

Unit: Crim101

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How Media, Political and Advocacy Groups May Have Impacted the Rule of Law During the Cardinal George Pell Trials

Introduction

Although it is a broad concept, the Rule of Law provides, inter alia, that all people should be entitled to due process, ‘the presumption of innocence and[to]... a fair... trial’,¹ all of which can be difficult to achieve in high profile cases such as George Pell’s (‘Pell’). This is because most indictable offences are tried in district (county) and supreme courts, where a jury comprised of regular members of the public, must set aside their personal biases and beliefs in order to come to a verdict based purely on the facts admitted by the court. It has long been discerned whether jurors are capable of satisfying this requirement,² particularly in high-profile cases, where they might have already formed opinions on the case from the media's coverage of it.

This is why the Australian judicial system has a doctrine known as sub judice contempt, which prohibits the media from reporting on an accused person's guilt or innocence between the time they are charged, and until the time their trial has concluded.³ However, the issue with this is that high-profile cases can receive extensive media coverage prior to an accused being charged, which can later lead to a juror's preconceived notion of that coverage to conflict or intertwine with their assessment of the facts solely presented in court. As a likely result of the extensive media coverage related to the allegations against Pell, and due to political and advocacy group influences, the Rule of Law was thus impacted during Pell’s trials.

Influences on the County Court Trial

The County Court trial was heard first instance in June 2018, and concluded on 13 December 2018 with the jury returning a verdict of guilty. To reach this conclusion, the jury had to believe beyond a reasonable doubt that the prosecution had proven the allegations, despite

¹ ‘Rule of Law’, *Policy Agenda* (Web Page) [4] <<https://www.lawcouncil.asn.au/policy-agenda/international-law/rule-of-law>>.

² See generally Edith Green, ‘Media Effects on Jurors’ (1990) 14(5) *Law and Human Behavior* 439.

³ ‘A Q&A Guide for Journalists’, *Covering the Courts* (Web Page) 3[28] <[covering-courts.pdf](https://www.covering-courts.pdf) (countycourt.vic.gov.au)>.

Pell's evidence to the contrary. However, without being privy to how the jury deliberated, it's difficult to discern if Pell's conviction was based entirely on the facts presented in court, or if media, political, and advocacy group influences may have impacted their decision. The following explores the likelihood of these factors negatively influencing Pell's trial, and thus how it impacted upon the principles of the Rule of Law.

The Media's Coverage of the Investigation on Pell

Prior to Pell being charged, he was the subject of a three-year investigation for child sex offences by an executive arm of state government, namely, Victoria Police ('Vicpol'). Initially, Vicpol had little to no evidence that Pell had committed any offences,⁴ which eventually led them to utilise media as a means of advertising for public assistance to aid their investigation. Vicpol's use of media to appeal for public assistance, in combination with how the media portrayed those appeals, had a significant potential to impact the Rule of Law in Pell's eventual court case.

In 2013, Vicpol created 'Operation Tethering',⁵ a secret taskforce dedicated to finding out if Pell had committed child sex offences, despite the fact that at the time there was no evidence to suggest that he had.⁶ Vicpol issued a state-wide appeal in The Guardian Newspaper on 23 December 2015, which asked witnesses to come forward with any information relating to child sex abuse that may have occurred at the St Patrick's Cathedral 'during Cardinal George Pell's tenure'.⁷ This request for information specific to the period of Pell's employment likely indicated to the public that he was a person of interest in child sex offences. In hindsight, this was when the Rule of Law first became threatened, as it may have encouraged the public to question if Pell was implicated in the offences.

In the following year on 19 February 2016, the Herald Sun published a news article entitled 'Victoria Police investigating Cardinal Pell'.⁸ It claimed to have knowledge of a secret Vicpol investigation into historical allegations of Pell sexually abusing between five to ten boys. The Herald Sun stated that while they were not implying the claims were true, the allegations did

⁴ 'Police Accused of Get Pell Focus', *News* (Web Page) [6] <<https://www.9news.com.au/national/pell-lawyer-attacks-police-investigation/424d421d-7c95-4a5f-8ebb-bb1084298ea4>>.

⁵ Jacqueline Le and Megan Neil, 'Police Deny Zeroing in on George Pell', *News* (Web Page, 29 March 2018) [10] <<https://www.illawarramercury.com.au/story/5314600/police-deny-zeroing-in-on-george-pell/>>.

⁶ Emma Younger, 'George Pell Committal: Police Accused of Single-Mindedly Pursuing Charges Court Told', *News* (Web Page, 28 March 2018) [3] <<https://www.abc.net.au/news/2018-03-28/george-pell-committal-detectives-single-mindedly-pursued-charge/9597312>>.

