'*

Ursula: *'She looks strange in the first picture – her mouth is strange*



Figure 24 DKNY Advert 2015

There are multiple codes at play in this DKNY advert in addition to the undertones of eating 'healthily'. The woman is in a lower ranking, position and 'relative size' to the male equivalent. There is an element of control – the male pushed up against the woman with his arms wrapped around her but also the feminine touch of the apple. This speaks to the genesis within Goffman's *Gender Advertisements*, the notion of advertisements representing parent-child compositions, where often the male will play the parent and female the child. In Goffman's interpretation of adverts replicating infantilization,³⁵ he notes that women will be depicted not only as controlled by the parent figure but with her fingers in or close to her mouth, perhaps

³⁵ Op. cit., Goffman, p.50-52

sucking, biting reflecting ‘innate’ feelings of anxiety or feeling lost – or as he claims in licenced withdrawal, removed from the situation and thinking of nothing at all. Here in the DKNY advert, the body is contorted, subordinated by the parent’s arms and unaware of the surroundings, comforted by the security of not just the male grip but also his gaze.

In the following data, taken from a wider discussion about a well-known Ryan Air case, the participants talk about the objectification of the cabin crew in a calendar published by the company.

Amaranta: *‘Yes, maybe violence. I am a woman and when I saw that I feel like these calendars, those women are treated like an object’*

Ursula: *‘Flying on that plane will... will get you these women... in no clothes, it’s... it’s silly’.*

There is a clear absence of the controlling male body in the RyanAir advert, however I argue for Goffman’s attention to the minutiae moves beyond the obvious objectification and sexualisation of the half-naked body. Instead, as with the Ryan Air adverts, Goffman’s attention is towards the body as passive, limp or laying on the ground, on one knee or kneeling-down. Highlighting such bashfulness and the bended knee alongside a tilted head to one side speaks to connotations of infantilization and yet paradoxically availability. The advert presents sexual undertones of the women’s sexual availability (as noted in the data) as well as subservient or promiscuous positioning.



Figure 25 RyanAir Calendar Advert (online) 2014

To highlight these subtleties is to nod to making the familiar strange, to shine a light on the unnatural poses that would seem absurd if the male were to replicate it. Or as Goffman claims, “although [the advertisements] cannot be taken as representative of gender behaviour in real life [...] one can probably make a significant negative statement about them, namely, that as pictures they are not perceived as peculiar and unnatural”

6.5.2 Resistance and Mockery

Over the last decade the UK Advertising Standards Agency have seen a sharp rise in ‘sexist’ and ‘[poor] taste and decency’ complaints.³⁶ This, paired with ongoing activism, mockery and resistance towards high profile ad campaigns (i.e. the RyanAir, calendar, H&M’s bikini bus stop adverts and Unilever’s ‘Love your Body’) has produced a space for sexist advertising to be debated not just within the advertising industry but in public spaces. This is no more evident than Protein World’s ‘Are you Beach Body Ready?’ advert campaign. So vitriolic was the advert that it became commonplace to not just reject the advert but to openly mock via social media and crude graffiti on the underground, train and bus stops.



Figure 26 Picture from the London Underground September 2015

³⁶ ASA’s report on gender stereotyping <https://www.asa.org.uk/news/our-call-for-evidence-gender-stereotyping-in-ads.html>

Inspired forms of resistance came through the channel of social media and individual acts of resistance morphed into collective reactions as the advert became a symbol of mockery. The social media platform Twitter and the climax of the #EverydaySexism campaign³⁷ meant that the advert gained press attention and inevitably became a parody across Europe, America and Australia. Although the Advertising Standards Agency found that the advert had not breached any of its public decency or sexualisation grounds³⁸, the advert was banned on public health concerns due to its promotion of an unrealistic extreme weight-loss programme. The advert's mockery came at the time of my first focus group in the UK and featured heavily in the discussions within both sessions.

In the UK focus group session, the participants brought the advert up towards the end of the discussion and were willing to engage with the advert in numerous ways. Initially Skye is critical of how advertisers manipulate audiences with unrealistic body image and what is 'perfect':

I just think if a woman wants a body like that then she can have it [...] if she doesn't want it then she doesn't have to. But it's kind of ironic though, how billboards and magazines and bus stops like promote confidence but at the same time put stuff like this out saying we're not perfect.

Rachel and James are of a similar gauge when asked how the advert makes them feel:

Rachel: *Yeah I'm fine with it. I mean, yeah, she looks lovely ... but I don't really mind*

James: *You see it all the time, not many people have that kind of body. So, like, they're trying to get to people. I mean, they're not gonna get someone in, that is, like, bigger. You know what I mean?*

It's only when Daniel interrupts that the rest of the group retaliate:

³⁷ Bates, L. Everyday Sexism (2014) see also Everyday Sexism Project <https://everydaysexism.com/>

³⁸ Advertising Standards Agency Report on Protein World 1st July 2015 available online: <https://www.asa.org.uk/rulings/protein-world-ltd-a15-300099.html> accessed 21 February 2018

Daniel: You know, they're just saying, work out and you can have a nice body like this if you aren't happy with your own body or you can have a more sought-after body. Yeah?

Rachel: [who has been hitting her ruler against the table] It's just really unrealistic Daniel! Not all girls have naturally big hips or big boobs! That's not in the protein, that's surgery! There's not much you can do about that.

The discussion between Daniel and Rachel is representative of the focus group discussion on objectification and sexualisation of the female body. There are similar instances in Sweden and Spain where the participants vent anger towards unrealistic body types, fat-shaming adverts (i.e. the 'Take Courage Advert') and anorexic models (Yves Saint Laurent advert).



Figure 27 Yves Saint Laurent Advert 2015

What this data and image reflects is the need to update Goffman's typology on subordination in line with feelings of disgust towards advertisers that objectify and sexualise the body. Goffman's code is not entirely repeated in these examples. This is clear in the Beach Body Ready advert as the representation is almost silhouette – no bended knees, bashfulness, function or size ranking – there is also little reference to other codes: feminine touch, licensed withdrawal. The advert does however speak to Goffman's framing of being 'doll-like' or a 'play-toy' and thus through the male gaze the body is almost positioned as a Barbie doll framed in a box of yellow. Through this understanding of the coding scheme, Goffman's typology has

limited space to manoeuvre on contemporary ‘empowerment’ advertising which contradicts notions of submission by producing adverts where the body is bolt upright, erect, face to the camera, in control of the situation and not ‘tuned out’. Moreover, the advert lacks any ‘setting’, scene or ‘stage’. There is little context, props or performances taking place as there are no other ‘actors’ within the composition – just a blank canvas. Questioning the reasons behind the modes of resistance and mockery towards advertising in both the focus group and in public spaces shows there is a clear lack in Goffman’s work. Focussing on mere subtleties of advertising as Goffman does demonstrates a problem with his analysis, rendering it impracticable particularly when mobilising resistance. However, I argue that by reading Goffman’s subordination code through the wider context of his work and claims of how adverts appear ‘unnatural’ or distorted then Goffman’s typology is relevant. Because the ‘Beach Body’ pose is decontextualized, because there are no other actors or props the pose itself seems unnatural: a doll on the shelf ready to be plucked and played with. Decoding the advert through lack of context renders the advert absurd. Indeed the stance of the model *is* unnatural, or as Goffman claims the absurdity of ‘the degree to which advertisements embody an artificial pose reflecting on perhaps yet another artificial pose – that is, the process by which we come to think of what we call our ‘natural’ selves’.³⁹

6.6 Conclusion

In this chapter I revisited and evaluated Erving Goffman’s gender display coding schema through contemporary advertisements taken from visual diaries of the participants and my own collation of adverts that have helped inform the focus groups of the research topic. At the beginning of the chapter I touched upon the key codes that have informed my own themes for the research, feminine touch, licensed withdrawal and ritualization of subordination. In addition to these three codes, I reintroduced some of the underlying concepts from Goffman’s work in *Gender Advertisements* such as the parent-child complex and infantilization but also ‘commercial realism’ and ‘making the familiar strange’. Together the codes and concepts have helped inform my analysis of the data as well reimagining of the codes to construct my own themes in the data.

³⁹ Op. cit., Goffman, E. (1979) p.7

‘The Mother’ merges some fundamental stereotypes that are found within contemporary advertising and the participants picked up on categorisations such as the cook, the cleaner, the carer or ‘the multitasker’. Drawing upon Goffman’s codes I argued that the depiction of the mother is a multifaceted stereotype within advertising: caressing and fetishizing the product whilst at the same time feeling withdrawn and removed from the chore. In this theme I focused on the Asda and Fiat adverts which centred on the same ideas of domestic labour however, arguing that decoding one as sexist and the other as ironic required agentic understanding from the participants. ‘Women on the Verge’ reimaged Goffman’s licenced withdrawal code and explored the stereotype of women in adverts portrayed as neurotic or mad. In addition to Goffman’s codes I have drawn upon the concepts of embodiment and hysteria I have argued that advertisers frequently portray women as either manic, neurotic or vacant and empty. Goffman’s coding, relevant to this theme, highlights the ways in which women are often depicted in a dream-like state ‘tuned out’ or removed from the situation. The Persil and L’Oréal adverts provided the source for these discussions and reflected the participant’s feelings of surprise that adverts contained the language of hysteria, or imagery of vacancy. The third theme ‘Objectified Bodies’ revisited Goffman’s ritualization of subordination and the ways in which the female body is objectified, sexualised put into unnatural and absurd subservient positions. Goffman’s typology works with contemporary advertising and most of the visual diaries and indeed discussions contained the participants desire to hold this theme in advertising as problematic. I argue that despite appearing as outdated, Goffman’s coding scheme maps onto contemporary forms of advertising such as the controversial ‘Beach Body Ready’ advert – an advert that on first impressions does not reveal the obvious coded messages of subordination.

In the penultimate chapter I discuss how each of the three Member States have sought to tackle gender stereotypes in advertising. Throughout the chapter I analyse the legislative and regulatory powers each state has assembled and critique some of the current and past case law that has helped develop the tackling of gender stereotypes in advertising.

Chapter 7

Ambulance or Fence? National Perspectives on Regulating in Advertising

7.1 Introduction

The objective of this chapter is to provide an outline of each of the Member State's legal frameworks and to demonstrate how each state tackles gender stereotypes in advertising. I also look towards the conceptualisation of what 'best practice' may look like. In regulating advertising content, each Member State has navigated conflicting constitutional principles such as freedom of expression, freedom of information up against principles of equality and non-discrimination. I unravel the dissimilar cultural, legal and political structures of the three Member States in order to reveal how the three case studies have legislated and regulated the issue. By identifying the current legal (and political) issues that intersect the regulation of gender stereotypes in advertising, I observe distinctive frictions within the Member States that impede such legislative or regulative aims. For example, Sweden's historical, legal and political interest in free press and extensive (market driven) freedom of expression rights which have thus far prevented legislation on sexist advertising. I will then provide some observations on future developments within each of the Member States and look towards what an EU regulatory code might look like. Developing an account of each of the three case studies legal traditions, norms and histories falls outside of the limits of this thesis. Instead, I identify historical, political and social issues that have helped shape pathways that have brought about law and policy on combatting sexist advertising. The focus of the chapter will specifically be on the development of gender equality programmes and regulatory 'best practice' within the three countries as well as analysis of advertising case law that has developed terminology of the issue: objectification, sexualisation, reification and gender stereotypes in advertising. Finally, I will scrutinise the regulatory and self-regulatory approaches of each country, the methodologies they employ and how they interact with non-state actors.

7.1.1 Normative Legal Instruments

If a rambler is off walking, there comes a time when they may come close to the edge of a cliff or dubious ridge. The question for the organisation that maintains health and safety for the

rambler is perhaps how to keep them safe yet without infringing upon their experience as a walker. The options are: a fence at the top of the cliff edge, perhaps a warning sign for good measure, or an ambulance waiting at the bottom to ensure they get to the hospital in time. This allegory is fundamentally how advertising regulation works: catch the problematic advert before it reaches its desired audience or wait for it to cause offence on the billboards, TV screens or smartphones. The latter is what most Member States of the EU have decided works best. As this chapter will provide an overview of the different approaches to combatting sexist advertising it will become apparent that there are different methods and tools available when regulating advertising and they are more complex than the rambler analogy. It is therefore necessary to categorize some of these methods and provide a brief outline of their merits and drawbacks. As discussed in Chapter 2, there has been a considerable amount work from the EU institutions and non-state actors such as the EASA¹ on what is the best option for combatting gender stereotypes and sexist advertising. The debates have always produced the same conclusions, that legislation is far too a blunt instrument, each Member State should be allowed to regulate (or legislate) as they see fit depending on cultural differences, and what is classed as ironic or good humour.² At state level, the tackling of sexist advertising ranges from legislation which may prohibit certain forms of advertising to merely ‘naming and shaming’ certain adverts that are considered unacceptable. Across the EU28 there are four ways to prevent advertisers from broadcasting sexist content. The most recognisable is legislation, which seeks to act as the fence at the top of cliff edge, with clear prohibition of objectification, sexualisation or gender stereotypes in advertisements. Numerous EU Member States such as Spain have indeed produced legislation which either prohibit or regulate sexist advertising. The legislation comes in many forms, some countries have sought to enact legislation through marketing laws (i.e. Finland and Denmark) while others have pursued legislation through advertising laws (i.e. Sweden and the UK). The significance of legislative control is to understand what extent it produces an outright ban, and what type of advertising it covers. EU Member States tend to side step the issue by scattering ambiguous terms (e.g. in the UK ‘harm’ and ‘offence’) and avoid explicit terminology in the legislation, such as providing definitions for ‘sexualisation’ or ‘gender stereotypes’. As such terms are rarely used (except perhaps in Spain) the legislation appears conducive but does not catch the sexist content in advertising.

¹ For example, the EASA advertising regulation code are published on their website: <http://www.easa-alliance.org/ad-standards/what-are-ad-standards/codes>

² Earle, R. (2016) ‘The Self-Regulatory System’ in Richard Lindsay (ed) *Ad Law: The Essential Guide to Advertising Law and Regulation* Kogan Page pp.58-59

A further common route has been through governmental regulatory bodies. These state-aided regulators are a dying breed and are slowly being replaced by industry-led self-regulation, such as the UK's ASA. They do however follow the International Chamber of Commerce (ICC) code of conduct on inappropriate advertising ³ with various penalties and sanctions and typically results in a ban or fine. State-funded regulation is increasingly rare since the introduction of the regulatory 'third way' self-regulation that developed during mid-1990s and the impetus for a *lassaiz faire* approach to the market. As outlined in chapter 3, the timing of this approach is acutely linked to the availability of satellite and cable TV and the hundreds of new TV channels across the EU which consumers began to sponsor through watching advertisements. The expansion of self-regulatory bodies (SROs) therefore became a better way to regulate an ever-expanding market giving the consumer the 'power' to regulate their own intake of advertising. SROs commonly consist of both the traditional governmental regulation (i.e. trained staff but not necessarily lawyers) and engagement with the industry stakeholders (predominantly advertising agencies). Since the introduction of the EASA in 1991, SROs are increasingly vogue and despite criticism for being too weak ⁴ they continue to dominate the landscape of advertising regulation within Europe. In the realm of sexist content, the SRO is often seen as taking the pressure off governments that find it difficult to legislate on a tricky topic, for example gambling or sexist advertising. The SRO is not as blunt as legislation, it characteristically takes a much softer approach, encouraging best practice by engaging with advertisers, providing services such as training or pre-screening of adverts. Through the introduction of the EASA the European SROs of the early 1990s have all faced significant changes and most are dynamic enough to react to moral or cultural shifts. The final mode of curbing sexist content in advertising is through the use of non-state actors such as watchdogs, NGOs, campaigners and activists. Across the EU there are numerous organisations that fit within this bracket with most working alongside the industry. Their work tends to coincide with the work of the SROs, as well as campaigns and bridging the gap between petitioners and formal legitimate avenues of complaints. This final grouping of non-state actors is gaining

³ A consolidated version of the ICC code can be found on its website: <https://iccwbo.org/publication/advertising-and-marketing-communication-practice-consolidated-icc-code/> accessed 1 March 2018

⁴ Self-regulatory bodies have been heavily criticised in both the food and alcohol industry. Campaigners and academics have long argued the need for tougher sanctions in both. See for example Hastings, G., Brooks, O., Stead, M., Angus, K., Anker, T., & Farrell, T. (2010). Failure of self-regulation of UK alcohol advertising. *British Medical Journal*, 340, b5650.

prominence across the EU and will be discussed in accordance with each country in this chapter.

7.1.2 Towards Democracy-Driven Freedom of Expression

Attempts to restrict sexist advertising – whether enshrined in legislation or regulation – has led to a theoretical debate with two opposing positions. On one side of the division there are countries that are reluctant to encourage legislation that sanctions advertisers as they perceive (or at least their constitutions do) legislative control over sexist advertising would constrain freedom of expression. Edström and Svensson provide the term ‘market-driven freedom of expression’.⁵ This concept regards the use of self-regulatory bodies or co-regulation (including specific industry regulation such as beer and spirits) as preferential. On the other hand, there are some EU Member States that have taken pre-emptive steps in ratifying Article 5(a) of CEDAW which seeks to remove all cultural stereotypes in society.⁶ By legislating on sexist advertising, these states are willing to position the protection of fundamental human rights, such as gender equality, above freedom of expression. This is conceptualised as ‘democracy-driven’ freedom of expression – curtailing sexist advertising by prohibiting sexual content and stereotypes, regardless of the demands from the advertiser’s claims that legislation (or stringent regulation) is a restriction of free press. This side of the debate represents two forms of logic:

‘The rationality of democracy-driven freedom of expression is committed to safeguarding free and independent information and expressions as a prerequisite for democracy. The rationality of the market-driven freedom of expression is committed to safeguarding all information and expressions regardless of their interests and purposes’.⁷

Both freedom of expression and gender equality are both democratic values that legislators wish to commit to. As there is an inherent tension between these two fundamental rights, the question is whether or not seeking to legislate on gender stereotypes or sexist advertising is a

⁵ Svensson, E.M. and Edström, M. (2015) Freedom of expression vs. gender equality. *Tidsskrift for Rettsvitenskap*, 127(05), pp.479-511.

⁶ See Article 5(a) on The Convention on the Elimination of all Forms of Discrimination Against Women States Parties shall take all appropriate measures:

(a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.

⁷ Op. cit., Svensson and Edström (2015) p.483

restriction to freedom of expression. This chapter therefore contemplates divergent perspectives in this debate. Firstly, I look towards Sweden, whose constitution and history is entangled with the Free Press Act of 1776 – the earliest recorded act on free speech – and is consistently cautious when opting for a democracy-driven freedom of expression. This freedom has been interpreted as a market-driven right, which seeks to appease the functioning of the media rather than the foundations of democracy-driven freedom of expression. Tampering with the Swedish constitution to incorporate legislation on advertising would symbolically be perceived as interfering the wider mass media and an affront towards the Free Press Act. Although there have been numerous attempts in Sweden to shift towards a ban on gender stereotypes the state is yet to opt for legislation. However, recent elections have forced a Social Democrat led coalition to fulfil one of their key manifesto pledges,⁸ to curb gender stereotypes in advertising and the media. At the polar opposite end of the theoretical debate, Spain has led the way within the EU by passing legislation⁹ from a democracy-driven perspective.¹⁰ Since 2004, there have been numerous criticisms of the legislation¹¹, however, the positioning of gender equality above the advertising industry is emblematic and worth exploring. The UK's position on gender stereotypes is similar to Sweden, there is both an SRO that enforces the regulatory code but also a strong pre-screening 'copy advice' that sifts advertisements before they are aired.

7.2 Sweden

Sweden has been reluctant in legislating on gender stereotypes in advertising when compared with its Nordic neighbours. Legislation has proven problematic for Sweden and is often criticised by its neighbours for not living up to its Scandinavian feminist image.¹² Sweden is cited as the nation state that has helped define the 'Nordic legal family' or 'Scandinavian law'¹³

⁸ The SDP in their 2014 Manifesto shadow Gender Equality Minister Veronica Palm promised to legislate on sex discrimination advertising should the party form part of the next government. See <https://www.socialdemokraterna.se/aktuellt/nyhetsarkiv> accessed 21 April 2018

⁹ Spanish Organic Act 1/2004 on 'Integrated Protection Measures against Gender Violence Spain'

¹⁰ Martin-Llaguno, M (2016) 'Regulating Sexist Advertising in Spain in Edström, Kenyon and Svensson (eds) *Blurring the Lines: Market Driven and Democracy Driven Freedom of Expression* (Nordicom 2016)

¹¹ *ibid* pp .180-181

¹² *Op. cit.*, Svensson. EM (2012) p.99

¹³ From a *legal culture* perspective, the Scandinavian legal 'family' can be split into east and west Scandinavia. The west includes Norway and Denmark, the latter of which has been more influential with monarch rule from Copenhagen up until 1814. Sweden is often cited as the most influential state

yet simultaneously falls victim to this classification. The Scandinavian categorisation often renders its members as homogenous, particularly in gender related legislation. There are of course numerous similarities and overlap amongst the Nordic countries and comparisons within this 'family' of nations that can often be overlooked by lawyers and policy makers wishing to neatly group the countries together.¹⁴ The legal grouping of the countries is often deemed similar from a comparative law perspective¹⁵ and their political, economic and cultural binding is measured with the same yardstick. The Nordic Union, which unites the countries in certain areas, has operated in parallel with the EU since 1952 and has subsequently established the Nordic Council,¹⁶ fostering deeper integration via the Nordic Passport Union¹⁷ and tackled shared problems such as environmental issues with the Nordic Alliance Swan label.¹⁸ It is therefore unsurprising that deeper analysis of the Nordic Legal family¹⁹ has sparingly been analysed in comparative law.²⁰ Similarities within the family include – but are not limited to – their legal theory foundations, formation of their basic legal concepts and principles, kinship in their methodology as well as codification, legal precedent and sources of law. Therefore, one would assume – from a distance – that the 'Nordic family' are wholly similar and if not the same.²¹ However, to say this (as I have) to a Swedish constitutional lawyer and you will

in the family; however, it has only influenced Finland's constitution as both were part of the same country until Finland came under Russian rule in 1809. For further discussion on legal family traditions and 'Scandinavian' law see Bernitz, U. (2007). What is Scandinavian law? Concept, characteristics, future. *Scandinavian studies in law*, 50, pp.15-16.

¹⁴ For examples the 'Nordic Welfare Model' is a well is universally recognised see for example: Kvist, J. ed., (2012). *Changing social equality: the Nordic welfare model in the 21st century*. Policy Press.as much as the Nordic model on prostitution See for example Skilbrei, M. L., & Holmström, C. (2011). Is there a Nordic prostitution regime? *Crime and Justice*, 40(1), 479-517.

¹⁵ Zweigert, K., Kötz, H., Weir, T., Kötz, H., & Weir, T. (1998). *Introduction to comparative law* (Vol. 3). Oxford: Clarendon Press. p.21

¹⁶ The Nordic Council, initially set up as a peace-building alliance, was founded in 1952. See <http://www.norden.org/en>

¹⁷ The notion of a Nordic Passport Union (1952) predates the European Union's effort to allow free movement of persons. See: <http://www.norden.org/en/om-samarbejdet-1/nordic-agreements/treaties-and-agreements/passport-issues-citizenship-and-national-registration/the-nordic-passport-convention>

¹⁸ See The Nordic Eco-Label <http://www.nordic-ecolabel.org/> (accessed 1 March 2018)

¹⁹ 'Nordic' incorporates the nation states of Sweden, Norway, Finland, Denmark and Iceland rather than 'Scandinavian' which would merely include Sweden, Norway and perhaps Arctic Finland. For further discussion on the Nordic/Scandinavian debate there are countless pieces of literature within law, politics and geography. I have used the most common term developed within legal literature; however, I am aware of the debate put forward by academics such as Ulf Bernitz (What is Scandinavian Law) from the Stockholm institute for Scandinavian Law.

²⁰ Bernitz, Ulf. (2007) What is Scandinavian law? Concept, characteristics, future. *Scandinavian studies in law* 50 13-30.

²¹ *ibid* pp.17-18.

be hastily scolded with raised eyebrows. It is akin to suggesting to a British constitutional lawyer that the English law is no different from French law. Nordic comparative law academics such as Malmström²² and Husa²³ have concluded that the members of the Nordic family, although distinctive, slots nicely into the four Western Europe legal groupings: Continental, Common Law, Latin American and Nordic. Moreover, Bogdan²⁴ aligns the Nordic family to the continental model, distancing it from the Common Law (i.e. UK) or Latin (i.e. Spanish) approach. This view has been shared by comparative lawyers²⁵ over the years but few have focused on how the Nordic countries diverge, particularly in their method and attitude towards freedom of expression. I therefore claim in this chapter that not only is the notion of the Nordic model to be contested but also because the Swedish legal system and its constitution is different from the rest of her sisters within the family, it therefore hinders the state in legislating on prohibiting sexist advertising. This difference becomes more apparent when considering specific elements of the legal system, particularly the history of and attitude towards freedom of expression and the press, advertising regulation and the use of self-regulatory bodies. I do not aim to chart the entire history and development of Swedish political and legal system within this chapter. However, to illustrate how Sweden contrasts with its fellow Nordic countries, I will unfurl some of the key characteristics of Sweden's political, historical and constitutional details before analysing the Swedish legal system and its approach to freedom of expression and advertising regulation.

