

**J**anne Haaland Matlárý has devoted her life to questions of ethics and politics. This preoccupation has become extraordinarily relevant to many of the issues that dominate the contemporary political agenda; particularly in Europe where the debate over relativism, human rights and majority tyranny has become a vital concern to very many of its citizens.

Combining academic research with an active political life as a diplomat serving both her native Norway and the Holy See, Janne Haaland Matlárý is able to offer us profound insights into the importance of human dignity and human rights in current politics. This book is essential reading for all who are concerned with issues of rationality, law, human rights, politics and religious freedom in European democracy today. As an academic, studying and teaching political science, her work has concentrated on security and foreign policy.

*She makes a strong case that foundations for human rights can be found through human reason, specifically, through retrieving and reanimating the classical tradition of rationalism that was once the pride of western civilization ... She builds her analysis of politics with far more promising materials than the instrumental rationality and the radically individualistic concept of the person that have prevented the human rights movement thus far from reaching its full potential.*

Mary Anne Glendon, Harvard University

**J**anne Haaland Matlárý is Professor of International Politics in the Department of Political Science of the University of Oslo, Norway, and Senior Adjunct Researcher in Security Policy at the Norwegian Institute of International Affairs. She was State Secretary for Foreign Affairs (Deputy Foreign Minister) of Norway 1997–2000, representing the Christian Democratic Party in the Bondevik government. Her main academic fields are the European Union and international security policy. She has published very widely and played significant roles in a number of international and consultative bodies. In April 2007 she was awarded *Il Premio San Benedetto*. Her biographical narrative of conversion to the Catholic Church, *Faith Through Reason*, is also published by Gracewing.

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WHEN MIGHT BECOMES HUMAN RIGHT

Janne Haaland Matlárý

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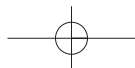
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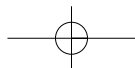
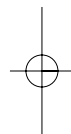
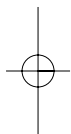
## Essays on Democracy and the Crisis of Rationality

Janne Haaland Matlárý

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## ABBREVIATIONS

CEO	Chief Executive Officer
COE	Council of Europe
CSR	Corporate Social Responsibility
ECHR	European Convention on Human Rights (also European Court of Human Rights)
ECJ	European Court of Justice
EU	European Union
ICBL	International Campaign to Ban Landmines
MFA	Minister for Foreign Affairs
NATO	North Atlantic Treaty Organization
NGO	Non-governmental organization
OECD	Organization for Economic Cooperation and Development
OSCE	Organization for Security and Cooperation in Europe
PC	Political correctness
SOP	Standard operating procedure
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNSC	United Nations Security Council
WHO	World Health Organization
WMD	Weapon of Mass Destruction
WTO	World Trade Organization

## ACKNOWLEDGEMENTS

Ever since I was a *Gymnasiumschruler* I have been interested in the question of ethics and politics; more precisely in the question of whether there can be any *Fester Punkt* beyond positivist law and majority opinion. This is naturally the question of the *Rechtsstaat*, of whether basic values in a constitution or in a human rights convention are really beyond the reach of the vagaries of public opinion and political correctness. The need to find an answer to this question led me both to my field of study, political science, and eventually to the Catholic Church and her doctrine of natural law. In Thomism I found the continuation of the Aristotelian rational tradition of politics as the pursuit of the common good – *summum bonum* – through reason.

Over the years this preoccupation of mine has led to several essays, articles, and talks in various European contexts. In this book I present a number of them in a revised form together with some new chapters that together will hopefully contribute to the European debate over relativism, human rights, and majority tyranny. This is the most important debate we conduct in our democracies today; and one where the natural law tradition of the Church seems to offer the only position 'in the market' which argues that ethics and reason belong together.

Christianity is the religion of the word – *Logos* – that is, of rationality. It builds on the classical notion of the rational as particular to the human being; as that which sets it apart from animals. Aristotle defines the human being as

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a 'rational and social being', where rationality means the ability to reason about ethics, about right and wrong. Animals, he points out, also have language, but they cannot reason. To reason implies to speak in the language of universals, which is the language of ethics and *therefore* the language of law and politics: 'Stealing is wrong and should be forbidden' means that stealing is wrong for each human being, everywhere and always. The law is the proper instrument to use to forbid it. But if I say that 'sailing is good for everyone and should be prescribed', I speak nonsense because I speak about a particular, private interest – of mine, but not something that concerns the *summum bonum* of society. In the use of language we immediately recognize that the argument about stealing is sound, but that the argument about sailing is illogical. Thus, we are born with the ability to rationalize ethical questions.

I am convinced that we have to rediscover these essentials of politics and law in order to preserve what may be left of the *Rechtsstaat* in Europe. Today human rights have, rightly so, become the new political 'Bible', but a profound relativism regarding basic values prevails. Human rights move the *Rechtsstaatproblematik* to the international level, where no political apparatus exists in the form of 'checks and balances'. This complicates matters further, while there at the same time reigns a strong degree of relativism regarding what these human rights constitute.

