

## “*Ihre defension zu führen*”: The rights of animals in early eighteenth-century Germany and Sweden

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*Abstract:* This article discusses two lesser known proponents of animal rights in early eighteenth-century Northern Europe. In Sweden, Johan Upmarck argued for an ‘analogy’ of rights of animals in 1714. German scholar Immanuel Proeleus proposed a set of animal rights and human duties towards animals in 1709. Both authors place restrictions on these rights. In the case of Upmarck, the rights are described through the notion of an ‘analogy’. The rights of animals are only rights in an improper sense, and not comparable to the rights humans have. In the case of Proeleus, animal rights are placed on a foundational level, as a category of rights that are common to both men and other animals. This gives them a stronger position than is the case in Upmarck’s argument, but animal rights are in the final analysis nonetheless relegated to a subordinate status. However, Proeleus goes much further in detailing the exact nature of the rights of animals and the duties of humans to care for and protect them, although Upmarck also delineates what constitutes ‘illicit cruelty’ towards animals and discusses their experience of suffering.

*Keywords:* Natural Law; Animal Rights; Johan Upmarck (Rosenadler); Immanuel Proeleus; Eighteenth-century Philosophy

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## Introduction

The day *may* come, when the rest of the animal creation may acquire those rights which never could have been withholden from them but by the hand of tyranny.<sup>1</sup>

Nichts gewissers aber ist, als dieses, daß wenn die Leute nach der Vernunft lebeten, man gar keine Ursache hätte, von der Pflicht der Menschen gegen die Bestien zu schreiben, und gleichsam ihre defension zu führen.<sup>2</sup>

The statement put forward in Jeremy Bentham's *An Introduction into the Principles of Morals and Legislation* in 1789 is often considered the first modern argument for animal protection. He built his argument on his own system of utilitarianism. His argument was based on animals' ability to suffer, and therefore side-steps discussions about their lack of rationality or legal capacity, which were long used to disqualify them from moral considerations in the Western philosophical tradition.<sup>3</sup>

However, by the time of the publication of Bentham's work, the issue of animal rights had been discussed by a number of less well-known philosophers and theologians for more than 100 years. In England, Humphrey Primatt published his *Dissertation on the Duty of Mercy and Sin of Cruelty to Brute Animals* in 1776 and in Germany Wilhelm Dietler *Gerechtigkeit gegen Thiere* in 1787, followed by Dane Laurids Smith's *Versuch eines vollständigen Lehrgebäudes der Natur* (1793). As early as 1711, Pietist theologian Adam Gottlieb Weigen argued for compassion towards animals in *De Jure Hominis in Creaturas: Oder Schriftmässige Erörterung Des Rechts des Menschen Über Die Creaturen*. Weigen used the Genesis story as the basis for an argument which stressed the responsibility which comes with man's dominance over nature. In other words, Bentham was clearly not the first to argue for the rights of animals or for their protection.

The early proponents of animal rights or compassion towards animals worked within different systems of thought. Many of them based their argument on Biblical exegesis, drawing on a long tradition in scholastic theology. Others worked

<sup>1</sup> Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation* (Oxford: Clarendon Press, 2005 [1996]), ed. by J. H. Burns & H. L. A. Hart, p. 283 (XVII:i:4, footnote b.). [Crossref](#)

<sup>2</sup> Immanuel Procleus, *Grund-Sätze Des Rechts der Natur, Nebst einer kurzen Historie und Anmerkungen über die Lehren Hrn. Barons von Puffendorff, Wie auch einem Beweiß, Daß die Pacta nicht des Interesse, sondern ihrer Natur und Eigenschaften wegen zu halten* (Leipzig, 1709), p. 89.

<sup>3</sup> The best general surveys are Richard Sorabji, *Animal Minds and Human Morals: the Origins of the Western debate* (Ithaca: Cornell University Press, 1993) and Gary Steiner, *Anthropocentrism and its Discontents: the Moral Status of Animals in the History of Western Philosophy* (Pittsburgh: University of Pittsburgh Press, 2010 [2005]). [Crossref](#)

within the framework of the so-called ‘modern’ or ‘secular’ natural law that had become established in the mid to late seventeenth century. In this article, I will highlight two examples of the latter: discussions of the rights of animals from the viewpoint of natural law. The two scholars argue in slightly different ways, but both explicitly discuss the idea of animals having *rights*, although these rights are circumscribed in various ways.

Two years prior to the publication of Weigen’s work, Immanuel Proeleus’s (ca 1670–1740?<sup>4</sup>) textbook *Grund-Sätze Des Rechts der Natur* appeared. His views on the rights of animals are presented in an appendix (Anhang) to the *Grund-Sätze*. It is notable for the philosophical nature of the argument and its basis in a larger framework of natural law. It also incorporates the idea of responsibility for or stewardship over God’s creation. As far as I know, Proeleus’s argument for animal rights has not received any attention in previous research. Johan Upmarck’s dissertation on the analogy of rights in animals has recently been translated into French by David Chauvet, but has otherwise not been discussed in previous research.<sup>5</sup> Upmarck also developed his argument in another dissertation, devoted to the issue of cruelty towards animals, which will also be taken into account here.

In these texts, the meaning of the term ‘right’ (*jus*) differs from modern usage. However, I hope it will be sufficiently clear from my analysis what the authors meant, and that the term itself is appropriate. The concept as it was understood in the seventeenth and eighteenth centuries had a different status compared to modern discourses on animal rights. The question of the rights of animals was, in a certain sense, fundamental to early modern natural law, but not because there existed a strong animal rights movement in this period. Animals were of interest to early modern natural law primarily because they were not human: they were used to illustrate the nature of humanity by contrast, to highlight its deficiencies or to delineate its boundaries. Hobbes’ use of the old adage that ‘man is a wolf to man’ to illustrate the state of war between sovereign states is perhaps the most famous example.<sup>6</sup>

As Brian Tierney has pointed out, ‘[t]he simple-looking little phrase, *ius naturale*, is a semantic minefield.’<sup>7</sup> Both *jus* and *natura* were defined in different ways

<sup>4</sup> I have not found any exact dates for his life; his origins in Stolp can be deduced from the title page of his pro loco-dissertation *Religio, Hominis et Boni Civis, Naturalis geometrice Demonstrata, Bened. Spinosa & Th. Hobbesio Opposita* (Leipzig, 1703), but it is not mentioned by Zedler.

