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Reviews

WHAT IS THE SMELL OF LAW? FIRST ASSUMPTIONS FOR THE SEMIOTICS OF JURIDICAL “MATTER”

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Abstract
This article is a semiological approach to a possible smell of Law, considering that the area of semiotics may include any of the five senses. Based on the perception of Law being represented by the Latin expression “Fumus boni juris”, we conjecture here if the smell of Law would be the smell of smoke, also describing its structures. From that point on, we discussed the structures of the juridical matter.

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WHAT IS THE SMELL OF LAW? FIRST ASSUMPTIONS FOR THE SEMIOTICS OF JURIDICAL “MATTER”

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“Due to its marginal and repressed status in contemporary Western culture, smell is hardly ever considered as a political vehicle or a medium for the expression of class allegiances and struggles. None the less, olfaction does indeed enter into the construction of relations of power in our society, on both popular and institutional levels.” (1)

1. INTRODUCTION AND CONTEXTUALIZATION

In times when Juridical Semiotics are emergent, but not yet culturally rooted (2) in the comprehension and explanation of phenomena, it is certainly noteworthy that the Juridical Iconography is more focused on visual arts (mainly painting and sculpting, in the so called “Visual Law”), generally speaking, than on other possible signs that are part of the empirical perception of phenomena within the Law, and that may also be a source of information and interpretation for experts, who are deeply immersed in the profusion of data that emerges from different motivations and concepts that constitute the ideal image of lawfulness.

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One might wonder if such provenance based on the notion that sight and hearing are the senses that are most exploited by cultural productions, when in fact, however, these are not always the senses that are more consciously manipulated, nor the ones to be activated most often by human exchanges. In other words, the fact that we so often focus our attention to vision and hearing in our regular productions does not necessarily mean that these manifestations are, in reality, the most important ones, which suppresses the aspiration of a full linguistic mimesis of anything, producing a cluster of meanings and representations that always have a prevailing substantial lack of something.

A probable cause of this imbalance, or of the different cultural destinations of the use of senses, may be found in biology studies, in comparative morphology. A current explanation is that the evolution of specific parts of the brain corresponds to the lifestyles of different species, which produce different functional domination. The human brain presents a dominance of the visual cortex, with binocular vision that is accurate in the perception of distance, while the olfactory structures are reduced as a trait of evolution resulting from life in the open air and the greater use of visual and tactile references for survival (3). Yet, the relevance of the sense of smell to identify varied survival conditions still remains.

In this context, it is noticeable that the contemporary means of communication are perfecting the tridimensional representation of images and sound, but have advanced very little in presenting or reproducing aromas with intellective ends. Specifically, the ordinary appeal of smells has been perfected by the food industry with artificial aromas that are identical to the natural ones, from vanilla to bacon; and in cosmetics, from the cheap scents to the million dollar ones, so many times the first trying to emulate the other in the never-ending strive for sophistication. Gastronomy has also improved in regards to specific sensations, going beyond nourishment for survival, and creating art and pleasure for the palate. All of these examples point to a greater flow of the aromas, now intended for consumption and comprehended within their feature of being a volatile compound.

The arts follow the same path, in such a way that smells (as a manifestation, not as image representation) are a special part of vanguard experiences of contemporary art, usually in environmental art (4). The aromatic production is then widespread, top of the line and most exploited in designer perfumes, adding together sophistication and the immediate delivery of sensuality, modernity, well-being and all sorts of images that people may like to associate to themselves by means of a purchase and a style (5). A perfume is also a means of social worth that an individual is able to emit.

Philosophically, the latent question on the subject is: can smells yield knowledge? According to the situation described above, smells were relegated more to a role within consumption than knowledge, necessarily; that is, its main function is to be pleasurable, and that couldn’t be any different because of its nature. The role of spicery and their allure for commercial development reinforces this understanding.
As from any other phenomenon, however, one can also gather knowledge and worth from an aroma, which is a cultural production that, when merely part of the discussion, is transformed into another possibility. Duality is present within meaning.

