

**IDAHO’S ANTI-CANNIBALISM STATUTE:
AN ASSESSMENT OF A UNIQUE LAW
(WITH SOME SUGGESTIONS FOR ITS IMPROVEMENT)**

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ABSTRACT

Idaho is the only U.S. state in which cannibalism is illegal. Although its statute, passed in 1990, has been invoked only once, it provides interesting food for thought. In this article, the author reviews the statute’s provisions and offers suggestions for how they can be rewritten to be more efficacious.

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I. INTRODUCTION

Cannibalism. The mere word sends chills down the spine and conjures up grisly images of half-eaten human body parts.¹ Despite this fact, cannibalism—more

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1. Despite (or perhaps because of) its gruesomeness, cannibalism has long been a staple of popular culture works. Early examples include Montaigne’s *Des Cannibales* (c. 1580), Shakespeare’s *Titus Andronicus* (c. 1593), and Jonathan Swift’s *A Modest Proposal* (1729). See also Lauren Working, *Violating*

the Body of the Law: Cannibalism in Jacobean Political Discourse, 71 REVUE DE LA SOCIÉTÉ D'ÉTUDES ANGLO-AMÉRICAINES DES XVII ET XVIII SIÈCLES 157 (2014) (explaining, *id.* at 158, "By the reign of James I [1603-25] . . . 'Cannibal' described the warlike people of the Americas but also denoted English 'savages' whose behaviour seemed to align them with the cannibals, depicted by the English as lacking sophisticated socio-political systems."); *but see* Cătălin Enache, *Did Platon (Politeia 571d) Believe That Every One of Us is a Repressed Cannibal?*, 40 POLIS: J. ANCIENT GREEK & ROMAN POL. THOUGHT 221 (2023) (disputing the idea that Plato viewed all humans as repressed cannibals).

In current times, cannibalism has proven to be an even bigger draw. See Alex Beggs, *A Taste for Cannibalism? A Spate of Recent Stomach-Churning Books, TV Shows and Films Suggests We've Never Looked So Delicious—to One Another*, N.Y. TIMES, <https://www.nytimes.com/2022/07/23/style/cannibalism-tv-shows-movies-books.html> (July 23, 2022, updated July 25, 2022). For a list of movies, see Jim Goad, *Human Meat: 33+ Best Cannibal Movies*, CREEPY CATALOG, <https://creepycatalog.com/cannibal-movies/> (updated July 20, 2023). For a list of novels, see LIBERTY HARDY, *FED UP WITH PEOPLE: 10 GREAT HORROR BOOKS ABOUT CANNIBALISM*, BOOK RIOT (Sept. 16, 2021), <https://bookriot.com/horror-books-about-cannibalism/>. For a list of TV shows, see *Cannibals on TV*, THE CANNIBAL GUY, <https://thecannibalguy.com/category/cannibals-on-tv/> (last visited Sept. 1, 2023). For a further discussion, see, e.g., JENNIFER BROWN, *CANNIBALISM IN LITERATURE AND FILM* (2012); Katherine Page, *The History of Cannibalism in the Horror Genre*, LIBERATOR (Mar. 2, 2023), <https://theliberatormagazine.com/2023/03/02/the-history-of-cannibalism-in-the-horror-genre/>. See also David Guzman, *New TV Shows Featuring Cannibalism*, THE NEW YORKER (May 19, 2023), <https://www.newyorker.com/humor/daily-shouts/new-tv-shows-featuring-cannibalism> (humorous piece suggesting future ideas for cannibal-themed TV shows). Jokes about cannibalism likewise are commonplace. For a list of cannibal jokes, see, e.g., Jessica Amlee, *90 Funny Cannibal Jokes for Hungry Man-Eaters*, HUMORNAMA, <https://humornama.com/jokes/cannibal-jokes/> (last visited Sept. 1, 2023). See also Roger Simon, *Why Cannibalism Always Brings Out the Bad Jokes*, BALTIMORE SUN (Jan. 17, 1993), <https://www.baltimoresun.com/news/bs-xpm-1993-01-17-1993017008-story.html>.

In addition to popular culture works, references to cannibalism have found their way into other aspects of everyday life, most notably speech:

Symbolic cannibalism, meanwhile, is frankly everywhere. Cannibalism resides in our English language, in our religious services, and in the many ways that we understand business dealings, sporting events, and even sex. We don't just win; we devour. We don't just vanquish; we roast our rivals, and we eat them for breakfast. We go to bars described as meat markets in search of a piece of ass, and if we find a lover, we nibble, we ravish, we swallow them whole.

Chelsea G. Summers, *The Defining Cultural Trope of 2022? Cannibalism*, VOGUE (Dec. 10, 2022), <https://www.vogue.com/article/cannibalism-defining-cultural-trope-of-2022>.

The word cannibalism also is used to describe situations in which parts from an old item are removed for reuse in a newer item, see *Equipment Cannibalization*, UNIVERSITY OF TEXAS AT SAN ANTONIO,

correctly referred to as anthropophagy, from the Greek words anthropos (man) and phagein (to eat)²—is illegal in only one U.S. jurisdiction: Idaho.³ In the rest of the country, no law specifically bans the practice,⁴ although the prohibitions against murder and desecrating a corpse normally create other legal impediments for

<https://www.utsa.edu/financialaffairs/services/inventory/asset-management/equipment-cannibalization.html> (last visited Sept. 1, 2023), as well as situations in which a new product cannibalizes an old product's sales. See, e.g., Ernest Goss & Peyton Miller, *Sports Betting's Impact on Casino Gambling: Cannibalization or Expansion?*, 2021 U. ILL. L. REV. 1731.

Other notable examples of references to cannibalism in everyday life include the name of the heavy metal band Cannibal Corpse (1988 to present), see CANNIBAL CORPSE, <http://www.cannibalcorpse.net/> (last visited Sept. 1, 2023); the nicknames of at least three minor league baseball teams, the best known of which was the Longview Cannibals (1895–1939), see JEFF BARNHART, *THE LONGVIEW CANNIBALS: A COMPLETE HISTORY OF EAST TEXAS' MOST CELEBRATED BASEBALL CLUB* (2009); and the availability of a wide assortment of cannibal-themed merchandise, including caps, t-shirts, and novelty items, see ETSY, <https://www.etsy.com/search?q=cannibal> (last visited Sept. 1, 2023). Oddly, however, the 1980s British pop-rock band Fine Young Cannibals pays homage to a movie (*ALL THE FINE YOUNG CANNIBALS* (Metro-Goldwyn-Mayer 1960)) that has nothing to do with cannibalism. See Tina Benitez-Eves, *Behind the Band Name: Fine Young Cannibals*, AMERICAN SONGWRITER, <https://americansongwriter.com/behind-the-band-name-fine-young-cannibals/> (last visited Sept. 1, 2023) (noting that the movie, which stars Natalie Wood and Robert Wagner, is about “a teenage couple [that] find themselves pregnant. They go their separate ways and are later reunited.”). No explanation has been found for the movie's title, which at various times was to be called “Ever for Each Other” and “The Young Years” and later was referred to by MGM as “The Rebel Generation.” See *All the Fine Young Cannibals* (1960), AFI CATALOG, <https://catalog.afi.com/Catalog/moviedetails/53408> (last visited Sept. 1, 2023) (under “History”).

2. As has been explained elsewhere, the latter term is more precise but the former term is more common: “Cannibalism in modern usage is generic. The word comes from Columbus's rendering of the Caribs' name for themselves. It since [has] broadened to mean individuals of a species which consume individuals of the same species. Anthropophagy literally means ‘man-eater’ and thus applies uniquely to humans.” Andrew Estes, *Cannibalism and Other Transgressions of the Human in the Road*, 12:3 EUR. J. AM. STUD. 1, 1 (2017), <https://journals.openedition.org/ejas/12368>.

3. See IDAHO CODE § 18–5003 (2023).

4. See *Is Cannibalism Legal in the US? Shocking Truth About Cannibalism in US*, MYTHGYAAN (Aug. 6, 2023), <https://mythgyaan.com/is-cannibalism-legal-in-the-us/>. See also Leeja Miller, *Why Isn't Cannibalism Illegal?*, YOUTUBE, <https://www.youtube.com/watch?v=jYDazxEoWlC> (last visited Sept. 1, 2023).

cannibals.⁵ Cannibalism likewise is not illegal under federal,⁶ foreign,⁷ or international law.⁸

5. In 2023, for example, the Indiana Supreme Court upheld the murder and burglary convictions of Joseph Oberhansley, who killed his girlfriend Tammy Jo Blanton and then ate her brain and heart. See *Oberhansley v. State*, 208 N.E.3d 1261, 1272 (Ind. 2023). Because cannibalism is not illegal in Indiana, Oberhansley was not charged for eating Blanton, although prosecutors did cite his dismemberment of her body as an aggravating factor in their unsuccessful bid to have him sentenced to death. *Id.* at 1266–67.

6. See JOSEPH WESTFALL, “I CANNIBAL,” HANNIBAL LECTER AND PHILOSOPHY: THE HEART OF THE MATTER 15–16 (2016) (explaining that “cannibalism is not, in itself and as such, a criminal offense under United States federal law. . .”).

7. See, e.g., Tara John & Brent Swails, *South African ‘Cannibal Case’ Men Get Life Sentences*, CNN (Dec. 13, 2018), <https://www.cnn.com/2018/12/13/africa/south-africa-cannibalism-scli-intl/index.html> (explaining that cannibalism is not illegal in South Africa); Homa Khaleeli, *Eating People is Wrong, But is It Against the Law?*, THE GUARDIAN (London) (16 Dec. 2015), <https://www.theguardian.com/law/shortcuts/2015/dec/16/eating-people-is-wrong-but-is-it-against-the-law> (explaining that cannibalism is not illegal in the United Kingdom); Sanjana Ratkal, *Overview: Legal State of Cannibalism in India*, FINTECH & LAW (June 6, 2021), <https://ylcube.com/c/blogs/overview-legal-state-cannibalism-india/> (explaining that cannibalism is not illegal in India).

In 2011, two Dutch TV personalities ate small pieces of each other’s flesh before a live studio audience. “[A]fter [a] row was raised in parliament by the Christian Democrats, Dutch justice minister Ivo Opstelten said the presenters would not be charged because cannibalism was not illegal in the Netherlands.” Peter Cluskey, *Dutch TV Presenters Who Ate Their Own Flesh to Escape Prosecution*, IRISH TIMES (Feb. 8, 2012), <https://www.irishtimes.com/news/dutch-tv-presenters-who-ate-their-own-flesh-to-escape-prosecution-1.459203>.

More recently, in 2021, a court in Madrid sentenced Alberto Sánchez Gómez, known as the “cannibal of Las Ventas,” to prison for killing and eating his mother. Because Spain does not have any laws against cannibalism, Gómez was given fifteen years for murder and six months for desecrating a corpse. Gómez also was ordered to pay his brother €60,000 (about \$73,000) as compensation for eating their mother. See Jack Guy, *Spanish Man Jailed for Killing and Eating His Mother*, CNN (June 16, 2021), <https://www.cnn.com/2021/06/16/europe/spain-cannibal-madrid-scli-intl/index.html>.

Uganda often is cited as a country that has banned cannibalism. See, e.g., Joyce Namutebi, J. Odyek & C. Bekunda, *Uganda: Law Against Cannibalism, Sex Tourism Passed*, ALL AFRICA (6 Apr. 2009), <https://allafrica.com/stories/200904070181.html>. However, its statute does not use the word “cannibalism” and only applies in situations involving human trafficking. See *The Prevention of Trafficking in Persons Act, 2009* (Act No. 7) (Uganda), <https://www.ulrc.go.ug/laws-of-uganda>. Section 4(i) of the Act provides:

A person commits the offence of aggravated trafficking . . .

