

Article

# TV Cannibalism, Body Worlds and Trade in Human Body Parts

Legal-Philosophical Reflections on the Rise of Late Modern Cannibalism

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## Abstract

In December 2011 two Dutch TV presenters ate pieces of each other's flesh in front of a live television audience. Despite the obscurity of this cannibalistic episode in television history, the matter touches on a series of complex legal and philosophical questions that are discussed in this article, such as the boundaries of criminal law, the legal limits of personal autonomy and law's changing relation to the biological aspects of life. Moreover, through its analysis of the arguments involved, this article offers legal-philosophical reflection on the role of taboos in legal approaches to the human body and derived materials.

## Introduction

At the end of 2011 cannibalism became a serious matter for political discussion in the Netherlands. Several parliamentary questions were submitted on the subject, which the responsible Minister was not able to answer within the official time limit "due to the complexity of the matter at hand".<sup>1</sup> At first sight the matter may seem too obscure to be of relevance for lawyers or philosophers. Nevertheless, it touches upon a series of complex legal and philosophical questions, such as the boundaries of criminal law, the legal limits of personal autonomy and law's changing relation to the biological aspects of life. These aspects and questions will be explored in this article. However, we will first turn to the recent events that have turned cannibalism into a hotly debated item in the Netherlands.

## I. The Birth of TV Cannibalism

In December 2011 live cannibalism made its debut on television. Two Dutch TV presenters, Valerio Zeno and Dennis Storm, ate pieces of each other's flesh in front of a live television audience. Zeno and Storm are hosts of a quasi-scientific TV show called "Guinea Pigs"<sup>2</sup> in which they provide "serious answers to stupid questions".<sup>3</sup> The week's show<sup>4</sup> revolved around the question: "What does human flesh taste like?" The two TV stars first consulted a

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<sup>1</sup> *Aanhangsel Handelingen II* 2011/12, nr. 1216, p. 2.

<sup>2</sup> 'Proefkonijnen' in Dutch.

<sup>3</sup> For more information, see the show's website: <http://sites.bnn.nl/page/proefkonijnen> (accessed on 29 March 2012).

<sup>4</sup> For a subtitled fragment of this show see: <http://www.guardian.co.uk/world/video/2011/dec/21/dutch-presenters-cat-flesh-on-tv-video?INTCMP=ILCNETTXT3487> (accessed on 29 March 2012).

butcher to decide which pieces of their bodies would be tastiest. A plastic surgeon then removed tiny pieces of tissue from Storm's buttocks and Zeno's abdomen. The final stage took place in a TV studio where a famous chef fried the bits of flesh and served them with truffle mayonnaise, carrots and asparagus. During the consumption of each other's flesh, the two hosts shared their immediate sensations, thoughts and anxieties with the camera. The dinner was preceded and followed by a discussion with criminal defence lawyer Gerard Spong, philosopher Bas Haring and physicist Lieven Scheire.

The public announcement of this TV event provoked controversy worldwide and made headlines internationally.<sup>5</sup> The most common reaction was that the presenters were 'publicity hungry'<sup>6</sup> and that the show crossed the boundaries of good taste in order to achieve high ratings. The TV makers themselves, on the other hand, maintained that their act was not fuelled by cheap sensationalism, but that it was meant as a scientific experiment.

Even though the answer to the question "what does human flesh taste like?" was hardly surprising (the answer was, spoiler alert, like beef), and although the show did not have any serious consequences for anyone involved, this cannibalistic episode in Dutch television history raises several interesting legal-philosophical questions.

## II. Why Cannibalism Matters to Legal Philosophy

Somewhat surprisingly, philosophers ranging from Aristotle<sup>7</sup> and Michel de Montaigne<sup>8</sup> to Michael Sandel<sup>9</sup> and Martha Nussbaum<sup>10</sup> have pondered the subject of cannibalism.<sup>11</sup> In fact, many lawyers will be familiar with Lon Fuller's classic thought experiment "The Case of the Speluncean Explorers".<sup>12</sup> In this fictitious legal case five Supreme Court Justices have to decide on the fate of a group of explorers who, trapped in a cave, have killed one of their own and devoured his flesh to stay alive. Each of the Justices decides differently, departing from different legal principles. Fuller's legal puzzle continues to be used in jurisprudence classes all over the world to teach law students on the divergent views on the nature of law and how these views affect the outcome of legal reasoning. Interestingly, Fuller partially modelled his tale of 'legal science-fiction' after an actual legal case.<sup>13</sup> The defendants in this English case were the victims of a shipwreck, and had managed to stay alive on a lifeboat by resorting to murder and cannibalism.

