

**WHAT LAW TASTES LIKE:
A FREE CONJECTURE ON THE
PALATE OF JURIDICITY
(«MENU DÉGUSTATION EN
QUATRE SERVICES»)
// OS SABORES DO DIREITO:
UMA CONJETURA LIVRE SOBRE
O PALADAR DA JURIDICIDADE
(«MENU DÉGUSTATION EN
QUATRE SERVICES»)**

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>> ABSTRACT // RESUMO

Like a banquet, this paper is served in four courses: from the opening aperitifs to the concluding desert. The menu demonstrates the intimate relationship between food and culture, similarly to the relations developed between Law itself and culture. From this initial panorama that approaches food and Law to culture and, therefore, to languages, we scrutinize which flavors more adequately express what contemporary juridicity tastes like. Sweet? Salty? Raw? Stewed? Roasted? This gastronomical discussion serves as the theme for a reflection on the Epistemology of nowadays Law, based on some theoretical considerations by thinkers such as Susan Sontag, Colette Brunschwig and Câmara Cascudo. Finally, instead of drinks, the reader is served the bibliographical sources with which this paper was fed. // Como em um grande jantar, o presente texto é servido em quatro pratos – dos aperitivos iniciais à conclusiva sobremesa. Ao longo do menu, é demonstrada a íntima relação entre comida e cultura, à semelhança das conexões que se desenvolvem entre o próprio Direito e a cultura. A partir desse panorama inicial, que aproxima a alimentação e o Direito à cultura, e, por via de consequência, às linguagens, perscrutam-se quais os sabores que estariam mais adequados para representar o paladar da juridicidade contemporânea. Doce? Salgado? Cru? Cozido? Assado? A discussão gastronômica serve de mote para uma reflexão sobre a epistemologia do Direito atual, partindo de considerações teóricas de autores como Susan Sontag, Colette Brunschwig e Câmara Cascudo. Por fim, em lugar das bebidas, são apresentadas as fontes bibliográficas de que se abeberou o texto.

>> KEYWORDS // PALAVRAS-CHAVE

Multisensory Law; Justice; Taste; Gastronomy; Culture; Transjuridicity.
// Direito Multissensorial; Justiça; Paladar; Gastronomia; Cultura; Transjuridicidade.

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>> SUMMARY // SUMÁRIO

§1. L'Amuse Bouche. §2. Les Entrées. §3. Les Plats Principaux. §4. Les Desserts. §5. Les Boissons. // L'Amuse Bouche. §2. Les Entrées. §3. Les Plats Principaux. §4. Les Desserts. §5. Les Boissons

>> ABOUT THIS ARTICLE // SOBRE ESTE ARTIGO

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1. L'AMUSE BOUCHE

Exactly fifty years ago, in one instigating and provocative essay entitled “Against Interpretation”, American writer Susan Sontag incited readers to let go of all the cold rationality of the contemporary hermeneutics of works of art only to replace it with true artistic “erotics”, through which the arrogance of interpretation should make way for men to “learn to see more, to hear more, to feel more”. Less *ratio* and more *cordis*. She added that:

“Ours is a culture based on excess, on overproduction; the result is a steady loss of sharpness in our sensory experience. All conditions of modern life – its material plenitude, its sheer crowdedness – conjoin to dull our faculties. (...) What is important now is to recover our senses. (...) In place of a hermeneutics we need an erotics of art.”¹

The sociocultural panorama designed by Susan Sontag is very similar to the current scenario of Law, marked by excessive normativity, abundant litigation, cold technicity, more-than-rarely sterile formalism, and rationalization that quickly swings between omnipotence and impotence: “The modern style of interpretation excavates, and as it excavates, destroys”.² In this very sense and aware of the risks it takes, this article gets back on the path of provoking senses and sensing in Law to question what juridicity tastes like. Does the juridical experience have a flavor? What is the flavor of Law? Are jurists ready to savor it?

The article is said to “get back”, for the topic is not exactly new. It must be remembered³ that Tobias Barreto, the great Brazilian writer and jurist, still in the mid-19th century, stated that “not only is law something that you know, it is something that you feel”⁴. In addition, in the poetic wording of Prof. Dr. Carlos Ayres Britto, retired Minister of the Federal Supreme Court, “perhaps it is something one feels first of all or even before intelligence, for it cannot be forgotten that the noun ‘sentence’ itself comes from the verb to sense”⁵. In the foreign juridical literature, juridical sensitivity is not a new topic either!⁶

Note that this is not the first time the authors of this article speculate on the senses of juridicity. In previous texts, they discussed the relations among Law and sight⁷, hearing⁸ and smell⁹. This fourth incursion on senses, however, is special. After all, from all five senses – sight, hearing, smell, touch and taste –, taste is the one that allows the most striking epistemology, once taste has all it takes for the “erotics” mentioned by Susan Sontag. The kitchen has always been a place of pleasure, conquest and seduction! The burning passion heats up bodies and fuses them together. Moreover, those who only see something, or hear something, or smell the perfume of something, do not experience it as much as those who taste something: “he who knows it through the mouth, knows it from up close, for you can only taste something that is already in your body”¹⁰. Taste, first and foremost, bridges distances, crushes immunities as well as the “inside x outside” dialectics. Here is the great mystery of Eucharist: “Take

and eat. This is my body...” Besides, the feel of eating is rather complex, starting from the fact that flavors are not static. On the contrary: flavors are dynamic and they change constantly:

