KARL CHRISTIAN FRIEDRICH KRAUSE ON ANIMAL RIGHTS

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Abstract. Krause's philosophy deserves to be memorized as the first link in a chain of thinking on animal rights that is still on the way today. Though Krause was not the first to talk of animal rights in the history of animal ethics, his theory of animal rights is pathbreaking in embedding a conception of animal rights in an all-encompassing metaphysical system. The essay situates Krause's theory of animal rights in the framework of his general theory of rights and points to the challenges Krause's theory faces by the inevitability of trade-offs between animal and human rights.

I. INTRODUCTION

In the history of Western thinking, rights were, most of the time, an exclusive privilege of humans. Other sentient beings, like sentient animals, were not reckoned among the entities capable of having rights. This was mainly because rights were seen as normative devices made by humans for humans in order to regulate social interaction and co-operation. One of the most common arguments for the position that animals are unable to partake in rights was that animals cannot have rights because they are unable to enter into binding relations with humans. This contractualist argument goes as far back as to antiquity.[1] Given the assumption that rights are basically reciprocal pledges of mutually respecting spheres of freedom, the denial of rights to animals seemed a logical conclusion. Since animals are inherently unable to respect the rights of humans and other animals, they are, according to the

1 This argument seems to have been put forward already by the epicurean philosopher Hermarchos. It was later taken up by Hobbes and Fichte. It is sometimes used even today. See, for example, Thomas B. Schmidt, *Das Tier — ein Rechtssubjekt? Eine rechtsphilosophische Kritik der Tierrechtsidee* (Roderer Verlag, 1996), 56. or Evangelos D. Protopapadakis, "Animal rights, or just human wrongs?", in *Animal ethics. Past and present perspectives*, ed. Evangelos D. Protopapadakis (Logos, 2012), 279.

PP. 63–82
DOI: 10.24204/EJPR.2022.3590
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EUROPEAN JOURNAL FOR
PHILOSOPHY OF RELIGION
Vol 14, No 2 (2022)

logic of contractualism, not qualified to be bearer of rights themselves, either in the form of moral or of legal rights.

The idea of non-reciprocal rights to be respected by humans in their relations with animals seems to have entered the scene — together with the growth of concern with the suffering imposed on animals by humans — not earlier than in the Enlightenment period. Rousseau, for one, was sure, in the preface to his *Discourse on Inequality* of 1755, that animals should be included in the scope of the natural law because they share with humans the property of being "êtres sensibles".[2] While Rousseau was satisfied with imposing on humans certain obligations ("une espèce de devoirs") in respect to animals and stopped short of using the language of rights, animal rights seem to have been postulated first by the German lawyer Wilhelm Dietler in 1787. In a short treatise on "justice against animals" Dietler condemns, among others, the widespread practice of cruel animal sports such as par-force hunting and the killing of animals except "by the quickest and most humane methods".[3] It took, however, a number of years until animal rights were recognized on a genuine philosophical level and integrated into a comprehensive philosophical system. This was done by Karl Christian Friedrich Krause.[4] Krause's philosophy is largely forgotten (except in the Spanish-speaking world), but he deserves to be memorized as the first link in a chain of thinking on animal rights that is still on the way today. One might even say that Krause's thinking on animals has perhaps never been more up to date than in the present period in which the traditional relations between human and non-human animals have come under severe scrutiny. There is ample reason to look anew into what Krause has to say about animal rights. Before doing this, however, it seems appropriate to set the scene by outlining the general drift of Krause's philosophy of rights.

2 Jean-Jacques Rousseau, Blaise Bachofen, and Bruno Bernardi, *Discours sur l'origine et les fondements de l'inégalité parmi les hommes* (Flammarion, 2016), 32.

3 Wilhelm Dietler, *Gerechtigkeit gegen Thiere (1787). Neudruck* (ASKU, 1997). The editor of the reprint edition, Manuela Linnemann, conjectures that Dietler may have been the first to talk of "Tierrechte" (ibid., 70).

4 Claus Dierksmeier, *Der absolute Grund des Rechts: Karl Christian Friedrich Krause in Auseinandersetzung mit Fichte und Schelling* (frommann-holzboog, 2003), 374.

II. KRAUSE'S "IDEALISTIC" TENDENCIES

There are a number of characteristic features of Krause's philosophy of right that apply to his conception of rights generally but are also directly relevant to his theory of animal rights. The most striking feature of Krause's conception of rights is that it is "idealistic", in the non-philosophical sense of the term, and in more than one way.

1. Krause's conception of rights is idealistic in so far as it is primarily a conception of *natural* rights. It is not to be mistaken for a philosophy of law that analyses and systematizes any existing body of positive law. Its mode is throughout normative rather than descriptive, and the rights it postulates far exceed the rights recognized or codified in any given system of law. Throughout, Krause carefully distinguishes between a normative philosophy of right, which he also calls *ideal jurisprudence* (*ideale Rechtswissenschaft*), and jurisprudence as a descriptive or interpretative discipline dealing with law insofar it has a purely conventional origin and status.[5] The same holds if Krause's theory of rights is alternatively interpreted as a theory of social morality. It neither describes nor systematizes any system of morality that is recognized or followed in any given society. It is presented throughout, in modern terms, as an *ideal* theory that refrains from making concessions to existing physical, psychological or technical limitations in putting rights or other kinds of norms into practice.
2. Krause's theory of rights is "idealistic" in the further sense that it aims primarily at changing our ideas about normative matters and not directly at legal or institutional reforms. Krause's philosophy of rights does not directly address the state or other agencies able to exercise physical sanctions in the case of non-conformity. It is primarily intended as an inspiration for confirming or changing, as the matter may be, habitual ways of thinking about rights, obligations and other normatively relevant institutions. Thus, when, in the context of Krause's plea for animal rights, the repeatedly refers to the

5 K.C.F. Krause, *Abriss des Systemes der Philosophie des Rechtes, oder des Naturrechtes* (1828), 84; K.C.F. Krause, *Vorlesungen über Rechtsphilosophie* (1874), 73.