<sup>5</sup> David Chauvet (ed.), ‘Nicolaus Krok, Analogia juris in brutis animantibus (1711): Texte établi, traduit, présenté et annoté par David Chauvet’, *Dix-huitième siècle* 47 (2015), pp. 587–625. [Crossref](#)

<sup>6</sup> Thomas Hobbes, *Elementa Philosophica De Cive* (Amsterdam, 1647), Epistola dedicatoria.

<sup>7</sup> Brian Tierney, *The Idea of Natural Rights: Studies on Natural Rights, Natural Law and Church Law 1150–1625*, Emory University Studies in Law and Religion 5 (Atlanta: Scholars Press, 1997), p. 48.

and sometimes openly contested. On the whole, medieval and early modern theories of natural rights were based both on metaphysical concepts (of the *nature of the world*) and on notions of *human nature*. Human beings were considered to possess a will, reason and a capacity for moral judgements.<sup>8</sup> When ideas of subjective rights developed, they were based on such conceptions of human nature.<sup>9</sup>

Metaphysical concepts regarding the will and wisdom of God and the reasonable nature of his creation were also fundamental parts of arguments for and against animal's rights, even when they did not build directly on a scriptural foundation. The phrase 'secular natural law' is often used by modern scholars. It is important to note, however, that early eighteenth-century natural law nonetheless often featured crucial arguments involving the nature of God, the metaphysical foundations of existence or the divine intentions laid down in human nature. It was 'secular' primarily because it depended on what was regarded to be philosophical rather than theological arguments. It was independent of any particular revealed religion. The God it referred to was the God of natural religion, not the God of the Bible.<sup>10</sup> As we will see, the issue of animal rights in particular illustrates the limits to the secularization of natural law.

Individual natural law thinkers also held different views. Samuel Pufendorf, who influenced both Proeleus and Upmarck, went further than most. He based his system solely on human reason and he drew a clear distinction between natural law, which was based on human nature, and divine law, based on scripture. God was the author of natural law in the sense that human nature was also his creation, according to Pufendorf, but the argument in itself was both anthropological and anthropocentric in nature. His version of natural law also clearly separated human beings from the rest of the natural world.<sup>11</sup> In *De Jure Naturae et Gentium* book 2, chapter

<sup>8</sup> The extent of mankind's intellectual abilities and the capacity of man's will to fulfill the duties of natural law were contested. In general, proponents of modern natural law often posited that they were sufficient for life in society, although they may not be sufficient for salvation. This was Pufendorf's view, but he was challenged by contemporary theologians. However, even a "secular" natural law thinker such as Thomasius had his doubts. In the later part of his career he regarded man's depraved will to be quite inadequate without the aid of divine grace; Tim J. Hochstrasser, *Natural Law Theories in the Early Enlightenment*, Ideas in Context 58 (Cambridge: Cambridge University Press, 2006 [2000]), pp. 129–35. [Crossref](#)

<sup>9</sup> Tierney, pp. 5–6, 76.

<sup>10</sup> Frank Grunert, *Normbegründung und politische Legitimität: Zur Rechts- und Staatsphilosophie der deutschen Frühaufklärung*, Frühe Neuzeit 57 (Tübingen: Max Niemeyer, 2000), p. 157. [Crossref](#)

<sup>11</sup> Hochstrasser, pp. 62, 67; Bo Lindberg (ed.), *The Pufendorf Lectures: Annotations from the Teaching of Samuel Pufendorf 1672–1674*, Handlingar: Filologisk-filosofiska serien 23 (Stockholm: Kungl. Vitterhets, Historie och Antikvitets Akademien, 2014), pp. 18, 36, 49, 117; Knud Haakonssen, *Natural Law and Moral Philosophy: From Grotius to the Scottish Enlightenment* (Cambridge: Cambridge University Press, 2003 [1996]), pp. 37–43; Grunert, pp. 152–62.

3, Pufendorf refuted the position that natural law was common to humans and animals, and he asserted that its foundations were to be sought in human nature.<sup>12</sup>

The anthropocentrism of natural law had very old roots, but the idea that natural law does not only pertain to humans also had an ancient lineage. The third-century Roman jurist Ulpian claimed that *jus naturale* (natural law) was common to humans and animals. It has been argued that Ulpian's inclusion of animals in this definition of natural law has a background in neo-platonic ideas, even though Ulpian himself was probably more of a stoic. In any case, Ulpian elsewhere made a practical distinction between animals who behaved badly, which meant contrary to nature, and those who acted in accordance with nature. An owner of an animal would be liable for damages caused by the actions of the former, but not for those caused by the latter. This would indicate not only that animals were subject to natural law, but also that they were seen as possessing a limited form of reason.<sup>13</sup>

