

## **KRAUSE'S ETHICS AS A PRECURSOR TO CAPABILITY THEORY**

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**Abstract.** There are striking parallels between current capability theories and the moral philosophy of Karl Christian Friedrich Krause (1781–1832). This article reconstructs central arguments of Krause's ethics and correlates them with passages from the works of Martha Nussbaum, showing that such similarities extend not only to what, substantially, is being professed in either philosophy but also, procedurally, to the question of how the respective moral conclusions are reached. As Krause correlates responsibility with capability, the article begins with an examination of Krause's idea of *human* — as compared to *animal* — *freedom* and their respective normative implications. Next, the argument is extended to the social responsibilities of personal freedom, before widening the scope to the cosmopolitan plane. The paper then briefly examines historical links between Krause and current capability theorists, before concluding.

### **I. INTRODUCTION**

This paper investigates the moral philosophy of Karl Christian Friedrich Krause (1781–1832) as a precursor of notions prominent in the capability theories of Martha Nussbaum and Amartya Sen. In what follows, I reconstruct core arguments of Krause's practical philosophy and portray, via citations in the footnotes, its proximity to the works of Martha Nussbaum. Something similar could be done in regard to Amartya Sen since the extant differences between Nussbaum and Sen are of no import to the topics under investigation here. Yet, while Sen is focused on economic and political theories, Nussbaum's writings were selected here since they provide a broader portfolio of tenets for comparison.

Beyond a doxographic tally, this article sets out to reconstruct how not only in its outcomes but also in premises and procedure Krause's philosophy resembles today's capability theories. This reconstruction takes departure from Krause's concept of *human* — as compared to *animal* — *freedom* (2). Then, the societal dimension of human freedom is worked out (3), before extending the perspective to the cosmopolitan plane (4). The article last proffers a sketch of historical links between the works of Krause and his disciples and current-day capability theorists (5), before concluding (6).

A deliberate limitation of this paper is that parallels between Krause's and Nussbaum's pedagogics have been addressed only in passing (in section 5). The overlap between both positions in this field is so broad as to warrant a paper of its own, which is why I have chosen not to go into much detail here.

### **II. HUMAN VERSUS ANIMAL FREEDOM**

In early nineteenth century philosophy, nature was often reduced to a mere object of human activity.<sup>1</sup> A case in point is Fichte's philosophical transformation of nature into nothing but a "material for duty"<sup>2</sup> –, which was strongly criticized by Krause.<sup>3</sup> Krause instead looked for human freedom less in opposition

1 Ernst Bloch, "Naturrecht und menschliche Würde", in *Collected Works, Vol. II:* (Suhrkamp, 1969), 86, 91.

2 Johann G. Fichte, *Gesamtausgabe der Bayerischen Akademie der Wissenschaften* (frommann-holzboog, 1964), 353.

3 K.C.F. Krause, *Vorlesungen über Grundwahrheiten der Wissenschaft, zugleich in ihrer Beziehung zu dem Leben. Nebst einer kurzen Darstellung und Würdigung der bisherigen Systeme der Philosophie, vornehmlich der neuesten von Kant, Fichte, Schelling*

to, subordination of, or independence from, but rather in interdependency with, nature.<sup>4</sup> From this relational approach results Krause's sustainability-orientated concept of human freedom. People should treat nature with care if, through the use they make of their freedom, they do not want to negate its biological preconditions.<sup>5</sup> Reason enough, Krause felt, for everyone to demand the "protection, maintenance and support of nature".<sup>6</sup>

Beyond that anthropocentric concern, Krause also pondered how to appreciate nature's intrinsic value — according to its own laws and "in its inner freedom".<sup>7</sup> His was not, however, a biocentric but rather an anthropo-relational position: Neither does nature reveal the intrinsic value of life forms at first glance, nor can human beings, situated within nature, observe it neutrally from outside, so to speak.<sup>8</sup> In order to convey to the human consciousness, via its own categories, what it ought to recognize in nature, Krause sought to incorporate into his philosophy the different degrees of freedom realized by other life forms, i.e. their capacities for self-organization.<sup>9</sup> Humans are to acknowledge non-human life as existing for its own freedoms and purposes, in an honest effort not to instrumentalize it right away for human ends.<sup>10</sup> Via a phenomenology of the different levels of freedom displayed in nature, one is to apportion to them corresponding axiological status.

Krause distinguished "three essentially different levels of finite reasonable personality" through their attendant grades of freedom.<sup>11</sup> The lowest level of freedom describes beings whose self-direction is merely physical. The next level incorporates cognition of an instrumentally rational type. The third level of morally reasonable freedom refers to individuals who, on top of that, are able to evaluate and alter their preferences critically. "As to these three levels of reasonableness," Krause declared, "we find all three of them presented in certain ways by the human beings upon this earth."<sup>12</sup> While, for large parts of their lives, most people operate from the second level, i.e. in the mode of self-assertive finality, to a human being in the full sense belongs, as a *potential* at least, also that highest level of self-critical freedom.

The essential difference between animal and human freedom lies in the human ability to govern oneself by self-transcending norms. Animals do not have that capacity, since "they determine themselves only according to sensory finite impulses and not according to eternally infinite concepts [...]".<sup>13</sup> Krause concluded: Within "the sphere of our experience" the human being appears to be the only form of life to whom belongs freedom in this comprehensive sense<sup>14</sup> and, consequently, also a particular responsibility as well as certain prerogatives.<sup>15</sup>

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und Hegel, und der Lehre Jacobi's. Für Gebildete aus allen Ständen (Dieterich, 1828), 455. All English translations of Krause's writings are my own.

4 Compare this with Martha Nussbaum's claim that "we insist that need and capacity, rationality and animality, are thoroughly interwoven, and that the dignity of the human being is the dignity of a needy enmattered being" Martha C. Nussbaum, *Frontiers of Justice: Disability, Nationality, Species Membership* (Harvard Univ. Press, 2006), 278.

5 K.C.F. Krause, *Das System der Rechtsphilosophie — Vorlesungen für Gebildete aus allen Ständen* (Brockhaus, 1874), 58.

6 K.C.F. Krause, *Vorlesungen über Naturrecht oder Philosophie des Rechts und des Staates* (Schulze, 1892), 135.

7 K.C.F. Krause, *Anleitung zur Naturphilosophie. I. Deduction der Natur, II. Anleitung zur Construction der Natur* (Gabler, 1804), 82.

8 Martha C. Nussbaum, *Creating Capabilities: The Human Development Approach* (Harvard Univ. Press, 2011), 161.

9 K.C.F. Krause, *Der Erdrechtsbund an sich selbst und in seinem Verhältnisse zum Ganzen und zu allen Einzeltheilen des Menschheitens* (Schulze, 1893), 36. Compare this with Martha Nussbaum's claim that "what is relevant to the harm of diminishing freedom is a capacity for freedom or autonomy. It would make no sense to complain that a worm is being deprived of autonomy, or a rabbit of the right to vote", Nussbaum, *Frontiers of Justice: Disability, Nationality, Species Membership*, 360.

