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Beyond Food or Drug: An Examination of Food and Drug Law Through a Study of Cannibalism

Howard Cheng
May 2002

Abstract

This paper attempts to explore some of the limitations within the Food, Drug and Cosmetics Act's definition of ''food'' and ''drug.'' Much of the preexisting scholarly debate has focused on hybrids between foods and drugs, dietary supplements, vitamins, weight loss products and the like. This paper attempts to investigate our current problematic definitions of food and drug through the study of an unabashedly unorthodox subject: cannibalism. Our current regime attempts to classify a product by its ''intended use.'' However, many foods and drugs do not have a single intended use; they are ingested for a myriad of reasons, economic, cultural and religious. And because cannibalism has throughout history taken many different forms and has shown up on almost every continent, it acts as an excellent lens for focusing on what we might think the true limitations of the Act might be. Often times, the motivation that lay within the cannibals mind behind his consumption of human flesh was often one of simply eating a meal.

In other tribes or other instances of history, some cannibals felt that eating people was the only way to treat illness, to prevent aging, cure leprosy or even blindness. However, not all instances of cannibalism fell into these simple acts of consuming a food, or administering a drug. Often times, cannibalism was an act of empowerment, of incorporation and self-realization; something that our FDCA doesn't address. Arguably, a third category of comestible products must be recognized, one that is connected to our identity, our culture and ethnicity, our religion and our beliefs. Catholics who consume the Eucharist do not do so for its nutrition, nor for its medicinal effects. Native American Peyotists worship peyote and do not inhale it simply as a hallucinogenic drug. And arguably, when an American eats a hamburger or a hot dog or apple pie, he is not simply partaking of a meal, but of his own culture and identity. This paper argues that foods and drugs cannot be confined, limited or defined simply by their compositional, nutritional or medicinal value. There is cultural value to foods and drugs, and it seems reasonable to demand that the law recognize these values.

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Beyond Food or Drug: An Examination of Food and Drug Law Through a Study of Cannibalism

Although some controversy already exists regarding the current bipolar system of defining comestibles as either food or drug with no in-between, there is, perhaps, a need to totally reformulate our understanding of the things we eat, to create new definitions for eaten fare that fall neither into the categories of food, drug, or hybrid. Throughout history, there have been cultures and practices that consider human flesh and blood to be a food or a drug or both. However, the act of cannibalism was not always simply one of eating a food or of administering a drug; it was often saturated with religious and magical meaning, with empowerment, communication, sacrifice, and incorporation.

As the things we ingest continue to be endowed with religious and cultural and ethnic meaning,

the motivation we may have for consuming them also continue to change and evolve and strengthen. And foods that may have once been eaten for taste, or drugs that may have once been administered as medicine may very soon become symbols of our identity and elixirs for our soul. The current regulatory scheme of either-or, of black or white, food or drug may rapidly find itself being both outdated and incapable and the creation of a new category of comestible may inevitably become necessary.

Cannibalism as a Lens

In order to fully understand the limitations and insufficiencies of the existing regime, it becomes necessary to explain and explore how the system distinguishes between foods and drugs, how producers attempt to work within the existing system, and finally, how it can be expanded to further address both problematic past situations as well as issues that may arise in the future.

The logic and consistency of a system may be tested by examining its outer limits. Products on the fringe of food and drug law will test and ultimately expand or shrink the circumference of the legal circle. By trying to understand food and drug law through a lens of cannibalism, an unabashedly fringe subject, it seems possible also to tease out what it is exactly that our system attempts to accomplish. If the existing regime of food and drug law can logically and consistently regulate the eating of people, then it can easily twist and wind itself to satisfactorily regulate ‘‘normal’’ foods and drugs.

Cannibalism also lends itself well as a lens through which we can understand the current food

and drug law structure because the motivations behind eating people, the effects of eating people, and the often deep and powerful meanings associated with eating people do not allow cannibalism to be classified easily. Are people a food? Are they a drug? Perhaps they are something else? What aspects of people and what aspects of eating people argue for treating people as a food and not a drug? Throughout human history, people have eaten people and they have done it for different reasons and with different effects. Can what was once considered a food become a drug? Again, these are questions that pertain to all foods and drugs, but the problems they raise are especially pronounced when dealing with cannibalism. By understanding how the eating of humans might or might not fit into our current classification structure we can perhaps understand the very same structure's limitations and insufficiencies.

