

# Language, Law and Food

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**Abstract:** *Lingua, Diritto e Cibo* - The language of law has been traditionally characterized by an extreme technicism and the use of a specific jargon whose comprehension is considered a prerogative of legal professionals. The situation is gradually changing. There is a general trend to make law more understandable to non-lawyers and to the normal people in general. This implies the use of a different, more colloquial, kind of language, that could be more familiar to ordinary people. On the other side, food today is no longer what humans eat to calm hunger, but has become an object of research, elaborations, and contaminations, an expression of the different world cultures and a social phenomenon. The links between food and law are as old as the concept of law. Many authors have been using such links in creative ways to express specific features of law. This is because the language of food and cooking offers legal scholars a lot of metaphors, comparing rules to recipes, and their combination to culinary processes. The paper considers the use of food related metaphors and language, and the relationship between law and food in an interdisciplinary perspective, to examine how food related topics can be used to identify different rules, norms, or prescriptions.

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## 1. Introductory remarks

Law is normally considered as a boring subject. Therefore, legal scholars engage themselves in finding ways to make it fun. Referring to food has been one of the tools used to reach this goal.

The *Juris Diversitas* association, for example, uses a dish of *gumbo* as its symbol: it represents *Juris Diversitas'* interest in "legal and normative *gumbos* around the world".<sup>1</sup> *Gumbo* is a stew originally prepared in southern Louisiana during the 18<sup>th</sup> century. Today it is cooked in several different varieties, but its characteristic stays in the fact that it "combines ingredients and culinary practices of several cultures, including French, Spanish,

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<sup>1</sup> The blogspot of *Juris Diversitas* explains the meaning of *gumbo* as follows: "As *gumbo* is a cultural hybrid made of many different ingredients, the phrase is also sometimes used with reference to other mixtures. For example, 'zydeco', a Louisiana musical mix of rhythm and blues, country, Cajun, etc, etc, has been described as having 'a *gumbo* of influences'." See the *Juris Diversitas* Blog at <http://jurisdiversitas.blogspot.com/p/gumbo.html>, accessed on 25 July 2022.

German, West African, and Choctaw.”<sup>2</sup> Therefore, making reference to this very particular dish indicates the “gumbo of influences” that *Juris Diversitas* pursues in its activities connected to research in law, considering that “*Juris Diversitas* are, if you like, interested in legal and normative gumbos around the world”<sup>3</sup>.

Clearly, *gumbo* is not the only metaphor used to illustrate the links between law and food. These connections are as “old as the concept of law”.<sup>4</sup> Food is necessary for life, as law is. They both can be considered as primordial needs of human beings. Food is essential for nutrition and takes hunger away; lack of food can cause unrest and conflicts. Law provides a means to prevent and solve conflicts throughout society, and – as normally we are used to say – wherever we find a society we find law. As each society has its own food culture, it has also its own legal culture.

This holds true in human societies as well as in advanced animal societies. Procuring food is the primary scope of life for all animals. Animal societies create primordial “juridical” rules. Most mammals “mark” their territory and obtain from their counterparts, i.e., from other members of their species, observance of their exclusive rights. Similarly, several varieties of birds mark their aerial space flying and screaming, and observance of the rule is enforced by self-help. Rules observed by the animal itself protect the relationship between male and female, often preceded by courtship, and the duties incumbent on the parents with respect to their offspring. Animals produce rules about food too: according to the different species, there are specific and strict rules concerning the order that each member of the family or the group must respect to access food.<sup>5</sup>

Human beings started their relationship with food by consuming fruits from plants and trees and by hunting animals to eat meat. Food not consumed was kept away and spare food had to be defended from its appropriation by others. When the *Homo Habilis* produced the first pebble tools, his law should not have been too different from that of the primates which immediately preceded him. Those pebble tools were used to create “weapons” to protect goods (including food), they created issues of property, and possession probably solved the most common problems.

Such legal rules were mute: possession constituted the exercise of legal power over the chattel, acquiescence implied recognition of the other’s rights, performance implied obligation. The dichotomy between law and enforcement did not exist. The acts that were performed were legal, in other words, the right exercised was legal, the duty absolved was legal, the act acquiesced by others was legal. Trade was accomplished through an

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<sup>2</sup> See the entry “gumbo” of Wikipedia at <https://en.wikipedia.org/wiki/Gumbo>, accessed on 25 July 2022.