English legislation on animal abuse of 1822, the so-called Martin's Act,[6] he does this as a confirmation of his philosophical postulates about animal rights. It does not occur to him to demand a likewise legislation from the worldly powers of his day.[7]

3. In a third sense, Krause's theory of rights is "idealistic" in the sense that it spells out the full content of widely accepted norms such as the basic human rights of the French Revolution and points to the extensive grey zones in which these are insufficiently realised in practice. Krause throughout takes a highly critical stance towards the great extent to which human rights are practically compromised in the case of humans seen as somehow deficient instances of mankind, such as women, children, and the mentally handicapped. Against this, Krause's theory of rights is deliberately inclusive.[8] Children are recognized by Krause (with Rousseau) as subjects of rights in their own right, and childhood is given an autonomous value as a stage of human development independently of its character as a preparation for adulthood.[9] Women are (contra Rousseau) not only credited with the same "freedom and dignity" as men,[10] but even endowed with the responsibility to ensure a "higher" future for the whole of mankind.[11] Though these emancipatory strands of Krause's theory of rights remain, for the most time, abstract and unpolitical (especially if compared with the much more concrete demands for gender equality

6 Krause, *Abriss des Systemes der Philosophie des Rechtes, oder des Naturrechtes*, 84; Krause, *Vorlesungen über Rechtsphilosophie*, 73.

7 In this respect, even the hardly less metaphysically minded Schopenhauer, the most direct follower of Krause in respect to animal rights, exhibited a more direct political orientation in demanding that there should be more rigorous penal sanctions for abuses of higher animals than judges of his time were prepared to impose (cf. Arthur Schopenhauer, "Grundlage der Ethik", in *Arthur Schopenhauer. Sämtliche Werke, Band 3*, ed. Arthur Hübscher (1988), 244; Dieter Birnbacher, "Tier- und Umweltethik als staatliche Herausforderung", in *Pessimistischer Realismus — Arthur Schopenhauers Staat*, ed. Christina Kast (2021), 222.)

8 Indeed, the extension of moral rights to animals can be seen as a natural outgrowth of this tendency.

9 Krause, *Vorlesungen über Rechtsphilosophie*, 473.

10 Ibid., 470.

11 Cf. the quotation fom Krause in Leonhardi 1902, 110.

in Mary Wollstonecraft's *A vindication of the rights of woman* of 1792), they constitute a truly revolutionary and pathbreaking achievement.

4. Krause's thinking is sometimes not only "idealistic" but downright utopian in ignoring many of the limits imposed on moral reform by the realities of human and nonhuman nature. Though in ascribing to animals a right to subsistence he sometimes limits this ascription to domesticated animals living under the tutelage of humans, most of the time this ascription is extended to *all* sentient animals irrespective of whether they have, in some way or other, been adopted by humans. It is, however, not only inconceivable that humans care for wild animals in the same way as for those living in their vicinity and by their own will. A right of wild animals to be cared for by humans would imply many kinds of undesirable side-effects, among them the highly disruptive effects of intense human intervention on natural cycles and equilibria.

These "idealistic" tendencies in Krause's thought are not without their own side-effects. One is that Krause is relatively insouciant in respect of the conflicts arising from his theoretical generosity. On the one hand, Krause goes much further than most earlier and later thinkers in ascribing rights to non-human entities. On the other hand, with the multiplication of rights ascribed to non-human animals there comes a multiplication of areas in which the rights of animals conflict with the rights of humans, and the right of one animal with the rights of others. For all practical purposes, a system of rights calls for priority rules that adjudicate between rights in the case of conflict. Though Krause admits the existence of a few areas of conflict, as for example, that between an animal's right to life and the human right to an adequate diet, he mentions them only rarely and leaves it to the reader to make up his mind about which priority rule might be adequate in each individual case. It must be admitted, however, that Krause's theory of animal rights is, in this respect, no exception. Most systems of the ethics of nature lack a system of priority rules able to arbitrate between the far-reaching obligations they impose on man's dealings with non-human nature.[12] In fields other than nature ethics, however,

12 The most problematic theory in this respect, which postulates a very strong principle but leaves priorities widely open, is Albert Schweitzer's ethics of the respect for life. Relatively concrete rules are given in the biocentric ethics of Paul W. Taylor, *Respect for nature. A theory*

Krause's "harmonism"[13] sometimes borders on the phantastic, as when, in the theory of punishment he rejects both retribution and deterrence as legitimate aims of punishing criminals, without giving one thought to the possibility that moral re-education, his favourite option, might prove ineffectual.[14]

Among the sources and motives of this "idealism", mainly two have been noted in the literature on Krause, one philosophical, one personal. The philosophical background is the Leibnizian conviction that behind the contradictions and conflicts of the world, the world of ideas included, there is hope for harmony rooted in the divine nature of everything existing. Even if the world is far from ideal as it is,[15] it is part of Krause's vision that an ideal world is thinkable and in principle realisable. His theory aims at a world as a harmoniously ordered organism in which all individuals have their specific place and function,[16] and in which the harmony of concepts, ideas and ideals is but the counterpart (and ultimately, product) of this underlying *harmonia mundi*. The role of philosophy is, among others, to bring to light the latency of harmony of everything existing and thereby to testify to its God-like quality. It is no wonder, then, that in his animal ethics Krause attempts to show the *compossibilitas* of animal rights and the rights of humans.