7.2.1 The Swedish System of Government

Sweden is typical of many modern European representative democracies in that it follows a constitutional parliamentary democracy²⁶, a written 'constitution'²⁷ and a metamorphosing

²² Malmstrom, A. (1969). System of Legal Systems, The. *Scandinavian Stud in Law*, 13, p.127.

²³ Husa, J. (2000). Guarding the constitutionality of laws in the Nordic countries: A comparative perspective. *The American journal of comparative law*, 48(3), 345-381.

²⁴ Bogdan, M., (2009). Private international law aspects of the introduction of same-sex marriages in Sweden. *Nordic J. International Law*. 78, p.253

²⁵ Zweigert, K. And Kötz, H. (1998) Comparative law p.36

²⁶ For a detailed English translation of the Swedish constitution see the Svergies Riksdag (Swedish Parliament): <http://www.riksdagen.se/en/documents-and-laws/> (accessed 11/08/2017)

²⁷ The Swedish Constitution comprises of four separate fundamental or 'basic' laws: *Successionsordningen* (The Act of Succession 1810) *Tryckfrihetsförordningen* (Freedom of Press Act 1945), *Regeringsformen* (The Instrument of Government Act 1974) and *Ytrandefrihetsgrundlagen* (Freedom of Expression Act 1991).

civil code.²⁸ The addition is the 'weak' monarch, which serves as the head of state. The Swedish Monarch's residual power is not too dissimilar to the British Monarch and at the end of the Second World War, the head of state's powers gradually diminished until the coronation of King Carl XVI and *Regeringsformen* (The Instrument of Government Act 1974). *Regeringsformen* is one of four fundamental 'basic' laws that make up the Swedish constitution and is a key piece of legislation that has helped reduce the Monarch's already dwindling powers to produce the modern-day mode of Swedish Government. The introduction of *Regeringsformen* to the constitution shifted the Monarch's symbolic position to provide Parliament with concrete powers that were already assumed by the *Riksdag* (Parliament).²⁹ This constitutional shift provided numerous changes but most significantly a single chamber and a shift of powers from the Head of State to the Prime Minister and Parliament. *Regeringsformen* provides a template and rules on how to form a government, a catalogue of basic freedoms, rights and regulations as well as the basic rules on the day-to-day running of the Parliamentary institutions. This limits the Monarch's position to a mere ceremonial figure for state functions and state visits. In recent years, two important pieces of European law – the European Convention of Human Rights and accession to the European Union – have considerably reshaped the Swedish constitution with both international agreements receiving acts of Parliaments in the 1990s.³⁰ In 2009 the Riksdag amended the *Regeringsform* section of the constitution to encompass and reflect the modern changes in Swedish society, principally sexual orientation rights, rights of minorities (particularly Roma and indigenous Sami people), and children's rights but most importantly to strike down new laws that contravene the EU Charter of Fundamental Rights. *Regeringsformen* is one quarter of the Swedish Constitution. The remaining three are *Successionsordningen* (the Act of Succession 1810), which provides rules on the rights of monarch accession, *Tryckfrihetsförordningen* (the Freedom of Press Act 1945) and *Yttrandefrihetsgrundlagen* (the Freedom of Expression Act 1991).

²⁸ Ortwein, B.M.I. (2002). The Swedish Legal System: An Introduction. *Ind. Int'l & Comp. L. Rev.*, 13, p.405

²⁹ This can be summarised with the opening section which reads: "All public power in Sweden proceeds from the people. The people's rule of Sweden builds upon the free formation of opinions and a universal and equal suffrage and is reali[z]ed through a representative and parliamentary Constitution and a communal autonomy. All public power must be exercised under the law."

³⁰ Act of Parliament SFS1994 1219 Lag (1994:1219) om den europeiska konventionen angående skydd för de mänskliga rättigheterna och de grundläggande friheterna see: <http://www.notisum.se/rnp/sls/lag/19941219.htm> and Accession to the European Union Act 1994

7.2.2 Conflicting Principles: The Freedom of Expression Constitution vs Gender Equality

“Well that's Sweden, you know, we have freedom of expression in our bones! Everyone learns this at school – everyone knows this principle – I can say this, it's a free country! But seriously, it is a uniquely Swedish thing, you know, our neighbours think we are mad!”³¹

Unlike its neighbours, Sweden is the only Nordic country that has failed to explicitly legislate on gender stereotypes in advertising.³² Denmark³³, Finland³⁴ Iceland³⁵ and Norway³⁶ regulate gender stereotypes in advertising through legislation as well as self-regulatory codes and ombudsmen. Although Sweden led the way in pushing for anti-discrimination laws in the early 1970s, the Sex Discrimination Act 1976 falls short of tackling advertising – specifically sexist advertising. At the time of the Act coming into force, the Swedish Market Court ruled that the purpose of the act was not to cover sexist advertising or advertising that may cause harm or offence.³⁷ The court found that any measures within the act that sought to regulate the media would breach the constitution's *Yttrandefrihetsgrundlagen* (the Freedom of Expression Act 1991). The main hurdle for the Swedish Government to legislate on gender stereotypes in advertising has been the Swedish constitution's strong safeguarding of freedom of expression. It is worth noting that freedom of expression has not hindered any of the other Nordic countries attempts to legislate or been seen as a barrier to regulate gender stereotypes. Where all of the Nordic countries have both legislation and self-regulation to tackle the problem, Sweden is heavily reliant on its self-regulatory body, *Reklamombudsmannen*. Freedom of expression is so entwined with the constitutional make-up of Sweden that it has always been an obstacle for campaigners and governments over the last thirty years.

³¹ Interview with Maria Edström, University of Gothenburg (April 2015)

³² See Svennson, EM. Nordic Regulation of Gender Discriminatory Advertisements in Edström, M., & Mølster, R. (2014). *Making Change. Nordic Examples of Working Towards Gender Equality in the Media*. Nordicom.

³³ Marketing Practices Act (*Markedsføringsloven*) and the Gender Equality Act (*Ligestillingsloven*)

³⁴ The Consumer Protection Act (*Kuluttajansuojalaki*) 37/1978 amended 29/2005

³⁵ Act on Equal Status and Equal Rights of Women and Men (78/1976, *Lög um jafnrétti kvenna og karla*)

³⁶ Marketing Control Act (LOV-2009-01-09-2, MCA, *Markedsføringsloven*)

³⁷ For further commentary see The Nordic Council of Ministers *The Regulation of Gender Discrimination Advertising in the Nordic Countries* 2017

In this section of the chapter I wish to discuss why Sweden has failed to legislate on gender stereotypes which will include an analysis of the political landscape and the historical anchoring of freedom of expression within the Swedish constitution. I will begin by broadly discussing the government's political will to legislate on gender policy issues and then move to specific attempts to prohibit gender stereotypes in advertising by charting political discourse and legislative attempts of the last two decades. I will then discuss the potential re-emergence of a ban on gender stereotypes in advertising under the current left-wing alliance under Stefan Löfven.

7.2.3 The 'Golden Child' of Gender Equality

Sweden is often celebrated as one of the best countries in the world to live ³⁸ particularly if you are an immigrant,³⁹ it also has one of the best welfare systems with ample parental leave provision,⁴⁰ its social assistance is relatively high, it is one of the best places to grow up⁴¹ and die in.⁴² Sweden is also one of the best places to live if you are a woman. Female representation is to a high level across different occupational fields and despite a dip in the number of Parliamentary seats held by women,⁴³ various news outlets⁴⁴ commentators⁴⁵ and academics have been quick to highlight how Sweden is the most feminist state in the world⁴⁶. Politically,

³⁸ See The OECD's 'Better Life Index' (2016))

³⁹ See OECD Swedish Migrant Integration System <<https://www.oecd.org/migration/swedish-migrant-integration-system.pdf> > (accessed 21 April 2018)

⁴⁰ See Kvist, J. and Greve, B. (2011). Has the Nordic welfare model been transformed? *Social Policy & Administration*, 45(2), pp.146-160.

⁴¹ See 'The Kids Rights Index'. The annual global index ranks how countries adhere to and are equipped to improve children's rights. Sweden are currently ranked 7th in the world. <http://kidsrightsindex.org/> accessed 21 April 2018)

⁴² Since 2010 Sweden has ranked within the 10 ten places to die. In 2015 it slipped out of the top 10 but has recently re-joined the top 10. See The Economist Intelligence Unit Quality of Death Report (2016) <http://www.eiuperspectives.economist.com/sites/default/files/images/2015%20Quality%20of%20Death%20Index%20Infographic.pdf> (accessed 21 October 2017)

⁴³ The Swedish parliament has one of the best records in terms of parliamentary members as %. Today's representation 43.6% is higher than the surge in 1997 (40.3%) but lower than 2006 election (47.3%) <https://data.worldbank.org/indicator/SG.GEN.PARL.ZS?locations=SE>

⁴⁴ See BBC report, *Is Sweden's Feminist Agenda Working?*, 17th February 2017 <http://www.bbc.co.uk/news/world-europe-39004991> (accessed 23 April 2018)

⁴⁵ See 'Sweden's 'feminist' government criticized for wearing headscarves in Iran' https://www.washingtonpost.com/news/worldviews/wp/2017/02/13/swedens-feminist-government-criticized-for-wearing-headscarves-in-iran/?utm_term=.7aff9807c8a1 or Guardian: What Trump Could Learn from Sweden'

⁴⁶ Borchorst, A. and Siim, B. (2008). Woman-friendly policies and state feminism: Theorizing Scandinavian gender equality. *Feminist Theory*, 9(2), pp.207-224.

this appears to be true. Sweden has historically had the most female members of Parliament, and has led the way in terms of female representation since the 1950s.⁴⁷ At start of their electoral campaign (and then formally in 2014), the SDP-led coalition declared itself the first ‘feminist government in the world’.⁴⁸ The current SDP government, denied the centre right coalition ‘Alliance for Sweden’ a third term of office in the 2014 election and has formed a left wing-bloc with Prime Minister Stefan Löfven at the helm. For political analysts, this is a somewhat return to normality as 60 out of the past 80 years have seen Sweden elect a social democrat or left-wing coalition.⁴⁹ This continuation and now re-emergence of the left is a significant factor in my research and is symbolic of how Sweden has worked steadily towards creating a more gender equal society. The current composition is indicative of the general allocation of seats in the Riksdag. With a history of left-wing/SDP majority governments and increasing numbers of female MPs, gender equality issues have always been at the forefront of Swedish politics. However, in recent years the varnish has begun to peel away from Sweden’s global reputation as a liberal feminist country. The problems are comparatively few but nonetheless contradict Sweden’s traditional international image. According to Programme for International Student Assessment (PISA), the education system is now in crisis, particularly for young girls,⁵⁰ there has been the rise of the far right in the national Parliament,⁵¹ border closures and condemnation on failure to help with the Syrian crisis⁵² and the riots of early

⁴⁷ See ‘Dahlerup, D. (2011). Women in Nordic politics—a continuing success story? *Gender and Power in the Nordic Countries* <http://kvinfo.org/history/women-nordic-politics-continuing-success-story> accessed 21st September 2017

⁴⁸ Amongst numerous gender mainstreaming policies, the current government ensures that gender risk assessments take place, seeks and promotes ‘feminist foreign policy and gender responsive budgeting. See <http://www.government.se/government-policy/a-feminist-government/>

⁴⁹ Jacob Christensen, ‘The left-wing share of the popular vote in Swedish National Elections’ <http://jacobchristensen.name/tag/sweden/> 14th September 2013

⁵⁰ See the OECD’s PISA results in 2016 <https://www.oecd.org/pisa/PISA-2015-Sweden.pdf> or Sally Weale ‘It’s a political failure: how Sweden’s celebrated school system fell into crisis (London 10th June 2015)

⁵¹ Emanuel Sidea, ‘Forget everything you know about nice, liberal Sweden — that country no longer exists’ *The Independent* 4th December 2014 (accessed 21st April 2018)

⁵² Sasha Abramsky ‘If Sweden and Denmark Are So Progressive, Why Did They Close Their Doors to Refugees?’ (27 September 2016) <https://www.thenation.com/article/if-sweden-and-denmark-are-so-progressive-why-did-they-close-their-doors-to-refugees/> (Accessed 14th September 2017)

2017.⁵³ Despite these isolated events, Sweden retains its feminist ⁵⁴ and ‘woman-friendly’⁵⁵ appearance and its sympathy and dedication to feminist issues knows no bounds: intervention policies on pornography,⁵⁶ sex work,⁵⁷ equal pay legislation⁵⁸ and most recently safeguarding of trans issues such as the gender recognition laws ⁵⁹ are just a handful of areas where the country is objectively progressive.

However, Sweden has not fulfilled its CEDAW obligations by legislating on gender stereotypes in advertising (and the media). It is incongruent that the state can legislate on numerous normative gender-based issues yet unable or reluctant to tackle systemic sexism such as gender stereotypes in advertising. It is particularly unusual as other forms of gender stereotypes have been tackled through legislation and policy. For example, the removal of gender stereotypes in Swedish culture is by no means a modern concept: gender neutral schools, pronouns, toilets and toys are just some of the few legislative ‘victories’ of the last decade. For decades, Sweden was held up as spearheading the regulation of advertising – particularly advertising aimed at children. Legislation on this area has moved towards the removal of gender stereotypes in advertising, for example a blanket ban on televised advertising to children existed up until its repeal 2010. The CJEU decision in *De Agostini* ⁶⁰ not only maintained that Sweden’s ban on advertising to preteens did not in breach of free

⁵³ BBC ‘Sweden probes riot in mainly immigrant Stockholm suburb’ (London 22nd February 2017) accessed 14th September 2017 <<http://www.bbc.co.uk/news/world-europe-39047455>>

⁵⁴ Ekman, L., & Engström, R. (2017). The many feminist voices of the radical right: An actor-oriented study of the Sweden Democrats’ conception of equality. *HumaNetten*, (38), 82-96.

⁵⁵ Borchorst, A. and Siim, B., 2008. Woman-friendly policies and state feminism: Theorizing Scandinavian gender equality. *Feminist Theory*, 9(2), pp.207-224.

⁵⁶ Tham, H. (2001). Law and order as a leftist project? The case of Sweden. *Punishment & Society*, 3(3), p.412.

⁵⁷ For a comparative perspective on Sweden’s *Kvinnofrid* law see also Ekberg, G. (2004). The Swedish law that prohibits the purchase of sexual services: Best practices for prevention of prostitution and trafficking in human beings. *Violence against women*, 10(10), 1187-1218.

⁵⁸ Meyersson Milgrom, E.M., Petersen, T. and Snartland, V. (2001). Equal pay for equal work? Evidence from Sweden and a comparison with Norway and the US. *The Scandinavian Journal of Economics*, 103(4), 559-583 pp.562-563 According to European Commission research, Sweden has one of the lowest gender pay gaps in the EU28. See European Commission’s website: http://ec.europa.eu/eurostat/statistics-explained/index.php/Gender_pay_gap_statistics. Accessed 21st September 2017

⁵⁹ Sweden’s Gender Recognition Act (1972) is currently under review by the Government to incorporate two proposals a) how gender is changed through legal documentation b) on the authorization of certain operations on sex organs and reproductive glands. The two laws would replace the current gender Recognition Act.

⁶⁰ *Konsumentombudsmannen v De Agostini* (Svenska) Forlag AB (Cases C-34-46/95) [1997]

movement provisions of the internal market but the Advocate General's opinion seemed to actively promote such a ban.⁶¹ The most recent example of tackling gender stereotypes is the gender-neutral pronoun 'hen' which was added to the Swedish dictionary in April 2015.⁶² This is a good example of how the dominant discourse of gender politics operates in Sweden. The use of the term 'hen' and its active promotion is characteristic of the Swedish long-game and 'public' debate: heated media exchanges, politicians flip-flopping with opinions, Parliamentary debates and newspaper articles.⁶³ The process has been open, with public debate and the eventual normalisation of the term.⁶⁴ The move towards banning sexist advertising is similar in terms of 'public' debate, however has not resulted in the same success. The proposal to ban gender stereotypes in advertising began in 1996 under Göran Persson's SDP government which sought to turn feminist principles into legislation. During his second term Persson had provided concerns with any such legislation: 'I'm a feminist, but I don't want to push these issues so hard that I create hostilities in society'.⁶⁵ This sentiment reflects the SDP's gender policy throughout his two terms of office – the banning sexist advertising was discussed and shelved numerous times due to the SDP's fears that such a ban would infringe the state's protection of freedom of expression but more importantly reignite old battles on free press between the traditional print media and government acting *ultra vires*. Over the years the language of the draft legislation loosened from 'ban' on 'sexist imagery' to prohibiting all advertising that could be 'considered sexist' incorporating terms such as 'gender stereotypes' and 'commodifying' women's bodies. The shift in language at draft stage further provided the Riksdag with sufficient reason to freely critique such a ban as unworkable and a step too far.

The ban was deferred and pressure to deliver on the SDP's feminist manifesto dwindled. Almost ten years later in 2006 the government provided the potential ban on sexist advertising

⁶¹ Para 23 of AG Jacobs opinion in *De Agostini*. Furthermore, necessary to introduce rules to protect the physical, mental and moral development of minors in programmes and in television advertising

⁶² Lindqvist, A., Bäck, E. A., & Sendén, M. G. (2017). Could hen reduce the gender bias in the Swedish language? In *International Convention of Psychological Science*.

⁶³ One of Sweden's leading newspapers, *Dagens Nyheter* banned the use of the term. See Natalie Rothschild 'Sweden New Gender-Neutral Pronoun: Hen' (The Slate Online 11 April 2012) http://www.slate.com/articles/double_x/doublex/2012/04/hen_sweden_s_new_gender_neutral_pronoun_causes_controversy_.html (accessed 14th September 2017)

⁶⁴ Bäck, E.A., Lindqvist, A. and Sendén, M.G., 2015. Hen can do it! *Effects of using a gender-neutral pronoun in recruitment. I: Jenny Magnusson m. fl. (red.), Könskonstruktioner och språkförändringar: Rapport från den åttonde konferensen om språk och kön. Text och samtalsstudier från Södertörns högskola. Stockholm: Södertörns högskola. S, pp.71-90.*

⁶⁵ Translated from Interview in Swedish Newspaper Aftonbladet 24th January 2002

one final opportunity. In the summer of 2006, an official government report was commissioned⁶⁶ on sex and gender discrimination was commissioned and passed to a team of legal experts led by Eva-Maria Svensson. The report outlined a simple argument: it would be possible to legislate on gender discrimination in advertising without infringing upon the strong freedom of expression status of the constitution. Svensson outlines the report's argument as

“... discriminatory commercial messages should not be protected from intervention, because they are discriminatory, and discrimination is prohibited in other areas of society. Thus, commercial messages do not have the same protection as other messages (because the main purpose is to sell something, not primarily to disseminate some opinion), and the issue of considering something to be discriminatory or not is too important to leave to self-regulation by the industry.”⁶⁷

The report was put before Riksdag, but was inevitably abandoned in 2008. This was partly due to a change of government – the SDP had lost vast numbers of seats in the election to Fredrik Reinfeldt, the newcomer and moderniser of the *Moderata samlingspartiet* (Moderate Party). Reinfeldt, like David Cameron in the UK wished to reunite the deeply disconnected conservative party he had inherited. As Reinfeldt was desperate to appear as the moderniser – a visionary that is not only youthful, in touch, but eager to appear to continue with Sweden's liberal agenda. The report was put together but never published. The Minister for Gender Equality, Nyamko Sabuni, stated at the time, the crux of Sweden's problem with legislating on gender stereotypes in advertising was obvious:

“I don't think legislation is the most effective means to use, and in this case, I would rather protect the freedom of speech than legislate against gender discriminatory advertising.”⁶⁸

Therefore, draft legislation was once again bluntly rejected by the incoming Conservative Government but almost a decade later the issue is once again being contemplated with the

⁶⁶ Swedish Government Official Report SOU 2008:5 *Könsdiskriminerande reklam – kränkande utformning av kommersiellameddelanden*.

<http://www.regeringen.se/49b70e/contentassets/6a83d9be02594fe3a2877dfd986b79e2/konsdiskriminerande-reklam---krankande-utformning-av-kommersiella-meddelanden-sou-20085>

⁶⁷ Svensson, E.M. and Edström, M. (2015). Freedom of expression vs. gender equality. *Tidsskrift for Rettsvitenskap*, 127(05), p.499.

⁶⁸ Translated from an Interview in *Dagens Industri* 24 April 2008

return of the SDP and 'hard left' coalition partners.⁶⁹ The current SDP government have stated that sexist advertising is a public health issue, particularly for teenagers in Sweden and echoes the past legislation on safeguarding children and preteens against advertising which was rebuked in 2010. The supplementary physical and mental health concern is a leap from the previous report, which perceives sexist advertising as gender discrimination. Understanding why Sweden has rejected legislation (and perhaps why it will reject it again) requires consideration of the constitution. As Constitutional lawyer Thomas Bull states, 'the Swedish legal system ensures that legislators and judges have almost no influence over the limits of freedom of expression'.⁷⁰ The final two sections of the Swedish constitution (freedom of expression and of the press) reflects Sweden's determination and historical ties to safeguarding freedom of expression. The Freedom of Press Act (1776) is considered the first freedom of information legislation in the world⁷¹ and at the time of passing sought to abolish all forms of press censorship and guaranteed public access to documents (Article 10) drawn up by public agencies.

These two acts reflect Sweden's deep commitment to freedom of expression and are influenced by Montesquieu's theorisation of distribution of powers.⁷² Montesquieu's theory asserts that the state will be the recipient of checks and balances, upholding the rule of law – one vital check is that the media are free to critique and hold the government to account. This vision is alive and well in Sweden through its commitment to both freedom of expression and autonomy. Svensson and Edström argue that freedom of expression (market driven) is both an inherent Swedish 'common good' but also the most easily recognisable part of the Swedish constitution.⁷³ Sweden is also equally committed to gender equality through its Fundamental Law (Constitutional Law) Instrument of Government Law (1974) as well as the legal

⁶⁹ The SDP in their 2014 Manifesto shadow gender equality minister Veronica Palm promised to legislate on sex discrimination advertising should the party from part of the next government. See <https://www.socialdemokraterna.se/aktuellt/nyhetsarkiv/stopp-for-sexistisk-reklam/>

⁷⁰ Bull, T. 2009 Freedom of Expression in Sweden: The Rule of Formalism in Kierulf and Ronning (Eds) *Freedom of Speech: Abridged* (Nordicom 2009)

⁷¹ Rutland, R. A. (1991). *The birth of the Bill of Rights, 1776-1791*. North Eastern University Press. p.9

⁷² Montesquieu's 'distribution of powers' can be found in *De l'Esprit des Loix* (The Spirit of Laws) (1748)

⁷³ Op. cit., Svensson, E.M. and Edström, M., (2015) p.499

obligations in EU law ⁷⁴ and the ECHR. ⁷⁵ At first glance, these two values embedded within the constitution seem relatively dormant, but according to Svensson and Edström, the strong principle of freedom of expression within the constitution is the biggest obstacle in achieving gender equality in terms of banning gender stereotypes in advertising.⁷⁶ The purpose of Freedom of Press Act (1776) and Fundamental Law (1974) chimes with the EU's Copenhagen Criteria,⁷⁷ that all members shall have a free press and uphold fundamental human rights. The two arms of the constitution have two broad principles: firstly, to ensure free exchange of opinions and pluralism of information, and secondly, to ensure the proper functioning of a free press and media that is able to provide such information and opinions. Implicit within these acts is the notion of ensuring that a free press and freedom of expression is paramount for a functioning democracy, where citizens that are well informed and the media are free to critique all notions of government.