10 Krause, *Der Erdrechtsbund an sich selbst und in seinem Verhältnisse zum Ganzen und zu allen Einzeltheilen des Menschheitens*, 35–36 and compare this with Nussbaum, *Frontiers of Justice: Disability, Nationality, Species Membership*, 355.

11 Krause, *Das System der Rechtsphilosophie — Vorlesungen für Gebildete aus allen Ständen*, 245.

12 *Ibid.*, 245.

13 Krause, *Das System der Rechtsphilosophie — Vorlesungen für Gebildete aus allen Ständen*, 172.

14 K.C.F. Krause, *Lebenlehre oder Philosophie der Geschichte zur Begründung der Lebenskunstwissenschaft* (Dieterich, 1904), 115.

15 K.C.F. Krause, *Abriss des Systemes der Philosophie des Rechtes oder des Naturrechts* (Dieterich, 1828), 183. Compare with Nussbaum: "The species norm is evaluative, as I have insisted; it does not simply read off norms from the way nature actually is. But once we have judged that a capability is essential for a life with human dignity, we have a very strong moral reason for promoting its flourishing and removing obstacles to it. The same attitude to natural powers that guides the approach in the

To be clear, the distinctive position of humans is not owed to *actual* mental accomplishments. Krause held that often, on a merely behavioral level, highly intelligent animals might not differ all that much from such human beings who — due to capability deprivation, e.g., lack of education, or by choice — live unguided by moral reason. What counts for the species differentiation is rather the *potential* of moral self-determination: an ethical freedom germane to human beings alone. Humans and animals, as a result, differ not only *gradually* from one another but also *categorically* “in their entire essence”.<sup>16</sup>

Unlike animals, human beings with disabilities are *reflectively autonomous* beings. Their disability may inhibit the *articulation* of their human nature, yet it is not a *privation* of it.<sup>17</sup> Disability therefore in no way entails a loss of human dignity<sup>18</sup> and so people with disabilities — “however deformed and deficient, however stunted, however mentally or physically ill, however immersed in misery” they may be<sup>19</sup> — must always be treated with and from respect for their species-typical dignity.<sup>20</sup> Society, and ultimately the state,<sup>21</sup> must assist them to make the best possible use of their freedom.<sup>22</sup> This social support is not conditioned by returns, as it belongs to the dignity of all human beings that their rights be unconditionally granted to them.

Now because [...] the possession of the rights that are supposed to be awarded to him are in no way originally legally founded upon what he does in return, they are rather established by the constantly available demands of reason, so can the same unfortunate [person] [...] in no respect be or become legally incapacitated because of his misfortune.<sup>23</sup>

By way of legal representation, society must assure that rights can be also enjoyed by those who are unable to demand them. This guardianship should — as readily as possible — render itself superfluous.<sup>24</sup> Inasmuch as a child can adequately handle its own freedom, it should be emancipated; the same holds true, *mutatis mutandis*, of people with disabilities who only partially, never totally, fall under the care of others.<sup>25</sup> Liberation on behalf of autonomy is both the legitimation and limitation of all legal representation.<sup>26</sup>

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case of human beings guides it in the case of other animals” Nussbaum, *Frontiers of Justice: Disability, Nationality, Species Membership*, 347.

16 Krause, *Lebenlehre oder Philosophie der Geschichte zur Begründung der Lebenskunstwissenschaft*, 338.

17 Ibid., 172. Compare this with Nussbaum’s statement: “A child with severe mental impairments is actually very different from a chimpanzee, though in certain respects some of her capacities may be comparable. Her life is lived as a member of the human community and not some other community; it is there that she will either flourish or not flourish. The possibilities of flourishing in that community are defined around species norms. [...] the fact, that their disabilities create impediments to species-typical ways of flourishing creates a moral imperative for society: such impediments should be treated and cured, where possible, even if the treatment is expensive.” Nussbaum, *Frontiers of Justice: Disability, Nationality, Species Membership*, 363f.

18 Krause, *Das System der Rechtsphilosophie — Vorlesungen für Gebildete aus allen Ständen*, 247.

19 Krause, *Lebenlehre oder Philosophie der Geschichte zur Begründung der Lebenskunstwissenschaft*, 180.

20 Compare this with Nussbaum’s position that “a focus on dignity is quite different, for example, from a focus on satisfaction. Think about debates concerning education for people with severe cognitive disabilities. It certainly seems possible that satisfaction, for many such people, could be produced without education. [...] A focus on dignity will dictate policies that protect and support agency, rather than choices that infantilize people and treat them as passive recipients of benefit”, Nussbaum, *Creating Capabilities: The Human Development Approach*, 30.

21 K.C.F. Krause, *Grundlage des Naturrechts, oder philosophischer Grundriss des Ideales des Rechts. Erste Abtheilung* (Schulze, 1890), 189.

22 K.C.F. Krause, *Grundlage des Naturrechts oder philosophischer Grundriss des Ideales des Rechts. Zweite Abtheilung* (Schulze, 1890), 189. Compare with Nussbaum’s argument that “we should bear in mind that any child born into a species has the dignity relevant to that species whether or not it seems to have the “basic capabilities” relevant to that species. For that reason, it should also have all the capabilities relevant to the species, either individually or through guardianship”, Nussbaum, *Frontiers of Justice: Disability, Nationality, Species Membership*, 347.

23 Krause, *Grundlage des Naturrechts oder philosophischer Grundriss des Ideales des Rechts. Zweite Abtheilung*, 149.

24 Krause, *Das System der Rechtsphilosophie — Vorlesungen für Gebildete aus allen Ständen*, 459.

25 Ibid., 458f.

26 Krause, *Vorlesungen über Naturrecht oder Philosophie des Rechts und des Staates*, 155.

Still, animals are *conscious* beings, as “we assume that they know themselves in certain ways, sense themselves, and strive to maintain and perfect their selfhood according to sensory ends.”<sup>27</sup> A glance at our own pets, teaches us for example:

that these beings show all those idiosyncrasies which express the lowest level of the spiritual personality; they feel themselves, feel pleasure and pain, they have representations and fantasy, as is well known they determine themselves according to social concepts, since within various individuals of the same species they nevertheless recognize the same species, e.g., just as every man distinguishes himself as man, so every animal accordingly discerns its own species. They are therefore intellectual beings [...].<sup>28</sup>

Against the *zeitgeist* of his era, Krause expressly recognized animals as partially *free* beings<sup>29</sup> and, accordingly, as *persons*;<sup>30</sup> although as persons of a lower rank,<sup>31</sup> since, unlike humans, animals are, to the best of our knowledge, incapable of the ethical finality that self-reflective freedom entails and, accordingly, lack those rights which adhere to this particular level of freedom.<sup>32</sup>

As soon as one considers the animal as a self-inward being possessing self-consciousness and self-feeling, one demands that man should also be just towards animals. But no one will talk about an animal justice which animals themselves practice. That is because one does not consider the animal capable of grasping the idea of justice in order to make justice its end. Thus, one says: Man should be the guardian of all animals and man considers the entire animal kingdom as in need of legal representation and rightly so.<sup>33</sup>