The personal background of Krause's "idealism" is his personal en-thusiasm (in the literal sense) for the good and the right and the overflowing goodness unanimously noted by his disciples. Many of his followers testified to his nobility of character and unusually humane attitude.[17] One, Hermann von Leonhardi, depicts Krause as an extraordinarily well-meaning person, who thinks highly, and indeed, enthusiastically, of his fellows as moved by "the holy feelings of a pure heart" and "the purified moral will of God-imbued

of environmental ethics (Princeton Univ. Press, 1986); Robin Attfield, *Environmental ethics* (John Wiley & Sons, 2014).

13 Wolfgang Forster, *Karl Christian Friedrich Krauses frühe Rechtsphilosophie und ihr geistesgeschichtlicher Hintergrund* (Aktiv Druck, 2000), 147.

14 Krause, *Vorlesungen über Rechtsphilosophie*, 316.

15 Peter Landau, "Stufen der Gerechtigkeit. Zur Rechtsphilosophie von Gottfried Wilhelm Leibniz und Karl Christian Friedrich Krause" Heft 7 (1995): 19.

16 Forster, *Karl Christian Friedrich Krauses frühe Rechtsphilosophie und ihr geistesgeschichtlicher Hintergrund*, 342.

17 Cf. A. Richter, quoted in Enrique M. Ureña, *Die Krause-Rezeption in Deutschland im 19. Jahrhundert. Philosophie - Religion - Staat* (frommann-holzboog, 2007), 123.

human beings".[18] Krause's enthusiasm was, no doubt, his principal strength. It was, however, accompanied by two weaknesses noted, among others, by Rudolf Eucken in the addendum to the text of his panegyric on Krause at the University of Jena in 1881: the fact that many of Krause's visionary ideas are left without elaboration; and that many of these ideas are left without adequate arguments and instead claim to flow from a purported intuition into the "essence" of things.[19]

Another significant feature of Krause's philosophy of right is that it does not distinguish, as Kant did, between perfect and imperfect duties. Instead, it includes all social duties in the sphere of rights, irrespective of their stringency and specificity. Consequently, he does not reserve the term "rights" for claims of a particularly high priority, as for the claims to elementary forms of freedom and protection from violence, but subsumes all positive obligations of a social nature under the term indistinguishably. "Right", for Krause is the name for all positive social aims, ideals and visions. This is not just a matter of terminology. The function of rights in Krause's system is not only the negative one to protect humans from harms done to them by others but the positive one to enable humans to live a good life. As a consequence, the rights postulated by Krause are mostly what in the terminology of today's philosophy of right are called *claim-rights*, social rights to receive certain goods (such as the means of subsistence) from others.

III. KRAUSE'S THEORY OF ANIMAL RIGHTS

Krause's concept of rights is, as his theory of natural rights generally, inclusive. All obligations humans have against animals are subsumed by Krause under the category of rights. This is exemplified by the way Krause deals with the *Cruel Treatment of Cattle Act* (Martin's Act) passed by the English parliament in 1822, which Krause interprets as ascribing *rights* to animals,[20] though in this case the respective right is no more than the negative right not to be cruelly treated (instead of the positive right to be properly treated or cared for). Typical of Krause's theory, are, however, the positive rights this theory

18 Hermann von Leonhardi, *Karl Christian Friedrich Krause's Leben und Lehre* (1905), 393.
19 Rudolf Eucken, *Zur Erinnerung an K. Ch. F. Krause* (De Gruyter, 1881), 39–47.
20 Krause, *Vorlesungen über Rechtsphilosophie*, 73.

ascribes to animals, Men are said to have not only the negative duty not to abuse animals, and not to kill them for trivial purposes, but also the positive duty to actively care for them. Not only humans but also animals have, according to Krause, a great number of claim-rights: the right to "corporeal well-being", the right "to be free from pain" and the right to be provided with the "necessary means of subsistence".[21]

As with many other authors writing on animal rights since Krause's time, Krause is not always as clear as one would wish about the exact demarcation of the range of animals to which he wants to ascribe these ambitious rights. One condition, however, seems clear: the animals to which these rights apply must be endowed with sentience. Non-sentient animals are not honoured with rights but are implicitly put, for all normative purposes, in the same class with plants, which have their own principle of life but are no proper subjects of consciousness. (In fact, the ontological status of non-sentient animals is not fully spelt out in this theory but for a vague distinction between "lower" and "higher" animals.[22]) Though it is part of Krause's metaphysical outlook that natural entities on all levels of the ontological ladder are endowed with a God-like quality, he makes a sharp distinction, as far as their rights are concerned, between pieces of unliving matter, plants, non-sentient animals, sentient animals and humans.[23] He makes it clear, for example, that plants are no proper subjects of rights.[24] Humans have no obligations against plants, as they have against sentient animals.[25] His reason is that plants have neither consciousness (they are not "conscious of themselves") nor the capacity to acts of will by which they determine how their life proceeds. Instead, they are only the field of action of internal and external impersonal forces. Sentient animals, on the contrary, partake in consciousness ("Seelenleben") and — insofar as they have the power to determine their individual life through acts of will — are subjects of will. Krause explicitly rejects the Cartesian view (which he ascribes to Fichte and Hegel) that the life of animals is only the playfield of unconscious mechanical forces and animal cries only symptoms of mechanical frictions. That for Krause

