ABSTRACT. Cooking and constitutionalism. Food and racial equity. I intend the juxtaposition to be jarring, even humorous. I would like to view it as a subtle indication of a historical trend in which central aspects of legal memory have been repressed from contemporary civic practice and important intellectual questions, concerning semiotics in consumer society, have been neglected in mainstream legal scholarship. As I will explain, the story of Ollie’s barbecue suggests not only that cooking and constitutionalism are intricately linked, but also that the expansion of postwar economic life formed a material basis for this hidden bond. Considering the history of Ollie’s thus can both illuminate the deep historical meaning of the Civil Rights Act, and also point the way toward a more general field of research, the development of what might be called a legal semiotics of consumption.

INTRODUCTION

Anyone who has traveled through the American South can attest that cooking barbecue is a diverse and varied art.¹ In every state and region, valley and town, local residents, both black and white, will express the strongest opinions on the subject. What kind of meat should be used, pork or beef? What specific cuts can be served, shoulder or brisket? Over what type of wood should the meat be cooked and for how long? What are the proper ingredients for sauce, if a wet sauce is to be used at all? What bread best accompanies the taste of the barbecue itself, a slice or roll? All are matters of heated debate.² Like law, the world of meat is an abundant multiplicity of rules.

¹ I wish to thank Jean-Christophe Agnew, John Brigham, Brannon Denning, and Jim Whitman. And thanks especially to Stephanie Kuduk Weiner for her support. This essay is an effort to extend previous discussions by the author on food, democracy, and consumer society into the realm of law. See “Consumer Culture and Participatory Democracy: The Story of Coca-Cola in World War II”, Food and Foodways 6/2 (1996), 109–129, and “We Are What We Eat; or, Democracy, Community and the Politics of Corporate Food Displays”, American Quarterly 46 (June 1994), 227–250.

² On barbecue and southern food, see S. Jonathan Bass, “How ‘bout a Hand for the Hog’: The Enduring Nature of the Swine as a Cultural Symbol of the South”, Southern Culture 1/3 (Spring 1995); John Egerton, Southern Food: At Home, on the Road, in History (New York: Alfred A. Knopf, 1987); Joe Gray Taylor, Eating, Drinking and Visiting...
Since 1926, Birmingham, Alabama has been home to a little restaurant called Ollie’s Barbecue. Around Birmingham, there is some dispute about Ollie’s cooking, especially the unique way it blends the vinegar-based sauce customary to the region. Some locals claim better barbecue is to be had on the other side of town, and that Ollie’s really is the place to go for dessert, to taste a real southern pie. For scholars of the law, however, Ollie’s status is unquestioned: it serves the most significant barbecue in American legal history. For Ollie’s was the business at issue in Katzenbach v. McClung, the Supreme Court decision that upheld Title II of the Civil Rights Act of 1964 and helped end Jim Crow.³ It was a site of intense legal combat over the meaning of our national Constitution – especially over the Commerce Clause – and a place of volatile argument about the possibility of achieving racial justice through concerted federal action. From this small restaurant devoted to meat, a new era of race relations and liberal legal rights was wrested into being.

Cooking and constitutionalism. Food and racial equity. I intend the juxtaposition to be jarring, even humorous. But if there is surprise or humor in the contrast, I wish to read that effect as part of the collective forgetting at the heart of modern myth, as described by Roland Barthes.⁴ I would like to view it as a subtle indication of a historical trend in which central aspects of legal memory have been repressed from contemporary civic practice and important intellectual questions, concerning semiotics in consumer society, have been neglected in mainstream legal scholarship. As I will explain, the story of Ollie’s barbecue suggests not only that cooking and constitutionalism are intricately linked, but also that the expansion of postwar economic life formed a material basis for this hidden bond. Considering the history of Ollie’s thus can both illuminate the deep historical meaning of the Civil Rights Act, and also point the way toward a more general field of research, the development of what might be called a legal semiotics of consumption.

That field would fall between the interstices of two recent areas of historical scholarship, and it is worth gesturing toward them to place my analysis of Ollie’s in some context. The first concerns the influence of consumer society on democratic political life, an issue now the subject of

⁴ See Roland Barthes, Mythologies (New York: Hill and Wang, 1972 [1957]). Famously, a number of the analyses of Mythologies, which can be read as one French intellectual’s response to postwar consumer society, concern items of food. See e.g., “Operation Margarine,” “Wine and Milk,” and “Steak and Chips,” 41–42, 58–61, 62–64.