

Pell's High Court acquittal revives reasonable doubt

EDITORIAL



By THE AUSTRALIAN EDITORIAL,

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The unanimous decision by the High Court of Australia to quash five child sexual abuse convictions of Cardinal George Pell is an emphatic verdict rooted in evidence, judicial precedents and the law. As the court said, there is “a significant possibility that an innocent person has been convicted because the evidence did not establish guilt to the requisite standard of proof”. That fundamental standard is beyond reasonable doubt, and the judgment runs through the court’s reasoning in clear, dispassionate detail. The court overturned the verdict of a second jury trial before the County Court of Victoria in December 2018 and a split decision by the Court of Appeal of the Supreme Court of Victoria last August.

Our judicial system is not perfect; no human system can ever be. But it has entrenched checks and balances, combining procedural fairness and reasonable review, and the promise that every person is treated equally. In this historic case, which has split the nation, we have seen the system’s manifest flaws but also its startling ability to right itself. When he was found guilty of abusing two choirboys at St Patrick’s Cathedral in Melbourne in 1996 and 1997, some saw the nation’s most senior cleric and high-ranking Vatican official as the scapegoat for decades of horrific child sexual abuse by Catholic clergy. For victims of that abuse, Tuesday’s decision will rekindle the traumas and turmoil at the hands of those who once had an exalted place in society.

Absolution and salvation are ecclesiastical terms, thus not the province of judges. Still, the decision is vindication for Cardinal Pell, who has been incarcerated since March last year. In a statement he said he did not want his acquittal to add “to the hurt and bitterness so many feel”.

But he was also defiant, noting his “trial was not a referendum on the Catholic Church; nor a referendum on how church authorities in Australia dealt with the crime of pedophilia in the church”. It was a trial over whether he committed specific, in his words, “awful crimes”.

But the acrimony and lynch mob hostility won't subside; regrettably, our culture supercharges them. Cardinal Pell is a divisive figure: a charismatic, powerful, conservative cultural warrior, singled out as the man who must take responsibility for decades of child sexual abuse by Catholic clergy. For many in law enforcement, the media and the outrage industry, he is beyond redemption. The nation's most senior judges also have validated last August's dissenting view of Mark Weinberg, Australia's most experienced criminal appeal court judge.

Coming after the Lawyer X debacle, Tuesday's decision highlights serious deficiencies in Victorian justice. It also raises a litany of questions. One of the first is why police launched the “get Pell” Operation Tethering in 2013, reportedly before they received any complaint against him. The police strategy of effectively advertising for complaints about the cardinal in the media was extraordinary. Later came the issue of charges. Anybody familiar with how cathedrals operate on Sundays knew the improbability of anybody having the chance to abuse two children in the priests' sacristy immediately after mass. Key issues of timing and opportunity rested on the unquestioned evidence of honest witnesses. As lawyer and Jesuit priest Frank Brennan writes, “the tragedy of this case for everyone, including victims and complainants (and most especially this complainant), is that an ordinary police investigation would have highlighted these problems with the complainant's account”.

In May 2017, we reported the state's Office of Public Prosecutions had twice returned briefs of evidence on the case to Victoria Police, which made the decision to charge Cardinal Pell. As to the two trials — the second was needed after the jury in the first failed to reach a verdict — Victoria should join NSW in allowing high-profile criminal matters to be heard by a judge alone. Judges, at least, should be above the baying mob. “Even if he didn't do this he deserves to be punished,” was a common sentiment heard inside the court's public gallery. The definitive judgment by the nation's highest court reaffirms the importance of the presumption of innocence, one of the cornerstones of our justice system. Like Justice Weinberg, the High Court decided that any jury acting rationally must have had a reasonable doubt.

The Pell saga lacked transparency, with a media blackout on reporting proceedings of the two trials, due to the possibility of a further trial on separate charges. Another problem, as Chris Merritt writes, was critically important evidence about the psychological problems of the

complainant was withheld from juries. That suggests laws with the intention of protecting those who claim to be victims of sexual assault have gone too far. For the good of victims and complainants, Victoria's OPP and police must review their procedures. The initial response by Premier Daniel Andrews, that he believes "every single victim and survivor of child sex abuse", suggests legal reform for dealing with such cases may be a slow train coming in Victoria.

After years of wicked revelations about unspeakable crimes, including harrowing testimonies by victims to the royal commission, church leaders are finally recognising past failings to protect children have left citizens outraged. How could they not see? It's a wound that will never heal for many. As Scott Morrison said of the decision, "mere discussion of these topics brings back great hurt" for victims. And when such issues are raised "my thoughts are always with them". Yet the final legal arbiter in our system has made its decision and, as the Prime Minister said, "that must be respected".