


*Inventing*  
HUMAN  
RIGHTS  
*A History*

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*Lynn Hunt*

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Calvinist pastor Jean-Paul Rabaut Saint-Etienne, who wrote to the French king in 1787 to complain about the limitations of a proposed Edict of Toleration for Protestants like himself. Emboldened by the rising sentiment in favor of the rights of man, Rabaut insisted, "we know today what natural rights are, and they certainly give to men much more than the edict accords to Protestants. . . . The time has come when it is no longer acceptable for a law to overtly overrule the rights of humanity that are very well known all over the world." They may have been "well known," yet Rabaut himself granted that a Catholic king could not officially sanction the Calvinist right of public worship. In short, everything depended—as it still does—on the interpretation given to what was "no longer acceptable."<sup>11</sup>

### *How Rights Became Self-Evident*

Human rights are difficult to pin down because their definition, indeed their very existence, depends on emotions as much as on reason. The claim of self-evidence relies ultimately on an emotional appeal; it is convincing if it strikes a chord within each person. Moreover, we are most certain that a human right is at issue when we feel horrified by its violation. Rabaut Saint-Etienne knew that he could appeal to the implicit knowledge of what was "no longer acceptable." In 1755, the influential French Enlightenment writer Denis Diderot had written of *droit naturel* that "the use of this term is so familiar that there is almost no one who would not be convinced inside himself that the thing is obviously known to him. This interior feeling is common both to the philosopher and to the man who has not reflected at all." Like others of the time, Diderot gave only a vague indication of

the meaning of natural rights; "as a man," he concluded, "I have no other natural rights that are truly inalienable than those of humanity." But he had put his finger on the most important quality of human rights; they required a certain widely shared "interior feeling."<sup>12</sup>

Even the austere Swiss natural law philosopher Jean-Jacques Burlamaqui insisted that liberty could only be proved by each man's inner feelings: "Such proofs of feeling are above all objection and produce the most deep-seated *conviction*." Human rights are not just a doctrine formulated in documents; they rest on a disposition toward other people, a set of convictions about what people are like and how they know right and wrong in the secular world. Philosophical ideas, legal traditions, and revolutionary politics had to have this kind of inner emotional reference point for human rights to be truly "self-evident." And, as Diderot insisted, these feelings had to be felt by many people, not just the philosophers who wrote about them.<sup>13</sup>

Underpinning these notions of liberty and rights was a set of assumptions about individual autonomy. To have human rights, people had to be perceived as separate individuals who were capable of exercising independent moral judgment; as Blackstone put it, the rights of man went along with the individual "considered as a free agent, endowed with discernment to know good from evil." But for these autonomous individuals to become members of a political community based on those independent moral judgments, they had to be able to empathize with others. Everyone would have rights only if everyone could be seen as in some fundamental way alike. Equality was not just an abstract concept or a political slogan. It had to be internalized in some fashion.

While we take the ideas of autonomy and equality, along

with human rights, for granted, they only gained influence in the eighteenth century. The contemporary moral philosopher J. B. Schneewind has traced what he calls "the invention of autonomy." "The new outlook that emerged by the end of the eighteenth century," he asserts, "centered on the belief that all normal individuals are equally able to live together in a morality of self-governance." Behind those "normal individuals" lies a long history of struggle. In the eighteenth century (and indeed, right up to the present), all "people" were not imagined as equally capable of moral autonomy. Two related but distinct qualities were involved: the ability to reason and the independence to decide for oneself. Both had to be present if an individual was to be morally autonomous. Children and the insane lacked the necessary capacity to reason, but they might someday gain or regain that capacity. Like children, slaves, servants, the propertyless, and women lacked the required independence of status to be fully autonomous. Children, servants, the propertyless, and perhaps even slaves might one day become autonomous, by growing up, by leaving service, by buying property, or by buying their freedom. Women alone seemed not to have any of these options; they were defined as inherently dependent on either their fathers or husbands. If the proponents of universal, equal, and natural human rights automatically excluded some categories of people from exercising those rights, it was primarily because they viewed them as less than fully capable of moral autonomy.<sup>14</sup>

Yet the newfound power of empathy could work against even the longest held prejudices. In 1791, the French revolutionary government granted equal rights to Jews; in 1792, even men without property were enfranchised; and in 1794, the French government officially abolished slavery. Neither autonomy nor

empathy were fixed; they were skills that could be learned, and the "acceptable" limitations on rights could be—and were—challenged. Rights cannot be defined once and for all because their emotional basis continues to shift, in part in reaction to declarations of rights. Rights remain open to question because our sense of who has rights and what those rights are constantly changes. The human rights revolution is by definition ongoing.