<sup>3</sup> *Juris Diversitas* Blog at <http://jurisdiversitas.blogspot.co.za/p/gumbo.html>, accessed on 25 July 2022.

<sup>4</sup> This expression was used in the *Juris Diversitas*’ Call for Papers for its 5<sup>th</sup> Annual Conference on Law and Food held in July 2017 in Lyon. See the *Juris Diversitas* Blog at <http://jurisdiversitas.blogspot.com/p/blog-page.html>, accessed on 25 July 2022.

<sup>5</sup> Among lions, for example, after a prey has been hunted and killed, the males eat first, then the cubs and finally the females, and such order cannot be changed. On the meta-juridical aspects of animal life see more in A. Gianola, “L’analisi etologica del diritto”, in *Rivista di diritto civile*, 1995, I, p. 805

exchange of possessions. Ceremonies and acts constituted legal actions. Adherence to the rule implied its existence and validity (manifested by the spontaneous conduct of the members of the group). The law was unspoken, sources were unspoken, acts were unspoken.<sup>6</sup>

Language came later. It served to identify the food and its different types, the way to prepare and consume it; it has been used also to express the rules that from mute became spoken, and later to identify and distinguish the different types of rules and the relationship existing between them.

Such as humans eat food every day, the law affects nearly every aspect of their day by day lives. Whatever is its form or shape, law contributes to ensure peace and harmony in the society by settling disputes between people and regulating the relationship between people and with the state. All this being said, the strong relationship between law and food should not come as a surprise.

The aim of this paper is therefore that of indicating some of the many possible links between language, law, and food, with the sole purpose of illustrating some – maybe unexpected – aspects of the law. The common thread guiding the present paper is represented by the relation between law and food that will be examined from different perspectives: the use of food related language to express legal concepts, the legal relevance of food in different legal traditions and the most recent trend where duration of law is quite short and becomes more and more similar to the food's expiry date. The attempt is to demonstrate that in all these aspects – that might seem unrelated each other – the relationship between law and food is very profound.

## 2. Food and law

The use of food analogies in law is extremely common. The analogical process observes a similarity between objects or concepts otherwise different, and outlines a comparison based on that similarity. In a legal context, the use of analogy is a well-known form to conduct legal reasoning.<sup>7</sup> This happens, for example, in civil law systems when a situation for which a specific rule is absent in the legal order is regulated by using a norm provided for a similar situation, and in common law systems where judges deciding a case follow an earlier decision because of the existence of similarities between the two cases, leading to the principle of *stare decisis* where the courts are bound by the decisions of higher courts and their own judgments.

Obviously, the use of food analogies cannot be considered a scientific method, but it can result an effective way of explaining the complexity of the law. This being said, analogies between law and food are an effective tool in teaching law or to let common people understand law and its functioning. An example is the comparison between a lawsuit and a recipe for a cake. To

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<sup>6</sup> R. Sacco, "Mute law", in *The American Journal of Comparative Law*, Vol. 43, No. 3 (Summer, 1995), p. 455-467, at 459 and ff.

<sup>7</sup> On the analogy see L. Gianformaggio, voce "Analogia", in *Digesto Discipline Privatistiche*, vol. I, (1989) Turin: UTET, p. 320-329. See also A. Ravà, voce "Analogia", in *Enciclopedia del Diritto*, vol. II, (1958) Milan: Giuffrè, p. 344-384.

succeed with a lawsuit (a cake), a lawyer (the chef) needs to prove the case by proving the elements following the rules of procedure; thus, the lawyer needs to follow the recipe. Failure to do so will result in a losing case (a collapsed cake).<sup>8</sup>