(i) where the person organizes, facilitates or makes preparations for the kidnapping, abduction, buying, selling, vending, bringing from or sending to, receiving, detaining or confining of a person for

Idaho passed its anti-cannibalism law in 1990.⁹ To date, it appears that charges under it have been filed only once.¹⁰ Due partially to its novelty and partially to its

purposes of harmful rituals or practices, human sacrifice, removal of any body part or organ, or any other act related to witchcraft[.] *Id.*

In 2014, four Pakistani legislators introduced an anti-cannibalism bill after it was discovered that two brothers (Arif Ali and Farman Ali) had engaged in multiple acts of cannibalism. The bill, however, failed to make it out of the National Assembly's Standing Committee on Law and Justice. See Ikram Paracha & Muhammad Shahzad, *Bill on Man-eaters Rots in Cold Storage*, EXPRESS TRIB. (Karachi, Pakistan) (Jan. 14, 2020), <https://tribune.com.pk/story/2136498/bill-man-eaters-rots-cold-storage>. Had the bill passed, offenders would have been subject to seven years in prison and a fine of 500,000 rupees (approximately \$1,500). For a copy of the bill, see https://na.gov.pk/uploads/documents/1415360941_491.pdf (last visited Sept. 1, 2023).

8. See René Provost, "Cannibal Laws," in CULTURE IN THE DOMAINS OF LAW 293, 296 (2017) (noting "the lack of an express prohibition of cannibalism in either international treaties or customary law[.]").

9. See *infra* notes 43–55 and accompanying text.

10. In September 2021, James D. Russell, 39, was charged with murdering David M. Flaget, 70. He also was charged with violating Idaho's cannibalism statute. See Eric Grossarth, *Idaho Man Charged with Murder, Cannibalism*, IDAHO STATESMAN (Boise), Dec. 21, 2021, at 2A. The cannibalism charge was dismissed in June 2022 because "[t]he court did not find sufficient evidence to show the defendant actually ingested parts of the deceased body." Garrett Cabeza, *Cannibalism Charge Against North Idaho Man Accused of Murder Dismissed Over Lack of Evidence*, SPOKESMAN-REV. (June 16, 2022), <https://www.spokesman.com/stories/2022/jun/16/cannibalism-charge-against-north-idaho-man-accused/> (quoting Bonner County Prosecutor Louis E. Marhsall III). In November 2022, Russell pleaded guilty to the murder charge. See James Hanlon, *Idaho Man Sentenced to Life for Murder After Cannibalism Charges Dropped*, IDAHO ST. J., (Feb. 1, 2023), https://www.idahostatejournal.com/freeaccess/idaho-man-sentenced-to-life-for-murder-after-cannibalism-charges-dropped/article_ae5ec8e8-a129-11ed-9331-f38a3e5264e8.html.

obscurity, the statute largely has escaped academic commentary.¹¹ Numerous stories about it, however, have appeared in the popular press.¹²

11. I have discovered only two law review articles that mention the statute. In the first, the author notes that Idaho's anti-cannibalism statute was one of "more than fifty new crimes" created by the Idaho Legislature between 1990 and 2000 and adds, "While no one has been sentenced for cannibalism to date, and there have not been many new prisoners as a result of most of these new laws, they are powerful politically and create the possibility for increased inmate numbers in the future." Paula M. Hoene, *Keeping the Streets Safe: Truth in Sentencing and Public Opinion in Idaho*, 12 JUST. PRO. 291, 296–97 (2000).

More is made of the statute in Carmen M. Cusack, *Placentophagy and Embryophagy: An Analysis of Social Deviance Within Gender, Families, or the Home (Etude 1)*, 1 J. L. & SOC. DEVIANCE 112 (2011). While arguing that neither placentophagy—the eating of a placenta—nor embryophagy—the eating of an embryo—are illegal, Cusack posits, *id.* at 115 n.6, that Idaho's statute likely would be held unconstitutional if it were to be applied to "consensual, private, nonharmful anthropophagy" because of *Lawrence v. Texas*, 539 U.S. 558 (2003). In *Lawrence*, the U.S. Supreme Court struck down the nation's sodomy laws on privacy grounds. See *Lawrence*, 539 U.S. at 578 ("The petitioners are entitled to respect for their private lives. The State cannot demean their existence or control their destiny by making their private sexual conduct a crime. Their right to liberty under the Due Process Clause gives them the full right to engage in their conduct without intervention of the government.").

Additionally, there is a bar journal article that begins by pointing out that cannibalism is one of Idaho's few criminal offenses that has a statutory maximum sentence but no mandatory minimum sentence. See Nicole R. Gabriel & Elisa G. Massoth, *Eating Ourselves Alive: Why Drug Trafficking is the Worst Statute on Idaho's Books*, *Advoc.*, Feb. 2021, at 32. The authors illustrate their point with the following hypothetical:

Let's play this out: say you are convicted of cannibalism. You were found, beyond a reasonable doubt, to have "willfully ingest[ed] the flesh or blood of a human being" without having done so "under extreme life-threatening conditions as the only apparent means of survival." Under state law, you can be sentenced to a maximum of 14 years in prison. But that doesn't mean you necessarily go to prison for 14 years: a judge could sentence you to one year, two years, three years . . . anywhere up to that 14-year maximum.

Alternatively, you could even be placed on probation and end up serving no prison time at all for your cannibalism conviction. And if your friend, Bob, was also convicted of cannibalism, it is entirely possible that you both could be sentenced to very different amounts of prison time for the same crime.

How could this possibly be? Simple: judicial discretion. A judge, when imposing your sentence, "specifically tailor[s that sentence] to the individual defendant and take[s] into account the totality of all relevant facts and circumstances." Those relevant facts and circumstances include, among others, whether you have any criminal history, whether you would be open to seeking treatment, and the likelihood you will commit another crime and harm another person. So, if a judge finds that this is your first offense and you are unlikely to reoffend, you could be given a much lesser sentence than your friend, Bob, if the judge finds him to be a danger to society. *Id.* (footnotes omitted).

Given the foregoing, the purpose of this article is to provide a serious examination of the law, particularly its “wilful ingestion” requirement¹³ and “extreme survival” exception.¹⁴ While the former represents the first statutory attempt to define cannibalism, the latter is at the heart (no pun intended) of most legal debates over cannibalism. As will be seen, the statute could be improved though the use of more precise language. Accordingly, the last part of this article will provide a suggested rewrite of its provisions.¹⁵

II. TYPES OF CANNIBALISM

Although cannibalism now is considered one of society’s greatest taboos,¹⁶ nothing in the Bible explicitly prohibits it. Indeed, one can even make an argument that when God says to Noah after the Great Flood, “Everything that lives and moves

I also have found a humorous essay about the statute. See Mark W. Podiva, *Idaho: The State Where They Eat Potatoes, Not People*, UNBOUND: REV. LEGAL HIST. & RARE BOOKS, Winter/Spring 2019, at 24. Podiva suggests, tongue-in-cheek, that in the event of a zombie apocalypse, non-zombies should head to Idaho because “no self-respecting zombie would violate the law by illegally consuming someone!” *Id.*

Lastly, there is a book review that mentions the statute while simultaneously making fun of it. See Louis M. Rosen, *Book Review*, 106 L. LIBR. J. 619, 620 (2014) (reviewing KEVIN UNDERHILL, *THE EMERGENCY SASQUATCH ORDINANCE AND OTHER REAL LAWS THAT HUMAN BEINGS ACTUALLY DREAMED UP, ENACTED, AND HAVE SOMETIMES EVEN ENFORCED* (2013)) (“Idaho is the only state with a specific law against cannibalism (defining it in a hilariously gory way), but it includes an affirmative defense if there are life-threatening conditions and cannibalism is the only apparent means of survival.”).

12. See, e.g., Steve Eighinger, *Daily Dirt: Can’t Sell Your Kids in Florida or Practice Cannibalism in Idaho*, MUDDY RIVER NEWS (Nov. 3, 2021), <https://muddyrivernews.com/opinion/daily-dirt-cant-sell-your-kids-in-florida-or-practice-cannibalism-in-idaho/20211103070742/>; *Did You Know That These ‘Odd Laws’ Existed in Idaho?*, THE TIMES NEWS (Jan. 21, 2019, 6:00 AM PDT), <https://apnews.com/general-news-c6474f9d2d124a80b7dfd825172694de> [hereinafter *Odd Idaho Laws*]; *For Law Day: Five Unusual Laws That Remain on the Books Today*, NAT’L CONST. CTR. (May 1, 2017), <https://constitutioncenter.org/blog/for-law-day-five-unusual-laws-the-remain-on-the-books-today>.

13. See *infra* notes 66–78 and accompanying text.

14. See *infra* notes 79–119 and accompanying text.

15. See *infra* notes 125–29 and accompanying text.

16. See, e.g., Gary Pullman, *10 Horrific Acts That Are Legal in Some Countries*, LISTVERSE (Dec. 26, 2017), <https://listverse.com/2017/12/26/10-horrific-acts-that-are-legal-in-some-countries/> (ranking cannibalism tenth, and slavery first, in a list of taboo acts). In the late 1980s, however, the Canadian performance artist Rick Gibson challenged society’s abhorrence of cannibalism by eating donated human tonsils and testicles in two exhibits titled, respectively, “A Cannibal of England” (1988) and “Carnivore” (1989). See *The Strange and Troubling Art of Rick Gibson*, KNOWLEDGE NUTS (Sept. 14, 2014), <https://knowledgenuts.com/2014/09/14/the-strange-and-troubling-art-of-rick-gibson/> (quoting Gibson as saying: “There is no law against cannibalism—provided you don’t injure anyone—yet we have this big social taboo about it.”). For a further discussion, see Rebecca Blomberg, “Cannibalism is Not Inherently Immoral—A Philosophical Study of Morality and Cannibalism” (2022) (Master’s thesis, Linköping University), <https://www.diva-portal.org/smash/get/diva2:1648556/FULLTEXT02>.

about will be food for you,”¹⁷ God is giving human beings permission to eat other human beings. Of course, God also prohibited human beings from killing each other,¹⁸ thereby setting up something of a conundrum.

Evidence of cannibalism can be found throughout human history.¹⁹ In most modern instances it has been resorted to when traditional food supplies have run out (“survival cannibalism”).²⁰ But it also has occurred for other reasons: as a cultural norm (“institutionalized cannibalism”); funeral rite (“mortuary cannibalism”); medical cure (“corpse cannibalism”); and intimidation tactic (“exocannibalism”).²¹ The 19th century American mountain man John Johnson (born John Jeremiah Garrison Johnston) acquired the nickname “Liver-Eating Johnson” because he allegedly ate the livers of those he believed had wronged him (“revenge cannibalism”).²²

17. *Genesis* 9:3 (New International Version).