“(...) Senses are not static. Rather, they are shifting and elusive qualities, constantly reshuffled by socio-cultural and technological changes, always dislocating law’s normativity towards new potentialities.”¹¹

This dynamic tasting sensation many times originates from the multimodal interaction among taste, flavor, temperature, texture, perfume, sound, place, landscape, etc. “As a matter of fact, taste does not boil down to somatosensory sensations, caused by receptors of the oral apparatus. (...) Taste is, therefore, a body and mind intertwined, interacting constantly with the environment”¹². Not by chance, in the famous conference that opened his course on literary semiology at the *Collège de France*, on January 7th, 1977, Roland Barthes stressed, among many other interesting things, that ‘know’ and ‘taste’ have, in Latin, the same etymology (the Latin verb *sapare*)¹³. Still today, people in Portugal usually say that “*a comida sabia bem*” (meaning “the food tasted well”), to refer to a tasty dish. For this reason, it would not be imprudent to see some divine coincidence between the fire burning on the kitchen stove and the fire of knowledge stolen by Prometheus.

For this all, this unusual investigation on what Law tastes like is actually a philosophical exercise of epistemology or even ontology about contemporary juridicity itself and its phenomenologies. Understanding what Law tastes like is also slowly digesting its dogmatic categories, moving away from the juridical *pret-à-penser* and giving a chance to a *slow-food* epistemo-gastronomy. Knowledge, including juridical-related knowledge, is food for the spirit!

It is true that, in the last years, the reference to Multisensory Law has become more and more frequent; i.e., a Law that can be felt by the five senses rather than solely and exclusively by sight and/or hearing. There is no doubt that throughout legal history, Law has been mostly verbal and/or written – from the oral-natured hearings and Customary law norms to the written legislative diplomas, doctrine and case-law –, but this is starting to change. The concept of Multisensory Law was created in 2011 by Prof. Dr. Colette R. Brunschwig, of the School of Law at the University of Zurich, Switzerland. The expression was coined based on the findings that verbal-vocal-palatal-olfactory-tactile-visual juridical manifestations were not only possible but also necessary in the more-and-more multimedia society we live in. Here is a tight summary of what Brunschwig comprehends to be Multisensory Law:

“Humans are multisensory beings and live in a multisensory world. Human communication involves the production and perception of messages, as well as the five senses (hearing, vision, touch, taste, and smell). Multimodal or multisensory systems are capable of receiving and sending information by using various sensory channels involving vision, hearing, and movement, but preferably all five senses. Such

computer systems are used not only in human communication but also in machine communication. These systems have brought forth a trend toward multisensory digital communication practices in the 21st century. Such multisensory digital media help us produce meaning by using two or more discrete sign systems (i.e., audio-visual, visual-kinaesthetic, tactile-kinaesthetic, and so forth). The advent of digital media and their implications for the law has prompted some scholars to suggest that a visual turn is also occurring in the legal context. Whereas this may be partly true, by restricting or confining the law to the verbal and visual, legal discourse has difficulties in becoming sufficiently aware of multisensory digital media and thus fails to adequately explore these media and their impact on the law — in overt contradiction to the growing significance of such media. Overemphasising both verbal and visual legal communication leads to marginalising or even to ignoring other modalities of already existing or future digital legal communication.”¹⁴

In this sense, today people talk not only about a visual Law, but also other sensory forms of apprehending and producing the juridical phenomenon. Colette R. Brunschwig goes on:

“What is the subject matter of multisensory law? Put simply, this emerging legal discipline explores the sensory phenomena of the law, be they unisensory (i.e., visual, auditory, kinaesthetic, and so forth) or multisensory (i.e., audiovisual, tactile-kinaesthetic, visual-kinaesthetic, and so forth). Multisensory law focuses primarily on the law as a uni- and multisensory phenomenon within and outside the legal context. It deals only marginally with the uni- and multisensory phenomena in the legal sources in a strict sense, because they are explored chiefly by the established legal disciplines of applicable law.”¹⁵

With this kinesthetic¹⁶, multisensory, sensitive, sensational or sensual perspective in mind, this text will attempt in the next few pages to unveil what Law possibly tastes like. Bear in mind that the relations among flavor, taste, palate and Law are not recent or minute: for centuries¹⁷ juridical norms have cared to regulate the way we produce food and consume it. They comprise the rules for health protection, labeling, geographical indications, authenticity, international trade (*Codex Alimentarius*) and gastronomical intangible cultural heritage. Law has also been long defining what can be eaten and how. In some countries, it guarantees the fundamental right to food and to food safety¹⁸. In Europe and in the USA an autonomous branch of Law has been well established: *Food Law* is a transdisciplinary field located somewhere between Economic Law, Administrative Law and Consumer Law. Not to mention the prestigious “*Association Internationale des Juristes pour le Droit de la Vigne et du Vin*” (AIDV), founded in 1985 with the aim to analyze the legal issues concerning the international trade of wine.