An interesting example of this type of discussion is the analysis and critique of perfumes. Chandler Burr is a famous critic in this area and, to illustrate our point, we can briefly mention a few comments of his review of Gucci Envy (6). In this text, the author declares that this perfume is worthy of being exhibited at the Modern Art Museum, such is its transcendence and aromatic greatness: an olfactory work of art. For Burr, the unique fragrance allows for surreal mental states, creating a pure, limpid and sophisticated beauty that is qualified by its perfect quality techniques of fixation, intensity and structure. This fragrance is described to be “as wonderfully odd as it is oddly wonderful”, whilst to appreciate it fully one must abandon any references to natural aromas. Yet, Burr writes regarding his job as an olfactory critic: It is interesting how much more difficult it can be to describe a good perfume than a bad one, but it is not surprising: This is in great part because often the good ones incorporate originality, and that is by definition a quality that defies description.”

Note, thus, how aromas and their classic top, middle and base notes, which create their structure, are closely vectored to the areas of memory, sensations, intuition and, in a sense, transcend verbal and linguistic abilities. In fact, the peculiarities of smells defy the ability of explanation. Still using the same example, note his creative strategy to communicate his comprehension of the aroma, using analogies with other senses and metaphors, besides references to the patterns used by the schools of perfume creation: “Envy is a green, fresh, modern, abstract innovation, as enigmatic yet compelling as the floating squares of color in a Rothko and as free of conscious information. It may or may not be ageless. We will see. But it is as remarkable and indefinable as an eclipse.”

This review exemplifies the challenges of a subject that requires different avenues of expression. In this article, the avenues used are followed in the opposite direction to that used by the critic, but with a similar approach: whilst the perfume analyst must create images to express the aroma that he smells, in this article we try to seek certain characteristics of the object in order to infer its possible aroma, based on certain abstractions.

The sense of smell is, then, challenging to knowledge and stimulates language, demanding it to abandon its usual strategies and forcing enunciation to produce a meaningful system. Its interaction with social life takes place in multiple dimensions, such as the focus of studies performed by the Sense of Smell Institute, in New York (7), which defines fields of Aromachology (the study of psychological effects of odors): consumer behavior; memory; humor and emotions; learning and development; social interaction; clinical applications; genetics and neurobiology; perception of odor and olfactory brain; health and molecular and mixture perception; pheromones. Thus the value of the subject in regards to juridical aesthetics.
2. WHAT IS THE SMELL OF LAW?

In the wide context of the olfactory world, we must consider that the Law, obviously, does not escape the orbit of the senses, and in this field Law has been discussed by means of Music, and a lot (almost all) has been said about Law and Literature. However, senses such as the ones of hearing and smell, whatever sounds and smells, have not been exploited, despite their potential to contribute to understanding the interaction between people in the juridical world and in the social world that also has juridical interest. That is: as mentioned above, aromas are interesting and challenging to the production of knowledge, including juridical knowledge.

In short, the traditional “qualification” – a prejudiced and obtuse one – that is normally attributed within the Law in regards to certain essential disciplines (which are a part of mere “perfumery”, that is, what is outside the scope of usual pragmatism), may be handled, without fearing the word play: in Law, aromas are sentenced to mere perfumery.

The search for the smell of Law, “[...] beyond and behind or below or above” its phenomenal reality (8), and from this, in an expression that is almost synesthetic of its concept, may represent an intuition transformed into an aroma. What would that aroma be?

“Quod non est in actis non est in mundo” – what is not in the records does not exist in the juridical world. Is there a smell “in actis”? The “fumus boni iuris” “est in actis” and, without a doubt, “est in mundo”. In a criminal case, the smell of a body “non est in actis” and, consequently, “non est in mundo”. But the smell of the paper escapes writing (unforgivable word-play): it is in the records, but it does not exist in the juridical world. Smells have many dimensions and they are all inter-related in different moments.

This brings us to the need to distinguish between two possible types of odors in Law: one is abstract and theoretical, called “fumus boni iuris”. Thus, the Legal Doctrine and the Theory of Law would supposedly, and by allegory, have a smell of smoke: pleasant or not, it expresses a possible indication of positive law, which brings us to the question of its smell.

A popular Brazilian proverb says that “this does not smell good” (9). Evidently, it is a common sense synthesis to express the understanding that something is not right, is imperfect, obscure or unfinished. And there is no doubt that an unethical attitude, or even illegal conduct, can in fact attack and hurt our senses. The expression “this does not smell good” is one such smell of the beginning of rottenness, of expiration, in other words, of decay and decomposition of things that were once whole, and that now emit the stimulus of its nefarious undoing.