Autonomy and empathy are cultural practices, not just ideas, and they are therefore quite literally embodied, that is, they have physical as well as emotional dimensions. Individual autonomy hinges on an increasing sense of the separation and sacredness of human bodies: your body is yours and my body is mine, and we should both respect the boundaries between each other's bodies. Empathy depends on the recognition that others feel and think as we do, that our inner feelings are alike in some fundamental fashion. To be autonomous, a person has to be legitimately separate and protected in his or her separation; but to have rights go along with that bodily separation a person's selfhood must be appreciated in some more emotional fashion. Human rights depend both on self-possession and on the recognition that all others are equally self-possessed. It is the incomplete development of the latter that gives rise to all the inequalities of rights that have preoccupied us throughout all history.

Autonomy and empathy did not materialize out of thin air in the eighteenth century; they had deep roots. Over the long term of several centuries, individuals had begun to pull themselves away from the webs of community and had become increasingly independent agents both legally and psychologically. Greater respect for bodily integrity and clearer lines of demarcation between individual bodies had been produced by

the ever-rising threshold of shame about bodily functions and the growing sense of bodily decorum. Over time, people began to sleep alone or only with a spouse in bed. They used utensils to eat and began to consider repulsive such previously acceptable behavior as throwing food on the floor or wiping bodily excretions on clothing. The constant evolution of notions of interiority and depth of psyche from the Christian soul to the Protestant conscience to eighteenth-century notions of sensibility filled the self with a new content. All these processes took place over a long time period.

But there was a spurt in the development of these practices in the second half of the eighteenth century. The absolute authority of fathers over their children was questioned. Audiences started watching theatrical performances or listening to music in silence. Portraiture and genre painting challenged the dominance of the great mythological and historical canvases of academic painting. Novels and newspapers proliferated, making the stories of ordinary lives accessible to a wide audience. Torture as part of the judicial process and the most extreme forms of corporal punishment both came to be seen as unacceptable. All of these changes contributed to a sense of the separation and self-possession of individual bodies, along with the possibility of empathy with others.

The notions of bodily integrity and empathetic selfhood, traced in the next chapters, have histories not unlike those of human rights, to which they are so intimately related. That is, the changes in views seem to happen all at once in the mid-eighteenth century. Consider, for example, torture. Between 1700 and 1750, most uses of the word "torture" in French referred to the difficulties a writer had in finding a felicitous expression. Thus, Marivaux in 1724 referred to "torturing one's mind in order to draw out reflections." Torture, that is, legally

authorized torture to get confessions of guilt or names of accomplices, became a major issue after Montesquieu attacked the practice in his *Spirit of Laws* (1748). In one of his most influential passages, Montesquieu insists that "So many clever people and so many men of genius have written against this practice [judicial torture] that I dare not speak after them." Then he goes on rather enigmatically to add, "I was going to say that it might be suitable for despotic government, where everything inspiring fear enters more into the springs of government; I was going to say that slaves among the Greeks and Romans. . . . But I hear the voice of nature crying out against me." Here too self-evidence—"the voice of nature crying out"—provides the grounding for the argument. After Montesquieu, Voltaire and many others, especially the Italian Beccaria, would join the campaign. By the 1780s, the abolition of torture and barbarous forms of corporal punishment had become essential articles in the new human rights doctrine.<sup>15</sup>

Changes in reactions to other people's bodies and selves provided critical support for the new secular grounding of political authority. Although Jefferson wrote that "their Creator" had endowed men with their rights, the role of the Creator ended there. Government no longer depended on God, much less on a church's interpretation of God's will. "Governments are instituted among Men," said Jefferson, "to secure these Rights," and they derive their power "from the Consent of the Governed." Similarly, the French Declaration of 1789 maintained that "The purpose of all political association is the preservation of the natural and imprescriptible rights of man" and "The principle of all sovereignty rests essentially in the nation." Political authority, in this view, derived from the innermost nature of individuals and their ability to create community through consent. Political scientists and historians have examined this conception of political

authority from various angles, but they have paid little attention to the view of bodies and selves that made it possible.<sup>16</sup>