The two freedom of expression acts provide some basic guidance on advertising categories (tobacco, alcohol and medicine)⁷⁸ and whom it is addressed to (i.e. children) but generally provides for media and press regulation. Misleading or 'unfair' advertising is covered by separate pieces of legislation across numerous acts of Parliament in Sweden: The Marketing Act (2008) is an implementation legislation based on Directive 2005/29/EC and Radio and Television Act (2010) is based on Directive 2010/13/EU. Neither of the acts contain any specific provisions on gender portrayal or taste and decency.⁷⁹ The second constitution

⁷⁴ See Article 11 of Charter of Fundamental Rights (Freedom of Information and Expression) Article 2 (and 49 TEU)

⁷⁵ See Article 10 of the ECHR Freedom of Expression

⁷⁶ Op. cit., Svensson and Edström (2015) p.495-496

⁷⁷ The Copenhagen Criteria is a formal set of conditions which allow for new Member States to join the EU. The criteria urge Member States for political stability, namely Human Rights.
https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/press_corner/elarg-guidelines-for-media-freedom-and-integrity_210214.pdf

⁷⁸ Article 9 (paragraphs 1-5) provides guidance on advertising alcohol and tobacco and the limitations of such advertising. It also covers the protection of health and safety, and misleading statements.

⁷⁹ There have been attempts to use s.5 of the Marketing Act to curtail discriminatory advertising. S.5 of the act states that all marketing must be in line with 'good practice'. Whilst drafting the Act 'good practice' meant using the ICC code for guidance, however due to an earlier case concerning advertising regulation in 1976 in the Marketing Court, it was held that gender discrimination does not fall within the scope of the act. Therefore, regulation of gender stereotypes falls outside the Marketing Act.

provision, the Freedom of Expression Act (1991) is a revised version of the 1776 act incorporating evolving technologies – TV, radio CD, DVD and online contact.⁸⁰

Therefore, I argue that legislation on gender stereotypes in advertising has been considered far too controversial for both the SDP and the Moderate/Alliance party, however, a revised draft report on advertising could be reconsidered in the near future. The SDP's manifesto is peppered with notions of a 'feminist government' that fights against 'gender roles and structures which hold people back'.⁸¹ However, there has thus far been no real attempt at reviving the legislation and as wider reaching gender related issues such as Swedish rape crisis and migration issues emerge,⁸² the political desire to legislate seems to have diminished at least until the next general election in 2018.

7.2.4 Self-Regulation in Sweden: Prohibition to Pillory

As both the Marketing Act (2008) and the Radio and Television Act (2010) have failed to catch advertising as form of sex discrimination, Sweden is heavily reliant on its self-regulatory body, *Stiftelsen Reklamombudsmannen* (RO) to tackle gender stereotypes in advertising. Prior to the RO the Swedish Consumer Agency⁸³ had traditionally dealt with sexist advertising but its role gradually diminished during the 1990s until it was formally passed on to ERK, a government-led self-regulatory body⁸⁴ which has also since expired. Although ERK operated as a self-regulatory body, the government oversaw most of its activities and its members were trained market lawyers or advertising specialists. With state backing, ERK possessed numerous powers, namely the right to strike-down adverts that contravened its regulatory code *before*

⁸⁰ Bull, T. 'Freedom of Expression in Sweden: The Rule of Formalism' in Kierulf and Ronning (Eds) *Freedom of Speech: Abridged* (Nordicom 2009)

⁸¹ See Berit Kvam, 'Sweden will be a global role model' (The Nordic Labor Journal 3rd October 2014) <http://www.nordiclabourjournal.org/nyheter/news-2014/article.2014-10-03.6180046911> (accessed 30 April 2018)

⁸² Debate in Sweden on the increase of reports of rape has led politicians and journalists lay blame on the migrant crisis. Statistics show that rape has indeed increased during the but this may also be due to the way in which rape is reported and 'sexual offences' are defined in Sweden. For further analysis see the Swedish Government's 'fact checker' report. Facts About Migration and Crime in Sweden 5th July 2015 <http://www.government.se/articles/2017/02/facts-about-migration-and-crime-in-sweden/>

⁸³ See Sweden's SRO: <http://www.konsumentverket.se/languages/english-engelska/> accessed 21 April 2018)

⁸⁴ The ERK - *Näringslivets etiska råd mot könsdiskriminerande reklam* (Ethics Against Sex Discriminatory Advertising Board) closed in 2009.

being aired on television. The ERK's criteria for sex discriminatory advertising was three-fold and congruent with Article 4(1) of the International Chamber of Commerce's Code on Advertising and Marketing Practice which broadly prohibits sex discrimination in advertising.

Under the ERK's criteria an advert can be banned from all forms of media if it positions a woman as a sexual object, reproduces out-of-touch gender roles that position women (and men) in a degrading way, or if it is in any other way 'degrading' towards women or men. From 1989 until its closure 2009, ERK issued 377 bans (9.4% of the 3,990 complaints received).⁸⁵ During the organisation's existence, advertising agencies became more influential in how ERK operated with increasing numbers of representatives working alongside its legally trained regulators to hear cases involving sexist content. The dilution of legal practitioners with advertising agency representatives became more popular across all EU Member State regulators with the push towards the use of more self-regulatory organisations. In Sweden's case, banning an advert became less popular due to this market-driven change. One of the final 'public' exchanges between the ERK and an advertiser is a good example of this shift from banning to 'naming and shaming' of an advertisement. The Black and Decker advert of 2008 embodies the diminishing power of ERK as the company behind the advert had clearly contravened the regulatory code by reproducing gender stereotypes through its advert promising customers a 'pleased wife guarantee'. The advert offered customers' wives a 'beauty makeover' worth 350 Swedish Kroner when they spent over 1500 Kronor on tools. ERK deemed the advert to be degrading to both men and women due to its use of archaic gender stereotypes and Black & Decker removed the advert immediately. This form of arrangement between the regulator and advertiser became commonplace as the powers shifted from ERK to the self-regulatory body and paved the way for ERK's complete replacement, *Stiftelsen Reklamombudsmannen*.⁸⁶

7.2.5 Reklamombudsmannen

The *Reklamombudsmannen* (RO) – The Swedish Advertising Ombudsman – appears similar to the ERK in both name, field of enquiry and regulatory powers. However, the key difference

⁸⁵ The *Regeringskanliet* (Swedish Government Offices) produced all of the complaints and remedies online but all statistics have since been removed their website.

⁸⁶ See the Swedish Self-Regulatory Body website <<http://reklamombudsmannen.org/eng/>>

is that as RO is not a public body it relinquishes its sanctioning powers and therefore only able to ‘name and shame’ adverts through public notices and campaigns. RO follows the ICC’s code on sexist advertising and reflects the ERK’s original criteria to define what constitutes discriminating advertising. Unlike the ERK, its staff are not advertising or market lawyers – most staff work within the advertising industry itself and the body is funded by the industry and ‘volunteers’. At the time of writing, the RO’s website does not provide a comprehensive list of financiers but identifies some of its ‘sponsors’ which are primarily from the beer and spirits industry. Although the RO does not provide for sanctions, it publishes its considerations and decisions online and is generally considered as accessible and transparent.⁸⁷ During the research I had contacted RO numerous times for an interview about their style of regulation, but no staff were available for an interview. Professor Eva-Maria Svensson did comment on the RO.

*‘Reklamombudsmannen – ombudsman, you know this word? It is not an accident, they know what they are doing by using this word, you know, it sounds official, it sounds important. But we all know that it is not’.*⁸⁸

As Svensson identifies above, accessibility lies partly in the RO’s branding – the stylish website provides plenty of information in accessible tone of language (the ICC’s code is summarised and link is provided to original text) and the complaints form is simple to use with mobile screenshots as one of the suggested modes of complaint. The shrewd use of *Ombudsman* is not a coincidence, the term originates from and is known across the Nordic countries to mean ‘representative’ and therefore its connotations and symbolism looms larger than the actual day-to-day operations of the body. The term indeed renders undertones of the Swedish Parliamentary Ombudsman, a body that was set up in 1809 (33 years after the Free Press Act of 1776) as part of the Montesquieu-esque separation of powers overhaul of the Swedish constitution. The Swedish Parliamentary Ombudsman receives complaints about public authorities from citizens with issues ranging from complaints against the civil service or infringement of local by-laws. Again, this use of term appears to be no coincidence as it instils some hope for the consumer that their complaint will result in some form of inquiry and sanction just as the Parliamentary Ombudsman does. The RO is therefore merely symbolically

⁸⁷ Op. cit., Svensson, E.M. (2014) and Svensson, E.M. and Edström, M., (2015) pp.488-489

⁸⁸ Maria Edström Interview Gothenburg (April 2015)

powerful, at least in an etymological sense, but also appears noble: the term is historically linked to lawyers and advocates, which may leave the consumer under the illusion that the body has some kind of legal underpinning. The reality is very different, as the RO not only lacks effective legal sanctions but also is heavily entwined with the industry it purports to regulate. Sanctions appear to have been replaced with training programmes for advertisers, ‘naming and shaming’ via press releases, public campaigns (adverts) and engagement with the media.

Both the CEDAW committee⁸⁹ and Beijing Platform for Action monitor⁹⁰ have been critical of Sweden’s lack of legislation, particularly the government’s 2008 report on sex discrimination in advertising. The Swedish Women’s Lobby cites the 2008 report to highlight the RO’s ineffectiveness as a regulator:

“The underrepresentation of women in the news media must also be viewed against a background of the harsh and sexualized exposure of women in other areas of the media, such as advertising. The current system of self-regulation carried out by the advertising industries’ own organisation, the Swedish Advertising Ombudsman (RO), is not sufficiently effective. The RO can neither issue economic sanctions nor require that advertising campaigns are withdrawn. The 2008 governmental inquiry into Gender Discriminatory Advertising recommended that legislation banning sexist advertisements should be implemented as early as the following year. This recommendation was rejected by the then incumbent government with reference to 15 the principle of self-regulation. Since then there has been no further development. There is no indication that the amount of gender stereotypical and sexist advertising has decreased since the RO was introduced. On the contrary, there is a tendency toward increased sexualisation of women, especially in the public sphere. Research has pointed out an increase in pornographic imagery used by advertising and the media.”⁹¹

⁸⁹ See CEDAW ‘Concluding observations of the Committee on the Elimination of Discrimination against Women: Sweden’ (3 08-29866 CEDAW/C/SWE/CO/7) (8 April 2008) para 23.

⁹⁰ See ‘Sweden’s follow-up of the Platform for Action from the UN’s Fourth World Conference on Women in Beijing (1995) covering the period between 2009 and 2014.’ (U2014/240/ JÄM).

⁹¹ See The Swedish Women’s Lobby Paper ‘Living Up to CEDAW– What Does Sweden Need to Do?’ (2015)

This criticism is amplified when considering the other Nordic countries use an amalgamation of legislation *and* self-regulation⁹², particularly Finland's SRO⁹³ which has recently been held up as a leading light in self-regulation.⁹⁴ However, some academics⁹⁵ have argued that SROs and in particular the RO of Sweden are highly effective as a 'third way' of naming and shaming bad or distasteful advertisements and brands. This 'third way' of the naming and shaming is apparent in almost all SROs across the continent and has left a void for the final form of regulation to develop: non-state actors. NGOs, campaigners and grassroots activists have blossomed in Sweden due to lack of meaningful government intervention. Extending the pillory strategy through public campaigning, this grouping has carved out a space in which to actively hound advertisers that fall foul of their arbitrary rules through social media. Digital campaigns in conjunction with other digital feminist groups have coerced the RO to take a tougher stance removing gender stereotypes in advertisements. The Swedish Women's Lobby is one of the strongest consortiums in this grouping and have been involved in pressuring the current SDP government and the RO to toughen their stance on advertising since 1997. Made up of 47 members, the SWL have set up their own alternative to the RO 'AdWatch'⁹⁶ which encourages consumers to report any form of sexist advertisement to the organisation. The organisation has been successful in its approach to the issue by successfully attracting younger consumers to report sexist adverts through the hashtag #reklamara. The hashtag initially began via AdWatch Facebook page⁹⁷ with users posting sexist adverts but has since move beyond Facebook and appeared underneath sponsored adverts on Twitter and Instagram. As well pressuring advertisers and brands, the campaign's advocates for the revival of legislation on gender stereotypes in Sweden. At the time of writing, the #reklamara has dissolved into the ether of other social media hashtags in Sweden but campaigns such as #reklamara demonstrates

⁹² Niina Kosunen, Anna Rosa Asikainen, Guðný Gústafsdóttir, Heidi Haggrén and Karolina Lång 'The Nordic Council of Ministers The Regulation of Gender Discrimination Advertising in the Nordic Countries' (2017) <<https://norden.diva-portal.org/smash/get/diva2:1108955/FULLTEXT01.pdf>>

⁹³ Finland's SRO, The Council of Ethics of Advertising is available online. See: <<https://kauppakamari.fi/en/boards/council-of-ethics-in-advertising/>> (accessed 21st October 2017)

⁹⁴ Since the EASA's first gender portrayal report (EASA Gender Portrayal Report May 2008) Finland has been deemed as the most effective SRO within the EU28. See also 'Finnish advertising watchdog gets tough on gender stereotypes' Helsinki 24th July 2017. https://yle.fi/uutiset/osasto/news/finnish_advertising_watchdog_gets_tough_on_gender_stereotypes/9734504

⁹⁵ Op. cit., Kosunen

⁹⁶ Swedish Women's Lobby 'Ad Watch' and 'Reklamara' available online <http://sverigeskvinnolobby.se/en/project/ad-watch/> date accessed 21st October 2017

⁹⁷ See <https://sv-se.facebook.com/reklamara/>

some of the issues with online movements. Whilst online campaigns are good at directing audiences to engage and critique advertising, the consumer traffic is ultimately moved away from the complaints procedure that may have at least some impact. Adverts are often criticised online, and social media websites provide easy access to express such critique, however, 4,000 angry comments underneath a washing-up liquid advert on Facebook does not amount to an official complaint. Secondly, online campaigns often reach their peak and fade out – this problem is common across most anti-sexist movements; the UK's Everyday Sexism Twitter campaign has similarly dwindled over time, acting as a community rather than a campaign.⁹⁸ Finally, online campaigns do not always result state intervention or legislation. Instead, the campaign acts a rouse – an online debate – but with little sanctioning in place. This idea will be discussed in the final case study with the 'Beach Body' campaigns in the UK.

7.3 Spain

In contrast to Sweden, the Spanish Parliament has opted for legislation to tighten regulation of gender stereotypes in advertising. As stated in the introduction, tackling gender stereotypes in Spain operates under the guise of wider measures aimed at reducing domestic violence and gender-based violence. Comparatively, this is an unusual approach and this section of the chapter discusses how and why Spain equates sexist advertising to violence against women. In this section I follow a similar outline as the previous by providing an historical backdrop as well as the political shift that led to the adoption of the legislation in 2004. I then provide some analysis of the legislation and advertising case law that have derived from both the legislation and the SRO. But first, as with Sweden, it is worth considering the context in which the Spanish modern constitution was born – namely the shift from dictatorship to modern democracy.

This part of the chapter primarily focuses on the modern Spanish constitution of 1978, however the constitutional history of Spain dates back to 1812 when the Cadiz Cortes and Cortes Generales effectively wrote the first constitution *La Pepa* whilst in exile. It is worth briefly highlighting the original liberal democracy-driven freedom of expression underpinning of *La*

⁹⁸ Golbeck, J., Ash, S., & Cabrera, N. (2017). Hashtags as online communities with social support: A study of anti-sexism-in-science hashtag movements. *First Monday*, 22(9).

Pepa as it is regarded by most Spanish constitutional lawyers⁹⁹ and comparative lawyers¹⁰⁰ as liberal use of free press and expression principles. The relatively ‘modern’ Spanish legal system and its constitution begins after the death of General Francisco Franco Bahamonde in 1975. After the death of Franco and the fall of the dictatorship, the constitution rapidly took shape with an election in 1977 and the *Constituent Cortes* (National Parliament) was put in place to oversee the drafting of a new constitution. By 6th December 1978 the Spanish Constitution was ratified. These swift three years of constitutional change were shaped by numerous actors but the most important are the *padres de la constitucion* (fathers of the constitution) that represented the different autonomous regions of Spain. The fathers of the constitution supposedly represent – at least symbolically – the political spectrum as well as autonomous regions of Spain and therefore the constitution is also the result of consensus amongst the leading political parties of the time. These fathers have therefore shaped not only the modern constitution but also the sex discrimination agenda of the early 2000s and the current debates around violence against women.

7.3.1 System of Government and Constitution

The Spanish constitution replaces Franco’s complex *leyes fundamentales* with a simpler constitution based on popular sovereignty and the creation of bicameralist Parliament: i.e. a congress and senate. The constitution is influenced by western post-war European constitutions – predominantly West Germany and Italy.¹⁰¹ This is largely due to the reunification of those states and Spain’s efforts to respect its own quasi-independent regions. The constitution is in stark contrast to the four decades of Franco’s regime that had preceded it and the constitutional character reflects the nation’s shift to a more human rights-based approach. Principles such as gender equality, freedom of expression and political freedoms such as the right to form a political party and freedom of assembly echo the bad times of the past. The political freedoms, such as the legalisation of political parties and freedom of assembly rights have led to some problems, for example the Basque region was not represented in the constitutional negotiations, and this ultimately led to its separatism and the ETA resurgence and deadliest period (1978-

⁹⁹ Villiers, C., (1999). *The Spanish Legal Tradition: An introduction to the Spanish law and legal system* pp.8-9

¹⁰⁰ Roberts, S. G., & Sharman, A. (2013). *Echoes: The Cadiz Constitution in Hispanic History, Culture and Politics. Newcastle upon Tyne: Cambridge Scholars Publishing.* p.394.

¹⁰¹ Op. cit., Villiers, C. (1999) p.21

1980)¹⁰². This consensus-based regionalist approach to the constitution has also led to division in the legal system, which will be addressed later in the chapter. The structure of the constitution is complex in comparison with Sweden; therefore, I will summarise only those elements that are important for the creation of legislation in the field of sex discrimination in advertising. As a starting point, it was clear from 1976 that Spain wished to join the EEC¹⁰³ and therefore wished to aim for – and present itself as – a liberal democracy with a legal system that protects fundamental human rights, particularly the rights of women.¹⁰⁴ Balfour and Quigora have argued that the re-writing of the Spanish constitution was an opportunity – as with reunified Germany – to start afresh and provide a constitution that heals old wounds and protects all citizens.¹⁰⁵ This is certainly true on the surface: from constitution's preamble there are principles on the protection of rule of law, human rights, rights of minorities and equality between men and women.¹⁰⁶ However, it was during the early years of Spain's accession to the European Economic Community (EEC) that the development of Spanish discrimination policy fully emerged. Since joining the EEC in 1986 Spain was fraught with EU supremacy issues¹⁰⁷ due to the Spanish constitution's promise to protect and respect the different autonomous regions of Spain.¹⁰⁸ Therefore, the autonomous communities within Spain is another important element of the constitution and a quirk of the Spanish legal system. This is a significant factor as the test case for sex-discrimination in advertising (RyanAir case) that took place in the regional court Malaga, which receives autonomous protection. For Villiers, the autonomous regions (and courts) of Spain are the most intriguing and important factors of the country's constitution and political make-up.¹⁰⁹ Prior to the civil war in 1936, Spain

¹⁰² A spike in the number of killings was recorded between 1976-1980 and 90% of ETA victims were killed after the end of transition. See Buck 'After Eta: Spain's History of Violence' *Financial Times* (London 27th January 2017)

¹⁰³ Spain issued its first application to join the then EEC in 1962 under Franco but was formally rejected by all Member States. Just one month after the Spanish election the Government formally requested to join the EEC on 22nd July 1977. The length of the negotiating process (1977-1986) reflects the legal, political and economic concerns Brussels had with Spain.

¹⁰⁴ Chapter 2 the 1st Article provides for equality between men and women

¹⁰⁵ Balfour, S. and Quiroga, A., 2007. *The reinvention of Spain: nation and identity since democracy*. Oxford University Press. pp.122-123

¹⁰⁶ Section 14 provides for equality between men and women and section 35 provides for non-discrimination in the work place and Section

¹⁰⁷ Op. cit., Villiers, C. (1999) p.141

¹⁰⁸ Antonio Moreno Juste and Cristina Blanco Sío-López 'Spain and the European integration process' (8th July 2016) <https://www.cvce.eu/content/publication/2010/5/11/bf91b328-fbed-4a65-9a3b-eadc21a7e831/publishable_en.pdf >

¹⁰⁹ Op. cit., Villiers, C. (1991) p.81

recognised just three regions that had developed comprehensive forms of autonomy: The Basque, Cataluña and Galicia. Although Spain had operated as a unitary state for the previous 150 years, these regions were important post-Franco and received special attention due to the fact that the regime had crushed all notions of autonomy through suppression of cultural difference. Moreover, these regions suffered the most in terms of torture, murders and political persecution. The efforts by the founding fathers resulted in the creation of *Stado de las Autonomías* (state of autonomies) which is found in Article 2 of the constitution. This Article seeks to balance unitary state and self-governance. As Villiers states, Spain is ‘...a form of federalism characterised more by interdependence, concurrence or cooperation than by independence’.¹¹⁰ There are numerous problems with the *Stado de las Autonomías* – primarily (in)flexibility which has led to confusion and uncertainty over legal precedence – which is significant for the Ryan Air test case. From a technical perspective, the constitution does not provide a definition for what an autonomous region is nor what powers the region has. On a practical level, the structure is confusing: there are now 19 *autonomías* (including the autonomous cities), which provides for less cohesion but more importantly provides for political diversity. Article 137 of the constitution goes some way in explaining the principle of co-existence of legal systems and how the duality of state and region can operate. Since 1978 the legal system(s) have developed a parallel body of law: the regions and state co-exist with the constitution acting as a bond between the two. The *autonomías* can be considered as a ‘mini state’¹¹¹ with its own president, government, administration and subsequently its own legal personality.

The *autonomías* have their own legislative powers however these can be limited or even modified by *ley organicas*¹¹² (substantive or fundamental laws) if regional law is seen to be *ultra vires* or falling below the standard of national legislation. *Ley organicas* are central to the state powers held within the constitution and usually relate to laws surrounding fundamental

¹¹⁰ *ibid.* p.81

¹¹¹ *ibid.* p. 83

¹¹² Unlike other Spanish legislative instruments, *Ley organicas* require an absolute majority in the congress.

rights or civil liberties.¹¹³ *Ley organicas* can be separated from *ley ordinarias* in that the former requires an absolute majority from congress members whereas the latter requires just one third of the vote.¹¹⁴ The legislation covering sexist content in advertising and violence against women derives from a *ley organica*, and is therefore symbolically perceived as an outlandish manoeuvre.

7.3.2 Criminalising *Machismo*: Gender Equality and ‘La Nueva Via’

Spain under the Socialist Party (PSOE) progressed dramatically during the 2000s, particularly with gender equality legislation and policy. President Rodriguez Zapatero had adopted a similar position (*Nueva Via*) to Tony Blair and Bill Clinton’s *third way* and ran the Socialist Party’s election campaign on the promise to tackle the wider social issues of the day in exchange for neo-liberal economic policies. From Zapatero’s move from general secretary to leader of the PSOE, three main legislative aims were made clear in the party’s manifesto: sex discrimination, gender-based violence and same-sex marriage. Zapatero’s premiership (2004-2011) saw Spain enter a further stage of political integration into the EU or as Kennedy states, the Socialist party were keen to embrace the political ‘modernisation’ and ‘Europeanisation’ of Spain.¹¹⁵ Zapatero was also keen to heal the wounds of the past too – removing the final Franco statues and setting up a memorial commission to resolve the horrors of Franco’s white terror (mass killings). The regulation of gender stereotypes in advertising is therefore merely part of the wider picture of legislation that was adopted under a gender equality reform. Laws on employment, political and economic representation, and gender mainstreaming (3/2005), same sex marriage law including adoption rights (13/2005) childcare and paternal leave law (3/2007) gender identity and transgender rights¹¹⁶ were all enacted within the first parliamentary term.

¹¹³ Article 81 (1) of the Constitution states: "Organic laws are those relating to the development of fundamental rights and public freedoms, which approve the Statutes of Autonomy and the general electoral system and other provisions of the Constitution."

¹¹⁴ Article 81.2, states: "The approval, modification or repeal of organic laws will require an absolute majority of the Congress, in a final vote on the whole project."

¹¹⁵ Kennedy, P. (2001). Spain's 'Third Way': The Spanish Socialist Party's utilization of European integration. *Journal of Southern Europe and the Balkans*, 3(1), 49-59.

¹¹⁶ Between 2009-2016 some of the *Autonomías* – Andalusia, Cataluña, The Basque, Galicia and Navarra

7.3.3 Gender Violence Act 2004

On October 7th, 2004, the Spanish Congress erupted into cheers and applause as its members passed a draft of *ley organica* 1/2004. Zapatero's socialist party had secured a strong majority of 320 votes from members across the political divide to ensure his first piece of legislation as Prime Minister of Spain would enter the constitution. The full title of the legislation – 'Integrated Protection Measure Against Gender Violence'¹¹⁷ – gives some indication of what the legislation entails, however as the list of measures is vast, I will concentrate on providing analysis of significant elements. Contextualising this legislation is necessary to understand how the act became Zapatero's first constitutional change but also paint a picture of the magnitude of the task.

