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## THE SENTIENCE CRITERION

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### INTRODUCTION

We are very grateful to the editors of the Boston University Law Review for organizing, and to Professors Buchanan, Camosy, Cassuto, and Tuerkheimer for participating in this online symposium on our book *Beating Hearts: Abortion and Animal Rights*. We are also deeply humbled by the too-kind praise that the contributors to the symposium bestow on our book. To avoid simply repeating what our interlocutors say more artfully than we can, in this essay, we focus mostly on areas of disagreement. However, we agree with a great many of the insightful observations that the symposium contributors elaborate, including some of the critical commentary. Had we read their analyses before the book went to press, no doubt it would have been better for the rethinking and revising they would have engendered.

### SYNOPSIS

Readers of this symposium issue who have not read *Beating Hearts* may find themselves in something like the position of a classics scholar trying to reconstruct the views of a pre-Socratic philosopher whose works are known only through fragments discussed by others.<sup>1</sup> At best, one can hope for an incomplete understanding. Accordingly, we begin with a brief summary of the main ideas of our book.

*Beating Hearts* addresses a puzzle: Why is there so little overlap between the pro-life and animal rights movements, given that both aim to protect innocent life from human violence? Our answer is that at their respective cores, the movements give very different moral weight to membership in the human

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<sup>1</sup> See, e.g., G.S. KIRK, *HERACLITUS: THE COSMIC FRAGMENTS* 13 (1954) (“There is probably no evidence” of the thought of Heraclitus “earlier than Plato,” whose work post-dates that of Heraclitus by about a century.).

species. Although of course all movements are big tents, most people who identify as pro-life regard membership in the human species as a sufficient condition for a right to live, while most people who endorse animal rights deny that being human is a necessary condition for a right to live and a right against being made to suffer to serve others' preferences. The difference that humanity makes or does not make resolves the puzzle.

As a normative matter, *Beating Hearts* sides with the animal rights position, even as we acknowledge that the best defense of this position has some overlap with the pro-life movement's concern for the interests of at least some human fetuses. In place of humanity, we argue that *sentience*—the ability to have subjective experiences, including pain and pleasure—grounds the most basic rights. Most reasonably complex animals, including nearly all of the animals used by people for food and fiber, are sentient, as are fetuses after some point in their development. (The exact point, like so much about abortion, is subject to political as well as scientific contestation.) Thus, we contend that the killing and use of animals and the abortion of sentient fetuses raise serious moral questions, whereas the vast majority of abortions, which take place before fetal sentience, do not cause harm to any being capable of being harmed and therefore do not trigger the same kind of moral concerns.

*Beating Hearts* is partly a book about moral duties. We argue that, except in extreme circumstances, humans have a duty to refrain from consuming animal products—that is, a duty to be vegan. We also argue that, absent a good reason (such as a substantial health risk), women ought not to abort sentient fetuses. But *Beating Hearts* is also a book about the law. Not all moral duties are, *ipso facto*, legal duties, and so, following familiar feminist arguments justifying an abortion right even assuming a fetus is a moral person,<sup>2</sup> we conclude that women ought not ever be compelled by the state to remain pregnant. For most of pregnancy, that judgment entails a right to abortion, but sufficiently late in pregnancy we allow that a woman who wishes to vindicate her interest in bodily integrity might be required to do so by inducing labor and delivery of a healthy baby.

We also express skepticism about many efforts to regulate the treatment of animals raised for human use. We are not “pro-choice” with respect to the consumption of animal products in the way that we are pro-choice with respect to abortion, because we do not think that there are reasons of principle why animal consumption should be left to individual conscience. Rather, our skepticism about using the law to better the lot of animals is rooted in our sense of what is possible as a practical matter. We acknowledge that ameliorative reforms of the sort that sometimes win support in referenda—such as those setting minimum cage sizes for laying hens and gestating sows—could do some good for the animals to whom they apply and could even play a role in catalyzing more meaningful reforms. However, because nearly all animal welfare measures accept the basic premise of the animal exploitation industries—that human

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<sup>2</sup> See, e.g., Judith Jarvis Thomson, *A Defense of Abortion*, 1 Phil. & Pub. Aff. 47 (1971).

exploitation of animals is morally acceptable if not gratuitously cruel—we express doubt about the likelihood that the sorts of measures that can garner support in our current era would lead to meaningful and lasting change.