Along these same lines, indifference is represented by another saying, “it doesn’t stink nor smell” (10), demonstrating that the sense of smell is able to indicate the focus of attention or relevance. Thus, for many the Law stinks, while for others it emits its perfumes around the world.
It is exactly in this context that one can locate the “fumus boni iuris”.

There is another popular saying, “where there’s smoke, there’s fire”; and certain native Indian tribes, such as the apache, used to communicate by using smoke signals, which, by the way, is the classic example to explain the image of the index in semiotics that from the triad index, sign and symbol. Well, this means that smoke is also a means of communication. In this sense, according to semiotics, smoke is a perfect and finished sign, where there is a sender and a receiver for the message. The smoke is the message. The “fumus” is also a message from the petitioner to the judge.

Another possible odor for the Law, within the same limits discussed above, is concrete and material; it shows to be plural and ordinary: the smell of paper, which may be new, old, dirty, dusty, stained with coffee, etc. And the smell of mold, which ultimately means elapsed time and the imperative process of change that all things are subjected to. How long will the Law, in practice, have the smell of paper and mold? How long until it becomes totally virtual in the electronic process? And how long until the virtual world will be filled with the diffusion of aromas? What difference does an aroma make to the perception and integration of phenomena?

The smell of hospitals is elected as the aroma of asepsis and, for some, of fear. The smell of penitentiaries expresses the condition of degradation that is experienced there. The smells of courthouses may represent people who are doing well in regards to their basic needs, or some who are above that social level and have certain luxuries, also indicating institutional respect or just personal affirmation, or yet, it may be a mixture of aromas that represent the most varied conditions of life sharing the same public space for the resolution of conflicts. Smells inform, unite, define, separate, bring together, push apart and hierarchize people.

Aromas may soothe or provoke, and any person who suffers from migraines knows the destructive power that even the best perfume can have. The different social environments condensate aromatic masses that provide information about the people who share that space and about the phenomena and relationships established there, in such a way that the smell makes part of the understanding of the object, giving it identity, purpose, qualifications.

It is interesting to notice how the integration of senses in relation to Law reveals very private concepts, prejudices and ideas regarding the legal world. The direct connection of the sense of smell to memory and emotions is undeniable, so much so that this is how Proust made famous the image of an immediate return of childhood memories by means of tasting a madeleine dipped in tea, an experience of time transition that we all have experienced when surrounded by the perfume of a loved one who is far away, by the memories associated with the smell of freshly brewed coffee, the rain on the fields and so on, involving all types of experiences.

Maybe the connection of what is seen with what is inhaled and what is heard and touched may all be interrelated data about a complex object that is sent to our intelligence, adding emotions to what was previously only rational data.
This connection may produce new concepts and legal aspirations (with its double meaning) (11), allowing what was once hidden, either because of a routine blindness or because it became natural to the social practices, to now be seen and felt. Since it is well known that social practices are subject to human creativity and re-invention, the exploitation of the sense of smell is then a new tool to know, sensitise and create a Law that is more consistent with the reality to which it relates.

It is within this context that the question of the “smell of Law”, as an interest of the aesthetical dimension and semiotics, makes perfect sense, even more so when considered under the virtualities of the use of the “synesthetic” trait, as mentioned, that knowledge may acquire: the combination of separate senses resulting in stimuli from one sense to another (for example, the color or smell of a sound, the roughness of an aroma, etc.), as an appropriate and functional figure of speech, for being close to a metaphor, establishing thus an intellectual-speculative method of apprehension. When we discuss the smell of law we are also in the field of synesthesia, bringing the olfactory aspect together with the intellective aspect, creating a dialogue and investigating the nature of objects by less conventional means.

Still in this path, it is noteworthy to consider the definition, although controversial and debated, that the word “sentence”, in Portuguese, derives from the word “sense” (12). Many criticize the idea for this would bring it a touch of sentimentalism, but its indication of purpose cannot be denied.