21 Krause, *Vorlesungen über Rechtsphilosophie*, 246.

22 Krause, *Lebenlehre oder Philosophie der Geschichte zur Begründung der Lebenkunstwissenschaft* (1904), 116.

23 Krause, *Vorlesungen über Naturrecht oder Philosophie des Rechtes und des Staates* (1892), 136.

24 Ibid., 138 .

25 Krause, *Vorlesungen über Rechtsphilosophie*, 28.

sentience is a necessary condition of the possession of rights (though he does never say so explicitly), is also shown by the fact that he thinks it evident that philosophers holding the Cartesian view deny rights to animals.[26]

If sentience is, for Krause, a necessary condition for the possession of rights, is this also a sufficient condition? On this point, Krause's theory is not free from ambivalence. It is true, in some contexts he writes as if sentience is, for him, sufficient to make an animal a possessor of rights.[27] In other passages, it seems that more is required, namely certain cognitive powers that qualify animal right-holders as *persons*, though not as persons in the full sense applicable to humans.[28] In order to possess rights, animals must not only share with humans the capacity to have sensory experience, to feel emotions and to act on their own will, but must be "persons", which cannot be understood in the sense of *legal* personhood (which can be ascribed even to collectives such as companies and states), but must be understood in a substantive and non-fictious sense. That Krause means "person" in a substantive sense is also made clear by the close association of "person" with "reason". Animals, according to Krause, have a certain amount of reasoning capacity ("Vernunft"),[29] and it seems that it is this capacity that qualifies them as persons, though on the lowest level of personhood.[30] This raises the question whether personhood in this sense is, for Krause, an additional condition of the possession of rights, or whether he assumes that sentience and reasoning capacity are co-extensive in animals? This latter assumption, however, would be "bold", or even "overbold".[31] Fish, for example, are generally held to be sentient, but only select species are attributed reasoning powers.[32] Krause, however, thinks that the attribution of reasoning capacity to animals is not simply an a priori postulate, but is confirmed by empirical evidence. He refers, among others, to

26 Krause, *Vorlesungen über Rechtsphilosophie*, 28.

27 Ibid., 29; 246.

28 Ibid., 244.

29 Ibid., 74.

30 Ibid., 246. Krause uses, among others, the expression "Vernunftperson" (person in virtue of reasoning capacity")(Krause 1874, 73). The question how far animals can be ascribed personhood, is a live topic in present-day animal ethics, see Dieter Birnbacher, "Sind Tiere Personen?", *Tierethik* 9, no. 1 (2017).

31 Eucken, *Zur Erinnerung an K. Ch. F. Krause*, 9.

32 Victoria Braithwaite, *Do fish feel pain?* (Oxford Univ. Press, 2010) and Jonathan Balcombe, *What fish knows* (Oneworld Publication, 2017).

animals' capacity to recognize individuals of their own species as such and to distinguish them from individuals of different species, including the human species. This is taken to show that they have concepts ("Allgemeinbegriffe") and are able use them in the "completion of their life".[33] Thus, it might well be that Krause in fact regards sentience in animals as coextensive with reasoning power and personhood, so that the ascription of both qualities coincide and both together are necessary for the possession of the list of rights he attributes, in a wholesale way, to "animals". A problem such a position faces is, of course, that the class of animals able to recognize members of their own species and of other species does not seem to be coextensive with the class of sentient animals. Insects, for example, are perfectly able to distinguish between individuals of their own and other species but, given their minute brains, are only rarely credited with sentience.

Sometimes, Krause goes so far in his ascription of personhood to animals to attribute to animals not only the role of right-holders but even the role of right-respecters (respecting the rights of other animals as well as the rights of humans), though only in a rudimentary way.[34] But this does not seem to be his final position. In his lectures on the philosophy of right held shortly before his death, he clearly states that "nobody will talk of justice in connection with animals because they are not able to have the idea of justice."[35]

Even in its less ambitious interpretation, however, Krause's position is still a bold, or even "over-bold" position unless its scope is significantly narrowed. The problem is that even higher animals in the wild would have to be granted far-reaching claim-rights. The right to life Krause ascribes to all animals would not only exclude hunting (at least if it exceeds the necessities of human self-preservation), but would mean that even higher animals in the wild would have to supported in leading their life uncurtailed by life-shortening factors such as diseases and attacks by other animals to the extent that these can be prevented by human effort.[36]

33 Krause, *Vorlesungen über Rechtsphilosophie*, 246.

34 Krause, *Abriss des Systemes der Philosophie des Rechtes, oder des Naturrechtes*, 84. For the present-day discussion about how far animals can be attributed the capacity to make moral distinctions see Mark Rowlands, *Can animals be moral?* (Oxford Univ. Press, 2012).

35 Krause, *Vorlesungen über Rechtsphilosophie*, 205.

36 Caring for wild animals is, again a controversial topic in present-day animal ethics. A relevant moral obligation is suggested in Ursula Wolf, "Haben wir moralische Verpflichtungen

It is understandable, therefore, that Krause at some points modifies his position or at least suggests a modification that considerably narrows the scope of his theory of animal rights. At least in one passage, he refers to "animals which are the closest united with the life of man, the domesticated animals",[37] though apparently only in the way of a paradigmatic exemplification of what he thinks holds for all animals. This can be understood as a half-hearted attempt to deprive his theory of animal rights of much of its utopian flavour and to make it much more acceptable to his audience (as well as to the present-day reader). An obligation to care for animals domesticated by man, either as agricultural tools, as providers of foodstuff, or as companions, was largely accepted at Krause's time.[38] It is even more accepted today, when even an obligation to care for domestic animals in their old age is increasingly recognized.