Samuel Walker uses also the cake – and, in particular, the “wedding cake” – as a metaphor to illustrate the theory of criminal justice in the United States. He purports that the criminal justice system can be divided into four layers which can be considered as the layers of a wedding cake. According to the seriousness of a crime, a case constitutes one more than another layer of the cake. The top level of the cake corresponds to the most serious cases which are highly publicised and where all aspects criminal justice procedures are present. Serious crimes committed by habitual offenders which usually require the intervention of jury trials and where culprits are sentenced to imprisonment can be considered as the second layer of the cake. The third layer is made by less important crimes committed by occasional offenders and thus are worthy of less attention. Petty crimes correspond to the lowest layer of the cake: these types of cases are quickly dealt with in the lower courts and are punished with minor punishments, such as fines or community service.<sup>9</sup>

Moving to a different kind of parallel between food and law, it has been observed how “African legal systems may be viewed as legal salmon – which can swim against the current, adapt, remodel, and regenerate while also remembering and imagining”.<sup>10</sup> This because the dynamics of African legal systems – which act differently from legal systems belonging to other legal traditions – can be assimilated to salmons which swim against the current rather than with it (the normal way of producing and administering law), and at the end still have the energy of producing something new. Finally, “by being ‘legal salmon’, Africa can have a sustainable legal tradition which may have something new to offer to Western legal traditions”.<sup>11</sup>

I also normally use a food metaphor to explain to the students the stratigraphic method normally used to study African law.<sup>12</sup> In this case African law is seen as a raw pizza where the dough represents the African traditional law and tomato, mozzarella, ham, and the other toppings symbolize the different legal layers that have occurred over time. As it is impossible to prepare pizza without the dough that is its essential element, it is impossible to conceive African law without the African traditional rules which are an essential part of it. Moreover, since pizza does not come raw, but cooked in the oven, the latter stands for the daily life that makes the law

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<sup>8</sup> C. Rautenbach, “Analogies and figures of speech in food and law”, in S. Mancuso (ed.), *The language of law and food*, (2021) London: Routledge, p. 11-20, at 12.

<sup>9</sup> S. Walker *Sense and Nonsense about Crime and Drugs: A Policy Guide*, 3<sup>rd</sup> ed (1994) Belmont: Wadsworth, p. 30-44.

<sup>10</sup> M. Twomey, “Legal Salmon: Comparative Law and its Role in Africa”, in S. Mancuso, C. M. Fombad (eds.), *Comparative Law in Africa. Methodologies and Concepts*, (2015) Cape Town: Juta, p. 85-106, at 86. Here I considered salmon in its valence of both fish and food.

<sup>11</sup> *Ibid.*, at 87.

<sup>12</sup> On the stratigraphic method to study African law see R. Sacco, *Il diritto africano*, (1995) Turin: UTET.

functioning, the determining factor of the ‘living law’ as existing in the African legal reality.

Another example of the use of food metaphors to describe law can be found in the United States with reference to the so-called “lemon laws”. The bitter taste of the lemon is used with reference to the state laws concerning the purchase of defective vehicles, which are referred to as “lemon cars”. Such laws include remedies for the purchasers of cars not in line with the standards of quality and performance, and whose defects cannot be repaired by the dealer within a given period. The laws are different between the states, but – as a general principle – the law obliges the dealer to buy back the defective vehicle and to reimburse the purchase price, or, alternatively, to replace it.<sup>13</sup>

Food metaphors were also used in different other circumstances. When Esin Orücü delivered the keynote speech at the annual conference of *Juris Diversitas* with the theme “diffusion” in 2013, she used the image of a teabag to explain her view about the difference between “diffusion” and “infusion”.<sup>14</sup> She indicated that diffusion can be assimilated to the process of putting a teabag into a cup of tea<sup>15</sup>; while infusion means introducing a modifying element of quality, it is a blending process which corresponds to that of the tea flavour spreading all over in the teacup.<sup>16</sup> As time goes on, such flavour becomes stronger up to getting to complete the blend: a fully transformed mixed legal system.

However, Esin Orücü had already utilized food metaphors to explain mixed legal systems. She used, for example, the salad as a figure of speech to describe the different manners in which mixity of legal systems can be done.<sup>17</sup> In particular, she refers to three types of salads with reference to mixed legal systems. The first one is a “simple” mixed legal system where “the ingredients [culture and law] being still in the process of blending but in need of further processing if a ‘puree’ is to be produced”.<sup>18</sup> The second one

<sup>13</sup> For more information on “lemon laws”, see M. C. Jasper, *Lemon Laws* (2005) Oceana: New York, cit. in C. Rautenbach, “Analogies and figures of speech in food and law” cit.

