

ODOUR

IN THE COURT

David Howes

My scholarly interests are somewhat disparate, having studied law and anthropology at different times. In anthropology, most of my recent work has centred on the cultural construction of sensory experience, with particular emphasis on smell, while in law my focus has been on distinctly non-sensational topics, such as Article 1057 of the Québec civil code. It never occurred to me that these two lines of inquiry, law and odour, could be crossed, until that morning in the spring of last year when I received a telephone call from a Québec City law firm.

The law firm needed a smell expert. The firm represented a company involved in the business of recycling and disposing of the animal waste products generated by restaurants and slaughterhouses in the Québec City region. This "rendering company," as the business is called, had been charged under Article 20 of the Québec Environment Quality Act. It was alleged in the statement of offence that the company in question had, in the course of its operations on July 8, 16, and 29, 1987 (not to mention August 4), emitted an odour into the atmosphere the presence of which was susceptible of "affecting the well-being or comfort of the human being," contrary to Article 20. The penalty for this offence involved a substantial fine and an order to cease operations.

What the law firm wanted to know was whether I might be interested in bringing an "anthropological perspective" to bear on the terms "comfort," "well-being" and "the human being," as used in Article 20. It was explained to me that if it turned out that these words were not susceptible to objective definition, then Article 20 could either be declared "void for vagueness" and struck down, or have to be "read down," thereby exculpating the rendering company. There was also the constitutional argument, based on Article 11 of the Charter of Rights and Freedoms, according to which any person charged with an offence has the right "to be informed without unreasonable delay of the specific offence." Evidently, if the terms "comfort" and "well-being" do not permit exact definition, there is no way the provincial au-

thorities could claim to have informed the company of the "specific offence" with which it had been charged.

I had certain moral reservations about presenting evidence that might exculpate a "polluter," but the epistemological and ethnographic questions — What do we mean by "comfort?" Can "well-being" be measured? Is there such an entity as "the human being?" — intrigued me, so I agreed to testify. What follows is an abridged account of some of the main points I raised during my testimony. The reader may find it an interesting exercise to attempt to refute them.

I should confess at the outset that my own views are coloured (or better, odourised) by Alain Corbin's *The Foul and the Fragrant*, which concerns the "perceptual revolution" in late 18th-century France.¹ Corbin documents how the "*ancien régime* of sensory values," which placed an emphasis on smelling strongly, was jettisoned around the same time the *ancien régime* itself was overthrown, and how this paved the way for "the bourgeois control of the sense of smell and the construction of a schema of perception based on the preeminence of sweetness." Hence the muted olfactory environment we enjoy today, which is perhaps best summed up in the advertising slogan for a new kind of laundry detergent, Unscented Tide: "Now all you smell is clean!" (which is to say, nothing at all).

Corbin often expresses a certain nostalgia for the "free organic manifestations" of pre-revolutionary France, and a certain admiration for the way in which manual workers and peasants resisted the deodorising strategies of the bourgeoisie (e.g., privatisation of excrement, bans on "foul" language, etc.), two sentiments which I share. I am also sympathetic to Edward T. Hall's indictment of the North American sensorium.² According to Hall, the suppression of odours in public places and the widespread use of deodorants, etc., have deprived our life of "richness and variety," to the point where our olfactory apparatus is now "culturally underdeveloped." The following, then, is a plea for the liberation of the nose.



A few preliminary points. While human beings are capable of distinguishing between and recognising a great variety of smells, neither English nor French provide us with the means to articulate these sensations. Unlike taste with its flavour vocabulary, or sight with its vocabulary of colours, smell is speechless. The best we can do when we do wish to evoke a smell (short of producing one) is to speak in terms of its causes or effects; for example, "the smell of a rose," "the smell of coffee," or "an appetising smell," "a nauseating smell." This raises the question: How can a legislator use language to prohibit that which is unmentionable, or, in other words, that which cannot be defined?

A further problem is presented by the phenomenon known as adaptation or "smell fatigue." It appears that sensitivity to an olfactory stimulus is reduced to zero upon prolonged stimulation, providing the smell remains constant. For example, it is only the visitor to a pulp and paper town who is conscious of its stench, and only the schizophrenic who is continually aware of his or her own body odour. Other well-known cases of "adaptation" (i.e., loss of sensitivity) include medical students in dissection rooms and workers in rendering plants. It follows that Article 20 is inapplicable to the source of a continuous olfactory stimulus for the simple reason that those normally exposed to it are not "affected" by it.

But it may be objected that since Article 20 refers to "the human being," it includes those irregularly exposed to an olfactory stimulus (because of a shift in the wind or the smell being inconstant) as well, and that a charge may therefore be brought on their behalf, if not those in the immediate vicinity of the olfactory offender. However,

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this referral creates more problems than it solves, for there are no innate antipathies or sympathies in matters olfactory. That is, all of our likes and dislikes are acquired. For example, numerous studies have shown that infants are not averse to such odorants as sweat or feces, and may even delight in them. In point of fact, it is not until the age of four or five that children interiorise the olfactory norms of their culture (as every parent knows).