⁷ Calla Wahlquist, 'Victoria Police Seek Victims of Sexual Assault at St Patrick's Cathedral', *News* (Web Page, 23 December 2015) [1] <[Victoria police seek victims of sexual assault at St Patrick's cathedral | Victoria | The Guardian](https://www.theguardian.com/australia-news/2015/dec/23/victoria-police-seek-victims-of-sexual-assault-at-st-patricks-cathedral)>.

⁸ Lucie Morris Marr, 'Victoria Police Investigating Cardinal Pell', *News* (Web Page, 20 February 2016) [1] <[2016_February20_Herald_Sun \(bishop-accountability.org\)](https://www.bishop-accountability.org/2016_February20_Herald_Sun)>.

justify a one-year long investigation.⁹ To the general public, this remark could have been interpreted to imply that the claims were credible because the investigation had lasted so long, and that Pell was thus guilty. The influence of media on the general public has been well documented, notably by *Gunther 1998*,¹⁰ who informed us on how influential media coverage can be in shaping public opinion.¹¹ As a result, this report had the potential to prejudice possible jurors in Pell's future trial, and thereby impact the Rule of Law.

A subsequent report with even greater potential for prejudice, surfaced in July 2016 on the Australian Broadcasting Corporation's 7:30 program, in which alleged victims gave detailed accounts of their allegations against Pell.¹² Even though Pell had not been charged or interviewed by Vicpol at this point, the media had already summoned witnesses to testify against him on national television.

Additionally, on 14 May 2017, the 7:30 program host published these allegations in an award winning book entitled 'The Rise and Fall of George Pell'.¹³ It discussed the specifics of the allegations made against Pell during his tenure at St Patrick's Cathedral, which was later asserted by Pell's legal representation to have perverted the course of justice.¹⁴ Pell's right to the presumption of innocence was now arguably compromised to a considerable extent, while impacting upon a further principal of the Rule of Law known as Due Process. A fair trial is predicated on this principle, as it entitles an accused person to a trial based on established court principles and procedures,¹⁵ rather than a trial by media.

Nonetheless, Pell was eventually charged in the following year on 29 June 2017,¹⁶ now allowing him the opportunity to defend the allegations through a questionably fair trial. The first of Pell's pre-trial hearings were heard at the Melbourne Magistrates court on 26 July

⁹ 'Victoria Police Investigating Cardinal Pell' (n 7) [9].

¹⁰ Albert C Gunther, 'The persuasive press inference: effects of mass media on perceived public opinion' (1998) 25(5) *Communication Research* 486, 486 [1].

¹¹ *Ibid.*

¹² See generally Louise Milligan and Andy Burns, 'George Pell subject of Victoria Police investigation into multiple allegations of sexual abuse', *News* (Web Page, 27 July 2016) <2016_July_27_George Pell subject of Vic...ustralian Broadcasting Corporation).pdf (bishop-accountability.org)>.

¹³ See generally 'Victoria Police Investigating Cardinal Pell', *Book Store* (Web Page) <<https://www.amazon.com/Cardinal-Rise-Fall-George-Pell-ebook/dp/B071VRGJC4>>.

¹⁴ Emma Younger, 'George Pell Committal: Accused of Trying to Poise the Public's Mind Against Him', *News* (Web Page, 27 March 2018) [22] <<https://www.abc.net.au/news/2018-03-27/cardinal-george-pell-abc-journalist-louise-milligan-evidence/9590992>>.

¹⁵ 'Basic Legal Expressions', *Info Sheet 23 – Basic Legal Expressions* (Web Page) [8] <Infosheet 23 - Basic legal expressions – Parliament of Australia (aph.gov.au)>.

¹⁶ 'Police Statement: Cardinal George Pell Charged with Multiple Sexual Offences Video', *News* (Web Page) [0:0:01]-[0:0:07] <<https://www.theguardian.com/global/video/2017/jun/29/victoria-police-cardinal-george-pell-charged-with-multiple-sexual-offences-video>>.

2017, during which time the prosecutor reminded the media that the period for the doctrine of sub judice contempt had already commenced.¹⁷

Political Influences

Although, for the most part, the media did not report in sub judice contempt throughout the duration of Pell's County Court Trial, its coverage of political opinion pertaining to institutional child sex abuse posed an additional threat to Pell's right to be presumed innocent. In particular, while jurors were hearing evidence in the trial on 22 October 2018, Prime Minister Scott Morrison issued a national televised apology to survivors and victims of institutional child sex abuse.¹⁸ The emotive apology concluded with a statement to the victims, saying 'I believe you, we believe you, [and] your country believes you'.¹⁹ This was a highly influential statement indicating a consensus that all Australians believe, or ought to believe, those who claim to have been sexually abused, and had the ability to persuade jurors to accept the claims against Pell on faith, rather than relying on the requisite burden of proof to determine whether or not he was guilty.

