AMA Journal of Ethics®
September 2024, Volume 26, Number 9: E690-695

HEALTH LAW: PEER-REVIEWED ARTICLE

How Might Corporations' and Nonhuman Animals' Personhood Compare Under the Fifth and Fourteenth Amendments?

Richard L. Cupp Jr, JD

Abstract

The Fourteenth Amendment to the US Constitution prohibits states from depriving any person "equal protection of the laws," and the Constitution's Fifth Amendment has been interpreted as applying this prohibition to the federal government. This article considers whether constitutional equal protection should apply to some nonhuman animals in light of corporations having gained such protection and concludes that expanding equal protection personhood to nonhuman animals is improbable in the present legal landscape.

Corporations and Nonhuman Animals

A common argument for extending legal personhood to at least some nonhuman animals is that courts grant legal personhood to corporations, and that, if lifeless corporations are legal persons, then equality principles and justice demand granting legal personhood to sentient or at least particularly intelligent nonhuman animals.[1] Legal personhood would enable legal standing for such nonhuman animals to bring or participate in legal proceedings implicating their interests through legal guardians, akin to how human children may be parties in legal proceedings represented by guardians. Corporations' legal personhood[2] has enabled corporations to bring lawsuits for alleged violations of their constitutional rights, including the constitutional right of "equal protection of the laws." Constitutional equal protection requires that the government protect rights equally for similarly situated persons. For example, if courts extended equal protection rights to animals, statutes and regulations allowing medical research on nonhuman animals for the benefit of humans without consent of an appointed guardian could be challenged as unconstitutional. These challenges would likely note that laws and regulations protect humans with less autonomy than some animals (eg, humans in a vegetative state and human infants) from medical research without consent of a guardian acting in the humans' best interests and thus that research on nonhuman animals merits equal protection of the laws.

This article begins by explaining the background of the constitutional guarantee of equal protection of the laws. It then addresses the courts' application of legal personhood to corporations and the common position of many advocates that sentient or intelligent nonhuman animals are at least as deserving of legal personhood and constitutional

equal protection as corporations. The paper next analyzes challenges to this argument for animal legal personhood, highlighting the connections courts have made between personhood and a norm of capacity for responsibility within humans' legal system. The paper concludes that courts are unlikely to accept the analogy between corporate personhood and animal personhood in the foreseeable future and that they are unlikely to assign constitutional equal protection rights to nonhuman animals in the foreseeable future. Thus, although extending equal protection rights is a timely issue, as views of animal protection have evolved, courts are unlikely to find in the foreseeable future that using an animal for human-centered medical research without consent of an appointed guardian acting in the animal's best interests violates constitutional equal rights protections.

Equal Protection for "Persons"

As mentioned, US courts apply the constitutional guarantee of equal protection of the laws to corporations, but they do not apply this protection to nonhuman animals. The Constitution's Fourteenth Amendment, which embodies the equal protection clause, was ratified in 1868 in the aftermath of the Civil War.[3] The amendment was inspired by the need to address racial injustice and to protect former slaves from unlawful discrimination. The Fourteenth Amendment applies only to action by states and does not govern action by the federal government. However, during the Civil Rights Movement in the 1950s, the Supreme Court of the United States (SCOTUS) interpreted the due process clause of the Fifth Amendment ("no person shall be … deprived of life, liberty, or property, without due process of law"[4]), which was part of the Bill of Rights, as requiring equal protection of the laws by the federal government as well.[5]

The most prominent application of the equal protection guarantee was the 1954 case of *Brown v Board of Education*.[6] *Brown* overruled the infamous 1896 decision in *Plessy v Ferguson*, which held that "separate but equal" accommodations based on race did not violate the Fourteenth Amendment.[7] *Brown* held that segregating school enrollment by race violates the Fourteenth Amendment's equal protection clause.[6] It led to significant societal changes by illegitimizing the formal racial segregation that was commonplace at that time. *Brown* is widely viewed as one of the most important and broadly respected judicial decisions in US history, leading one prominent scholar to opine that "an approach to constitutional interpretation is unacceptable if it entails the incorrectness of *Brown v Board of Education*."[8]