Food or Drug?

While most products may fall cleanly into the category of either food or drug, many producers and manufacturers may attempt to have their potential drugs classified as foods in order to pass through a ''food's'' less exacting regulatory scheme. However in so much that reality does not imitate law, many products legitimately seem to be in the middle; they are valued for their nutrition, taste or aroma and also for their possible medical benefits. Some questions then arise. How does the FDA and the existing regulatory scheme deal with this issue? On what basis can distinctions between the two be made? What happens to products that fall in-between (such as vitamin supplements, herbal juices and weight control pills)? And specifically, for the purposes of this discussion, how do we classify the eating of people -- something throughout

history that has been considered both a food and a drug -- and sometimes even something more?

What is a Food?

According to Title 21, U.S.C.A, Section 321(f) the ‘‘term ‘food’ means (1) articles used for food or drink for man or other animals, (2) chewing gum, and (3) articles used for components of any such article.’’[1] As is evident even in the statutory definition, the term food has been difficult to define, and more importantly, as new foods emerge and are created, has been difficult to confine. Multiple attempts have been made to give food manufacturers and producers as clear as possible guidelines as to how they should label and market their products. Congress stated in 1935 that the ‘‘definitions of food, drug and cosmetic shall not be construed, other than to the extent expressly provided, as mutually exclusive.’’ Furthermore, it stated that the ‘‘use to which the product is to be put will determine the category into which it will fall. If it is to be used only as a food it will come within the definition of a food and none other...If it is sold to be used both as a food and for the prevention or treatment of disease it would satisfy both definitions and be subject to the substantive requirements for both.’’[2] Basically, a comestible will be considered either a food or drug depending on what purpose it serves. As theory, the statement helps to shape what policy concerns the FDA and the courts might have when attempting to distinguish between foods and drugs, especially for clear-cut products. Yet, it does not necessarily draw a clear line, nor does it place strict conditions on the definition of either food or drug.

[1] Federal Food, Drug, and Cosmetic Act § 321(f) Title 21 U.S.C.A
[2] S. Rep. No. 361 (1935).

Courts have also struggled with this issue and have been able to highlight further complications inherent in the definition of food. In Nutrilab, they specifically rejected the idea that something is a food because it was derived from a traditional food. The court states, just as Congress did, ‘‘that ‘food’ is to be defined in terms of its function as food, rather than in terms of its source, biochemical composition or ingestibility.’’ Yet, the court then maintains that ‘‘[if] defining food in terms of its source or defining it in terms of its biochemical composition is clearly wrong, defining food as articles intended by the manufacturer to be used as food is problematic.’’ [3] If intent of the manufacturer were the only defining condition, many drug manufacturers might attempt to pass their products under a food's less stringent regulatory scheme. Or, as the court in Nutrilab imagines, a manufacturer might attempt to wholly ‘‘avoid the reach of the FDA by claiming that a product which looks like food and smells like food is not food because it was not intended for consumption.’’ The court warily comes to a conclusion, with some exceptions, that foods are articles used ‘‘primarily for taste, aroma or nutritive value.’’ [4] While problems remain, this definition has seemingly been widely accepted and will suffice for the purpose of this study.

People as Food

Arguably the most widespread form of cannibalism was, and perhaps continues to be, one that treats people as food. In ancient times and throughout the world, the bodies of the dead were consumed most often for their ‘‘taste, aroma, or nutritive value.’’ Tribal societies throughout

[3] Nutrilab, INC. v. Schweiker, 713 F.2d 335, 337 (7^{th} Cir. 1983).
[4] Nutrilab, INC. v. Schweiker, 713 F.2d 335, 338 (7^{th} Cir. 1983).

the world, such as those in Polynesia[5], Brazil and the Caribbean,[6] India,[7] China,[8] Africa,[9] New Guinea, New Zealand and Australia[10] have all been known to eat people. There have also been numerous instances of cannibalism throughout Europe,[11] and America.[12] There seems to be no doubt that the eating of people was and continues to be a world-wide phenomenon. Furthermore, common throughout many of these cannibalistic societies was the idea that humans were ingested as sustenance, to be taken in as food when other sources were either considered less appetizing, or simply not available.