Animals have different status; albeit not because they cannot themselves demand or defend their rights — also children, minors, and the mentally ill are often unable to do so<sup>34</sup> — but due to their specific level of freedom. As a result, animals possess different, not weaker rights. Just as human rights, animal rights are *unconditionally* to be granted; no reciprocity is needed.<sup>35</sup> Legal guardianship for animals shall assure that the “conditions of the completion of their purely animalistic life are guaranteed.”<sup>36</sup> Animals are, that is, entitled to a self-determined life according to their natural capacities.<sup>37</sup>

Humans do have rights against animals, though. Norms which humans, as representatives of the highest degree of autonomy on earth, may enforce upon others of the same standing, e.g., the elimination of unlawful violence, may also be enforced upon animals, for example, when these (like predators) violate higher level (i.e., human) rights.<sup>38</sup> If we are allowed to curtail our shared environs for the protection of everyone’s freedom, then we are also allowed to limit the roving range of animals insofar as their rightful interests are otherwise respected. Or, humans may utilize animal waste products just as they do

27 Krause, *Das System der Rechtsphilosophie — Vorlesungen für Gebildete aus allen Ständen*, 172. Compare that with how Nussbaum define “animals as agents, not receptacles of pleasure or pain” Nussbaum, *Creating Capabilities: The Human Development Approach*, 160.

28 Krause, *Das System der Rechtsphilosophie — Vorlesungen für Gebildete aus allen Ständen*, 246.

29 In this way, also, Krause’s position foreshadows Nussbaum’s which likewise recognizes not only human beings, but rather “a wider range of types of beings who can be free”, Nussbaum, *Frontiers of Justice: Disability, Nationality, Species Membership*, 88.

30 “Right exists without regard to the person. No person has a privilege (no one anticipates the right of another), but every person has his or her right. This is just as true [...] of the simplest (*qui capere valet, capiat!*) animals” Krause, *Vorlesungen über Naturrecht oder Philosophie des Rechts und des Staates*, 114.

31 Krause, *Lebenlehre oder Philosophie der Geschichte zur Begründung der Lebenkunstwissenschaft*, 115ff.

32 Krause, *Vorlesungen über Naturrecht oder Philosophie des Rechts und des Staates*, 149f.

33 Krause, *Das System der Rechtsphilosophie — Vorlesungen für Gebildete aus allen Ständen*, 205.

34 Krause, *Vorlesungen über Naturrecht oder Philosophie des Rechts und des Staates*, 149.

35 For Nussbaum’s very similar arguments, see Nussbaum, *Frontiers of Justice: Disability, Nationality, Species Membership*, 354–65.

36 Krause, *Das System der Rechtsphilosophie — Vorlesungen für Gebildete aus allen Ständen*, 246.

37 Krause, *Vorlesungen über Naturrecht oder Philosophie des Rechts und des Staates*, 136f.

38 Claus Dierksmeier, “Krause on Animal Rights and Ecological Sustainability” 1 (2020): 5–19.

with their own (hair, nails, etc.).<sup>39</sup> Krause also thought it possible to use animal labor — “for reasonable purposes”<sup>40</sup> — similarly to human labor as long as one did not distress the animal in the process.<sup>41</sup>

May one eat animals, though? Only insofar, Krause thought, as “without such killing humanity on earth could not exist, unless some other kind of nourishment were found”.<sup>42</sup> Most people, did, however, already have access to adequate vegetarian food, he contended, so as to vitiate the permission to negate the natural freedom of animals for nutritional purposes — and thus the animals’ “right to bodily well-being, to absence of pain, and to the requisite nutrition” should prevail.<sup>43</sup>

While animals, if left alone, are quite capable to take care of their own welfare, to obtain food, to avoid pain, and so to realize their natural rights themselves, human interference with the animal biospheres alters that condition.<sup>44</sup> If one takes animals out of their original habitat, or limits it, and so impairs their capacity for self-care, a duty to species-appropriate care ensues.<sup>45</sup> This conclusion, Krause hoped, concurred with a pervasive “feeling favoring justice for animals,” which “cannot be eradicated” from the human mind.<sup>46</sup>

What about plants? Since they do not display a conscious form of freedom,<sup>47</sup> plants cannot attain a comparable status. Still, they enjoy protective rights. Nothing, not even inorganic nature, Krause held, can be regarded as worthless; everything might, after all, serve somehow, someone, at some time, as a means towards freedom.<sup>48</sup> Today’s sustainability protects tomorrow’s liberty. Anyone disturbing the environment has to make the case that they thus create more or better freedom than they annihilate.<sup>49</sup> Arbitrary destruction and excessive exploitation of nature are consequently interdicted: “Things are to be consumed, that is destroyed through their use, (a) only under the condition that they can promote higher forms of life (a higher amount of the good or a higher good); and (b) only if the damage which they inflict on living beings could otherwise not be prevented”.<sup>50</sup> In an anticipation of the *precautionary principle*,<sup>51</sup> Krause shifted the burden of proof from the defendants of nature upon those who wish to instrumentalize it.

39 Martha Nussbaum brings up similar ideas in connection with education: “A good education is sensitive to the individuality of the child, and is not rigid and above all not cruel or humiliating, but it does have goals and standards, and exacting through respectful discipline is often appropriate in leading children toward those goals. Why should we think differently about non-human animals?”, Nussbaum, *Frontiers of Justice: Disability, Nationality, Species Membership*, 377.

40 Krause, *Vorlesungen über Naturrecht oder Philosophie des Rechts und des Staates*, 137.

41 Krause, *Das System der Rechtsphilosophie — Vorlesungen für Gebildete aus allen Ständen*, 246. Likewise Nussbaum: “The analogue to work rights is the right of laboring animals to dignified and respectful labor conditions”, Nussbaum, *Frontiers of Justice: Disability, Nationality, Species Membership*, 400.

42 Krause, *Lebenlehre oder Philosophie der Geschichte zur Begründung der Lebenskunstwissenschaft*, 300.

43 Krause, *Das System der Rechtsphilosophie — Vorlesungen für Gebildete aus allen Ständen*, 246.

44 Krause, *Lebenlehre oder Philosophie der Geschichte zur Begründung der Lebenskunstwissenschaft*, 117. Compare that with Nussbaum’s claim that “large numbers of animals live under human’s direct control: domestic animals, farm animals, and those members of wild species that are in zoos or other forms of captivity. Humans have direct responsibility for the nutrition and health care of these animals [...]. Animals in the “wild” appear to go their way unaffected by human beings. But of course that can hardly be so in many cases in today’s world. Human beings pervasively affect the habitats of animals, [and] our pervasive involvement with the conditions of animal flourishing gives us such responsibilities now.”, Nussbaum, *Frontiers of Justice: Disability, Nationality, Species Membership*, 373f.

45 Krause, *Vorlesungen über Naturrecht oder Philosophie des Rechts und des Staates*, 136. Nussbaum argues similarly that “As for the idea that we should leave animals alone when they live in “the wild,” this naively romantic naturalism ought to be rejected for today’s world. There is no habitat that is not pervasively affected by human action”, Nussbaum, *Creating Capabilities: The Human Development Approach*, 162.