This book pleads for a return *ad fontes*, to the classical rationalism of ancient political thought. This tradition, called natural law, has to this day been especially well preserved in the Catholic Church. It is not specifically Christian, but the Christian view of the human being (*Menschenwurde*) is different from the classical one. I think we have to rediscover and modernize natural law in order to ensure that democracy does not become majority – or as it may be, minority tyranny. In order to succeed in this, we have to focus on two themes: one, being willing to acknowledge that the central political question today, when we debate human rights, is not the concept of *right*

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but the concept of *human*; and two, being willing to re-examine what rationality means. The latter is today almost exclusively regarded as a matter of pursuing one's own material interests, but this is a very impoverished view of rationality. Instead rationality must be returned to in its classical form, emanating from a human being who is able to reason about ethics and therefore, about politics and law.

During ten years of sometime diplomatic service for the Holy See I had occasion to study and participate in the 'human rights diplomacy' of Pope John Paul II. I was impressed by the fact that he developed and applied the notion of human dignity in international politics, through his encyclicals, speech, and action. No other actor on the world scene did that; representing the continuation of the natural law tradition of the Church, which is a general, 'non-religious' sphere of thought proper to politics. The Vatican spokesman Dr Navarro-Valls suggested that I should write a book on the importance of human dignity and human rights in current politics.

My long-standing interest in this theme naturally led me to Joseph Cardinal Ratzinger. His writings on rationality, freedom and the 'tyranny of relativism' in modern democracy are incisive and radical. I discussed the idea for a book with him in several meetings in the Vatican, and he made suggestions for readings and even supplied a bibliography from his own hand. He also graciously offered to write the introduction to this book; an offer which naturally could not stand when he was elected Pope in April 2005.

I remain tremendously grateful for his interest and equally inspired by his pen. If there is one person that fulfils the criteria of classical rationality, it is he.

Janne Haaland Matlány

## PREFACE

*Mary Ann Glendon*

In this fascinating collection of essays, Janne Haaland Matlárý explores one of the most troubling political questions of our time: how can 'human rights' serve as a universal common standard in a political climate where relativism prevails? Where the scope and meaning of every right is hotly contested? If human rights cannot be placed on a solid philosophical basis, the doors are open for endless manipulation and deconstruction. The hopes they represent – for democracy, rule of law, peace, and dignified living – dissolve amidst power politics. And might becomes right.

Some of the most profound thinkers of the late twentieth century had already called attention to the risks of resting a noble enterprise on shaky foundations. Pope John Paul II, for example, was a great admirer of the 1948 Universal Declaration of Human Rights, describing it as 'one of the highest expressions of human conscience of our time' and 'a real milestone on the path of the moral progress of humanity'.<sup>1</sup> But in the fateful year of 1989, he warned that the document 'does not present *the anthropological and ethical foundations of the human rights* which it proclaims'.<sup>2</sup> A few years after the fall of communism in

<sup>1</sup> John Paul II, 'Address to the United Nations', 2 October 1979, par. 7, and 'Address to the United Nations', 5 October 1995, par. 2.

<sup>2</sup> John Paul II, 'Address to the Diplomatic Corps Accredited to the Holy See', 9 January 1989, par. 7.

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Eastern Europe, the Nobel prize-winning poet Czeslaw Milosz put the dilemma even more sharply. Evoking 'those beautiful and deeply moving words which pertain to the old repertory of the rights of man and the dignity of the person', Milosz wrote: 'I wonder at this phenomenon because maybe underneath there is an abyss . . . How long will they stay afloat if the bottom is taken out?'<sup>3</sup>

One might well wonder how it happened that such an imposing edifice as the 1948 Declaration was constructed with so little attention to foundations. The fact is that the fathers and mothers of the post-Second World War human rights project were well aware of the omission. They just didn't have time to remedy it. When the UN's first Human Rights Commission, chaired by Eleanor Roosevelt, began to draft a 'bill of rights' to which persons of all nations and cultures could subscribe, they were immediately faced with two problems: no one really knew whether there were any such common principles, or what they might be. Anticipating those difficulties, UNESCO had asked a group of philosophers (some well known in the West like Jacques Maritain and others from Confucian, Hindu and Muslim cultures) to look into the matter.

The philosophers sent a questionnaire to leading thinkers all over the world, from Mahatma Gandhi to Teilhard de Chardin, and in due course, they reported that, somewhat to their surprise, there were a few common standards of decency that were widely shared, though not always formulated in the language of rights. They pronounced themselves 'convinced that the members of the United Nations share common convictions on which human rights depend'.<sup>4</sup> At the same time, however, they cautioned that 'those common convictions are stated in terms of different philosophic principles and

<sup>3</sup> Czeslaw Milosz, 'The Religious Imagination at 2000', *New Perspectives Quarterly* (Fall 1997), p. 32.