Ulpian's definition of natural law was included in the introduction to the *Digest* of Roman law.<sup>14</sup> Therefore, it was well known in the Middle Ages and early modern period. Several natural philosophers of the seventeenth century engaged directly with Ulpian's view. Hugo Grotius argued in typical fashion, in the first chapter of his *De Jure Belli ac Pacis* (1625), that Ulpian's view was erroneous, because only beings who by nature can use reason are considered to be *capacia juris* (legally capable). In his earlier work, Grotius had acknowledged that animals have something akin to a right to their own self-preservation, although he denied that this had anything to do with justice in the proper sense. In a similar way, Hobbes regarded animals as having the 'right' to kill humans, but only because the relationship between humans and animals is that of a state of nature (i.e., a state of war). Pufendorf argued in a way that resembled both Grotius and Hobbes, stating that while animals experience pain, humans do no injustice in killing them, because there is no legal community between men and animals, only a state of nature. According to Annabel Brett, such arguments were the result of a shift in the conception of differences between humans and other animals, which occurred in the late Renaissance. She states that '[i]n terms of both the preceding and the subsequent *ius naturae et gentium*, this [i.e. Pufendorf's] acknowledgement of pain is (to the best of my knowledge) unique'.<sup>15</sup> In the early eighteenth century, the most prevalent

<sup>12</sup> Samuel Pufendorf, *De Jure Naturae et Gentium Libri Octo* (Frankfurt, 1684 [2d ed.]), 2:3:2–3, 10–11, 14.

<sup>13</sup> Tony Honoré, *Ulpian* (Oxford: Oxford University Press, 2002 [1982]), p. 82. [Crossref](#)

<sup>14</sup> Tierney, p. 136.

<sup>15</sup> Hugo Grotius, *De Jure Belli ac Pacis Libri Tres. In quibus ius naturae & Gentium: item iuris publici praecipua explicantur* (Paris: Nicolaus Bvon, 1625), §1:1:11, p. 7. [Crossref](#); Annabel Brett, 'Rights of and over Animals in the *Ius Naturae et Gentium*', *American Journal of International Law*, vol. 111 (2017), pp. 257–61; quote at p. 261. [Crossref](#)

argument for some sort of legal common ground between humans and animals was indeed centered around self-preservation. This was also, as we will see, the basis for the arguments put forward by Proeleus and Upmarck. Pufendorf's discussion of the pain and suffering of animals is also addressed by both authors.

The arguments *against* animal rights during the late seventeenth and early eighteenth centuries were most likely reinforced by contemporary metaphysical discussions. It is well known that Descartes described animals as being like mere machines. According to him, human reason was entirely unique, and it was something that other animals completely lack.<sup>16</sup> One of Descartes' adherents, Antoine Le Grand (1629–1699), further elaborated on this view in a dissertation published in 1675 tellingly entitled *On the Lack of Sense and Cognition in Brutes*.<sup>17</sup> However, Descartes' views were not universally accepted. Although mechanism was indeed common in natural philosophy, it could also serve to blur the boundary between animal and human. This was true especially of thinkers such as Gassendi, who did not subscribe to the dualism of Descartes. Gassendi was also a vegetarian who defended his position by appealing to the suffering of animals, to the adverse health effects of meat-eating, and to man's unjust dominion over nature, which he, like Bentham, called a tyranny. He also argued that animals possess a natural desire for self-preservation. However, he did not believe that there could be any contractual relations between humans and animals, and therefore that humans have no obligations towards them.<sup>18</sup>

### *Immanuel Proeleus*

Immanuel Proeleus came from the town of Stolp in Pomerania (now Słupsk, Poland), then part of the electorate of Brandenburg, which became a part of the kingdom of Prussia in 1701. He worked as a teacher at the *Fürstenschule* in Meissen and at the university of Leipzig.<sup>19</sup> He obtained a master's degree in 1703 and

<sup>16</sup> René Descartes, *Discourse on Method and the Meditations* (London: Penguin, 1968), transl. F. E. Sutcliffe, p. 74–76. Note how Bentham (in the passage quoted above) and Descartes make similar comparisons between animals and young children, but they draw completely different conclusions from this.

<sup>17</sup> Antoine Le Grand, *Dissertatio De Carentia Sensus & Cognitionis in Brutis* (London, 1675).

<sup>18</sup> Emily Michael, 'Vegetarianism and Virtue: Gassendi's Epicurean Defense', *Between the Species* 7:2 (1991), pp. 61–72. [Crossref](#); Guido Giglioni, 'Life and its Animal Boundaries: Ethical Implications in Early Modern Theories of Universal Animation', in *Ethical Perspectives on Animals in the Renaissance and Early Modern Period* (Florence: Sismel, 2013), ed. by Cecilia Muratori & Burkhard Dohm, pp. 111–37.

<sup>19</sup> The title-page of the dissertation *Quid sit Honestè Vivere* (Leipzig, 1704) describes Proeleus as a member (assessor) of the philosophical faculty.

published a few dissertations, but he does not seem to have become a professor. The Zedler encyclopedia claims that Proeleus became the preceptor of a young aristocrat in Frankfurt an der Oder after his time in Leipzig. Later, he joined the anabaptists and then the ‘Galenists’ in Amsterdam.<sup>20</sup> The group were a branch of the mennonites who received their name from their leader Galenus Abrahamsz de Haan (1622–1706).

In 1695, Proeleus wrote a guide to Latin rhetoric, probably as part of his work as teacher. This was followed by dissertations on philosophical and theological subjects, and one larger epistemological work (in Latin).<sup>21</sup> A few years later, he published a substantial work on natural law in German: *Grund-Sätze Des Rechts der Natur* (1709). Zedler gives the impression that his ideas became more radical once he had moved to the Netherlands (after he wrote the texts discussed here). However, it is difficult to say whether his ideas on the rights of animals were in any way a part of this presumed later radicalization.