Among some tribes, the flesh of humans was considered a delicacy, superior to all other kinds of meat. Tribes such as the Fijis, Baja, Sande, Pambia, Manjema, Wadai, Haussaland, and Gerse all ‘‘preferred [the eating of] humans to anything else.’’[13] People were eaten simply because they were considered to be delicious. ‘‘When cows were given to the Basuto in order to make them give up cannibalism, they tasted them and declined the beef.’’[14] Various recipes, methods of preparation, preservation and consumption exist (and continue to proliferate on the internet)[15] that treat humans and their various parts as ‘‘especially delicious’’ foods to be relished and savored.[16]

Other instances of cannibalism occurred when food was scarce and the threat of starvation and death were imminent. Particularly prevalent periods of cannibalism seem to coincide with periods of famine, poverty, disease and war. In ancient China, when the harvest failed in Langye Province

[5]Hans Askenasy, Cannibalsim: from sacrifice to survival 30 (Prometheus Books 1994).
[6]Reay Tannahill, Flesh and Blood 148 (Abacus Books ed., Hamish Hamilton Ltd 1997) (1976).
[7]Hans Askenasy, Cannibalsim: from sacrifice to survival 121.
[8]See id. at 131.
[9]See id. at 127.
[10]See id. at 132.
[11]Reay Tannahill, Flesh and Blood 65.
[12]See id. at 107.
[13]Hans Askenasy, Cannibalsim: from sacrifice to survival 130.
[14]See id. at 130.
[15]See C.A.R.E. homepage at <http://www.anthropophagy.com/care/care.html>.
[16]Hans Askenasy, Cannibalsim: from sacrifice to survival 133.

in 48-44 BC, ‘‘residents ate human flesh.’’ And the practice was often repeated and throughout different parts of China when crops failed, when hunting was poor, and when times were hard.[17] In Europe, people fared no better during periods of famine. In 450 AD, when there was famine in Italy, ‘‘parents ate their children.’’ It is said that ‘‘between 695 and 700, England and Ireland suffered from a three-year dearth during which ‘men ate each other.’’’[18] In 1631, when ‘‘famine reigned in India’’ women ‘‘were seen to roast their children; men traveling in the way were laid hold of to be eaten.’’[19]

And perhaps even more chilling were instances of cannibalism during war, both within prisons and on the battlefield. In his autobiography, the major commandant at Auschwitz, SS Colonel Rudolph Hoss wrote (as excerpted by Askenasy) :

> ‘‘Cases of cannibalism were not rare in Birkenau. I myself came across a Russian lying between piles of bricks, whose body had been ripped open and the liver removed. They would beat each other to death for food...
> When the foundation for the first group of buildings [at Auschwitz] were being dug, the men often found the bodies of Russians who had been killed by their fellows, partly eaten, and then stuffed into a hole in the mud...’’[20]

With the threat of death all around, survival became the only goal. And often, to escape starvation, battle hardened soldiers would consume the bodies of the many dead that lay around them.

Finally, in modern times, the bodies of the dead have served to preserve the lives of the living in times of emergency, isolation, remoteness, and accident. Most famous perhaps is the Andes

[17] Reay Tannahill, Flesh and Blood 62.
[18] See id. at 65.
[19] Hans Askenasy, Cannibalsim: from sacrifice to survival 59.

plane crash incident in 1972. Of the 45 passengers in the plane, the crew, an amateur rugby team, friends and relatives, only sixteen survived.[21] The survivors lasted for ten weeks in the treacherous, freezing Andes mountains, consuming not only the fat and muscle in their own bodies, but also the flesh, organs and brains of the already dead.[22] Although the most recent in memory, the Andes crash is certainly not the only episode where human bodies were used as emergency rations. Episodes of cannibalism have been heavily documented both in the American ''frontiers,'' when the migration of settlers and caravans still occurred (The Donner party incident being perhaps the most famous),[23] and throughout the high seas, when ships were stranded, lost, or shipwrecked (of the many, the case of the ship La Meduse is well documented).[24] These cases of cannibalism are perhaps the most tangible and comprehensible for they are neither very distant chronologically nor culturally. The extremity of the circumstances called for a rationale specific to the situation. As Brecht put it: hunger has its own logic.

