



# Understanding Human Dignity

Edited by  
Christopher McCrudden

PROCEEDINGS OF THE BRITISH ACADEMY • 192

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*Published for* THE BRITISH ACADEMY  
*by* OXFORD UNIVERSITY PRESS

*Oxford University Press, Great Clarendon Street, Oxford OX2 6DP*

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*First edition published 2013*  
*Reprinted 2014 (twice)*  
*Paperback edition 2014*

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*British Library Cataloguing in Publication Data*  
*Data available*

*Library of Congress Cataloging in Publication Data*  
*Data available*

*Typeset by AtriTeX Technologies Pvt. Ltd., Chennai, India*  
*Printed in Great Britain by TJ International Ltd, Padstow, Cornwall*

*ISBN 978-0-19-726582-6*  
*ISSN 0068-1202*

## UNDERSTANDING HUMAN DIGNITY

## Acknowledgements

TO A CONSIDERABLE EXTENT, this book is the outcome of a conference held in Rhodes House, Oxford, in June 2012. It largely results from discussions there in which a decidedly multidisciplinary group, including historians, legal academics, judges, political scientists, theologians, and philosophers were brought together to discuss the concept of human dignity from their various disciplinary perspectives.

Some of the main issues that the group were asked to consider include the following fundamental theoretical questions: Is there a minimum core to the meaning of human dignity? Is a person's human dignity to be assessed subjectively from his or her point of view, or 'objectively'? Can human dignity be understood in purely secular terms, or is it (as Michael Perry has claimed in respect of human rights) 'ineliminably religious'?<sup>1</sup> Can there be a shared meaning of human dignity where there is religious and ideological pluralism? What ontological claims are implied by appeals to human dignity?

Other questions were more directed at the implications of dignity for relations between individuals, and between individuals and the state: What are the implications of such ontological claims for the ways in which we should behave towards each other? What are its implications for the ways in which the state should treat those who fall under its authority?

An important set of questions posed considered the relationship between human dignity, human rights, and other values: What is the relationship between human dignity and human rights? Is human dignity more appropriately seen as attaching to some rights rather than others? What is the relationship between human dignity and other values and principles connected with rights, such as autonomy, freedom, equality, social solidarity, and identity? What is the weight and status of human dignity? Does human dignity have a status superior to that of other values? Is it absolute, or can it be balanced against other values? Does human dignity essentially serve community or individual goals? Can it also serve moralistic and paternalistic goals? Is human dignity necessarily an emancipatory idea? Is it rights-supporting or rights-constraining?

We also considered how, if at all, the concept of human dignity helps us to deal with claims made in relation to several issues that are among the most

<sup>1</sup> Michael J. Perry, *The Idea of Human Rights: Four Inquiries* (Oxford and New York, Oxford University Press, 1998), ch.1, 'Is the Idea of Human Rights Ineliminably Religious?', 11–41.

divisive current political and social questions: the claims of right involved in the issue of abortion; the vexed topic of assisted suicide ('death with dignity'); non-discrimination and minority rights; and claims of socio-economic rights, such as health care. Does dignity apply only to sentient humans, or can it apply to animals, dead humans, and human foetuses? What is the relation between the idea of dignity and what appears to be voluntary self-degradation (for example, in some instances of prostitution and pornography)? How far, if at all, can a person waive his or her human dignity? Does human dignity determine the boundaries of religious pluralism?

A further set of questions considered were more institutional, or related to the relationship between disciplines: How appropriate is the use of the concept of human dignity for judicial decision-making? What is the role of courts and legal authorities in developing and elaborating the concept of human dignity? What role, if any, should human dignity play in adjudicating conflicts of human rights, philosophical and legal?

Readers, at this point, may feel that this list is so daunting, and raises such complex issues, that we are in danger of not being able to see the forest for the trees. The aim of my Introduction is to provide a guide, a map, through the thicket. It situates the subsequent chapters within an overview of the terrain that currently constitutes debates about the use of dignity. While no such mapping exercise is ever entirely innocent, the strategy adopted in the Introduction might be misinterpreted as attempting to tackle more than it does. I have not attempted to put forward my own comprehensive account of dignity (that is for another day, perhaps). I have sought, rather, to probe the potential weaknesses of the positions advanced, mostly based on the rich conversations that took place at the conference, at least in some contexts taking on the role of a devil's advocate.