At this point, it is worth observing, however, that the enterprise hereby proposed is far from being a Cartesian-like task, from the cognitive aspect, let alone regulatory, through the prescriptive prism. It is actually a free analogy concerning the adventure of thought much more than the more-restrict academic rationality. For this reason the aesthetics of this text is closer to the lightness of the literary essay (both in terms of form and objective) than to the perpetuity of the academic writing per se. We do not intend to be categorical here. Neither do we intend to search for the definitive truth down the line. As in the case of the true “gastro-nauts” that dedicate themselves to gastronomic expeditions to explore new sensitivities, the biggest pleasure is to try other food possibilities and feel the flavors that may be unveiled along the way – not forgetting that, in Italian, *saggio* (i.e., the literary essay, but also the sage, or wise person) leads both to the noun *assaggio* (a bite, a morsel) and to the verb *assaggiare* (to try or taste something). May we then take the same road proposed by the great Ítalo Calvino:

“The true journey, as the introjection of an “outside” different from our normal one, implies a complete change of nutrition, a digesting of the visited country — its fauna and flora and its culture (not only the different culinary practices and condiments but the different implements used to grind the flour or stir the pot) — making it pass between the lips and down the oesophagus. This is the only kind of travel that has a meaning nowadays, when everything visible you can see on television without rising from your easy chair.”¹⁹

Bon appétit!

2. LES ENTRÉES

Fruits off the same tree: before moving on to more specific speculations on what Law tastes like, it seems to be worth stressing old steady relationships between food and culture. In this field, we could start by mentioning the evolution of gastronomy and cultural differences; commenting on how gastronomy can peacefully approximate peoples; discussing cooking as art, and talking about anthropophagy, as well as the natural predators in the food chain, going back to Charles Darwin. Several are the possible approaches to gastronomic and palate-related issues, of sociological, anthropological, historical and philosophical nature, which implies that the subject is far from being negligible; rather, it is very present in the history of civilizations and human relations. *“L’univers n’est rien que par la vie, et tout ce qui vit se nourrit.”²⁰*

Remembering Gilberto Freyre and his fabulous work “*Sugar*”, it is worth mentioning that the sociology of eating derives from the very fundamentals of social life, for no other activity is so present in human history. All the conception of social organization and survival – from hunting to fishing, extraction, cultivation, etc. – concerns eating. Since

the Neolithic period, traps and the first tools made by man were aimed at eating²¹. For this, it can be understood that food and everything connected to it – v.g., taste – can be treated based on the archetype of collective and individual unconscious²², perpetually set in the deepest roots of human mind, retracing the memory of flavors and the pleasant or unpleasant feel originating from them. For being an archetype encrusted in the remote whereabouts of human mind, the investigation into the occasional relations between (the senses of) taste and justice or the feeling of juridicity is not to be in vain.

Each culture has their own gastronomy and the invention of a new dish may be celebrated, but also understood as a form of audacity and fear. All societies work to produce and preserve food. In the Brazilian and Portuguese homes, the “pantry” used to be a special place and may be on its way to regain important status, depending on the course of economy. In many homes, the cupboard used to be an indispensable piece of furniture in the dining room. There are basic elements in the gastronomy of each country or region which play the role of food fundamentals of a people or class, and, therefore, of taste. The history of a nation can be told, for example, through the history of its foods; social organization may also be analyzed through the viewpoint of gastronomy and taste: the king’s cook handled spices that were inaccessible to slaves or the mob²³.

Eating has a rhythm: you may eat fast or slow, depending on the social occasion. Above all, eating and digesting have a biorhythm, which is one of the biological fundamentals of life on Earth. Yet there are food-related folklore, beliefs, legends and superstitions²⁴, which reveals that eating also comprises the popular and abstract imagination of each culture, and not only their biology, in concrete terms. The folklore of eating is as complex and varied as its own history. Table manners and etiquette, as gestures of respect, reflect the values of a social group, at one specific time and, undoubtedly, reveal an indelible religious trait²⁵.

Considering the eating strategies in prehistoric times and those of the first civilizations, it can be learned that eating habits have become more humanized; take, for example, the social function of the banquet²⁶. The Bible describes Hebrew eating rules, whereas Phoenicians, Carthaginians, Etruscans and Romans, in ancient times, developed their own means, rituals and symbology associated with eating and taste. The latter developed a “grammar of Roman dining”, which established typologies, rules and vocabulary that are worth a reflection²⁷. In the High and Early Middle Ages, eating had a straight connection with the issues of feudalism and subsistence, in addition, as at all times, issues of the market. As of those times, culminating in modern times, a place’s cooking penetrates the other, promoting the interchange and fusion of customs. In Modern times, with the quick expansion of sugar, gastronomy also expanded, ranging from diet food to the liberation of gluttony²⁸.

However, it was in Contemporary times that the act of eating became a style or art with added refinement, apart from being a vital need. The primitive kitchenware evolved to the microwave oven and the freezer; fast food was created and food has been industrialized to the form of pills.