Proeleus was involved in a significant debate concerning the fundamental precepts of natural law during his years at Leipzig. Ever since Grotius, there had been much discussion about the nature of what he called *socialitas*, the *sociability* of man. Grotius’ idea was rather optimistic, seeing the natural impulse to society as a positive aspect of human nature. Pufendorf also spoke of *socialitas*, but he held a more pessimistic view. Human sociability was not natural, but rather an effect of the unfavorable conditions of the state of nature, which in turn was a result of human nature. In that sense, society originated at least partly as a product of fear, or even malice. Pufendorf nonetheless argued that man had a duty to preserve society, as the alternative was far worse. This became the first principle of his system: all other duties were derived from the duty to preserve society. Proeleus instead made self-preservation the first principle and the basis for *socialitas*.<sup>22</sup> Up to that point self-preservation had been closely associated with Hobbes, whose reputation made the concept suspect. By making *conservatio sui* and *socialitas* compatible rather than opposites, Proeleus contributed to making self-preservation more palatable to a mainstream audience, as Michael Kempe has pointed out.<sup>23</sup>

<sup>20</sup> Johann Heinrich Zedler, *Grosses vollständiges Universal-Lexicon aller Wissenschaften und Künste*, vol. 29 (Leipzig & Halle, 1741), pp. 758–9, [www.zedler-lexikon.de](http://www.zedler-lexikon.de), retrieved 2020-10-29.

<sup>21</sup> Immanuel Proeleus, *Demonstratio de Certitudine Sensuum, Rationis, et Fidei qua Status Naturalis imprimis autem Religionis Verae Principia, per Testimonium Spiritus S. Internum Confirmata Expli-cantur* (Leipzig, 1704).

<sup>22</sup> Proeleus develops this argument in his comments on Pufendorf; *Grund-Sätze*, pp. 140–54.

<sup>23</sup> Michael Kempe, ‘Geselligkeit in Widerstreit: Zur Pufendorf-Kontroverse um die *socialitas* als Grundprinzip des Naturrecht in der Disputationsliteratur in Deutschland um 1700’, in *Jahrbuch für Recht und Ethik* 2004:12, pp. 57–72; Proeleus, *Grund-Sätze*, p. 145.

Thus, the basic premise of Proeleus's *Grund-Sätze* is that human beings must preserve themselves. While this may sound similar to Hobbes' basic 'right of nature', it in fact becomes a rule with a much wider application and a completely different purpose. Everyone has a duty to respect the self-preservation of others. Furthermore, this is not only valid in the state of nature. For instance, a prince's right to do anything necessary to maintain his position falls under this general rule. According to Proeleus, everyone has an equal right to preserve themselves, but in each case circumstances must also be taken into account. Rather than being radical and egalitarian, this turns into a defense of estate society. Everyone's condition must be taken into consideration: what is right with regard to a nobleman is not necessarily right with regard to a peasant, etc. In this and other respects, Proeleus is clearly indebted to Thomasius.<sup>24</sup>

Proeleus presents man's duties in a threefold way, which was not unusual at this time: duties towards God, towards oneself, and towards one's fellow man. But he also adds a fourth basic duty, which, he points out, most other writers omit:

Die Pflicht gegen die Bestien pfeget fast durchgehends weggelassen zu werden, theils weil man dieses als was bekantes voraus setzt, theils auch weil die Thiere nicht zu verdienen scheinen, daß man sich um sie bekümmere, und noch vielweniger ihnen ein Recht beylege.<sup>25</sup>

Mankind must understand how to act in relation to nature and, more specifically, towards animals. He writes that people do not regard animals very highly and that they regard duties towards animals as a non-issue. However, if only people followed reason, they would come to the animals' defense.<sup>26</sup> The appeal to right reason (*gesunde Vernunft*) is often repeated.<sup>27</sup> In fact, many of Proeleus's arguments seem to be based simply on the statement that this or that is 'reasonable'. In the first part of his survey of the duties of man, he says that God 'alles liebet, was vernünfftig lebet.'<sup>28</sup> Like Pufendorf, Proeleus uses the God of natural religion as the basis for his normative statements. God and 'right reason' effectively mean the same thing. To live according to the will and intention of God is equivalent to liv-

<sup>24</sup> For the innovations of Thomasius compared to Pufendorf, see for example Hochstrasser, pp. 113–49; Grunert, pp. 172–84. There is no room for a systematic comparison here, but Proeleus seems to have taken over Thomasius's points regarding (e.g.) the separation between (external) natural law, (internal) morality and societal *decorum* as well as his controversial position on bigamy and at least parts of his prudential private ethics.

<sup>25</sup> Proeleus, *Grund-Sätze*, Vorbericht, p. 16.

<sup>26</sup> See footnote 1.

<sup>27</sup> Proeleus's use of this term makes it clear that it corresponds to the philosophical term *recta ratio* rather than a generic "common sense".

<sup>28</sup> Proeleus, *Grund-Sätze*, p. 32.



ing in a ‘reasonable’ and ‘honnette’ fashion, and this is also to live in accordance with natural law.<sup>29</sup>

Compared to other natural law writers of the period, Proeleus discusses the moral and legal status of animals at length. In an appendix devoted to man’s duty towards animals, he discusses three questions: 1. Whether it is right to kill animals; 2. Whether it is right to eat animals; 3. How humans should behave towards them, that is, how animals should be treated.

