Australian Cardinal George Pell, Child Abuse and Law

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***Cardinal George Pell**, formerly the Vatican's minder of cash, was confident that his conviction would not stand the withering scrutiny of the Victorian appeals court. The December convictions in the county court involving the charges of sexual assault against two choirboys had made institutional history; the key test was whether such convictions might survive the appellate process. The actions had taken place in 1996-7 against two 13 year old choirboys in the St. Patrick's Cathedral choir. Memories of details had faded; witness evidence was there for the challenge.*

Three grounds by his defence team were suggested to **Chief Justice Anne Ferguson, Justice Chris Maxwell and Justice Mark Weinberg**. The first was that the guilty verdicts were "unreasonable and cannot be supported having regarding to the evidence"; the second, the refusal by the trial judge to permit a 19 minute animation in the closing address to the jury; the third, whether there a fundamental irregularity arose because Pell did not enter his plea of not guilty in the presence of the jury. The Court of Appeal unanimously refused leave to appeal on the second and third grounds, though Pell did convince Justice Weinberg that he could succeed on the "unreasonableness ground".

The Chief Justice and Justice Maxwell were satisfied that neither the complainant's evidence nor the opportunity evidence had reason to put the jury in doubt about the veracity of the account. To merely claim that the jury "might have had a doubt" was not a sufficient test; the test, rather, was that the jury "must have had a doubt". "The jury were entitled to reject the falsity contention" advanced by Pell's defence team.

The Chief Justice and Justice Maxwell were swayed by the prosecution's argument that the complainant was compelling.

> "Throughout his evidence, [the complainant] came across as someone who was telling the truth. He did not seek to embellish his evidence or tailor it in a manner favourable to the prosecution. As might have been expected, there were some things which he could remember and many things he could not. And his explanations of why that was so had a ring of truth."

The court majority noted that "an appeal court should be slow to substitute its own judgments about human behaviour for those made by a jury."

The heavy artillery tended to pop weakly at points. Thirteen "solid obstacles" were asserted by the defence as standing in the way of a sound conviction. The majority rejected all of them, evidently seeing them as lacking necessary solidity. One stand out "obstacle", rather ghoulishly, was whether the robes were manoeuvrable enough in the infliction of assault.

Statements by Monsignor Portelli, prefect of ceremonies to Pell, and the sacristan, were submitted by the defence, both categorical in asserting that it was impossible for the robes to be pulled to the side. These were not sufficient to impeach the jury's finding that Pell might have manoeuvred the robes adequately to inflict the said harm.

The lengthy dissenting judgment, one upon which Pell's supporters and the Church are hanging their hopes on appeal, was that of Justice Weinberg's finding that the unreasonableness ground could be sustained.

> "Having had regard to the whole of the evidence led at trial, and having deliberated long and hard over this matter, I find myself in the position of having genuine doubt as to the applicant's guilt."

He lacked the same confidence shown by his fellow judges in the complainant's evidence.

While Weinberg did not accept Pell's argument that the complainant was a fantasist ("I cannot conclude that the complainant invented these allegations"), or even that it was impossible for the robes to be parted, "a number of things had to have taken place in the space of just a few minutes"; essentially, "the changes of 'all the planets aligning', in that way, would, at the very least, be doubtful." In sum, "my doubt is a doubt which the jury ought also to have had."

The dissenting material was sufficient to cause a titter in the legal fraternity. "You would be pretty safe ground following Weinberg," suggested a barrister to the *Australian Financial Review*. A fundamental reason for this was said to be Weinberg's criminal law pedigree, one sharpened as the Commonwealth Director of Public Prosecutions. Justices Ferguson and Maxwell, by way of contrast, were noted for their, in the words of Michael Pelly, "exclusively commercial law" backgrounds.

The Vatican, as it has done for a good number of centuries, was playing the cautious wait-and-see card. Should the Cardinal be defrocked? That might be premature: the Australian legal system had to run its course. In the words of Vatican spokesman **Matteo Bruni**,

> "The Congregation for the Doctrine of the Faith is awaiting the outcome of the ongoing proceedings and the conclusion of the appellate process prior to taking up the case."

Pell's defenders continue to demonstrate how the application of the law is often susceptible to cloying sentiment and rampant disbelief. Elliptical reasoning has been proffered. **Andrew Bolt**, Melbourne's reigning provocateur of reaction, continues to lead the charge, if only on grounds of Pell's reputation and incredulity.

> "Even if Pell could physically have been in the sacristy, in time, and without being seen, and physically done these attacks, how insane would he have to be to do all this, attack two boys he didn't know, in an open room in a busy cathedral?"

Bolt's idea of a paedophile is evidently that of a reasoned predator, awaiting to strike when

all is calm and silent. And all paedophiles, he surmises, must have offended before, giving the impression that there can never be a first time. The circle of absurd reasoning is thereby complete.

The court majority were cognisant of the issue of "improbability" or "implausibility". There was a high risk of discovery, that either one of the boys "would cry out", and a high risk to reputation. But the majority, in a more tempered manner than Bolt, acknowledged case law that "sexual offending sometimes take place in circumstances carrying a high risk of detection." The rush of blood does not necessarily entail the exercise of calm and calculating reason.

Pell continues to fight, but there was never any doubt of that. The burdens of history weigh heavily, as they have done for victims. The Cardinal is a reminder of an institution in decay, and has been, perhaps in some ways, unjustifiably saddled with a greater broad-blanket responsibility. Even the trial judge was clear in warning that Pell was "not to be made a scapegoat for any [perceived] failings… of the Catholic Church" or for the failings of the other clergy in the matter of child abuse. But the law has now tread where it previously had no place: the realm of historic crimes of a sexual nature, perpetrated against those in care in the shadings of fallible memories. The High Court chapter, however, remains to be written.

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