That admittedly tentative assessment has implications for how animal rights activists ought to spend their time and energy. We explore those implications and other common questions that face the animal rights and pro-life movements in Part II of *Beating Hearts*. In addition to considering the prospects of gradualism in each movement, we address two particularly fraught questions: First, when, if ever, should activists use gory images to shock people into recognizing the horrors of the challenged practices? And second, given the magnitude of the evils as seen by activists, why should violent means of attacking those evils be categorically rejected?

Although *Beating Hearts* stakes out positions, it also acknowledges that people of good faith will reach other conclusions and that some puzzles—such as how to care for purpose-bred animals who cannot simply be set loose in nature—have no perfect solution. This brief summary necessarily omits a great deal of the ways in which our views recognize the strength of competing claims. In responding to particular points made by the participants in this symposium, we hope to give some further indication of the book’s nuances.

DEBORAH TUERKHEIMER

(1) Professor Tuerkheimer worries “that affording legal status to a fetus has effects outside the abortion context.” For example, “[p]regnant women . . . have been prosecuted for using drugs, refusing a Caesarian section, having sex outside a doctor’s recommendation and attempting suicide.” Although *Beating Hearts* does not propose that fetuses should be given *legal* status, Tuerkheimer fears that the same sort of collateral consequences that follow from legal recognition could follow even from our categorical judgment that abortions of sentient fetuses, absent a good reason, are immoral. In essence, Tuerkheimer cautions against too quickly judging the decisions of women—and the women who make those decisions—when we have not walked in their shoes. She describes the movement to destigmatize abortion, as exemplified by the social media phenomenon #shoutyourabortion, as an effort to change “the social conditions under which abortion is accessed” and, we infer from her essay, also to change the conditions under which it is discussed.

Whether destigmatizing abortion will work in the same way that, say, coming-out narratives advanced the cause of LGBT rights, is the sort of question that we address in Part II of *Beating Hearts*. It is ultimately empirical, but we can hazard a guess based on the similarities and differences between LGBT rights and abortion rights.

“It is possible that #ShoutYourAbortion will persuade people that,” just as there is nothing wrong with being lesbian, gay, bi, or trans, “there is likewise nothing wrong with having an abortion. We are social creatures, including with respect to our moral judgments. Seeing that otherwise respected and ethical women have abortions could lead people to regard abortion as a harmless and

thus blameless act.”<sup>3</sup> Yet it is also possible that, after hearing the powerful stories of women who chose abortion under difficult circumstances, many people will conclude that abortion should be permitted *only* under such circumstances.

Or they may not be moved at all, reasoning that while there are powerful reasons why women choose abortion, there are even more powerful reasons why they should not choose abortion. Acting on same-sex attraction or choosing to live in accordance with one’s gender identity harms no one, whereas from the pro-life perspective, abortion kills a human being. Indeed, from our own perspective, some abortions—those of sentient fetuses—kill a being worthy of moral respect. The coming-out comparison may fail because it analogizes harmless conduct to what many people regard as extremely harmful conduct.

We nonetheless agree with what we take to be Tuerkheimer’s point that, quite apart from legality, even in evaluating the morality of the abortion of a sentient fetus, one ought to be careful to understand the full context in which moral decision making occurs. Insofar as she cautions humility, point taken. But if Tuerkheimer is read to suggest that no one can judge the morality of anyone else’s decisions about abortion or anything else, we respectfully disagree.