Having a sense of the origins of the book should explain why it has some of the characteristics that set it apart from other recent and forthcoming discussions of dignity. The conference, and this book, represent the coming together of three strands of thinking. The first was academic: as we shall see, there has been an extraordinary explosion of scholarly writing about the concept of human dignity, often showing a degree of ignorance of equivalent writing in cognate disciplines. One aim of the conference, and of this book, is to reflect on intra-disciplinary debates about dignity in law, philosophy, history, politics, and theology, as well as expose those working within these disciplines to some of the richness of debates occurring in the other disciplines with which they might be less familiar.

The origins of the conference, and of this book, are also personal. In my own work on the theory and practice of human rights, funded by the

Leverhulme Trust, I have become increasingly intrigued by the concept of human dignity. In 2008, I published a lengthy article examining its use.<sup>2</sup> On the basis of a comparative examination of the use of human dignity by courts in human rights adjudication, I argued that the use of dignity, beyond a basic minimum core, did not provide a universalistic, principled basis for judicial decision-making in the human rights context, in the sense that there was little common understanding of what dignity requires substantively within or across jurisdictions. The meaning of dignity, I suggested, is therefore context-specific, varying significantly from jurisdiction to jurisdiction and (often) over time within particular jurisdictions. Indeed, instead of providing a basis for principled decision-making, dignity seems open to significant judicial manipulation, increasing rather than decreasing judicial discretion. That is one of its significant attractions to both judges and litigators alike. Dignity provides a convenient language for the adoption of substantive interpretations of human rights guarantees which appear to be intentionally, not just coincidentally, highly contingent on local circumstances.

Despite that, however, I argued that the concept of human dignity plays an important role in the development of human rights adjudication, not in providing an agreed content to human rights but in contributing to particular methods of human rights interpretation and adjudication. I did *not* argue that a coherent extra-legal conception of dignity that could form the basis of a common transnational legal approach was impossible. I accepted that it could be, therefore, that the interpretation of dignity within Catholic social doctrine, or within a social democratic framework, or within an Islamic framework, or within the Jewish tradition, or based on Kant, might fulfil this role. But I thought that none of these currently provided a consensus conception of the legal use of dignity, and I was sceptical whether any of these could really provide a secure foundation for its judicial application in the future. When any one of these conceptions is adopted, dignity loses its attractiveness as a basis for generating consensus with those who do not share that tradition. The conference and this book were, at least partly, intended to test these arguments and take the discussion further.

The third strand of thinking was more practical. For some time, there has been a palpable tension, perhaps particularly in the USA, between some understandings of human rights and some religious understandings of what constitutes the common good. The controversies over President Obama's health care reforms, in particular whether certain medical procedures forbidden by

<sup>2</sup> Christopher McCrudden, 'Human dignity and judicial interpretation of human rights', *European Journal of International Law* 19 (2008), 655–724.

the Catholic Church should nevertheless be imposed on all hospitals that receive federal funding (including Catholic hospitals), is one prominent example. Frequently, these tensions have been exposed to a heightened degree in litigation where issues of individual rights have been involved. A relatively recent example is the now extensive British litigation concerning assisted suicide. This trend is now also appearing in Europe to a greater extent than previously. The Bishops' Conference of the Catholic Church in England and Wales has been considering for some time how best to contribute to public and legal debates on these issues in ways that are constructive and effective. The visit of Pope Benedict XVI to England and Scotland in 2010, during which he called for a dialogue between faith and reason, stimulated further thinking. This resulted in the idea that one way of engaging with current human rights debates was to consider the deeper theoretical foundations of human rights, particularly the idea of human dignity, which is claimed to serve both as a foundation of international and European human rights, and also of Catholic social teaching. The Bishops' Conference was instrumental in driving forward the plans for the conference.