It seems clear that in many instances of cannibalism, people are understood as a food, as delicacy, as sustenance, as survival. Under the FDA's existing regulatory structure, the human flesh that was consumed could not help but be defined as a ''food.'' Yet indicative of the problems within the FDA's statutory structure is the fact that this atypical ''food'' is just as often used, or conceived of, as a drug. Claims (and superstition) that the consumption of human parts cleanse the body of disorder, act as wards against sickness and cure illness, are old, common and well known. Can the eating of people be considered solely an act of food consumption? How does cannibalism fall into the regulatory scheme of drugs?

[21] Hans Askenasy, Cannibalsim: from sacrifice to survival 101.
[22] See id. at 103.
[23] See id. at 92.
[24] Reay Tannahill, Flesh and Blood 192.

What is a Drug?

The definition of a drug, according to Title 21, U.S.C.A. Section 321(g)(1) is complicated:

> ‘‘The term ‘drug’ means...(B) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; and (C) articles (other than food) intended to affect the structure or any function of the body of man or other animals; and (D) articles intended for use as a component of any article specified in clauses (A), (B), or (C) of this paragraph. A food or dietary supplement for which a claim...is made in accordance with the requirements of section 343(r)[25] of this title is not a drug solely because the label or the labeling contains such a claim. A food, dietary ingredient, or dietary supplement for which a truthful and not misleading statement is made in accordance with section 343(r)(6) of this title is not a drug under clause (C) solely because the label or labeling contains such a statement.[26]

With this statutory definition, it seems clear that Congress attempted to define drugs also with an eye toward their intended use. However, with drugs, a definition that is geared simply toward intended use is problematic; no where in the definition is there any mention of actual effect or cure. Presumably, drugs that do not ‘‘work’’ will be driven out of existence by the market and the demanding customer. But understandings toward medicine and health continue to change. And as sickness and disease are no longer perceived to be intermittent phenomena, as something to be caught and cured, but rather as indicators and functions of overall health, substances that claim to have long term effects, and accordingly require long term use, become harder to define. Both through the parenthetical ‘‘(other than food)’’ in section (C) and by specifically creating an exception for dietary supplements, the statute itself attempts to address this problem. Are vitamins more similar to drugs or more similar to foods? Do they claim to aid in the cure, mitigation, treatment or prevention of disease? What of ‘‘herbal’’ remedies that have no observable short term effects, but claim to ‘‘work’’ in the long run?

Many of the leading cases considering what exactly falls into the category of ‘‘drug’’ have also run into effectiveness problems, most heavily related to labeling and misbranding. For decades, the courts struggled with difficulties in proving the effects of drugs. In the McAnnulty case (where plaintiffs claimed to heal diseases through appeals to the human mind), the Supreme Court issued a statement saying ‘‘[there] is no exact standard of absolute truth by which to prove [an] assertion [of medicinal effect] false and a fraud’’ and concluded that ‘‘any particular method of treatment of disease, is, to a more or less extent, a fruitful source of difference of opinion.’’[27] However, due to continued cases of fraud and misbranding, courts ultimately came to a make-shift solution in Research Laboratories, allowing for the ‘‘consensus of medical opinion’’ to be considered when judging claims of effectiveness and misbranding.[28] Although problems still arise, the FDA and Congress seem reluctant, especially in an age where the limitations of science are readily understood, to demand unchallengeable proof of efficacy or cure.
In any case, for the purposes of this study, what is more important than the actual empirical proof of effectiveness, is the logic behind the idea of misbranding; a ‘‘drug’’ must be regulated differently from a food in that it must do or purport to do ‘‘something.’’ It is again the same logic of ‘‘intended use’’ that rules the statutory considerations of what are to be foods and what are to be drugs.

People as Drugs

Although many of the mistaken beliefs regarding the physiological effects of consuming people

[27] American Judicial School of Magnetic Healing v. Mc Annulty, 187 U.S. 94, 23 S.Ct. 33, 37 (1902).
[28] Research Laboratories, INC. v. United States, 167 F.2d 410, 416 (9^{th} Cir. 1948).

seem to have been dispelled by modern science, there remain nevertheless societies and cultures that continue to use human parts in the treatment of illness and disease. Perhaps most common and well known was the use of blood as an elixir, one that promised life and youth and beauty. Other methods in which humans were used as drugs consisted of the consumption of certain body parts to treat certain illnesses, perhaps no different from our understanding and use of drugs today. And although much of this area is saturated with superstition and mistaken beliefs, the underlying mental state of the cannibal consumer was no different than that of the cancer patients who treated themselves with Laetrile, or from many of the Chinese who claim ginseng (panax quinquefolium -- derived from the Greek word panakos – a panacea) to be some kind of miracle medicine. If a drug, like a food, is to be defined mainly by its intended use, for the purpose of ''diagnosis, cure, mitigation, treatment or prevention of disease in man,'' then it seems clear that much of the human body must also be considered a drug as well.