Advocacy Group Influence

In addition to political influences, was an online article written about Pell by an organisation that advocates against institutional child sex abuse, called Broken Rites. Their website, among other things, publishes anonymous articles authored by alleged victims of child sex abuse. Although the website doesn't explicitly make any allegations against Pell, it implies he was complicit in covering-up child sex offences that had been committed within the Catholic Church.²⁰ This is evidenced by an article on their website entitled 'About Us'²¹, which explains their objective to expose the cover-ups of sexual abuse within the Catholic Church. Within the same context it includes a photo of Pell walking beside a priest, who at the time, was on trial for child sex abuse offences. Then through implication, it goes on to suggest that because Pell was accompanying the priest to court as a support person, that Pell was in

¹⁷ 'Secrecy and Security Envelop George Pell's Magistrates Court Show', *News* (Web Page, 26 July 2017) [19] <<https://www.theguardian.com/australia-news/2017/jul/26/secrecy-and-security-envelop-george-pells-magistrates-court-show-david-marr>>.

¹⁸ See generally 'Scott Morrison's National Apology to Australian Survivors and Victims of Child Sex Abuse', *News* (Web Page, 22 October 2018) [Final Paragraph] <Scott Morrison's national apology to Australian survivors and victims of child sexual abuse – full speech | Royal commission into institutional responses to child sexual abuse | The Guardian>

¹⁹ *Ibid* [105].

²⁰ See generally 'About Us', *Broken Rites Australia: Researching the Catholic Cover-Up* (Web Page) <<http://www.brokenrites.org.au/drupal/node/246>>.

²¹ *Ibid*

support of the offending, and likely to be involved in the prior cover-ups of the Catholic Church.

If a jury member in Pell's trial had seen this website before or during the proceedings, they might have been prejudiced by this inference, as it suggests Pell had a proclivity for committing child sex offences himself.

Appeal to the Court of Appeal of the Supreme Court of Victoria

Pell's application for special leave to appeal to the Court of Appeal of the Supreme Court of Victoria ('Supreme Court') was granted. Having reviewed the evidence presented in the County Court, the majority judgement in the Supreme Court concluded that the jury was correct in reaching a guilty verdict. The Supreme Court held that there was a reasonable possibility Pell had committed the offences. However, a dissenting judgement by Mark Weinberg J held that it was not open to the jury beyond a reasonable doubt that Pell was guilty²².

There is no evidence to discern whether influences from media, political, and or the Broken Rites advocacy group prejudiced the Supreme Court's majority judgement. Nonetheless, it impacted on the Rule of Law because it had gone against one of the fundamental principles of the presumption of innocence. That being, that the requisite standard of proof in establishing guilt in criminal trials should be based beyond a reasonable doubt,²³ and not on a reasonable possibility.²⁴

Appeal to the High Court

Following the Supreme Court judgement, Pell successfully applied for special leave to appeal to the High Court of Australia, which is the highest and final court of appeal in the Australian judicial hierarchy. In a unanimous judgement by the full bench of the High Court, their honours held that 'there was a significant possibility that an innocent person had been convicted because the evidence did not establish guilt to the requisite standard of proof'.²⁵

²² 'Judgement In the Matter of George PELL v R', *Supreme Court Victoria* (Web Page, 21 August 2019) [00:01:42]-[00:01:52] <<https://www.streaming.scvwebcast1.com/judgment-in-the-matter-of-george-pell-v-r-21-august-19/>>.

²³ 'A Common Law Principle' *ALRC Interim Report 127* (Web Page, 31 July 2015) [3] <<https://www.alrc.gov.au/publication/traditional-rights-and-freedoms-encroachments-by-commonwealth-laws-alrc-interim-report-127/11-burden-of-proof/a-common-law-principle-7/>>.

²⁴ *George Pell v The Queen* (2019) VSCA 186 [1105].

²⁵ *Pell v The Queen* (2020) 268 CLR 123, 137 [9].

The convictions against Pell were subsequently quashed,²⁶ and the principles of the Rule of Law were restored.

Conclusion

As the County and Supreme Court decisions were ultimately overturned by the High Court, it confirmed that Pell did not receive a fair trial due to how the Rule of Law was impacted by the likely influences discussed. The media's biased coverage of Vicpol's investigation into Pell, long before he was charged, provided the public an opportunity to form opinions about Pell's guilt, and potentially prejudiced the jurors in his trial. Furthermore, the political influences of Prime Minister Scott Morrison's national apology, and the media's coverage of it during Pell's trial, had a further potential to prejudice the jurors. Additionally, the inference made by the Broken Rites website suggested that Pell had a proclivity for committing child sex offences, which also cast a shadow of doubt over Pell's innocence, and may have contributed to how the principles of the Rule of Law were impacted. Overall, these factors were likely to have collectively prejudiced the jurors during Pell's trials, and impact the Rule of Law, as evidenced by the High Court's decision that the jurors could not have found Pell guilty beyond a reasonable doubt with the evidence solely presented in court.

²⁶ 138 [10].