Within every culture there is general agreement as to what sorts of odours are most foul and which are most fragrant. But within these extremes, preferences and aversions vary significantly in accordance with a person's age, sex and temperament. Consider, for example, the "age-liking curve" which R.W. Moncrieff discovered when he exposed some 500 British subjects to ten odorants.³ What this graph shows is that you cannot please (or offend) all of the people all of the time.

Moncrieff would have found even greater variation had he expanded his study to include individuals from other socio-economic strata and ethnic backgrounds than the British middle class. This appears from various studies concerning attitudes toward air pollution carried out in the United States.⁴ These studies show that concern about air pollution is positively related to socio-economic status (the higher one's status the greater one's sensitivity) and degree of urbanity. They also evidence that whites are more knowledgeable about air pollution than blacks, the most probable explanation for this being that the latter have more "social hazards," such as poverty, to deal with, and these take priority over environmental concerns.

Given that the degree to which a human being is affected by an olfactory stimulus varies with that person's age, sex, temperament, ethnic background and socio-economic status, it follows that the reference to "the human being" in Article 20 does not provide just one standard of reference, but many, which is to say, no standard at all. Is "the human being" in question a five-year-old or a 50-year-old? Black or white? Each of these categories betokens a different threshold of tolerance.

The question of acceptable thresholds becomes even more complex once one factors in the meaning different smells have for different classes of people or sectors of society. As Erik Cohen points out, "the experience of smell ought to be understood emically, in terms of its meaning within the cultural context, and cannot be fully grasped etically, i.e., merely from the olfactory characteristics of the smelling substance."⁵

Cohen's work has focused on how the context of smell in rural society differs from that in urban society. In the former, a temporal *cycle of smells* obtains (closely related to ecological cycles), whereas in the latter, smells are associated with specific static *domains* ranging from the "bad smells" of industrial non-public space to the "good smells" of residential or private space (public space being olfactorily neutral). The urban dweller is therefore re-

pulsed by substances bearing the smells of putrefaction, decay and death in or out of their proper domain, whereas for the rural dweller, because such substances are used to produce new life (for example, as fertilisers) and thus form part of an ecological cycle, their badness is qualified by the good which they produce, and they are appreciated accordingly: "the odious smell of refuse, through ecological recycling, will become the pleasant smell of the life-giving fertiliser." It follows that urban and rural dwellers are not affected in the same way by the same smell, which, once again, makes it difficult if not impossible to gauge what standard is implied by the legislator's reference to "the human being."

Let us now consider the more general question of what is meant by the term "comfort." As Witold Rybczynski observes, there exists a scientific definition of "comfort."⁶ This holds that comfort is "that condition in which discomfort has been avoided." For example, a scientist will measure the temperatures at which people begin to feel either too hot or too cold and in this way determine the "thermal comfort zone" for the population concerned. But, Rybczynski argues, there is a fallacy to this definition:

The fallacy of the scientific definition of comfort is that it considers only those aspects of comfort that are measurable, and with not untypical arrogance denies the existence of the rest — many behavioural scientists have concluded that because people experience only discomfort, comfort as a physical phenomenon does not really exist at all... A room may feel uncomfortable — it may be too bright for intimate conversation, or too dark for reading — but avoiding such irritations will not automatically produce a feeling of well-being.

In illustration of this point, Rybczynski discusses a survey done at Merck & Company in New York, a workplace with an attractive modern commercial interior. The survey revealed that Merck employees experienced some degree of dissatisfaction with 20 of the 30 different aspects of the workplace identified in the questionnaire, in spite of the fact that the Merck offices had been completely redesigned and renovated so as to promote comfort. Rybczynski concludes that comfort is one of those complicated experiences which, like wine-tasting, defies objectification or measurement.

The implication of the preceding discussion is that there may exist degrees of discomfort, but there is no such thing as comfort *per se*. In any discussion of comfort one must always ask: Comfort for whom? It follows that had the legislator used the term "discomfort" in article 20 there would be no question as to the constitutionality of this article, but having used the term "comfort," the article would seem to be void due to vagueness. There can be no positivistic definition given to the term "comfort."

Finally, there is the term "well-being."

To the question: Does the term "well-being" have a standard meaning? the answer must also be in the negative. This emerges in part from a very interesting study of the related term "health" conducted by D'Houtard and Field.⁷ They found that the meaning this concept has for an individual is determined by his or her socio-economic status. For example, respondents belonging to the upper middle or managerial class defined "health" in terms of "personal unfolding" and "life without constraints" whereas manual workers defined it as "to be regularly under medical supervision" or "to be able to work." D'Houtard and Field relate these complementary representations (one personal, the other social) of the same concept to the corresponding social roles of the persons surveyed — namely, mastery on the one hand and the execution of social tasks on the other.

Of course, it is not only the meaning of health, but also health itself, that is distributed along class lines. As is well-known, members of the upper classes are favoured on all measures of life expectancy and contract fewer infectious diseases; at the same time, heart disease, a stress-related illness, is more prevalent among them.