46 Krause, *Vorlesungen über Naturrecht oder Philosophie des Rechts und des Staates*, 137.

47 Nussbaum, *Creating Capabilities: The Human Development Approach*, 158f.

48 Krause, *Abriss des Systemes der Philosophie des Rechtes oder des Naturrechts*, 182 and Krause, *Vorlesungen über Naturrecht oder Philosophie des Rechts und des Staates*, 139.

49 Francisco Querol Fernández, *La filosofía del derecho de K. Ch. F. Krause: Con un apéndice sobre su proyecto Europeísta* (Editorial Universidad Pontificia Comillas, 2000), 219–28. See Nussbaum’s position, *Frontiers of Justice*, 94, as well as, about the differentiation between plants and animals, Nussbaum, *Creating Capabilities: The Human Development Approach*, 158f.

50 Krause, *Vorlesungen über Naturrecht oder Philosophie des Rechts und des Staates*, 144.

51 United Nations Conference on Environment and Development, *Agenda 21, Rio Declaration, Forest Principles* (United Nations Press, 1992) and Daniel Steel, *Philosophy and the Precautionary Principle Science, Evidence, and Environmental Policy* (Cambridge

### III. SOCIETAL FREEDOM AND SOCIAL RESPONSIBILITIES

Unlike in contractarian theories, for Krause, people are owed assistance in their capability development due to their species-nature, not as a result of (real or hypothetical) contracts specifying reciprocal and symmetrical exchanges.<sup>52</sup> The state can by no means simply be thought of as a quasi-private insurance contract, extended to all citizens, for the mutual securitization of their possessions.<sup>53</sup> For every such contract is only valid provisionally and hypothetically, i.e. based upon the consenting volition and the persistent interest of the participants; it can in no way provide peremptory and categorical validity — and will fail to establish counterfactual entitlements.<sup>54</sup> On such shaky grounds, Krause felt, no state of law could be erected. The social compact should instead arise from a notion of human fellowship.<sup>55</sup>

The contractarian insistence upon symmetrical reciprocity was rejected by Krause even in its foremost domain, the sphere of civil law. In no instance, he held, does right commence simply *from* factual contracting. It is rather the case that everyone's original rights comprise a right *to* enter into contracts with others:

The validity of law can therefore not originally be based upon some kind of contract since every contract presupposes an arbitrary determination of the will. Choice (Willkür), however, is any determination of inner freedom which derives its determining grounds merely from the willing person as individual person. Law rather first gives to the free will the sphere of its choice and justifies it to move arbitrarily within its limits. For any contract to have legal force one has to presuppose the existence of rights in and through the state in order to enter into such a contract. In short, in the already established state it is possible to enter into rightfully binding contracts [...]. It is therefore a deep and dangerous misunderstanding to ground all rights, even the state, and all legally binding powers, upon contracts, upon so-called fundamental contracts, which have no legal force beyond said choice.<sup>56</sup>

Even within the realm of civil law, that is, contractual obligations do not automatically come to an end as soon as one party does not fully comply with the contract — an insight, by the way, in accord with today's juridical practices but foreign to contractarianism.<sup>57</sup>

For Krause, the unconditioned dignity of human life is — even for the respective persons themselves — strictly inviolable; it can neither be constituted, nor abridged by contracts, and must be respected everywhere, at any time, by everyone.<sup>58</sup> Consequently, in virtue of their personhood, “world citizen rights” are to be proclaimed for all human beings.<sup>59</sup> In order to specify these cosmopolitan rights,

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Univ. Press, 2014).

52 Krause, *Das System der Rechtsphilosophie — Vorlesungen für Gebildete aus allen Ständen*, 452ff. For a comparison with Nussbaum's position see in general Nussbaum, *Frontiers of Justice: Disability, Nationality, Species Membership*, 393f as well as, in particular, the following passages: “We do not have to win the respect of others by being productive. [...] Productivity is necessary, and even good; but it is not the main end of social life” (ibid., 160). The search for reciprocal advantage would simply be a “wrong account of the primary basis for social cooperation.” (ibid., 129).

53 Similarly, Nussbaum says “the capabilities approach denies that principles of justice have to secure mutual advantage [...]. Justice is about justice [...]. It is always very nice if one can show that that justice is compatible with mutual advantage, but the argument of principles of justice should not rest on this hope”, Nussbaum, *Frontiers of Justice: Disability, Nationality, Species Membership*, 89.

54 Krause, *Vorlesungen über Naturrecht oder Philosophie des Rechts und des Staates*, 133.

55 Compare with Nussbaum's claim that “we acknowledge, as well, that the kind of sociability that is fully human includes symmetrical relations, [...] but also relations of more or less extreme asymmetry; we insist that the nonsymmetrical relations can still contain reciprocity and truly human functioning”, Nussbaum, *Frontiers of Justice: Disability, Nationality, Species Membership*, 160.

56 Krause, *Der Erdrechtsbund an sich selbst und in seinem Verhältnisse zum Ganzen und zu allen Einzeltheilen des Menschheitens*, 39f.

57 See also Nussbaum's intensive critique of “contractualism” as such: “our dominant theories of social contract give us the wrong message. For centuries they have been giving us a defective story about why people get together to form a society”, Nussbaum, *Frontiers of Justice: Disability, Nationality, Species Membership*, 222; see also Nussbaum, *Creating Capabilities: The Human Development Approach*, 87.

58 Compare with Nussbaum's claim that “the approach espouses a principle of each person as an end. [...] The approach, however, considers each person worthy of equal respect and regard, even if people don't always take that view about themselves”, Nussbaum, *Creating Capabilities: The Human Development Approach*, 35.

59 Krause, *Grundlage des Naturrechts, oder philosophischer Grundriss des Ideales des Rechts. Erste Abteilung*, 28.

Krause took recourse to freedom's various levels of maturity and their concomitant forms of responsibility.<sup>60</sup> Individual life in society begins, following Krause, with “sensory freedom,” which takes its cues from context, habits, and customs.<sup>61</sup> On the next level of “rational freedom” individuals set about making themselves increasingly independent of their contexts which leads to the productive liberation of individual capacities, but — if overdone — also to social isolation. It is rectified by the highest level of human autonomy, “reasonable freedom,” which enables forms of coexistence surpassing interest-based connections by uniting people in the name of shared ethical aims.