Rights are a relational, multilateral entity. There must not only be a right-holder but also an agent or a collective of agents who should recognize these rights as well as the obligations following from them for their dealings with the right-holder. In many cases, the relation between right-holders and potential right-respecters is triangular: the rights of the right-holder are vicariously claimed by a representative, where the representative is sometimes chosen by the represented person him- or herself (as in the case of medical advance directives) or by others, such as in the case of children, the mentally handicapped and future generations.

Krause righty thinks that not only (conventional) legal rights can be legitimately attributed to entities unable to claim these rights in their own person but also moral rights. Thus, the fact that animals are unable to make claims against humans based on these rights does not exclude that they are legitimate objects of the ascription of rights. Otherwise, even children would have to be excluded from the "holy sphere of rights",[39] which is counterintuitive.

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gegen Tiere?", *Zeitschrift für Philosophische Forschung*, no. 42 (1988). It is rejected even by conceptions that otherwise come close to Krause's theory of animal rights such as Sue Donaldson and Will Kymlicka, *Zoopolis: A political theory of animal rights* (Oxford Univ. Press, 2011) and Bernd Ladwig, *Politische Philosophie der Tierrechte* (2020).

37 Krause, *Vorlesungen über Rechtsphilosophie*, 246.

38 Cf. Kant's thesis that the services of a faithful dog should be recompensed by not having it killed at an age at which it is no longer useful to its owner (Immanuel Kant, *Die Vorlesung über Ethik* (1990), 256).

39 Krause, *Vorlesungen über Rechtsphilosophie*, 73.

Nor is it necessary for right-possession that those who possess these rights know or are able to know these rights, or actively to will them.[40] The fact that sentient animals have certain basic needs which can be frustrated, and that they have cognitive powers ("Vernunft") that enable them to feel when they are frustrated, is perfectly sufficient, for Krause, to ascribe to them a certain number of rights. What is less clear, in Krause's discussion, is who is the suitable representative claiming these rights on behalf of animals. Krause says no more than that "man" should see himself as the advocate and enforcer of this rights. He should see himself as the "guardian" of animals and accept the obligations of protection and care going with this role. He leaves open, however, how the considerable responsibilities following from this role should be distributed, especially in the case of animals unowned by human persons or animals such as wild animals for which ownership has to be defined by law. He is satisfied with imposing the role and duties of guardianship on mankind in toto.[41] Or rather, what is somewhat surprising, he is satisfied with ascribing mankind the right (not the duty) to act as guardian of animals. They are said to be allowed ("befugt"), not obligated, to respect (or to make claims on behalf of) the rights of animals.[42]

IV. TRADE-OFFS BETWEEN ANIMAL RIGHTS AND HUMAN RIGHTS

Moral rights are, in general, not absolute, but only prima-facie, i. e. have to be negotiated with other rights — the rights of others or even with other rights of the right-holder. This fact is easily concealed by the special emphasis that is distinctive of rights and sets them off against mere obligations. To claim that animals have rights (which entail certain obligations towards them) is usually understood as a stronger moral claim than the claim that humans have duties against animals. "Rights talk" seems inherently more powerful to persuade people into respecting these rights than "duty talk", perhaps by focusing on the perspective of those who have something to gain from a given moral or

40 Ibid., 248.

41 Ibid., 205. The "guardianship"-relation fits in neatly with the "stewardship"-tradition in theistic conceptions of the relation between man and nature (cf. John Passmore, *Man's responsibility for nature. Ecological problems and Western traditions* (Duckworth, 1974), 28ff).

42 Krause, *Vorlesungen über Rechtsphilosophie*, 248.

legal relationship rather than on those who have to bear the costs. In general, it will be much easier to bring people to fight for the rights of a given A than for the fulfillment of their or others' duties towards A.

Krause is realist enough to see that animal rights easily conflict with human rights and that trade-offs between both are inevitable. He in fact makes a serious attempt to bring the necessary trade-offs into line with his metaphysics and in particular with his theory of ontological levels. It is clear that panentheism as such cannot give any definite answer to the question of trade-offs: Animals are endowed with a God-like quality, but so are humans, and not only humans, but the whole of nature. All parts of creation are equally "holy". It follows that if there is to be a metaphysical foundation for legitimizing the exploitation of one segment of creation by other segments, such as of plants by herbivore animals, animals by carnivore animals and humans and both by omnivore animals and humans, there must be an independent criterion such as the traditional ranking of entities on the ontological ladder reaching from material objects through plants and non-human animals to humans. In fact, differently from his theory of rights Krause's ontology is far from revolutionary and follows the traditional pattern of an axiological hierarchy. Humans are rated to be "higher" than animals in virtue of being able to reflect on themselves, to follow moral norms and to have an idea of their own God-likeness. This is, according to Krause, not only a difference in degree, but in kind.[43] Only man is capable of knowing that he and the rest of creation is "in God", he is the only creature for which holiness is not only an *An-Sich* but a *Für-sich*.[44] Krause's postulate that only sentient animals have rights (and not, as "biocentrists" would have it, all living beings) fits in with this traditional view, and it is does not come as a surprise that Krause tends to ascribe to humans considerable privileges in acting against the rights of animals. Though not only animals but even plants and even pieces of inanimate matter are classed, in virtue of their holiness, by Krause as "Selbstzwecke", he is prepared to concede to man the right to make use of the rest of nature. Interestingly, Krause is not prepared to subscribe to Kant's principle that entities that are "Selbstzwecke" and have intrinsic worth must never be used