Nevertheless, in order to accomplish relating Law and the sense of justice to taste, it is important to recall that he who cooks the food always seasons it to *his* own taste. Taste is then the timbre of culture, just like the sense of justice of each people. The confectioner's shop is European, with minute Chinese and Indian influence. There is no such thing as an African or native American sweet or candy. In Brazil, the Portuguese settler was fed by African and native's hands, but the food was shaped by Portuguese women²⁹, which gave this nation its peculiar taste. By and large, taste conveys social bonds. Foods and drinks are object of talks, debates, behavior and communication. As far as habit is concerned, the more familiar, the more acceptable something is³⁰ – but is it the same with juridical norms and their application?

For all this, it seems valid to associate taste, Law and the sense of justice for, as was said before, eating is a cognitive act: you also learn from taste. This led Charles Fourier to coin the term *gastrosophy*³¹, which seemed to him to be more appropriate than gastronomy. Not only does this indicate the existence of a source of direct empirical knowledge, which is taste-related, but also the possibility of placing the sword, scales, pots, plates and cutlery on the same table.

3. LES PLATS PRINCIPAUX

Time to bear fruit.

Apart from the aforementioned Food Law, many are the structural contact spots between juridicity and taste, starting from the major organ where both are processed: the tongue! “*Cut off the tongue, there will be neither taste nor speech*”³², and orality is intrinsic to Law and gastronomy. The table, as a very important piece of furniture, is another intersection point between contemporary Law and gastronomy: neither are supposed to take place without the solemn presence of a table in their workplaces. Can a dinner or Law be made these days far from a table? Besides, making both a dish and law requires equal prudence and ritual, a true choreography³³. In special, prudence and precision typical of Law and cooking materialize into a tool common to kitchens and courts: the scales. As a way to warrant certainty, security and predictability to those in charge, Law and Cooking norms (*nomos*) lie in the recipes and codes. Eating is fully regulated and normalized, from recipes to table manners, to the places dedicated to eating and the regulation on food itself. Dining rooms, diplomatic banquet rooms and court rooms all have preset strict rules as to who takes a seat, where and when. Conservative in essence, Law and gastronomy deal with traditions and repertoires, and they converge into forming intangible cultural heritage. In the last years, this intangible cultural heritage has been marked, in some areas, by a certain prestige of lightness and softness, found both in the “salmon foam” of the molecular gastronomy and in the power of legal principles, as well as the power of *soft-law*³⁴. After all, law and gastronomy face today a constant tension between local and global, tradition and novelty, quickness and slowness,

minimalism and baroque³⁵ — all of which derive from the fact that both law and cooking travel, circulate, move and not only in the form of recipes and legislation, but as “the way a collectivity thinks and behaves”³⁶.

Professor Tércio Sampaio Ferraz Júnior adverts that the foundation of juridical discourse lies in decidability³⁷, thus, judgment is a central category both to Law and to taste. In both, “judgment” plays a fundamental role: “Indeed, (...) law and taste primarily share the same core mechanism: judgement. Perhaps differently from other senses, taste is always an act of judgement”³⁸. Law is also mostly judgment: the jurist is all the time inclined to choose between right and wrong, just and unjust, the crooked and the straight. Apart from these (apparently) binary codes, there are rituals and grammars both to Law (procedure and legislation) and to the art of cooking (recipes), and distancing oneself from these rituals and grammars is always risky. Prof. Bjerne Melkevik translates well this affection for the text:

“(...) Un juriste travaille avec des textes et (...) ces derniers ne sont que des outils de travail. (...) Cela signifie que de la même façon qu’un charpentier travaille avec un marteau, une scie, une drille, etc. (...), le juriste travaille avec des textes.”³⁹

With these and other bridges to connect cultures, it is not surprising that many jurists – such as Jean Anthelme Brillat-Savarin⁴⁰, Grimod de La Reynière⁴¹, Joseph Berchoux⁴², Justice Eliana Calmon⁴³ and Prof. Dr. Gladston Mamede⁴⁴ – dedicate themselves with great enthusiasm and competence to Law and Cooking or Gastronomy. By the way, jurist-gastronome Brillat-Savarin has a very broad definition of gastronomy: “la gastronomie est la connaissance raisonnée de tout ce qui a rapport à l’homme, en tant qu’il se nourrit”.⁴⁵ About this if it is true that, as the Holy Scripture says, “Blessed are they that hunger and thirst after justice: for they shall have their fill” (Matthew 5:6), it can be surely implied that Justice is also food for men and, therefore, can be included in that broad definition of gastronomy formulated by jurist Brillat-Savarin.

It was Brillat-Savarin himself who, in the second decade of the 19th century (1825), formulated the aphorism “dis-moi ce que tu manges, je le dirai ce que tu es”⁴⁶, in his classic gastronomic work “Physiologie du Goût”. This seems to have been the starting point of Claude Lévi-Strauss for “Le Cru et Le Cuit”, to whom it is possible to “montrer comment des catégories empiriques telles que celles de cru et de cuit, de frais et de pourri, de mouillé et de brûlé, etc., définissable avec précision par la seule observation ethnographique et chaque fois en se plaçant au point de vue d’une culture particulière, peuvent néanmoins servir d’outils conceptuels pour dégager des notions abstraites et les enchaîner en propositions”⁴⁷. Taste, therefore reveals a double experience in the world – both the active experience (of experimenting or *Erfahrung*, in German) and the passive experience (of living experiences or *Erlebnis*, in German)⁴⁸.