The aroma of law is smelled before the sentence. Just think of the “smoke of a good right”. Well, the smoke (“fumus”) is not a gas, but a colloid, solid particles (micelles) in the air (“undone”, cf. remarkable image created by Marshall Berman), in a Brownian movement that is only observable thanks to the Tyndall effect. The smoke is a dissipative structure, related to the chaos theory (Prigogine). The Brownian movement is usually chaotic, which apparently means that the semiotics of the “smell of law” would in fact allow for an approach using the theory of dissipative structures. The theory of dissipative structures and the Principle of order through fluctuation contributed to the creation of a new mindset. The following aspects stand out in this new perspective: history, unpredictability, interpretation, spontaneity, disorder, creativity, accident and self-organization. This theory also states that the thought is always in process. It is temporary, not stable or fixed. Similar to the temporary restraining order that is based on “fumus”: temporary, unstable, subject to procedural fluctuations (and the procedural path is not a straight one, but one filled with different circumstances, therefore, fractal, that is, chaotic) that may repeal it or suspend it.

“Fumus” will also remit us to “sfumato”, a basic representation technique that is established in renaissance paintings, evident on Mona Lisa’s face. With “sfumato” the passage from one color to another or among different shades of the same color is done without abrupt interruptions, but softly and progressively, which turns the image into a metaphor of the knowledge between differences, bringing out the idea that one should not face reality in such a contrasting way, “black and
white”, but should consider all the uncountable shades of gray that allow us to see subtleties and nuances, similitudes and oppositions that help us comprehend shapes by means of light and shadow and multiple hues.

At first sight, thus, one might think that the presence of “fumus boni iuris”, contrary to “sfumato”, has the purpose of “breaking” the “status quo” with the imposition of a temporary restraining order. That is, the temporary restraining order would be the abrupt transition, non-“sfumata”. Marinoni clarifies, however, that the contrary occurs: the temporary restraining order is a tool to smooth the rough edges in favor of the author who has been having his copyright rights violated. That is true especially because a temporary restraining order is not final, but cautionary of the ultimate result of the case, which would transmit an even closer idea of the smoothening of abrupt transitions. “Fumus” is, in fact, “sfumato”.

But things are not all “smoke” or “smell” in Law. Note expressions such as “clear legal right” (13), on an injunction. Not only solids are relevant within the juridical imagery; the colloid (“fumus”) and also the liquid (liquidity of a right, of a credit, etc.) may be equally considered juridically worthy. Well, the idea of “liquidity” brings us to Bauman, especially to “Liquid Modernity”, whilst solidity points to the past. Such expressions within the legal jargon are loaded with a non “pejorative” (negative) meaning – which, for example, an “illiquid” right would have – well, but what is illiquid? Gas? It is not possible to be precise while being abstract. Anyhow, gas is closer to an idea of uncertainty, which conflicts with the pretense of a juridical certainty.

However, “solidity” is also frequent in the juridical imagery. There are enough jargons that remit to the idea of concreteness, based on the pre-atomic legal-philosophical concept, such as “materiality of the offence”, “materiality of the evidence” (and of the law); contrary to the theory of “dematerialization of property”, for example, with intangible assets (we think of Marshall Berman: “all that is solid melts into air”).

The expression “solid legal knowledge” also deserves attention, for it is a fossilized expression, as if taken from Flaubert’s “Dictionary of Received Ideas”, which tells a lot about the imagery that the legal universe creates about the consistency of the law. Thinking about the idea of “solidity” in the legal imagery, it is possible to observe that, for more traditional concepts, everything had to be solid: knowledge, consistency, furniture, marble antiques, etc. More than an aesthetic issue, the idea of solidity in the Law originates from the concept of matter previous to the discovery of the atom, when matter was believed to be solid.

Nowadays, we know that the core of matter has more empty spaces than mass, but for many Law concepts, furniture and knowledge continue to be solid, dense, and opaque, without any air within. On the other hand, jurists of any time adopt “fumus boni iuris”, which is as volatile and dissipative as an aroma – just like the ephemerality and volatility as metaphors of fugacity of legal facts lost in time. Legal procedures many times become a game of grasping smoke with bare hands.
3. THE SMELL OF LAW, JURIDICAL MATERIALITY AND ITS STATES

Since we are also discussing matter, the present article is not only a preliminary draft on the aesthetics of the sense of smell, but also of the sense of touch, for we started from the semiotic conjectures of the smell of law, moved to the idea of liquidity and then of matter.

Thus, we derive from “the juridical smell to the juridical touch”, that is, we began by discussing the smell, then concluded that the smoke is a colloid and followed with the states of matter, reflecting the path or trajectory that our thoughts go through in order to fully discuss our ideas.