18. See *Exodus* 20:13 (King James).

19. The history of cannibalism is the subject of numerous books. Recent general works include BILL SCHUTT, *CANNIBALISM: A PERFECTLY NATURAL HISTORY* (2017); NATHAN CONSTANTINE, *A HISTORY OF CANNIBALISM: FROM ANCIENT CULTURES TO SURVIVAL STORIES AND MODERN PSYCHOPATHS* (2009); DANIEL DIEHL & MARK P. DONNELLY, *EAT THY NEIGHBOR: A HISTORY OF CANNIBALISM* (2006). More specialized recent works include CĂTĂLIN AVRĂMEȘCU, *AN INTELLECTUAL HISTORY OF CANNIBALISM* (Alistair Ian Blyth transl., 2009); GEORGE FRANKLIN FELDMAN, *CANNIBALISM, HEADHUNTING AND HUMAN SACRIFICE IN NORTH AMERICA: A HISTORY FORGOTTEN* (2008); CHRISTY G. TURNER II & JACQUELINE A. TURNER, *MAN CORN: CANNIBALISM AND VIOLENCE IN THE PREHISTORIC AMERICAN SOUTHWEST* (1999). See also ANDERS KALIFF & TERJE OESTIGAARD, *CREMATION, CORPSES AND CANNIBALISM: COMPARATIVE COSMOLOGIES AND CENTURIES OF COSMIC CONSUMPTION* (2017).

20. Amy Tikkanen, *Cannibalism: Cultures, Cures, Cuisine, and Calories*, BRITANNICA, <https://www.britannica.com/story/cannibalism-cultures-cures-cuisine-and-calories> (last visited Sept. 1, 2023).

21. *Id.* For a further look at the different types of cannibalism, see, e.g., Roger W. Byard, *Cannibalism—Overview and Medicolegal issues*, 19 *FORENSIC SCI., MED. & PATHOLOGY* 281, 281–87 (2023); Shirley Lindenbaum, *Thinking About Cannibalism*, 33 *ANN. REV. ANTHROPOLOGY* 475, 477–81 (2004).

One researcher believes that because human bodies provide relatively few calories (125,000 versus, for example, 3.6 million for a woolly mammoth), most pre-historic acts of cannibalism occurred for non-nutritional reasons. Nicholas St. Fleur, *Paleo Diet: When Meat Really Was Murder*, *N.Y. TIMES*, May 9, 2017, at D2. That human bodies do not provide many calories has been cited as a critical flaw in the hit TV show *YELLOWJACKETS* (Showtime, 2021 to present), which involves a New Jersey high school girls’ soccer team whose plane crashes in a remote part of Canada. Haley Weiss, *The Frightening Science Behind the Cannibalism on Yellowjackets*, *TIME* (May 26, 2023), <https://time.com/6283057/yellowjackets-cannibalism-science/>.

22. According to legend, Johnson’s pregnant wife Swan was killed by members of the Crow Indian tribe. In response, Johnson killed 300 Crows and ate their livers but eventually made peace with the tribe. A 1972 movie about Johnson starring Robert Redford greatly rewrites Johnson’s biography and omits all references to cannibalism. Deborah Hufford, *The Real Jeremiah Johnson: An Original “Rugged*

Yet another form of cannibalism is “consensual cannibalism.”²³ In 2001 in Germany, for example, Armin Meiwes placed an ad on *Cannibal Cafi* (a now defunct website for people with cannibal fetishes) for a “well-built man, 18-30, who would like to be eaten by me.”²⁴ Bernd-Jürgen Brandes, a 43-year-old software developer, answered the ad.²⁵ After killing and eating Brandes, Meiwes was convicted of manslaughter.²⁶ Dissatisfied with this outcome, prosecutors successfully argued for a new trial. As a result, Meiwes was retried and found guilty of murder.²⁷ Meiwes’s defense that Brandes had wanted to be eaten was rejected.²⁸ In 2014, Detlev Gunzel, a former German police officer, made the same argument in his case with similar results.²⁹

Closely related to consensual cannibalism is “sexual cannibalism.” Often referred to as vorarephilia (usually shortened to “vore”), it is a condition in which a person is sexually aroused at the thought of eating another person or being eaten by another person.³⁰ For example, New York City police officer Gilberto Valle, better

Individualist,” NOTES FROM THE FRONTIER, <https://www.notesfromthefrontier.com/post/the-the-real-jeremiah-johnson> (Apr. 14, 2020, updated May 11, 2020) (critiquing the movie JEREMIAH JOHNSON (Warner Bros. 1972)).

23. Nicole Anderson, *The Ethics of Consensual Cannibalism: Deconstructing the Human-Animal Dichotomy*, 14 ANTENNAE: J. OF NATURE IN VISUAL CULTURE 66 (2010); Thomas Brodey & Cole Graber-Mitchell, *Seeing Double: Consensual Cannibalism?*, AMHERST STUD. (MA) (Oct. 14, 2021), <https://amherststudent.com/article/seeing-double-consensual-cannibalism-2/>.

24. Matthew Schofield, *Germany: How Cannibal Met His Victim*, MIAMI HERALD, Jan. 19, 2004, at 17A.

25. *Id.*

26. Mark Landler, *German Court Convicts Internet Cannibal of Manslaughter*, N.Y. TIMES, Jan. 31, 2004, at A3.

27. *Self-Confessed German Cannibal Convicted of Murder*, N.Y. TIMES, May 9, 2006, <https://www.nytimes.com/2006/05/09/world/europe/09iht-web.0509cannibal.html>.

28. *See id.* For a further look at Meiwes’s case, see Charles J. Reid, Jr., *Eat What You Kill: Or, a Strange and Gothic Tale of Cannibalism by Consent*, 39 N.C. J. INT’L L. & COM. REG. 423 (2014); *See also infra* note 127.

29. *See* Mark Hay, *How Courts Treat Consensual Cannibals*, VICE (Apr. 4, 2015, 7:33 AM), <https://www.vice.com/en/article/8gdwdp/cannibal-fetishists-403>.

30. In 1982, the British rock band Total Coelo released the hit song “I Eat Cannibals,” which described the delights of sexual cannibalism:

I eat cannibal
 Feed on animal
 Your love is so edible to me
 I eat cannibals

known as the “Cannibal Cop,” wrote hundreds of e-mails in which he fantasized about eating his wife and other women.³¹ When he was put on trial for conspiracy to commit kidnapping, however, he successfully argued that he merely had been role-playing.³² In contrast, Jeffrey Dahmer, better known as the “Milwaukee

I eat cannibal
It’s incredible
You bring out the animal in me
I eat cannibals

Roastin’, toastin’, you’re the one I’m boastin’
Eat me, eat you, incredibly delicious too
Gourmet, flambe, serve you up an entree
Intake, home bake, you’re the icing on the cake

A video of the group performing the song can be viewed at <https://www.youtube.com/watch?v=d4O1A-mmBWw> (last visited Sept. 1, 2023). For a more conventional discussion of sexual cannibalism, see Mark D. Griffiths, *Turn on the Eater: A Beginner’s Guide to Vorarephilia*, PSYCH. TODAY (Nov. 29, 2013), <https://www.psychologytoday.com/us/blog/in-excess/201311/turn-the-eater>; see also Mark D. Griffiths, *Vorarephilia and Being Eaten for Sexual Pleasure: Another Look at the Strange World of “Vore” Fetishism*, PSYCH. TODAY (Apr. 7, 2016), <https://www.psychologytoday.com/us/blog/in-excess/201604/vorarephilia-and-being-eaten-sexual-pleasure>.

In 2021, an ex-girlfriend accused well-known actor Armie Hammer of sexually abusing her and having a cannibalism fetish. Lydia Wang, *A Breakdown of Armie Hammer’s Allegations, Controversies, and Time-share Drama*, VULTURE (July 5, 2023), <https://www.vulture.com/article/armie-hammer-allegations-career-timeline.html>. When more women came forward with similar stories, the Los Angeles District Attorney’s office began an investigation but ultimately declined to charge Hammer. *Id.* Nevertheless, the allegations derailed his career and ended his marriage. *Id.*

31. See Joseph Goldstein, *Officer Plotted to Abduct, Cook and Eat Women, Authorities Say*, N.Y. TIMES, Oct. 25, 2012, at A26.

32. See Benjamin Weiser, *Officer’s Conviction in Cannibalism Case Overturned*, N.Y. TIMES, July 1, 2014, at A15. For a further discussion, see Thea Johnson & Andrew Gilden, *Common Sense and the Cannibal Cop*, 11 STAN. J. C.R. & C.L. 313 (2015); Kaitlin Ek, Note, *Conspiracy and the Fantasy Defense: The Strange Case of the Cannibal Cop*, 64 DUKE L.J. 901 (2015). For later case developments, see United States v. Valle, 467 F. Supp. 3d 194 (S.D.N.Y. 2020). See also *infra* note 129.

For a more recent prosecution in which the perpetrator had made it clear he was serious, see Nick Pearson, *‘Dark Web Cannibal’ Gets 40 Years for Plot to Murder, Eat Teenage Girl*, 9 NEWS (Sept. 22, 2020, 10:34 AM), <https://www.9news.com.au/world/dark-web-cannibal-necrophilia-jailed-alexander-barter-joaquin-texas-arrest-undercover-police-usa/74fe3bec-be8b-4329-b5fe-77466bbd64ac> (“Alexander Nathan Barter, 23, of Joaquin, [Texas,] posted an ad on a dark web site looking for a victim. [I’d like to try necrophilia and cannibalism, and see how it feels to take a life,] he posted on the site in October 2018.

Cannibal,” did engage in multiple acts of cannibalism.³³ He appears to have done so, at least in part, for sexual reasons.³⁴ Where sex is not a motivating factor, cannibalism often is undertaken for criminal reasons (“criminal cannibalism”).³⁵

While most cannibalism involves two (or more) people, there also is “auto-cannibalism,” or the act of eating oneself.³⁶ Also known as self-cannibalism, its formal name is autosarcophagy (from the Latin words for “self” and “flesh eating”).³⁷ In 2023, the Spanish social media personality Paula Gonu claimed during a podcast that she ate cartilage from her knee that had been removed during surgery.³⁸ Several years earlier, an unidentified American man allegedly served his severed leg to his friends.³⁹ The man had kept the extremity after it was amputated following a motorcycle accident.⁴⁰

Lastly, it has been suggested that in the future, human cloning might give rise to “victimless cannibalism”:

[If you'd be willing to let me kill you, are in the US (preferably in the south) and can travel by car, contact me.] The ad was spotted by an undercover Homeland Security agent in Florida, who responded under the guise of a father who wanted to have his 13-year-old daughter killed.”)

33. See *Dahmer Pleads Not Guilty to Charges of Killing 15*, N.Y. TIMES, Sept. 11, 1991, at A20. After changing his plea, *Dahmer Changes His Plea to Guilty*, N.Y. TIMES, Jan. 8, 1992, at A14, Dahmer was sentenced to life imprisonment, *15 Life Terms and No Parole for Dahmer*, N.Y. TIMES, Feb. 18, 1992, at A14. While serving his sentence, he was killed by a fellow inmate. Don Terry, *Jeffrey Dahmer, Multiple Killer, is Bludgeoned to Death in Prison*, N.Y. TIMES, Nov. 29, 1994, at A1.

34. See Peter Kwan, *Jeffrey Dahmer and the Cosynthesis of Categories*, 48 HASTINGS L.J. 1257, 1260 (1997). See generally ANNE E. SCHWARTZ, *MONSTER: THE TRUE STORY OF THE JEFFREY DAHMER MURDERS* (2021) (Schwartz was the *Milwaukee Journal* newspaper reporter who broke the Dahmer story).

35. See Victor G. Petreca et al., *Criminal Cannibalism: An Examination of Patterns and Styles*, 56 AGGRESSION & VIOLENT BEHAV. 101531 (2021). Such cannibalism also is known as “pathological cannibalism” and is considered one of the three principal forms of cannibalism: “Although several forms of cannibalism have been acknowledged, most anthropologists agree on the classification of three main types of cannibalism in humans: ritual, survival and pathological.” Abbie Marono & David A. Keatley, *An Investigation into the Association Between Cannibalism and Serial Killers*, 30 PSYCHIATRY, PSYCH. & L. 447, 449 (2023).