That Fuller uses survival cannibalism, despite its obscurity, to illustrate the central questions of legal philosophy, may appear an unusual angle. Yet in its extremity, survival cannibalism

<sup>5</sup> N. Posthumus, "Internationale media walgen van kannibalisme in BNN-show", *NRC Handelsblad*, 20 December 2011, see: <http://www.nrc.nl/nieuws/2011/12/20/kannibalisme-bnn-show-proefkonijnen-kan-rekenen-op-walging-in-internationale-media/> (accessed on 29 March 2012).

<sup>6</sup> See for instance the ABC news item on the cannibalistic TV show: <http://abcnews.go.com/blogs/headlines/2011/12/dutch-tv-show-hosts-appear-to-dine-on-each-others-flesh/> (accessed on 2 April 2012).

<sup>7</sup> Aristotle, *Nicomachean Ethics*, trans. W.D. Ross, Oxford: Clarendon Press 1908, VII.5.

<sup>8</sup> See Montaigne's essay *Of cannibals* in M. de Montaigne, *The Complete Essays*, trans. M.A. Screech, London: Penguin Classics 1993, I.31.

<sup>9</sup> M. Sandel, *Justice. What's the right thing to do?*, New York: Farrar, Strauss and Giroux 2010, pp. 73-74.

<sup>10</sup> M. Nussbaum, *Hiding from Humanity. Disgust, Shame and the Law*, Princeton: Princeton University Press 2004, p. 80.

<sup>11</sup> For more details and sources, see: C. Avramescu, *An intellectual history of cannibalism*, Princeton: Princeton University Press 2009.

<sup>12</sup> L.L. Fuller, 'The Case of the Speluncean Explorers', *Harvard Law Review* 1949-4, pp. 616-645.

<sup>13</sup> *Regina v. Dudley and Stephens* [1884] 14 QBD 273. For more elaborate accounts, see: N. Hanson, *The Custom of the Sea*, London: Doubleday 1999; and A.W. Brian Simpson, *Cannibalism and the Common Law*, Chicago: University of Chicago Press 1984.

offers the perfect example of a hard legal case: the murder of an innocent and transgression of the last taboo in order to stay alive. However, this dilemma is completely absent in the Dutch case of TV cannibalism. The TV hosts did not act out of self-preservation or necessity, nor did they have to resort to murder to acquire the ingredients for their cannibalistic meal. What makes this Dutch case of consensual and mutual cannibalism legally and philosophically special though, is its purity. The reason why the show was controversial is the sole fact that human flesh was eaten. Nobody was murdered, no corpses were desecrated.

### III. The Legal and Moral Complexities of Cannibalism

#### III.1 Why We Do Not Own Our Bodies

One can wonder why the sheer act of eating human flesh provokes such a fierce response. After all, those involved had pieces of their flesh removed, fried and eaten at their own request. Moreover, their physical injuries were kept to a bare minimum. In the future they will only have small scars left to remind them of their cannibalistic outing. It is through this line of thinking that the Dutch Minister of Education, Culture and Science Bijsterveldt-Vliegenthart argued, in answer to parliamentary questions, that none of the individuals involved in the cannibalistic TV performance are guilty of any criminal behaviour.<sup>14</sup> She stressed that both TV hosts fully consented to the surgical removal and subsequent consumption of their flesh.<sup>15</sup> Moreover, she did not see any compelling reason to prohibit such activities in the future.<sup>16</sup>

Yet, something more appears to be at stake. Eating human flesh seems wrong to many, regardless of the obtained informed consent or the degree of physical harm, as was also argued by two Members of Parliament in their questions to the Minister.<sup>17</sup> Nevertheless, the question why exactly cannibalism would be wrong is very difficult to answer. We can perhaps offer scientific *explanations* for the disgust that cannibalism provokes in many of us, such as the theory that our instinctive revulsion is a biological mechanism that benefits the prevention of certain diseases.<sup>18</sup> However, this is not the same as offering *reasons* for it.<sup>19</sup> In a way, most taboos are groundless. Even if we were sure that cannibalism would not result in disease, most of us would still find eating human flesh problematic, without being able to explain exactly why. That is not to say that taboos are also meaningless. On the contrary, many classic taboos are connected with the fundamental distinctions and categories that are at the root of human civilisation, such as the distinctions between man and woman, human and animal, subjects and objects, and life and death. The prohibition of cannibalism is exactly such an ancient taboo. From this perspective it seems useless to attempt to justify our revulsion against cannibalism on solely rational grounds, as for instance Martha Nussbaum has tried.<sup>20</sup>

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<sup>14</sup> *Aanhangsel Handelingen II* 2011/12, nr. 1426, answer 5 and 6.