7.3.4 Background to the Act

There are numerous problems when discussing gender-based violence from a Spanish context. Firstly, due to the dictatorship, there is very little data or literature on the subject and secondly, due to censorship and cultural control, some of the stories that have been told since are either misunderstood or deemed as political propaganda.¹¹⁸ What is certain is that women's position under the regime was one of persecution, forced labour,¹¹⁹ sexual violence and *las mujeres desaparecidas*¹²⁰ (the missing women). As quick as the civil war brought feminism to Spain life for women under Franco quickly reverted to pre-civil war conditions: legislation influenced by Napoleons Civil Code positioned women as minors, prohibited contraception and divorce and gender segregation in school and work was enforced.¹²¹ In Franco's Spain, domestic violence was treated strictly as a private or family matter¹²² and hence post-Franco, this traditional view remained despite early legislative attempts in the 1980s to combat gender-

¹¹⁷ Ley Organica 1/2004 Medidas de Protección Integral contra la Violencia de Género. 28th December 2004 (BOE-A-2004 -21740)

¹¹⁸ Heras, M.O. (2006). Mujer y dictadura franquista. *Aposta. Revista de Ciencias Sociales*, (28), pp.1-26.

¹¹⁹ Mendiola Gonzalo, F. (2011). Forced labour in Franco's Spain: Workforce supply, profits and productivity

¹²⁰ 'Los desaparecidas de Franco' *El Mundo* 7th July 2002 'The disappeared under Franco' (accessed 21 April 2018)<http://www.elmundo.es/cronica/2002/351/1026114970.html>

¹²¹ 'Women under the dictatorship of Franco' / la mujer durante el franquismo. National Archives <http://www.vallenajerilla.com/berceo/garciacarcel/lamujerduranteelfranquismo.htm>

¹²² Mar Camarasa 'Gender Violence Effects Indicators, National Report on Spain' http://www.surt.org/gvei/docs/national_report_spain_def.pdf accessed 21 September 2017

based violence. Because of this traditional view and the 40 years of a dictatorship, there have been very few government policies, regulations or legislative measures to tackle the problem. According to the United Nations,¹²³ prior to accession to the EEC in 1986 Spain had adopted just one preventive measure – the constitutional amendment of 1983 on equal opportunities at work. Various pieces of legislation have been passed in Spain but were nonetheless limited to outside the private sphere – victims of violent crimes act 1995 and EU Directives such as the Anti-Trafficking Law. Education was segregated under Franco and the state educational programme *Formacion del Espiritu Nacional* (formation of the national spirit) produced essentialist ideals: men were trained for either the military, politics or hard labour and women for home life, motherhood and music. Therefore, the history of violence against women and the educational impetus to segregate sex in Spain has played its part in shaping the political agenda and Zapatero's motivation to combat gender-based violence and define the representation of women (i.e. in advertising) as a form of gender-based violence. In addition to the stigma from the Franco era, the second influence for legislation was a spike in the number of victims of gender-based violence in Spain during the 1990s and early 2000s. One particular case, that of Ana Orantes, caused a public outcry when the 60-year-old was thrown off her balcony and set alight by her husband. At the beginning of the millennium, Spain had one of the highest rates of gender-based violence in EU¹²⁴ and Zapatero's Socialist party promised to take control of the crisis and provide legislation.

The Gender Violence Act was therefore a product of rising 'intimate partner violence', the increased public discourse and political parties' engagement with women's groups¹²⁵ in Spain.¹²⁶ The Act covers numerous provisions that seek to tackle gender-based violence in Spain and establishes a new court *Juzgados de Violencia Sobre la Mujer* (Violence Against the Woman Court). However, the act is limited on two fronts: firstly, due to characterisation of one type of gender violence – that arising in an 'intimate relationship'. Secondly, the act places

¹²³ United Nations Global Database on Violence Against Women (Spain) <<http://evaw-global-database.unwomen.org/en/countries/europe/spain>> accessed 14 July 2017

¹²⁴ Despite the Organic Act of 2004, so far 2017 has the highest number of reported gender violence related crimes. <https://www.thelocal.es/20180312/violence-against-women-in-spain-highest-ever-in-2017> (accessed 21 April 2017)

¹²⁵ García, E. (2016) 'La génesis de la política del gobierno central contra la violencia de género en España: ideas, prioridades y policy change' in M. La Barbera and M. Cruells (Eds.) *Igualdad de género y no discriminación en España: evolución, problemas y perspectivas*. Madrid: CEPC, 395-423.

¹²⁶ Op. cit., Martin-Llaguno, M (2016)

onus on the victim to denounce the perpetrator in order to instigate the act's mechanisms. The act does however break from Spain's past in positioning gender violence as a public problem that all institutions must address through prevention, protection and sanction.¹²⁷ As part of the drive to place responsibility on state institutions, the act places obligations upon advertisers and prohibits 'commercial communications' in two broad ways a) use a woman's body (or part of it) detached from the advertised object (reification)¹²⁸ or b) uses an image that portrays women in stereotyped behaviour(s). Within the act's preamble, this provision falls under an educational sphere, however the main provision, Article 10, positions the prohibition of sexist advertising as a human dignity facet. The main provision is an amendment of Article 3(a) of the Advertising Act 34/1988, which now prohibits advertisements which 'act against the dignity of persons or are contrary to the values and rights enshrined in the Constitution' such adverts shall depict 'women in a degrading manner, either by directly using their bodies or parts of the same as a mere object unrelated to the product being promoted' or 'associating their image to stereotyped roles antithetical to the principles of our law'. The most significant and important element of the act is that it depicts sexist advertising as contributory to the violence referred to in the act. As the law is positioned as a fundamental right embedded within the constitution, the Spanish ban on advertising is contrary to Sweden's notion of market-driven freedom of expression as it promotes the ban as a constitutional human right. The act also provides more powers for *Observatorio de la Imagen de las Mujeres* – Women's Image Observatory (OIM). The observatory was established in 1994, six years after the initial Advertising Act (34/1988) was implemented. The new powers provide that the OIM can advocate on behalf of the complainant and pursue a case to court. The act also included the launch of the National Plan whereby all public authorities must produce and promote information and awareness campaigns on how to raise a complaint under the legislation. Awareness programmes, according to Gonzalez,¹²⁹ have been the most effective element in the implementation of the act. Through the work of women's groups and NGOs, protests and sit-ins have become regular occurrences in Spain. This dualistic approach – targeting the general public as well as the regulators – has led to gender violence being brought to the foreground in public debate and vilification of sexist advertisements.

¹²⁷ Alberdi, I & Matas, N. (2002) Report on Domestic Violence in Spain. La Caixa Foundation. Barcelona

¹²⁸ Spanish translation of reification = *cosificación* (objectification)

¹²⁹ Rodriguez Gonzalez, A. "Ongoing and errant reforms in discriminatory illicit advertising. On the subject of the Ryanair Sentence", in Competition and Distribution Law Magazine, number 14,



Figure 28 Multiópticas Protest in Seville May 2015

For example, the optician ‘Multiópticas’ was forced to withdraw its TV advert which depicted women as ‘accessories’. Women’s groups, along with NGOs, were quick to identify the advert and co-ordinate small protests, but most importantly, to film the sit-ins and share them on social media platforms.¹³⁰ Aside from out-of-court settlements and protests, the act has provided a formal legal remedy, however this has resulted in just one decision, the RyanAir Calendar test case in 2013.

7.3.5 Ryan Air Calendar Case

As with most Spanish legislation, the Gender Violence Act was delegated to Spain’s regional *autonomías* through numerous protocols and regional provisions. Thus far, the RyanAir case is the only litigation to have been instigated by the legislation through the Malaga court in the Andalucía region.¹³¹ The RyanAir calendar had previously caused controversy across the EU since its creation in 2008, particularly in the UK where the calendar’s proceeds were donated to a charity. The calendar depicted female airhostesses in lingerie representing different countries for each calendar month. Some of the adverts that ran simultaneously with the

¹³⁰ Visual artist Yolanda Dominguez filmed the protest and shared the video on YouTube in May 2015. At the time of writing the video has been viewed 160,00 times the video went viral on Facebook and has been shared 120,00 times.

<https://www.youtube.com/watch?v=4WnFqk7aXaI&feature=youtu.be> (accessed 14 July 2017)

¹³¹ Judgment of the Mercantile Court of Malaga of December 5, 2013 RyanAir Case (JUR 2013/375143).

campaign also featured airhostesses or models in lingerie and one advert depicting an adult model in school uniform. The advert prompted three responses in the UK: an online petition initiated by a RyanAir hostess which received 11,000 signatures,¹³² an inquiry from the UK's Advertising Standards Agency which received 10 complaints and an investigation by the UK's Office of Fair Trading (OFT).



Figure 29 RyanAir Advert that featured in three UK newspapers in 2011

7.3.5.2 Reification of women

“In Spain we can say that the principle idea behind this law is about the reification of women... yes, it is the objectification, the attack on women... the assault of women and their bodies. The second [principle] is about the stereotyping, the limiting of women’s lives”¹³³

(Lawyer and Professor of Spanish Constitutional Law Anonymised)

All three of the above responses were based on consumer’s unease towards the adverts who felt that it used both outdated sexist images¹³⁴ and objectified both the hostesses and women in general. Adverts linked to the calendar (including the tagline ‘red-hot fares and crew’) were subsequently banned by the ASA in 2012. The case received attention from both the Spanish

¹³² Change.org ‘Stop Selling Your Staff’ received 8,000 complaints in just over a week and was delivered to the U.K’s regulatory body Advertising Standards Agency. For the campaign see <https://www.change.org/p/ryanair-stop-selling-your-staff>

¹³³ Interview Gothenburg (September 2015)

¹³⁴ The ruling no longer exists on the ASA website, however the Guardian Reported the ruling. See Mark Sweeney ‘ASA Bans RyanAir ad’ *The Guardian* (London 5 February 2012) <https://www.theguardian.com/media/2012/feb/15/asa-bans-sexist-ryanair-ad> (accessed 21 September 2017)

and international press, which subsequently ignited public debate on what sexist advertising is, whether it could be linked to domestic violence and how such companies should be sanctioned. At the time, there was a spike in the number of general complaints made about sexist content to the advertising observatory (OIM).¹³⁵ In November 2012, the RyanAir calendar was released and advertised across most EU Member States both online and in print. In Spain, a women's group, Tyrius and consumer group, Adecua, issued a joint formal complaint to OIM and requested a test case using the Gender Violence Act. The joint complainant's argument maintained that the advert contravened Article 3 of the act, which prohibits the reification of women, arguing that the women are positioned as 'mere objects' with 'no connection' between the image and product/service (air fare prices). The advert also featured the slogan "*Tarifas al rojo vivo. ¡Y la tripulación!*" ("The tariffs are red hot and so are the crew!") which the complainant argued conveyed clear sexual connotations.



Figure 30 Screenshot from RyanAir online banner advertisement. 'Click here to buy the RyanAir crew's charity calendar'

¹³⁵ In 2012 OIM received a total of 1,002 complaints, with 33 advertising campaigns struck down informally.



Figure 31 Screen shot from RyanAir online banner advert 'the fares are red hot and so are the crew'

In the judgment, the court agreed that the advert reified women by positioning the stewardesses in 'clear sexual invitation'. The court also agreed with the juxtaposition argument made by the complainant; the bikini clad stewardesses had 'absolutely no connection whatsoever' with the product. The use of a female body was deemed artificial and the calendar was clearly used as a tool to entice customers onto the website. The court goes on to point out that although it is obvious that the average citizen will not be offended by women in bikinis, they may be dismayed to see the reification, the juxtaposition and the dignity of women under attack. As the women in the RyanAir advert are reduced to mere objects to attract attention, regardless of the content of the adverts content the court condemns the airline and asked for the removal of the advert from the website and online advertising. The significance of the complainant's reification argument is important when compared to an earlier decision made by the ASA in the UK. The ASA 'froze' sales of the calendar and banned the advert the previous year for merely being 'offensive' and the 'stance and gaze' of the models sexually suggestive. As the ASA decision has been removed from the website, it appears that the crux of the ban rests on the fact that the adverts were published in newspapers – and was therefore considered *more* offensive or disrespectful than in other advertising platforms. The ASA appear only to have reacted to the adverts due to the accessibility (i.e. traditional forms: billboards, newspapers) rather than the content of the images. However, the Spanish RyanAir case is comprehensive and considers the calendar and adverts as distasteful irrespective of the mode of advertising. This distinction between 'traditional' and 'modern' forms of advertising is discussed later in the self-regulatory section of the UK.

7.3.6 Self-regulation

‘...we have this normative gender violence [act] but [it] must to be backed up by an appeal [process] ... self-regulation cannot work [just] with ‘good will’. No. There must be an authority in Spain that [takes] seriously the gender violence principle in the act.... To remove the adverts before they are broadcast’

(Spanish Lawyer, Anonymised)

In addition to Spanish Gender Violence Act, Spain has had a similar self-regulatory body to Sweden in place since 1997, which was born out of the Advertising Act of 1988. The regulatory authority, Autocontrol is an independent organisation that loosely follows the ICC ethical standards of advertising but was set up to fill in the gaps left by the Advertising Act. Article 10 of the APP code provides remedies for the sexualisation of women and adverts that use outdated gender stereotypes to sell a product. At the time of writing, Autocontrol is bolstered by the Gender Violence Act and consequently has numerous ongoing cases on the reification of women and gender stereotypes in advertising. The complaints procedure is a straightforward online system and the jury is quasi-independent of the SRO as it is appointed its Director General. The jury is made up of advertisers and media experts but not lawyers which reflects the trend across Europe as SROs are slowly replacing its legal team with advertising industry members. The Jury reaches a decision based on the SRO’s ethical framework as well as the Advertising Act 1988 and it may also wish consult further industry-based regulators such as the beer and spirits advertising regulatory body. Although there are numerous individual advertising agencies attached to various industries, the current trend indicates that the majority of complainants are passed over to Autocontrol. If an advert is deemed to have breached the either the SRO code or legislation, the advertiser is asked to modify or terminate the advert. The RyanAir case highlights the involvement of NGOs and outsider organisations in this process, in particular OIM, one of the largest organisations and now runs parallel to Autocontrol however watchdogs such as Siamura¹³⁶ are also filling the void. This is very much a ‘who’s watching the watchmen’ approach to self-regulation. Siamura notes that ‘we need[ed] the observatory to ensure that they [advertisers] cannot make these adverts in Spain... the guidelines are [sometimes] too basic’.¹³⁷ A further pair of eyes on the

¹³⁶ Siamura is primarily a Spanish advertising observatory collating evidence and complaints against advertising with sexist content See <http://siamura.eu> accessed 21 September 2017

¹³⁷ Skype interview Siamura (May 16, 2016)

problem adds pressure to Autocontrol but also provides a voice to the changing attitudes of complainants as well as informing the general public of the complaints procedure. In contrast to Sweden, pressure groups such as OIM and Siamura work alongside the government bodies (OIM currently advises governmental departments such as Health & Social Services and Equality) rather than as an external pressure group.

The most significant facet of Autocontrol is the pre-screening provision, Copy Advice. It is a non-binding service that assesses an advert or a wider advertising campaign's suitability prior to its production and distribution. Copy Advice is marketed as a legal team embedded within the Technical Office of the SRO. Copy Advice therefore acts as a quasi-guarantee that the advert will at least not fall foul of the legislation or regulatory code. It is therefore somewhat of a compromise due to the SRO losing its legal team and status during the 1990s. In 2013 Copy Advice published its most recent report with 0.24% of consultations resulting in a breach of the ethical code or what may be deemed reification of women. Of this figure, 43% were related to the 'dignity' of women 37% related to the juxtaposition of women's body and 20% involved outdated gender stereotypes. Despite this pre-screening advice centre, the actions are limited to advisory role and numerous companies pursue with their advertising campaign irrespective of the advice. Moreover, the advice can cynically be deployed by advertisers as a defence when an advert receives complaints.¹³⁸ The Autocontrol wing of the Spanish regulation system has in the recent years come under fire for failing to raise awareness about its powers as an SRO. This is a common criticism amongst academics and the OIM. Autocontrol has been forced to 'relaunch' frequently, in particular in 2010 the SRO received heavy criticism from the European Commission as it failed to meet the expected targets from the roadmap to Equality Programme. In 2011 Autocontrol had a major relaunch with TV, online and traditional billboard adverts to raise awareness of its 'position, powers and sense of justice'.¹³⁹

Since the Gender Violence Act, Spain has witnessed radical economic, political and social change which has placed gender equality concerns firmly on the back-burner. The fall-out of the Madrid terrorist attacks in 2004 followed by the 2007 economic crisis which pushed

¹³⁸ RyanAir sought advice from Copy Advice prior to their campaign. As the company has a history of complaints, the Spanish SRO asked the company to seek advice prior to the campaign. The advice was later used as a defence in the Ryan Air Calendar case.

¹³⁹ See <https://www.marketingdirecto.com/marketing-general/publicidad/autocontrol-volvera-a-hacer-campana-publicitaria-este-verano>

Zapaterro's personal ratings down reshaped public opinion and the wider raft of social reform was replaced by tighter security and austerity measures. In 2008 conservative opposition leader Mariano Rajoy gained the support of Nicolas Sarkozy and Angela Merkel and by the end of the decade the PSOE were all but replaced by Spanish conservatism. In 2011 Spain had one of the highest unemployment rates in the EU¹⁴⁰ and the general election was won by Rajoy's promise to decrease the deficit, increase employment rates and deliver educational reform. Gender equality reform switched to regression particularly abortion rights and cuts to women's key services. Although there is no clear correlation¹⁴¹ between unemployment and femicide in Spain, there has been a sharp rise in deaths and a general increase in the number of reported domestic violence cases¹⁴². Arroyo and Coronas have highlighted that in certain autonomous regions, femicide and domestic violence has fallen, however in predominantly southern regions there has been a spike in gender-based violence. Since records began in 1982, femicide rates peaked in Spain in 2008 (76 deaths) and continue to remain in the mid-70s.¹⁴³ Martin-Llaguno has argued that the Gender Violence Act has made reporting domestic violence easier and therefore may account for the increase, however the reporting appears to be where the issue ends. The recent death of Ana Gomez highlights this issue and has galvanized women's groups across country to seek reform. Gomez was a victim of domestic violence in the northern region of Galicia and turned away numerous times from a women's refuge. It was unclear if Gomez's death was caused by the women's hostel's poor training, lack of funding or police austerity cuts.¹⁴⁴ Campaigners and NGOs have nonetheless utilised the case to increase budgets and secure changes to the Gender Violence Act. Critically, the amendments to the Gender Violence Act do affect the advertising section and irrespective of RyanAir Calendar test case there appears to be little progress in tackling sexist advertising in Spain. As Martin-Llaguno states, the core problem lays in the foundations of the act – namely the legal ambiguity of the terms

¹⁴⁰ Tim Burridge BBC London 23 January 2012 <http://www.bbc.co.uk/news/world-16754600> (accessed 3 October 2017)

¹⁴¹ Torrubiano-Domínguez, J., Vives-Cases, C., San-Sebastián, M., Sanz-Barbero, B., Goicolea, I., & Álvarez-Dardet, C. (2015). No effect of unemployment on intimate partner-related femicide during the financial crisis: a longitudinal ecological study in Spain. *BMC public health*, 15(1), p.990.

¹⁴² Arroyo, A. and Coronas, C. (2017). Intimate Partner Violence in Spain: Medical and Legal Aspects. *GSLJ Forensic Res*, 1, p.103. see also BBC report on Spanish Femicide <http://www.bbc.co.uk/news/world-europe-40715325> date accessed 3 October 2017

¹⁴³ *ibid* pp.105-8

¹⁴⁴ *El Progreso* (Santiago de Compostela 23 February 2016) <http://elprogreso.galiciae.com/gl/noticia/510996/ve-la-luz-niega-que-los-hijos-de-ana-gomez-hayan-estado-desamparados> (accessed 3 October 2017)

‘reification’ (in this case, objectification) and gender stereotypes which have hampered attempts to bring an action as well as the application of law.¹⁴⁵ The RyanAir case provides slight development of the two terms, mostly reification however the case yet to be followed. Despite numerous training programmes and public awareness campaigns set up by Autocontrol there has been little guidance on what is meant by the terms covered in the act: reification, sexualisation and gender stereotypes. Martin-Llaguno argues that precedent has been set on the definition of objectification and sexualisation in advertising by the work of Autocontrol¹⁴⁶ and its decisions since 2010. However, as Gonzalez states, neither Congress, the Gender Violence Act or Autocontrol have yet to provide separate explicit and unequivocal guidance on how the terms in advertising should be interpreted by the courts.¹⁴⁷ The act’s application is according to Martin Llaguno inadequate: if it is applied broadly it will inevitably catch all forms of gender stereotypes that may or may not appear sexist – if applied narrowly then advertisers are at liberty breach both the Act and the SROs code. The same criticisms of the gender violence therefore apply to Autocontrol. The lax and vague definitions of reification, sexualisation and gender stereotypes are problematic and the case law of Autocontrol rarely develops these terms. The monitoring of the case law of the SRO has shown that the jury often over-complicate the definitions (for example reification) which leads to confusion in the decisions. The most problematic definition with Autocontrol and the RyanAir case seems to be defining gender stereotypes. In light of this, Roderiguez and Tato Plaza offer new wording for the act and SRO code. A gender stereotype should be: (a) when they appear playing a role traditionally associated with females and (b) in the advertising message it is clear that this task uniquely belongs to the female population. The untangling of the definition of gender stereotype is slowly changing through the case law of Autocontrol and the Cillit Bang case is a good example of the problems with the act and Autocontrol’s lack of guidance on sexist content, lack of scope for online content and issues surrounding the pre-screening legal team within Copy Advice.

¹⁴⁵ Op. cit., Martin-Llaguno (2016) p.181

¹⁴⁶ Beltrá, M.N. and Llaguno, M.M., 2011. El sexismo publicitario: delimitación de conceptos e indicadores de género. Estudio empírico de la producción científica. *Pensar la publicidad*, 5(1), p.51.

¹⁴⁷ González, R. (2008). Aportaciones de la Ley de medidas contra la violencia de género a la prohibición de publicidad discriminatoria. *Revista de derecho de la competencia y la distribución*, (2), pp.145-160.

7.3.7 Cillit Bang Case

In 2015 Reckitt (Cillit Bang) produced an advertising campaign depicting 30 women discussing their cleaning experiences via the use of pseudo ‘vlogging’. Of all 30 of the vlogs not one featured a man using the toilet cleaning product. In its ruling¹⁴⁸ Autocontrol stated that the advert featured outdated ‘stereotypical behaviours with a clear allocation of role by gender’. Autocontrol specifically highlighted two elements that had led to the breach of Article.10 of the code: (i) an integrated campaign of three separate adverts each featured exclusively women; (ii) all the advertisements had common characteristics: a collage of photographs of the alleged product users (all of them women) and a voiceover of one of the users explaining how to use the product (iii) during the closure of the advert a woman’s voice says: "Try it and tell us yourself!".



Figure 32 Screen Shot from Cillit Bang Advert (2015)

Reckitt’s defence to the complaint was that despite the advert featuring only women, it did not position them inferior to men and the cleaning products are mainly bought by women. This last factor is quantified by multiple online surveys, questionnaires and focus groups collated by the advertising company. Reckitt also gained the clearance of Autocontrol’s pre-screening service, Copy Advice. Reckitt’s argument was rejected, and the advert subsequently banned from Television, however, not from online platforms. The significance of this case is partly in Reckitt’s marketing research and its defence that the advertisement is a reflection of Spanish society. Reckitt’s argument is that it neither reifies/objectifies women, and because it reflects

¹⁴⁸ Resolución 29/10/2015 : Asociación de Consumidores en Red vs. Reckitt Benckiser España, S.L. “Cillit Bang” http://www.autocontrol.es/pdfs/pdfs_resoluciones/rest1950.pdf

Spanish women's everyday life, there is no harm offence caused as the portrayal of women in the advert emulates a housewife's daily routine and is therefore not an outdated stereotype.