36. See Eleesha Lockett, *All About Autocannibalism*, HEALTHLINE (May 18, 2020), <https://www.healthline.com/health/autocannibalism>.

37. *Id.*

38. See Joe Kinsey, *Instagram Model Paula Gonu Makes Spaghetti Bolognese Out of Her Knee Cartilage*, OUTKICK (May 9, 2023), <https://www.outkick.com/instagram-model-paula-gonu-makes-spaghetti-bolognese-out-of-her-knee-cartilage/>.

39. See Matthew Wright, *‘I Taste Like Buffalo, But Chewier. Super Beefy and Little Fat!’: Man Shockingly Claims to Have Fed His Own Amputated Leg to Friends in Tacos*, DAILY MAIL (London) (June 13, 2018), <https://www.dailymail.co.uk/news/article-5840415/Man-shockingly-claims-fed-amputated-leg-friends-TACOS.html>.

40. *Id.*

[The] growing demand for protein, especially from meat, [is driving] a search for alternatives to conventional meat production. . . . In vitro meat research seeks to develop a method to grow meat in a lab environment While somewhat farfetched, some worry the development of in vitro meat could lead to growing human muscle cells for food. Opponents worry in vitro meat technology could result in “victimless cannibalism.” Currently, no federal law prohibits human cloning in the United States. . . . [However,] the FDA could prohibit the use of human cells for in vitro meat production. By banning human cells for use in food and allowing the FDA to properly oversee in vitro meat production systems, Congress could assuage fears of a Soylent Green situation becoming a reality.⁴¹

For obvious reasons, widespread agreement concerning the taste of human flesh does not exist. Those who have tried it (including a machine designed to identify flavors), however, have likened it to a multitude of different proteins, including bacon, chicken, veal, and even tuna.⁴²

III. IDAHO’S ANTI-CANNIBALISM STATUTE

In full, Idaho’s anti-cannibalism statute reads as follows:

- (1) Any person who wilfully ingests the flesh or blood of a human being is guilty of cannibalism.
- (2) It shall be an affirmative defense to a violation of the provisions of this section that the action was taken under extreme life-threatening conditions as the only apparent means of survival.

41. Zachary Schneider, Comment, *In Vitro Meat: Space Travel, Cannibalism, and Federal Regulation*, 50 Hous. L. Rev. 991, 994, 1023–24 (2013) (footnotes omitted). In the science fiction movie *SOYLENT GREEN* (Metro-Goldwyn-Mayer 1973), “the main character [played by Charlton Heston] discovers that [the] Soylent Corporation [is making] Soylent Green[, a food ration,] from people. . . . The movie culminates in Charlton Heston’s character distraughtly proclaiming, ‘It’s people. Soylent Green is made out of people.’” Schneider, *supra* note 41, at 1023 & n.223. A similar sort of discovery (“It’s a cookbook!”) is made at the end of *The Twilight Zone*’s classic episode, *To Serve Man* (CBS, Mar. 2, 1962). See Rob Hunter, *Exploring The Twilight Zone #89: To Serve Man*, FILM SCHOOL REJECTS (Oct. 22, 2011), <https://filmschoolrejects.com/exploring-the-twilight-zone-89-to-serve-man-819234f61c17/>.

42. See Andrew Court, *What Does Human Flesh Taste Like? Sick Cannibal Confessions Go Viral*, N.Y. POST (May 11, 2023), <https://nypost.com/2023/05/11/what-does-human-flesh-taste-like-cannibal-confessions-revealed/>; see also Rachel Nuwer, *Human Flesh Looks Like Beef, But the Taste is More Elusive*, SMITHSONIAN MAG. (Feb. 3, 2014), <https://www.smithsonianmag.com/smart-news/human-flesh-looks-beef-taste-more-elusive-180949562/>.

(3) Cannibalism is punishable by imprisonment in the state prison not exceeding fourteen (14) years.⁴³

These provisions were passed in March 1990 as section 2 of Idaho House Bill 817 (“H.B. 817”),⁴⁴ a measure chiefly aimed at ritualized child abuse.⁴⁵ In November 1989, the burned and mutilated remains of a baby girl, dubbed “Baby X,” were discovered in Minidoka County in southern Idaho.⁴⁶ A rumor soon spread that she had been

*killed by a local satanic cult composed of black robed figures [who were] roaming the woods in Idaho, sacrificing animals and children. Local mental health workers and law enforcement officials provided media outlets with ideas legitimizing the rumors, and several Christian groups held social protests condemning the assumed demonic worship. Local and national media covered those protests providing a high level or credibility to the Baby X stories. . . .*⁴⁷

Shocked by Baby X’s death, H.B. 817 was introduced in the second session of the 1989-90 Idaho Legislature.⁴⁸ There is no useful legislative history concerning the

43. IDAHO CODE § 18–5003 (2023).

44. See 1990 Idaho Sess. Laws 467, 468.

45. In full, H.B. 817’s title reads:

AN ACT RELATING TO RITUALIZED ABUSE OF A CHILD; AMENDING CHAPTER 15, TITLE 18, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 18-1506A, IDAHO CODE, TO PROVIDE A FELONY OFFENSE FOR SPECIFIED ABUSE OF A CHILD AS PART OF A RITUAL, TO PROVIDE EXCLUSIONS, TO PROVIDE PENALTIES AND TO PROVIDE A DEFINITION; AMENDING CHAPTER 50, TITLE 18, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 18-5003, IDAHO CODE, TO PROVIDE A DEFINITION OF CANNIBALISM AND TO PROVIDE A PENALTY; AMENDING SECTION 19-402, IDAHO CODE, TO PROVIDE THAT PROSECUTION FOR RITUALIZED ABUSE OF A CHILD MUST COMMENCE WITHIN A TIME CERTAIN; AND AMENDING SECTION 19-3024A, IDAHO CODE, TO PROVIDE THAT A CHILD WITNESS TO RITUALIZED ABUSE MAY PRESENT TESTIMONY BY AN ALTERNATE PROCEDURE. *Id.* at 467.

46. See *Skeleton Found*, IDAHO STATESMAN (Boise), Nov. 19, 1989, at 1C. In March 1992, Baby X was given the name “Kristina Angelica James” and was buried in a cemetery near where her body was discovered. See Christopher R. Clark, *Given Christian Name: Baby X Finally Laid to Rest in Rupert*, S. IDAHO PRESS (Burley), Mar. 17, 1992, at 1.

47. Stan H. Hodges & Jason S. Ulsperger, *A Historical and Theoretical Look at Ritual Abuse Laws Part II: Applying an Integrated Conflict Model Analysis to the Idaho Baby X Case*, 36 FREE INQUIRY IN CREATIVE SOCIO. 95, 95 (Nov. 2008). In May 1992, the Idaho Attorney General’s office announced that its lengthy investigation into the case had turned up no evidence of Satanism, ritual murder, or even murder. See Craig Lincoln, *Baby X Report: No Sign of Satanism*, TIMES-NEWS (Twin Falls, ID), May 19, 1992, at A1. To this day, the case remains unsolved. See Alison Gene Smith, *Magic Valley’s Missing and Murdered*, TIMES-NEWS (Twin Falls, ID), Feb. 27, 2022, at A1, A7-A8.

48. See Mary deYoung, *A Painted Devil: Constructing the Satanic Ritual Abuse of Children Problem*, 1 AGGRESSION & VIOLENT BEHAV. 235, 242 (1996).

bill,⁴⁹ which sailed through both chambers without attracting a single negative vote.⁵⁰ Following the Idaho Senate's passage of the bill, however, the *Idaho Statesman* newspaper reported:

The Idaho Senate has given final approval to legislation defining the crime of ritualistic child abuse and cannibalism.

"You have to get over the idea that maybe there isn't a problem in this state," floor sponsor Ann Rydalch, R-Idaho Falls, said Tuesday as the Senate unanimously approved the bill.

"Idaho does have a destructive ritual crime problem," she said, citing half a dozen incidents that have sparked investigations in the past two years.

The bill, backed by both law enforcement officials and school administrators, sets up reporting, tracking, intervention and treatment procedures to handle what officials say is a social phenomenon on the rise. The bill now goes to Gov. Cecil Andrus.⁵¹

49. The Idaho House and Senate journals merely record, without elaboration, the introduction, passage, and approval of the bill. See J. OF THE H.R. 317, 2ND REG. SESS. OF THE CENTENNIAL LEG. 203, 235, 395 (Idaho 1990); J. OF THE STATE S. 817, 2ND REG. SESS. OF THE CENTENNIAL LEGISLATURE 214, 309, 354 (Idaho 1990).

If one contacts the Idaho Legislative Library, however, it has the bill's file, which contains the bill's Statement of Purpose and the minutes from the House Judiciary Committee and the Senate Judiciary Committee. See E-mail from Baylie Moore, Administrative Assistant, Idaho Legislative Services Office—Research & Legislation Division, to the author, Aug. 28, 2023, at 10:39 a.m. (on file with the author). Perusing the file reveals that H.B. 817 (formerly Routing Slip 24094, Routing Slip 24174, and H.B. 751) was introduced by Representative Elizabeth Allan-Hodge (R-Nampa). There is no mention of the cannibalism parts of the bill.

Allan-Hodge, a real estate agent, served three terms in the Idaho House of Representatives (1984–90), during which she championed fiscal responsibility, free enterprise, and parents' rights and "established herself as one of the most conservative lawmakers in the Statehouse." *Our View: Endorsements, District 16*, IDAHO STATESMAN (Boise), Oct. 8, 2008, at 12 (Main). See also *Candidate Bios*, IDAHO STATESMAN (Boise), Oct. 24, 2008, at 4 (Main). In 2008, she sought election to a new term but was defeated by Democrat Elfreda Higgins. See *Final Idaho Election Results*, IDAHO STATESMAN (Boise), Nov. 6, 2008, at 2 (Main).

50. See Hodges & Ulsperger, *supra* note 47, at 100.

51. *Senate Passes Legislation on Ritualistic Child Abuse*, IDAHO STATESMAN (Boise), Mar. 28, 1990, at 4C.

On April 3, 1990, Andrus signed H.B. 817.⁵² Other than reporting that he had done so, Idaho's newspapers ignored the advent of the United States' first (and only) anti-cannibalism law.⁵³ Outside Idaho, not a single newspaper made mention of the legislation. In his autobiography, Andrus likewise skipped over the bill.⁵⁴ Today, apparently no one can explain why cannibalism was included in the bill.⁵⁵

Idaho's anti-cannibalism statute has led to explicit changes in two Idaho laws. First, a person convicted of cannibalism permanently loses the right to "ship, transport, possess or receive a firearm."⁵⁶ Second, a person seeking to have their completed sentence for cannibalism reduced from a felony to a misdemeanor must obtain the consent of the prosecuting attorney.⁵⁷

IV. PROBLEMS WITH IDAHO'S ANTI-CANNIBALISM STATUTE

As noted earlier, Idaho's anti-cannibalism statute appears to have been used only once, with the charges dismissed due to a lack of evidence.⁵⁸ Nevertheless, a useful thought exercise can be conducted by analyzing possible legal challenges to the statute.⁵⁹ For these purposes, it is convenient to divide the statute into its six

52. See *Cecil Dale Andrus*, TIMENOTE, <https://timenote.info/en/Cecil-Dale-Andrus> (last visited Sept. 1, 2023) ("On April 3, 1990, [Andrus] signed House Bill 817 into law, creating two new types of felony crimes, defined new criminal investigation areas, provided the basis for opening ritual child abuse cases based upon probable cause, and provided a framework for extensive ritual child abuse investigation training throughout Idaho.").