Likewise, the painting *L’Avvocato* (also called “The Jurist”), of 1566, seems to be a provocative visual metaphor of the principle “dis-moi ce que

tu manges, je le dirai ce que tu es". It is a grotesque oil-on-canvas work by Italian painter Giuseppe Arcimboldo, who used multiple roast birds and a fish to compose the face of a man of Law, whose body is made of documents and legal books (fig. 1). That strange, old, serious and dry – noble, though – figure is often associated with the German jurist Johann Ulrich Zasius, powerful lawyer in the courts of the Habsburg monarchs Ferdinand I and his son Maximilian II. One aspect of Arcimboldo's portrait is especially enticing: its irrationality. The head of the jurist is taken by animality. For sure, no one is normal when seen from up close. The documents (notebooks and sheets) are on the man's chest, near his heart and this is also amusing, for it is the place of the "erotics" (or heartfelt juridical hermeneutics), as Susan Sontag would propose centuries later. All in all, this proximity of Visual Arts, Cooking and Law is not casual! Art, Cooking and Law are languages by which each society codifies certain messages through rites, signs, actions, techniques, symbolic operations and rituals. All three manifestations – Art, Cooking and Law – are also languages and, for this reason, are adequate places for expression/interpretation. Take, for example, restaurants that use square plates, black napkins and Italian designer utensils to convey an image of contemporaneity. In addition, food is served in a clearly Bauhaus fashion and the wine is described on the menu as a dense semiotic text by Umberto Eco. Therefore, artistic, gastronomical and juridical rhetoric all have great expressive power. At the intersection of it all is "eat art", the artistic wave created in the 1960s by Daniel Spoerri, among others, that placed food as works of art.

Many centuries before "eat art", Giuseppe Arcimboldo painted more than just the "Jurist" in a critical or caricatural tone. He has a vast work and the resources he used to acidly depict his characters were many: animals, flowers, fruits, vegetables, etc. It must be believed then that, as he painted the prestigious lawyer, his choice for birds and fish was very well thought out.

By all means, Arcimboldo helps us understand that Law does not taste sweet. A juridical win may taste sweet. Sweet is mother's milk – a person's first food. In the first weeks, the milk that is breastfed to babies has lots of lactose, which gives it a discretely sweet taste in the beginning. With time lactose decreases and the mother's milk acquires higher levels of minerals, and consequently a more salty taste. Sweet has always been associated with the nomads' most primitive extraction: long before sugar, honey and fruit were human food and convey the idea of nature, when men would essentially collect. As a cultural (or civilizing) construction, Law is not a gift of Nature or manna. Law is never given, it is always constructed, elaborated, and for this reason, it is closer to the salty taste, just like the prey and, later, agriculture and cooking.

Not necessarily sour, Law may taste salty. However, undoubtedly there are many salty foods. So which salty flavor would Law be closest to? Raw? Cooked? Roasted? Rotten? Just like sweet, raw and rotten are not so close to Law, since they denote some naturalism. Raw would be the taste of vendetta. Rotten would be death penalty. The state of nature bleeds as a cut of meat. The apparent rationality and complexity of the contemporary

juridical systems distance them from the “*in natura*” tastes. Law is something transformed, it is a cultural object, and thus “*res non naturalis*”; for this reason, it is closer to “food” than to “nutriment”. Massimo Montanari explains the difference between food and nutriment:

“Cooking is a human activity par excellence; it is the act that transforms the product “of nature” into something deeply diverse: chemical modifications caused by cooking and by the combination of ingredients allow taking to the mouth a food, if not totally ‘artificial’, surely ‘fabricated’. For this reason, in the ancient myths and legends about creation, the conquest of fire represents (symbolically, but also materially and technically) the constituting and founding moment of human civilization. The raw and the cooked, to which Claude Lévi-Strauss dedicated a famous essay, surely represent opposite poles of the conflict (...) between nature and culture. In Greek mythology, fire belongs solely to the gods, but only up to the moment giant Prometheus reveals the secret to men. It is a gesture of mercy towards those naked and defenseless beings (...)”⁴⁹.

Therefore, Law is something cooked something whose nature was transformed by the fire of knowledge, just like the cook – by using recipes, moves and techniques – alchemically modifies the natural taste of things. Down this course of senses, the flavors of roasted and stewed food would follow. Would Law taste somewhat like stewed or roasted food? Well, Law is far from being solid, uniform, rigid and consistent as a sucking pig, ham or roast chicken. Law is brothy, mobile and inconsistent as a soup, a stew, melted food. Especially nowadays, Law oozes into people’s lives, penetrating areas that were unimaginable not long ago. But Law is not homogenous like a soup, a *consommé* or cheese *fondue*! Neither is it thin. Law is thick, dense.