The Spanish self-regulatory system is therefore somewhat akin to the Swedish SRO in that it operates as an independent body with a jury that consists of advertising 'insiders' as opposed to legal experts. It is also sponsored by the same industry insiders and follows a 'weak' reactive code that responds to complaints rather than a proactive one that seeks to pre-empt sexist advertising. However, there are some distinctive elements of the Spanish approach which place it in a better position. Autocontrol's sanctioning powers are substantially tougher and convey the right to ban (or ask the advertiser to amend) the advert as opposed to the mere pillory powers of the Swedish SRO. Whilst there is no unconditional pre-emptive tool, the Copy Advice appears prepared to restrict adverts that breach the code or act when compared to the Reklamombudsmannen. The fundamental difference is symbolic role of the Gender Violence Act has in shaping the Spanish perspective on tackling gender stereotypes. By including sexist advertising in the act, developing a precedent in the courts, the Spanish model purports that there is a clear relationship between advertising and gender violence discourses particularly towards women, irrespective of whether the advertisement perpetuates gender stereotypes or the reification/sexualisation of women. The UK's SRO, which is assessed in next section of the chapter, possesses a very similar code however it has not gone as far as Autocontrol or the judicial review in sanctioning sexualisation/objectification in advertising.

7.4 The UK

An outsider observing the UK would gauge that gender equality ranks high on the list of legislative reform. Over the last 30 years the British government have passed laws on various gender equality related legislation. This was undoubtedly stimulated by membership of the EU but the earlier victories at the dawn of the 1970s, such as the Equal Pay Act (1970), came from grassroots movements and later, political leverage. Since the Equal Pay Act, it would appear that the UK has been on a ceaseless fight to end gender-based inequality: the recognition of marital rape, domestic violence legislation, maternity and paternity laws and transgender recognition are just some of the few areas the judiciary and legislature have sought to develop. 40 years later, the Equality Acts of 2006 and 2010 were designed by New Labour to curb the remaining loopholes that remained in gender equality laws. The gender pay gap has improved dramatically and currently stands at 9.4% and in terms of political representation, women make

up 32% of the House of Commons (compared to just 26 MPS (4.1%) in 1970) 26% of the House of Lords and 33% are local councillors.

Beyond the legislative framework, however, gender equality has a long way to go in the UK. Over the last decade, both NGOs and academics have purported that gender equality legislation has systematically failed women in the UK. Research from the Fawcett society has consistently argued that the gender pay gap is increasing, particularly via austerity measures and amongst low-skilled workers ¹⁴⁹ and that although political representation may have improved, according to the EU Institute for Gender Equality, the UK still only ranks 16th compared with EU28 national parliaments and 18th in media representation.¹⁵⁰ According to the Home Office, gender-based violence has increased five-fold in the period 2009-2012.¹⁵¹ A recent report from the Crown Prosecution Service, shows that whilst the reporting of rape has quadrupled in the last 4 years, the rape conviction rate remains one of the lowest in the EU, ¹⁵² with the dominant discourse surrounding rape still hinging on the notion of ‘real rape’.¹⁵³ Austerity is another factor that has slowed progress in terms of gender equality. Since the financial crash of 2008 and the subsequent response from the coalition Government, austerity measures have been disproportionately inflicted upon women.¹⁵⁴ Research conducted by A Fair Deal For Women has stated that the freezing of welfare benefits and cuts to key services such as shelters and legal aid have disproportionately affected women.¹⁵⁵ Austerity policies tend to harm women more than they do men in society, irrespective of age, class or race.¹⁵⁶ As Conley claims, the Government’s austerity measures have fundamentally failed to recognise how men and women

¹⁴⁹ See Fawcett’s Gender Pay Gap Report from August 2015 <https://www.fawcettsociety.org.uk/the-gender-pay-gap-series> accessed (Accessed 3 October 2017)

¹⁵⁰ See European Union Institute for Gender Equality ‘Women and Men in Decision Making’ in the Gender Equality Index. <http://eige.europa.eu/gender-statistics/dgs/browse/wmidm> accessed 3 October 2017

¹⁵¹ UK Home Office statistics (2013) <https://www.gov.uk/government/publications/an-overview-of-sexual-offending-in-england-and-wales> (accessed 3 October 2017)

¹⁵² See Crown Prosecution Report (2016) and Dodd and Bengsston ‘Reported rapes in England and Wales Double in four years’ *The Guardian* (London 3 October 2016)

¹⁵³ Krahé, B. (2016). Societal responses to sexual violence against women: Rape myths and the “real rape” stereotype. In *Women and Children as Victims and Offenders: Background, Prevention, Reintegration* (pp. 671-700). Springer

¹⁵⁴ <https://thewomensresourcecentre.org.uk/a-fair-deal-for-women-report-2017-part-2-women-speak-out-on-safety-justice-and-support-and-womens-health/>

¹⁵⁵ Fair Deal For Women reported in 2016 that domestic violence shelters and homeless shelters <https://thewomensresourcecentre.org.uk/fair-deal-for-women/> (accessed 3 October 2017)

¹⁵⁶ Ginn, J. (2013). Austerity and Inequality. Exploring the Impact of Cuts in the UK by Gender and Age. *Research on Ageing and Social Policy*, 1(1) p31

live their lives and how the cuts will disproportionately impact poor and vulnerable women because of these differences.¹⁵⁷ Furthermore, the Equality Act has not only unsuccessfully reduced this disproportionate burden it has actively been dismantled by the previous Liberal-Conservative coalition and current Conservative government.¹⁵⁸ Such an assault on women's rights has inevitably kicked smaller issues in the UK – such as legislation on sexist advertising – into the long grass. There have been some tenuous attempts to incorporate sexist advertising into legislation, for example The Equality Act (2010) is the most recent but does not explicitly address the advertising industry however, advertisers should ensure they comply with the duties set out in the Act, namely that they do not discriminate when offering goods and services. The UK government's guidance on this states that as a matter of good practice and business when accessing 'goods, facilities or services fairly, regardless of their age, gender, race, sexual orientation, disability, gender reassignment, religion or belief, and guard against making assumptions about the characteristics of individuals'.¹⁵⁹

7.4.1 Self-Regulatory System

The UK has a raft of legislative instruments, however the main arm of the regulation of advertising derives from the UK's SRO, the Advertising Standards Authority (ASA). The sections of regulatory code that covers sexist advertising is 'taste and decency' and 'social responsibility' and according to Rupert Earle these two classifications of advertising require constant attention due to the changing moral and cultural standards in the UK.¹⁶⁰ Such revisions take place every 5 years and in a report published in the Summer of 2017, the authority has signalled for stronger regulation of advertising that 'feature stereotypical gender roles or characteristics which might be harmful to people, including ads which mock people for not conforming to gender stereotypes'. Advertising and marketing law is somewhat similar to Sweden in that it predominantly relies on industry-led self-regulation rather than legislation or a government regulation. However, ASA is significantly different in its approach – such as its

¹⁵⁷ Conley, H. (2012). Economic crisis, austerity and gender equality: The UK case. *European Gender Equality Law Review*, (2) pp.14-19.

¹⁵⁸ *ibid* p. 18

¹⁵⁹ See the Equality Act Guide Published by UK Equalities Office and British Chambers of Commerce 'What do I need to Know? Quick-Start Guide for Businesses Who Sell Goods and Services

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/85008/business-quickstart.pdf (accessed 21 April 2017)

¹⁶⁰ Crown, G., Bray, O. and Earle, R. (2010). *Advertising law and regulation*. A&C Black pp.849-850

quasi-state-run locus and its appeal system but also in its over-complicated organisational design. The ASA is far more intricate when compared with its Swedish and Spanish counterparts in that it is confusingly made up of various sub-regulatory bodies and appeal organisations. By large, the organisation can be divided in to two bodies: CAP and BCAP.

The Committee of Advertising Practice (CAP) is the main arm of the ASA that produces and reviews the advertising code (CAP code) and regulates non-broadcast (i.e. passive) advertising, for example online advertising and traditional forms such as newspaper and magazine. The broadcast content (i.e. active or live) such as television and radio and is covered by broadcast advertising code (BCAP). Since the Communications Act (2003), BCAP exercises the duties of the UK Office for Communication (Ofcom). As discussed in Chapter 2, duties include logistical responsibilities such as advertising time limits and scheduling requirements. Other duties include the regulation of misleading content and ‘harmful or offensive’ advertising, which are also covered by the CAP code rules. The Advertising Standards (Broadcast) mirrors the ASA in its approach to regulating active advertisements. Despite this division within the organisation, both the CAP and BCAP are fundamentally the same when it comes to defining, regulating and sanctioning sexist content advertising. A copy advice is also available for pre-screening advertisers consent and at present is free of charge. The endorsement of the codes is straightforward, a jury of 12 (usually made up of industry and non-industry adjudicators) will review the advert in question but can be reviewed by an independent panel and subsequently sent for judicial review. The ASA then asks the advertiser to remove (a promise it won’t be shown again) or amend the advert. Certain advertisers with a history of controversy may be asked to send their advertising campaigns to copy advice for pre-screening, although this is rarely requested.¹⁶¹ In this section of the chapter, I will discuss both CAP and BCAP, provide analysis on some of the recent controversial rulings and scrutinise the future outlook of advertising regulation in a post-Brexit UK.

7.4.2 The Codes

The Committee of Advertising Practice (CAP) was established in 1961 and has ever since been made up of industry representatives and at present consists of 12 members, two thirds of which

¹⁶¹ *ibid* p. 806 RyanAir are one of the few companies that the ASA have sent to Copy Advice for all future advertising campaigns

are independent of the industry. This is significantly similar to both the Swedish and Spanish bodies – indeed across all members of the EASA – where the tendency has been to rely on the industry rather than independent adjudicators or lawyers. The CAP code covers advertising through numerous channels that are mainly contractually binding. Essentially CAP covers traditional forms of advertising such as newspapers, magazines, billboards but also adverts in printed material; on posters, cinema, DVD, online adverts (i.e. banners, pop ups and videos) but also any other non-active adverts that include contractual conditions that the advert must comply with the code.¹⁶² The CAP applies with online content, for example Google's and Facebook's advertising contractual conditions meet the code's requirements. The ASA's application of the code is two-fold, firstly in considering complaints about an advert that breaches the code and secondly through extensive training and regulatory projects. BCAP on the other hand covers broadcasting content and is determined by the Communications Act (2003) and covers all advertising from licenced television, radio, teleshopping and interactive TV. This is further licensed by the Office of Communications (OfCom). As discussed in Chapter Two, this type of advertising falls under the AVMS Directive and is subsequently extensively reviewed by the EU institutions. As Earle notes, television has traditionally been the medium which receives the most complaints which highlights the power of traditional modes of advertising.¹⁶³ However, in the last 3 years complaints specifically about sexualisation, objectification and gender stereotypes are generated by advertising from online platforms. As mentioned previously, both CAP and BCAP follow similar guidelines covering sexist content.

The ASA receives around 30,000 complaints per year and are roughly split evenly between broadcast and non-broadcast. Although the complaint procedure is fairly straightforward and transparent, the registration of a complaint is not. Access to the website is clear but due to the complexity of the organisation and who-deals-with-what, reaching the complaint form is a task in of itself. The website now offers a step-by-step guide but is littered with multiple questions and drop-down options (i.e. online behaviour advertisements). The complaints are assessed against the two codes and usually results in an ASA executive decision that there is no need for an investigation.¹⁶⁴ Often an advert may be withdrawn by the advertiser due to negative

¹⁶² An extensive list of forms of advertising is available on the ASA website.
<https://www.asa.org.uk/codes-and-rulings/advertising-codes.html> (accessed 3 October 2017)

¹⁶³ Op. Cit., Crown, Bray, Earle, (2010). p.855

¹⁶⁴ *ibid* pp.828-829

media coverage or the sheer number of complaints received. With the increase in use of social media, controversial adverts are often picked up by campaigners, activists and NGOs and dispelled within in days, rendering the ASA's proactive component void. Some complaints are dealt with informally and are listed online, however there is no mention of what the original specific complaint was about.

The guiding principle of the CAP code is that advertising should always be 'legal, decent, honest and truthful', for BCAP a similar tone is promoted: 'advertisements should not cause [...] widespread harm or offence'. In addition to these two guiding principles, both codes assert that advertisers must prepare ads with a sense of responsibility to their audiences and society. In sum, adverts must therefore be decent, not cause harm or offence and generally prepared responsibly. The code's main regulatory remit for sexist advertising falls under three main areas: 'social responsibility' (rule 1.3: responsibility to consumers and to society rule), sanctioning the causing of 'harm and offence' (Rule 4.1 – harm and offence on the grounds of gender') and sanctioning the encouragement of violence (rule 4.4 – 'condone or encourage violence and protection of children (rule 5.1 featuring children must contain nothing that is likely to result in their physical, mental or moral harm). Some of the cases from these regulatory categories will be discussed later, however for now it is worth noting that the 'social responsibility' category (which receives the most complaints about sexist advertising) does not fit neatly within either of the code's rules. Instead it is spread across all specialist areas such as gambling, alcohol and healthcare and the identification of sexist advertising is not easily recognisable amongst the list of specific categories. 'Harm and offence' is the most identifiable category that links to objectification sexualisation or gender stereotypes as it includes the term 'gender'. If the complaint 'matches' any of the rules or has been seen to have breached the spirit of the code, then the CAP/BCAP have some powers at its dispersal. As with the Swedish and Spanish SROs, these regulatory powers are limited when it comes to passive adverts. The ASA has no power to financially sanction the advertiser, however it can rely on other 'soft' approaches such as pillory through the ASA decisions sections of the website. The organisation can however ban an advert when it is seen to have breached any of the codes. Prohibition is often a last resort, as Chief Executive Guy Parker noted in 2016, the adverts that attract the

highest number of complaints ‘are often not the ones that need banning’.¹⁶⁵ Aside from peer pressure, there are unwritten sanctions at play in the UK. Upheld decisions that include sexist content or outdated gender stereotypes tend to receive considerable amount of media attention and there is increasing evidence of this in the last 5 years. The ASA relies on a customary and conventional practice with media outlets whereby the carrier will not publish an advert that has had a case upheld. The final ‘sanction’ is the option to refer the advertiser to the copy centre for vetting and training. As mentioned previously, this is reserved for serial offenders and seen as symbolic pillory rather than regulation. The Copy Centre is similar to Spain’s Autocontrol in its approach to advertising regulation as it offers free legal advice for would-be advertisers ensuring that they are not in breach of the CAP code. The copy clearance is required by all TV broadcast advertisements as required by all licensees and is run by Clearcast. Clearcast is mandatory for channels that require a licence and the process is straightforward. A script is and feedback are provided against the existing CAP code, approval is either granted when a timed version of the advert is seen. Clearcast is not required by non-broadcast and is only available to adverts that may be widely distributed to high-risk audiences (i.e. children) or sensitive areas (i.e. mental health charity adverts).

I argue that in recent years the code’s remit has produced some inconsistent and often underwhelming decisions due to the lack of reform, definition of terms and lacklustre preventive measure that have evolved through new modes of advertising that appear on social media platforms. I will highlight the inconsistencies as well as the ASA’s lack of response to sexist advertising in the UK. If the ASA codes are ‘more adaptable than laws, to changing moral standards and changes in technology’¹⁶⁶ then the *laissez faire* approach to self-regulation in the UK is not working. Moreover, in the age of digital democracy¹⁶⁷ where consumers are transformed into commodity¹⁶⁸ there has been a public backlash towards advertising through social media platforms and the following case law reflects this backlash. I have selected three adverts that tap into three separate issues that often produce contradictory decisions in British advertising regulation. Firstly, the American Apparel campaign which features the

¹⁶⁵ ‘Advertising Standards Authority, Most complained about ads’ <https://www.asa.org.uk/news/2016-s-most-complained-about-ads.html> April 2016 (Accessed 21 February 2018)

¹⁶⁶ Op. cit., Crown et al (2010) p.803

¹⁶⁷ Gil de Zúñiga, H., Veenstra, A., Vraga, E. and Shah, D. (2010). Digital democracy: Reimagining pathways to political participation. *Journal of Information Technology & Politics*, 7(1), pp.36-7.

¹⁶⁸ Bauman, Z. (2013). *Consuming life*. John Wiley & Sons. p.11

pornification of young model that appears to be a teenager. Secondly, the two Protein World adverts of 2015/16 which were initially investigated for misstatement but eventually scrutinised for their objectification of women. Finally, the Asda ‘mum’ advert of 2013 which received the most ASA complaints of that year. The advert was investigated on for the use of outdated gender stereotypes.

Recent case law on the code’s remit has produced some contradictory decisions and due to the lack of definitions within the codes. ‘Harm and offence’, ‘social responsibility’ are too wide to catch problematic advertising. A general backlash has been felt in the UK and like in Spain, this has come through new modes of communication: twitter, Instagram and Facebook. It has also arrived through traditional ‘analogue’ modes: graffiti. There are problems with such campaigns (official and informal) in that there is strict ASA guidelines on how individuals must issue a complaint. I argue here, and as will become apparent in the final section of this thesis, the need for ‘comments as complaints’.

7.4.3 The American Apparel Ruling

According to Earle and Crown et al, there is a clear precedent in the ASA decisions when it comes to sexualisation and objectification when the advert features a child in an adult context.¹⁶⁹ These decisions are tinged with the over-arching ‘social responsibility’ clause of the code. The upheld American Apparel decision in 2014 was a result of two public complaints of an advert appearing on Instagram which voyeuristically depicted a school girl bent over a car with crotch and buttocks visible in the company’s ‘back to school’ and ‘School Days’ campaign. The advert was featured on both the company’s website but also through sponsored adverts on Instagram. The complainants felt the advert was irresponsible, sexualised young girls and objectified women. American Apparel’s defence largely hinged on the Instagram advertising as this would only be available to anyone that follows the company on the platform. American Apparel’s second line of defence relied on its renowned and intentionally provocative branding which customers were fully aware of prior to ‘following’ them on the platform. Moreover, they argued that the model that featured in the advert was 30 years old, that the advert was not part of the ‘back to school’ campaign, and that the image was posted by

¹⁶⁹ Op. cit., Earle and Crown et al (2016) p.61

an inexperienced member of their junior social media team. In their ruling, ASA claimed that the advert had breached several rules in the code: social responsibility (1.3) harm and offence (4.1) and children (5.1). Action was duly taken to remove the adverts from social media platforms, as it was argued that besides the breach of code, the advertiser owed the consumer and wider society a sense of social responsibility particularly through using of children.



Figure 33 Screen shot taken from American Apparel Instagram and Website (2014)

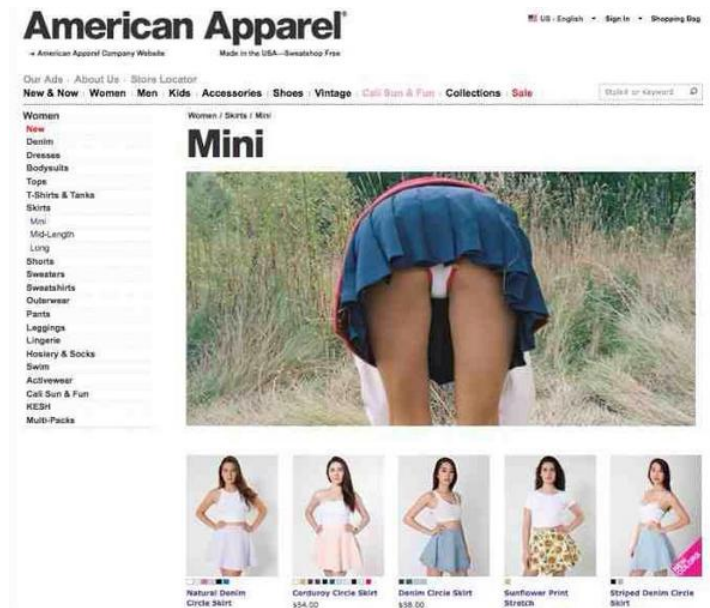


Figure 34 Screen shot taken from American Apparel Instagram and Website (2014)

The ASA ruling considered the advert's 'dissected' depiction of the model in the framing of the advert and whether the advert's intention was to focus on the skirt or crotch. ASA made particular reference to how the legs were detached from the body and how the image was gratuitous and objectifying women whilst simultaneously imitating the rise of celebrity 'up-skirt' shots that are taken without permission. ASA also considered how the advert targeted young women and potentially school children. With this, the ASA stated the advert 'had the potential to normalise a predatory sexual behaviour'.¹⁷⁰ Moreover, according to the website and Instagram account the image was clearly linked to the School Days and #BTS (back to school) campaign, and due to this linkage, it would be impossible for the consumer to differentiate between the adult model and teenage school girls. The advert was therefore found to be objectifying women and sexualising adolescent girls. Finally, with regards to ASA's defence of the consumer's agency to opt-in/out of the advertising, the adverts would feature on social media regardless as sponsored content (advert) and therefore inevitably feature on consumer's news feeds. The ruling reflects the effectiveness of applying the CAP code, however the underlying problem with this ruling (and others) is the lack of preventative action from the ASA as it later transpired that an intern had placed the advert on the Instagram account. This reveals the ease and speed in which an advert can be produced online without

¹⁷⁰ ASA Adjudication on American Apparel (UK)Ltd 3 September 2014
<https://www.asa.org.uk/rulings/american-apparel-uk-ltd-a14-275883.html>

pre-screening or regulation. A more recent ruling has mirrored the American Apparel decision on the issue of pornification of teenagers. In 2017, two TV adverts and a poster campaign for clothing retailer Prettylittlething.com¹⁷¹ were deemed to have breached the same rules despite obtaining approval from the copy advice pre-screening. The campaign featured the sexualisation and objectification despite the ‘children’ being 23 and 24-year-old models.



Figure 35 Screenshot from Pretty Little Thing Advert 2017

Objectification and sexualisation in the context of children is clearly well established and safeguarded subject by the ASA, however the ASA’s approach to sexualisation and objectification of adults in adverts remains unclear. By comparison to American Apparel and PrettyLittleThing the recent decision by ASA on a campaign produced by Protein World reflects this lack of will to sanction or rebuke an advert that sexualises women.

7.4.4 The Protein World Case

Protein World billboard campaigns received widespread criticism across the major cities of the world and in particular stirred debate in London, Paris and Berlin. There have been two particular poster campaigns, the first in 2015 and the second in 2017. The first Protein World advert is an interesting case due to the ASA’s ruling that the advert contained numerous misstatements (9 in total) of weight loss claims made in the advert ¹⁷² despite receiving clearance from the Copy Advice. The advert is also interesting due to the amount of attention

¹⁷¹ ASA Ruling on 21 Three Clothing Ltd t/a Prettylittlething.com 20 September 2017

¹⁷² See earlier ruling (Upheld) by the ASA which ruled the advert unfair. See ASA Adjudication on Protein World Ltd 8 April 2015

and resistance it received on social media, on the London underground and street billboards. During the spring of 2015, the advert by Protein World depicted a highly toned woman in a bikini with the question: 'Are you Beach Body Read?'. The advert was regarded controversial due to the use of a model whose body was unrealistic and unattainable. The advert has a sense of inflated omnipresence due to its initial controversial, subversively appearing on underground and bus stop billboards with graffiti (See Figure 36). The campaign received harsh criticism from women's groups and general public, this time, due to its objectification and sexualisation and 'body shaming' of women. The initial ASA ruling lit the fuse but the advert's controversy quickly shifted from be innocuous misstatement to sexualisation and objectification. The poster initially received a lot of attention through Twitter users, who began to tweet pictures of the defaced advert with comments etched on the posters. The campaign also instigated 70,000 e-signatures from an online petition and social media users also left 'comments as complaints' underneath the online version advert. The advert also formally received a relatively high number of public complaints (378) through the ASA, all of which cited harm and offence and social responsibility (1.3). It is also worth noting that the advert was the most easily identified and discussed advert in my focus groups, as will be discussed in Chapter 6.



Figure 36 Screen Shot from Twitter handle @A_MaurerPrager depicting 4 separate graffitied adverts from London Underground [2015]

Due to the amount of coverage the advert received; the ASA launched a separate investigation unrelated to the previous misstatement ruling. The new investigation was based on two types of public complaint: firstly, that the advert appeared to promote an idealised body shape and that other body types were deemed inferior. The use of the idealised body type amounted to body-shaming and was therefore offensive (breaching the 'harm and offence' part of the code). Secondly, the advert was seen to be socially irresponsible due to the juxtaposition of the image of a slim toned body with the tagline question 'ARE YOU BEACH BODY READY?' The ASA refused to agree with the complainants' 'harm and offence' objections due to the Copy Advice's pre-screening of the advert but also because of the meaning behind the 'beach body ready' tagline. The CAP argued that the term has a broader meaning, beyond undertones of fat-shaming, and therefore would not cause audiences harm or offence. They said that the meaning of the term included feeling:

'...comfortable and confident with one's physical appearance to wear swimwear in a public environment... we did not consider that the accompanying image implied that a different body shape to that shown was not good enough or was inferior'.

The ASA also argued that the advert did not amount to body shaming as it did not promote a particular body shape but rather probed readers to 'think about their figures'. Rule 4.1 harm and offence was therefore not breached. Rule 1.3 on social responsibility was considered but the ASA could not find a breach. No response or reasoning was provided in the final ruling. Protein World's second poster campaign (figure 37) produced the same reaction from campaigners and the general public. The advert depicted reality TV star Khloe Kardashian dressed in a leotard with the tagline question: Can you Keep Up with a Kardashian?'. The advert received 14 official ASA adverts citing social responsibility but not harm and offence and received similar social media response to the previous campaign of 2015.