That is why this is a discussion about the materiality of the law, that is, an analogy to the “states of matter”. Smells refer to materiality (gas and colloid). And gas and colloid (materiality) refer to space. Well, going from one state of matter to another is a form of transmutation, which is not the same as transubstantiation, thus the importance of the intersemiotic translation of Julio Plaza.

The idea of malleability is worth mentioning, which is a characteristic that makes sense for solids (not all, by the way), but doesn’t make sense for liquids or gases. That is, when we mention solidity, should we categorize solids (rights?) as malleable, inflexible and fragile?

Gustavo Zagrebelsky (14) approached a similar problem when he discussed the relation of human rights with the law and their relation to justice, including ductility as a trace of a pacific and democratic proposal that is part of overcoming the “Babel” of languages among the different cultural, ethical, political and religious universes which the human rights permeate. The form of Law is then decisive for its application, separate from the positivist understanding of solid and impervious right.

Despite this very rich contribution by Zagrebelsky and the advances of constitutional hermeneutics, there is still a lack of a supposed semiotic analogy to the “gaseous law”, which is not virtual law. By the way, what would be the state of matter of virtual law? Indeed, in this first analysis of the subject we wouldn’t contemplate an example of “gaseous law”, despite the examples mentioned for the “smell of law”. In the examples aforementioned, however, we may note that things do not need to be in the gaseous state to have a smell.

When we think about the supposed “states of matter” relating to the juridical field within a semiotic approach, it is necessary to point out that not everything in the universe is composed of matter. Discussing states is, then, a discussion of a small part of the universe. There is energy, dark matter, dark energy, etc., all are under the interest of astronomers. In this sense, “virtual law” would have more in common with “energy” (both without a smell, by the way), that’s why it is questionable if it would escape the issue of states of matter. If virtual law is energy, note that matter can be converted into energy (Einstein) and new smells may emerge from the transmutations.
It is possible that there are more states of matter than the ones known, but there is no proof of them that would be admitted by the official science. Even (astro) physics theorizes about it. By the way, one of these states is plasma.

Thus, the legitimacy of going from the subject of Juridical Semiotics of smells to the issue of matter in this study may be questioned. It might be necessary to determine what is essential and what is accessory to this article in order to delimit the theme. Still, the issue of matter may sound interestingly rich for the promising fertile minds of Semiotic of Law scholars.


The reading proposed along this article suggests a superposition, overlap and imbrication of states of juridical matter, since there are segments of different orders. But in fact, in order to create an aesthetic related to the “materiality” of Law, which hasn’t been explored yet, it is necessary to wonder if the superposition of matters may also be a superposition of languages.

In regards to the position taken by these languages, which would be metaphors created by the law imagery in regards to the states of matter, we cannot yet affirm if it is a superposition, overlap or imbrication, but we can certainly observe the analogous and metaphoric presence of these states of (juridical) matter in the language used by Law: solid (juridical knowledge), liquid (clear right). Colloid is not a state of matter, but it is also present (“fumus”). And gas? It may be part or emanation of a colloid (“fumus”).

Marcílio Toscano Franca Filho declares with propriety that the Law suffers from imagophobia (15). It is logocentric, indeed. But its objectivity and impersonality all lead to a law that is not only without images, but also without smells. Consider the “eloquent silence of the law”, that Karl Larenz (16) speaks of: the sense of smell cannot reach it. Also the “Mute Law”, the unwritten and unspoken Law: the sense of smell remains untouched. That is, the Law doesn’t only suffer from imagophobia, but also olfactophobia, an effect that is eventually leveraged by the civilizing process.

After all, based on the reading of Aldous Huxley and Norbert Elias we may say that the history of civilization is the history of deodorization – which may create the blockade of the smell of Law.

By the way, the juridical olfactophobia is confirmed even by the tributary principle of “non olet”, which declares that money “does not stink”, i.e., the unlawfulness of the activity is irrelevant for the taxation of its profits. It is as paradoxical as Camões’ sonnet (“it is a wishing no more for what you really want”), it is a smelling no more for what you really smell: it starts from a point and then demands that it be abandoned; it is an “olfactory” principle that demands us to leave the smell aside, that is, it is simultaneously an olfactory and olfactophobic
principle, i.e., an example of the importance of the smell in Law and also of its lack of importance.