<sup>14</sup> Also see E. Orücü’s discussion of diffusion and infusion in her “Infusion of the Diffused: Four Circles of Diffusion Infusing the Legal System of Turkey” in S. Farran, J. Gallen, J. Hendry J and C. Rautenbach (eds) *The Diffusion of Law: The Movement of Laws and Norms Around the World* (2015) London: Ashgate, p. 7-24

<sup>15</sup> This can be connected to the meaning of diffusion as “the random thermal motion of atoms, molecules, clusters of atoms, etc, in gases, liquids, and some solids”, meaning that – in anthropology – becomes “the transmission of social institutions, skills, and myths from one culture to another”. See <https://www.collinsdictionary.com/dictionary/english/diffusion>, accessed on 6 October 2022.

<sup>16</sup> Also see the dictionary meaning of “infusion” as “a liquid made by leaving herbs in hot water until the flavour is strong” at <https://www.collinsdictionary.com/dictionary/english/infusion>, accessed on 6 October 2022.

<sup>17</sup> E. Orücü, “Family Trees for Legal Systems: Towards a Contemporary Approach” in M. Van Hoecke (ed) *Epistemology and Methodology of Comparative Law* (2004) Hart Publishing) 359-376.

<sup>18</sup> E. Orücü, “What is a Mixed Legal System: Exclusion or Expansion?”, in *Electronic Journal of Comparative Law*, vol. 12.1 (May 2008), available at <http://www.ejcl.org>, at 13.

is a “complex” mixed legal system where the elements of culture and law are different. She says that such mix resembles the “Italian salad bowl’, where, although the salad dressing covers the salad, it is easy to detect the individual ingredients clearly through the sides of the glass bowl”.<sup>19</sup> The last type illustrates the superficial process of mixing like an “English salad plate”, in which “ingredients sitting separately, far apart on a flat plate with a blob of mayonnaise to the side into which the different ingredients can be dipped before consumption”.<sup>20</sup>

More recently, *Juris Diversitas* organized a conference dedicated to the different kinds of relation existing between food and law.<sup>21</sup> Apart from a series of essay dedicated to the food regulation in different legal environments, some of the presenters dedicated their research endeavour to the use of food metaphors or, even more, to the use of the language of food to describe law. The approach has been that of using this last aspect of the relation between law and food to go far beyond their mere interaction, to explore different ways of using these two apparently so diverse elements to describe different phenomena of the legal reality.<sup>22</sup> The result has been that of showing how diversely the interaction between law and food can be imagined out of the legal discipline of food-related matters. Furthermore, the Italian Association of Comparative Law dedicated its conference in 2019 to the different kind of relations existing between law and food.<sup>23</sup>

The parallels between the diffusion and infusion of tea and laws have been used by Christa Rautenbach to describe the development of transplanted law in South Africa.<sup>24</sup> She considers that “[i]nitially, from 1652, a Dutch settlement in the Cape saw the import of Roman-Dutch law principles. Though it remained the law of the land, it was greatly influenced by English common law after the second British occupation in 1806.<sup>25</sup> Today this fusion is a pluralistic mix made up of civil law (Roman-Dutch law) and

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<sup>19</sup> Ibid.

<sup>20</sup> Ibid.

<sup>21</sup> Reference is made here to the *Juris Diversitas* conference “Law and Food”, organized in Lyon (France) in 2017.

<sup>22</sup> S. Mancuso, “Introduction”, to *The Language of Law and Food* cit.

<sup>23</sup> The conference proceedings have been published in L. Scaffardi, V. Zeno-Zencovich (eds.), *Cibo e diritto. Una prospettiva comparata* (2020) Rome: Roma TrE-Press.

<sup>24</sup> In this context the “mix” refers to the fusion or mix of Roman-Dutch law and English common law. See C. Rautenbach, “Analogies and figures of speech in food and law” cit.