Apart from its appearance and consistency, roast is close to raw. Roast is an atavistic reminiscence of raw, of hunting, of the wild, “*since it does not require any other means apart from fire, upon which the meat cooks violently and directly. (...) Stewing, on the contrary, uses water to mediate the relationship between fire and food, and requires using a pan – i.e., a cultural artifact – to hold and cook the meat, and tends to take up symbolic meanings more connected to the notion of domesticity*”⁵⁰. Rubem Alves agrees with this “wild” perspective:

“Barbecuing is the most primitive way of cooking. Before barbecuing, meat was eaten raw. It all happened by chance: a bonfire was lit inside a cave to provide heat. Troglodytes gathered around raw meat. They felt sleepy. They fell asleep. When they woke up, fire had burned the meat. They were mad but decided to eat it anyway. They found out that the meat had become softer and tastier. Barbecue was invented. Barbecuing is the first cooking technique ever heard of. They just had the meat on the blaze. It took centuries, perhaps millennia, for our ancestors to think of using sticks. The smell of dripping fat burning on

*the blaze is the olfactory 'cue' that makes the Troglodyte in us come out of the cave where he hides*⁵¹.

Whereas roast meat is served as the main course at the major formal banquets, open-air hunt and celebrations for war battles won, always with many people round the table, the stew is typical of peasant cuisine, of domesticity *en petit comité*. The great roast meat is, on top of it all, essentially male – the world of barbecues, cookers and skewers –, while stews and pots, pans and cauldrons are – like the Goddess of Justice (and witches) – very much associated with female refinement and sensitivity. Again, Rubem Alves is precise:

*"Barbecuing takes skewers, knives, forks: phallic, male, hellish objects. Barbecuing implies perforating, cutting, lacerating. The jaws fight the meat. The meat resists"*⁵².

Apart from being stewed, Law's flavor is a heterogeneous complex mix. Its consistency alternates tender and harder pieces, difficult to swallow, but always immerse in broth. Thus, Law's specter would be much closer to the consistent rustic stews, cooked in big cauldrons and open to multiple cultural influences. Law, therefore, would be close to the gastronomical and cultural complexity of the Brazilian *feijoada* (black beans stew), of the *cozido português* (Portuguese stew), of the Spanish *callos a la madrileña*, of the French *cassoulet*, of the Italian *ossobuco*, all of which are syncretic dishes, or *assamblage*. All these dishes have a perfumed sauce that, once in the mouth, involves and warms little by little the entire organism. These stews were created from leftovers – the pantry's *ultima ratio* – which ended up in the pot because there was no noble part left to be eaten. Autopoietically, the stew is also a "*magic potion through which what was lost is rescued from doom and taken back to the flow of life and pleasure*"⁵³. These dishes were passed on to the next generations by older generations through oral tradition and only more recently were put down into cook books. This unrefined wet cooking of multiple convergences was dominated by oral tradition and was only written down long after it was deeply rooted in the food culture of those populations.

These menus are said to be syncretic, or *assamblage*, not only because they mix multiple ingredients and influences, but also because they usually gather many people round a table. No one prepares a *feijoada* only to himself; it calls for sociability.

4. LE DESSERT

It is true that the academic text has a temporal development similar in many aspects to the process of wine-making. In the beginning of the process, or vinification, crushing and pressing the grapes picked from the vine gives out a rustic and sweet juice, called must, which, once fermented, will originate the wine. In the thesis, dissertations and

academic papers, a similar (intellectual) fermentation occurs to the starting sources of research, rather than to grapes. This primal phase of the process requires not only the appropriate harvest (at the vineyard, library or laboratory), but also, later, a previous sorting of the (useless) branches and leaves. After this first phase comes maturing, the second phase wine-making goes through. Maturing occurs when the rustic wine is transferred from the big steel drums where fermentation takes place to oak barrels. In this phase wine makes contact with the environment of the cellars and slowly oxygenates so tannin is lost, and aromas and flavors are balanced. Wine is then “refined”, loses astringency and becomes softer as it makes contact with oxygen through the pores of the cask. Academic papers also go through a maturing phase, which demands oxygenation, be it in the qualifying exams or in the conversations that guide the writing of the text, so that arguments lose their astringency, and more positive aspects are highlighted. Wine is a living being and after maturing comes aging. This phase occurs in the bottle or, when it comes to the thesis and academic papers, after presentation or publication. Unlike most people believe, not every wine ages well, only the great wines – reserve wines, as Brunellos and Bordeaux wine – are capable of gaining more flavor, complexity and sensory richness as they age. If the wine or thesis are set on feeble ground (the *terroir* or the reasearch), time is unable to improve them.

This digression has no other intent than highlighting that the current text – a reflection on the sensory theme of Law, with special attention to the sense of taste – is still going through maturing. After the harvest, the result now starts to gain oxygen and breathe. As said from the start, this is an essay or, in reinvented Italian, a(n) *(as)saggio*. Its aim is not to set a single flavor to Law by any means, which would be impossible, but to speculate on possible flavors experienced in the fields of juridicity, from a transjuridical viewpoint. There is no single flavor: rather, there are multiple flavors, palates, tastes, for they are all dynamic and constantly changing. There is no such thing as universal food-related truth, nor does universal juridical truth seem plausible.

