

Episode: *Author Interview: “How Might Corporations’ and Nonhuman Animals’ Personhood Compare Under the Fifth and Fourteenth Amendments?”*

Guest: Richard L. Cupp Jr, JD

Host: Tim Hoff

Transcript: Cheryl Green

[Access the podcast.](#)

[bright theme music]

[00:00:03] TIM HOFF: Welcome to another episode of the Author Interview series from the *American Medical Association Journal of Ethics*. I’m your host, Tim Hoff. This series provides an alternative way to access the interesting and important work being done by Journal contributors each month. Joining me on this episode is Professor Richard Cupp Jr, the John W. Wade Professor of Law at Pepperdine Caruso School of Law in Malibu, California. He’s here to discuss his article, “*How Might Corporations’ and Nonhuman Animals’ Personhood Compare Under the Fifth and Fourteenth Amendments?*,” in the September 2024 issue of the Journal, [Nonhuman Animal Research](#). Professor Cupp, thank you so much for being on the podcast. [music fades]

RICHARD CUPP: Thank you for having me. It’s great to be here.

[00:00:47] HOFF: So, what is the main ethics point that you’re making in your article?

CUPP: Well, I’d say there are two points I’m really trying to emphasize. First, society is evolving quickly with regard to how we view animals and what we view as appropriate treatment of animals. We’re appropriately becoming much more sensitive to animal suffering, and there’s a great deal of energy being directed toward finding ways that we can have good biomedical research with less use of animals, maybe someday in the future, no use of animals. And if we’re going to be using animals, how to treat them as well as we can possibly treat them. That is going to continue. It’s why we’re writing about these kinds of subjects increasingly in law.

One point I wanted to make with the article that’s important to ethics is that if we were to apply equal protection under the Constitution to animals based on their intelligence or their sentience, their ability to suffer or experience pain or pleasure, it would be quite problematic. We would be effectively treating them in a manner akin to how we treat young children or mentally incompetent adults.

HOFF: Mm.

CUPP: And a lot of what my article does is look at how that might be surfacely attractive in some senses, but ultimately problematic.

[00:02:18] The second ethics point that I wanted to pull from the article is that when we think about how could we possibly protect animals by finding some way to apply constitutional protection, at least to the smartest animals like chimpanzees or other

great apes? We have to think not just about the ethical implications with regarding animal research, but we also have to think about the ethical implications for our most vulnerable humans. If we go to the Constitution and start openly comparing intelligent nonhuman animals to more, less intelligent, to be blunt, than some of these animals, humans such as infant children who have less capacity, of course, than great apes have, or mentally incompetent adults, that has ethical, long-term ethical, implications for how we value humans. And in this era in which our AI questions are exploding and our AI expertise is exploding, it's increasingly relevant to think, gee, how important is it really to distinguish humanity from other questions?

[00:03:38] HOFF: And so, what do you see as the most important thing for health professions students and trainees specifically to take from your article?

CUPP: Well, a lot of what I tried to do was address a very common argument that's made, especially in the popular press, regarding equal protection for corporations being...purported as a proving point that we should also apply it to animals. The argument goes that corporations are lifeless beings, they have no capacity for pain, they have no sentience, and yet we treat them as legal persons under the Constitution, under equal protection in the 5th and 14th Amendments. And that's quite controversial to give those corporations personhood. It's unpopular with many people, which may or may not be appropriate. The article's agnostic on that issue. But what it does do is point out the significant differences that exist between the corporate personhood argument and the animal personhood argument. That being that every application of constitutional personhood for equal protection purposes to corporations has been justified based on the corporations serving as a proxy, one could say a mere proxy, for human interests, the interests of the owners of the corporation or owner of the corporation. Corporations are seen as a convenient fiction for the interests of humans.

So corporate personhood is really focused on humans and our traditional human personhood, but is using what is perceived—again, I'll be agnostic about whether we're going too far with this—but is perceived by the courts to be a useful fiction for getting things done in an effective manner with regard to economic transactions. So, there's a just big disconnect between corporate personhood and animal personhood, because, of course, we started considering animals as legal persons who could get constitutional protections, be treated equally based on their abilities or intelligence. We would not be using them as a proxy for humans. We would just be focused on their interests, which is we could argue, whether it's appropriate or inappropriate, but it's a huge jump as opposed to being an easy, it's kind of perceived as a softball by a lot of people. But I think if you think through it, it's really a pretty difficult jump to make to go from those two.

[00:06:18] HOFF: And finally, if you could add a point to your article that you didn't have the time or the space to fully explore, what would that be?

CUPP: Well, I would've, this was a great experience for me, writing for the *American Medical Association Journal of Ethics*, because the peer review format is just a lot more compact than what we do with law review articles. So it was a good lesson in compact writing, and there were a lot of things I would've liked to have added. But really briefly,

law is going to be heavily involved in this question of appropriate biomedical research for animals. We're already seeing some of these efforts. The article goes into efforts other than constitutional protection that are also seeking to get legal personhood. I don't think those will be successful either. But the fact that those and other efforts are taking place is really good indication that our legal system, which reflects our societal values, is recognizing that we're evolving in how we look at animals and how we need to protect them. And I would've loved to have been able to write more about how this is, despite I'm mostly saying this particular argument's not going to work, but I would've loved to have more time to write about how we're still going to see dramatic changes over time. [theme music returns]

[00:07:32] HOFF: Professor Cupp, thank you so much for your time on the podcast today, and thanks for your contribution to the Journal this month.

CUPP: Thank you.

HOFF: To read the full article, as well as the rest of this month's issue for free, visit our site, journalofethics.org. We'll be back soon with more *Ethics Talk* from the *American Medical Association Journal of Ethics*.