An open society cannot, however, derive said ethical ends straightaway from certain moral or metaphysical doctrines (or ‘comprehensive conceptions of the good,’ as, following Rawls, Nussbaum puts it) and then simply go about to legislate their pursuit. Instead, society has to craft its legal norms to allow all citizens to strive for the good in their own, personal way. Hence Krause separates the *ethical* concept of freedom from its *legal* variant. He declares that “the essential form of human life itself is ethical freedom, that is one’s innermost choice of the individual good”<sup>62</sup> whereas legal freedom means freedom in which “everyone would have to possess a determinate outer sphere for the confirmation of his ethically free efficacy, in which sphere he can externally realize that which he internally acknowledges with ethical freedom as good and thus decides to realize.”<sup>63</sup> Legal freedom protects the outer realm and the individual capability for reasonable freedom; ethical freedom realizes it. The law should always enable, never enforce, the individuals’ ethical orientations.<sup>64</sup>

Where does this position Krause within the current debate? Against proponents of a merely ‘negative’ concept of freedom without any relation to the good, Krause would claim that “freedom is not aimless choice, not egotistic self-interest, not arbitrary lawlessness.”<sup>65</sup> At the same time, Krause did not simply champion a ‘positive’ concept of freedom, which orients human freedom at a single, determinate conception of morals.<sup>66</sup> Krause maintained that freedom is not committed to but one materially concrete good but instead directed to the abstract idea of the good which shall become specific through ends voluntarily pursued by human freedom. The law should go so far as to empower all to morally responsible freedom but not further.<sup>67</sup>

Not only the protection of factual liberties and possessions but also the counterfactual creation of personal capabilities and social opportunities is incumbent on the state.<sup>68</sup> In fleshing out this latter aspect of his legal philosophy, Krause derived a set of fundamental rights which foreshadowed much of the subsequent discourse on human rights, notably encompassing human rights of the first, second, and third generation, i.e. civic rights, rights to political participation, and to social as well as cultural inclusion. With a view to all material types or ‘generations’ of rights, one has, in Krause’s rendition, to discern additionally and on a formal plane between any and all *substantial* human rights (as first-level rights, so to speak) from a *procedural* ‘right to rights’ (as a second-level right) concerning the institutionalization of appropriate juridical safeguards for the former, and (as a third-level right) from *factual* empowerment

60 Krause, *Lebenlehre oder Philosophie der Geschichte zur Begründung der Lebenskunstwissenschaft*, 127ff.

61 This and the subsequent quotes within this paragraph are from Krause, *Das System der Rechtsphilosophie — Vorlesungen für Gebildete aus allen Ständen*, 441.

62 Krause, *Vorlesungen über Naturrecht oder Philosophie des Rechts und des Staates*, 254.

63 Krause, *Das System der Rechtsphilosophie — Vorlesungen für Gebildete aus allen Ständen*, 452f.

64 Krause, *Grundlage des Naturrechts oder philosophischer Grundriss des Ideales des Rechts. Zweite Abtheilung*, 166f.

65 Krause, *Der Erdrechtsbund an sich selbst und in seinem Verhältnisse zum Ganzen und zu allen Einzeltheilen des Menschheitens*, 9 K.C.F. Krause, *Erdrechtsbund*, 9.

66 Claus Dierksmeier, *Qualitative Freedom — Autonomy in Cosmopolitan Responsibility* (Springer, 2019), 122–27.

67 Krause, *Grundlage des Naturrechts oder philosophischer Grundriss des Ideales des Rechts. Zweite Abtheilung*, 19f.

68 Krause, *Grundlage des Naturrechts oder philosophischer Grundriss des Ideales des Rechts. Zweite Abtheilung*, 166f. See also Martha Nussbaum’s characterization of her own theory: Capabilities “are not just abilities residing inside a person, but also the freedoms or opportunities created by a combination of personal abilities and the political, social, and economic environment” Nussbaum, *Creating Capabilities: The Human Development Approach*, 20.

through, for instance, a “right to legal capability,”<sup>69</sup> which has to secure that everyone — directly or via representatives — “is capable of exercising his specific rights”.<sup>70</sup>

The radius of any one particular human right encompasses, following Krause, the right to cultivate oneself sufficiently so as to be able to exert this respective right autonomously. Thus, the realization of the freedom to cultivate and exert one’s own body, for instance, requires certain presuppositions: a reasonably intact environment,<sup>71</sup> hygienic housing, and access to health care, for example.<sup>72</sup> Accordingly, “the health of citizens” should become a “public concern.”<sup>73</sup> Similarly, rights to intellectual freedom comprise one’s intellectual cultivation and exertion. For what would be the point of the freedom of thought, Krause asked, if one “is unable to educate one’s mind and learn scientific truth”?<sup>74</sup> A right to free access to the sciences and arts is needed.<sup>75</sup> Without a minimal level of education, intellectual freedom hardly takes flight, which is why Krause derived a secondary right to education from the primary right to intellectual freedom,<sup>76</sup> considering, furthermore, whether “public educational institutions” were required to secure that education was available to all and remained politically impartial.<sup>77</sup> From the realm of intellectual education Krause transitioned to intellectual (notably, political) activities. Rights to the freedom of conscience and the freedom of thought should empower all citizens to participate freely in the intellectual life of their society.<sup>78</sup>

In this way, Krause gradually developed from the principle of freedom a comprehensive catalog of human rights — not unlike the capability list provided by Martha Nussbaum<sup>79</sup> —, which comprises the rights of work, health, association, sociality, rights concerning the intimacy of private life, safeguards for private and economic autonomy, access to education, and culture, among others.<sup>80</sup> This human rights catalogue embodies Krause’s concept of an emancipatory society wherein the freedom of everyone is promoted by the freedom and the efforts of all.

In order to assure such solidarity, property rights have to be tailored appropriately so as to balance the individual interest in a privatization of things with the concern for open access to objects as a means to freedom.<sup>81</sup> Krause accepted only a *relative*, not an *absolute* right to property.<sup>82</sup> Just as all persons have a right to freedom, all have a right freely to differentiate themselves from others (through merit and industry), i.e. to make their existence unequal, e.g., through the assets they acquire.<sup>83</sup> Nevertheless, not every inequality can be celebrated as an expression of freedom or praised as expressing an individual’s will to differentiation. Wherever material inequalities exist because equal opportunities were lacking, they rather point to a lack of freedom to be remedied.<sup>84</sup>

69 Krause, *Das System der Rechtsphilosophie — Vorlesungen für Gebildete aus allen Ständen*, 452f.

70 Krause, *Das System der Rechtsphilosophie — Vorlesungen für Gebildete aus allen Ständen*, 260f. Similarly Nussbaum states: “In other words, to secure a right to citizens in these areas is to put them in a position of capacity to function in that area.” And for that it is not sufficient that one grants certain rights to citizens only on paper; one must enable them to seize these rights: “They really have been given right only if there are effective measures to make truly capable of political exercise.” This, Nussbaum explains, entails “affirmative material and institutional support” Nussbaum, *Frontiers of Justice: Disability, Nationality, Species Membership*, 287.

71 Krause, *Das System der Rechtsphilosophie — Vorlesungen für Gebildete aus allen Ständen*, 483.

72 *Ibid.*, 498.

73 Krause, *Grundlage des Naturrechts oder philosophischer Grundriss des Ideales des Rechts. Zweite Abtheilung*, 169.

74 Krause, *Lebenlehre oder Philosophie der Geschichte zur Begründung der Lebenskunstwissenschaft*, 195.

75 Krause, *Grundlage des Naturrechts oder philosophischer Grundriss des Ideales des Rechts. Zweite Abtheilung*, 125.

76 *Ibid.*, 117.

