

"Interview of Justice Kirby with *Animals Today* - The Battery Hen Debate

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TREAT ANIMALS

# Justice Michael Kirby



*The kind of protection given to animals in our society depends on whether they are "companion" animals or animals used for food, clothing, scientific research, or entertainment.*

*While companion animals receive legal protection against cruelty, farm animals are largely only protected by Codes of Practice which provide guidelines rather than legally enforceable conditions.*

*AT talked to The Hon Justice Michael Kirby, President of the Court of Appeal, Supreme Court, Sydney, and Patron of RSPCA Australia, about the anomalies and how laws might be reformed to give greater equality of protection to all animals.*

A major issue for animal welfare organizations is the cruelty of the battery hen system, and a National Review of housing for hens has been considering welfare problems in the egg industry in Australia.

Justice Kirby entered the battery hen debate after he was sent a copy of the judgement of Magistrate Philip Wright in the case of the Tasmanian Golden Egg Farm Pty Ltd which was found guilty on seven counts of cruelty to hens in an action brought by Animal Liberation and Pam Clarke.

The judgement found that battery hens were "animals" for the purpose of the Tasmanian legislation. "I was asked," he says, "as patron of the RSPCA, to respond to the suggestion that this was legally misconceived, and that battery hens were not sentient animals as the magistrate had found.

"I replied that the magistrate was perfectly right to say that not only are hens animals, but they are animals towards the highest level of sentient beings, with feelings and emotions, and with a response to cruelty not all that dissimilar to that of human beings, and that these were facts which required of us a sensitivity to the predicament of battery hens whenever they were shown to be in conditions of frustration and cruelty."

Justice Kirby received hundreds of letters of support for his view. "Doubtless there would be some citizens who don't agree with what I said, but I would imagine they have either never been to a battery hen establishment, as I have, or have never seen photographs showing the hens' suffering. I believe that seeing is believing and seeing cruelty, whether it is in human beings or in other sentient creatures, excites our moral sense and impels us towards both observance, and reform, of the law where that is required. It is important to see the development of the law relating to the protection of animals as an ever increasing circle of sensitivity."

So how can human sensitivity towards other animals be heightened, and the laws changed accordingly? Justice Kirby believes human sensitivity can be influenced by raising



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will be more sensitive to their obligations to other sentient beings whatever the law says." He points out that "We should be kind to animals not because the law tells us to be kind to animals, or punishes us if we are not, but because, as moral beings, that is our obligation."

On effectively changing the laws, he agrees that this can be achieved, in part, by test cases which test the boundaries of the law, and in part by efforts to persuade the legislature to reform the law. He upholds the view that animals should be treated equally and have the same protection under the law, that there should be no distinction, for instance, between companion animals and farm animals.

"People are becoming much more sensitive to the rights of animals. In part this is because of the stimulus of thinkers who have explained that, having acknowledged the obligation to protect domestic animals, it is extremely difficult, if not impossible, for us to draw the line against other animals that, like domestic animals, can feel pain and in that sense are similar to ourselves.

If farm animals are *animals* and if the object of anti-cruelty legislation is to prevent cruelty to animals then conceptually all animals should come under the one piece of legislation.

The reality is, however, that human beings feel more sensitive to the animals in their domestic environment, such as dogs and cats and other domestic pets, than they do to animals which are seen as objects, or commodities. In terms of parliament reacting to the values of a community it is understandable that different responses and different codes of practice have ensued.

"I don't see that that is incompatible with bringing all animals under the one piece of legislation or at least bringing all animals which we would regard as within the higher reaches of sentient beings into the one piece of legislation."

Justice Kirby does not anticipate the emergence of a totally vegetarian society, at least not in the short term, and he is not a vegetarian himself. But while our society remains carnivorous, and many animals are going to be killed and eaten, he believes we have a moral obligation to develop laws and codes "which are increasingly sensitive to the need for protecting sentient animals, domestic and

"That may not mean, at the beginning, the abolition of the battery hen establishments or live sheep exports, or prohibition of farming at the extremities of our drought affected, intensely hot and often marginally economical continent, but it may mean developments which increase the requirements on those who are involved in animal farming, so that they reflect the increasing sensitivity of the community to the prevention of cruelty to 'farm' animals."

Commenting on the value of prosecutions in contributing to public awareness of particular issues, the judge expressed the view that court cases involving any social issues, especially if they are given high level coverage in the media, can have an educative effect on those involved, if they are convicted, those engaged in similar activities, and public perceptions.

Looking to the future, Justice Kirby sees compromise as the logical and most likely outcome of educating both the general community and the animal users. That attitudes will change over time as a result of enlightenment, he believes is not an unreasonable expectation. "It is something which I see in many areas of the law, where the law is reformed in keeping with changing social attitudes, and I don't believe that the law on animal welfare is any different."

He suggests that it is important to consider animal welfare legislation in its historical context. "It began in the early 19th century in England and we are still in the process of writing its history. It behoves Australia, as a country which produces large numbers of farm animals, often in conditions of marginal economic operation, to be amongst the leaders in the world in attention to this issue. As an educated and moral community, that is our obligation. It is an obligation that also falls on lawyers because they have a duty to be leaders and to explain the role of the law and the opportunities for law reform.

"We can see it as a journey, a journey towards enlightenment. Enlightenment involves an appreciation of what it is we are seeking to protect - in this case to protect all animals from undue cruelty and pain."

**BOB BROWN**  
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parties is that we take a long term view and will act under the dictum, will this be good for people a hundred years from now? If we can't say that about an action, then we simply shouldn't do it."

Brown believes that the Greens movement is vitally important because it embraces a wide range of ethics including social justice, the environment, and animal welfare. He describes it as a "thinking" ethic instead of a "grabbing" ethic and the most exciting thing happening in the world today.

"There are 35 parties in Europe, 17 in Africa. The elected mayor of Rome is the first Green to be mayor of a major capital. The elected secretary for the environment in Rio de Janeiro, with a workforce of 6000, is a Green and 4 mayors in Brazilian cities were elected as Greens. There are 8 Greens in parliaments in Australia and Greens are increasing their vote at every election."

Brown says that the Greens are bound by a common view that we can do better than have politics based on who gets the money and how you carve up the use of the planet. "It's time we got back to working with the planet instead of just off it. We are in the age of materialism which doesn't give value to things like love, beauty, compassion; doesn't give value to wilderness. Anything you can't put a price tag on is of no account. We won't get it right until that system of values is reversed."

Bob Brown is an optimist and he believes that the bond humans have with nature will never disappear completely. He says with a smile, "People put pictures of wilderness on their walls, not pictures of bulldozers! I think we can turn it around. If we do faster what we've done in the past we'll succeed faster than we've done in the past.

"Do we just allow the chaos ... the social and environmental chaos to continue, or do we act sensibly and turn things around? This isn't the crisis of the future, we're in it, *now!* We have to give hope back to young people, so they can see their future."

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