Organizing a conference and producing a book from that conference incurs many debts of gratitude, which it is only right to acknowledge. Apart from the contributors to the book, who deserve praise and thanks beyond measure for coping with tight deadlines with no complaints, I am particularly grateful to Jeremy Waldron FBA, who co-organized the conference with me. Conor Gearty FBA was of immense help at the planning stage in advising how to make the conference work, and subsequently in the preparation of the book. My debt to him, both intellectual and personal, is considerable. Archbishop Peter Smith, James Hanvey SJ, and Charles Wookey advised extensively on the original concept of the conference and were involved at each stage in ensuring that it took place. The chairs of the various conference sessions expertly guided the discussion. The staff of the Catholic Bishop's Conference of England and Wales, especially Julia Flanagan and Arabella MacDonald, handled the day-to-day organizational arrangements. I am most grateful to them all. The conference was supported by a wide array of different groups and organizations: the British Academy, the Catholic Bishops Conference of England and Wales, the University of Oxford, the Pontifical Academy of Sciences, and Queen's University Belfast. In addition, several donors enabled the conference to invite a wide array of distinguished participants from far-flung places. I would like to acknowledge and thank the following donors to the conference: the Edith Bessie Gibson Trust, the British Province of the Society of Jesus, Porticus Trust, Peter Harper, and Atlantic Trading Charitable Trust. I am particularly grateful to Archbishop Vincent Nichols and Lady

Hale, not only for chairing part of the Conference but also for each contributing a Preface to this volume. Brigid Hamilton-Jones was responsible for expertly guiding the book through the British Academy publications process. Elizabeth Stone was a magnificent editor and deserves considerable credit for successfully bringing the book to publication. My family were subjected to an almost constant barrage of discussion about human dignity at the dinner table, and responded as generously as always by helping to clarify my thoughts. The book was conceived and completed whilst I held a Leverhulme Major Research Fellowship, without which it could not have been written.

Christopher McCrudden  
Oxford, 1 July 2013

# Preface

*Brenda Hale*

ACCORDING TO STROUD'S JUDICIAL DICTIONARY, dignity means a status. 'Dignities may be divided into superior and inferior; as the titles of duke, earl, baron, and so on are the highest names of dignity; and those of baronet, knight, serjeant at law, etc. the lowest.' A dignity in the church involves having a jurisdiction as well as a spiritual function: so a parson or vicar does not hold a dignity but a bishop, dean, or archdeacon does. Succession law still excludes adopted and children of unmarried parents from those entitled to succeed to hereditary 'dignities and titles of honour'.

That is the sort of meaning a lawyer can understand. It may be old fashioned but it is a precise description of a status attached to a particular individual, a status which by definition only a few can have. It is very like a property right. So how did we get from that exclusive and hierarchical view of dignity to Article 1 of the Universal Declaration of Human Rights: 'Everyone is born free and equal in dignity and rights'? Equal rights we may understand, but what do we mean by equal dignity? Is it just the reason why everyone has equal rights or is it something separate and distinct from those rights? If so, what is it?

More puzzling still, what does it mean to say that there is a right to dignity? Thus Article 1(1) of the German Basic Law declares: 'Human Dignity shall be inviolable. To respect and protect it shall be the duty of all state authority.' The Israeli Basic Law: Human Dignity and Liberty translates this into a negative obligation in section 2: 'There shall be no violation of the life, body or dignity of any person as such'; and a positive obligation in section 4: 'All persons are entitled to protection of their life, body and dignity.' Here, dignity is not just the reason why all people have rights: it is a right in itself which must have a specific content if it is to have any meaning at all. But what should that content be? Should it be pitched at a minimum level of respect for humanity—freedom from torture or inhuman and degrading treatment, for example? Or, and this is the big question, does human dignity mean that all people must be treated as well as valued equally? Does dignity now mean equality? The Supreme Court of Israel thinks that it does.

The law may eventually have reached this point, but the lawyers did not invent such a major shift in political thinking. The people did that.

Freedom-fighters, levellers, feminists even, who knew that they were not being accorded their proper respect as human beings and sometimes called this dignity. Philosophers and theologians supplied the thinking behind it. But how did they get from the hierarchical to the universal view of human worth? From the idea that God ordained the rich man in his castle and the poor man at his gate to the idea that such differences are made by man and not by God? And have they all got there? Surely there are some differences that are ordained by God, if only in the hierarchy of an apostolic church which does not yet admit that women may have that dignity. So what does it mean to say that man is made in the image of God? Or is it, as some would say, the other way round?