We are not moral relativists or moral skeptics who doubt that moral propositions have truth value. *Beating Hearts* aims to show that torturing and killing animals without an extraordinarily strong justification is *really* wrong, not just that such acts make us feel bad or that they are wrong for us but could be right for people whose cultures teach other values. Likewise, we regard our argument that some abortions are immoral but that government nonetheless may not rightfully forbid abortion as correct, not just correct for us.

(2) Tuerkheimer very gently hints at a critique of our skepticism about the efficacy of legal measures that aim to make very modest improvements in the conditions under which animals are raised and killed. She says that “the promise of legal rights is that they alter relations between those who have newly been given rights and those who have long possessed them,” so, she asks, “why not create legal rights to be free of cruelty?” Perhaps the law will eventually reshape norms and behavior with respect to animals, as it sometimes has done in other areas.

Perhaps, but we have good reason to be skeptical. State and federal laws already forbid what they define as cruelty to animals; yet these legal prohibitions have long co-existed with almost unfathomable amounts of animal cruelty. Indeed, they arguably enable such cruelty, insofar as the existence of legal regulation falsely assures consumers that they do not need to worry about the harm to which their consumption of animal products contributes.

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<sup>3</sup> Michael C. Dorf, “Shout Your Abortion” Movement Raises Questions About the “Coming Out” Analogy, VERDICT (Oct. 7, 2015), <https://verdict.justia.com/2015/10/07/shout-your-abortion-movement-raises-questions-about-the-coming-out-analogy> [https://perma.cc/959R-SXFX].

To be clear, we are *not* saying that just because a law fails to fully achieve its purpose, it ought to be abandoned. We would not advocate the repeal of laws forbidding murder on the ground that murder still occurs. Indeed, we do not even advocate repeal of existing animal-welfare laws, nor do we *oppose* the enactment of new ones. Our claim, rather, is that given existing social norms, the welfare laws and the mechanisms for enforcing them will by design be largely ineffective and, as Tuerkheimer correctly reads us to say, risk reinforcing the normalcy of consuming animal products. Thus, we conclude that activists for animals wondering how to spend their time would do best to promote veganism.

Whether that choice is correct, we acknowledge in *Beating Hearts*, is ultimately an empirical question about which there are many more claims than useful data. We would like to see questions about the efficacy of animal welfare measures and other approaches answered through careful, unbiased research. In the meantime, we will spend our time and energy promoting veganism. Because we know that many people who share our long-term goals have concluded that welfarist legal reforms usefully promote these goals and thus spend their time and energy advocating such reforms, we hope that our skepticism proves to be unwarranted.

DAVID CASSUTO

Professor Cassuto devotes his essay to a problem that occupies us in Chapter 4 of *Beating Hearts*: If, as Jeremy Bentham suggested, the capacity to suffer grounds the interest of animals in being well treated,<sup>4</sup> does it follow that painlessly killing an animal for food or fiber does no harm to the animal, so long as he or she was previously well treated? As Cassuto notes, we base the challenge we pose for ourselves on an argument from the Greek philosopher Epicurus, who contended that death should not be feared because once one is dead one ceases to be, and thus cannot be harmed.

In *Beating Hearts*, we suggest that the *endowment effect* might explain why having been sentient at one point entails a right to continued existence, even if (as we illustrate with a bizarre but real case of a hiker who was temporarily frozen) one is not currently sentient but has the capacity to regain sentience. The endowment effect explains why we conclude that sentient humans (including sentient human fetuses) and sentient animals have an interest in continued existence while pre-sentient human fetuses do not.

To be sure, the endowment effect is a psychological phenomenon. Even assuming that it is universal among humans, we do not know whether it is experienced by other animals, although experimental evidence suggests that it

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<sup>4</sup> See JEREMY BENTHAM, AN INTRODUCTION TO THE PRINCIPLES OF MORALS AND LEGISLATION 310 n.1 (Dover Pub. 2007) (1789) (“The question is not ‘Can they reason?’ nor ‘Can they speak?’ but ‘Can they suffer?’”).

is.<sup>5</sup> (So too does our admittedly anecdotal evidence from observing the dogs with whom we live. Once one of them has a toy in his or her possession, he or she will growl if one of the other dogs attempt to take it away, while expressing no aggression if another dog takes the same toy when it is not in his or her possession.) Still, it might be objected that unless there is reason to believe that all sentient beings experience the endowment effect, the effect cannot serve as the basis for a morality governing all sentient beings.