77 *Ibid.*, 169.

78 Krause, *Das System der Rechtsphilosophie — Vorlesungen für Gebildete aus allen Ständen*, 481–83.

79 Nussbaum, *Creating Capabilities: The Human Development Approach*, 33f.

80 Krause, *Das System der Rechtsphilosophie — Vorlesungen für Gebildete aus allen Ständen*, 484–91.

81 *Ibid.*, 511.

82 For further detail, see Claus Dierksmeier, *Der absolute Grund des Rechts. Karl Christian Friedrich Krause in Auseinandersetzung mit Fichte und Schelling* (frommann-holzboog, 2003), 405ff.

83 Krause, *Vorlesungen über Grundwahrheiten der Wissenschaft, zugleich in ihrer Beziehung zu dem Leben. Nebst einer kurzen Darstellung und Würdigung der bisherigen Systeme der Philosophie, vornehmlich der neuesten von Kant, Fichte, Schelling und Hegel, und der Lehre Jacobi’s. Für Gebildete aus allen Ständen*, 171.

84 *Ibid.*, 142.



Social obligations have to be placed on property so as to assure that individual possessive freedom conforms to the idea of universal freedom which legitimizes the privatization, i.e. the “exclusion of all other persons,”<sup>85</sup> of property in the first place.<sup>86</sup> On this view, constraints on property in the interest of everyone’s freedom, as via regulations and taxes, realize — rather than undermine — the freedom to property ownership. A case in point is that havoc wrought by natural catastrophes or similar calamities must not “be borne only by the person contingently affected, since, in contrast, this is a legal concern of the entire society.”<sup>87</sup>

Also, according to Krause, a proprietor cannot simply do “whatever he likes and whatever he pleases” with his possessions.<sup>88</sup> Rights to property are valid functionally, never totally; and their function is the freedom of all.<sup>89</sup> While everyone should call a certain “sphere of freedom” their own, the extent of this sphere depends on society, which qualifies the entitlements of each in light of the rights of all.<sup>90</sup> Claims on the property of others, like usufruct, occupancy, right of way, and easements, ought to open up access to otherwise underused assets, their private ownership notwithstanding. Likewise, wherever apt for the same purpose, communal or public property should be promoted.<sup>91</sup> In all, the point and purpose of Krause’s property concept is to steer a middle path between the “opposing demands of communal property on the one hand and the strict (absolute) private property” on the other hand in order to secure the interests of universal freedom against either extreme.<sup>92</sup>

#### IV. COSMOPOLITAN RESPONSIBILITIES

Krause’s theory of society emphasized how the unconditional protection of human rights was also to be extended to asymmetric relations unsupported by the calculus of self-interest.<sup>93</sup> This position is grounded in a sociologically informed anthropology. Families, associations, and society at large, Krause showed, are not to be secondarily derived from the interests of individuals conceived as social atoms.<sup>94</sup> Social contract theories, that is, falsely treat as emergent and secondary what is essential and primary. For humanity, sociality is not contingent, but constitutive. There would be no sociality at all, “unless they, as human beings as such, are already sociable.”<sup>95</sup> Human beings do not need one another merely for utility-enhancing exchanges and the reciprocal mitigation of deficiencies.<sup>96</sup> They also associate in order to perfect themselves and their joint lifeworld.<sup>97</sup> Societal formations and social norms arise not solely from

85 Krause, *Das System der Rechtsphilosophie — Vorlesungen für Gebildete aus allen Ständen*, 452f.

86 *Ibid.*, 253.

87 *Ibid.*, 440.

88 *Ibid.*, 287.

89 Krause, *Vorlesungen über Naturrecht oder Philosophie des Rechts und des Staates*, 173.

90 *Ibid.*, 173.

91 Krause, *Das System der Rechtsphilosophie — Vorlesungen für Gebildete aus allen Ständen*, 291.

92 Krause, *Vorlesungen über Naturrecht oder Philosophie des Rechts und des Staates*, 173.

93 Nussbaum also sees things this way, Nussbaum, *Frontiers of Justice: Disability, Nationality, Species Membership*, 22. Like Krause, contrary to the basic logic of game theory and contractalist theories, she thinks that “A large asymmetry of power ... might make questions of justice more urgent than, as in contractarianism, taking them off the agenda” (*ibid.* 87).

94 Krause, *Lebenlehre oder Philosophie der Geschichte zur Begründung der Lebenskunstwissenschaft*, 173.

95 K.C.F. Krause, *Das Urbild der Menschheit* (Dieterich, 1851), 79. Nussbaum, too, champions a relational concept of the person which is constitutively characterized by sociality. Just like Krause, she differentiates it from the apolitical models of contractualism and determines the “idea of the human being as ‘by nature’ political”, Nussbaum, *Frontiers of Justice: Disability, Nationality, Species Membership*, 86 and explains that the concept of the person includes “the ideas of a fundamental sociability and of people’s ends including shared ends” (*ibid.* 86) with the consequence that “the good of others is an important part of one’s own scheme of goals and ends” (*ibid.* 91).

96 In just the same way, Nussbaum argues against the “very idea [...] that the goal and *raison d’être* of social cooperation is mutual advantage”, Nussbaum, *Creating Capabilities: The Human Development Approach*, 150.

97 Krause, *Lebenlehre oder Philosophie der Geschichte zur Begründung der Lebenskunstwissenschaft*, 149. Nussbaum also strives for “the gradual formation of an interdependent world in which all species will enjoy cooperation and mutually supportive relations. Nature is not that way and never has been. So it calls, in a very general way, for the gradual supplanting of the natural by the just” Nussbaum, *Frontiers of Justice: Disability, Nationality, Species Membership*, 399.

the otherwise ceaselessly conflictive coexistence of “characterless rational persons” but rather through voluntary cooperation between reasonable “persons full of character”.<sup>98</sup>

Beginning with the family, moving on to wider ambits (community and city), and concluding with sub-state as well as state, national, supranational, regional, and global structures, Krause highlighted how personal freedom is, time and again, complemented and completed by association. Said “inner sociability” of humanity culminates in the idea of “one humanity,” which comprises all human beings both near and far, future generations just as much as present world citizens.<sup>99</sup> The more human beings orientate themselves by this idea, the more harmonious could they coexist, Krause believed.

While the nation state “which alone, incorrectly, one customarily called the state”,<sup>100</sup> certainly is an important means for protecting and realizing human rights, Krause insisted that equally legitimate legal structures may also exist underneath, outside of, and above the sphere of the nation state.<sup>101</sup> Krause’s cosmopolitan conception of human rights is not only firmly opposed to every form of xenophobic patriotism but, what is more, denies that national law could ever self-legitimate its rulings (as in legal positivism), insisting instead that nation states draw their legitimacy from their local contributions to “providing” every global citizen with their “human rights”.<sup>102</sup> National laws should be designed for the potential “approval of the whole existing humanity.”<sup>103</sup> Ethnic criteria cannot bestow prerogatives on certain groups of people over others<sup>104</sup> because a people is, to Krause, simply the cultural correlate of a legal community.<sup>105</sup> Nations are meant to set and sanction norms not according to their narrow self-interest but as legal stewards of humanity at large.