Proeleus states that it is wrong to suppose that humans and animals live in a state of war with each other. This may be true if a wild animal attacks us, but it obviously is not true of our relations to a peaceful domesticated animal. Proeleus acknowledges that life is the dearest thing to animals, as it is to humans. He also dismisses the argument that animals may be killed because they do not have an immortal soul. Animals apparently experience dying as something painful just as humans do. He claims that from the standpoint of philosophical reason alone, the question of their immortal soul is highly obscure. Even if they do lack souls, it is still wrong to kill animals that could be useful to us, or animals that are similar to us in terms of sensibility or reason.<sup>30</sup>

Proeleus does not claim that it is always morally wrong to kill and eat animals. Instead, he argues that killing animals is allowed because it is unlikely that God would have allowed an abuse to go on for such a long time, since killing animals has been customary for so long among so many people. The argument for meat-eating is equally interesting. Proeleus claims that meat-eating is necessary in Europe, because fallen man has become accustomed to this. For us it would be harmful to abstain from meat, but for Indians, who are accustomed to a vegetarian diet, it is unhealthy, and therefore irrational. It is implied that vegetarianism is closer to man’s original, uncorrupted state before the fall. He compares it to the use of alcohol, which is a similar type of long-standing abuse.<sup>31</sup>

Cruelty towards animals is a central concern for Proeleus. Cruel treatment is wrong because to unnecessarily kill or harm God’s creation is a *Verkleinerung* (belittling) of the creator. It is an abuse which serves no useful purpose. Proeleus concludes that:

<sup>29</sup> “Denn wer nach der gesunden Vernunft lebt, der lebt auch nothwendig nach dem Recht der Natur.” Proeleus, *Grund-Sätze*, p. 95; “Unsere Erhaltung, welche Gott in die Natur gesetzt”, Proeleus, *Grund-Sätze*, p. 176.

<sup>30</sup> Proeleus, *Grund-Sätze*, pp. 75–9.

<sup>31</sup> Proeleus, *Grund-Sätze*, pp. 79–82. Surprisingly, this argument comes from Le Grand, as Proeleus himself states; Proeleus, *Grund-Sätze*, pp. 80, 218–9.

Wenn dieses gewiß ist, daran man keine Ursache zu zweifeln hat, so kan keines weges gelegnet werden, daß die Bestien einiges Recht von uns zu fordern haben, und daß wir hingegen ihnen einige Pflicht zu leisten schuldig sind.<sup>32</sup>

Our duty and their right do not derive from a contract, he stresses, but from a law that God has prescribed for us, through reason.<sup>33</sup> As we have seen, Grotius had argued that a contract between humans and animals was impossible, and that therefore there was no basis for rights for them. Proeleus pursued an alternative route, more reminiscent of Pufendorf: he deduced a set of duties from a first principle. The first principle is *humans'* duty of self-preservation: the rights of animals correspond to our duties as humans, and are not derived from the animals' own right of self-preservation (if they can be said to have one, which seems doubtful).

From this basis, Proeleus argues that humans may kill and use animals as long as it serves man's own preservation. He therefore questions the arranging of animal fights (e.g. dog or cock fighting for gambling) as irrational and cruel. Proeleus also discusses rational and less cruel methods of hunting, and hunting and fishing at specified seasons of the year. He even argues that humans ought to provide fodder for wild animals in harsh winters to preserve them (so that they may be caught and put to better use later).<sup>34</sup>

Human duties towards domesticated animals are more comprehensive. To them humans owe proper sustenance and care, and they must not make animals work harder than they can bear. But it is also the duty of humans not to treat them in a way that is contrary to their nature. This includes giving animals too many delicacies in terms of food, etc. At slaughter, all unnecessary suffering must be avoided. In general, animals must be used in a rational way. It follows from this idea of rational use that animals that can be more usefully employed working for us should not be eaten. Neither should animals with human-like intellectual capabilities.<sup>35</sup> Such animals seem to be considered particularly worthy of humans' care for a similar reason. They give humans more joy (*Vergnügen*) alive than dead.<sup>36</sup>

The most interesting part of the argument is perhaps the conclusion to the whole section on the duty towards animals. Here, Proeleus states that if people only lived reasonably, there would be no need to write about the duty towards animals at all. In fact, this is the reason why most writers have ignored the subject: there has been no need to elaborate on it.<sup>37</sup> Instead of presenting animal rights as

<sup>32</sup> Proeleus, *Grund-Sätze*, p. 82.

<sup>33</sup> Proeleus, *Grund-Sätze*, pp. 82–3.

<sup>34</sup> Proeleus, *Grund-Sätze*, pp. 85–7.

<sup>35</sup> Unfortunately he does not mention which species he has in mind.

<sup>36</sup> Proeleus, *Grund-Sätze*, pp. 87–9.

<sup>37</sup> Proeleus, *Grund-Sätze*, pp. 89–90.

a controversial issue, Proeleus claims on the contrary that it is the most reasonable thing, something that all civilized people will surely recognize. Of course animals have rights, this is obvious!

### *Johan Upmarck*

Johan Upmarck<sup>38</sup> (1664–1743) was the professor *skytteanus* of rhetoric and politics at Uppsala University between 1698 and 1716. This chair was a royal endowment founded in 1622 by Gustavus Adolphus, as part of a larger effort to bolster practically useful education for noblemen destined for the courts and the civil administration. Natural law was an important part of the teaching duties of the professor *skytteanus*. Upmarck's predecessor Johannes Schefferus (1621–1679) had led the way by introducing Grotius in his lectures from 1655 onwards. Upmarck mainly based his lectures on Pufendorf's works.<sup>39</sup> In the first few years of the eighteenth century, Upmarck was involved in controversies regarding the place of natural law within the university. He and his colleagues in the philosophical faculty challenged the jurists, who claimed natural law for the faculty of law. The philosophers won the battle and among their notable arguments was that natural law, far from being a new discipline, had an ancient pedigree all the way back to the ancient philosophers. They presented modern natural law, such as Pufendorf and Grotius, as a rebirth of classical wisdom and contrasted it to the 'scholastics' of the Middle Ages.<sup>40</sup>

There are two dissertations of Upmarck's<sup>41</sup> that deal with the issue of animal rights: one focuses on the specific question of illicit cruelty towards animals and the other discusses animal rights in general.

<sup>38</sup> Upmarck was ennobled under the name Rosenadler in 1719.