That objection, however, would confuse the endowment effect as a psychological phenomenon with what we call in *Beating Hearts* a *moralized* endowment effect, according to which depriving a being of something harms that being in a way that failure to bestow a benefit does not. That view is widely shared. It is closely related to the act/omission distinction in deontological morality, and it is reflected in property law and many other domains of law. And because the moralized endowment effect is a moral proposition rather than a psychological phenomenon, it can extend to beings who do not believe in it—and may lack the intellectual capacity to form propositional beliefs—because true moral propositions can apply to such beings as moral patients even if they are not moral agents.

For his part, Cassuto responds to the Epicurean objection by pointing to what he calls “the arc of being,” according to which in “each instant we aggregate all of our prior instants into the whole of our individual selves.” Yet if taken literally, this is too strenuous a condition for moral rights. Does anybody aggregate *all* of his or her prior instants into the whole of his or her self? And even if the condition is relaxed considerably, it would seem to allow that people suffering serious memory loss due to Alzheimer’s disease or some similar condition lack an interest in continuing to live. We agree with Cassuto that in order for a being to have an interest in continued life, there must be some minimal sense in which the being extends from the present into the future. Otherwise, the interest any of us—human or otherwise—has in the existence and wellbeing of our future selves is no greater than the interest we have in the existence and wellbeing of strangers. But we think that the necessary continuity is supplied by something less grand than an arc of being.

We acknowledge, however, that there may be no thoroughly satisfying answer to the question of what, if anything, makes a being the same being over time. Cassuto fairly characterizes this response to the Epicurean problem as a punt. After canvassing difficulties faced by all theories that attempt to establish continuity of existence over time, we say in *Beating Hearts* that perhaps the Epicurean challenge cannot be met, but that if it cannot be met, that is as true for humans as it is for non-human animals. And because no one but a moral monster would regard the Epicurean challenge as license to kill and eat other humans, even if the killing occurs unexpectedly and painlessly, neither should it license even unexpected and painless killing of non-human animals.

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<sup>5</sup> See Venkat Lakshminaryanan et al, *Endowment Effect in Capuchin Monkeys*, 363 Phil. Trans. R. Soc. B. 3837 (2008).

It is also worth remembering that the Epicurean challenge is more theoretical than real. It has little purchase as a justification for so-called happy meat, because even the animals whose products are touted as “cage free”, “free range,” and “grass fed” almost never lead anything resembling happy lives and rarely die painlessly and unexpectedly.

CHARLES CAMOSY

(1) Without minimizing our disagreements with Professor Camosy, we happily acknowledge that we share considerable common ground. We are delighted that many Catholics and other people of faith have taken up the issue of animal ethics in earnest. We share Camosy’s view that the more voices speaking up for animals, the better. To be sure, we would prefer if the focus of attention were animal exploitation itself, rather than “factory farming,” because the profound offense against animals that we humans commit is farming their bodies for flesh and secretions at all. Just as Camosy and others who oppose abortion oppose it regardless of how “humanely” it might be performed, so we would like to see the same commitment to refraining from violence against animals, to veganism, no matter the type of farm at issue. We were glad to see Camosy cite Matthew Scully, who is by his own description a “pro-life, vegan conservative.”<sup>6</sup>

(2) We also agree with Camosy’s critique of “personal freedom” as a catch-all basis for moral or legal rights, even at the expense of the interests of vulnerable beings. Yet even as we agree that only such a radical libertarianism can justify consuming (and thus contributing to the demand for) the products of animal torture and slaughter, abortion rights need not be justified in strongly libertarian terms, nor do we think that general-purpose libertarianism provides the best justification for abortion rights.