Extending Equal Protection

In 1886, a headnote (not an official part of the court's ruling) in a case before SCOTUS, entitled *Santa Clara County v Southern Pacific Railroad Company*, stated that the court's justices were in unanimous agreement that corporations are entitled to the Fourteenth Amendment's equal protection guarantee.[9] Later decisions cited *Santa Clara County* as precedent for treating corporations as legal persons under the Fourteenth Amendment, and SCOTUS has affirmed corporations' right to constitutional equal protection in many cases. SCOTUS has also extended some other constitutional protections to corporations. For example, in the controversial case of *Citizens United v Federal Election Commission*, SCOTUS held that corporations have a constitutional right of freedom of speech that allows them to make unlimited political donations.[2] Some advocates of "strong" animal rights challenge the courts' assignment of legal personhood and constitutional rights, such as equal protection, to corporations while denying legal personhood and constitutional rights to sentient or highly intelligent animals.[1] In contrast with typical existing legal protections of nonhuman animals that

are described by some as "rights," strong animal rights may be understood as rights that, if recognized, would enable legal standing for at least some animals, with the animal's rights asserted by a human representative acting on behalf of the animal.[10] Asserting constitutional or other legal rights through a representative is routine for humans who lack legal competency, such as children or adults with significant cognitive limitations. As living beings that can suffer pain or experience pleasure, sentient or highly intelligent nonhuman animals are in some respects closer to human beings than are lifeless corporations; corporations are artificial entities and sentient nonhuman animals are, like humans, biological creatures.[11]

Challenges to a Legal Personhood Comparison

Although arguing that sentient nonhuman animals should have equal protection rights if such rights are granted to corporations has been appealing to many advocates, a growing body of judicial decisions has firmly rejected animal-corporation comparisons regarding legal personhood. For example, in 2022, New York State's highest court dismissed a lawsuit seeking a writ of *habeas corpus* in the name of an elephant kept at a zoo.[12] The lawsuit demanded that the elephant be moved to a sanctuary, which the plaintiff believed to be a better environment for the elephant. *Habeas corpus* means "produce the body" and is used to bring a detained or imprisoned person to court for a challenge regarding the lawfulness of the person's confinement.[13] While listing reasons that the lawsuit must fail, the court stated "[n]or does any recognition of corporate and partnership entities as legal 'persons' lend support to petitioner's claim. Corporations are simply legal constructs through which human beings act and corporate entities, unlike nonhuman animals, bear legal duties in exchange for legal rights."[12] In a similar animal personhood lawsuit rejected in 2019, a Connecticut appellate court stated: "We note that entities to which personhood has been ascribed by law are formed and governed for the benefit of human beings."[14] In 2014, another New York State appellate decision rejecting animal legal personhood held that "[a]ssociations of human beings, such as corporations and municipal entities, may be considered legal persons, because they too bear legal duties in exchange for their legal rights."[15]

These courts' emphasis on corporations' status as proxies for their human owners has a strong foundation in legal precedent and in the dominant scholarly theories regarding the nature of corporate personhood. Under all of the major corporate personhood theories, corporate personhood is anchored in the interests of humans.[16] Asserted animal legal personhood, by contrast, is focused on the interests of animals. The former stance does not imply that human society's legal systems should not protect animals but that nonhuman animals are not proxies for the interests of individual humans or groups of humans.

A Norm of Capacity for Responsibility

A growing body of legal precedent rejecting animal legal personhood assertions in recent years has emphasized that personhood and a norm of capacity for legal responsibility are intertwined. As one of these courts put it, "collectively, human beings possess the unique ability to bear legal responsibility."[12,14,15,17] Although some humans, such as infants, lack this ability, these humans' personhood may be viewed as anchored in their membership in the human community rather than in their individual capacities. For example, legally incompetent persons often were—or in the future likely will be—deemed legally competent, and they typically are tightly interconnected with humans capable of bearing legal responsibility (eg, parents, children, siblings, caretakers). Thus, our legal system recognizes legally incompetent people as rights-bearing humans, rather than

defining them as less than human due to their legal incompetence. Furthermore, as addressed above, the legal personhood of entities such as corporations is grounded in the interests and duties of humans, and thus courts have deemed treating corporations as responsible actors with some rights within our legal system as appropriate. No animals possess sufficient capacity to hold them morally responsible under our legal system.