<sup>39</sup> Anders Burius, 'Johan Rosenadler', Svenskt biografiskt lexikon, <https://sok.riksarkivet.se/sbl/Presentation.aspx?id=6895>, retrieved 2022-05-06. Pufendorf had of course himself enjoyed considerable royal favor in Sweden, at the university of Lund in 1668–1677 and thereafter and until 1688, as royal historiographer in Stockholm.

<sup>40</sup> Bo Lindberg, *Naturrätten i Uppsala 1655–1720* (Uppsala: Uppsala universitet, 1976), pp. 78–85.

<sup>41</sup> The question of authorship is always difficult to determine when it comes to dissertations of this period. However, the texts discussed here include such consistency of argument that it seems reasonable to consider them to be the work of Upmarck, although the participation of the students must in no way be ruled out. The same can be said about Proeleus's dissertations discussed above, and that is also how they have been viewed in previous research, e.g. by Kempe. A recent and very thorough discussion of this issue can be found in Bo Lindberg, *Disputation, dissertation, avhandling: Historien om en genre*, Handlingar: Historiska serien 40 (Stockholm: Kungl. Vitterhets, Historie och Antikvitets Akademien, 2022); see also Erland Sellberg, 'Disputationsväsendet under stormaktstiden', in *Idé och lärdom*, ed. by Ronny Ambjörnsson (Lund: Studentlitteratur, 1972).

Upmarck's argument starts from a traditional view of human exceptionalism and superiority. Man is lord of the animals and God has created many things in the natural world as useful goods and tools for man's benefit. However, he also states that it is not certain that everything in nature is created *solely* for man's sake, and that the lordship God has granted does not include misuse or abuse. The arguments are in these respects very similar to Proeleus's.

The similarities do not end there. More specifically, in the dissertation on illicit cruelty towards animals, Upmarck claims that mankind has been conceded the privilege to make *reasonable* use of the earth. This is not an unrestricted, absolute dominium. The claim is supported by references to the Bible (Genesis 1:28–29 and 9:2–3), to natural reason and to Thomasius and Pufendorf. It is God's will that humans make use of these things for their own preservation. It stands to reason that 'whoever wills the end, also wills the means'. Mankind's rights to lordship over creation must be understood as a privilege granted (*concessionem privilegii*), not a duty – it would be absurd to say that humans are obliged to kill all animals they encounter. Using natural resources for other purposes, that is, using them in an irrational way, may therefore be wrong.<sup>42</sup> In this way, the idea of man's dominium over the natural world has an inherent limitation. The limitation is reason or, in other words, natural law.

The dissertations also consider philosophical discussions from antiquity onwards regarding the possible reasoning faculties of animals. More importantly, the dissertation on cruelty states that:

[animals] seem to observe the main points of natural law, concerning the preservation of themselves and their offspring, upon which all other precepts of natural law are built.<sup>43</sup>

This claim is reinforced by examples of virtue-like acts in the animal world, including an emotion-laden quotation from the Greco-Roman poet Oppian (in a Latin translation of his original Greek), emphasizing the reciprocal *pietas* (devotion) shown between grateful animals and their parents who nurtured them in early life.<sup>44</sup>

Self-preservation is the basis for the argument for an 'analogy of rights in animals', which is the subject of a dissertation devoted to that subject. This analogy

<sup>42</sup> Johan Upmarck/Erland Rosell, *Dissertatio de Saevitia in Pecudes Illicita [..]* (Uppsala, 1713), p. 1–8.

<sup>43</sup> "nimirum cum viderentur juris naturalis praecipua capita observare, quoad sui prolisque suae conservationem, qua reliqua omnia praecepta fundantur." Upmarck/Rosell, p. 9.

<sup>44</sup> "Ulnis amplexi summa pietate foventes / Officium paribus curis puerile rependunt." Upmarck/Rosell, p. 13.

is explicitly mentioned in the text *On Cruelty* as well. A central reference is the statement from Roman law (by Ulpian), defining natural right (*jus naturale*) as ‘that which nature teaches all animals’. In the dissertation, this fundamental right is equated with self-preservation. This may be a reasonable inference, but it is not explicitly stated by Ulpian, who speaks about procreation and the upbringing of children.<sup>45</sup> However, despite stressing this authoritative support for extending natural law to animals, Upmarck, unlike Proeleus, denies that there is a natural law or right that includes them.

Many people have been led to assume that there exists a *jus* that is common to humans and animals, Upmarck continues, because they have confounded animals’ natural impulse – what the stoics called *prima naturae* – with natural law. The actions of animals and humans may superficially look similar, but in reality, they are quite different. Upmarck associates the idea that human and animal self-preservation are essentially the same with Hobbes and Spinoza.<sup>46</sup> This is not exactly what either of them claimed, but that is perhaps not really the point: Upmarck is trying to show that the idea that humans and animals share a *jus commune* is an absurd one, and the mere association with thinkers of such bad repute may have had that effect.

More important to his argument is the excursus which follows. This deals with the issue of animal souls. Proeleus does not delve into this issue, but he mentions a few authors who had claimed that animals have souls (Rorarius, Pythagoras, Campanella, van Helmont). Upmarck goes into more detail and takes a clearer position. Modern, reliable philosophers, such as Descartes and Le Grand, have shown that what some of the ancients took to be the souls of animals are merely animal spirits, fine particles of the blood which give movement to the body’s muscles. Animals are like wonderfully well-made mechanical clocks, and like such machines, their wonderous workings must be ascribed to the intellect of their creator, not to any inherent cognition of their own.<sup>47</sup>

However, Upmarck continues, it cannot be denied that animals provide *simulacra* of almost all possible (human) virtues: fidelity, chastity, courage, etc. Indeed, in many ways animals behave better towards others creatures than humans do:

<sup>45</sup> Upmarck/Rosell, p. 15. The passage by Ulpian reads: ‘Jus naturale est quod natura omnia animalia docuit. Nam jus istud non humani generis proprium est, sed omnium animalium quae in caelo, quae in terra, quae in mari nascuntur, avium quoque commune est. Hinc descendit maris atque feminae conjunctio, quam nos matrimonium appellamus: hinc liberorum procreatio, hinc educatio: videmus etenim, cetera quoque animalia istius juris peritia censerit.’ *Digesta* 1:1:1, §3. Upmarck/Rosell reads ‘Ulpianus jus naturae illud esse definiebat, quod omnia *animantia* docuit.’ (my italics).