<sup>25</sup> As C. Rautenbach refers in her “Analogies and figures of speech in food and law” cit., at footnote 29, “[t]he Roman-Dutch legal system that existed in the province of Holland during the 17<sup>th</sup> century forms the basis of the South African common law. This system was introduced into South Africa from 1652 onwards. After the British invasion it was proclaimed that the Roman-Dutch law - as it was in force in 1806 - would prevail in the Cape. In spite of the policy to retain Roman-Dutch law in the Cape during the British occupation (1795-1803, and again from 1806 onwards), certain areas of law became anglicised, especially in the area of business, government and procedural law. The Roman-Dutch influence is most visible in criminal and substantive private law. With the extension of the British Empire and the establishment of the Dutch colonies, Roman-Dutch law expanded to the rest of South Africa. This situation has continued to prevail, even although South Africa became independent from Britain. On 11 December 1931 South Africa became independent from Britain but the British monarch remained the head of state. On 31 may 1961 South Africa severed all ties with Britain and became a Republic, though strong links with the English common law remain”.

common law (English law) elements”.<sup>26</sup> In another research paper the same Author used a food figure of speech to describe this process, namely the “potfood”. Potfood (in Afrikaans “potjiekos”) is a South African dish made to create friendship, to be enjoyed by all people without any distinction. It is traditionally prepared around an open fire, generally gathering friends, and with a mixture of meat and vegetables, stuffed in distinct layers. When the dish is cooked, the layered food has taken the flavour of the meat, the vegetables and the spices used to dress it due to a process of infusion which recalls Esin Orücü’s description with the teabag. In the potfood metaphor, Christa Rautenbach considers the South African Constitution as the meat, and the vegetables represent the state and non-state laws which consist of the common law, African traditional law, and the legal norms deriving from unrecognised religious legal systems. As this pot with its mix of ingredients stews, the Constitutional flavour is what renders the final product something to be enjoyed by all table companions.<sup>27</sup>

There are also a lot of instances where the judiciary also used food metaphors. One of the most recent is that of the so-called “broccoli saga” used by Judge Vinson in the United States District Court of Florida, when the constitutionality of what is known as the “Obamacare Act”<sup>28</sup> was challenged by 26 states and some other parties. In examining the possible unconstitutionality of the Act, the judge was not convinced of the fact that the federal government could require people to buy health insurance since the healthcare market has unique elements which make it necessary to request people to contribute. According to Judge Vinson, the same distinctive factors could bring the government to “require that people buy and consume broccoli at regular intervals, not only because the required purchases will positively impact interstate commerce, but also because people who eat healthier tend to be healthier, and are thus more productive and put less of a strain on the health care system”.<sup>29</sup>

These are only a few examples from different sources from all over the world to illustrate the legal profession’s fascination with food analogies and figures of speech.

### 3. Food as a component of law

If in the examples made above food has been used as a metaphor to describe and explain legal situations, we shall also make reference to cases where food has been a fundamental element for the completion of legal transactions. Here we go back to traditional societies with their own system of rules, clearly detached from the Western approach to law.

<sup>26</sup> C. Rautenbach, “Analogies and figures of speech in food and law” cit., at 17.

<sup>27</sup> C. Rautenbach, “Mixing South African Common Law and Customary Law of Intestate Succession: ‘Potjiekos’ in the Making” in E. Örüçü E (ed.), *Studies in Comparative Law: Mixed Legal Systems at New Frontiers* (2010) London: Wildy, Simmonds & Hill, p. 222-240.

<sup>28</sup> Reference is made here to the Patient Protection and Affordable Care Act of 2010.

<sup>29</sup> See *State of Florida v US Department of Health and Human Services*, 10-cv-00091, US District Court, Northern District of Florida (Pensacola) at 46, accessible at <https://www.crowell.com/pdf/ManagedCare/Florida-v-United-States-Department-Health-Human-Services.pdf> and accessed on 12 May 2022.

In Eritrea, sale of land and the payment of the related price was celebrated during village assemblies, weddings, or funerals, so that the widest number of community members was present to assist to the entering into the contract. Terms and conditions of the sale were declaimed loudly, so that all participants were able to hear them. Youngsters were invited to assist to the ceremony, and to make sure that the event with the related transaction remained in their memory to have evidence of the transaction in the future, they were fed with roasted corn, so that when they became older, they could remember that they ate roasted corn in that particular occasion.<sup>30</sup> Always in Eritrea, the use of the herding contract was also widely used. Through it, the community entrusts all the village livestock to one or more shepherds. If the shepherd suffers the theft or loss of one or more head of cattle without reporting it to the owner by sunset on the same day of the loss, he is required to pay compensation for the missing animal. If the shepherd has - on the other hand - killed the animal to eat it, the compensation is due in an amount equal to five times the value of the animal.