43 Krause, *Vorlesungen über Naturrecht oder Philosophie des Rechtes und des Staates*, 136.
44 Krause, *Abriss des Systemes der Philosophie des Rechtes, oder des Naturrechtes*, 84.

merely as means. Krause rejects this principle.[45] He insists, however, that persons, by being made the means for the purposes of others, thereby do not lose their status as persons. They do not become things and must not be looked upon and used as things.[46]

This applies to animals in the same way as to humans. Animals are, for Krause, persons, but because they are persons only at the very lowest level of personhood it is legitimate for persons of a higher rank to use them and even to kill them for their own purposes. This holds, however, only under two conditions: 1. These purposes are "reasonable" purposes ("Vernunftzwecke");[47] and 2. the use is in conformity with the "essence and dignity" ("Wesenheit und Würde") of the relevant natural entities.[48]

Both conditions are open to a plurality of interpretations, and Krause gives no more than hints as to how to derive practicable maxims from them. The first condition reminds the modern reader of the malleability of the expression "reasonable" in the German animal protection law, which says in its first paragraph that "nobody must inflict pain, suffering or harm on an animal without reasonable justification ("einen vernünftigen Grund"), where the expression "reasonable" has been deliberately chosen to adapt its interpretation the changes in social sensibilities. In fact, what can count as "reasonable justification" in terms of human interests in exploiting animals is much more controversial now than it was in the last fifty years when, for example it was largely beyond controversy that mammals were kept under problematic conditions and killed for luxury purposes such as fur coats. Even now, only a small minority of the population live as ethical vegetarians or vegans, and the majority implicitly accepts the quasi-industrial production of meat and other animal products in spite of its improbable compatibility even with existing animal protection laws, let alone with ideal protection laws such as Krause's.

How can Krause's postulate that the rights of animals may be infringed only for reasonable human purposes be understood? Certainly not in the sense that humans are unrestrictedly free to make use of animals, simply in virtue of their superior ontological status. Though an interpretation on these lines is suggested

45 Krause, *Vorlesungen über Naturrecht oder Philosophie des Rechtes und des Staates*, 147; though not, as he explains one sentence later, "only" as means.

46 Krause, *Vorlesungen über Rechtsphilosophie*, 257.

47 Ibid., 246, 444.

48 Ibid., 246.

by the fact that Krause frequently refers to humans as "higher" "Vernunftwesen" irrespective of their specific purposes, the general drift of Krause's theory suggests that "reasonable" should be interpreted as a prerequisite of these purposes themselves and not simply as the prerequisite that these purposes are the purposes of a being endowed with reason. Even then, "reasonable" can be given two interpretations with highly divergent consequences. One interpretation is that humans are allowed to use animals for their purposes only to the extent that this is necessary for their self-preservation, or alternatively, that human animal use is legitimate to the extent that without such use it would be impossible for men to live a life in which they are able to exercise their higher faculties, such as rationality, morality and religion. The first alterative is suggested in at least one passage.[49] The other alternative is suggested by a number of passages in which Krause justifies human animal use not only with reference to human subsistence needs but to the "the conditions of the *higher* personal life"[50] and to the "*higher* kind of work" incumbent on man.[51] On this latter interpretation, using animals for nutrition, for example, would be justified to the extent that a vegetarian diet would not suffice for these faculties to flourish. At least for traditional subsistence societies in which the workforce would be completely occupied in manual agricultural labour without the "services and products"[52] of animals, the difference between these two interpretations is evident. In all advanced societies, in which these services can be rendered by machinery, a vegan diet and a complete replacement of animal services by machinery that would be sufficient for subsistence would also be sufficient for all higher human occupations. It goes without saying that in such a society, all practices in which animals are instrumentalized for other than subsistence purposes would have to be discontinued, including, hunting, fishing and animal sports like horse races. Possibly, some animals might still be used for medical experiments that help to preserve the life of humans and to further their health. Animals would, however, continue to be bred, raised and kept as human companions, on the condition that they are treated as such and killed only for their own good.

49 Krause, *Lebenlehre oder Philosophie der Geschichte zur Begründung der Lebenkunstwissenschaft*, 300.

50 Krause, *Abriss des Systemes der Philosophie des Rechtes, oder des Naturrechtes*, 84. My emphasis.

51 Krause, *Vorlesungen über Rechtsphilosophie*, 246. My emphasis.

52 Krause, *Abriss des Systemes der Philosophie des Rechtes, oder des Naturrechtes*, 84.

The second interpretation is much more generous, as far as the strictures on human animal use are concerned. According to this interpretation, man is at liberty to use animals to the extent that he is by nature adapted to this kind of use, or that this kind is use is in harmony with his "essence", understood in naturalistic terms. Understood in this way, an equilibrium between animal rights and human rights would require neither veganism nor vegetarianism but were compatible with meat-eating, hunting and animal sports as long as their practice does not involve particularly serious infringements of animal rights, e. g. by cruel or willful treatment or negligence. Since the physical nature of man shows that he is created for a omnivorous diet instead of a vegan one, and that his instincts include an instinct for hunting, it might be argued that humans have a right to exercise these parts of their "essence" even if this means an infringement of animal rights. In many passages, Krause insists that conflicting rights should be brought into some kind of "organic" equilibrium, on a homoeostatic model of physiological functioning. Like many modern conceptions of a "reflective equilibrium"[53] he leaves it open, however, where and how this equilibrium is to be found in concrete cases.