<sup>46</sup> Chauvet, p. 594–6.

<sup>47</sup> Chauvet, pp. 600–2.

even lions only devour women and children in exceptional cases. Animals are often better at living in harmony with one another, they cultivate friendship better than humans do, and they obey their superiors more.<sup>48</sup> As the last and most prominent example of virtuous behavior in animals comes the defense of oneself, one's kin and home. Animals care just as much as humans for the preservation of their own lives and the upbringing of their young. They protect their nests, with tooth and claw.<sup>49</sup>

Indeed, you say: 'led by nature, brute animals do the same things humans do when it comes to fostering their offspring, self-defense, and the like: surely they must also have the same legal capability as humans'.<sup>50</sup>

But Upmarck's answer is no: 'There is truly no common law [*jus*], because obligation is lacking on one side, as brutes are not capable of it [*jus*] because they lack reason.' Animals do what they do exactly because they are led by nature (*per naturae ductum*). They are not held back by the bonds of morality as humans are.<sup>51</sup>

This does not mean that animals live in a constant state of war with humans. Again, Upmarck holds a similar view to Proeleus's. Such a state would exist if a *jus commune* was lacking and the other part enjoyed a "perfectum superioris dominium" (the perfect dominium of a superior). But mankind was never given such a lordship over the natural world, although some have interpreted Genesis 1:28 in that way. Upmarck counters this with a philosophical argument and an appeal to reason rather than scripture: Humans do not have the right to kill animals for 'unnecessary uses' (*usus non necessarios*). God intended humans to use things to preserve their life, not to 'kill harmless animals to gratify their gluttony'. Eating meat is less well suited for human digestive systems than vegetable food, Upmarck says, and raising cattle for meat, preparing and cooking it, is more difficult and labor-intensive than preparing food from grain and fruits.<sup>52</sup>

Upmarck argues that such abuse and wasteful practices are an affront to God, who has provided such bountiful gifts. He would not wish to see them 'thoughtlessly squandered' (*temere usurpandum*). Misuse of resources also goes against the interests of every single state.<sup>53</sup>

<sup>48</sup> Chauvet, pp. 608–14.

<sup>49</sup> Chauvet, pp. 616–8.

<sup>50</sup> "Verum, enimvero dicis: bruta animantia per ductum Naturae eadem faciunt, quae homines circa educationem proles circa sui defensionem & similia: Unde etiam Juris prorsus eadem capacia sunt cum homine." Chauvet, p. 618.

<sup>51</sup> "Verum Jus commune non datur, quum ab altera parte obligatio deficiat, utpote cujus bruta ob rationis defectum capacia non sunt." Chauvet, p. 618.

<sup>52</sup> "homo gulae obsequens, innoxio animanti auferre", Chauvet, p. 620.

<sup>53</sup> Chauvet, p. 622.

Upmarck's dissertations also consider animals' ability to suffer. He states that animals seem to have a sense of pain and that they are able to express their discomfort. This must be so in order for them to be able to communicate their pain to humans, which is useful when it comes to domesticated animals such as horses and oxen. God has given them a means of signaling that humans must not use them in the wrong way. We should therefore be attentive to the suffering of animals.<sup>54</sup> Compassion with animals is clearly an emotion with a *rational* foundation, according to Upmarck.

As animals do not understand things such as natural religion or moral law, they can only be said to possess rationality in an *improper* sense, as Upmarck terms it. What may seem to be reason is rather a natural impulse. They may not lack reason altogether, but what they have is just 'a shadow of human reason'. They do however have sense perception, which is not necessarily connected to reason (in a restricted sense).<sup>55</sup>

So, animals can feel pain, but they do not have rights because they do not have full rational capacity. It is lawful for humans to kill animals when this is done out of necessity. Humans are not *obliged* to eat meat, although it can be reasonable and useful to do so. This does not mean, he says, that we are allowed to kill any animal at any time or in any way we want. There is a limit to what is healthy and appropriate. It is also only lawful to kill 'innocent' animals (i.e. as opposed to dangerous wild beasts) when this is *useful* to man. Otherwise, it will be a case of 'illicit cruelty towards animals'.<sup>56</sup>

### Conclusions

The arguments of Proeleus and Upmarck are interesting for a number of reasons. Firstly, they illustrate the basic point that the anthropocentrism, rationalism and human exceptionalism characteristic of the period did not exclude discussions of the rights of animals, their suffering, and humans' duties to care for them. In the texts examined in this article, it is *reason* and man in his role as God's steward of the natural world that come to the animals' defense. References to the God of natural religion seem to become particularly important to these authors when discussing animals. The anthropocentrism of Pufendorf's natural law theory could only accommodate animals with some difficulty, for obvious reasons. Perhaps it was because they illustrated the limits of that perspective that animals caught Proeleus's and Upmarck's attention.

<sup>54</sup> Upmarck/Rosell, pp. 26–7.

<sup>55</sup> Upmarck/Rosell, pp. 23–4.

<sup>56</sup> 'saevitia in pecudes illicita', Upmarck/Rosell, p. 27.

The texts do undoubtedly also appeal, rhetorically, to our compassion. However, in the end, the point is that cruelty towards animals is just not *reasonable*. The question of animals' minds and rational capacities is, surprisingly, not at the center of attention. Their desire for self-preservation, on the other hand, is acknowledged as not only natural, but *rational* by both authors. And it is indeed this rational agency, more than a rational mind, upon which animals' tentative rights are constructed, although Proeleus goes significantly farther in this regard.