<sup>15</sup> *Aanhangsel Handelingen II* 2011/12, nr. 1901, answer 1.

<sup>16</sup> *Idem*, answer 3.

<sup>17</sup> By MPs Haverkamp (CDA) and Dijkgraaf (SGP) (see *Aanhangsel Handelingen II* 2011/12, nr. 1426 and nr. 1901).

<sup>18</sup> Just like mad cow disease originates in cows being fed the remains of cows, the so-called 'kuru disease', with which the Fore people in New Guinea were contaminated, originates in humans eating the human remains of their loved ones. For an interesting account, see: W. Anderson, *The Collectors of Lost Souls. Turning Kuru Scientists into White Men*, Baltimore: Johns Hopkins University Press 2008.

<sup>19</sup> As Dutch philosopher Van Tongeren also argued in his comments on the televised cannibalism (see M. van Dijk, "Het taboe op kannibalisme", *Trouw*, 21 December 2011).

<sup>20</sup> Nussbaum 2004, *supra* note 10.

Nussbaum seems to agree that cannibalism is problematic, yet she argues that our only truly moral objections go back to either the corpse mutilation or the murder that precedes the cannibalistic act, and not the cannibalism itself. She thereby denies that the revulsion or disgust most feel for cannibalism has any moral, let alone, legal value. This raises the question of how Nussbaum views the existing prohibitions of corpse mutilation. According to her corpse desecration is wrong “because the treatment of the corpse is the perfectly legitimate concern of whoever holds it as property, whether the state or private individuals.”<sup>21</sup> With “private individuals” Nussbaum is primarily referring to the relatives and loved ones of the deceased. In other words, according to her corpse mutilation is wrong to the extent that it violates the property rights that the survivors and the state have on corpses.

Nussbaum seems relieved that through her approach “we need not take any stand on the metaphysical issues connecting corpse and person”.<sup>22</sup> Yet to speak of the relatives as the ‘owners’ of the deceased person’s corpse seems like a rather reductive understanding of what most of us mean by “respect for the dead”. The human body and human corpse may not have the status of full-fledged persons. Nonetheless, they also represent more than ordinary objects of property rights.<sup>23</sup> Moreover, through her property approach of human corpses she is not able to explain why cannibalism would be wrong when people explicitly request to be eaten post-mortem, or when the family ‘owner’ of the corpse wishes to engage in cannibalistic activities with his deceased ‘property’. Finally, one can wonder whether Nussbaum really evades the metaphysical question. Her perspective seems to reflect a certain metaphysical conception of the relation between body and person after all: a dualistic vision according to which person and body are disconnected in such a way that bodies can be perceived as property. Interestingly, this seems at odds with her own views of human dignity as the dignity of *embodied* human beings.<sup>24</sup>

Nussbaum’s struggle reveals that it is hard, if not impossible, to express possible objections against cannibalism in terms of a violation of rights, liberties or the harm principle. The classic liberal vocabulary is ill-suited to express the deeply rooted cultural and symbolic values with which the human body has been vested since long. From a liberal perspective one could argue that individuals should be free to donate their flesh for meat consumption, or even have a right to do so, since they have the last say about what happens to their own bodies. In Mill’s famous words, “over himself, over his own body and mind, the individual is sovereign.”<sup>25</sup>

Should we therefore conclude that there is no basis in law for prohibitions of cannibalism? That conclusion would be too easy. Mill’s viewpoint, though at the heart of liberal political philosophy, does not completely correspond with legal practice, especially where aspects of physical integrity are involved.<sup>26</sup> Similar shortcomings can be detected in the Minister’s approach to the cannibalistic TV programme. In fact, there are grounds to argue that different aspects of the cannibalistic activities amount to criminal behaviour. In the following subsections I explore these shortcomings in more detail (III.2 en III.3). Additionally, I argue

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<sup>21</sup> Idem, pp. 155-156.

<sup>22</sup> Idem, p. 155.

<sup>23</sup> See on these questions B. Edelman, *Ni Chose, ni Personne. Le Corps Humain en Question*, Paris: Hermann Éditeurs 2009. In the third part of his book Edelman addresses the question of the status of human corpses. See also A. Campbell, *The Body in Bioethics*, London: Routledge 2009.

<sup>24</sup> See for instance M.C. Nussbaum, *Frontiers of Justice. Disability, Nationality, Species Membership*, Cambridge/ London: Harvard University Press 2006, p. 132.

<sup>25</sup> J.S. Mill [1859], *On Liberty*, London: Penguin 1985, p. 141.