Availing ourselves of an idea of Chandler Burr, every perfume, so to say, may be considered a completely abstract work of art. Just the same, Law ("ars boni et aequi") is an art; it also has styles, trends, schools... The art of perfumes not only has its time, its trends, but also its styles, in a way that it may be possible to write a history of perfumes just like we may write the history of art and of Law, with the prominent schools of each period of time etc. But the art of perfume will not have an image, nor a verb, and probably not a “logos” (and, in this sense, extremely opposite to the Law; that is, the smell of Law can reach what the Law itself cannot – and, maybe, that is why it is so disdained by the juridical world and its semiologists, at least expressively).

Well, the dissemination of a smell indicates that the matter (gas or colloid) is spreading through space, entropically. If the Law is olfactophobic, it is also agoraphobic, for it is linked to closed environments. If music is invasive (Pascal Quignard), so is the smell, thus the forensic seclusion against smells outside of the Law. Only closed places can preserve a smell. By trying to get rid of smells the court paradoxically ends up preserving and concentrating its own: the smell of Law. Preserving it from what? From the smells that are external to the juridical world, smells of the real world.

Despite that, the idea of democracy of Plato appeared in the agora, an area in the open air – which means: free smell. It is where smells mix together, i.e., that doesn’t mean that democracy is odorless, it simply mixes up smells – in fact, it mixes wills, votes, races, beliefs, genres, everything. But a smell in freedom thins out, gets lost by entropy, in such a way that freedom for smells in democracy is their own end.

If the open environment of the agora and the forensic seclusion are incompatible, in a final analysis, this means that there is an incompatibility between democracy and the preservation of the smell of Law...

Notes:
(1) CLASSEN, Constance; HOWES, David; SYNNOTT, Anthony. Aroma: a história cultural dos odores. Rio de Janeiro: Zahar, 1996. p. 173. This statement was the inspiration for the present article, first, because of the lesser attention given to the sense of smell as a significant source of knowledge, in general, in proportion to the discussion on juridical aesthetics which is, for now, almost non-existent. This disregard is opposed to the entire meaningful scope that has been abridged around smells and their social, political and also epistemic implications.


(4) Two examples to verify the expressive role of aromas currently explored by artists. ENCICLOPÉDIA ITAU CULTURAL DE ARTES VISUAIS. Comentário Crítico: Ernesto Neto. Available at: <http://www.itaucultural.org.br/aplicexternas/enciclopedia_ic/index.cfm?fuseaction=artistas_biografia&cd_verbete=1677&cd_idioma=28555&cd_item=1>. Access date: Apr. 07th, 2012. The exploitation of senses received from Helio Oiticica and Lygia Clark is evident in Ernesto Neto’s work. “During the second half of the 1980s, Ernesto Neto began to execute sculptures using tubes of fine translucent mesh, filled with spices of various colors and aromas: saffron, urucum, cumin, ground black pepper or powdered cloves. In some works, the piles of spices are laid out on the floor, while the ends of the fabric tubes are tied to the roof, generating the verticality of the sculptures as well as an interaction with the exhibition space. These sculptures carry allusions to the human body in the fabric which resembles an epidermis, as well as in the sinuous forms which establish themselves in space. The titles of the works reiterate the artist’s intention of situating the human body at the centre of his work: *O Céu É a Anatomia do Meu Corpo [The Sky Is the Anatomy of My Body]* or *Acontece na Fricção dos Corpos [It Occurs in the Friction of Bodies]* (both dating from 1998).” Exploring the expressiveness of the sense of smell and its relations to memory more vehemently: CARVALHO, Josely. *Nidus Vítreo – Diário de Cheiros.* Installation. Exhibit from Dec. 15th, 2010 to Mar. 20th, 2011, Museu Nacional de Belas Artes, Rio de Janeiro. “In the dark room, a giant nest with a thousand branches made of translucid glass resin takes over an area of about 54 square feet, on the floor. It reflects over a lighted mirror. At first, it explodes into the retina, shining majestically: then, the sense of smell is activated by a fragrance that arises from its core, evoking the memory of all guests. Memory? Of coziness, of beginning of life, of the beginning of a story. The smell (of nest), specially developed to compose this work, invites people to embark on a sensorial trip through the olfactory installation.” In contemporary art history, especially on the influences of video art and the Fluxus movement, a reference to the expansion of senses. ENCICLOPÉDIA ITAU CULTURAL DE ARTES VISUAIS. Verbete Videarte. Available at: http://www.itaucultural.org.br/aplicexternas/enciclopedia_ic/index.cfm?fuseaction=termos_texto&cd_verbete=3854&cd_idioma=28555&cd_item=8>. Access date: Apr. 07th, 2012. “Video art must be appreciated among minimalist conquests, but also along the lines of pop art because of its refusal to separate art and life by means of incorporating comic strips, advertising, and television and movie images. Performances and happenings widely used by artists connected to Fluxus are directly connected to video art. Fluxus works juxtapose not only objects, but also sounds, movements and lights, appealing simultaneously to several senses: sight, smell, hearing, touch. In them, the spectator must participate in experimental (and generally intermittent) performances that do not have a defined focus, are non-verbal and don’t have any previously established order. Looking further back, it is
possible to locate Dadaist echoes, mainly of tridimensional works of Marcel Duchamp (1887-1968) - The Large Glass 1915/1923 and To Be Looked at (From the Other Side of the Glass) with one Eye, Close to, for almost an Hour, known as Small Glass, 1918 – and his optical works, Rotary Glass Plates (Precision Optics), 1924 and Anemic Cinema, 1926.”