Instead, a right to abortion rests first on the recognition that pregnancy places special demands on women, and thus gives rise to special claims of freedom from outside interference. As a leading Supreme Court opinion explains, a pregnant woman “is subject to anxieties, to physical constraints, to pain that only she must bear.”<sup>7</sup> Freedom to eat a turkey rather than a Tofurky sandwich simply is not comparable to freedom from having one’s body physically occupied by another entity (whether we call that entity a prenatal child or a fetus).

Moreover, prior to sentience that other entity is not a vulnerable being but the material substrate that can in the future become a vulnerable being. Once it does become sentient, there is a true moral conflict, but the woman who decides to terminate is not simply asserting her “personal freedom and choice.” She is taking her body back from what is, from her valid perspective, an unwanted intrusion into it. One need not be a general-purpose libertarian or embrace

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<sup>6</sup> See Matthew Scully, *Pro-Life, Pro-Animal*, NAT’L REV. (Oct. 7, 2013), <http://www.nationalreview.com/article/359761/pro-life-pro-animal-matthew-scully> [<https://perma.cc/QT48-AYV7>].

<sup>7</sup> *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 852 (1992).

existing power hierarchies to oppose the government's efforts to compel her to endure this intrusion, any more than one would need to be a general-purpose libertarian to oppose efforts to force healthy citizens to become kidney donors against their will. That some people make libertarian arguments for abortion does not diminish the feminist arguments about equality and bodily integrity that others—upon whose work *Beating Hearts* relies—make for the same right.

Camosy wonders how we can support legal abortion even in the tragic case of post-sentient fetuses, given that we do not support legal infanticide. The answer does not turn on the *moral status* of born babies versus unborn sentient fetuses, but on what is required to sustain them. To outlaw infanticide is simply to forbid an act of violence. By contrast, to outlaw abortion is to demand that women endure the extreme burdens of pregnancy. If a woman is unwilling to endure those burdens, we believe it is wrong for the state or others to compel her to do so.

Camosy similarly confuses our views about what may be legitimately demanded of women with views about the status of the beings on whose behalf demands may be made when he asserts, as though it were a critique of our view, that “[o]ne couldn’t simply toss one’s newborn baby out in the winter cold because she was, say, hampering one’s ability to finish school.” Quite right, but that is not because a newborn baby has a higher moral status than a sentient fetus. It is because a sentient fetus makes very substantial demands on exactly one pregnant woman (albeit innocently), whereas many people—including adoptive parents—could provide for the newborn child in Camosy’s grisly hypothetical example.

(3) A different sort of confusion underlies Camosy’s charge that our allowance for favoring members of our own species undercuts our support of abortion rights. He states that such a preference should apply to pre-sentient human fetuses as well. Yet nowhere in *Beating Hearts* do we state (nor do we believe) that a preference for one’s own species is *generally* justified. Rather, our discussion of species favoritism arises in the course of expounding the act/omission distinction. We say that in conveying supererogatory benefits, one may choose on whom to bestow those benefits for reasons that would be illegitimate bases for decisions to inflict harm on others. You may give an iPhone to your child and to no one else’s child, but you may not decide to refrain from violence only against your own child while you inflict violence on other peoples’ children. Your obligation to refrain from harm applies equally to those you favor and to those you do not favor, whether you favor them because they are in your family or because they are in your species.

Camosy, by contrast, appears to think that species distinctions are more broadly permissible. Indeed, he partly rests his egalitarian views about humans on his inegalitarian views about the relation between humans and other animals. He states that “all living members of the species *Homo sapiens* count the same,” because picking a trait to distinguish those with full moral status would potentially lead to the conclusion that a rat is as entitled to freedom from violence as a human being. We agree with the conclusion but not with the

implicit claim that it is a *reductio*. Indeed, the trait approach makes eminent sense in helping to distinguish between human organisms that are and that are not entitled to moral consideration. On what basis would we equate a human embryo with a newborn baby? It cannot be the fact that they are both “human,” because that would constitute preferring members of our own species simply because they are members of our species, and Camosy says he rejects this sort of preference. It also begs the question of what makes humans worthy of moral consideration.