<sup>26</sup> This is one of the main themes of my dissertation. See B.C. van Beers, *Persoon en Lichaam in het Recht. Menselijke Waardigheid en Zelfbeschikking in het Tijdsperk van de Medische Biotechnologie*, The Hague: BJU 2009.

that the Minister missed an important objection that even liberals in Mill's tradition may offer against the TV show (III.4).

### III.2 Dwarves, Cage-fighters, Sodomasochists and Cannibals

In criminal law, consent is only accepted to a limited degree as a defence to criminal charges. Murder and battery are punishable, even if they take place at the explicit request of the victim. Especially when someone's physical integrity is at stake, the principle of *volenti non fit iniuria* ("one cannot be wronged by that to which one consents") does not apply without reservations in law. Similarly, human dignity is often interpreted in law as a principle that protects subjects against degradation and objectification, even when these subjects consent to their own degradation or objectification. In such cases the State protects these individuals against themselves. This line of reasoning has led to controversial legal decisions and actions.<sup>27</sup> Much-discussed examples are the legal restrictions on dwarf tossing,<sup>28</sup> cage fighting and violent forms of sadomasochism.<sup>29</sup>

Interestingly, the German Supreme Court (*Bundesgerichtshof*) applied the same logic in its decision in an actual case of cannibalism. The facts of this case have been widely published. Armin Meiwes, later known as the 'Rotenburg cannibal', found his voluntary victim through the internet. It was the express wish of the victim not only to be killed and eaten by Meiwes, but also to have a taste of his own flesh before his death. In its so called *Kannibalen-Urteil*<sup>30</sup> the *Bundesgerichtshof* qualified Meiwes' killing and cannibalism as punishable acts, despite the victim's consent.<sup>31</sup> As to the cannibalistic aspects, the *Bundesgerichtshof* considered that the legal prohibition to desecrate a human corpse is an expression of "*das Pietätsgefühl der Allgemeinheit*".<sup>32</sup> In other words, a collective value, that is not open to personal interpretation. Due to one's inalienable human dignity, and one's membership of the human race ("*die Würde des Menschen als Gattungswesen*"<sup>33</sup>) no one has the right to have his or her corpse eaten after death.

Some claim that in a liberal society consensual crimes are a *contradictio in terminis*. How can one speak of crime or harm when the 'victim' does not consider him- or herself aggrieved in any way? Moreover, prohibiting consensual behaviour can interfere with the prospective victim's personal autonomy when he or she is fully aware of the possible risks. However, limits to the aforementioned *volenti*-principle are more broadly accepted when it comes to medical procedures.

<sup>27</sup> For more examples, see chapters 1 and 2 of D. Beyleveld en R. Brownsword, *Human dignity in bioethics and biolaw*, Oxford: Oxford University Press 2001 and chapter 3 of my dissertation: Van Beers 2009, supra note 17.

<sup>28</sup> The French *Conseil d'État* famously ruled that dwarf tossing is a violation of human dignity and thus contrary to public order. See CE ass. 27 October 1995, Recueil Dalloz 1996, Jur. p. 177 (*Commune de Morsang-sur-Orge* and *Ville d'Aix-en-Provence*). See also Human Rights Committee UN 26 July 2002, Case 854/1999 (*Wackenheim v. France*).

<sup>29</sup> The European Court of Human Rights (ECtHR) has been confronted twice with the question whether the conviction of sadomasochists for assault and battery constitutes a violation of the right to respect for private life (art. 8 ECHR). See: *Laskey, Jaggard and Brown v. United Kingdom*, Judgment of 19 February 1997 ECtHR and *K.A. and A.D. v. Belgium*, Judgment 17 February 2005 ECtHR.

<sup>30</sup> *Bundesgerichtshof* (BGH) 22 April 2005, 2 StR 310/04.

<sup>31</sup> The German Constitutional Court (Bundesverfassungsgericht) has upheld Meiwes' conviction for murder, see: BVerfG 7 October 2008, BvR 578/07 at: [http://www.bverfg.de/entscheidungen/rk20081007\\_2bvr057807.html](http://www.bverfg.de/entscheidungen/rk20081007_2bvr057807.html) (accessed on 2 April 2012).

<sup>32</sup> *Bundesgerichtshof* (BGH) 22 April 2005, 2 StR 310/04, at 34.

<sup>33</sup> *Ibid*, at 35.