53. See, e.g., *Legislative Log*, TIMES-NEWS (Twin Falls), Apr. 5, 1990, at A-3; *Log*, IDAHO STATESMAN (Boise), Apr. 5, 1990, at 2C.

54. See CECIL D. ANDRUS & JOEL CONNELLY, *CECIL ANDRUS: POLITICS WESTERN STYLE* (1998).

55. When asked about the law in 2019, for example, longtime Twin Falls (Idaho) County Prosecuting Attorney Grant P. Loebs responded, "Idaho has never prosecuted cannibalism in [my] career, and [I am] not sure why it became a law when it did." See *Odd Idaho Laws*, *supra* note 12. Loebs is considered an authority on Idaho law. *Id.* He joined the Twin Falls Prosecuting Attorney's Office in 1993 as a deputy prosecutor and became the county prosecutor in 1997. In 2023, he announced that he would run for a seventh four-year term in 2024. See *Lorien Nettleton, Twin Falls Co. Sheriff Carter Announces Retirement—Johnson Seeks Job, Gains Endorsement; Loebs to Run Again*, TIMES-NEWS (Twin Falls), June 22, 2023, at A1, A2.

56. See IDAHO CODE § 18-310(2)(aa) (2023).

57. See IDAHO CODE § 19-2604(3)(c)(xiii) (2023). See also *State v. Moore*, 161 Idaho 166, 173, 384 P.3d 413, 420 (2016) (upholding the prosecutor's veto against a separation-of-powers attack and noting that prosecutorial consent is required for fifteen specific crimes, including cannibalism).

58. See sources cited *supra* note 10.

59. For a similar exercise done using a hypothetical jurisdiction (Newgarth) in the year 4300, see Lon L. Fuller, *The Case of the Speluncean Explorers*, 62 HARV. L. REV. 616 (1949). Fuller's famous hypothetical involves four amateur explorers who, having become trapped in a cave, eat a fifth member of their party to survive. After the quartet is rescued, they are found guilty of murder by the trial court.

component parts, as follows: Cannibalism is the A) wilful ingestion;⁶⁰ B) of the flesh or blood;⁶¹ C) of a human being;⁶² D) except under extreme life threatening conditions;⁶³ E) where such consumption is the only apparent means of survival;⁶⁴ F) with offenders being subject to a term in the state prison not exceeding fourteen years.⁶⁵

A. “Wilful Ingestion”

The statute’s inclusion of the word “wilful” makes it clear that a person must voluntarily intend to consume another human being.⁶⁶ Accordingly, under Idaho law a defendant could not be convicted of cannibalism if they could prove: 1) coercion (*e.g.*, a third person threatened to harm them if they did not eat the victim); 2) trickery (*e.g.*, a third person told them that they were eating chicken); or 3) involuntariness (*e.g.*, a third person force-fed them another human being). This is made clear by section 18–201 of the Idaho Code:

All persons are capable of committing crimes, except those belonging to the following classes:

1. Persons who committed the act or made the omission charged, under an ignorance or mistake of fact which disproves any criminal intent.
2. Persons who committed the act charged without being conscious thereof.

On appeal, the supreme court affirms after its members split 2-2, with the fifth justice being unable to reach a decision. Fuller’s article now is considered a model of legal reasoning and many subsequent authors have “updated” it. *See, e.g.*, PETER SUBER, *THE CASE OF THE SPELUNCEAN EXPLORERS: NINE NEW OPINIONS* (1998); Frank H. Easterbrook, *The Case of the Speluncean Explorers: A Fiftieth Anniversary Symposium*, 112 HARV. L. REV. 1913 (1999); Naomi R. Cahn et al., *The Case of the Speluncean Explorers: Contemporary Proceedings*, 61 GEO. WASH. L. REV. 1754 (1993); Anthony D’Amato, *The Speluncean Explorers: Further Proceedings*, 32 STAN. L. REV. 467 (1980).

60. *See* IDAHO CODE § 18–5003(1) (2023).

61. *Id.*

62. *Id.*

63. *See* IDAHO CODE § 18–5003(2) (2023).

64. *Id.*

65. *See* IDAHO CODE § 18–5003(3) (2023).

66. *Cf.* Idaho State Bar v. Smith, 170 Idaho 534, 552, 513 P.3d 1154, 1172 (2022) (quoting Marek v. Hecla, Ltd., 161 Idaho 211, 216, 384 P.3d 975, 980 (2016) (“This Court has examined the meaning of willful in other contexts before, explaining ‘*Black’s Law Dictionary* defines willful as voluntary and intentional, but not necessarily malicious.”)).

3. Persons who committed the act or made the omission charged, through misfortune or by accident, when it appears that there was not evil design, intention or culpable negligence.

4. Persons (unless the crime be punishable with death) who committed the act or made the omission charged, under threats or menaces sufficient to show that they had reasonable cause to and did believe their lives would be endangered if they refused.⁶⁷

It is not surprising that Idaho's anti-cannibalism statute contains a *mens rea* requirement, for strict liability crimes are disfavored in the United States.⁶⁸ Nevertheless, by allowing a defendant to avoid liability by arguing that their ingestion was not wilful, Idaho's anti-cannibalism statute provides a defendant with important means to avoid conviction (assuming the right set of facts).

Idaho's statute clearly makes no exception for either consensual cannibalism or auto-cannibalism—instead, it covers all intentional ingestions of human beings. As explained earlier, one commentator (Dr. Carmen M. Cusack) believes that the lack of exceptions for these types of cannibalism makes the statute vulnerable on personal privacy grounds.⁶⁹ Specifically, Cusack argues that the statute is unconstitutionally overbroad:

The only legitimate, important, or compelling interest that Idaho could maintain in the face of a Lawrence argument would be when anthropophagy results in harm to the provider or the recipient of infectious menses. When a provider and/or a recipient intentionally pass[es] HIV or other highly scrutinized or dangerous diseases, the right to privacy ends and the state gains a legitimate, important, or compelling interest to protect citizens from hurting themselves or each other. However, this is a highly distinguishable circumstance from anthropophagy that involves healthy, uncontaminated blood or tissue.⁷⁰

Even if her argument is well-founded, it applies only to what Cusack describes as situations in which “women . . . consum[e] healthy tissues that their bodies have legally, naturally, and harmlessly expelled.”⁷¹ The lack of exceptions for such situations hardly seems a basis for declaring invalid the entire statute.

67. IDAHO CODE § 18–201 (2023).

68. For a recent article that calls for the elimination of the few strict liability crimes that do exist, see Michael Serota, *Strict Liability Abolition*, 98 N.Y.U. L. REV. 112 (2023) (arguing that such crimes disproportionately punish persons of color).

69. See Cusack, *supra* note 11, at 124–29.

70. *Id.* at 129.

71. *Id.* at 145.

B. “Of the Flesh or Blood”

The statute’s use of the words “flesh” and “blood” provides a defendant with an entirely different method of avoiding conviction (again, assuming the right set of facts). The most direct route would be for the defendant to prove that he or she ate only the victim’s bones or cartilage, both of which are distinct from flesh and blood.⁷² Alternatively, if the defendant cooked the victim for an extended length of time before eating them, this also would work as a defense because it would mean that the defendant ate only bones.⁷³

C. “Of a Human Being”

Idaho’s anti-cannibalism statute does not define the term “human being,” even though it was passed by the same legislators who passed House Bill 625, a failed anti-abortion proposal that defined (in section 1) human beings as including “unborn children.”⁷⁴ Idaho’s 2021 Fetal Heartbeat Preborn Child Protection Act (amended 2022) makes it clear, however, that unborn children are human beings.⁷⁵

The foregoing leaves open the question of whether a corpse is a human being, such that ingesting its flesh or blood violates the statute. As has been pointed out elsewhere, the question of whether a corpse is a human being for legal purposes remains unsettled.⁷⁶

72. The word “blood” refers to “[t]he fluid . . . that is circulated by the heart through the arteries and veins, carrying oxygen and nutrients to and waste materials away from all body tissues.” AM. HERITAGE MEDICAL DICTIONARY 70 (2008). The word “bone” refers to “[t]he dense, semirigid, porous, calcified connective tissue forming the major portion of the skeleton. . . .” *Id.* at 72. The word “cartilage” refers to the “tough, elastic, fibrous connective tissue that is . . . found in various parts of the adult body, such as the joints, outer ear, and larynx.” *Id.* at 88–89. Lastly, the word “flesh” refers to “[t]he soft tissue of the body . . . covering the bones and consisting mainly of skeletal muscle and fat.” *Id.* at 206.

73. While blood, fat, muscle, skin, and tissue burn quickly, bones burn slowly and never completely because they are made up largely of inorganic matter. See Shania Mendonca, *Do Bones Burn?*, SCIENCE ABC, <https://www.scienceabc.com/humans/do-bones-burn.html> (last updated Feb. 24, 2022).

74. See Bill Miller, *House Bill 625: An Analysis from Pro-Choice, Pro-Life Experts*, IDAHO STATESMAN, Mar. 22, 1990, at 8A. Because of Andrus’s veto, H.B. 625 did not become law. See Dan Pokey, *Andrus Says No*, IDAHO STATESMAN, Mar. 31, 1990, at 1A.

75. See IDAHO CODE §§ 18–8801(3), 18–8802(1) (2023).

76. See Ellen Stroud, *Law and the Dead Body: Is a Corpse a Person or a Thing?*, 14 ANN. REV. L. & SOC. SCI. 115, 118 (2018). See also Fred O. Smith, Jr., *The Constitution After Death*, 120 COLUM. L. REV. 1471, 1475 (2020) (criticizing the sharp distinction that has been drawn between human beings and corpses with respect to federal constitutional rights).

No Idaho case addresses the issue. In contrast, the U.S. Court of Appeals for the Ninth Circuit, whose jurisdiction includes Idaho,⁷⁷ has come out both ways.⁷⁸ As a result, it would seem a colorable argument could be made by a defendant that ate a dead body that he or she did not violate Idaho's anti-cannibalism statute because they did not eat a human being.

D. "Except Under Extreme Life-Threatening Conditions" [and]
E. "Where Such Consumption is the Only Apparent Means of Survival"

The second paragraph of Idaho's anti-cannibalism statute creates an exception for survival cannibalism. To qualify for this affirmative defense, the defendant must be able to show two things: 1) that he or she resorted to cannibalism under extreme life-threatening conditions, and 2) that cannibalism was the only apparent means of survival.

As previously pointed out, survival cannibalism is resorted to when traditional food supplies are unavailable.⁷⁹ Notable examples include the Nantucket whaling ship *Essex* (1820);⁸⁰ Sir John Franklin's "doomed expedition" (1845–48);⁸¹ California's Donner Party (1846–47);⁸² the celebrated Stella Maris College rugby

77. Idaho has been a part of the Ninth Circuit since the Circuit's creation in 1891. In recent years, however, various proposals have been introduced in Congress to divide the Ninth Circuit into two circuits, with Idaho becoming part of a new Twelfth Circuit. *See, e.g.*, Press Release, *Risch, Crapo Reintroduce Legislation to Split Ninth Circuit Court of Appeals* (Oct. 7, 2021), <https://www.risch.senate.gov/public/index.cfm/2021/10/crapo-reintroduces-legislation-to-split-ninth-circuit-court-of-appeals>. For a further discussion, *see generally* Ilya Shapiro & Nathan Harvey, *Break Up the Ninth Circuit*, 26 GEO. MASON L. REV. 1299 (2019).