Why this excess of stress? According to Peter Freund, it is "the product of time-pressured work and a competitiveness that is not only a response to job pressures, but is internalised and encouraged as a personal style in the socialisation process of capitalist ... production-oriented societies."⁸ Freund goes on to suggest that the rhythms of capitalism are inimical to the natural rhythms of the body, and interfere above all with our capacity to relax. It is for this reason that there is such a high incidence of psychosomatic illnesses among the upper classes. Freund concludes that in an environment motivated by profit, such as our own, there is a continual redefinition of health and well-being toward a normalisation of stressful habits and practices. The scale of well-being is thus a sliding one.

This raises a deeply distressing question: Can there be any well-being under capitalism? Or to relate this question more closely to the issue at hand: How is it possible to determine whether a particular noise, or a particular smell, is *the* factor responsible for a reduction in well-being when our well-being is already so compromised by the social and economic system under which we live?

Of course, were we not so anxious about our social status, we would not have to be so concerned about our well-being, or, I would argue, the smell of our environment. This is rather a complex point. It is best enunciated by going back to consider that revolutionary moment in French (and, in effect, world) history when all men were declared equal in principle, but then immediately sought ways of differentiating themselves from each other again. *The* means of differentiation that the bourgeoisie latched onto was smell: tolerance of smell suddenly came to define social status (the higher one's status the lower one's tolerance). The curious thing is that one

finds nothing in the records to suggest that the level of stench, which we know to have been very high, actually increased in any way, and could therefore be said to have caused the new anxiety. The change, according to Corbin, was at the level of perception, of discourse, only. Thus, it was the emergence of a new social consciousness that precipitated the shift in olfactory consciousness. It was because smell became *the* medium of social differentiation for an emergent elite that smell pollution suddenly came to loom so large in public discourse.

What the preceding discussion implies is that consciousness of smell is a symptom of anxiety about social status. Policing smells, therefore, has more to do with policing social boundaries than with policing "pollution" in the conventional sense. This analysis has an interesting bearing on the case at bar, for it turns out that the rendering factory in question has been in operation for close to 30 years. It is situated in a town across the river from Québec City, where farming and working on the railway are the only other sources of employment. Why, then, the sudden reconstitution of the odours emanating from the factory as "polluting"? This reconstitution must have to do with the new housing development that has grown up on the banks of the river opposite the factory, which is inhabited by a very exclusive class of people (deputy ministers and the like). The smells evidently confuse their definition of themselves as upper middle class. The reason for this is simple: smells, by their very nature,

cross boundaries and therefore level distinctions. For those with an interest in maintaining distinctions, that is criminal.

If, as I have suggested, smells are not so much a cause of discomfort as an idiom through which anxiety about social status is expressed, this rather changes the picture of the case. The odours emanating from the factory are not causes of pollution, but rather symptoms of a particular social malaise. It follows that what is really at issue in this case is not smell pollution but land use planning. There is an old legal maxim: one cannot do indirectly what one cannot do directly. It applies to the present case as follows: what is being sought is a zoning change, but rather than going through the proper channels, it is the Environment Quality Act that is being used, and that cannot be done.

Near the end of my testimony, the judge, a good-natured, grandfatherly soul, whose bemused expression told me that my remarks were not having their intended effect, posed a question. Somehow, I am not sure how, we had gotten onto the subject of railroads. He sketched the following scenario. There is a man, and let us say he lives in Brossard, with his wife, two children, and a dog in a split-level house with a V.C.R. and a one-car garage. He is a very average man, in other words. Were the authorities to decide to build a railway line through his backyard would he not be "affected" by the noise of the trains? I had to agree, but went on to note that the judge had had to exclude a great variety of people in his effort to define the average

man. The judge's face fell, and shortly thereafter, court was adjourned.

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NOTES

1. Alain Corbin, *The Foul and the Fragrant: Odor and the French Social Imagination*. Cambridge, Mass.: Harvard University Press, 1986.
2. E.T. Hall, *The Hidden Dimension*. New York: Doubleday, 1969.
3. R.W. Mocrieff, *Odor Preferences*. New York: Wiley and Sons, 1966.
4. Gary Evans, ed., *Environmental Stress*. Cambridge: Cambridge University Press, 1982.
5. Erik Cohen, "The Broken Cycle: Smell in a Bangkok Soi (lane)," *Ethnos* 13 (1-2), 1988, p. 37.
6. Witold Rybczynski, *Home: A Short History of an Idea*. Toronto: Penguin, 1986.
7. A. D'Houtard and M. Field, "The image of health: variations in perception by social class," *Sociology of Health and Illness* 6, 1984, p. 30.
8. Peter Freund, *The Civilized Body: Social Domination, Control and Health*. Philadelphia: Temple University Press, 1982.

Alphonse Bertillon (1853-1914)

developed the first criminal identification system for the Paris police. Called "Anthropométrie Signalétique," Bertillon's method used a series of measurements of the skull and face as well as photographs of the forehead, ears, eyelids, nose and mouth to establish a system of rational identification.

Widely used in Europe and North America, the "Bertillonage" mug-shot established photography as a factual *science* in the legal and judiciary system by the turn of the century.

