Cardinal Pell, Moral Outrage, and the Rule of Law

by Theodore Dalrymple

> "Revenge is a kind of wild justice; which the more a man's nature runs to, the more ought law to weed it out." — *Francis Bacon*

The coronavirus pandemic notwithstanding, other things continue to happen in the world. The thanked the court of Victoria for doing its job, suggesting that it had come to the right decision.

The case aroused enormous passion. Many of those who adhere to the guilty-if-accused school of jurisprudence rejoiced at the Victorian appeals court's 2-1 decision. There were others who refused to entertain even the possibility of the Cardinal's guilt.

I went to the trouble of reading the court's 300-page judgment and the dissension from it. Under the law, the possible grounds for appeal in such a case were in effect two: that

there had been some error in procedure (for example a misdirection of the judge), or that the verdict was so perverse and against the evidence that no body of rational persons could have come to the verdict that the jury came to. In this case, a third grounds for appeal (the emergence of new evidence unavailable at the time of trial) was not relevant.

The appeals court ruled that there had been no fault in the conduct of the trial. It also ruled (with one dissension) that a reasonable body of persons *could* have come to the conclusion that the jury came to. It was reasonable for the jury to believe the testimony of the alleged victim under cross-examination, even if it would also have been reasonable to doubt it—as I would have done—and vote for acquittal.

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In reaching their conclusion, the two judges who voted for upholding the conviction said the testimony of the alleged victim was compelling and believable. It was not as if he had alleged something that was intrinsically impossible (for example, that he had been abused in Melbourne while the Cardinal was in Rome). The judges, however, did not seem to me to give enough weight to the possibility that the alleged victim might have been a good actor, and that no one is immune from belief in convincing liars. But this, fundamentally, was beside the point: the testimony was not so ridiculous that no sensible person could have believed it to be true. And that was the test.

I think that, on narrow grounds, the appeals court might have been right, and yet I also think that a grave injustice had been done. A tiny thought experiment would demonstrate why.

Suppose I were to allege that my house had been burgled ten years ago and that certain of my possessions were taken.

Furthermore, the burglar was my next-door neighbour: I know it was he because I caught him at it. There is, however, no collateral evidence to my testimony that there had been a crime, or that my neighbour had committed it. Would anyone take my accusation seriously enough even to investigate it, let alone bring it to trial, even if I pointed out that other persons with one or another attribute in common with my neighbour had been convicted of burglary?

The same principle demonstrates the problem with the case against Cardinal Pell. It is shocking that it was ever seriously investigated at all in the absence of any other possible evidence, and it is even more shocking that is was brought to trial and ended in conviction. Of course, it is terrible for someone who has suffered abuse to not be believed, but it is also terrible for an innocent man to be wrongly accused, even if he is eventually exonerated. It is part of the unavoidable tragic dimension of life that both are possible: not for nothing is the prohibition of bearing false witness one of the Ten Commandments. No one is guilty merely because he is accused.

What is the difference, then, between my hypothetical case and the real case of Cardinal Pell? Most likely, it is the surrender of legal administration to the political and emotional pressure of those who believe that certain categories of crime are so heinous that the normal safeguards against false conviction can, indeed must, be abrogated. Better that ninety-nine innocent men be convicted than one guilty man be acquitted, especially when he already belongs to a category of persons whom one dislikes.

University campuses, with their censorship and de-platforming, have demonstrated just how shallow is the commitment of some people to the notion of freedom of speech and thought. Likewise, the case of Cardinal Pell has illustrated how shallowly implanted is the commitment of some people to the principle that a man is innocent until proven guilty, once

moral enthusiasm for a cause takes over. This, be it remembered, take place in polities in which the principles of freedom of speech and the rule of law are supposed to be deeply-rooted.

Things are often more fragile than one supposes, including the commitment to basic rights of the accused. Associations in defence of victims of abuse in Australia are said to have been shocked by the court’s overturning of the Cardinal’s conviction. Would they prefer detention without trial, and guilt without proof? Perhaps if it was under their direction. There are even fears for the safety of the Cardinal after his release, so certain are his calumniators of the rectitude of their outrage. But the High Court of Australia has, at least, given an overdue victory for the rule of law.

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