Textualism, Originalism, and the Living Constitution

Three of the most influential approaches to interpreting the US Constitution are textualism, originalism, and the living constitution approach. Although definitions of all 3 approaches may be nuanced and debated, in general terms textualism reflects a strong focus on the text of the constitutional statute or provision under consideration—sometimes referred to as the "plain text" —in determining its meaning.[18] Originalism focuses on seeking to determine and abide by the original intent of the constitutional provisions' drafters.[19] The living constitution approach holds that the Constitution should be interpreted in accordance with "changing circumstances and, in particular, with changes in social values."[19]

Textualism and originalism have played a significant role in modern constitutional jurisprudence, and the concept of applying constitutional equal protection to nonhuman animals fares poorly under either interpretive approach. The Fourteenth Amendment's text states that it applies to "persons." The plain text meaning of *person* in 1868 would seemingly be a human being or, at the furthest plausible stretch, human beings and their proxies, such as corporations. Even more plainly, the original intent of the Fourteenth Amendment's drafters could not have been to include nonhuman animals in the definition of persons. Rather, "[a]s everyone knew when it was ratified in 1868, the amendment's guarantees of equal protection . . . were designed to secure the rights of the newly freed slaves and protect them from discrimination by the states."[3] Both textualism and originalism may be subject to flexible interpretation, but a level of abstraction well beyond the toleration of most jurists would be required to shoehorn them into supporting constitutional equal protection for animals.

Although it champions interpretive flexibility, the living constitution approach is also unlikely to persuade courts to apply constitutional equal protection to nonhuman animals in the foreseeable future. Multiple decisions by influential appellate courts agreeing on an issue with no appellate courts disagreeing creates precedent that even living constitution jurists view as significant. Furthermore, judicial decisions often shed light on societal values. The living constitution approach is highly unlikely to be employed by SCOTUS—the ultimate arbiter of all constitutional law issues—to make a fundamental change to equal protection doctrine that not only is inconsistent with the Constitution's text and original intent, but also does not appear to represent widespread changes in social values regarding whether nonhuman animals should be considered persons. The growing body of judicial decisions rejecting animal legal personhood addressed in this paper reflect the commonsense reality that US society has not changed sufficiently to broadly view nonhuman animals as legal persons, and only persons may assert equal protection rights. Put another way, society's evolution toward caring more about protecting animals does not represent a substantial societal shift toward embracing animal legal personhood. Every additional legal decision rejecting animal legal personhood strengthens the precedent against widespread acceptance of the concept in the foreseeable future.

Writ of *Habeus Corpus*

Several highly publicized lawsuits have been filed in recent years seeking legal personhood for intelligent nonhuman animals such as chimpanzees and elephants, and it is notable that these lawsuits have avoided pleading violation of the Fourteenth Amendment as the basis of their claims. Most of these lawsuits have instead focused on seeking a writ of *habeas corpus* under state common law[12,14,15] (ie, law derived from judicial decisions rather than the Constitution or statutes),[13] perhaps reflecting recognition of the particularly exceptional challenge of convincing courts to apply the Constitution to animals. Courts have rejected all of the *habeas corpus* lawsuits thus far, and the possibility of prevailing in a constitutional claim, with its attendant focus on text and the framers' intent, is even more remote.

Society is evolving to demand greater protections for sentient animals, and the US legal system is increasingly providing stronger protections. However, assigning constitutional personhood to nonhuman animals under the Fourteenth Amendment or under any other constitutional provisions would be highly problematic (eg, a 2022 appellate decision noted that allowing an elephant to invoke *habeas corpus* protections—analogous to personhood in the scope of its implications—"would have an enormous destabilizing impact on modern society"[12]) and is quite unlikely, given the approaches to constitutional interpretation that are currently dominant in US courts.

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Richard L. Cupp Jr, JD is the John W. Wade Professor of Law at Pepperdine Caruso School of Law in Malibu, California. He writes and speaks extensively about the legal and moral status of animals, and his writings have been cited by appellate courts addressing assertions of legal personhood for animals. He received a JD from University of California Davis School of Law and a BA from Pepperdine University.

Citation
AMA J Ethics. 2024;26(9):E690-695.

DOI
10.1001/amajethics.2024.690.

Conflict of Interest Disclosure
Author disclosed no conflicts of interest.

The viewpoints expressed in this article are those of the author(s) and do not necessarily reflect the views and policies of the AMA.

ISSN 2376-6980