On Krause’s view, humanity’s survival depends on progress to ever-more cosmopolitan cooperation.<sup>106</sup> On the path to an ever-closer global union of humanity, necessary steps are the rectification of colonial injustices and solidarity towards all peoples whose development is hampered.<sup>107</sup> Yet, while nations can and should engage themselves here unilaterally, most important seemed to Krause the creation of a system of global governance. Perpetual peace could be guaranteed only by a truly global league of nations — for which Krause drafted constitutional regulations. Absent such a planetary institution, every country could, in cases of conflict, insist upon its right to self-defense. But where all states act as judges in their own affairs, arms races and spiraling violence ensue.<sup>108</sup> Consequently, the world’s citizens should eventually “legally determine the relations of peoples as the whole of mankind and establish a higher organism of law, to which the peoples will relate themselves in the same way that every individual human being relates to his own people.”<sup>109</sup>

For Krause, the requisite delegation of state sovereignty rights to this global union is legitimate *ab ovo*, since he sees the nation state as just *one* — but never the *only* — form for institutionalizing human rights.<sup>110</sup> To put the same idea differently, these notions are but a corollary of his cosmopolitan idea of

98 Krause, *Der Erdrechtsbund an sich selbst und in seinem Verhältnisse zum Ganzen und zu allen Einzeltheilen des Menschheitens*, 41. Nussbaum too states that that the end of “social cooperation is not to gain an advantage; it is to foster the dignity and well-being of each and every citizen”, Nussbaum, *Frontiers of Justice: Disability, Nationality, Species Membership*, 202.

99 Krause, *Das Urbild der Menschheit*, 72.

100 Krause, *Abriss des Systemes der Philosophie des Rechtes oder des Naturrechts*, 179.

101 Krause, *Lebenlehre oder Philosophie der Geschichte zur Begründung der Lebenkunstwissenschaft*, 203.

102 Krause, *Das System der Rechtsphilosophie — Vorlesungen für Gebildete aus allen Ständen*, 350.

103 *Ibid.*, 350.

104 Krause, *Vorlesungen über Naturrecht oder Philosophie des Rechts und des Staates*, 230; Krause, *Das System der Rechtsphilosophie — Vorlesungen für Gebildete aus allen Ständen*, 352.

105 Krause, *Lebenlehre oder Philosophie der Geschichte zur Begründung der Lebenkunstwissenschaft*, 206.

106 *Ibid.*, 129.

107 Krause, *Das System der Rechtsphilosophie — Vorlesungen für Gebildete aus allen Ständen*, 464. The proximity to Nussbaum’s position is patent: “Many of the problems of poorer nations were caused by colonial exploitation, which prevented them from industrializing and robbed them of natural resources, among other things. Redistribution in the present seems an appropriate form of remediation for the past.” Nussbaum, *Creating Capabilities: The Human Development Approach*, 115.

108 Krause, *Das System der Rechtsphilosophie — Vorlesungen für Gebildete aus allen Ständen*, 500.

109 Krause, *Das Urbild der Menschheit*, 60.

110 Krause, *Lebenlehre oder Philosophie der Geschichte zur Begründung der Lebenkunstwissenschaft*, 203.

law according to which each global citizen should strive to put the world in precisely such a state wherein “every citizen of the planet, wherever he may be heading, is granted his germane personal rights.”<sup>111</sup>

Should a “state of humanity on this earth”<sup>112</sup> ever arise, it may rearrange such legal positions which, from a perspective of global justice, appear in need of reform.<sup>113</sup> Especially in terms of access to natural resources, Krause’s legal world order would transform existing rights, modifying foregoing (local, national, and regional) legal systems.<sup>114</sup> Since the earth is “the original external property of the entire whole of mankind”<sup>115</sup> and belongs to “all and everyone”<sup>116</sup> this, too, Krause deems philosophically unproblematic, howsoever controversial the implementation might prove. The historical occupation of the earth took place as a result of power relations frequently at odds with the moral “authority to take possession of the earth” which equally belongs to all human beings.<sup>117</sup> Hence first allocations need not always also be the last.<sup>118</sup>

Modifications of global ownership rights in the name of distributive justice require “insight” and “good, lawful will” on part of the more fortunate nations.<sup>119</sup> But instead, as Krause knew, peoples often violently resist such demands.<sup>120</sup> Nevertheless he believed in the auspices of his cosmopolitan project, since, over time, civilizational progress hand in hand with an appellation to “the conscience of mankind”<sup>121</sup> on the one hand, and, on the other, people’s enlightened self-interest — attached not least to the economic benefits of planetary cooperation and collaboration —,<sup>122</sup> were likely to become ever stronger forces for the advance of a fair global order.

Lest he be misunderstood as promoting a world monoculture, Krause was quick to add that the transformations he envisioned did not always entail the loss of acquired positions in favor of a modified return. Certain areas of life are to be exempt from global governance where individual “independence must be maintained”.<sup>123</sup> The accession of a state to a community of peoples will not overly affect local structures and customs, for instance. In fact, he viewed his plans as a safeguard for diversity. Whereas in a legally unregulated world, hegemonic powers can raze traditional cultures with impunity, a well-governed cosmopolitan order improves the chances for the preservation of cultural differences. Precisely because the earth belongs to *all* for the realization of their *individual* freedoms, various civilizations may manifest themselves in *dissimilar* ways of life. These can continue to exist as internal specifications of a globally networked order insofar as they are in accordance with the human rights and freedoms of all global citizens.<sup>124</sup>

111 Krause, *Das System der Rechtsphilosophie — Vorlesungen für Gebildete aus allen Ständen*, 467. See Nussbaum’s claim that “humanity is under a collective obligation to find ways of living and cooperating together so that all human beings have decent lives”, Nussbaum, *Frontiers of Justice: Disability, Nationality, Species Membership*, 280.

112 Krause, *Das System der Rechtsphilosophie — Vorlesungen für Gebildete aus allen Ständen*, 348.

113 Krause, *Das Urbild der Menschheit*, 147. In the same way, Nussbaum claims that “one might then doubt that domestic arrangements can be insulated from scrutiny, if they are such as to make it impossible for people in other nations to live decent lives.”, Nussbaum, *Frontiers of Justice: Disability, Nationality, Species Membership*, 229.

114 Krause, *Das System der Rechtsphilosophie — Vorlesungen für Gebildete aus allen Ständen*, 449f. Krause, *Lebenlehre oder Philosophie der Geschichte zur Begründung der Lebenkunstwissenschaft*, 204.

115 Krause, *Das System der Rechtsphilosophie — Vorlesungen für Gebildete aus allen Ständen*, 463.

116 *Ibid.*, 466. Likewise Nussbaum states: “The capabilities approach is fully universal: the capabilities in question are held to be important for each and every citizen, in each and every nation, and each person is to be treated as an end”, Nussbaum, *Frontiers of Justice: Disability, Nationality, Species Membership*, 78.