These are big questions, and no one discipline can claim to have all the answers. But it helps to get together to discuss them seriously. So it was a great privilege, as well as a great education, to be present at the Rhodes House conference in July 2012, along with historians, philosophers, judges from Germany, Israel, South Africa, and the European Court of Human Rights, theologians from the Christian (primarily Roman Catholic) tradition, and legal scholars from around the world. Having spent a little time myself wondering what we could possibly mean by a right to dignity in a world where hospital patients could be left without food, water, pain relief, or help with their bodily functions, I hoped the conference might supply me with some answers. I cannot say that it did. It supplied me with a great deal of information which I did not have before and more to think about than I could ever have imagined.

The trouble with judging is that you do not have the luxury of doubt and indecision. You have to make up your mind one way or another. There has to be an answer to the case. That is why so many judicial decisions seem unsatisfactory to deep-thinking critics—either the result, or the reasoning, or both, fail to take account of the complexity of the issues, or to reflect a coherent world view, or to appreciate the deeper consequences of deciding a particular way. So it was a mistake on my part to hope for answers.

What I did find was a breadth and depth of scholarship and thought, a richness of debate, and above all for the most part a deep respect for one another's points of view. I did learn one thing—that we have moved away from dignity as hierarchy to dignity as reciprocity—you must respect my human dignity as much as I must respect yours (even if I don't or you don't). But there could be reciprocity of respect between people who are very far from equal. So the content of what we have to respect in one another remains something of a mystery.

So congratulations to Christopher McCrudden for arranging the conference and bringing such a diverse group of people together without their coming to blows and for editing this magnificent collection of essays. They may not have supplied the answers, but he has certainly enabled us to organize our thoughts more coherently on this immensely challenging but also immensely important subject.

Brenda Hale

The Rt Hon. the Baroness Hale of Richmond  
Justice of the Supreme Court of the United Kingdom

# Preface

*Vincent Nichols*

WHAT IS IT IN virtue of which we can say that each person has an intrinsic human dignity? Where does this transcendent value come from? For the Christian, and for many of other religions too, this transcendent value is from God. But one does not need to be a religious believer to affirm, from reflection on experience, that other people matter and make a claim upon us, and that ‘human dignity’ is the idea which best encapsulates the universal truth of that claim, with the moral force that it carries.

We can see this if we reflect on the extraordinary scenes played out in 2011 in the countries of the Middle East. In Tunisia the slogan was ‘Dignity, Bread and Freedom’. And I was struck by this account from an Egyptian journalist, Nawara Najem, of how the crowds suddenly decided to risk being shot and refuse to be intimidated. She said: ‘Why did the people not fear death? No one knows. It was not only religion. It was not only poverty. It was not only despair. Perhaps the answer is human dignity. No force, however tyrannical, is able to deprive human beings of this.’<sup>3</sup>

Ideas of human dignity have had a long history, going back to Cicero. Down the centuries, the idea has continued to play a part in moral discourse, in particular through Kantian philosophy, in which dignity resides only in humanity insofar as it is capable of morality.<sup>4</sup> These uses of dignity are relatively well known. Less well known, perhaps, is that the concept of human dignity has also had a central place within Catholic theology and philosophy. It has featured particularly in reflections and debates about social injustice, in discussion about slavery, and in the articulation of the rights of indigenous peoples by the Salamanca school of Dominicans following the Spanish colonizations of Latin America. In these contexts the recognition of the human dignity of ‘the other’ was the first and fundamental step to moral and spiritual change, and to recognizing as injustices the oppression they were suffering. Then, in the nineteenth century, through reflection on the dignity of work and the rights of the poor, we find Pope Leo XIII in his 1891 encyclical *Rerum Novarum* establishing human dignity as the foundational principle for the de-

<sup>3</sup> *The Guardian*, 20 February 2011.

<sup>4</sup> Kant, *Groundwork of the Metaphysics of Morals* (Ak. 4:435).

velopment of the modern social doctrine of the Church.<sup>5</sup> Subsequently this has been developed into a rich corpus of teaching by successive popes.