### III.3 The Difference Between Patients and ‘Consumers’

This brings me to the second objection against the Minister’s legal view, which concerns the surgeon’s role in the cannibalistic TV event. Although informed consent is a requirement to any surgical procedure, consent in itself cannot justify such a procedure, as lawyer Spong also pointed out in the TV programme. For instance, if after careful consideration somebody would request a surgeon to amputate his healthy limbs, broadly recognised medical standards of care would not allow said surgeon to perform this amputation.<sup>34</sup>

In the same vein, the Royal Dutch Medical Association (KNMG)<sup>35</sup> and the Dutch Association for Aesthetic Plastic Surgery<sup>36</sup> have declared to disapprove of the plastic surgeon’s participation in the cannibalistic dinner. As the chairman of the latter association put it: “The Hippocratic oath demands a medical reason for an operation. In case of plastic surgery that can also be a psychological reason. But this particular operation serves no purpose at all, except the desire for high ratings. My colleague should not have participated in this show.”<sup>37</sup> In other words, medical interventions are only allowed when they serve medical purposes. They are not meant for entertainment purposes, let alone consumption purposes.

This conclusion may strike as odd in an age in which TV programmes on medical interventions, plastic surgery and surgical ‘makeovers’ abound. However, in most of these shows the interests of the patients still seem to prevail over the possible entertainment value of these interventions. The TV audience is made witness to a medical procedure that would or could have also taken place outside the gaze of the camera. In the case of the Dutch TV cannibals this is radically different. The surgical procedure is performed solely and especially for broadcasting purposes. Without the TV audience, both TV presenters would have never subjected themselves to the surgery.

When an operation is performed that does not accord with the care standards of the medical profession, and thereby does not serve a ‘medical’ purpose, this operation can legally qualify as assault. In short, in case of surgical interventions the patient’s will is not enough to justify this violation of the patient’s physical integrity. A medical purpose and approach are indispensable to perform the surgery (the so-called medical exception).

### III.4 The Lonely Cannibal

Lastly, even if existing law were to reflect the libertarian view of one’s body as one’s property, the question what one is allowed to do with one’s body in public is still left open. For example, although having sex in itself is not prohibited, it is prohibited to have sex in public places, or to put pornographic images on billboards. Such prohibitions can be based on a liberal approach. Since pornography and nudity can be seriously offensive to some, individuals should have the possibility to choose whether they want to view such images, rather than be confronted with them without any warning.

Remarkably enough, the ultraliberal philosopher Joel Feinberg uses precisely the case of public voluntary cannibalism as a test case for his ‘offense principle’ in part II of his classic work ‘The Moral Limits of the Criminal Law’. He asks us to imagine “a human flesh-eater

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<sup>34</sup> This is the case with people that suffer from body integrity identity disorder (BIID). Amputations have been performed on BIID-patients, but not without consequences for the surgeons involved. For more information see: J. Hari, “I’m having my wings done”, *Guardian*, 11 March 2002; and C. Elliott, “A new way to be mad”, *Atlantic Magazine*, December 2000.

<sup>35</sup> *Aanhangsel Handelingen II* 2011/12, nr. 1426, answer 3.

<sup>36</sup> D. Huffels, “Chirurgen tegen kannibalen”, *NRC Handelsblad*, 21 December 2011.

<sup>37</sup> *Ibid.*

who receives his dead bodies through donations or other legal means.”<sup>38</sup> Feinberg calls this imaginary character “the lonely cannibal”. According to Feinberg, liberals cannot deny the lonely cannibal the right to have this human flesh for dinner, since no one is harmed by his actions. According to this straightforward interpretation of Mill’s famous ‘harm principle’, liberals do not have any reason to prohibit cannibalistic activities, as long as all those involved are consenting. The radical implications of this liberal view become clear once we realise that under this liberal approach the Rotenburg cannibal would not be guilty of any crime, provided that the victim was completely sane.

But then Feinberg asks us to imagine the lonely cannibal in a range of different circumstances, as he reaches out to other people to join him in his cannibalistic dinners.<sup>39</sup> We now leave the domain of the harm principle and enter the domain in which the ‘offense principle’ may warrant legal limits to one’s freedom. According to Feinberg the harm principle and ‘offense principle’ are the only liberal grounds for interventions by criminal law. The ‘offense principle’ states that the prevention of serious offence is a good reason for criminal prohibitions. The question is, however, which of the lonely cannibal’s actions will qualify as ‘serious offense’.