My argument will make much of the influence of new kinds of experiences, from viewing pictures in public exhibitions to reading the hugely popular epistolary novels about love and marriage. Such experiences helped spread the practices of autonomy and empathy. The political scientist Benedict Anderson has argued that newspapers and novels created the "imagined community" that nationalism requires in order to flourish. What might be termed "imagined empathy" serves as the foundation of human rights rather than of nationalism. It is imagined, not in the sense of made up, but in the sense that empathy requires a leap of faith, of imagining that someone else is like you. Accounts of torture produced this imagined empathy through new views of pain. Novels generated it by inducing new sensations about the inner self. Each in their way reinforced the notion of a community based on autonomous, empathetic individuals who could relate beyond their immediate families, religious affiliations, or even nations to greater universal values.<sup>17</sup>

There is no easy or obvious way to prove or even measure the effect of new cultural experiences on eighteenth-century people, much less on their conceptions of rights. Scientific studies of present-day responses to reading or watching television have proved difficult enough, and they have the advantage of living subjects who can be exposed to ever-changing research strategies. Still, neuroscientists and cognitive psychologists have been making some progress in linking the biology of the brain to psychological and eventually even to social and cultural outcomes. They have shown, for example, that the ability to construct narratives is based in the biology of the brain and is crucial to the development of any notion of self. Certain kinds

of brain lesions affect narrative comprehension, and diseases such as autism show that the capacity for empathy—for the recognition that others have minds like your own—has a biological basis. For the most part, however, these studies only address one side of the equation: the biological. Although most psychiatrists and even some neuroscientists would agree that the brain itself is influenced by social and cultural forces, this interaction has been harder to study. Indeed, the self itself has proved very difficult to examine. We know that we have an experience of having a self, but neuroscientists have not succeeded in pinning down the site of that experience, much less explaining how it works.<sup>18</sup>

If neuroscience, psychiatry, and psychology are still uncertain about the nature of the self, then it is perhaps not surprising that historians have stayed away from the subject altogether. Most historians probably believe that the self is to some extent shaped by social and cultural factors, that is, that selfhood meant something different in the tenth century from what it means to us today. Yet little is known about the history of personhood as a set of experiences. Scholars have written at great length about the emergence of individualism and autonomy as doctrines, but much less about how the self itself might change over time. I agree with other historians that the meaning of the self changes over time, and I believe that the experience—not just the idea—of it changes for some people in decisive ways in the eighteenth century.

My argument depends on the notion that reading accounts of torture or epistolary novels had physical effects that translated into brain changes and came back out as new concepts about the organization of social and political life. New kinds of reading (and viewing and listening) created new individual expe-