In the immediate aftermath of the Second World War there was a strong desire to articulate a binding set of universal principles to which all could agree and which would serve as a permanent bulwark against arbitrary action by any state power. This desire was shared by a broad coalition of countries and faiths, and the Catholic Church played a significant role alongside others in the discussions that led up to the formulation of the United Nations Universal Declaration of Human Rights. The use of the term ‘human dignity’ in the Declaration was possible because it seemed to encapsulate an idea of the intrinsic worth and value of every human life which served as a foundation for the legitimacy of human rights, whilst at the same time not presupposing any particular theological or philosophical basis for those rights. Affirming the centrality of ‘human dignity’ was possible from the perspective of both religious faith and secular rationality.

Today, the widespread contemporary use of human dignity both in law and in ethics is under the spotlight, particularly in the areas of law and medical ethics. The underlying consensus about what human dignity means or requires is increasingly in question. Rival moral conceptions of freedom, autonomy, and the role of the state, the nature of human identity and what makes human life worth living, lie just beneath the surface. The way in which in our pluralist society we develop and hold onto a shared understanding of such a key concept can have an immense influence on the quality of moral and social development of people, and in particular on the practical development of law.

So, when it was suggested by Christopher McCrudden that the Catholic Bishops’ Conference of England and Wales might collaborate with Oxford University (where Professor McCrudden was Professor of Human Rights before moving to Queen’s University Belfast) in organizing a major interdisciplinary conference on understanding human dignity, Archbishop Peter Smith and I had no hesitation in strongly supporting the idea. We felt that such a dialogue was extremely important and timely. It would offer an open, frank, serious intellectual engagement between the worlds of religious faith and secular reason, through the lenses of history, law, theology, and philosophy.

During his visit to the UK in 2010, Pope Benedict XVI reflected on the relationship between faith and secular reason, and how each needs the insights of the other. A key paragraph of the historic speech he gave in Westminster Hall reads as follows:

<sup>5</sup> See [http://www.vatican.va/holy\\_father/leo\\_xiii/encyclicals/documents/hf\\_l-xiii\\_enc\\_15051891\\_re-rum-novarum\\_en.html](http://www.vatican.va/holy_father/leo_xiii/encyclicals/documents/hf_l-xiii_enc_15051891_re-rum-novarum_en.html).

The Catholic tradition maintains that the objective norms governing right action are accessible to reason, prescinding from the content of revelation. According to this understanding, the role of religion in political debate is not so much to supply these norms, as if they could not be known by non-believers—still less to propose concrete political solutions, which would lie altogether outside the competence of religion—but rather to help purify and shed light upon the application of reason to the discovery of objective moral principles. This ‘corrective’ role of religion vis-à-vis reason is not always welcomed, though, partly because distorted forms of religion, such as sectarianism and fundamentalism, can be seen to create serious social problems themselves. And in their turn, these distortions of religion arise when insufficient attention is given to the purifying and structuring role of reason within religion. It is a two-way process. Without the corrective supplied by religion, though, reason too can fall prey to distortions, as when it is manipulated by ideology, or applied in a partial way that fails to take full account of the dignity of the human person. Such misuse of reason, after all, was what gave rise to the slave trade in the first place and to many other social evils, not least the totalitarian ideologies of the twentieth century. This is why I would suggest that the world of reason and the world of faith—the world of secular rationality and the world of religious belief—need one another and should not be afraid to enter into a profound and ongoing dialogue, for the good of our civilization.

As Archbishops, we saw the 2012 conference—and this book which has resulted from it—as a direct response to Pope Benedict’s strong encouragement of such a dialogue. The chapters in this volume, together with the outstanding introduction by Professor McCrudden, take that dialogue in many different directions. The conversation is multifaceted, direct, and sometimes extremely sharp when profound differences are laid bare in areas of current controversy. There are challenges here for everyone, and there is much rich food for further thought and reflection, including for the Church itself, which must always be attentive, as Pope Benedict said, to what it might learn from the voice of secular reason.