Among the Aztecs, sales were made on cash and credit. While there was no official currency, various goods functioned as money, among which cocoa and grains were the most popular. Similarly, salt was one of the main currencies in West Africa in pre-colonial times. Furthermore, always among the Aztecs, peasants paid taxes through the crops that they produced, and food was used also as family punishment since parents were permitted to physically punish their children by forcing them to inhale chili smoke.

The town of Texcoco was founded in the 12th century and grew to prominence within the Aztec Empire in the early 15th century through its leader, Nezahualcoyotl. Texcocan laws were strictly enforced, but Nezahualcoyotl was considered an enlightened leader. He had corn planted along public roads so that hungry individuals could eat and not be accused of theft. Begging was also prohibited and punished by death, but to prevent this the Texcocan ruler gave food and clothing to the needy and to wounded soldiers.<sup>31</sup>

The Maya did have a currency system and used cocoa beans as forms of money. Counterfeiting was a problem and occurred when unscrupulous individuals removed the flesh of cocoa beans and replaced it with avocado rinds or dirt. The Maya used contracts, which were formalized when the parties drank *balché* (a mild alcoholic drink) in front of witnesses.<sup>32</sup>

There has been a deep relationship between language, food and law in Roman law. From the *Lex clodia frumentaria* that distributed wheat for free to the Roman plebs, to the *lex Iulia de Annona* that prescribed a penalty against a person who commits any act or forms any association by means of which the price of wheat and grain may be increased, to the Veleia's *tabula alimentaria* where the interests accrued on land loans were the instrument through which the Roman state paid subsidies in cash or in kind (wheat) to young people with low economic possibilities, and Diocletian's *Edictum de*

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<sup>30</sup> C. Conti Rossini, *Principi di diritto consuetudinario dell'Eritrea*, (xxx), at 337.

<sup>31</sup> Information about Aztec law is taken from <https://tarlton.law.utexas.edu/aztec-and-maya-law/intro>, last accessed on & October 2022.

<sup>32</sup> Information about Maya law is taken from <https://tarlton.law.utexas.edu/aztec-and-maya-law/intro>, last accessed on & October 2022.

*Preiis Rerum Venalium* that prescribed maximum prices for more than 1,400 products, food, raw materials, labour and services, transport, animals and slaves, we have numerous references to food in the classical legal sources.<sup>33</sup>

But in Roman law we can also find a lot of rules referring to food. Milk was considered a *fructus naturales* of livestock. The law of obligations has several rules regarding food. For example, if someone unknowingly rented defective barrels from which the wine came off, compensation is due to the client taking into consideration the fact that he was unaware of the defects. If the seller was late in delivering the wine, he had to pay the higher value of the wine with reference to that of the real sale. Conversely, if the delay was due to the buyer's fault and there were no obstacles to the delivery of the wine, the price had to be determined considering the place where it was lower. If someone bought grapes ready for the harvest and he was prevented to picking the grape, he was entitled to refuse payment until the grapes are harvested and delivered. There were specific rules regarding the liability of owners and peasants in case of events concerning the quality of food. Therefore, if olives are damaged because of tree disease or excessive heat, liability stayed on the owner, while if wine became vinegar the peasant is liable. Furthermore, if someone bought the result of the future fishing and the fisherman did not go fishing, the uncertain catch must be estimated, and if he refused to deliver the catch, an estimate of it must be done. If oil was fraudulently weighted using lightened or heavy weights, the part who had more should have returned the excess or who had less should have been entitled to reclaim the missing quantity.