The use of human blood as a medicine is ancient and can be found throughout the world. In ancient Egypt, pharaohs or princes, ''when afflicted with leprosy, used to take baths in human blood to wash the sickness away.''[29] This method of treating leprosy was practiced in Europe as well. In 1483 Louis XI was known to have drank the blood of children in an attempt to cure leprosy, and in 1750 Louis XV was believed to have done the same.[30] In China, in the nineteenth century, human blood was considered to be the only cure to leprosy.[31] In Rome, drinking still warm blood was considered a cure for epilepsy.[32] Other instances of when blood was used as treatment detail specific instances in Germany and Hungary, of collecting human blood ''streaming from the bodies of beheaded convicts'' to be sold as a medicine for generic sicknesses.[33] And

[29]Hans Askenasy, Cannibalsim: from sacrifice to survival 112.
[30]Reay Tannahill, Flesh and Blood 87.
[31]See id. at 87.
[32]Hans Askenasy, Cannibalsim: from sacrifice to survival 112.
[33]Reay Tannahill, Flesh and Blood 87.

as a final example, in a famous (if exceptional) case in Hungary, noble woman Elizabeth Bathory, born in 1560, is said to have killed over six hundred virgin maidens, ‘‘showering and bathing in their blood.’’ She would drink the blood and eat the flesh of young girls, ‘‘all in an attempt to retain her beauty and postpone her old age.’’[34] In numerous instances throughout history, blood was used as a medicine against illness and aging. Even now, human blood continues to symbolize potency and youth and life. For curing sicknesses, old age, or ugliness, what could be better?

If the blood of humans was considered to have medicinal properties, so too, it seems was the flesh. In China, where cannibalism was thought to be a cure for illness, ‘‘children cut off a portion of their flesh and offered it to a sick parent.’’[35] In as late as the 1870’s, Chinese newspapers reported two bizarre instances of filial piety, ‘‘one in which a son cut a piece of his flesh from his arm to make soup for his ailing mother (who duly recovered),’’ and another, where a girl ‘‘placed a piece of her own flesh in her dying father’s medicine. He, too, recovered.’’[36] In other countries, cannibal medicine was more specific. In Central Africa, the Lessa tribe believed that consuming ‘‘certain female parts’’ would allow them to ‘‘better perform their marital obligations.’’[37] The Wabondei of East Africa believed that eating human livers would provide energy and strength.[38] And in Egypt, there even existed recipes for concocting these kinds of medicine; one called for draining out the blood, marinating the body with various ingredients, and mixing it with spirits.[39]

While the simple belief that human blood or human flesh has curative powers does not necessarily

[34]Hans Askenasy, Cannibalsim: from sacrifice to survival 136.
[35]See id. at 112.
[36]Reay Tannahill, Flesh and Blood 214.
[37]Hans Askenasy, Cannibalsim: from sacrifice to survival 112.
[38]See id. at 111.
[39]See id. at 112.

make it so, it is nevertheless illustrative of the way many cannibals seemed to have understood their medicinal habits. If you were sick, you were to be treated by eating human flesh or bathing in human blood. Whether or not the treatments were effective is an altogether different matter. This understanding of people as drugs seems to place itself within our statutory definition of what a drug is. Yet, again indicative of structural problems with the FDA's regulation of foods and drugs, is the fact that the consumption of people was often an act that falls into neither the category of eating a food or of administering a drug. Often times, human flesh or blood was seen to be something much more than either food or drug, something that lacks definition in our current legal structure, something that was filled with meaning and significance and identity.