If I were to single out one area of contemporary debate in our society where different understandings of human dignity are shaping the debate, it would be the care of the elderly and most vulnerable. In the United States of America, the State of Oregon legalized physician-assisted suicide in November 1997 under the heading of the ‘Death with Dignity Act’. The 2012 official report on the operation of Oregon’s physician-assisted suicide law revealed that the three most frequently mentioned end-of-life concerns of those who died by physician-assisted suicide were loss of autonomy (93.5 per cent), decreasing ability to participate in activities that made life enjoyable (92.2 per cent), and loss of dignity (77.9 per cent). In fact, Oregon’s Public Health Division records that the majority (82 per cent) of those who have ended their lives in

this way in the fifteen years since the Act was first implemented have attributed their decision to a ‘loss of dignity’.<sup>6</sup>

These are distressing and debilitating experiences and not in any way to be minimized. Yet what we are seeing here is the use of the term ‘dignity’ as a profoundly subjective notion. If I am the only person who can decide whether or not my life has any dignity, and if I decide it no longer does, and if I need the help of others to end it, then they should have a duty to help me to do so. It is no accident that in Britain the main campaign group for the legalization of euthanasia and assisted suicide changed its name from the Voluntary Euthanasia Society to ‘Dignity in Dying’. The underlying rationale in these situations is that individual personal autonomy is what matters above all else.

While this autonomy is of real importance it can only be a decisive factor if the true meaning of human dignity has been abandoned. It is striking that the 2012 campaign within the British health and social care sector, which aimed to improve the quality of care provided to those with chronic illness or dementia, was called ‘Dignity in Care’. In contrast with ‘Dignity in Dying’, underlying this campaign is the view that, whilst the sense of personal autonomy is important, it is not the only source of value. Rather, recognition is given to the fact that one’s sense of dignity is immensely influenced by the social environment of care, and the wider context of social and cultural values in which we live; an ethic of respect and care for others can enhance a person’s sense of self worth and dignity. Human dignity in its fullest sense emerges from social relationships. The experience of loving care can transform the subjective experiences of the loss of dignity or the loss of self-respect.

As James Hanvey SJ points out in his fine chapter in this volume, Christian anthropology is profoundly helpful in this respect, for it affirms that our humanity is found and fulfilled precisely in relationships with others, and fundamentally with God. It is not surprising that in this vital arena of care of the vulnerable it is in the quality of social relationships that a richer understanding of human dignity is to be found. Indeed, for those who have dementia, there is a powerful sense in which their dignity is held by others who care for them. And for those who are wholly incapable of conscious awareness, we can affirm that their human dignity is still upheld by the love shown by others and by the unchanging love of God for them which is never withdrawn.

This social dimension of human dignity, which arises from our nature as social beings, helps to explain why we lose something extremely important

<sup>6</sup> Oregon’s Death With Dignity Act: 2012 Annual Report, Oregon Public Health Division, available at <http://public.health.oregon.gov/ProviderPartnerResources/EvaluationResearch/DeathwithDignity-Act/Documents/year15.pdf>.

if we try to reduce the value of human dignity to simply protecting personal autonomy. Nor is it sufficient to equate treating people ‘with dignity’ to requiring merely that we show them ‘respect’. Respect for others is of course important but it too is socially conditioned. We easily think of respect in terms of those who ‘earn’ or ‘deserve’ it and of those who do not. In this sense we can ‘earn’ respect. But we cannot ‘earn’ human dignity. Respect cannot be a substitute for human dignity because a person’s intrinsic human dignity is the very reason we want to treat them with respect. A society in which there is a strong sense that people matter has a bulwark against the temptation to devalue particular groups or people, including those suffering from acute dementia or the elderly.

In thinking about human dignity in relation to specific issues of policy or law we can easily find ourselves focusing on what needs to be protected or safeguarded. The area of social care is a good example of where this approach is profoundly important. But there is a deeper richness in the idea of human dignity we may not yet have grasped, something that is profoundly creative and emancipatory, something that stimulates a desire and an openness to a common understanding. The protestors in the Arab spring uprisings in 2011 seized on the idea of human dignity precisely because it offered a promise of a new future. It carried a latent power and potential, an intimation of the deepest truth about humanity made in the image and likeness of God. As Christians we bring our faith to a world in need of healing and hope, and through dialogue and engagement with others, and an openness to learn from the insights of others, we seek to gain a deeper understanding of where that truth about humanity may yet be leading us all.

This fascinating book, covering an immense canvas, helps us all to think harder about what is at stake. I hope it will provoke and stimulate further dialogue. In particular, recognizing that the theological contributions were largely from a Catholic perspective, I hope that it may encourage a deeper dialogue on human dignity from the perspectives of different faiths and Christian denominations. This book provides an excellent foundation for such further exploration.

Archbishop Vincent Nichols