78. *Compare* *Guyton v. Phillips*, 606 F.2d 248, 250 (9th Cir. 1989) (holding a corpse is not a human being for purposes of the Civil Rights Act), *with* *United States v. Maciel-Alcala*, 612 F.3d 1092, 1102 (9th Cir. 2010) (holding a corpse is a human being for purposes of identity theft).

79. *See* Tikkanen, *supra* note 20. Levi Boone Helm (1828–64), better known as the "Kentucky Cannibal," is an anomaly: although he primarily resorted to cannibalism when he could not find food, he appears to also have engaged in cannibalism when food was plentiful. For a further discussion, *see* RYAN GREEN, *THE KENTUCKY CANNIBAL: THE TRUE STORY OF AN OUTLAW, MURDERER AND MAN-EATER* (2020).

80. The *Essex* was rammed by a sperm whale while hunting in the South Pacific. Following the ship's sinking, the surviving crew members were forced to resort to cannibalism prior to being rescued. The incident later inspired Herman Melville to write his classic novel *MOBY DICK* (1851). For a further discussion, *see* NATHANIEL PHILBRICK, *IN THE HEART OF THE SEA: THE TRAGEDY OF THE WHALESHIP ESSEX* (2001).

81. *See* Tia Ghose, *Cracked Bones Reveal Cannibalism by Doomed Arctic Explorers*, *LIVE SCIENCE* (July 21, 2015), <https://www.livescience.com/51614-doomed-franklin-expedition-cannibalism.html>. For a further discussion, *see* PAUL WATSON, *ICE GHOSTS: THE EPIC HUNT FOR THE LOST FRANKLIN EXPEDITION* (2017).

82. The Donner Party, also known as the Donner-Reed Party, was a group of Midwest pioneers who, after becoming snowbound in the Sierra Nevada mountains, turned to cannibalism. For a further discussion, *see* ETHAN RARICK, *DESPERATE PASSAGE: THE DONNER PARTY'S PERILOUS JOURNEY WEST* (2009).

team (1972);⁸³ and a group of Dominican Republic refugees lost at sea (2008).⁸⁴ Survival cannibalism also was practiced by the colonists at Jamestown during the “Starving Time” (1609–10);⁸⁵ Ukrainians during the Great Famine (“Holodomor”) (1932–33);⁸⁶ and the Japanese Army in New Guinea (1942–43).⁸⁷

It is rare for survival cannibals to be prosecuted. A notable exception is Alferd (often misspelled “Alfred”) G. Packer, better known as the “Colorado Cannibal,” who resorted to survival cannibalism during the winter of 1873–74.⁸⁸ After Packer confessed to eating the five men he had been hired to lead across the San Juan mountains, he was tried and found guilty of murder.⁸⁹ When his conviction was overturned by the Colorado Supreme Court on a technicality,⁹⁰ he was retried for manslaughter, again found guilty, and given forty years (eight for each victim).⁹¹

83. The Stella Maris College rugby team, along with others, crashed in the Andes during a flight from Uruguay to Chile. While waiting to be rescued, the survivors became cannibals. In 1974, British novelist Piers Paul Read published an acclaimed book about the event titled *ALIVE: THE STORY OF THE ANDES SURVIVORS*, which subsequently was made into a movie starring Ethan Hawke. See *ALIVE* (Paramount Pictures 1993).

84. See *Dominican Migrant: We Ate Flesh to Survive*, NBC NEWS (Nov. 4, 2008), <https://www.nbcnews.com/id/wbna27531105>.

85. See David Brown, *Skeleton of Teenage Girl Confirms Cannibalism at Jamestown Colony*, WASH. POST (May 1, 2013), https://www.washingtonpost.com/national/health-science/skeleton-of-teenage-girl-confirms-cannibalism-at-jamestown-colony/2013/05/01/5af5b474-b1dc-11e2-9a98-4be1688d7d84_story.html. See also WILLIAM M. KELSO, *JAMESTOWN, THE TRUTH REVEALED* (2017).

86. See Xabier Irujo, *Ukraine, Horror of the Past, Terror to the Future*, NEV. TODAY (Mar. 15, 2022), <https://www.unr.edu/nevada-today/news/2022/ukraine-horror-past-terror-future> (“[A]t least 2,505 people were convicted of cannibalism between 1932 to 1933 in the Ukraine. The lucky ones who were discovered eating human flesh were spontaneously beaten by the crowd, some were burned alive.”).

87. See *Cannibalism Laid to Japanese Army*, N.Y. TIMES, Sept. 10, 1945, at 6. For further discussion, see YUKI TANAKA, *HIDDEN HORRORS: JAPANESE WAR CRIMES IN WORLD WAR II* (1996).

88. For a profile of Packer, see HAROLD SCHECHTER, *MAN-EATER: THE LIFE AND LEGEND OF AN AMERICAN CANNIBAL* (2015). Packer’s name now graces the University of Colorado’s student dining hall and his life is the subject of both a cult movie and a popular song. See Jana Bommersbach, *Eating His Weight in Democrats*, TRUE WEST MAG. (Mar. 1, 2004), <https://truwestmagazine.com/article/eating-his-weight-in-democrats/>.

89. See *Deeds of Evil-Doers: Testimony Against Scheller—Phipps in Philadelphia—Packer Convicted*, N.Y. TIMES, Apr. 14, 1883, at 5. At Packer’s sentencing, Judge Melville B. Gerry uttered his now famous line: “Stand up, Alferd Packer, you voracious, man-eating son of a bitch. There were seven Democrats in Hinsdale County, and you ate five of them!” See Jess Brovsky-Eaker, *The Colorado Cannibal: The Story of Alferd Packer*, L. WEEK COLO. (Feb. 9, 2022), <https://www.lawweekcolorado.com/article/the-colorado-cannibal-the-story-of-alferd-packer/>.

90. See *Packer v. People*, 8 P. 564 (Colo. 1885).

91. See *Forty Years’ Imprisonment*, N.Y. TIMES, Aug. 6, 1886, at 2.

Although this new sentence was upheld twice by the Colorado Supreme Court,⁹² Packer was pardoned in 1901.⁹³

An even more famous court case involving survivalism cannibalism is the 1884 English decision known as *Regina v. Dudley and Stephens*.⁹⁴ In that case, two shipwrecked sailors (Tom Riley Dudley and Edwin Stephens) were tried and found guilty of murder after they killed and ate one of their fellow shipmates (a teenager named Richard Parker) when the group ran out of food.⁹⁵

Together, *Packer* and *Dudley and Stephens* clearly reject the idea that survival cannibalism is ever legally permissible. Thus, it is odd that Idaho's cannibalism statute recognizes it as an affirmative defense. Interestingly, in a 1925 editorial the *Idaho Statesman*, the state's leading newspaper, endorsed the principle while discussing the upcoming prosecution of a Canadian man accused of engaging in survival cannibalism:

There is a blow to our pride in humankind in the story from northern Saskatchewan about the aged hunter who, on the verge of starvation, resorted to cannibalism, killing and cooking three persons of the Chippewa tribe.

But the force of the blow is blunted by the knowledge that these incidents are not unusual in the history of the race, nor do they mean that there is danger of any trend toward cannibalism. Self-preservation is the first law of life.

There are historic cases of shipwreck in which survivors have done the sort of thing the aged hunter did. It has been in every case a repugnant thing but, also in every case, it has been considered necessary by the hunger-crazed, mind-befuddled people who have resorted to it. . . .

[I]f it can be proved that [t]his way was the only way out, even the Canadian cannibal may be forgiven by a jury of his peers. The proof,

92. See *Packer v. People*, 57 P. 1087 (Colo. 1899); *In re Packer*, 33 P. 578 (Colo. 1893).

93. See Gov. Thomas's Last Official Act is to Grant a Pardon to "Man-Eater" Packer, SALT LAKE HERALD (UT), Jan. 9, 1901, at 1.

94. The Queen v. Dudley, 14 QBD 273 (1884). The case has been the subject of many works, including, most notably, A.W. Brian Simpson, *Cannibalism and the Common Law: The Story of the Tragic Last Voyage of the Mignonette and the Strange Legal Proceedings to Which It Gave Rise* (1984). See also Note, *In Warm Blood: Some Historical and Procedural Aspects of Regina v. Dudley and Stephens*, 34 U. CHI. L. REV. 387 (1967). Reading (and then writing a review of) Simpson's book is what first got me interested in the subject of cannibalism. See Robert M. Jarvis, Book Note, *On the Decision to Make New Law: The Needs of Society Versus the Rights of the Accused*, 5 PACE L. REV. 529 (1985).

95. *Dudley*, *supra* note 94. The principle of survival cannibalism (long considered a "custom of the sea") having been firmly rejected, Dudley and Stephens quickly had their sentences commuted to time served by Queen Victoria. See Jarvis, *supra* note 94, at 539.

*however, will have to be very convincing. Three lives for one is a poor exchange.*⁹⁶

In 1979, when a plane crash forced two Canadians (Brent Dyer and Donna Johnson) to resort to survival cannibalism in central Idaho's White Cloud Mountains, there briefly was talk of prosecuting the pair under Idaho's common law.⁹⁷ In the end, no charges were brought because the body of the alleged victim (Donald Johnson, Donna's father) was so mutilated that authorities could not say with certainty whether Dyer and Donna Johnson had engaged in cannibalism.⁹⁸ Curiously, this decision was reached even though Dyer confessed to committing cannibalism in an interview with Canada's *Regina Leader-Post* newspaper.⁹⁹

In a long editorial about the incident, the Twin Falls *Times-News*, one of Idaho's most widely circulated newspapers, came out strongly in favor of survival cannibalism:

The story of two plane crash survivors eating the flesh of one of the persons who had died in the crash was run as the top story in the Times-News' Saturday edition. . . .

. . . [T]he story was given top play because it was an unusual climax to an Idaho story that had been reported and followed with much interest by Idahoans for the past three weeks.

Also, in giving the story top play, the Times-News editors meant no implication that cannibalism of this sort is immoral. The fact that Brent Dyer and Donna Johnson ate the flesh of Don Johnson (Miss Johnson's father) could be considered proper, mainly because it was the only way

96. *The Occasional Cannibal*, IDAHO STATESMAN, July 28, 1925, at 4. It should be noted that three days before the *Statesman's* editorial appeared, a Saskatchewan newspaper advised its readers that there was no evidence that the event had occurred. See *No Report by Police on Cannibalism Story—Fond Du Lac Detachment Would Know if There was Any Tragedy, is Belief*, SASKATOON PHOENIX (Saskatchewan), July 25, 1925, at 3.

97. See Doug Peebles, *Cannibalism—Survival vs. Starvation*, IDAHO STATESMEN, June 1, 1979, at 4A (“Idaho Deputy Attorney General Warren Felton said cannibalism does not appear to violate state laws, but said cannibalism could be a violation of common law.”).

98. See Gary Strauss, *Report of Cannibalism Cannot be Confirmed*, IDAHO STATESMAN, June 1, 1979, at 1A.

99. See *Cannibalism Story Highlights Week*, TIMES-NEWS, June 3, 1979, at B-2. Dyer and Johnson later collaborated with journalist Peter Gzowski on a book about their experiences and made it clear that they had engaged in cannibalism. See PETER GZOWSKI, *THE SACRAMENT: THE INCREDIBLE STORY OF BRENT DYER AND DONNA JOHNSON* (1980) (the book's title is a nod to the fact that Dyer and Johnson prayed for guidance before deciding to eat Donald Johnson).

that the two Canadians could have remained alive after the crash. Doing anything else would have bordered on the suicidal.