A Third Category: Deeper Meaning

Although many of the problems that arose from the FDA's controlled definitions of food and drug have already been addressed by Congress or amendment, the ''intended use'' logic that drives the system seems ultimately too limited. It assumes that all comestible goods are ingested either as a food (for taste, aroma, or nutrition) or as a drug (for the treatment of illness). However, in both ancient and modern times many products were not and are not consumed with either of these two purposes in mind. In the modern world, one of media driven imagery and icons, products are often identified with certain characteristics, particular individuals and sometimes even incorporated into a sense of self. In ancient times some concoctions were believed to have magical properties, and even now religions drive many to consume specific substances,

both as acts of faith and symbols of their conviction. Throughout history most foods and drugs have always been linked to ethnicity or national origin, to environment and placement and belonging. And for cannibals, the eating of people was, it seems, no different.

People as More than Food or Drug

For some cannibal tribes, the act of consuming either your enemies or your revered was perceived to have great significance, understood to be an act filled with power and profundity. It was often believed to endow the consumer with the strengths and wisdom of the consumed, to allow the cannibal to incorporate the spirit along with the flesh. In some tribes, cannibalism was believed to be a way of communicating with the gods, of pleasing them or begging them for a bountiful harvest. Often, the gods demanded sacrifices, and after certain parts were incinerated, the ashes would be spread across the crop fields and the remaining corpse eaten.[40] In other instances, the act of consumption was akin to an initiation rite, a symbol of passage into adulthood or perhaps warrior-hood.[41] No matter what the specifics, it seems that for many tribes cannibalism was not simply an act of sustenance or survival; it was a culture, a custom, a veritable way of life.

Perhaps the most widespread belief regarding magical and spiritual cannibalism was that human flesh and blood were independently potent, held power in themselves even when separated from the body. Tribes throughout Egypt, China, America, Africa, Australia and the Balkans practiced cannibalism for its incorporative aspect.[42] According to these tribes, the power within a

[40] Hans Askenasy, Cannibalsim: from sacrifice to survival 120.
[41] See id. at 119.
[42] Reay Tannahill, Flesh and Blood 16.

body was considered a transferable asset, one that could be gained through consumption. ‘‘For one man to absorb the blood of another (living or dead) was to absorb part of his essence, his force, his nature.’’[43] Such incorporation allowed endophagic tribes (tribes that only ate their own kinsmen) to preserve their human resources, to make sure that the ‘‘wise man’s genius [was] not lost, nor the warrior’s strength, nor the cheerful man’s humour.’’[44] And for exophagic tribes (tribes that only ate outsiders), it was a way of assimilating your enemies courage and vitality and strength.[45] For the many who practiced incorporative cannibalism, the act of consumption was no simple meal; it was a form of development, advancement and learning. Cannibalism was also often believed to be a way of communicating with the gods, of appeasing their demands and ensuring a ripe harvest. For many tribes, this meant that the gods themselves were cannibals; they fed on the flesh of humans and would punish those who refused to feed them.[46] In other instances, the consumption of the body was similar to an act of purification; the Fijis ‘‘felt obligated to eat all shipwrecked persons lest some insulted god take revenge.’’[47] The American Pawnees, in their bids for a bountiful yield, were said to have ritually killed a girl and sprinkled her blood on seeds that were to be planted; her heart was then eaten by the chief sacrificer.[48] In India, the Gonds were known to kidnap boys of the Brahmin caste, kill them and sprinkle their blood over the fields in an attempt to placate the gods.[49] Although such practices may seem barbaric, they are no different and no less illogical than many religious practices even today. And though we may no longer allow human sacrifice, we still do allow significant latitude for religiously motivated conduct, one of which, arguably, is cannibalism.

[43]See id. at 13.
[44]Reay Tannahill, Flesh and Blood 14.
[45]See id. at 15.
[46]Hans Askenasy, Cannibalsim: from sacrifice to survival 118.
[47]See id. at 118.
[48]Reay Tannahill, Flesh and Blood 30.
[49]See id. at 30.

As a final example, it seems appropriate to discuss cannibalism that constituted an initiation ritual or final rite of passage. Youths in some cannibal tribes were ‘‘reborn’’ into manhood through their first act of people eating. The Ovaherero tribe introduced their young men into adulthood by allowing them to eat the castrated members of enemy tribes.[50] Kwakiutl Indian youths who chose the cannibal god as their patron could only win his full support after three months in the forest, and ultimately their first human meal.[51] And in Africa, claims were made regarding the existence of a secret ‘‘Leopard Society;’’ membership was obtained partially through the ritual consumption of a young girl, traditionally from the wife’s family.[52] For these tribes, the eating of people was akin to tradition or custom, an act that hailed admission into a new age and a new life.