117 Krause, *Vorlesungen über Naturrecht oder Philosophie des Rechts und des Staates*, 262.

118 *Ibid.*, 262. Nussbaum similarly states that “even the concept of redistribution [...] needs to be called into question, since it rests on the prior determination that people own the unequal amounts they have.” She thus argues against positions which claim “that the part of a person’s holdings that is needed to support other members of a society (or world, [...]), are actually owned by the people who need them, not by the people who are holding on to them”, Nussbaum, *Frontiers of Justice: Disability, Nationality, Species Membership*, 373.

119 Krause, *Vorlesungen über Naturrecht oder Philosophie des Rechts und des Staates*, 264.

120 *Ibid.*, 265.

121 Krause, *Das Urbild der Menschheit*, 305.

122 Krause, *Vorlesungen über Naturrecht oder Philosophie des Rechts und des Staates*, 268.

123 *Ibid.*, 264.

124 Krause, *Das System der Rechtsphilosophie — Vorlesungen für Gebildete aus allen Ständen*, 539f.

## V. HISTORICAL CONNECTIONS?

The *systematic* proximity of Krause's ethics to the capabilities approach suggests looking for *historical* connections, especially via later followers of his ideas both in England and among the Spanish *krausistas*.<sup>125</sup>

When in Cambridge (UK), Amartya Sen was influenced by Ernest Baker (1874–1960) who in turn studied under Thomas Hill Green (1832–1886). The latter shared key ideas of Krause's (e.g., his capability-oriented concept of freedom and the concomitant conception of law as facilitating personal development as well as his penchant for cosmopolitanism) and explicitly referred to Krause in his works.<sup>126</sup> While I have found no direct references to Krause in Sen's works, Sen's concept of substantive freedom might be indirectly influenced by Krause. Sen established it with reference to Green's theory of 'positive freedom' which itself bears a strong resemblance to Krause's respective conception.<sup>127</sup>

A similar line can be traced via John Dewey (1859–1952) to Martha Nussbaum. Nussbaum often aligns herself with the pedagogical philosophy of Dewey,<sup>128</sup> who, for his part, admired the work of Green for rejecting an atomistic liberalism arranged around the concept of freedom as "a ready-made possession," fending instead for a relational account of human life wherein the state was deployed to foster the conditions and institutions people require to "possess actual as distinct from merely legal liberty."<sup>129</sup>

What is more, in his pedagogical thinking, Dewey admitted repeatedly being indebted to Friedrich Fröbel (1782–1852).<sup>130</sup> Fröbel was closely collaborating with Krause and his disciples in the *Allgemeiner Erziehungsverein* (General Association for Education).<sup>131</sup> As a result, even though Dewey mentioned Krause in his works only in respect to his "pantheism", an indirect influence of Krause might well be seen in the impact that Fröbel had on Dewey. This interpretation can be reinforced by a look at the educational policies of the *krausist* pedagogical flagship, the *Institución Libre de Enseñanza* in Madrid. Its teaching was based on ideas that *krausists* Manuel Bartolomé Cossío (1857–1935) and Francisco Giner de los Ríos (1839–1915) had gleaned from Krause, Fröbel, and others. Their experimental methods of instruction centered on self-guided activities on part of the students, the active exploration of nature, engagement with the arts and an immersion into play. In particular, though, theirs was a pedagogy of knowledge and skill acquisition based on collaborative efforts within an educational setting seen as a laboratory of cooperative inquiry.<sup>132</sup> What the *krausistas* could offer to John Dewey, when he came to Madrid in 1926 and met with the spearhead of the Spanish *krausismo* movement, Francisco Giner de los Ríos, was thus an institutional background wherein many ideas that he espoused had already been tried and tested. Within this *krausistic* setting, Dewey could find much inspiration for his educational program on behalf of moral development and democratic agency, which is also at the heart of Nussbaum's pedagogy.

Even so, since neither Nussbaum nor Sen engaged with the *krausistic* tradition directly, one can only attest to an indirect influence of Krause on their thinking via Fröbel, Green, and Dewey.

125 For more information on the *krausistas* see Claus Dierksmeier, "Krausism", in *A Companion to Latin American Philosophy*, ed. Susana Nuccetelli, Ofelia Schutte and Otavio Bueno (Wiley-Blackwell, 2010), 110–23.

126 Thomas H. Green, *Works of Thomas Hill Green* (Thoemmes, 1886), 341.

127 Dierksmeier, *Qualitative Freedom — Autonomy in Cosmopolitan Responsibility*, 105, 256.

128 Martha C. Nussbaum, *Not for Profit: Why Democracy Needs the Humanities* (Princeton Univ. Press, 2010), 18, 60.

129 John Dewey, "Liberalism and Social Action (first edition: 1935)", in *Later Works, Vol. 11:* (Southern Illinois Univ. Press, 1985), 19–21.

130 John Dewey, *Democracy and Education: An Introduction to the Philosophy of Education* (Macmillan, 1929), 207.

131 On the Fröbel-Krause relationship see Enrique M. Ureña, *Philosophie und gesellschaftliche Praxis: Wirkungen der Philosophie K.C.F. Krauses in Deutschland (1833–1881)* (frommann-holzboog, 2001), 215ff.

132 Miguel Pereya-García Castro, "El principio de la actividad en John Dewey y en la Institución Libre de Enseñanza: Un estudio comparado" (1979): 80ff.

## VI. CONCLUSIONS

Krause defended a capability-oriented conception of freedom *avant la lettre*. His idea of liberty is also, as Nussbaum's and Sen's, intimately linked to a conception of cosmopolitan responsibility. Espousing a conception of justice that culminates in the postulate to enable an autonomous life for all global citizens, Krause, quite like today's capability theorists, did not shy away from calling for a rearrangement of the order of private liberties and possessions with a view to a fairer distribution of the bounties of the earth. Notably, Krause advanced an ethics encompassing unilateral obligations against asymmetrically situated parties. The rights of severely disabled persons and of future generations, for instance, should be protected by law even though their contributions to society might not be equivalent to what they receive. This, holds true, according to Krause, also for animals. To each according to their dignity, and from each according to their capability — with this formula one could not only sum up the core ethical tenets of Martha Nussbaum and Amartya Sen but also those of Karl Christian Friedrich Krause. These and further substantial overlaps between today's capability theories and Krause's moral philosophy are not incidental but, as argued above, due to deeper agreements regarding both the premises and procedures of ethical theory. Krause rejected, as does capability theory, the very idea behind contractarian schemes (i.e. a contract for the sake of a reciprocally beneficial utility exchange) and replaced it with the notion of a moral fellowship of all persons, near and far, regardless of their possessions, gender, beliefs, or ethnicity.

Given this astounding concord in principles and practical application, the question was raised whether these can be accounted for by historical links between Krause and today's capability theorists. Some such lines can be traced indeed; in all, however, we have to conclude that the proximity of both approaches was probably driven less by historical connections than by similar systematic questions, leading independently to kindred proceedings and comparable results.



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