Food was also part of the inheritance rights. In the *Digestum* there are several rules concerning the duty of support arising from legacies, where feeding is linked to the need of eating and becomes an heir's obligation in favour of the beneficiary. In this case, the obligation to support some people through the continuous provision of food was born in the ambit of the relationship between the master and the freedman and therefore through the legacy. Subsequently, it was extended to every relationship with kinsmen or closest people and expanded beyond the food to embrace what was considered necessary to the sustenance, including housing and clothing. Worth remembering the case of wine legacy, that also includes the containers where the wine is contained since they are considered as an accession to the wine (wine was often measured in amphoras), unless the containers cannot be moved. Wineskins were not considered included.<sup>34</sup>

More recently food became an element intertwined with religious law. All people are concerned about the food they eat. Muslims want to ensure that their food is *halal*; Jews that their food is *kosher*; Hindus, Buddhists, and certain other groups that their food is vegetarian.

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<sup>33</sup> See more in J. L. Zamora Manzano, "Crisis alimentaria y especulacion en el derecho romano: a proposito de la lex Iulia de annonae", in *Studia Prawnoustrojowe*, vol. 25, (2014) p. 7-21; M. Sukacic, "Consumer protection in ancient Rome – *Lex Iulia de annonae* and *Edictum de preiis rerum venalium* as prohibitions of abuse of dominant position?", in Economic and Social Development, proceedings of the 22nd International Scientific Conference on Economic and Social Development – "The Legal Challenges of Modern World", p. 107-117;

<sup>34</sup> For more information about law and food in Roman law see I. Fagnoli, *Cibo e diritto in età romana* (2015) Turin: Giappichelli.

The most recognized of associations of the terms *halal* and *haram* is in the food and beverage sector. As mentioned above, in Islamic law food must be *halal* (permitted) to be eaten, while some other foods are *haram* (forbidden). In general, every food is considered *halal* in Islam unless it is specially prohibited by the Quran or the Hadith. By official definition, *halal* foods are those free from any component that Muslims are prohibited from consuming according to Islamic law. Forbidden food includes pork, carnivores, non-ruminants (donkeys and horses), animals that were slaughtered in the name of a god other than Allah, animals that died due to illness, injury, stunning, poisoning, or slaughtering not in the name of Allah. *Halal* items that have been contaminated or mixed with *haram* items are also forbidden.<sup>35</sup>

*Khumūr* (sing. *khamr*), is defined as alcoholic beverages, wine; liquor. In *fiqh*, it is viewed as a general term for any intoxicating beverage made from grapes, dates, and similar substances. *Khumūr* are considered also *haram* as any other intoxicating substance.<sup>36</sup>

*Kashrut* is the set of Jewish food standards which allows the consumption of some animals and not others based on a complex set of criteria, determines the lawfulness of the animal's consumption also on the basis of the ways in which it is killed (providing for a special system called *shechita*), designed to eliminate as much blood as possible, and prevents the joint consumption of certain foods. Food that may be consumed is classified *kosher*, meaning "fit". Although the details of the laws of *kashrut* are numerous and complex, they are based on a few basic principles. Firstly, only certain types of mammals, birds and fish having specific standards are *kosher*; the consumption of the flesh of any animals that do not meet these criteria, such as pork, frogs, and shellfish, is forbidden. Secondly, *kosher* mammals and birds must be slaughtered according to a process known as *shechita*; blood may never be consumed and must be removed from meat by a process of salting and soaking in water for the meat to be permissible for use. Finally, meat and meat derivatives may never be mixed with milk and milk derivatives: separate equipment for the storage and preparation of meat-based and dairy-based foods must be used.<sup>37</sup>

Kosher food is also categorized as follows: 1) meat products are those that contain kosher meat, such as beef, lamb or venison, kosher poultry such as chicken, goose, duck or turkey, or derivatives of meat, such as animal

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<sup>35</sup> M. M. Zubair Butt, "Halal and Shariah Law", in Y. R. Al-Teinaz, S. Spear, I. H. A. Abd El-Rahim (eds.), *The Halal Food Handbook*, (2020) Hoboken, NJ: John Wiley & Sons, p. 27-38. See also D. Nurdeng, "Lawful and unlawful foods in Islamic law, focus on Islamic medical and ethical aspects", in *International Food Research Journal*, vol. 16 (2009), p. 469-478.