We would characterize a pre-sentient fetus or embryo as not having rights because it has yet to attain the status of a being with interests, including the interest in living and in avoiding pain; that is simply what it means not to be sentient. We would look to the trait of sentience, and we are fully comfortable with the implication that a nonhuman animal such as a rat qualifies for moral consideration under this view. To say that a rat counts “exactly the same” as a human, as Camosy says that we would be forced to say, is in some sense meaningless, because rats and humans demand different things of us. The rat asks only that we leave her alone, that we stop breeding her and utilizing her in experiments and hurting her unnecessarily. Humans ask far more of us, as they are part of our society and will thus wish to be educated, to vote, to blog, etc.

(4) We welcome and embrace Camosy’s no-doubt sincere feminism. We gladly echo his call to reject the “default model for a person participating in our culture” as “someone who cannot get pregnant.” This attitude needs fixing, but until the world changes, it is unjust to impose the consequences of a patriarchal society uniquely on women who consequently find themselves facing unwanted pregnancies. Furthermore, even in a more feminist world, women will sometimes want to terminate their pregnancies and from their perspective, the disease model of pregnancy that Camosy rejects is quite apt. The unwanted embryo is literally a parasite taking nutrients from the woman and otherwise intruding upon her and distorting her body. That will not change just because society may become more accepting of pregnant women who do want to be pregnant.

We share Camosy’s goal of uniting the pro-life movement for human fetuses with the pro-life movement for animals. People who are pro-life for fetuses ought to be vegan and therefore refrain from violence against a very vulnerable population, animals. Likewise, it is incumbent upon those who are pro-life for animals—those who are necessarily ethical vegans—that we take seriously the moral claims of post-sentient fetuses and therefore do what we can to make post-sentience abortion less frequent, without coercing women to remain pregnant. We can do this by increasing access to birth control and by making it easier for women to have early abortions so that the post-20-week terminations that Camosy mentions become even rarer than they already are. We also agree with Camosy that society should be structured in a way that removes the sexist disincentives to remain pregnant. In each of these non-coercive ways, we would support joining hands with our pro-life-for-fetuses friends, including Camosy.

## NEIL BUCHANAN

(1) In his generous commentary, Professor Buchanan describes the pro-life challenge to the vegan position as a kind of “dare,” implying that people who make the charge that veganism entails a pro-life position with respect to abortion are not really concerned about animals or fetuses, but are merely using our supposed inconsistency against us. Thus, he contends, *Beating Hearts* is useful in part as a rejoinder to what opponents of animal rights intend as a *gotcha* question.

We have little doubt that Buchanan is right about the motivation of many of our interlocutors. We also think he is right in his implicit reminder that one ought to understand the motives of those with whom one argues, the better to attempt to persuade them or others. At the same time, however, our approach in *Beating Hearts* assumes interlocutors of good faith, for two reasons: first, because, as Professor Camosy’s essay reminds us, there are serious thoughtful people who derive their pro-animal and their pro-life positions from the same basic values; and second, because an important question is worth addressing regardless of why it is posed.

(2) Readers who are not (yet) vegan might think that one line of argument Buchanan develops takes aim at a straw man. Surely no thoughtful people really say that because it is theoretically possible to eat a small number of animal products in ways that do not cause harm to animals, it is therefore morally acceptable to eat the animal products actually on offer even though doing so contributes to the demand for more such products and thus the infliction of more suffering on animals. We want to assure such readers that this rationalization is common, even from people who are generally thoughtful and sophisticated. As Buchanan’s analogies show, there is nothing to the objection. But that does not mean that no one makes the objection.

Although we fully agree with Buchanan’s response to the rationalization he discusses, we think that the premise of the rationalization raises an interesting question that speaks to a practical question. The question is whether veganism is really a moral obligation. Suppose that someone does not rationalize eating cruelty-driving animal products based on the possibility of harmless consumption of animal products. Suppose, instead, that that someone restricts her consumption of animal products to circumstances in which there is no obvious connection to harm to animals.