In Feinberg’s opinion liberals cannot object to the cannibal inviting others by phone or mail (case 1), nor can they object to him advertising discreetly in newspapers (case 2). But the case changes when the advertisement is by means of “a garish neon sign” on the cannibal’s house (case 3), or on large billboards throughout the city (case 4). In the fifth and last case “the conspicuous signs are now illustrated graphically with paintings (say) of attractive men and women carving rump roasts out of a recognizably human corpse.” In his discussion of the last three cases, Feinberg argues that the graphic signs are more offensive than the non-graphic ones, and that the widespread billboards are more offensive than the sole neon sign, since the latter “is not likely to affect the visual environment as a whole.”<sup>40</sup>

How would Feinberg qualify the Dutch case of TV cannibalism? On the one hand, one could argue that a sixth category offense would have to be created to categorise the show. In some ways, live TV cannibalism is even more offensive than the graphic billboard with paintings of cannibalistic activity (case 5). What’s more, the show left no detail unseen, as the audience was made witness to the incisions in the operation room and the preparation of the flesh in the kitchen. On the other hand, the audience of a TV show is less ‘captive’ than the audience of billboards. When billboards are placed all over the city, it is almost impossible to avoid confrontation with the graphic images. A TV show, on the contrary, can be switched off at any time. The question remains however, whether an unsuspecting person, changing TV channels that night, might have been confronted with the cannibalistic images against his or her will. Since this show was shown on public television (by broadcaster BNN, a public broadcasting company that targets teenagers and young adults), broadcast at an hour in which many people are still watching television (9.40 PM), and advertisement trailers of the programme were shown in other programmes, I think it is not unfair to say that a considerable number of television viewers may have been caught off-guard. Moreover, erotic shows and commercials for sexual services, which are probably less offensive to most people than cannibalism, are broadcast in the Netherlands at a later hour, and only by commercial broadcasters. From that perspective, the two Members of Parliament had a relevant point when they asked the Minister whether she would question the public broadcaster on the

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<sup>38</sup> J. Feinberg, *Offense to Others (The Moral Limits of the Criminal Law, Volume II)*, Oxford: Oxford University Press 1985, p. 70.

<sup>39</sup> *Ibid.*

<sup>40</sup> *Idem*, p. 71.

controversial contents of its show. The Minister, however, answered that it would be censorship to “draw up minimum requirements based on decency or public order.”<sup>41</sup>

#### IV. The Biomedical ‘Consumption’ of Human Flesh

In the preceding section three arguments have been offered against the Minister’s accommodating approach to TV cannibalism. Nevertheless, one possible argument in favour of allowing such items on TV has remained unexplored so far. This argument was also made by Spong, the criminal defence lawyer present in the studio during the cannibalistic meal. In his view people have been overreacting to the cannibalistic TV show, since it is undeniable that “we live in a fundamentally cannibalistic society.”<sup>42</sup> To illustrate his point he mentioned the Catholic consumption of sacramental bread and the practice of organ transplantation. Why should we be upset about the Dutch TV cannibals, when we are allowing and even encouraging people to donate their body parts after death?

Spong is right to some extent. The taboos with which human corpses and bodies are vested, and which go back to the beginning of human civilisation, seem to be making place for more utilitarian approaches to the human body. According to these approaches it is a relic of ancient times to view the human body as an inalienable, unchangeable and indivisible part of one’s person. Since the rise of biomedical technologies human body parts and materials have acquired a new medical and scientific value.<sup>43</sup> Organs and blood can be donated, stem cells and tissues can be used as resource for advanced therapy medicinal products, bones can be recycled as therapeutic implants, and blood plasma can be turned into a variety of pharmaceutical products.

Although one of the effects of these developments is a certain instrumentalisation of the human body, this effect is generally considered to be outweighed by the spectacular (potential) achievements of biomedical science in the struggle against disease. Through biomedical technologies such as stem cell therapy and tissue engineering lives may be saved and illnesses cured. Therefore, if one wishes to call these biomedical technologies cannibalistic, as Spong does, they would be so in only a very limited way. After all, the biomedical ‘consumption’ of human flesh merely serves medical and therapeutic purposes. In that sense the medical exception can be recognised in biomedical regulation too.

Moreover, many taboos surrounding the human body remain, despite technological developments. Some taboos even seem to be revitalised by biomedical regulation. For example, in most legal systems human embryos can only be used for a limited number of medical and scientific goals. Thus it would be illegal to use embryos for beauty treatments or, to stay close to the main theme, for food. Their human origin prevents us from reducing these semi-objects to purely exploitable resources, even though such an exploitation has become technologically possible.

The characterisation of biomedical approaches as cannibalistic is therefore misplaced, as is Spong’s comparison between TV cannibalism and organ donation. Nevertheless, several alarming developments indicate a rise of “new forms of late modern cannibalism” or “neo-cannibalism”, in the words of the renowned medical anthropologist Nancy Scheper-

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<sup>41</sup> *Aanhangsel Handelingen II* 2011/12, nr. 1901, answer 2.