The second condition of human animal use, that the "essence and dignity" of nature is preserved, is, again, open to varying interpretations, especially since for Krause not only animals, but all natural entities are ends in themselves and should be treated as such,.[54] This feature, then, cannot serve as a criterion on which to base an ethical distinction between treating entities having dignity and treating those without. In its application to sentient animals respecting dignity might mean that animals may be treated as means for human ends, but never *only* as means, which may further be explicated by certain limiting conditions. An example of such conditions are the "five freedoms" formulated by the British *Farm Animal Welfare Council*, which indeed can be read as a modern version of Krause's animal rights (short of the right to life): 1. freedom from hunger and thirst, 2. freedom from discomfort 3. freedom from pain, injury or disease, 4. freedom to express normal behaviour, and 5. freedom from fear and distress.[55]

53 Susanne Hahn, Überlegungsgleichgewicht(e): Prüfung einer Rechtfertigungsmetapher (Alber, 2000).

54 Krause, *Vorlesungen über Rechtsphilosophie*, 444.

55 *FAWC 2012. Five freedoms.*

Apart from this, Krause's attribution of Kantian dignity to nature is remarkable if compared with the way other authors have attempted to transfer Kant's anthropocentric (or rather "noocentric") concept of dignity (and the principle never to use the bearers of this dignity only as a means to the ends of others) to non-human entities. All these attempts (by Leonard Nelson, Tom Regan and Christine Korsgaard) have in common that though they preserve at least part of the valuational content of the Kantian concept by making dignity the supreme value that has to be respected in human dealings with nature, they dissolve the link between the normative supremacy of the concept and the metaphysical basis from which the concept of dignity derives its force in Kant's system.[56] In consequence, "dignity" is, metaphysically speaking, left free-floating in these conceptions. It is reduced to a moral postulate. Against this, Krause's post-Kantian dignity preserves the ties between dignity and the metaphysics of nature by giving it a panentheistic interpretation. Whereas Kant by the ascription of inherent dignity singles out beings possessing pure practical reason and transcendental freedom, Krause ascribes dignity to the whole of nature qua being the bearer of a God-like quality. Dignity is no longer exclusive, as in Kant, but inclusive.

V. CONCLUSION

Though Krause was not the first to talk of animal rights in the history of nature ethics, his theory of animal rights is pathbreaking in embedding a conception of animal rights in an all-encompassing metaphysical system. His distinctive "idealistic" tendencies which give his ethics a decidedly "utopian" flavour, enable him, on the one hand, to develop a theory of animal rights which surpasses in scope and radicalness all comparable theories of later times up to the present, but prevent him, on the other hand, to spell out the consequences of his theory in a way that make it politically relevant. What is remarkable, however, is the self-reliance with which Krause defends his conception of animal rights against the *zeitgeist* of his times (with the accompanying opposition and ridicule), and how far he thereby anticipates discussions that have come to maturity only in the 21st century,

56 Dieter Birnbacher, "From Würde to Würde der Kreatur. Dignity in nature ethics and its Kantian roots", in *Kant's concept of dignity*, ed. Yasushi Kato and Gerhard Schönrich (2020), 44.

Apart from a few modern contributions on Krause's philosophy,[57] Krause`s theory of animal rights has only rarely been taken note of in the ethics of the human-animal relation. Though the literature on animal rights is constantly growing, to most authors the origins of the concept of animal rights do not seem worth mentioning. The entries on Krause in standard dictionaries of philosophy such as the *Encyclopedia of Philosophy* or the *Philosophen-Lexikon* of Ziegenfuss ignore Krause's achievement in this regard, and even in the literature on environmental ethics there are only few contributions mentioning Krause.[58] In a recent publication on the history of the ethics of nature, Robin Attfield gives panentheism a place in the development of ideas about the sanctity of nature, but without referring to Krause as one of the protagonists of this perspective.[59] Ironically, the most extensive appreciative appraisal of Krause's contribution to animal ethics in German not specifically dealing with Krause is to be found in an article on animal protection legislation of 1986 by a lawyer, Günter Erbel.[60]

BIBLIOGRAPHY

Attfield, Robin. 2014. *Environmental ethics*. Cambridge: John Wiley & Sons.

—. 2021. *Environmental thought. A short history*. Cambridge:

Balcombe, Jonathan. 2017. *What fish knows*. London: Oneworld Publication.

Birnbacher, Dieter. 1994. "Objections to attributing legal rights to nature". *Universitas*, no. 2: 88–97.

—. 2017. "Sind Tiere Personen?". *Tierethik* 9, no. 1: 40–59.

—. 2020. "From Würde to Würde der Kreatur. Dignity in nature ethics and its Kantian roots". In *Kant's concept of dignity*, edited by Yasushi Kato and Gerhard Schönrich, 31–48. Berlin/ Boston.

57 such as Peter Landau, "Karl Christian Friedrich Krauses Rechtsphilosophie", in *Karl Christian Friedrich Krause (1781–1832). Studien zu seiner Philosophie und zum Krausismo*, ed. Klaus M. Kodalle (1985) and Claus Dierksmeier, "Krause on animal rights and ecological sustainability", *Rechtsphilosophie*, no. 6 (2020).