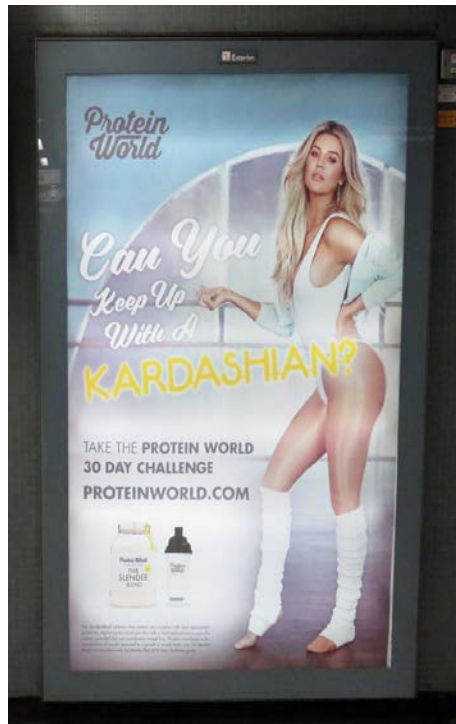


Figure 37 Protein World Kardashian Advert 2017

On the surface ASA's ruling appears identical, the body image promoted in the advert was 'desirable and aspirational' and did not 'appear to be out of proportion or unhealthy'. The tagline question was a double entendre, viewers would understand that the context of the question having viewed the TV show and although the language had undertones of 'competitive quality' it did not encourage extreme weight loss. Protein World's defence was also similar to 2015 decision, the Copy Advice cleared the poster, internal research had been conducted and in addition the advert satisfied Transport for London's criteria. The key difference is that 'harm and offence' were not investigated due to the nature of the complaints.

The two rulings by the ASA and the wider media discourse provide a number of conclusions and recommendations. Firstly, that the ASA appear to have responded to the wider public's disapproval that stems from social media rather than the official complaints through ASA. Within this, the ASA also fail to use pre-emptive measures to vet the billboard posters (which have the ability to reach a wider audience) for potential offensiveness. This measure dates back to 1998 when CAP code's response on campaign posters produces a special measure to pre-screen 'shocking' or 'offensive' posters. This was the case when United Colours of Benetton

produced a poster campaign that included shocking images which was subsequently banned.¹⁷³ The use of the pre-screening for where content may be deemed shocking or offensive has set a fairly new precedent.¹⁷⁴ The rulings from the computer game *Mortal Combat* featured stabbing and decapitation which were intended to be ironic and humorous and a nasal spray advert which featured the tagline: *WANT LONGER LASTING SEX?* were both deemed offensive and subsequently banned. The ASA have not followed this precedent but rather investigated the claims retrospectively. The CAP special procedure on posters must therefore be applied across all adverts that may actually or potentially cause offence to the wider public. Moreover, it is also not certain what caused the ASA to investigate the advert. This is an important question for future claims against sexist content in understanding what mode of complain is required to engage the ASA. It is probable that the ASA buckled due to the vast attention the ad received – both illegitimate means such as the graffiti/social media response and legitimate means such as the change.org petition and traditional mass media discourse that the organisation ought to be seen to be reacting to the campaign. Secondly, in conjunction with the CAP special procedure on poster-vetting, the ASA relied the use of copy advice (Clearcast) as a defence. The use of the pre-screening argument renders their investigation and its decision irrevocable. In Spain, the case law from SRO suggests that Autocontrol are content in admitting they were initially wrong with their pre-screening as in the case of RyanAir. This notion should be applied in the UK, irrespective of the pre-screening advice, the ASA should be able to refute the advice of Clearcast and sanction an advert. Thirdly, the CAP code provides that advertisements that cause ‘harm’ or ‘offence’ or are ‘socially irresponsible’, both generally but in this context specifically on the grounds of sex shall be prohibited.¹⁷⁵ Thus, the CAP code definitions are far too narrow as the two case highlights how the code falls below a basic human rights standard in not including a section on discrimination.¹⁷⁶ It therefore proves difficult in sanctioning adverts that sexualise or objectify specific groups – i.e. women. The ASA avoid scrutiny in their decision-making process as an advertiser – for example Protein World – is quite able to prove that no one was offended, or no harm was caused when the advertiser can cite its own market research focus groups or surveys as part of their own ‘clearance’ research. The onus therefore must be shifted to the ASA and copy advice to provide more vetting and ensure that

¹⁷³ *Op cit.*, Crown (2010) p. 849

¹⁷⁴ *Op cit* Crown p. 849

¹⁷⁵ Earle, R. (2016) ‘The Self-Regulatory System’ in Richard Lindsay (eds) *Ad Law: The Essential Guide to Advertising Law and Regulation*

¹⁷⁶ NGO response to the ASA Report in 2016

the advert is fully pre-screened incorporating. With this in mind, sections 1 and 4 of the CAP code require rewriting with a human-rights based approach underpinning the terms. For example, with 'harm', there must be an enhanced identification of the capacity that the media has to cause harm towards specific groups, for example women. Children (as discussed with the American Apparel case) provides a much higher threshold, safeguarding the protection of the child's right not to be sexualised or objectified.

7.4.5 Asda Christmas Advert

The 2013 Asda Christmas advert received a similar reaction from the general public, campaigners and the ASA.¹⁷⁷ The Christmas advert was aimed at a wide market, with identical adverts featuring on TV, video on demand (catch-up TV), online, YouTube and the markets website. The content of the advert depicts a mother carrying out numerous tasks in the build-up to Christmas with the voice-over tagline: It doesn't just happen by magic, behind every great Christmas there's mum, and behind mum there's Asda'. 620 complaints were made to the ASA and the majority of the complainants stated that the advert was offensive and sexist as it reinforced outdated gender stereotypes of both men (useless, lazy dad) and women (exhausted chore ridden mum). A minority of the complaints were about single parents and children that had lost their mother. Asda's defence of the advert hinged on the argument that the depiction of the mother at Christmas was accurate rather than sexist and although the depiction of motherhood is not universal, extensive market research including feedback and focus groups¹⁷⁸ indicated that their customers identified with the advert's representation of the average family at Christmas. Therefore, the advert reflected common experience and not the alleged outdated stereotypes.

As the advert was live broadcast it was scrutinised by copy advice. Clearcast considered the portrayal to be understood by the majority of viewers as an honest representation of Christmas in the UK, that the father was active in helping with the chores and the advert 'celebrated the mother in a positive way'. Asda's defence is bolstered by licensed broadcasters such as ITV

¹⁷⁷ ASDA Supermarket Ruling (2013) <https://www.asa.org.uk/rulings/asda-stores-ltd-a12-213056.html>

¹⁷⁸ 1896 mothers who shopped at Asda were surveyed and 8 out of 10 claimed that they would be responsible for the chores represented in the advert. The chores include: gift buying, wrapping, Christmas tree collection and decorating, food shopping, cooking, playing with the children and sitting on the odd chair at dinner.

and YouTube who believed the advert was suitable as it would appear on TV when a ‘housewives’ audience would be watching, that the advert relied on truisms and painted a positive picture of motherhood at Christmas. ASA decided that no action was necessary and in the assessment of the advert ASA agreed with Asda’s own research on the experiences of mothers at Christmas. Moreover, the ASA claimed that the advert was a relatively realistic representation of motherhood and would not breach the harm or offence element of the code:

‘We considered viewers were likely to understand the ad was not prescriptive of the experience of all at Christmas; rather it reflected Asda’s view of the Christmas experience for a significant number of their customers. We therefore considered the ad was not likely to be seen as condoning or encouraging harmful discriminatory behaviour or reinforcing negative stereotypes of men or women in general, and, for those reasons, considered it was unlikely to cause serious or widespread offence.’

This is the only mention of gender stereotypes in the ASA’s ruling and looking it’s the precedent, the regulation of the stereotypical mother is predictable in that stereotypical representations of motherhood rarely result in the breach of code’s ‘harm and offence’ chapter. Of the 1,574 rulings that include the terms ‘gender stereotype’ and ‘motherhood’ there are just 6 upheld decisions which usually require an additional breach of the CAP/BCAP code such as misleading information or the excessive use of sexualisation/objectification of women.

To conclude, the CAP/BCAP code is limited in tackling both the use of gender stereotypes and the sexualisation/objectification of women in advertising. The code’s key sections, social responsibility and harm/offence rarely render adverts as discriminatory. Despite instigating discussion and scrutiny of the ASA’s regulatory code and sexism in advertising, the organisation is reluctant to prohibit adverts that receive a high number of complaints. The American Apparel case and a recent ruling on a Yves Saint Laurent advert¹⁷⁹ that uses an anorexic model seem some of the few adverts that breach the code. Both of these adverts received a very few complaints – YSL received just one complaint.

¹⁷⁹ Yves Saint Laurent Advert Featured a very skinny model laying on the floor
<https://www.asa.org.uk/rulings/yves-saint-laurent-sas-a15-292161.html>

7.4.6 Future of the Advertising Standards Agency

"While advertising is only one of many factors that contribute to unequal gender outcomes, we welcome CAP's decision to introduce a new rule on harmful gender stereotypes in ads. Although companies have responded positively and constructively to our report, with welcome examples of voluntary action, there is more to do. We are determined to make sure our regulation calls out harmful and outdated practices and a new rule in the Advertising Codes will help tackle the harmful gender stereotypes identified in our review of the evidence"

(Guy Parker, CEO of the ASA, 14 December 2017)

The ASA came under considerable pressure¹⁸⁰ after the two Protein World adverts, particularly the Beach Body Ready campaign in 2015. Retallack et al have argued that in addition to traditional complaints, fourth wave (or digital) feminists are securing change through social media platforms such as twitter and Instagram¹⁸¹ and it is conceivable that the attention the advert received online has coerced the ASA to produce this report. As discussed previously, the revolt against the adverts was widespread – beyond London and the UK and the reaction from the ASA was muted, citing a lacklustre precedent that fails to sanction adverts that sexualise or objectify adults. In light of this failure, it is also conceivable that the report is born out of this failure to act in 2015.

As adverts that the gender stereotypes have not fallen outside of the CAP codes, the ASA have recently reconsidered whether or not they are doing enough to address the 'harm and offence' caused by such advertising. In April 2016, the ASA released its report on gender stereotypes in advertising 'Depictions, Perceptions and Harm'¹⁸² which identifies 6 categories of gender stereotypes: gendered roles and occupations, gendered characteristics or behaviours, mocking non-confirmability, sexualisation of girls and women, focus on particular body or body parts (objectification) and promoting unhealthy body types. The report states that although the ASA already prohibits adverts which objectify or sexualise women, there is need in the industry to tackle advertisements that feature the aforementioned list of gender stereotypes. According to the report, the ASA will begin 'strengthening' the regulatory codes with emphasis on gender

¹⁸⁰ Boland, M. The inspiring young feminists who took back the beach from Protein World. *The New Statesman*. 3 May 2015 (Accessed September 13, 2017)

¹⁸¹ Retallack, H., Ringrose, J., & Lawrence, E. (2016). "Fuck Your Body Image": Teen Girls' Twitter and Instagram Feminism in and Around School. In *Learning bodies* (pp. 85-103). Springer, Singapore.

¹⁸² See full report on the ASA website. 'Report on Gender Stereotypes in Advertising Depictions, Perceptions and Harm' 2016 <https://www.asa.org.uk/asset/2DF6E028-9C47-4944-850D00DAC5ECB45B.C3A4D948-B739-4AE4-9F17CA2110264347/>

stereotypes and ‘new standards’ will be developed to tackle the problem and further training and advice will be made available to clients.

The evidence from the report is comprehensive: an in-depth review of the CAP/BCAP codes, public opinion reports, stake holder suggestions, academic and NGO responses and a list of divisive rulings. The adverts that have informed the report are on the spectrum as this thesis: problematic cases where the ASA have lacked the teeth to regulate on gender roles and sexualisation/objectification: Protein World ruling, GAP (girl grows up to be a butterfly – the boy becomes an academic) and KFC (man ridiculed over his anxiety). The report is critical of the ASA recent decision’s but oddly limits the parameters of the research to the last 3 years of advertising. This criticism is particularly weighted on body image, sexualisation and objectification, however the report argues that the rulings are ‘broadly in the right place’ and the decisions concerning the depiction of gender roles ‘have rarely been formally investigated by the ASA in the past’. These statements from the report reflect the altogether vagueness of the CAP/BCAP codes and ASA’s unwillingness to take further action on gender stereotypes. The report is also not clear whether new guidelines will be drawn up and crucially whether the six areas (and terminology) will enter the new code. This is an important factor when considering the Spanish legislative and regulatory order: sexualisation and objectification (reification) are clearly outlined in the Spanish framework and Gender Violence Act. This provides the SRO (and courts) the opportunity and tools to dismantle any advertisers counter claims that their advert was in good faith, humorous or based on their own market research of mothers/housewives. Ultimately, except ‘new standards’, there are no clear objectives or recommendations from the report and CAP are yet to respond the report. The report does suggest that the CAP will respond by the end of 2017 and ‘commits, as always, to delivering training and advice’

7.4.7 Who’s Watching the Watchmen? The Impact of Brexit on UK Advertising Regulation

This research explores the way in which the regulation of gender stereotypes is mediated within national context therefore the impending exit of the UK from this regulatory role of the EU will have consequences beyond research parameters of this thesis. Whilst it is uncertain what long-term impact Brexit will have on the regulation of advertising in the UK, I will provide a

critical assessment of some of the likely short-term implications of the decision to leave the EU.

There are indeed some major concerns with the wider advertising regulatory system (for example the European Unfair Commercial Practices Directive which will affect the regulation of misleading advertising) however, my main focus is on the specific regulation of gender stereotypes in advertising. As discussed in the final part of this chapter, the UK has a well-established self-regulatory system with industry-led and self-imposed measures that are governed by the ASA. This understanding has been managed and quasi-regulated by both OfCom (CAP/BCAP codes) through the Communications Act 2003 and via the European Advertising Standards Alliance (EASA). This arrangement is in place for two key reasons, first to actively and unapologetically avoid legislation but also to demonstrate the advertising industry's commitment to high standards of regulation, and in this particular case the sanctioning of sexist content in advertising. There is no obvious reason why these two guiding philosophies would cease to exist when the UK leaves the EU. This is partly due to the authors of the codes that make up the ASA: they are written, amended and implemented by the Committee of Advertising Practice (CAP) with very little interference or regulation from the EU. However, both the EASA and the Communications Act 2003 are partially controlled by the EU. The EASA less so, although the Communications Act 2003 is amended and regulated by the provisions set out in the Audio-Visual Media Services Directive. The EU wields a great deal of soft power through institutions such as the EASA and AVMS regulators that utilise the authority for its use of pillory – i.e. the naming and shaming of EU Member States that appear to either be flouting advertising law or their SRO's are not in line with the spirit of good regulation, especially with gender stereotypes. As discussed in Chapter 2, the EASA has taken a pro-active stance on gender portrayal and has provided its own charter with set of commitments to EU Member States, endorsing moral and financial support for the creation of a pan-EU self-regulation network. By large, the EASA's network of SROs works on a pillory based – rather than sanction based – system in providing statistics on Member States SRO complaints and reports such as the 'Portrayal of Gender in Advertising Report' in 2008.¹⁸³ Such output provides a comparative overview of how SROs across the EU combat sexist content in advertising and is often recommended as best practice.¹⁸⁴ The significance of

¹⁸³ The EASA Portrayal of Gender: Report on advertising self-regulation across Europe May 2008

¹⁸⁴ Op. Cit., Wilks and Marshall (2009) p.119.

withdrawing from the EU will mean withdrawing from the EASA network and losing the secondary layer of regulation from the authority but more importantly a further safeguard watching over the ASA's work. The 'naming and shaming' process will no longer involve the UK's SRO statistics and funding will cease post-Brexit. Other forms of EU 'soft' law that effect advertising will also have an impact on the UK post Brexit. The European Parliament's political influence on the progress of a unified European standard has been instrumental and the UK's influence here as well as the Committee on Women's Rights and Gender Equality (FEMM) role will be diminished. FEMM has provided two reports on Eliminating Gender Stereotypes in the EU which although are not binding or have any legal effect, they are influential in terms of reaching consensus on potential future regulatory codes in Europe.

One of the major concerns amongst the Brexit negotiations has been the 'Great Repeal Bill' or Withdrawal Agreement Bill. The proposed legislation serves two functions: to convert existing EU law into UK law and 'provide a process of amending ex-EU law in future'.¹⁸⁵ The Audio-visual Media Services Directive which regulates UK broadcast content and was implemented via the Communications Act amendment in 2010 is going to leave the biggest mark on advertising regulation. Woods has argued that UK advertising regulation would not necessarily be affected if the AVMS Directive were no longer the driving force.¹⁸⁶ This is partly true as the advertising standards in the UK (such as harm, offence and responsibility) do not derive from the Articles of AVMS Directive. However, as the Directive's content primary focus is to regulate the free-movement rules and provides guidelines concerning the distribution of TV and internet TV (online TV/ TV on demand) which is saturated with advertisements. The UK would no longer be open to scrutiny or regulated by the AVMS and the standards that have been set for the past 7 years will no longer apply. As discussed in Chapter 2, the AVMS Directive's reach on gender stereotypes in advertising is the prohibition of sex discrimination (Article 3e Article 9c) in advertising and the role of the AVMS Directive's contact committee – which acts as the EU regulatory body – is set out in in the Directive (Articles 29-33). The contact committee may continue for a further two years, but this further level of regulation

¹⁸⁵ Steve Peers 'The White Paper on the Great Repeal Bill: Invasion of the Parliamentary Control Snatchers' (EU Law Analysis Blog 31 March 2017) <http://eulawanalysis.blogspot.co.uk/2017/03/the-white-paper-on-great-repeal-bill.html> (accessed 3 October 2017)

¹⁸⁶ Lorna Woods, 'What would the impact of Brexit be on U.K media regulation?' (LSE Law Blog 13 September 2016) <http://blogs.lse.ac.uk/mediapolicyproject/2016/09/13/what-would-be-the-impact-of-brexit-on-uk-media-regulation/> accessed 18 October 2017

shall inevitably be lost. The wider aim and spirit of the Directive will also no longer be felt. The Directive ensures that appropriate mechanisms are in place at Member State level (i.e. OfCom, ASA and CAP codes) to ensure that the core values of the Directive are resected. The language of the Directive goes beyond that of the CAP code with a human rights approach to advertising regulation: ‘respect human dignity’ and ‘do not promote sex discrimination’.

7.5 Conclusion

In this concluding chapter I have provided an analysis of the three state’s legislative and regulatory powers to curb gender stereotypes in advertising. Sweden, Spain and the UK have each taken very different approaches in tackling objectification, sexualisation, outdated stereotypes and general sexism in advertising. Spain, since 2004, has been recognised as ‘spearheading’ the cause, opting for harsher sanctions through its sweeping violence against women regime and promoting its challenge through a wider narrative of sanctioning *machismo*. This approach has led to some shifts in attitudes from the regulators, in particular industries that have for a long time peddled out-dated stereotypes. It has also led to a single landmark ruling which has shown how self-regulation and legislation can work jointly on the same issue. Although the Ryan Air case appears to be a test for the courts, it has provided clarification of the legislative framework from the 2004 Act and the new SRO powers. The Cillit Bang case equally reflects these new powers and the regulators determination to identify and sanction objectification and sexualisation of women. In Sweden there has been posturing from both sides of the political divide and legislation has thus far not transpired. A culture of self-regulation and a pseudo-ombudsman appears to be the safest option in Sweden as legislation with clear advertising and media related sanctioning would appear out of kilter with the constitution that places emphasis on (market based) freedom of expression and free speech. Since the demise of its previous and more powerful SRO, Sweden has slowly progressed replicating its codes and language. However, the current regulator which appears as a ‘third way’ – thus avoiding legislation is an SRO only by name. The predecessor, the ERK, with clear sanctioning powers has left a void in the advertising regulation of Swedish advertising, which is now filled with campaigns and training exercises for re-offending advertisers. The UK’s legislative void is akin to Sweden’s stance on the issue – legislative powers to sanction advertisers would contravene the UK’s market driven claims for democracy and free speech. Advertising regulation is a mere footnote in The Gender Equality Act and so the UK have

relied heavily on an SRO that is operated by – and dependent upon – an industry that it seeks to protect. At the time of writing, the Advertising Standards Authority has shown signs of updating its codes to include explicit inclusion of the term ‘gender stereotypes’. However, such an inclusion seems at odds with the foundation of any such reforms as the advertisements that caused the criticism featured complaints about overt sexualisation, objectification and ‘body shaming’. What appears to unite all three of the case studies is their content in relying on self-regulation. With little pressure from the European Commission or indeed the EASA, the future approach of gender portrayal in advertising seems to be *laissez faire*.

Chapter 8

Conclusion

8.1 Findings

Attempts to curtail the use of gender stereotypes in advertising is by no means a new legal issue, particularly within an EU law framework where there have been numerous attempts to safeguard women's rights within the private sphere for the last two decades. However, as an ever-evolving digital landscape takes shape and as a society we have become more accustomed to social media, catch-up TV and targeted advertising, the need for tighter controls and limitations of what we hear and see online and offline is required. This desire is reflected in both the online world (through Twitter campaigns and ad-blocking software) and the analogue world (graffiti on billboard posters) where audiences carve out new ways to resist pervasive forms of advertising. The purpose of this thesis was to examine how legislators and regulators may address the issue of gender stereotypes in advertisements within an EU context and explore what 'best practice' may look like.

Thus, there are two main aims of the thesis. The first is to investigate whether or not the EU has the powers to challenge gender discrimination in the private sphere by combatting gender stereotypes in advertising. The second aim is to assess the diverse practices from three national perspectives: Sweden, Spain and the UK and evaluate the legislation, regulation and policy at Member State level to conceptualise a unified EU code of advertising regulation of gender stereotypes. The EU have been heavily lobbied when attempts have been made to enact secondary legislation or a unified regulatory code on the issue, this sends a clear message to consumers and Member States alike that not only is gender equality less important than other forms of equality but that certain forms of gender equality are more important than others within the EU gender regime. Seeking out a 'third way' would seem to be the most palatable and achievable considering the varied cultural values and social norms which exist within the EU. The first part of the conclusion will provide a brief overview of the main arguments I have put forward from each chapter and a recap of the research findings. In concluding this thesis, the second part of this chapter will propose possible solutions and look towards what a common-sense approach to advertising regulation of gender stereotypes.

The thesis began with two legal framework chapters: contextualising of the legal problem of regulating the use of gender stereotypes in advertising and the EU's endeavours in tackling the issue. In chapter 2, I addressed the two interlocking EU competences which the thesis straddles, media and gender equality and raised the main research question of whether the EU has the power to provide secondary legislation. Charting the 'patchwork' secondary legislation of the 1970s through to the constitutionalisation of the gender competence, I claim that the EU has moved from labour market related equality provisions and moved towards tackling private sphere 'blind spots' issues such as domestic violence.¹ I also argue that the two competences have now become coagulated through the emergence of the competence catalogue and that amongst many other actors, the Commission have established means in safeguarding women's rights and the regulation of advertising. In almost 10 years since the Lisbon treaty the CJEU and Parliament have also stimulated a 'hands-on' approach in these areas, particularly within gender equality where stereotypes are persistently seen as a threat to gender equality as much as substantive work-based barriers. In the final section of the chapter I argue that the CJEU have not wavered in influencing the fate of advertising regulation, it has creatively reshaped the issue as a single market concern through the free movement objectives of the EU and accordingly through the wider scope of goods and services case law. The chapter concluded that the EU's capacity to provide for secondary legislation is not unimaginable and indeed there are instances where the commission have sought to act, but due to the underlying free movement principles 'soft law' approaches may seem the most realistic tool for accelerating the removal of gender stereotypes in advertising. Thus, in chapter 2 I focused my analysis on the EU's soft law strategy to tackling gender stereotypes in advertising by investigating the list of actors and organisations that have helped drive the issue forward. I argued that although there is clear political will from the Commission and other institutions (notably the Parliament) to eliminate gender stereotypes in advertising, both the 'Gender' Directive and the AVMS Directive have fallen short in delivering regulation of advertising that effects women. This I argue, is due in part to the bulwark market-driven principles of the EU but also the intense lobbying of the Directives from both advertising industries and Member States with a shared interest of protecting such industries. The EU therefore seems content in striking a happy medium and to compromise through soft law measures. Amongst the soft law apparatus, the

¹ Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA OJ L 315,

EASA, acting as a quasi-regulator, appears to have set a fairly low standard for gender portrayal amongst the EU28. I claim that although the pursuit of regulating gender stereotypes is being kept alive on the fringes of the EU's agenda, a refreshed pan-EU regulatory code is required if the EU is to move beyond the current status quo. Moreover, 'soft law' tends to precede substantive law and it is only a matter of time before advertising industry is met with tougher action.