The eating of people, for many meant much more than keeping healthy to see the next year. It was a practice that promised spiritual and magical benefits, that drew societies and tribes to partake in that practice even if some sacrifice had to be made. And the same kind of thing happens even now. We associate foods and drugs with deeper meanings, to ethnicity and image and status. Albeit, the meanings we find are different; we no longer believe that eating people brings us closer to the deceased. However the impulse to associate, the desire to find or create deeper meaning is the same: caviar is for the rich; drinking gallons of beer will allow you to join a fraternity; kosher foods satisfy God’s laws; the Eucharist is no symbol, it is Jesus’ flesh and blood made real. And on and on and on.

[50] Hans Askenasy, Cannibalsim: from sacrifice to survival 120.
[51] See id. at 120.
[52] See id. at 119.

Meaning in the Modern World

This deliberate and somewhat forced examination of how cannibalism (arguably an ancient and now nearly extinct practice) might fit into our modern regulatory scheme is only useful if we can, in the end, distance ourselves from its unrealistic nature and focus on its deeper message: eating ‘‘foods’’ and administering ‘‘drugs’’ are both acts we feel are filled with deep significance and rich meaning; it is unrealistic to attempt to regulate foods and drugs without also taking into consideration how those foods and drugs (and other) affect our spirituality, our culture and our identities.

By forcing manufacturers and ultimately consumers to produce and exist within a universe of either ‘‘food’’ or ‘‘drug,’’ the current structure has very nearly stripped away all deeper meaning from the things we consume. However, many beliefs cannot be regulated out of existence. In the famous peyote cases (People v. Woody and its spawn), courts have attempted to tackle the regulation of religious substances with mixed results. Peyote is a hallucinogenic substance that forms the basis of worship for many Native Americans who subscribe to (what has been dubbed) Peyotism. In People v. Woody, the court explains, ‘‘[although] peyote serves as a sacramental symbol similar to bread and wine in certain Christian churches, it is more than a sacrament. Peyote constitutes in itself an object of worship; prayers are directed to it much as prayers are devoted to the Holy Ghost. On the other hand, to use peyote for nonreligious purposes is sacrilegious.’’[53] To prohibit peyote was for Native American believers not simply an act of drug regulation; peyote was after all no simple drug. Although states continue to disagree

[53]People v. Woody, 61 Cal.2d 716, 394 P.2d 813, 817 (1964).

(the California Supreme Court struck down the regulation as unconstitutional), the US Supreme Court has ruled, in substance, that religious use of peyote is not Constitutionally protected conduct, and that states have a compelling interest in controlling harmful substances.[54] This ruling seems problematic. Hadn't the same logic been applied (failingly) to alcohol? Under Smith could employers terminate employees who used herbal medicines, ate ethnic foods or partook of the Eucharist? (See Employment Div., Dept. of Human Resources of Oregon v. Smith, 110 S.Ct. 1595, (1990) where regulation denying unemployment compensation to religious users of peyote was upheld as Constitutional). Recent studies[55] suggest that fried and oven-baked high starch products such as bread, French fries and potato chips contain ''alarmingly'' high amounts of carcinogens (specifically acrylamide). If more research were to show these substances to be similar in effect to cigarettes or asbestos, would the FDA be willing or able to prohibit the consumption of such traditional foods? Could it ultimately prohibit Americans from eating hot dogs, hamburgers, pizza, and even apple pie?

By refusing to take into consideration the deeper meanings that we place into the things we eat or administer, our current regime threatens not only our food and drug supply, but the very way we perceive what a food or drug is. Reality may not conform to the law, but our perceptions of reality, our understanding of its depth and significance, may very well be influenced and controlled by our statutes and regulations. We are not machines that process foods and utilize medicines solely for the purpose of better functionality; we care very much about not only the objective, measurable results of consumption and treatment, but also their mental, emotional, cultural and spiritual meaning. And in so much that our reality is filled with deeper meaning, we should, in the least, attempt to find a reflection of that reality within our law.

[54] Employment Div., Dept. of Human Resources of Oregon v. Smith, 110 S.Ct. 1595, (1990).

[55] Peter Stark, Cancer Risk Found in French Fries, Bread, Reuters, April 24, 2002 at http://story.news.yahoo.com/news?tmpl=story&u=/nm/20020424/sc_nm/health_food_cancer_dc_4.