<sup>36</sup> Most of the Muslim countries have provisions in their penal codes to prohibit the consumption of alcoholic beverages, crime often punished by repeating the penalty indicated in the Koran. For the African instance see S. Mancuso, "The consumption of alcoholic beverages in the Somali penal code", in S. Mancuso (ed.), *Law and food. Regulatory Recipes of Culinary Issues*, (2021) London: Routledge, p. 128-140.

<sup>37</sup> See more in E. Stradella, "Ebraismo e cibo: un binomio antico e nuove tendenze alla prova del multiculturalismo", in L. Scaffardi, V. Zeno-Zencovich (eds.), *Cibo e diritto* cit., p. 133-171.

gelatin; non-animal products that were processed on equipment used for meat or meat-derived products must also be considered as meat; 2) dairy products, which contain milk or any derivatives such as butter or cheese; non-dairy products that were processed on equipment used for milk or milk-derived products must also be considered as milk; 3) products that do not contain either meat, or milk or their respective derivatives (pareve, “neutral” products), and include foods such as fish, eggs, grains, fruit and produce; they remain pareve if they are not mixed with or processed using equipment that is used for any meat or dairy products. While any product that grows from the earth, such as fruits, grains, vegetables and mushrooms, is always permissible, laws regarding the status of certain agricultural products, especially those grown in the Land of Israel, impact their permissibility for consumption.

#### 4. Law like food (best before within...)

Such discourse reflects a change of paradigm in the way in which law is conceived in the present times. Obviously, it implies a longer discussion involving sociological and anthropological themes that lies outside the scope of the present paper.

For our purpose it is enough to say that by observing the changes occurred in the present society, we can detect a significant change in the role that law plays in our daily life, with particular reference to its relationship with economic activities.

It is possible to affirm that the role of law in relations with economic activity has been completely subverted. Up to the end of the last century, the role of law was clearly that of establishing the limits within which economic activity should - and could - take place, as well as that of blocking any attempt to cross such limits. In the present society, there has been a complete shift in the role played by law vis a vis the economic activities. Law became indeed an instrument of the economic activity, which uses (and consumes) law (as well as other non-legal instruments) to pursue its objectives. Therefore, the law is now an instrument that must promote economic activity and must be in line with its objectives, having enough flexibility to allow it to go further, change or reinterpret itself whenever it is deemed necessary.

Law is therefore part of the market, it becomes itself a commodity, an object of consumption. Like food, it has a shelf life. Consequently, and as a consumer good subject to today's market rules, the shelf life of the law has significantly reduced compared to the past: today the law must be changed much more frequently and quickly than previously, and the need to use tools and long and complex procedures to arrive at the modification of the norm is considered as an obstacle to the consumption of the law. All this because the legal rules, as well as any market good, are “produced” from nothing and can be eliminated at any time, since no rule has the privilege of immutability, being the “fruit” of the will of humans. This without mentioning the issues related to “producer's liability” for any piece of “defective law” and all its connection with politics.

The economy has thus replaced politics as the fulcrum of the legal universe, and the legal formulations are developed around an economy focused on the objectives to be achieved and refractory to the constraints deriving from the rigidity of the rules as made by the state. Law became a special kind of food to be consumed by humans. It has its own shelf life determined by the economic processes requiring it. When the expiry date is passed, law is thrown away, like a piece of food that cannot be eaten anymore.<sup>38</sup>

## 5. Conclusion

Scholars and legal professionals make use of analogies and other figures of speech linking food to the law in some or other way to make sense of the law. Of course, this exercise is more than just fun and games. Making use of analogies and figures of speech could be used “fruitfully” to teach abstract concepts and ideas to law students. It is also an effective way of explaining the law to people who are generally not knowledgeable about law.

Furthermore, food has been – and it is still – a contributor in the law-making process, being sometimes, as we have seen, the instrument through which a rule can operate within a given society. At the same time, we have briefly seen how law developed in a “foody” way with an expiry date determined by external factors like the economy.

The parallel between law and food opens the study of law towards an interdisciplinary perspective, touching upon anthropology, sociology, economics, linguistics. Therefore, law can be fun, and – to a certain extent – tasty. However, real food remains preferable.

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<sup>38</sup> The discourse is more widely developed in my *Liquidità e comparazione* (2018) Pisa: Pacini Giuridica.