<sup>4</sup> UNESCO, *Human Rights: Comments and Interpretations*, Wingate, London, 1949, pp. 268–71.

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on the background of divergent political and economic systems’.

The UNESCO group’s bottom line was that agreement could be reached across cultures concerning certain rights that ‘may be seen as implicit in man’s nature as an individual and as a member of society and to follow from the fundamental right to live’.<sup>5</sup> But they harboured no illusions about how deep that agreement went. As Maritain famously put it, when someone asked him how consensus had been achieved among such diverse informants: ‘We agree about the rights but on condition no one asks us why!’<sup>6</sup>

Maritain and his colleagues did not view that problem as fatal to proceeding. For the time being, he maintained, the only feasible goal was to reach agreement ‘not on the basis of common speculative ideas, but on common practical ideas’.<sup>7</sup> Since there was consensus that some things are so terrible in practice that no one will publicly approve them, and some things are so good in practice that virtually no one will openly oppose them, a common project could go forward, even in the absence of agreement on the reasons for those positions. That practical consensus, the UNESCO philosophers said, was enough ‘to enable a great task to be undertaken’.<sup>8</sup>

The philosophers’ judgement proved correct. The delegates on the Human Rights Commission had remarkably few disagreements over which principles should be included in the Declaration.<sup>9</sup> (Their disputes were chiefly political, arising out of the antagonistic relations between the Soviet Union and the United States.) On 10 December 1948, the document was adopted by the UN General Assembly as a ‘common standard of achievement’.

<sup>5</sup> Ibid.

<sup>6</sup> Jacques Maritain, ‘Introduction’, *Ibid.*, p. 9.

<sup>7</sup> *Ibid.*, p. 10.

<sup>8</sup> *Ibid.*

<sup>9</sup> For a detailed account, see Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights*, Random House, New York, 2001.

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Against the predictions of sceptics, the non-binding Declaration quickly showed its moral force. It became the principal inspiration of the post-war international human rights movement; the most influential model for the majority of rights instruments in today's world; and it continues to serve as the single most important reference point for discussions of human rights in international settings. It is a classic example of the effectiveness of what Matlárý and others call 'soft power'.

Still, the decision to proceed 'without asking why' had costs, as one of the UNESCO philosophers foresaw it would. In a prescient essay titled, 'The Philosophic Bases and Material Circumstances of the Rights of Man', Richard McKeon warned that so long as the business of foundations remained unfinished, the Declaration would be highly vulnerable to struggles for the control of its interpretation 'for the purpose of advancing special interests'.<sup>10</sup> That is precisely what happened all during the Cold War, and in the culture battles that succeeded it, such as those at recent UN conferences where Matlárý had the opportunity to see the new 'norm entrepreneurs' in action. But Mrs Roosevelt's Commission was under such pressure to proceed, and the philosophers were so confident that foundations could be found, that they left the job of proving it for another day.

Now that day has come. In Europe, with a vast supranational experiment under way, the problem has acquired increasing urgency. As Matlárý puts it, 'the move toward a state based on human rights, away from the "one-nation, one-identity" state happens while there is less and less belief in the ability to define these rights in an objective manner' (p. 12).

What needs to be investigated is not whether agreement can be reached on a single foundation. Maritain and his

<sup>10</sup> Richard McKeon, 'The Philosophic Bases and Material Circumstances of the Rights of Man', in *Human Rights: Comments and Interpretations*, Wingate, London, 1949, pp. 35-6.

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colleagues considered that to be a fruitless endeavour. More promising, they thought, was to demonstrate that human rights could be firmly grounded in the world's major cultural, philosophical and religious traditions. John Paul II concurred in their view, writing that, 'It is thus the task of the various schools of thought – in particular the communities of believers – to provide the moral bases for the juridical edifice of human rights.'<sup>11</sup>

Friends of human rights should be grateful, therefore, to Janne Haaland Matlary for taking up that challenge with spirit and energy. In this collection of essays, she makes a strong case that foundations for human rights can be found through human reason, specifically, through retrieving and reanimating the classical tradition of rationalism that was once the pride of western civilization. Like John Paul II, Benedict XVI, and other thinkers in that tradition, she also insists that reflection on human rights must begin with an adequate understanding of the human person. She thus builds her analysis of politics with far more promising materials than the instrumental rationality and the radically individualistic concept of the person that have prevented the human rights movement thus far from reaching its full potential.

*Professor Mary Ann Glendon  
Harvard Law School*

<sup>11</sup> John Paul II, 'Address to the Diplomatic Corps Accredited to the Holy See', 9 January 1989, par. 7.