>> ENDNOTES

- ¹ Sontag, 1990, p. 13-14.
- ² Sontag, 1990, p. 6.
- ³ This issue has been dealt with in Franca Filho, 2011, *passim*.
- ⁴ Barreto, 2001, p. 38.
- ⁵ Britto, 2007, p. 75.
- ⁶ See, for example, the bibliography in Philippopoulos-Mihalopoulos and Chryssostalis, 2013, p. 3.
- ⁷ Franca Filho, Marcílio Toscano. *A Cegueira da Justiça - Diálogo Iconográfico entre Arte e Direito*. Porto Alegre: Fabris, 2011.
- ⁸ Franca Filho, Marcílio Toscano. *O Silêncio Eloqüente - Omissão do Legislador e Responsabilidade do Estado na Comunidade Européia e no Mercosul*. Coimbra: Almedina, 2008.
- ⁹ Carneiro, Maria Francisca; Venturi, Eliseu Raphael et al. *Qual é o cheiro do Direito? Primeiras conjeturas para uma semiótica da "matéria" jurídica*. Jus Navigandi, Teresina, ano 18, n. 3570, 10 abr. 2013. Available at: <<http://jus.com.br/artigos/24139>>. Last access: September 26th, 2014.
- ¹⁰ Alves, Rubem. *Escritores e Cozinheiros*. In: Alves, 1995, p. 156. Rubem Alves is even more emphatic: "(...) Eating is not only what takes place at the table (...). The cook and the lover are moved by the same desire: the other person's pleasure. The difference is that the lover offers their own body to be taken, as the object of delight" (op. cit., p. 156). In turn, Italian writer Italo Calvino also talks about a "universal cannibalism that leaves its imprint on every amorous relationship and erases the lines between our bodies" (Calvino, 1995, p. 104).
- ¹¹ Philippopoulos-Mihalopoulos and Chryssostalis, 2013, p. 3. The same way: Brigenti, 2013, p. 39.
- ¹² Perullo, 2013, p. 15.
- ¹³ Barthes, s/d, *passim*.
- ¹⁴ Brunschwig, 2013, *passim*.
- ¹⁵ Brunschwig, 2013, p. 240-241. Also: Brunschwig, 2011, p. 573-667.
- ¹⁶ Kinesthesia is the sensory phenomenon where multiple senses are mixed. In other words, it is that which allows seeing sounds, smelling words, listening to colors, savoring music or attributing colors to numbers and letters.
- ¹⁷ This multiseccular aspect is not just a way of talking: the former Court of Justice of the European Communities, for example, in a ruling of March 5th, 1996 (Cases C-46/93 and C-48/93, *Brasserie du Pêcheur*, Collection 1996, p. I-1029-I-1163) dealt with a reference for a preliminary ruling by the German *Bundesgerichtshof* in the case where the French brewery *Brasserie du Pêcheur*, based in Schiltigheim (Alsace), demanded that the Federal Republic of Germany pay reparation of the loss the company had to face as it was prevented from exporting beer to Germany between 1981 and 1987, for allegedly failing to comply with manufacturing standards set in the German legislation that ruled the purity of beer. "*Biersteuergesetz*", of March 14th, 1952, was declared discriminatory and against the free circulation of goods guaranteed by European Union Law in a previous statement of the Court of Justice of the European Communities, of March 12th, 1987. The prohibition was based on a Bavarian prescription dating back to 1516, which reserved the name "*Bier*" ("beer", in German) to fermented drinks produced through a specific process it described and with ingredients also dictated by it. In another interesting case, the French *Conseil d'État*, through the *affaire Caucheteux et Desmont*, of January 21st, 1944 (*Recueil Dalloz*, p. 65, 1944), considered a request of indemnity against the French State deriving from serious financial loss of a glucose company brought about by an economic intervention law. The loss was caused by the legal reduction of the percentage of glucose in the beer industry (from 30% to 15%), in order to protect producers of grains (hop and barley), whose quantities in the production of beer should be increased. Many other examples exist. In Brazil,

Decree n° 4.851/2003 (revoked by Decree n° 6.871/2009) defined *caipirinha* as follows: “*Caipirinha is a typical Brazilian drink, containing from fifteen to thirty-six per cent of alcohol, at twenty degrees Celsius, obtained exclusively from mixing Cachaça, lime and sugar*”.