<sup>42</sup> In TV show *De Wereld Draait Door*, see: <http://dewerelddraaitdoor.vara.nl/media/83200> (accessed 2 April 2012).

<sup>43</sup> For interesting observations and more sources on the interconnections between actual cannibalism and the early rise of biomedical science, see: Anderson 2008, *supra* note 12.

Hughes.<sup>44</sup> Due to biomedical developments, the human body has not only become the object of enormous medical and scientific interest but also of economic interest.<sup>45</sup> As a result, the body is increasingly viewed as a consumer good and tradable commodity. This process of radical commodification of the human body raises profound concerns. Since people do not only 'have' their bodies, but also 'are' their bodies to a certain extent, approaches to the human body as a collection of marketable goods can have dehumanising effects. Such dehumanising effects are brutally illustrated by practices of organ trafficking.

Most agree, therefore, that financial incentives may rob organ 'donations' of their voluntary character, especially when one is desperately poor. Additionally, a market in human body parts could lead to new social inequalities worldwide. It does not come as a surprise then that in law the human body and its elements are traditionally governed by the rules of the gift, and not the rules of the free market. Organs, blood and embryos are only allowed to be 'donated', not sold. According to the internationally recognised 'principle of non-commercialisation',<sup>46</sup> alienation of human body parts and materials should be motivated altruistically, not economically.

Lately, this legal principle seems to be questioned in light of the promises of biomedical technology. However, once economic motives to alienate body parts start to dominate over altruistic ones, biomedical consumerism and consumption are not far off. More importantly, when individuals and their bodies are seen as merely exploitable resources, comparisons with cannibalism are no longer that far-fetched.

## V. From TV Cannibalism to Body Worlds

Although the Dutch case of TV cannibalism is quite exceptional, the arguments explored in this article may also apply to other examples. At the time of writing, advertisement posters for the latest show of Body Worlds, "the original exhibition of real human bodies", are hanging all over the city of Amsterdam. These enormously popular and lucrative anatomical exhibitions feature human corpses and body parts that have been 'plastinated'.<sup>47</sup> Body Worlds was the first in its kind, but now a whole range of competitors are offering travelling anatomical shows too. How would the arguments used in the discussion about the TV cannibals apply to Body Worlds? Just like the case of TV cannibalism, one of the most controversial aspects of exhibitions like Body Worlds is the question whether such use of human body materials serves purely medical, scientific and educational purposes, or rather commercial and entertainment ones. To many it is clear that these exhibitions are part of a highly lucrative industry, with corpse factories,<sup>48</sup> plastination 'products' offered for sale online and deliberately controversial presentations of the preserved corpses, such as in copulating poses.<sup>49</sup> Accordingly, the French Supreme Court (*Cour de Cassation*) judged that exhibitions of human corpses for commercial purposes are contrary to the respect, dignity and decency with which human remains should be treated.<sup>50</sup>

<sup>44</sup> N. Scheper-Hughes, 'Bodies for sale – Whole or in parts', in: N. Scheper-Hughes & L. Wacquant, *Commodifying Bodies*, London: Sage Publications 2002, p. 1.

<sup>45</sup> E.g. D. Dickenson, *Body Shopping. Converting Body Parts to Profit*, Oxford: Oneworld Publications 2009; C. Waldby and R. Mitchell, *Tissue Economies. Blood, Organs, and Cell Lines in Late Capitalism*, Durham/London: Duke University Press 2007.

<sup>46</sup> See for instance art. 21 Convention on Human Rights and Biomedicine; and art. 3 (2) Charter of Fundamental Rights of the European Union.

<sup>47</sup> Plastination is a preservation technique that has been developed by Gunther von Hagens, the anatomist that also developed the exhibition.

<sup>48</sup> D. Barboza, "China Turns Out Mummified Bodies for Displays", *New York Times*, 8 August 2006.

<sup>49</sup> D. Itzkoff, "Cadaver Sex Exhibition in Germany Is Criticized", *New York Times*, 7 May 2009.

<sup>50</sup> Civ. 1<sup>st</sup>, 16 September 2010, *Recueil Dalloz* 2010, p. 2754, note B. Edelman.

What makes the associations with cannibalism stronger is that some of the anatomical shows, such as 'Bodies: the Exhibition' and 'Our Body: The Universe Within',<sup>51</sup> probably feature(d) the bodies of executed Chinese prisoners. These corpses are said to have been purchased from the Chinese government by Chinese plastinating factories that supply the plastinated cadavers to the companies organising these exhibitions.<sup>52</sup> These companies have admitted that they do not have any proof of the prisoner's or family's permission. Therefore, there are good grounds to fear that some of the cadavers were originally acquired on a black market in corpses.