- reviews of books, pamphlets, plays, musical performances, art exhibitions, and sensational court cases—See Jeremy D. Popkin and Bernadette Fort, *The Mémoires secrets and the Culture of Publicity in Eighteenth-Century France* (Oxford: Voltaire Foundation, 1998), and Louis A. Olivier, "Bachaumont the Chronicler: A Questionable Renown," in *Studies on Voltaire and the Eighteenth Century*, vol. 143 (Voltaire Foundation: Banbury, Oxford, 1975), pp. 161–79. Since the volumes were published after the dates they purported to cover, we cannot be entirely certain that usage of "rights of man" was as common as the writer infers by 1763. In Act One, Scene II, Manco recites: "Born, like them, in the forest, but quick to know ourselves/ Demanding both the title and the rights of our being/ We have recalled to their surprised hearts/ Both this title and these rights too long profaned"—Antoine Le Blanc de Guillet, *Manco-Capac, Premier Ynca du Pérou, Tragédie, Représentée pour la première fois par les Comédiens François ordinaires du Roi, le 12 Juin 1763* (Paris: Belin, 1782), p. 4.
9. "Rights of man" appears once in William Blackstone, *Commentaries on the Laws of England*, 4 vols. (Oxford, 1765–69), vol. 1 (1765), p. 121. The first use I have found in English is in John Perceval, Earl of Egmont, *A Full and Fair Discussion of the Pretensions of the Dissenters, to the Repeal of the Sacramental Test* (London, 1733), p. 14. It also appears in the 1773 "poetical epistle" *The Dying Negro*, and in an early tract by the abolitionist leader Granville Sharp, *A Declaration of the People's Natural Right to a Share in the Legislature . . .* (London, 1774), p. xxv. I found these using the online service of Thomson Gale, Eighteenth-Century Collections Online, and am grateful to Jenna Gibbs-Boyer for help with this research. Quote from Condorcet in *Oeuvres complètes de Condorcet*, ed. by Maire Louise Sophie de Grouchy, marquise de Condorcet, 21 vols. (Brunswick: Vieweg; Paris: Henrichs, 1804), vol. XI, pp. 240–42, 251, 249. Sieyès used the term *droits de l'homme* only once: "Il ne faut point juger de ses [Third Estate's] demandes par les observations isolées de quelques auteurs plus ou moins instruits des droits de l'homme"—Emmanuel Sieyès, *Le Tiers-Etat* (1789; Paris: E. Champion, 1888), p. 36. In his letter to James Madison from Paris dated January 12, 1789, Thomas Jefferson sent Madison Lafayette's draft declaration. Its second paragraph began, "Les droits de l'homme assurent sa propriété, sa liberté, son honneur, sa vie"—*Jefferson Papers*, vol. 14, p. 438. Condorcet's draft is dated to some time prior to the opening of the Estates-General on May 5, 1789, in Iain McLean and Fiona Hewitt, *Condorcet: Foundations of Social Choice and Political Theory* (Aldershot, Hants: Edward Elgar, 1994), p. 57, and see pp. 255–70 for the draft declaration "of rights," which uses the expression "rights of man" but not in its title. See the texts of the various projects for a declaration in Antoine de Baecque, ed., *L'An I des droits de l'homme* (Paris: Presses du CNRS, 1988).
  10. Blackstone, *Commentaries on the Laws of England*, vol. 1, p. 121. P. H. d'Holbach, *Système de la Nature* (1770; London, 1771), p. 336. H. Comte de Mirabeau, *Lettres écrites du donjon* (1780; Paris, 1792), p. 41.
  11. Quoted in Lynn Hunt, ed., *The French Revolution and Human Rights: A Brief Documentary History* (Boston: Bedford Books/St. Martin's Press, 1996), p. 46.
  12. Denis Diderot and Jean Le Rond d'Alembert, eds., *Encyclopédie ou Dictionnaire raisonné des sciences, arts, et des métiers*, 17 vols. (Paris, 1751–80), vol. 5 (1755), pp. 115–16. This volume includes two different articles on "Droit Naturel." The first is titled "Droit Naturel (Morale)," pp. 115–16, and begins with Diderot's characteristic editorial asterisk (signaling his authorship); the second is titled "Droit de la nature, ou Droit naturel," pp. 131–34, and is signed "A" (Antoine-Gaspard Boucher d'Argis). Information on authorship comes from John Lough, "The Contributors to the *Encyclopédie*," in Richard N. Schwab and Walter E. Rex, *Inventory of Diderot's Encyclopédie*, vol. 7: *Inventory of the Plates, with a Study of the Contributors to the Encyclopédie by John Lough* (Oxford: Voltaire Foundation, 1984), pp. 483–564. The second article by Boucher d'Argis consists of a history of the concept and is largely based on Burlamaqui's 1747 treatise, *Principes du droit naturel*.
  13. Burlamaqui, *Principes du droit naturel*, p. 29 [his emphasis].
  14. J. B. Schneewind, *The Invention of Autonomy: A History of Modern Moral Philosophy* (Cambridge: Cambridge University Press, 1998), p. 4. Autonomy seems to be the crucial element lacking in natural law theories up to the middle of the eighteenth century. As Haakonssen argues, "According to most natural lawyers in the seventeenth and eighteenth centuries, moral agency consisted in being subject to natural law and carrying out the duties imposed by such law, whereas rights were derivative, being mere means to the fulfilment of duties"—Knud Haakonssen, *Natural Law and Moral Philosophy: From Grotius to the Scottish Enlightenment* (Cambridge: Cambridge University Press, 1996), p. 6. In this regard, Burlamaqui, such a great influence on the Americans in the 1760s and 1770s, may well mark an important transition. Burlamaqui insists that men are subject to a superior power, but that that power must accord with man's inner nature: "In order for a law to regulate human actions, it must absolutely accord with the nature and the constitution of man and it must relate in the end to his happiness, which is what reason necessarily makes him seek out"—Burlamaqui, *Principes*, p. 89. On the general importance of autonomy to human rights, see Charles Taylor, *Sources of the Self: The Making of Modern Identity* (Cambridge, MA: Harvard University Press, 1989), esp. p. 12.