Following the two contextual chapters, chapter 4 focused on the theorisations of advertising as a problematic structure in the formation of gender. In this chapter I revisited and politicized the work of Erving Goffman in *Gender Advertisements* to highlight the subtleties and minutiae within his 'gender displays' typologies. Throughout the chapter I argue that such representations in advertising shapes the production of gender and distorts our understanding of everyday life. Revisiting Goffman forms the foundation of the thesis; by testing his typologies, I also argue that his codes and pictorial analysis are still relevant today. Through reimagining Goffman's coding, I introduced contemporary modes of advertising and by doing so updated his typologies to show his works relevance and importance when deciphering what is meant by harmful gender stereotypes.

Following the theoretical framework, I move towards the methodological underpinning of the thesis and a discussion of the methods I used. Focusing on socio-legal discourses I first argue for pursuing alternative modes of legal study and provided a wider discussion of how legal phenomena and analysing the law is interlinked with – and enhanced by – sociological methodology and discourse. I then claim the benefits of using sociological research methods and provide a 'nuts and bolts' account of how I conducted my research and the feminist undertones to research methods of focus groups and listening to young people's voices. The methods chapter again reimagines Goffman's work and how encoding/decoding of adverts encourages audiences to engage with the deep-seated problems within gender(ed) advertisements.

In the first of my two analysis chapters I used focus groups across the three case studies to underline how contemporary adverts are still perceived as problematic for young people. By revisiting and reapplying Goffman's codes of gender (for example 'licensed withdrawal') I reconstruct my own themes from the data 'mothers', 'women on the verge' and 'objectified

self'. Throughout the chapter I argue that current advertising still exerts harmful gender stereotypes but also, I argue for the contemporaneity of Goffman's coding schema and his insistence of 'making the familiar strange'. In the second analysis chapter I utilize the elite interviews to provide a comprehensive analysis of the 'legal culture' of the three case studies and the means in which each state has advanced tackling gender stereotypes in advertising. Due to divergent histories, social problems and indeed legal frameworks, I emphasise the different approaches that Spain, Sweden and the UK have inevitably taken in curtailing gender stereotypes in advertising. I argue that options for each state are somewhat binary, legislation or self-regulation, with the latter appearing the most dominant within the EU and therefore the most achievable and practical within the case studies. The option to self-regulate is what binds the national perspectives together and reflects the theoretical argument running throughout the chapter – Member States prefer market-driven freedom of expression over democracy-driven freedom of expression. Therefore, 'light-touch' regulation serves the interests of the advertising community rather than safeguarding gender equality. Moreover, a reliance on self-regulation reflects the free market principles that underpin the EU rendering the future of tackling gender stereotypes to be *laissez faire*

8.2 What does a best practice look like?

The genesis of this thesis began whilst conducting research on the lack of EU advertising regulation and coming across a footnote from an academic article that mentioned the removal of a section in the 'Gender Directive' during the drafting process in 2003. The Directive was by no means the Commission's first or the last attempt at delivering secondary legislation, but it was evident that any mention of the words 'gender' and 'advertisements' in one sentence had ruffled the feathers of the advertising industry and the larger Member States that rely on these markets. Equally, the drafting of the AVMS Directive of 2010 tells the similar story of opposition from advertisers and Member States; therefore the thesis is a response to these omissions and what alternatives might be acceptable for the Commission, the advertising industry and the Member States of the EU.

Throughout the first part of the thesis I have argued that legislation on curbing gender stereotypes in advertising is feasible. Indeed, I have claimed that it is also a legitimate concern of the EU and desired not only by numerous NGOs but also consumers, through the voices of teenagers across the case studies within the research. Despite such clear justifications, I have

acknowledged that national legislation is often deemed as excessive when pursuing the curtailment of gender stereotypes in advertising. Amongst many other EU Member States, both the UK and Sweden have resisted legislation on the issue and have instead assigned the role to the industry itself through the use of self-regulatory organisations. Self-regulation, though it has many flaws, has so far proven to be a relative success. The malleable personality of self-regulation allows for elasticity when tackling the issue; reacting to changes in audience's attitudes, gauging what is deemed appropriate and how audiences perceive irony and humour. Nonetheless, self-regulation has some flaws and there are many that have been raised throughout the thesis.

8.3 The Fence or Ambulance?

Before scrutinising these flaws, I wish to comment further on the potential of future legislation as a mode of regulating gender stereotypes. I presented an analysis of the Spanish *ley organica* (Integrated Protection Measure Against Gender Violence) of 2004 to emphasise not just the historical rationale for the act but to equally emphasise the opacity and rigidity of law. Spanish lawyer and activist, Martin-Llaguno, has drawn attention to the legal ambiguity of the term's 'reification' within the act and how the legislation lack clarity.² The RyanAir test case of 2013 proves this point – there is ambiguity as to what constitutes as reification, sexualisation or objectification. Moreover, the mechanics and process seem rather slow. As the RyanAir case has taken almost 10 years to reach its conclusion, the presence of legislation seems deceptive and there is a lack of precedent to be distilled from the case. If applied too broadly, all forms of advertising that feature any form of gender stereotype will be caught, if applied too narrowly then adverts are not scrutinized enough. Instead, it has been for the Spanish self-regulatory body, Autocontrol, and the *obiter* that has emanated from its case law to provide the definition of 'reification'. In addition to the Spanish *ley organica* I have also discussed the difficulties Sweden have encountered when attempting to legislate on the issue whilst anchored by a freedom of expression constitution.³ The market/democracy-driven freedom of expression

² See Beltrá, M.N. and Llaguno, M.M., 2011. El sexismo publicitario: delimitación de conceptos e indicadores de género. Estudio empírico de la producción científica. *Pensar la publicidad*, 5(1), p.51. And Martin-Llaguno, M (2016) 'Regulating Sexist Advertising in Spain in Edström, Kenyon and Svensson (eds) *Blurring the Lines: Market Driven and Democracy Driven Freedom of Expression* (Nordicom 2016)

³ Svensson, E.M. and Edström, M. (2015) Freedom of expression vs. gender equality. *Tidsskrift for Rettsvitenskap*, 127(05), pp.479-511.

debate is noteworthy here, however the true doubt in the executive and legislative's mind in most EU states is the balancing of multiple principles: freedom of expression versus anti-discrimination and gender equality. Sweden's positivist attempts to legislate on gender stereotypes begins and ends in the 1990s with attempts to ban all forms of 'sexist imagery', the 'commodification' of women's body and 'outdated gender roles'. This lexicon is the most explicit and refined but is also the polar opposite of the opaqueness of the *ley organica* 'reification'. Indeed, even the most robust Swedish legislation protecting minors from sexist content and gender stereotypes was shelved in 2010. Finally, what is evident from the data and in particular the Spanish voices, is that despite the legislation of 2004 there has been a clear failure to capture advertising that uses out-of-date gender roles, sexualisation, objectification and reification of women and therefore lacks the capacity to act as a fence at the top of the cliff edge. At present, further attempts at providing secondary legislation banning the use of gender stereotypes in advertising seems unlikely and therefore, I suggest that better codes of self-regulation at EU and national level is the most palatable and achievable form of interference that the advertising industry would accept.

If it is for the self-regulatory organisations to execute the piecemeal work of modelling what constitutes sexist content or 'gender stereotypes' in advertising I feel that the terminology is in part where the problem lies. Another major concern is the lack of clarity in the national regulatory codes and this could be improved by better guidelines from the umbrella advertising authority the European Advertising Standards Association (EASA). I also believe that a lack of agency from consumer's perspective in registering a formal complaint to the necessary SRO is a key issue.

The use of gender stereotypes is inevitably inescapable in advertising and as I have shown in the data, the term can conjure numerous ideas and practices in the minds of teenagers. Also, the wider public, through their formal complaints to SROs, provides a spectrum of meanings to the term. This is amplified through informal modes of discourse (i.e. online campaigns) that has captured the public's attention in controversial cases such as 'Beach Body Ready', Cillit Bang, or RyanAir decisions. These cases all derive from the terminology and guidance provided that the EASA provides. The EASA guides its members with the umbrella ICC rule of 'taste and decency' to capture gender stereotypes and other forms sexist content. As I have shown in the thesis, the ICC rule has been interpreted broadly by the EU Member States and

its definition seems to be inconsistent throughout the three national perspectives that I have covered and indeed across the EU28.⁴ I therefore recommend that a more comprehensive guidance is required beyond the ICC's standard and is taken up by the EASA. Drawing upon the three SRO codes that I have covered in the thesis I believe that more clarification is required as to what breaches 'taste and decency' but more importantly clearer guidance on what constitutes as a gender stereotype and includes definitions of sexualisation, objectification and reification of women.

8.4 Recommendations: Regulating the Objectified Body

I begin with the reformulation of terminology of advertising codes and the efforts of the EASA to promote responsible advertising amongst its members. I recommend the inclusion of the term 'gender stereotype' to be used in the EASA advertising guidelines and have the term used as a baseline for all signatory states. Based on my theoretical framework, fieldwork and the advertisement rulings, I believe this term to have broad connotations, covering roles and characteristics and subsequently it captures the broader and mildest forms of harmful stereotypes, or as Blloshmi frames them 'retro stereotypes'.⁵ Whilst I don't wish to undermine or misrepresent this term, I believe that it conceals the harsher realities and typologies that lurk beyond traditional stereotypes of 'the mother', 'the cleaner' and 'the carer'. The Asda case from the UK, and the Cillit Bang case in Spain reflect the unease that consumers face when confronted with out-of-date representations of women in advertisements. The rulings however have led to different outcomes: a ban in Spain (though only through traditional modes of communication) and in the UK, clearance from the ASA's copy advice. The overt use of the representation of 'mother as the cleaner' is thus problematic – a reflection of society's norms or an out of date stereotype that requires positive action. This is reflected in the data from the UK:

*I think it's good advertising! For example, in my family... I mean it's related to my family it's exactly what we're supposed to do, and it's supposed to relate to people.
It's a good advert!*

⁴ See EASA gender portrayal reports <http://www.easa-alliance.org/products-services/publications/statistics> accessed 30 June 2018

⁵ Blloshmi, A. (2013). Advertising in Post-Feminism: The Return of Sexism in Visual Culture?. *Journal of Promotional Communications*, 1(1).

(Daniel discussing the Asda advert in the UK focus group)

At the time of writing the ASA's CAP have opened consultation⁶ for a new code and rewriting of its 'harm and offence' rule (4.1 of the CAP code) and advertising guidelines based on the Report on Gender Stereotypes in Advertising Depictions, Perceptions and Harm from last year.⁷ So far, the report and subsequent consultation has produced a modest reformulation of the code so that the future guidelines will capture and prohibit adverts that:

- Depict women as solely responsible for cleaning-up the family mess, cooking or cleaning.
- Suggest a specific activity is inappropriate for children of one gender as it is traditional associated with the opposite gender.
- Depict men trying and failing to undertake a relatively simple parental or household task.

The CAP are yet to publish both their key findings and new code, however I suggest their consultation is a move in the right direction and considering that the UK were one of the 'heavyweight' Member States that lobbied against the 'Gender Directive', the EASA should take notice of this progression. The CAP's recommendations address some of the theoretical approaches discussed in Chapter 4. In particular Judith Butler's theorisations of gender and performativity through challenging the notion of gender identity and 'script' by addressing the phenomenon that gender is ceaselessly (re)produced over time. By removing the mildest forms of gender stereotypes in advertising, the code challenges the notion of gender as performative and debunk the claim that identity is not transformative. The new CAP guidelines will also have some impact on gender and calibrate to the standards established in Article 5(a) of CEDAW. The potential of this guideline amendment could work towards the CEDAW standard by eliminating harmful practices that are based on superiority/inferiority of both sexes based on stereotyped roles of men and women and secondly eliminating the pretext that the women's role is at home, embedded to motherhood and within the family. The new guidelines

⁶ The ASA have launched a public consultation on the issue. Such a ban would be limited to certain forms of 'traditional' advertising practices such as billboards/bus tops in public spaces.
<<https://www.asa.org.uk/news/consulting-on-a-new-rule-to-tackle-harmful-gender-stereotypes.html>>
accessed 18 April 2018

⁷ See full report on the ASA website. Report on Gender Stereotypes in Advertising Depictions, Perceptions and Harm (accessed 30 June 2018)

are equally redolent of Goffman's gender displays and tackle the subtleties of everyday gender interactions, the myths and simplification of lived gendered experiences.

There are of course limitations with these pending guidelines, and they do not live up to the real 'harm and offence' anxieties that were voiced by both the teenage participants in this research. To achieve a genuine change in the way advertisers construct unrealistic body types, objectify the female body or reproduce outdated gender stereotypes, the CAP code and the EASA must address some of the entrenched issues that underscore consumer's complaints, namely sexualisation and objectification of the body.

Beyond the inclusion of the term gender stereotypes and the potential examples put forward by the ASA, further guidance on sexualisation and objectification of women is much needed by the EASA and then within the national SRO guidelines. Sexualisation and objectification, as discussed in the data, are the most problematic and pervasive causes of harm and offence in contemporary advertising and speak more directly to the EASA's 'taste and decency' categorisation. It is striking that there is little guidance or definition of the terms in self-regulatory codes or national legislation. The current status quo seems to be fixated on the milder 'catch-all' yet limiting umbrella term of 'gender stereotypes' rather than an explicit sub-categorization that would incorporate these terms. The ASA's report and public consultation has failed to consider these terms and runs the risk of merely capturing cultural retro-stereotypes linked to the family and home. The Liotard parliamentary report of 2012 is highly critical of the lack of terms that address sexualisation and states that there is a clear link to violence against women, pornification, eating disorders, mental health and general humiliation of women. Inclusion of these terms would initially be symbolic and a move away from mild basic gender stereotypes. However, the EASA and SROs have the capacity in both their guidelines and precedent from their case law to provide for definitions which would subsequently revitalise the EASA's pre-existing vocabulary within the 'taste and decency' categorisation. Introducing a fresh lexicon of terms would broaden the regulatory net and recast the essence of self-regulatory organisations enabling them to catch advertisements that are problematic.

A final recommendation lies within the procedures and processes of self-regulation and the need to provide consumers the capacity to voice agency and resistance to harmful gender

stereotypes in advertising. At present, online campaigns, Facebook and Instagram comments, Twitter spats and graffiti on billboards do not amount to formal, and therefore legitimate, modes of complaint. More is required from both the EASA and SROs to engage with these social media platforms and convert online interaction from audiences with adverts as avenues of resistance and agency. All three of the SROs included in the research lacked the basic interface for logging and complaining about an advert from the user's perspective. Incorporating informal complaints when considering a decision has had an impact and coerced SROs into adopting sweeping changes, as can be seen in the reaction to the 'Beach Body Ready' campaign and backlash. Moreover, more information on advertising is required at these access points. The lack of legitimate complaints provides the SROs the opportunity to react slower to online and analogue controversy.

Bibliography

Articles and Books

Abel, R. L. (1980). Redirecting social studies of law. *Law and Society Review*, 14, 803–829,

Andreoni, J and Petrie, R. ‘Beauty, gender and stereotypes: Evidence from Laboratory Experiments’ (2008) *Journal of Economic Psychology* 29 (2008) 73–93 at 82

Arroyo, A. and Coronas, C. (2017). Intimate Partner Violence in Spain: Medical and Legal Aspects. *GSL J Forensic Res*, 1, p.103.

Bäck, E. A., Lindqvist, A., & Sendén, M. G. (2015). Hen can do it! *Effects of using a gender-neutral pronoun in recruitment. I: Jenny Magnusson m. fl.(red.), Könskonstruktioner och språkförändringar: Rapport från den åttonde konferensen om språk och kön. Text och samtalsstudier från Södertörns högskola. Stockholm: Södertörns högskola. S, 71-90.*

Balfour, S., & Quiroga, A. (2007). *The reinvention of Spain: nation and identity since democracy*. Oxford University Press.

Banakar, R., & Travers, M. (2013). Introduction: Law and Social Theory. *Law and Social Theory. Second edition. Oxford, Hart.*

Banakar, R., & Travers, M. (Eds.). (2005). *Theory and method in socio-legal research*. Bloomsbury Publishing.

Barendt, E., Hitchens, L., Craufurd-Smith, R. and Bosland, J. (2013). *Media Law: Text, Cases and Materials*. Pearson Higher Ed. pp. 195-6

Barnard, C. and Peers, S. eds. (2017). *European Union law*. Oxford University Press.

Baron Cohen, S. *Autism: The Empathizing–Systemizing (E-S) Theory* The Year in Cognitive Neuroscience 2009

Barthes, R. (1988). *The semiotic challenge* (p. 11). New York: Hill and Wang.

Bassin, D., Honey, M., & Kaplan, M. M. (Eds.). (1996). *Representations of motherhood*. Yale University Press.

Bates, L. (2014). Enough is Enough: The Fight Against Everyday Sexism. *The Guardian*.

Baudrillard, J. (1994). *Simulacra and simulation*. University of Michigan press.

Bauman, Z. (2013). *Consuming life*. John Wiley & Sons.

Beauvoir, S. D. (1989). The second sex, trans. HM Parshley. *New York: Vintage*.

- Belknap, P., & Leonard, W. M. (1991). A conceptual replication and extension of Erving Goffman's study of gender advertisements. *Sex Roles*, 25(3-4), 103-118.
- Bell, P., & Milic, M. (2002). Goffman's Gender Advertisements revisited: combining content analysis with semiotic analysis. *Visual communication*, 1(2), 203-222.
- Beltrá, M.N. and Llaguno, M.M. (2011). El sexismo publicitario: delimitación de conceptos e indicadores de género. Estudio empírico de la producción científica. *Pensar la publicidad*, 5(1), p.51.
- Berger, J. (2008) *Ways of seeing*. Vol. 1. Penguin UK,
- Bernitz, Ulf. (2007). What is Scandinavian law? Concept, characteristics, future. *Scandinavian studies in law* 50 (2007): 13-30.
- Beveridge, F. (2008). Implementing gender equality and mainstreaming in an enlarged European Union: Prospects and challenges. *Gender and the open method of coordination: Perspectives on law, governance and equality in the EU*, 11-34.
- Beveridge and Velluti (eds.) (2008) *Gender and the Open Method of Coordination* Ashgate
- Bleich, E. (2003). *Race politics in Britain and France: Ideas and policymaking since the 1960s*. Cambridge University Press
- Bloshmi, A. (2013). Advertising in Post-Feminism: The Return of Sexism in Visual Culture? *Journal of Promotional Communications*, 1(1).
- Bogdan, M. (2009). Private international law aspects of the introduction of same-sex marriages in Sweden. *Nordic J. Int'l L.*, 78, 253.
- Borchorst, A. and Siim, B. (2008). Woman-friendly policies and state feminism: Theorizing Scandinavian gender equality. *Feminist Theory*, 9(2), pp.207-224.
- Bourdieu, P. 2011. The forms of capital. *Cultural theory: An anthology*, 1, pp.81-93.
- Brennan, F. (2003) 'The Race Directive: Recycling Racial Inequality?' *Cambridge Yearbook of European Legal Studies* 5 311-331
- Bryman, A. (2016). *Social research methods*. Oxford university press
- Bull, T. (2009). 'Freedom of Expression in Sweden: The Rule of Formalism' in Kierulf and Ronning (Eds) *Freedom of Speech: Abridged* Nordicom
- Burawoy, M. (2005). The critical turn to public sociology. *Critical Sociology*, 31(3), 313-326.
- Burrows, N. (1985). The 1979 convention on the elimination of all forms of discrimination against women. *Netherlands International Law Review*, 32(3), 419-460.
- Busfield, J. (1994) "The female malady? Men, women and madness in nineteenth century Britain." *Sociology* 28(1) 259-277.

Butler, J, (1990) *Gender Trouble* Routledge.

Butler, Judith. (1997) *Excitable speech: A politics of the performative*. Psychology Press

Calder, B.J. (1977). Focus groups and the nature of qualitative marketing research. *Journal of Marketing research* 353-364.

Calvero, S. and Galligan, Y. 'Justice, Democracy and Gender' in Galligan, Y. (ed) (2012). *Deliberative Processes and Gender Democracy* (No. 1/12). Case Studies from Europe, ARENA Report.

Caracciolo Di Torella, E. (2005) 'The Goods and Services Directive: Limitations and Opportunities' *Feminist Legal Studies* 13:3 337-347

Caracciolo Di Torella (2007) 'The Principle of Gender Equality, The Goods and Services Directive and Insurance: A conceptual Analysis' (2007) *The Maastricht Journal of European and Comparative Law* 339-350

Cartwright, J., McCormick, H., & Warnaby, G. (2016). Consumers' emotional responses to the Christmas TV advertising of four retail brands. *Journal of Retailing and Consumer Services*, 29, 82-91.

Conley, H. (2012). Economic crisis, austerity and gender equality: The UK case. *European Gender Equality Law Review*, (2)14-19.

Cook, R. (1990) 'Reservation to the Convention on the Eliminations of all forms of Discrimination Against Women' *Virginia Law Journal* 643-671

Cotterrell, R. (2006). 'Comparative law and legal culture' in Reimann, M., & Zimmermann, R. (Eds.). *The Oxford handbook of comparative law*. Oxford University Press.

Cotterrell, R. (1997). *Law's community: legal theory in sociological perspective*. Oxford University Press.

Crown, G., Bray, O. and Earle, R. (2010). *Advertising law and regulation*. A&C Black.

Dahlerup, D. (2011). Women in Nordic politics—a continuing success story? *Gender and Power in the Nordic Countries*, 59.

Dawson, M. (2013). 'Soft Law and the Rule of Law in the European Union: Revision or Redundancy? In Vauchez, A and De Witte, B (eds) *In Lawyering Europe* Hart Publishing

De Búrca, G. (Ed.). (2005). *EU law and the welfare state: in search of solidarity*. Oxford: Oxford University Press.

De Cruz, P. (1999). *Comparative law in a changing world* (p. 13). London: Cavendish.

Dehghani, M., & Tumer, M. (2015). A research on effectiveness of Facebook advertising on enhancing purchase intention of consumers. *Computers in Human Behavior*, 49, 597-600.

Delise, N. How do You Facebook? The Gendered Characteristics of Online Interaction in Farris, D. N., Davis, M. A., & D'Lane, R. (Eds.). (2014). *Illuminating how Identities, Stereotypes and Inequalities Matter Through Gender Studies*. Springer Science & Business.

Dodinson and F Johnson 'Qualitative Legal Research', in McConville and W.H. Chue (Eds) *Research Methods for Law* (Edinburgh Uni Press 2010) p.20-33

Döring, N., Reif, A., & Poeschl, S. (2016). How gender-stereotypical are selfies? A content analysis and comparison with magazine adverts. *Computers in Human Behaviour*, 55, 955-962.

Earle 'The Self-Regulatory System' in Richard Lindsay (ed) (2016). *Ad Law: The Essential Guide to Advertising Law and Regulation* Kogan Page

Edström, M., & Kenyon, A. T. (2016). *Blurring the lines: Market-driven and democracy-driven freedom of expression*. Nordicom.

Eckermann, L. (2009). Theorising self-starvation: Beyond risk, governmentality and the normalizing gaze. In *Critical feminist approaches to eating dis/orders* (pp. 31-43). Routledge.

Ekberg, G. (2004). The Swedish law that prohibits the purchase of sexual services: Best practices for prevention of prostitution and trafficking in human beings. *Violence against women*, 10(10), 1187-1218.

Ekman, L., & Engström, R. (2017). The many feminist voices of the radical right: An actor-oriented study of the Sweden Democrats' conception of equality. *HumaNetten*, (38), 82-96.

Enchelmaier, S., Jarvis, M., Johnston, A. C., Norberg, S., Oliver, P. J., Stothers, C., & Weatherill, S. (2010). *Oliver on Free movement of goods in the European Union*. Bloomsbury Publishing.

Eschholz, S., Bufkin, J., & Long, J. (2002). Symbolic reality bites: Women and racial/ethnic minorities in modern film. *Sociological Spectrum*, 22(3), 299-334.

Edström, M., & Mølster, R. (2014). *Making Change. Nordic Examples of Working Towards Gender Equality in the Media*. Nordicom.

Fern, E. F., & Fern, E. E. (2001). *Advanced focus group research*. Sage.

Ferrés, J. and Piscitelli, A. (2012). Media competence. Articulated proposal of dimensions and indicators. *Comunicar*, 19(38), pp.75-81.