This does not prevent the shows from taking place in major cities worldwide. If one does not feel comfortable with these shows, one can of course simply stay away. However, these exhibitions are widely advertised events. In Amsterdam, the posters for the current exhibition of Body Worlds are hanging in all sorts of public places, ranging from shopping streets to bus and tram stations and even the VU University Cafeteria. Both the bus passengers and the students having lunch cannot choose to evade these posters, and are inevitably offered glimpses of the plastinated corpses. In fact, for anyone moving around in Amsterdam, including children, it is almost impossible to avoid the pictures of these highly controversial shows.

Whereas one could be hesitant as to what Feinberg would have thought of the Dutch TV cannibals, the posters for Body Worlds seem to be the perfect example of the aggressive, widespread and graphic depictions against which the offense principle protects unwilling audiences. Liberal cities would do well to ban these advertisements from their streets and let their citizens choose for themselves whether they want to be part of late modern cannibalism or would rather be left alone.

## Conclusion

The Dutch TV cannibals probably aimed at breaking the last taboo. Yet the ensuing public debate on cannibalism offered illustrations of the way in which the human body and its elements are still surrounded by taboos. Secularisation processes notwithstanding, these taboos and symbolic representations of the human body are to a certain extent also present in contemporary law. This can explain why the victim's consent is not accepted as a defence to charges of murder or battery, and why the patient's consent in itself is not enough to justify surgical procedures. These constraints to one's personal freedom are hard to justify from a traditional liberal perspective. In a way, the recent debate about the TV cannibals thus reveals the shortcomings of a purely Millsian approach to the legal status of the human body and derived materials.

However, even from a liberal perspective it is clear that the show is problematic. Although the cannibals may not have harmed anyone directly by their actions, it is another thing to then also broadcast these cannibalistic activities on public television. Obviously, the cannibalistic activities have the potential to offend many people. Also from a traditional liberal perspective, the prevention of serious forms of offense can be a good reason to prohibit certain kinds of behaviour, as Feinberg has convincingly argued. Thus, to a certain

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<sup>51</sup> At the moment Body Worlds is able to guarantee that all the corpses originate from willing donors, see [http://www.koerperspende.de/en/body\\_donation/the\\_body\\_donation.html](http://www.koerperspende.de/en/body_donation/the_body_donation.html) (accessed on 10 May 2012).

However, most of these donors consented to scientific use of their bodies after death. It is contested whether plastination can qualify as such a scientific aim.

<sup>52</sup> A. Jacobs, "Cadaver Exhibition Raises Questions Beyond Taste", *New York Times*, 18 November 2005.

extent, the offense principle also allows liberals to acknowledge the taboos surrounding the human body.

Finally, the case of the Dutch TV cannibals raises the question to what extent taboos should be reflected in law. For several reasons, one has to be careful to translate the cultural prohibitions of taboos into legal prohibitions. Behind the facade of taboos harmful irrationalities, conservative prejudices or repressive stereotypes may be lurking. However, biomedical regulation has shown that taboos can also have a certain value to regulation. The new hybrids of humans, animals, products and persons with which we are increasingly confronted by biomedical developments, have made questions on the status of these new objects inescapable. How should we view human embryonic stem cells, artificial human tissues, brain dead patients or human-animal hybrids for instance? All of these hybrids mingle the foundational categories and distinctions with which most taboos are intertwined, such as the distinctions between life and death, humans and animals and persons and objects. According to Habermas, this involves “a dedifferentiation, through biotechnology, of deep-rooted categorical distinctions which we have as yet, in the description we give of ourselves, assumed to be invariant.”<sup>53</sup> Within the regulation of these transgressive technologies new meanings and understandings of each of these categories are needed. In that process some taboos will perhaps be broken. Yet other taboos may be reinterpreted in the cultural and political process of giving meaning to the new creations of biomedical technology. If we want to apply these technologies with respect for our humanity and dignity, discussion on the founding categories of human civilisation seems indispensable.<sup>54</sup>

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<sup>53</sup> J. Habermas, *The Future of Human Nature*, Cambridge: Polity Press 2003, p. 42.

<sup>54</sup> *Ibid.* See also A. Supiot, *Homo Juridicus. Essai sur la fonction anthropologique du Droit*, Paris: Seuil 2005; and C. Labrusse-Riou, ‘L’Humain en Droit: Réalité, Fiction, Utopie?’, in: C. Hervé and J.J. Rozenberg (eds.), *Vers la Fin de l’Homme?*, Brussels: De Boeck 2006, pp. 157-176.