How might someone go about doing that? So-called freegans consume animal products only when doing so does not contribute to demand for animal products. For example, they might eat meat or cheese that would otherwise be thrown away or that actually was thrown away. Consuming animal products only in this way might seem harmless; indeed, insofar as it uses products that would otherwise go to waste, it seems downright virtuous. Nonetheless, we think that freegan consumption of animal products raises three concerns.

First, eating or otherwise using animal products, even as a freegan, shows disrespect for animals. Just as nearly all readers would find it abhorrent to eat human flesh—even if it would have no adverse health effects and would

otherwise go to waste—so a deep respect for animals entails moral disgust for products created from the torture and slaughter of animals.

Second, freeganism has social consequences. Suppose you find a useable leather couch that someone has left on the sidewalk as trash (or intentionally to be “freecycled”). If you take it into your home and then have guests sit on it, you risk sending a message that leather goods are more broadly morally acceptable. You certainly would not bring home a couch made of the skin of murdered humans, even if you found it as abandoned property. By participating in even what looks like animal exploitation, you undermine your own argument against it.

Third, our actions have behavioral implications even for ourselves. Partly this is a matter of reinforcing or undermining our ideals. We think that most people would not take the human-skin couch even if they never intended for anyone else to see it, because taking it would communicate internally that one is the sort of person who regards such artifacts as lacking moral significance. The problem could well be more serious still with food, because we eat so often. A person who eats dairy cheese pizza with pepperoni when there is a remaining slice from a box that would otherwise be thrown out, even when no one else is looking, desensitizes herself to eating dairy and meat. Even if she knows cognitively that there is an important moral distinction between the pizza slice that does not contribute to demand for animal products and the pizza slice that does, consuming the former sort may reduce her inhibitions against consuming the latter. Ultimately, it is of course an empirical question whether freegans, “flexitarians,” and others who do not fully commit to veganism are more or less likely than full-time vegans to stick with the program, and we thus welcome careful research. For the time being, our own experience and observations lead us to think that in this area more is less: it is easier to avoid animal products all of the time than only most of the time.

(3) We end our own essay where Buchanan begins his. Buchanan says that our book shows that it is “morally required . . . to believe simultaneously that abortion should not be banned and that consuming animal products is immoral.” He is right as a matter of logic. As we noted above in response to Professor Tuerkheimer, we are not moral relativists or moral skeptics.

Yet even as Buchanan accurately characterizes the meta-ethical stance of *Beating Hearts*, we would emphasize that our tone is tentative. *Beating Hearts* is less an effort to beat back the opposition than to engage in a dialogue. A famous speech by Judge Learned Hand captures what we regard as the essence of our enterprise. In it, Hand described the spirit of liberty, although, as we noted above in our response to Camosy, we are not libertarians in any strong sense. Still, Hand’s language is evocative, and thus we invite the reader to substitute for Hand’s discussion of the spirit of liberty the spirit of inquiry or perhaps the spirit of compassion. Hand said:

The spirit of liberty is the spirit which is not too sure that it is right; the spirit of liberty is the spirit which seeks to understand the mind of other men and women; the spirit of liberty is the spirit which weighs their

interests alongside its own without bias; the spirit of liberty remembers that not even a sparrow falls to earth unheeded . . . .<sup>8</sup>

Likewise, we are not too sure that we are right; we seek to understand the minds of other men and women; we try to weigh their interests—and the interests of all sentient beings—alongside our own without bias; and we hope for a day when even mere mortal humans consistently heed the interests of the nonhuman creatures with whom we share this Earth.

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<sup>8</sup> Learned Hand, *The Spirit of Liberty* (May 21, 1944), reprinted in *THE SPIRIT OF LIBERTY: PAPERS AND ADDRESSES OF LEARNED HAND* 189, 190 (Irving Dilliard ed., 1953).