Actually, what we need is another word to describe the act of humans eating flesh of an already dead person as the last resort of survival. Cannibalism, in its pure sense, does not fill the bill.

....

Unfortunately, a word to specifically describe the Canadians' act does not exist, and so "cannibalism" is used instead, with hope that the reader will know enough to not confuse it with premediated cannibalism.¹⁰⁰

Reflecting these sentiments, Idaho's anti-cannibalism statute, as explained above, requires that the defendant have been faced with "extreme life-threatening conditions" in which cannibalism was "the only apparent means of survival." Both clauses, however, are problematic.

First, life threatening conditions, it can be argued, are by definition "extreme." Thus, it would seem difficult to draw a line between conditions that are merely life threatening and those that are *extremely* life threatening. Nevertheless, a defendant under the statute must offer proof that the conditions he or she encountered were not merely life threatening, but extremely life threatening.¹⁰¹ Obviously, this leaves the statute open to considerable interpretation.

Second, the phrase "only apparent means of survival" can be read as either objective or subjective. In other words, it is not clear whether it is enough that it appeared to the defendant that cannibalism was the only option. A prosecutor, for example, could argue (especially with the benefit of hindsight) that the defendant had other options but failed to take them.

The foregoing concerns are addressed, to a point, by Idaho Criminal Jury Instruction 1512. In full, it reads as follows:

100. Editorial, *Cannibalism of a Very Different Order*, TIMES-NEWS, June 4, 1979, at A-4.

101. Although not certain, it is likely that if a defendant presented colorable evidence that the conditions he or she encountered were extremely life threatening, the government then would have the burden of disproving this contention:

In the absence of a statute [providing otherwise], the general rule is that the burden is upon the state in a criminal case to negative any exception or proviso appearing in that part of the statute which defines the crime if the exception is 'so incorporated with the language describing and defining the offense that the ingredients of the offense cannot be accurately and clearly described if the exception is omitted. . . .' State v. Segovia, 93 Idaho 208, 210, 457 P.2d 905, 907 (1969) (citing 41 Am.Jur.2d, Indictments and Informations, § 98, pp. 940–941). For a further discussion, see State v. Schall, No. 39891, 2013 WL 4748393, at *3–5 (Idaho Ct. App. Sept. 5, 2013), *rev'd on other grounds*, 157 Idaho 488, 337 P.3d 647 (2014).

The defendant cannot be guilty [of (name of crime)] if the defendant acted because of necessity. Conduct which violates the law is justified by necessity if:

1. there is a specific threat of immediate harm to [the defendant] [name of person],
2. the defendant did not bring about the circumstances which created the threat of immediate harm,
3. the defendant could not have prevented the threatened harm by any less offensive alternative, and
4. the harm caused by violating the law was less than the threatened harm.

The state must prove beyond a reasonable doubt that the defendant did not act because of necessity. If you have a reasonable doubt on that issue, you must find the defendant not guilty.¹⁰²

Assuming a defendant charged with cannibalism persuades the court to give a 1512 instruction,¹⁰³ much work awaits the jury. Consider, for example, the following set of facts (which admittedly read like a law school exam question):

Running late for a long-planned appointment, a couple gets into their car without checking how much gas is in their tank. They also do not check the local weather reports, which indicate that a storm is moving into the area.

Because of their late start, the wife, who is driving, decides to take the back roads, which she figures will save the pair substantial time because these roads bypass the main highway and are little traveled.

Two hours into their drive, the couple becomes snowbound because of the storm. Not anticipating such a circumstance, the only food they have with them is a candy bar, a bag of potato chips, and two bottles of water.

102. *Criminal Jury Instructions, 1512 Necessity Defense*, STATE OF IDAHO JUD. BRANCH SUP. CT., <https://isc.idaho.gov/main/criminal-jury-instructions>.

103. There appears to be some reluctance among Idaho judges to give a necessity instruction. *See, e.g.*, *State v. Burns*, Docket No. 49639, 2023 WL 2491957 (Idaho Ct. App. Mar. 14, 2023) (magistrate court did not err when it denied defendant's request for necessity instruction in DUI case); *State v. Cruse*, Docket No. 47801, 2021 WL 3046028 (Idaho Ct. App. July 20, 2021) (district court did not err when it denied defendant's request for necessity instruction in domestic battery case); *State v. Frank*, 168 Idaho 248, 482 P.3d 1105 (Idaho Ct. App. 2020) (magistrate court did not err when it denied defendant's request for necessity instruction in marijuana possession case).

The snow is exceptionally heavy and strands the couple. And because they are on a back road, no one is around. After several days of bone-chilling cold weather, the couple realizes that they must leave their car (which by now is out of gas) and try to walk to civilization. This proves impossible, however, and the couple is forced to turn around and go back to their car.

Eventually, the husband dies. Seemingly out of alternatives, the wife, using a pen knife, digs out several pieces of flesh from her husband's arm and eats them. A few hours later, a state trooper happens by and rescues the wife. When the trooper notices the condition of the husband's body, however, he arrests the wife for cannibalism.

Following the wife's arrest, the couple's car is impounded. During a routine inspection of the car, an emergency first aid kit (installed by the car's manufacturer) is discovered in the trunk. It includes a flare gun and various other life-survival items.

Given these facts, the wife's necessity defense almost surely will fail. First, of course, it appears that she was not in immediate danger, as she still had enough strength to get her knife and was thinking clearly when she used it. Second, the prosecutor will argue that the wife caused her predicament by (a) failing to check her gas tank; (b) failing to check the weather reports; (c) taking the back roads; and (d) not having sufficient food in the car.¹⁰⁴ Lastly, the couple's inexplicable decision to not look inside the trunk (where they quickly would have found the first aid kit) almost certainly negates the wife's claim that cannibalism was her only option.

Two recent Idaho cases make it clear that the necessity defense is strictly construed. In *State v. Meyer*,¹⁰⁵ the district court denied the defendant's request for a necessity defense instruction in a marijuana possession case.¹⁰⁶ The defendant argued that he needed the marijuana to treat his chronic pain.¹⁰⁷ In affirming the defendant's conviction, the Idaho Supreme Court wrote:

Meyer's objective was to avoid pain caused by his medical condition. He brought over three ounces of marijuana into Idaho, which is a felony

104. The Idaho Transportation Department makes it a point to remind motorists traveling in the state during the winter to do all the things the wife did not do, including carrying extra gas, checking the weather, and packing a survival kit that contains food and water. See *Tag: Winter Car Emergency Kit*, IDAHO TRANSP. DEP'T, <https://itd.idaho.gov/tag/winter-car-emergency-kit/> (last visited Sept. 1, 2023) ("Of the many things that Idahoans know a lot about, one of them is how to be prepared. Prepared for the big game, prepared for the campout, and prepared for the road. Whether you've lived in Idaho your whole life or are a new resident, it's important to do everything you can to prepare for an Idaho winter. As the cold weather sets in, so do winter road conditions.").

105. *State v. Meyer*, 161 Idaho 631, 389 P.3d 176 (2017).

106. *Id.* at 633, 389 P.3d at 178.

107. *Id.*

*offense. He was planning to be in Idaho for roughly eight hours. Meyer did present some evidence suggesting that he had tried other medications which had not been as effective and had had negative side effects that led him to “prefer” marijuana. However, Meyer did not present evidence that there was no legal method by which he could manage his pain for the eight hours that he was in Idaho. Without a prima facie showing that Meyer did not have any legal alternative to manage his pain for that short period of time, including through the procurement of medications which are legal in the State of Idaho, Meyer cannot show that the district court erred in refusing to instruct the jury as to necessity.*¹⁰⁸

More recently, in *State v. Doyle*,¹⁰⁹ the defendant was charged with illegal possession of a pistol, which he used to shoot a man in what the defendant claimed was an act of self-defense.¹¹⁰ The defendant raised a necessity defense based on his prior history with the victim.¹¹¹ The trial court rejected the defense.¹¹² On appeal, the Idaho Court of Appeals affirmed:

*[S]ubstantial evidence demonstrates that there was no specific threat of immediate harm to Doyle when he originally took possession of the firearm. Doyle was not under an immediate threat of harm when he acquired the firearm the day before he used it to shoot Schell. The possibility of harm at an indeterminate date in the future, is insufficient to satisfy the specific threat of immediate harm element required for a necessity defense. State v. Howley, 128 Idaho 874, 879, 920 P.2d 391, 396 (1996). Substantial evidence also supports the district court’s finding that Doyle could have prevented the threatened harm by a less-offensive alternative such as contacting law enforcement or seeking help from his grandfather or mother rather than by obtaining a firearm.*¹¹³

Thus, a necessity defense, even if it makes it to the jury, is not a guaranteed get-out-of-jail-free card for a defendant charged with cannibalism. This is particularly so because Idaho’s courts take the view that in evaluating the facts, a judge or jury may not give undue weight to any one of them. This is seen most clearly in *State v. Detwiler*.¹¹⁴

108. *Id.* at 180-81 (footnote omitted).

109. *State v. Doyle*, 170 Idaho 400, 511 P.3d 282 (Idaho Ct. App. 2022).

110. *Id.* at 402, 511 P.3d at 284.

111. *Id.*

112. *Id.* at 403, 511 P.3d at 285.

113. *Id.* at 407, 511 P.3d at 289.

114. *State v. Detwiler*, No. 41125, 2015 WL 1237083 (Idaho Ct. App. Mar. 18, 2015).

In *Detwiler*, the defendant went to a bar and became embroiled in a dispute with some of the other patrons.¹¹⁵ Eventually, he was asked to leave the premises by the bartender.¹¹⁶ When he got into his car, a crowd gathered.¹¹⁷ Fearing for his life, he accelerated forward, striking one of the customers.¹¹⁸ In finding that the defendant was not entitled to a necessity defense instruction, the Idaho Court of Appeals stressed that all the precipitating events had to be considered:

*Detwiler argues that, because his vehicle was surrounded, he was at risk of great bodily harm and that he had to drive forward, in the direction of the bartender and customer, to remove himself from the situation. However, even though Detwiler may have been in a highly dangerous situation constraining him to drive his vehicle toward the bartender and customer, the situation in this case was a continuous string of events, brought about by Detwiler's offensive and provocative behavior inside and outside the bar. Thus, we agree with the district court that no reasonable view of the evidence supports the second required element of the necessity defense—that the circumstances were not brought about by Detwiler. Therefore, the district court did not err in concluding that Detwiler was not entitled to have the jury instructed on the defense of necessity.*¹¹⁹

Applying *Detwiler* to the car hypothetical posed above, it is obvious that the judge or jury could not simply consider the conditions that existed when the wife took out her penknife. Instead, they would be required to consider the entire “string of events,” beginning with the failure to check the car’s gas tank and the weather reports.

F. “With Offenders Being Subject to a Term in the State Prison Not Exceeding Fourteen Years”

In the event of a conviction, the final paragraph of Idaho’s anti-cannibalism statute leaves it to the sentencing court to determine how many years an offender should serve, with the maximum possible sentence being fourteen years. As has been pointed out by an earlier pair of commentators, there is no mandatory minimum sentence for cannibalism.¹²⁰ More problematically, there are no specific guidelines when it comes to sentencing a cannibal. Instead, a court would be

115. *Id.* at *1.

116. *Id.*

117. *Id.*

118. *Id.*

119. *Id.* at *5.