58 Dieter von der Pfordten, Ökologische Ethik (Rowohlt, 1994), 94; Dieter Birnbacher, "Objections to attributing legal rights to nature", *Universitas*, no. 2 (1994): 89.

59 Robin Attfield, *Environmental thought. A short history* (2021), ch.2.

60 Günter Erbel, "Rechtsschutz für Tiere. Eine Bestandsaufnahme anläßlich der Novellierung des Tierschutzgesetzes", in *Deutsches Verwaltungsblatt*: (1986), 1241.

—. 2021. "Tier- und Umweltethik als staatliche Herausforderung". In *Pessimistischer Realismus — Arthur Schopenhauers Staat*, edited by Christina Kast, 215–33. Baden-Baden: Nomos.

Braithwaite, Victoria. 2010. *Do fish feel pain?* Oxford: Oxford Univ. Press.

Dierksmeier, Claus. 2003. *Der absolute Grund des Rechts: Karl Christian Friedrich Krause in Auseinandersetzung mit Fichte und Schelling*. Stuttgart & Bad Cannstatt: frommann-holzboog.

—. 2020. "Krause on animal rights and ecological sustainability". *Rechtsphilosophie*, no. 6: 5–19.

Dietler, Wilhelm. 1997. *Gerechtigkeit gegen Thiere (1787). Neudruck*. Bad Nauheim: ASKU.

Donaldson, Sue, and Will Kymlicka. 2011. *Zoopolis: A political theory of animal rights*. Oxford: Oxford Univ. Press.

Erbel, Günter. 1986. "Rechtsschutz für Tiere. Eine Bestandsaufnahme anläßlich der Novellierung des Tierschutzgesetzes". In *Deutsches Verwaltungsblatt*, 1235–58.

Eucken, Rudolf. 1881. *Zur Erinnerung an K. Ch. F. Krause*. Leipzig: De Gruyter.

FAWC 2012. Five freedoms. https://webarchive.nationalarchives.gov.uk/20121010012427/http://www.fawc.org.uk/freedoms.htm.

Forster, Wolfgang. 2000. *Karl Christian Friedrich Krauses frühe Rechtsphilosophie und ihr geistesgeschichtlicher Hintergrund*. Ebelsbach: Aktiv Druck.

Hahn, Susanne. 2000. Überlegungsgleichgewicht(e): Prüfung einer Rechtfertigungsmetapher. Freiburg/ München: Alber.

Kant, Immanuel. 1990. *Die Vorlesung über Ethik.* Translated by Gerd Gerhardt. Frankfurt a.M.:

Krause, K.C.F. 1828. *Abriss des Systemes der Philosophie des Rechtes, oder des Naturrechtes*. Leipzig.

—. 1874. *Vorlesungen über Rechtsphilosophie.* Translated by K. D. A. Röder. Leipzig:

—. 1892. *Vorlesungen über Naturrecht oder Philosophie des Rechtes und des Staates.* Translated by Richard Mucke. Leipzig.

—. 1904. *Lebenlehre oder Philosophie der Geschichte zur Begründung der Lebenkunstwissenschaft.* Translated by P. Hohlfeld and A. Wünsche. Leipzig.

Ladwig, Bernd. 2020. *Politische Philosophie der Tierrechte*. Berlin: Suhrkamp.

Landau, Peter. 1985. "Karl Christian Friedrich Krauses Rechtsphilosophie". In *Karl Christian Friedrich Krause (1781–1832). Studien zu seiner Philosophie und zum Krausismo*, edited by Klaus M. Kodalle, 80–92.

—. 1995. "Stufen der Gerechtigkeit. Zur Rechtsphilosophie von Gottfried Wilhelm Leibniz und Karl Christian Friedrich Krause" Heft 7.

Leonhardi, Hermann von. 1905. *Karl Christian Friedrich Krause's Leben und Lehre.* Translated by P. Hohlfeld and A. Wünsche. Leipzig:

Passmore, John. 1974. *Man's responsibility for nature. Ecological problems and Western traditions*. London: Duckworth.

Pfordten, Dieter von der. 1994. Ökologische Ethik. Reinbek: Rowohlt.

Protopapadakis, Evangelos D. 2012. "Animal rights, or just human wrongs?". In *Animal ethics. Past and present perspectives*, edited by Evangelos D. Protopapadakis, 279–92. Berlin: Logos.

Rousseau, Jean-Jacques, Blaise Bachofen, and Bruno Bernardi. 2016. *Discours sur l'origine et les fondements de l'inégalité parmi les hommes*. Paris: Flammarion.

Rowlands, Mark. 2012. *Can animals be moral?* Oxford: Oxford Univ. Press.

Schmidt, Thomas B. 1996. *Das Tier — ein Rechtssubjekt? Eine rechtsphilosophische Kritik der Tierrechtsidee*. Regensburg: Roderer Verlag.

Schopenhauer, Arthur. 1988. "Grundlage der Ethik". In *Arthur Schopenhauer. Sämtliche Werke, Band 3*, edited by Arthur Hübscher. Mannheim.

Taylor, Paul W. 1986. *Respect for nature. A theory of environmental ethics*. Princeton, N.J.: Princeton Univ. Press.

Ureña, Enrique M. 2007. *Die Krause-Rezeption in Deutschland im 19. Jahrhundert. Philosophie - Religion - Staat*. Stuttgart & Bad Cannstatt: frommann-holzboog.

Wolf, Ursula. 1988. "Haben wir moralische Verpflichtungen gegen Tiere?". *Zeitschrift für Philosophische Forschung*, no. 42: 222–46.