- ¹⁸ “(...) Taste has to be controlled, disciplined and moderated, to avoid it turning into a capital vice (gluttony)” – according to Philippopoulos-Mihalopoulos and Chryssostalis, 2013, p. 4. About the right to food safety, constitutions of countries like Bolivia, Guatemala, Brazil, Nepal and Zimbabwe, for example, contain specific mechanisms concerning the right to food or the right to eating (cf. www.constituteproject.org). International Law also has a vast bibliography on the subject – cf. goedert, 2014, p. 17-18.
- ¹⁹ Calvino, 1995, p. 66.
- ²⁰ *L'Aforism* I. Brillat-Savarin, 1864, p. 9.
- ²¹ Cascudo, 2004, p. 339.
- ²² Jung, 1970, *passim*.
- ²³ Cascudo, 2004, p. 339.
- ²⁴ Cascudo, 2004, p. 339.
- ²⁵ Cascudo, 2004, p. 339.
- ²⁶ Flandrin e Montanari, 1998, *passim*. The same way, Onfray, 1999, *passim*.
- ²⁷ Flandrin and Montanari, 1998, *passim*. As a matter of fact, eating and drinking imply some conventions: “*In every society the way people eat is ruled by conventions analogous to those that regulate verbal languages. This set of conventions, which we call 'grammar', rules the eating system not as a simple sum of products and foods, gathered in a more or less casual way, but rather, as a structure where each element defines their own meaning. The lexicon upon which this language is based evidently results from the repertoire of products, plants and animals available (...)*” (Montanari, 2013, p. 165).
- ²⁸ Flandrin e Montanari, 1998, *passim*.
- ²⁹ Cascudo, 2008, p. 12.
- ³⁰ AA.VV. História da Alimentação, 2005, p. 55.
- ³¹ AA.VV. História da Alimentação, 2005, p. 55. Michel Onfray goes in the same direction: “*Qu'est-ce que la gastrosophie? Elle est une science ("science de gueule", écrivait Proudhon l'ascète pour la fustiger...) qui combine gastronomie, cuisine, conserve, culture, hygiène, philosophie (fouririste), médecine. Le gastrosophe sait donc cuisiner, il connaît la charge hiéroglyphique des aliments en vertu de la théorie de l'analogie, il n'ignore rien de la médecine préventive associée aux aliments, il s'active en cuisine pour créer du plaisir à être, puis à être ensemble, il sublime les passions tristes en les intégrant dans des banquets vécus comme des performances esthétiques ou des happenings contemporains (comme chez les futuristes...) qui permettent, par exemple, d'en finir avec la guerre classique, létale à des niveaux inouïs, grâce à la scénographie de combats avec des petits pâtés pivotaux en guise de munitions, ou de bouchons de bouteilles de champagne qui explosent en lieu et place des munitions de champ de bataille...*” (Onfray, Michel. “Confessions d'un gastrosophe” [Entretien avec Marc Legros]. Philosophie Magazine, n° 50, Juin 2011, pp. 54-56).
- ³² Barthes, 2004, p. 324.
- ³³ Branlard, 2009, p. 20.
- ³⁴ On the concept of lightness in Law, see Franca Filho, 2014, *passim*.
- ³⁵ Baggini, 2014, *passim*.
- ³⁶ Rabenhorst, 2014, p. 48.
- ³⁷ Ferraz Jr, 1997, p. 171-2.
- ³⁸ Philippopoulos-Mihalopoulos e Chryssostalis, 2013, p. 3. The issue of judgment was also discussed in CARNEIRO, s/d, *passim*.
- ³⁹ Melkevik, 2014, p.57-58.

- ⁴⁰ Frenchman Jean Anthelme Brillat-Savarin is considered one of the founders of modern gastronomy. He was a lawyer and later a judge at the admirable Cour de Cassation (Paris), and he is also the author of “*Physiologie du Goût*”, of 1825, which is an unavoidable bibliographical reference of universal gastronomy.
- ⁴¹ The eccentric Parisian lawyer and gastronome Alexandre Balthazar Laurent Grimod de La Reynière gained fame during the reign of Napoleon for being one of the first gastronomy reviewers in history. He is the author of the classic gastronomy guide “*Almanach des Gourmands*”, published in separate tomes between 1803 and 1812.
- ⁴² Judge Joseph Berchoux, author of “*L’Homme des Champs à Table*”, invented the word “gastronomy” (Branlard, 2009, p. 90).
- ⁴³ Retired Justice of the Superior Tribunal of Justice (STJ, in Portuguese) and famed cook, Eliana Calmon (born in the state of Bahia, Brazil) is author of a best-selling book that has reached its 10th edition: “*Receitas Especiais – REsp*” (Rio de Janeiro: ed. JC, 2013), having more than 360 pages of recipes for sweet and salty food, including food typical to the state of Bahia.
- ⁴⁴ In turn, Gladston Mamede (natural to the state of Minas Gerais, Brazil), Doctor of Philosophy of Law (title obtained from Universidade Federal de Minas Gerais, UFMG), university professor and author of extensive legal books in the field of Private Law, used to keep a very popular blog until some months ago on food and wine reviews. Those who have had the opportunity to try one of his dishes say he is one good alchemist.
- ⁴⁵ Brillat-Savarin, 1864, p. 57.
- ⁴⁶ *L’Aforism IV*. Brillat-Savarin, 1864, p. 9.
- ⁴⁷ Levi-Strauss, 2010, p. 1.
- ⁴⁸ Perullo, 2013, p. 19.
- ⁴⁹ Montanari, 2013, p. 56.
- ⁵⁰ Montanari, 2013, p. 78-79.
- ⁵¹ Alves, Rubem. Churrasco. *In*: Alves, 2000, p. 66-67.
- ⁵² Alves, Rubem. Sopas. *In*: Alves, 2000, p. 70.
- ⁵³ Alves, Rubem. Sopas. *In*: Alves, 2000, p. 70.

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