120. See Gabriel & Massoth, *supra* note 11, at 32.

required to apply Idaho's general sentencing guidelines statute.¹²¹ Given that the statute lists fifteen factors that a court must consider in determining an appropriate sentence, it is obvious that a defendant convicted of cannibalism has no way to predict his or her sentence. Moreover, most of the factors favor the government.¹²²

What makes the lack of guidance particularly problematic is the fact that cannibalism has been charged only once in Idaho and is not a crime in any other state. Thus, the next Idaho judge to sentence a cannibal will be the first one to do so and will be writing on a completely blank slate. While this is true whenever a new crime is recognized, normally there is at least some prior consensus of what an appropriate sentence would look like because similar crimes already have been adjudicated. No such consensus exists when it comes to cannibalism, however, because cannibalism is a *sui generis* crime.¹²³

Rather than leave it to an individual judge to decide, it would be much better if Idaho's anti-cannibalism statute gave clear sentencing guidance. This could be accomplished in several ways:

1. By specifying a fixed number of years based on the number of victims (*e.g.*, one year per victim).
2. By specifying a fixed number of years based on whether the defendant killed and then ate the victim, or only ate the victim after they already were dead (*e.g.*, ten years for the former, five years for the latter).
3. By specifying a fixed number of years based on the quantum of the defendant's consumption (*e.g.*, two years for each hand or foot eaten, three years for each arm or leg eaten, five years for the torso or any part

121. See IDAHO CODE § 19-2521 (2023). For a brief overview of the statute, see Randy Smith, *Unified Sentencing Act*, 48 ADVOC. 13 (Oct. 2005).

122. The only factor that clearly favors the defendant is the fourth factor, which provides: "There were substantial grounds tending to excuse or justify the defendant's criminal conduct, though failing to establish a defense." IDAHO CODE § 19-2521(2)(d) (2023). See also IDAHO CODE § 19-2521(2)(h) (2023), which provides: "The defendant's criminal conduct was the result of circumstances unlikely to recur."

123. See generally Manuel Barcia, *White Cannibalism in the Illegal Slave Trade: The Peculiar Case of the Portuguese Schooner Arrogante in 1837*, 96 NEW W. INDIAN GUIDE 1 (2022) (explaining that despite overwhelming evidence of forced cannibalism, British officials in Jamaica looked the other way in the *Arrogante* case because of the difficulties that would have been encountered in trying to punish the offenders). In modern times, the *sui generis* nature of cannibalism has caused international criminal tribunals to be similarly reluctant in punishing proven acts of cannibalism. See Provost, *supra* note 8, at 296 (discussing "the law's inability to construct a rationalized version of cannibalism that permits its reduction to legal fact.").

thereof, and ten years for any part of the face, head, nose, ears, eyes, neck, or scalp).

With further thought, more refined calculations undoubtedly could be devised.¹²⁴

V. REWRITING IDAHO'S ANTI-CANNIBALISM STATUTE: SOME SUGGESTIONS

Whether Idaho should continue to be the only state with an anti-cannibalism statute is a question that is beyond the scope of this article, involving as it does a political (as opposed to a legal) determination.¹²⁵ Thus, for present purposes, it is assumed that Idaho will continue to have such a statute.

Likewise, while one can reasonably wonder whether Idaho should decriminalize either or both auto-cannibalism and consensual cannibalism, that too involves complicated political judgments and is beyond the scope of this article. On first blush, however, the decriminalization of auto-cannibalism likely would do little harm, as Cusack suggests,¹²⁶ while the decriminalization of consensual cannibalism raises the thorny question of how actual, informed consent ever could be established, especially if the victim was dead.¹²⁷

124. Although this approach may strike some as ghoulish, it should be kept in mind that workers' compensation statutes throughout the country use this method to determine the amount of benefits an injured worker can recover. *See, e.g.*, IDAHO CODE § 72-428 (2023) ("Scheduled income benefits for loss or losses of use of bodily members").

125. It would seem, however, that if an anti-cannibalism statute is desirable, a federal statute covering the entire country would be better than a patchwork of potentially conflicting state laws. That the federal government has the power to pass such legislation is indisputable. *See, e.g.*, *United States v. Comstock*, 560 U.S. 126, 137 (2010) ("Neither Congress' power to criminalize conduct, nor its power to imprison individuals who engage in that conduct, nor its power to enact laws governing prisons and prisoners, is explicitly mentioned in the Constitution. But Congress nonetheless possesses broad authority to do each of those things. . . ."). *See also* Charles Doyle, *Congressional Authority to Enact Criminal Law: An Examination of Selected Recent Cases*, CON. RSCH. SERV. (Mar. 27, 2013), <https://crsreports.congress.gov/product/pdf/R/R43023> (explaining, *id.* at 1, that the federal government's power to make and enforce criminal laws is "sweeping").

126. *See* Cusack, *supra* note 11, at 168.

127. Unsurprisingly, no Idaho case has been found that sheds any light on these questions—the Idaho cases that do exist have all involved consent that clearly was invalid. *See, e.g.*, *State v. Knutsen*, 158 Idaho 199, 345 P.3d 989 (2015) (mentally incompetent person held to be incapable of giving valid consent). One commentator, however, has argued that creating a consent regime for cannibalism presents no greater practical challenges than creating it for any other type of activity, although we may not like where such a regime eventually leads us:

Thus, what follows is a proposed rewriting of the statute to address its existing problems without expanding its scope (additions are **underlined in bold**; deleted material is ~~struck through~~):

(1) Any person who ~~willfully~~ **knowingly and intentionally** ingests ~~the flesh or blood~~ **any part** of a human being, **whether living or dead**, is guilty **of the crime** of cannibalism.

(2) It shall be an affirmative defense to a ~~violation of the provisions of this section~~ **charge of cannibalism** that the action was taken under ~~extreme~~ life-threatening conditions as the only apparent means of survival. **For purposes of this section, the “reasonable person” standard shall be used and all evidentiary burdens shall at all times be on the party seeking to benefit from this section.**

For example, how rational was [Bernd-Jürgen] Brandes when he consented to being killed and eaten by [Armin] Meiwes? His consent to cutting off his penis some time before his death was hardly valid: by that time Brandes had consumed twenty sleeping tablets and half a bottle of schnapps. But when he agreed to the killing, Brandes was not intoxicated. He was informed of every detail of the plan and gave it his full approval, as a video made by Meiwes shows. Brandes was a mature man and an educated professional. He was not clinically insane, although he apparently suffered from a “strong desire for self-destruction.”

This story raises a question of whether the same level of rationality or competency should be required for effective consent to bodily harm of different proportions. . . . The Brandes example also reveals the empirical fallacy of the *a priori* assumption that anyone who consents to pain or injury is crazy: Brandes was not. This is a disturbing thought. We can limit the defense of consent so as to require a written notarized request by the victim as well as the victim’s evaluation by several independent, court-appointed psychiatrists, but sooner or later we are doomed to encounter a mentally competent person who would wish to be killed or injured.

We may or may not sympathize with that wish. . . . However, unless we want the character of our society to change dramatically, we may not assert that a person is insane or irrational merely because we disagree with his decisions. Coordinating the required level of rationality with the amount (and kind) of the desired harm is likely to be a good practical solution for the absolute majority of problematic cases. Still, with respect to the remaining small group of cases in which rational people desire socially objectionable self-regarding harm, we would either have to permit the harm or find a better argument for prohibiting it.

(3) Cannibalism is punishable ~~is punishable~~ **shall be punished** by imprisonment in the state prison ~~not exceeding fourteen (14) years.~~ **as follows:**

- (a) one (1) year for each victim or attempted victim, *plus*
- (b) ten (10) years if the defendant killed the victim (otherwise five (5) years), *plus*
- (c) two (2) years for each hand or foot fully or partially eaten, *plus*
- (d) three (3) years for each arm (excluding the hand) or leg (excluding the foot) fully or partially eaten, *plus*
- (e) five (5) years if the torso or buttocks, or any part of them, is eaten, *plus*
- (f) ten (10) years if any part of the face, including the head, nose, ears, eyes, neck, or scalp, is eaten, *plus*
- (g) twenty (20) years if any reproductive sexual organ, or part thereof, is eaten.

(4) As used in paragraph (3) of this statute, the word "eaten" includes attempts to eat.

(5) A person may not consent to an act of cannibalism, whether to be performed while they are alive or after they are dead, and any such consent is legally invalid.

(6) It is a violation of this statute for a person to commit, or attempt to commit, self-cannibalism.

As can be seen, the foregoing changes improve the statute both stylistically and substantively. In terms of the latter, they do so by: 1) closing its bone and cartilage loophole; 2) making it clear that it applies to dead bodies; 3) simplifying its affirmative defense provision; 4) ensuring that all offenders serve at least some prison time; 5) making sentences predictable and uniform; and, 6) addressing both consensual cannibalism and auto-cannibalism. In addition, plea bargaining would be facilitated (because it would be easy for the prosecution and the defense to

determine the maximum potential sentence)¹²⁸ and the likelihood of a defendant successfully requesting application of the “rule of lenity” would be reduced.¹²⁹

By way of illustration, if the wife in the previously discussed car hypothetical was found guilty, she would receive nine years: one year because there was one victim; plus five years because he already was dead when the cannibalism occurred; plus three years because part of his arm was eaten. Of course, the wife could claim necessity, but she would have to prove that a reasonable person under the same conditions would have reached the conclusion that the situation was life-threatening and that cannibalism was the only solution.

VI. CONCLUSION

In the eyes of many (if not most) people, cannibalism is an abhorrent act.¹³⁰ Nevertheless, only Idaho has seen fit to criminalize it. Whether Idaho’s decision to do so is necessary or wise is not now up for debate. What is up for debate is whether, having decided to have an anti-cannibalism statute, Idaho has the best possible statute. As this article has shown, the answer currently is “no.” A few tweaks, however, would change the answer to “yes.”

128. See Stephanos Bibas, *Plea Bargaining Outside the Shadow of Trial*, 117 HARV. L. REV. 2463, 2487 (2004) (“If the parties [have] precision sentencing tools, they [can] tailor [plea] bargains to reflect both the severity of the crime and the strength of the evidence.”).

129. See *State v. Jones*, 151 Idaho 943, 947, 265 P.3d 1155, 1159 (Idaho Ct. App. 2011) (“The rule of lenity requires that ambiguous criminal statutes should be read narrowly and be construed in favor of the defendant. *State v. Anderson*, 145 Idaho 99, 103, 175 P.3d 788, 792 (2008).”). The rule of lenity was applied by the Second Circuit in the Cannibal Cop case, discussed *supra* notes 31–32 and accompanying text. See *United States v. Valle*, 807 F.3d 508, 523–28 (2d Cir. 2015) (applying the rule to the Counterfeit Access Device and Computer Fraud and Abuse Act of 1984, 18 U.S.C. § 1030). For a further discussion, see Charles S. Wood, Note, *Cannibal Cop Out: Why Lenity is a Necessary, Yet Unworkable Solution in Interpreting the Computer Fraud and Abuse Act*, 82 BROOK. L. REV. 1849 (2017).

130. Like all human activities, however, cannibalism has its supporters. See, e.g., Cusack, *supra* note 11; Blomberg, *supra* note 16; J. Jeremy Wisniewski, *A Defense of Cannibalism*, 18 PUB. AFF. Q. 265 (2004); Ausonia Calabrese, *In Defense of Cannibalism*, THE ANARCHIST LIBRARY (Dec. 27, 2018), <https://theanarchistlibrary.org/library/in-defense-of-cannibalism>.