(5) A good example of the semantic and social complexity within the perfume industry may be seen in the refined perfume readings done by Chandler Burr, perfume critic and columnist for the NY Times who is also the author of “The Emperor of Scent: A True Story of Perfume and Obsession” and “The Perfect Scent: A Year Inside the Perfume Industry in Paris and New York". Equally relevant is the proposal and observations of Jean-Marc Lehu regarding olfactory marketing and the copyright problems arising from issues of aroma and speculations about the possibility of aroma on the web. LEHU, Jean-Marc. *Le marketing olfactif*. Collection Grande Collection, Editions Presses du management, 1999.


(7) Sense of smell Institute, NY. Available at: [http://www.senseofsmell.org](http://www.senseofsmell.org).

(8) The original expression used in this article comes from the Portuguese language: “Isto não cheira bem”. It literally means "it doesn't smell good". It is a linguistic expression or a metaphor that conveys the sense that something does not seem right. An equivalent expression used in English is "it doesn't pass the smell test".

(9) This article uses layman (literal, physical, sensorial) meanings of certain juridical expressions used in Brazilian law. Thus, a literal translation may occasionally lose the juridical meaning, while a translation of the juridical meaning may lose certain physical and sensorial aspects discussed in this essay. It is what happens, for example, with the Brazilian expression "não fede nem cheira". It literally means "it doesn't smell good or bad". It means that something makes no difference or it is "in the middle of the road", for example.

(10) Complete reference of the passage by Paulo Ferreira da Cunha below, in note (11).

(11) On the legitimacy of such cogitation of the epistemic and philosophic possibilities of the configurations and creation of Law, see Paulo Ferreira da Cunha’s statement: “And what is this thing called Law? It is a phenomenal reality that is out there. It is in fact very independent from values, virtues, even axiological principles, and can be detected by some more subtle and formalized forms of power and strength, by executions, executioners, prisons, guillotines, paperwork, confirmations, stamps, declarations, notaries, bailiffs, judges, attorneys, clerks, files, reports, records, depositions, warrants, diplomas, laws, decrees and such, police, robes, magistrates, wigs, gavels, and the pathos of all of these rituals. For a Law that is satisfied with being phenomenal, with the evidence that we referred to (or
something analogous), Natural Law is an unnecessary hypothesis, if not a bothersome chimera or an opium of jurists. *For those who, beyond and behind or below or above this simple vegetative existence of lawfulness still search for meaning, discover values, virtues, principles, and worry about the content of justice, will then have to ask for Natural Law.* [our emphasis]. CUNHA, Paulo Ferreira da. *Problemas do Direito Natural* (conferência no III Seminário Internacional Cristianismo, Filosofia, Educação e Arte – Faculdade de Educação da Universidade de São Paulo, 25-6-02). Available at: <http://www.hottopos.com/videtur14/paulo.htm>. Access date: Dec. 20th, 2011.


(13) “Direito líquido e certo” is a juridical expression that, literally, would be translated as "liquid and clear right". It means "clear legal right". The literal translation maintains the two juridical characteristics of this kind of right, namely: liquidity (the claim must be executable in court) and certainty (the fact must be plainly proved).


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