Fine, C. (2010) *Delusions of Gender Icon*

Festinger, L. (1954) "A theory of social comparison process". *Human Relations* 7 (2) pp.117-140

- Frankenberg, G. (2016). *Comparative law as critique*. Edward Elgar Publishing.
- Fredman, S. F. (2011). *Discrimination law*. Oxford University Press
- Friedman, L. M. (1975). *The legal system: A social science perspective*. Russell Sage Foundation.
- Gago, E.G. and Kirzner, M.S Women, gender equality and the economic crisis in Spain. *Women and in Karamessini, M., & Rubery, J. (Eds.). (2013). Women and austerity: The economic crisis and the future for gender equality* (Vol. 11). Routledge.
- Gane, N. (2004). *The future of social theory*. A&C Black.
- García, E. (2016). 'La génesis de la política del gobierno central contra la violencia de género en España: ideas, prioridades y policy change' in M. La Barbera and M. Cruells (Eds.) *Igualdad de género y no discriminación en España: evolución, problemas y perspectivas*. Madrid: CEPC, 395-423.
- Giaccardi, C. (1995). Television advertising and the representation of social reality: A comparative study. *Theory, Culture & Society*, 12(1), 109-131.
- Gibbons, T. and Humphreys, P. (2012). *Audiovisual regulation under pressure: Comparative cases from North America and Europe*. Routledge Press
- Gil de Zúñiga, H., Veenstra, A., Vraga, E. and Shah, D. (2010). Digital Democracy: Reimagining pathways to political participation. *Journal of Information Technology & Politics*, 7(1), pp.36-51.
- Gill, R. M. (2007). *Gender and the Media*. Polity Press.
- Gilligan, C. (1982). *In a different voice*. Harvard University Press.
- Gilman, S. L., Gilman, S. L., King, H., Porter, R., Rousseau, G. S., & Showalter, E. (1993). *Hysteria Beyond Freud*. University of California Press.
- Ginn, J. (2013). Austerity and Inequality. Exploring the Impact of Cuts in the UK by Gender and Age. *Research on Ageing and Social Policy*, 1(1) pp.28-53.
- Goffman, E. (1959). *The Presentation of Self in Everyday Life* New York
- Goffman, E. (1974) *Frame Analysis* Boston University Press
- Goffman, E. (1979) *Gender advertisements* Macmillan
- Goffman, E. (1977). The arrangement between the sexes. *Theory and society*, 4(3), 301-331.
- Golbeck, J., Ash, S., & Cabrera, N. (2017). Hashtags as online communities with social support: A study of anti-sexism-in-science hashtag movements. *First Monday*, 22(9).

González, R. (2008). Aportaciones de la Ley de medidas contra la violencia de género a la prohibición de publicidad discriminatoria. *Revista de derecho de la competencia y la distribución*, (2),

Grau, S. L., & Zotos, Y. C. (2016). Gender stereotypes in advertising: a review of current research. *International Journal of Advertising*, 35(5), 761-770.

Graziadei, M. (2009). Legal transplants and the frontiers of legal knowledge. *Theoretical Inquiries in Law*, 10(2), 723-743.

Graziano, P., & Vink, M. (Eds.). (2006). *Europeanization: new research agendas*. Springer.

Guerrina, R., & Masselot, A. (2018). Walking into the footprint of EU Law: unpacking the gendered consequences of Brexit. *Social Policy and Society*, 17(2), 319-330.

Hacking, I. (1999). *The social construction of what?*. Harvard University Press.

Haines, E. L., Deaux, K., & Lofaro, N. (2016). The times they are a-changing... or are they not? A comparison of gender stereotypes, 1983–2014. *Psychology of Women Quarterly*, 40(3), 353-363.

Hardy, M.A. and Bryman, A. (2004) *Handbook of data analysis*. Sage.

Harper, D. (2002). Talking about pictures: A case for photo elicitation. *Visual studies*, 17(1), 13-26.

Harrison, K., & Cantor, J. (1997). The relationship between media consumption and eating disorders. *Journal of communication*, 47(1), 40-67.

Hennink, M. M. (2013). *Focus group discussions*. Oxford University Press.

Heras, M.O. (2006). Mujer y dictadura franquista. *Aposta. Revista de Ciencias Sociales*, (28), pp.1-26.

Hermida, A., Fletcher, F., Korell, D., & Logan, D. (2012). Share, like, recommend: Decoding the social media news consumer. *Journalism Studies*, 13(5-6), 815-824.

Herring, S. C., & Kapidzic, S. (2015). Teens, gender, and self-presentation in social media. *International encyclopaedia of social and behavioral sciences*, 2, 1-16.

Holland, G., & Tiggemann, M. (2016). A systematic review of the impact of the use of social networking sites on body image and disordered eating outcomes. *Body image*, 17, 100-110.

Holtmaat, R., & Tobler, C. (2005). CEDAW and the European Union's Policy in the Field of Combating Gender Discrimination. *Maastricht Journal of European and Comparative Law*, 12(4), 399-425.

Hunt, A. (1978). The sociological movement in law. In *The Sociological Movement in Law* (pp. 1-10). Palgrave Macmillan, London.

- Husa, J. (2000). Guarding the constitutionality of laws in the Nordic countries: A comparative perspective. *The American journal of comparative law*, 48(3), 345-381.
- Hermida, A., Fletcher, F., Korell, D., & Logan, D. (2012). Share, like, recommend: Decoding the social media news consumer. *Journalism Studies*, 13(5-6), 815-824.
- Kang, M. E. (1997). The portrayal of women's images in magazine advertisements: Goffman's gender analysis revisited. *Sex roles*, 37(11-12), 979.
- Kantola, J. (2010). *Gender and the European Union*. Macmillan International Higher Education.
- Kathree, F. (1995) Convention on the Elimination of all Forms of Discrimination Against Women *South African Journal of Human Rights* 11:3
- Kennedy, P. (2001). Spain's 'Third Way?': The Spanish Socialist Party's utilization of European integration. *Journal of Southern Europe and the Balkans*, 3(1), 49-59.
- Kitzinger, J. (1994). The methodology of focus groups: the importance of interaction between research participants. *Sociology of health & illness*, 16(1), 103-121.
- Kitzinger J. (1995). 'Introducing focus groups', *British Medical Journal* 311: 299-302.
- Kleinstauber, H. J., & Sonnenberg, U. (1990). Beyond public service and private profit: international experience with non-commercial local radio. *European Journal of Communication*, 5(1), 87-106.
- Konstadinides, T., & Dyson, T. (2016). Enhancing Energy Security in the European Union: Pathways to Reduce Europe's Dependence on Russian Gas Imports. *European Law Review*.
- Koukoulis-Spiiotopoulos, S. (2005). The Amended Equal Treatment Directive (2002/73): An Expression of Constitutional Principles/Fundamental Rights. *Maastricht Journal of European and Comparative Law*, 12(4), 327-368.
- Kraft, D. (2007). Advertising Restrictions and the Free Movement of Goods-The Case Law of the ECJ. *Eur. Bus. L. Rev.*, 18, 517.
- Krahé, B. (2016). Societal responses to sexual violence against women: Rape myths and the "real rape" stereotype. In *Women and Children as Victims and Offenders: Background, Prevention, Reintegration* (pp. 671-700). Springer,
- Krizsán, A., Skjeie, H. and Squires, J. eds., 2012. *Institutionalizing intersectionality: The changing nature of European equality regimes*. Springer.
- Krolokke, C., & Sorensen, A. S. (2006). *Gender communication theories and analyses: From silence to performance* (No. 50). Sage.
- Kvale, S. (2008). *Doing interviews*. Sage.

Kvist, J. (Ed.). (2012). *Changing social equality: the Nordic welfare model in the 21st century*. Policy Press.

Kvist, J. and Greve, B., 2011. Has the Nordic welfare model been transformed? *Social Policy & Administration*, 45(2), pp.146-160.

Lacey, N. (1996). Normative reconstruction in socio-legal theory. *Social & Legal Studies*, 5(2), 131-157.

Legrand, P. (2003). 'The Same and the Different' in Legrand, P and Munday, R (eds) *Comparative Legal Studies: Traditions and Transitions* Cambridge University Press at 240-311.

Leiss, W., Kline, S., Jhally, S. and Botterill, J. (2013). *Social communication in advertising: Consumption in the mediated marketplace*. Routledge.

Lindqvist, A., Bäck, E. A., & Sendén, M. G. (2017). Could hen reduce the gender bias in the Swedish language? In *International Convention of Psychological Science*.

Lindsay, R. (2016) *Ad Law: The Essential Guide to Advertising Law and Regulation* Kogan Page

Little, V. (2008). Audiovisual Media Services Directive: Europe's Modernization of Broadcast Services Regulations. *U. Ill. JL Tech. & Pol'y*, 223.

Lorber, J. (2004). "Night to his day": The social construction of gender. *Race, class, and gender in the United States*, 54-64.

Mäntylä, T. (2013). Gender differences in multitasking reflect spatial ability. *Psychological science*, 24(4), 514-520.

MacRae, H. (2006). Rescaling gender relations: The influence of European Directives on the German gender regime. *Social Politics*, 13(4), 522-550.

Madriz, E., (2000). Focus groups in feminist research. *Handbook of qualitative research*, 2, 837

Magnuson, M. J., & Dundes, L. (2008). Gender differences in "social portraits" reflected in MySpace profiles. *Cyber Psychology & Behavior*, 11(2), 239-241.

Maines, R. P. (2001). *The technology of orgasm: "Hysteria," the vibrator, and women's sexual satisfaction*. JHU Press.

Malmstrom, A. (1969). System of Legal Systems, The. *Scandinavian Stud in Law*, 13, 127.

Malson, H., Halliwell, E., Tischner, I., & RÚDÓLFSDÓTTIR, A. (2011). Post-feminist advertising laid bare: Young women's talk about the sexually agentic woman of 'midriff' advertising. *Feminism & Psychology*, 21(1), 74-99.

Manning, P. (2013). *Erving Goffman and modern sociology*. John Wiley & Sons.

Masselot, A. (2007). The state of gender equality law in the European Union. *European Law Journal*, 13(2), 152-168.

Masselot, A. (2007) 'The Future of Gender Equality Outside the Workplace', in S. Millns and M. Mateo Diaz (eds.) *Gender Equality and the Future of the European Union* [Unpublished]

Mastenbroek, E. (2005). EU compliance: Still a 'black hole'? *Journal of European Public Policy*, 12(6), 1103-1120.

Mazey, S. (2000). The emergence of gender mainstreaming in the EU: policy succession in hard times. In *Mainstreaming Gender in European Union Public Policy: A Workshop at the University of Wisconsin-Madison*.

McRobbie, A. (1994). *Postmodernism and popular culture*. Psychology Press.

Merton, R. K., Fiske, M., & Kendall, P. A. (1956). The focused interview; a manual of problems and procedures.

Meyer, J., Song, R., & Ha, K. (2016). The effect of product placements on the evaluation of movies. *European Journal of Marketing*, 50(3/4), 530-549.

Meyersson Milgrom, E.M., Petersen, T. and Snartland, V. (2001). Equal pay for equal work? Evidence from Sweden and a comparison with Norway and the US. *The Scandinavian Journal of Economics*, 103(4), 559-583

Montesquieu, C. (1989). *Montesquieu: The spirit of the laws*. Cambridge University Press.

Morgan D.L. (1988) *Focus groups as qualitative research*. London: Sage.

Morgan D.L. (1997, 2nd Edition) *Focus groups as qualitative research*. London: Sage.

Morgan, D.L., Neal, M.B. and Carder, P., 1997. The stability of core and peripheral networks over time. *Social networks*, 19(1), 9-25.

Munday, J. (2006). Identity in focus: The use of focus groups to study the construction of collective identity. *Sociology*, 40(1), 89-105.

Nelken, D. (2006) 'Rethinking Legal Culture' in Freeman, M. (ed). *Law and Sociology*, (Oxford University Press) 200-224.

Nelken, D. (2002). Legal transplants and beyond: of disciplines and metaphors.

Nelken, D. (2004). Using the concept of legal culture. *Austl. J. Leg. Phil.*, 29, p.1.

Orbach, S. (2009) *Bodies*. Picador

Orbach, S. (1998) *Fat is a Feminist Issue: The Anti-diet Guide for Women+ Fat is a Feminist*. No. 2. Random House,

Ortwein, B.M.I. (2002). The Swedish Legal System: An Introduction. *Ind. Int'l & Comp. L. Rev.*, 13,

Paoletti, J. B. (2012). *Pink and blue: Telling the boys from the girls in America*. Indiana University Press.

Parsons, T. and Bales, R.F. (1956). *Family socialization and interaction process* (Vol. 7). Psychology Press

Paul, J., & Sheets, E. (2012). Adapting Erving Goffman's "Gender Advertisements" to interpret popular sport depictions of American Indians. *International Journal of Humanities and Social Science*, 2(24), 71-83.

Pollack, M. A. (2000). The end of creeping competence? EU policy-making since Maastricht. *JCMS: Journal of Common Market Studies*, 38(3), 519-538.

Puchta, C. and Potter, J. (2004). *Focus group practice*. Sage.

Raag, T. (1999). Influences of social expectations of gender, gender stereotypes, and situational constraints on children's toy choices. *Sex Roles*, 41(11-12), pp.809-831.

Ralph M.. Negrine and Papathanassopoulos, S. (1990). *The internationalisation of television*. Pinter publishing pp.105-109

Rawls, J. (2009). *A theory of justice*. Harvard university press.

Reay, D., Crozier, G. and Clayton, J. (2009). 'Strangers in paradise'? Working-class students in elite universities. *Sociology*, 43(6), p1115.

Retallack, H., Ringrose, J., & Lawrence, E. (2016). 'Fuck Your Body Image': Teen Girls' Twitter and Instagram Feminism in and Around School. In *Learning bodies* (pp. 85-103). Springer, Singapore.

Ren, D., Zhou, H., & Fu, X. (2009, August). A deeper look at gender difference in multitasking: Gender-specific mechanism of cognitive control. In *Natural Computation, 2009. ICNC'09. Fifth International Conference on* (Vol. 5, pp. 13-17). IEEE.

Ripley, S. (2012) *EU Law after Lisbon* OUP Oxford

Ritchie, J., Lewis, J., Nicholls, C. M., & Ormston, R. (Eds.). (2013). *Qualitative research practice: A guide for social science students and researchers*. sage.

Roberts, S. G., & Sharman, A. (2013). *1812 Echoes: The Cadiz Constitution in Hispanic History, Culture and Politics*. Cambridge Scholars Publishing.

Rousseau, G. (2004). *Nervous acts: essays on literature, culture and sensibility*. Springer.

Rutland, R. A. (1991). *The birth of the Bill of Rights, 1776-1791*. Northeastern University Press.

Salih, S. (2002). Judith Butler: Routledge Critical Thinkers.

Sarikakis, K., & Nguyen, E. T. (2009). The trouble with gender: Media policy and gender mainstreaming in the European Union. *European Integration*, 31(2), 201-216.

Senden, L. (2005) *Soft Law in European Community Law* Hart Publishing

Schutz, A. (1970). *Alfred Schutz on phenomenology and social relations* (Vol. 360). University of Chicago Press.

Schutzman, M. (1999). *The real thing: performance, hysteria, & advertising*. Wesleyan University Press.

Scott, S. (2009). *Making sense of everyday life*. Polity.

Scott, S. (2016). *Negotiating identity: Symbolic interactionist approaches to social identity*. John Wiley & Sons.

Scott, S. (2017). Transitions and transcendence of the self: stage fright and the paradox of shy performativity. *Sociology*, 51(4), pp.715-731.

Shirani, F., & Henwood, K. (2011). Taking one day at a time: Temporal experiences in the context of unexpected life course transitions. *Time & Society*, 20(1), 49-68.

Skilbrei, M. L., & Holmström, C. (2011). Is there a Nordic prostitution regime?. *Crime and Justice*, 40(1), 479-517.

Showalter, E. (2016). Ophelia, gender and madness. *The British Library*.

Svensson, E.M. and Edström, M. (2015). Freedom of expression vs. gender equality. *Tidsskrift for Rettsvitenskap*, 127(05), pp.479-511.

Senden, L. 'Soft Law in European Community Law' (Hart Publishing 2005) 36

Senden, L. 'Soft Law, Self-Regulation and Co-Regulation in EU Law: Where Do They Meet?' *Journal of Comparative Law*, 2005 9:1

Sheppard-LeMoin, D. (2000) *The Social Construction of Low Income Single Mothers Lives: The Link to Understanding their Parenting Experiences*

Showalter, Elaine. *Female malady*. 1985.

Showalter, Elaine. *Hystories: Hysterical epidemics and modern media*. Vol. 2. Columbia University Press, 1998.

Smith, G, *Erving Goffman* (Routledge 2006) p.94

Snyder, F. 'The Effectiveness of European Community Law: Limitations, Processes, Tools and Techniques' (1993) *Modern Law Review* 56:1 (1993) p.33

Steiner, J., Drawing the Line: Uses and Abuses of Article 30 EEC' (1992). *CML Rev*, 29, p.749.

Stern, Barbara B. "Pleasure and persuasion in advertising: rhetorical irony as a humor technique." *Current Issues and Research in Advertising* 12.1-2 (1990): 25-42.

Irving, H. (Ed.). (2017). *Constitutions and Gender*. Edward Elgar Publishing.

Svensson, E.M. and Edström, M., 2015. Freedom of expression vs. gender equality. *Tidsskrift for Rettsvitenskap*, 127(05), pp.479-511.

Teye, V., Ercan, S and Sevil F. Sönmez. (2002) 'Residents' attitudes toward tourism development." *Annals of tourism research* 29.3:668-688.

Tham, H., 2001. Law and order as a leftist project? The case of Sweden. *Punishment & Society*, 3(3), pp.409-426.

Thomas, DS (1928). The child in America. Behavior problems and programs.

Timmer, A. S. H. (2016). Gender Stereotyping in the case law of the EU Court of Justice. *European Equality Law Review*, (1), 37-46.

Torrubiano-Domínguez, J., Vives-Cases, C., San-Sebastián, M., Sanz-Barbero, B., Goicolea, I., & Álvarez-Dardet, C. (2015). No effect of unemployment on intimate partner-related femicide during the financial crisis: a longitudinal ecological study in Spain. *BMC public health*, 15(1), 990.

Trubek, D. M., & Trubek, L. G. (2005). Hard and soft law in the construction of social Europe: the role of the open method of co-ordination. *European Law Journal*, 11(3), 343-364.

Tuckman, B. W., & Jensen, M. A. C. (1977). Stages of small-group development revisited. *Group & Organization Studies*, 2(4), 419-427.

Tyler, D.I. (2013) *Revolting subjects: Social abjection and resistance in neoliberal Britain*. Zed Books Ltd

Van Hoecke, M. (2015). Methodology of comparative legal research. *Law and Method*, pp.1-35.

Vauchez, A. and De Witte, B. eds., 2013. *Lawyering Europe: European law as a transnational social field*. Bloomsbury Publishing.

Villiers, C. (1999). *The Spanish Legal Tradition: An introduction to the Spanish law and legal system*. Dartmouth Publishing Company

Wadsworth, B. J. (1996). *Piaget's theory of cognitive and affective development: Foundations of constructivism*. Longman Publishing.

Walby, S. (2004). The European Union and gender equality: Emergent varieties of gender regime. *Social Politics: International Studies in Gender, State & Society*, 11(1), 4-29.

- Ward, D. (2002). *The European Union democratic deficit and the public sphere: An evaluation of EU media policy* (Vol. 8). IOS Press.
- Wallace, R. A., & Wolf, A. (1995). Contemporary Sociological Theory Continuing the Classical Tradition.
- Weatherill, S. (2014). *Cases and materials on EU law*. Oxford University Press, USA.
- West, C., & Zimmerman, D. H. (1987). Doing gender. *Gender & society*, 1(2), 125-151.
- Wheeler, S., & Thomas, P. (2002). Socio-legal studies. *Law's Future (s)*. Oxford: Hart Publishing, 267-80.
- Wilkinson, S. (1999). How useful are focus groups in feminist research?
- Wolf, N. (1991). The beauty myth: How images of beauty are used against women. New York: William Morrow and Company. Inc, 348, 5.
- Zweigert, K., Kötz, H., Weir, T., Kötz, H., & Weir, T. (1998). *Introduction to comparative law* (Vol. 3). Oxford: Clarendon Press.

Case Law

Autronic AG v Switzerland, Merits and just satisfaction, App no 12726/87 (A/178), (1990) 12 EHRR 485,

C-20/71 Louisa Sabbatini (Nee Beroni) v European Parliament [1972]

C-155/73 Italy v Sacchi [1974] ECR I-409

C-8/74 Procureur de Roi v Dassonville [1974] ECR 837

C-43/75 Defrenne v. Sabena, [1976] ECR I 455.

C-120/78 Rewe-Zentral AG v Bundesmonopolverwaltung für Branntwein [1979] ECR I 00649

C-249/81 Commission of the European Communities v Ireland [1982] ECLI:EU:C:1982:402

C-286/81 Oosthoek's Uitgeversmaatschappij BV.[1982] ECR 4575

C-178/84 Commission v Germany [1987] ECR 1227

C-325/85 Bon Van Adverteeders and Others v The Netherlands [1988] ECR I-2085

C-362/88 GB-INNO-BM v Confederation du Commerce Luxembourgois [1990] I ECR 667

C-1/90 and C-176/90 Angonesas de Publicidad Exterior SA and Publivia SAE v Departamento de Sanidad y Seguridad Social de la Generalitat de Cataluña

C-267/91 and 268/91 Bernard Keck and Daniel Mithouard [1993] ECR I-6097

C-401/92 and C-402/92 Tankstation 't Heukske vof and J. B. E. Boermans

C-391/92 Commission v Greece [1995] ECR I-01621

C-292/92 Ruth Hünemund and others v Landesapothekerkammer Baden Württemberg [1993] ECR I-06787

C-69/93 and C258/93 Puno Casa [1993] ECR I-02355

C-412/93 Leclerc Siplec Societe d'Importation v TFI Publicite & M6 Publicite [1995] ECR I-00179

C-418/93 Semeraro Casa Uno Srl gegen Sindaco del Comune di Erbusco [1993] ECR I-02975

Case C-34/95 Konsumentombudsmannen (KO) v De Agostini (Svenska) Forlag [1995] ECR I-179

Case C-385/01 Commission v Spain [2003] ECR I-13145

Case C- 71/02 Herbert Karner Industrie-Auktionen GmbH v Troostwijk GmbH. [2004] ECR I-0302

Case C-115/15 NA (Pakistan) [2016] ECR not yet published

Case C-239/02. Douwe Egberts NV v. Westrom Pharma NV and Others [2004] ECR I-07007

Case C-20/03 Marcel Burmanjer and Others [2003] ECR 687

C-403/08 FAPL v QC Leisure and Others and C-429/08 Murphy v Media Protection Services [2008] ECR I-11519

Groppera Radio AG and others v Switzerland App no 10890/84, A/173, (1990) 12 EHRR 321

Judgment of the Mercantile Court of Malaga of December 5, 2013 RyanAir Case (JUR 2013/375143).

Khurshid Mustafa and Tarzibachi v Sweden ECHR (Bailii, [2011] ECHR 1277

Appendices

Elite Interview Question List

1.	What are the national rules on gender stereotypes / sexualisation / decency / good taste / representation of women and men in the respective Member States? Are one of the above areas are surely covered by some primary legislation, constitutional code or similar.
2.	Aside from the national laws, codes (SROs) are there any other measures that indirectly protect the consumer? E.g. Swedish law protects vulnerable consumers – children, placing a higher threshold for regulation of kids TV/advertising.
3.	Are there any landmark cases in this area? How do consumers go about complaining, is the complaints system rigorous enough, well-advertised, easily accessed? Can groups of consumers/NGOs or other complain about an advert? Are there any reasons why consumers are not coming forward? (overlap with empirical research interviews)
4.	Are there any other soft law or voluntary measures at play? Advertisers at least may want to appear like they care or have considered the problems that advertising can cause.

Focus Group Questions List

1.	When you think of gender-based stereotypes in advertising what brands or products come to mind
2.	When you think of gender-based stereotypes in advertising what brands or products come to mind
3.	What do the gender stereotypes in these adverts tell you about the product?
4.	What are the problems (if at all) with adverts that use gender stereotypes to sell certain brands and products
5.	How do the gender stereotypes in these advertisements make you feel?
6.	When you think about these advertisements, how do you feel?
7.	What was the last advert you saw that upset you or made you think 'this advert is odd'?
8.	Have you ever bought any of the products that use gender stereotypes in their advertisements?
9.	Is there a problem with gender stereotypes in advertising
10.	Semi improvised probing questions – 'tell me more about why that advert is problematic/harmful' 'what do you mean by that?' etc.