At first glance, it would be easy to dismiss the arguments and focus on the restrictions on the 'rights' of animals as proposed by the two authors. Are they not just a legitimization of a view of animals as property, to be used by humans as they see fit? However, Proeleus and Upmarck both make an important distinction. Animals are in a sense property. But they also have the desire, and the right, to self-preservation. Property in the normal sense does not: a building or a piece of furniture cannot be said to have neither the desire nor the right to preserve itself. That is also the point, I think, of speaking of animals as having an 'analogy' of rights, as Upmarck does, or giving them rights of a lower order, as Proeleus does. The rights of humans take precedence, but animals, in contrast to mere objects, share something similar to what humans have by virtue of their natural drive and the 'shadow' of reason they possess. How the relationship between human and animal rights is to be construed is still one of the main points of contention in contemporary discussions of animal rights. The fact that animals lack the capacity to understand moral concepts was a problem these authors were trying to engage with, using the conceptual tools available to them, like modern philosophers do today.

It is worth stressing that these arguments stem from the same tradition and the same ascendant philosophical system of natural law. They are also eclectic, in a style which was common in Germany and Sweden at this time.<sup>57</sup> Both authors shared an interest in the stoics as the historical founders of natural law, and both, interestingly, admired the Stoic ethical maxim that one should live in accordance with nature.<sup>58</sup> Both authors base their arguments on the main contemporary authorities, most importantly Pufendorf. They even differ from Pufendorf in the exact same way on at least two important points: both regard self-preservation (not

<sup>57</sup> Bo Lindberg, 'Den eklektiska filosofien och "libertas philosophandi": Svensk universitetsfilosofi under 1700-talets första decennier', *Lychnos* 1973/1974. Knud Haakonssen, 'The History of Eighteenth Century Philosophy: History or Philosophy?', in *The Cambridge History of Eighteenth Century Philosophy* (Cambridge: Cambridge University Press, 2006), ed. by Knud Haakonssen, p. 18. [Crossref](#); Hochstrasser, pp. 11–30.

<sup>58</sup> Proeleus, *Grund-Sätze*, p. 104; Upmarck devoted a dissertation to this subject: Andreas Thurelius/Johan Upmarck, *De Natura Duce ex Phil. Stoic.* (Uppsala, 1714). Stoic themes occur in several of his dissertations.



sociability) as the first principle, and both argue that man's dominion over nature is limited to rational use. When it comes to questions of human/animal nature, Proeleus is in his *Anhang* somewhat reminiscent of modern mechanist philosophers like Gassendi.<sup>59</sup> In terms of the natural law tradition, however, he draws on the ancient assertion (of Ulpian) that humans and animals share a common part of the *jus naturae*, which Proeleus then attempts to elaborate into a set of corresponding duties and rights in a more modern way. Upmarck argued from a Cartesian viewpoint, but nonetheless stressed animals' ability to experience pain.

What significance did the arguments of Proeleus and Upmarck have? What weight did the ideas that Proeleus presented as common-sensical carry with contemporaries? It is difficult to determine, but some things can be stated without doubt. Although neither of them is remembered as a classic in the history of philosophy, they were not entirely obscure in their own time. Upmarck held what was in many ways the most prestigious academic chair in the kingdom of Sweden at the time. Well paid and highly respected, he would have been counted on to present authorized views in his dissertations. He was entirely an establishment figure. When king Charles XII died in 1718, it was Upmarck (by then named Rosenadler) who was called upon to hold the oration at the king's funeral.<sup>60</sup> By that time he had moved on from his professorship to become nothing less than *ensor librorum*, responsible for the scrutiny of sensitive publications. Nothing indicates that the arguments he presented were intended to be controversial.

Proeleus did perhaps not enjoy such a distinguished career or royal favor, but his work was published as a printed text-book and even saw a second edition ten years after its initial publication. What overall impact the work had remains to be investigated, but the *Grund-Sätze* is quoted in a dissertation published in Åbo in 1754. Despite the fact that the discussion of animal rights is only an appendix to Proeleus's work, it is precisely this appendix that is quoted to strengthen a case against cruelty towards animals.<sup>61</sup>

The issue of animal rights was, it seems, marginalized, seen as unimportant, and perhaps, as Proeleus says, to some extent taken for granted. For social and

<sup>59</sup> He discusses Gassendi and Epicurus in *Grund-Sätze*, p. 105. However, Proeleus also calls man 'die künstlichste Maschine', and seems to imply some form of dualism; *Grund-Sätze*, p. 166.

<sup>60</sup> [Johan Upmarck], *Then stormächtigste konungs, konung Carl then tolfte Sweriges, Göthes och Wendes &c. &c. konungs personalier, upläsne wid konglige begrafningen, som skedde uti Ridderholms kyrkian i Stockholm den 28 februari 1719* (Stockholm, 1721).

<sup>61</sup> Carl Mesterton/Andreas Johan Holmdahl, *Brevis Delineatio Moralis. Quaestionem, an Liceat Brutorum Membra Amputare? Exhibens* (Åbo, 1754), pp. 6–7. It is notable that Proeleus is here called "Magnus ille Moralista", which seems to indicate at least a high degree of admiration for his work.

economic reason, most likely, legislation for the protection of animals was not forthcoming. Perhaps it was deemed unnecessary, as animals were to some extent – then as now – legally protected as the property of their owners. However, it cannot be said that the philosophical issue of animal rights was ignored in the early eighteenth century. Many writers came to the defense of animals in this period. Unfortunately, until recently, only their opponents have come to be remembered, if for no other reason than that the history of philosophy has been written by its victors.

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