

Inventing Human Rights by Professor Lynn Hunt¹ WW Norton and Company,² 2007

By Stephen Keim SC

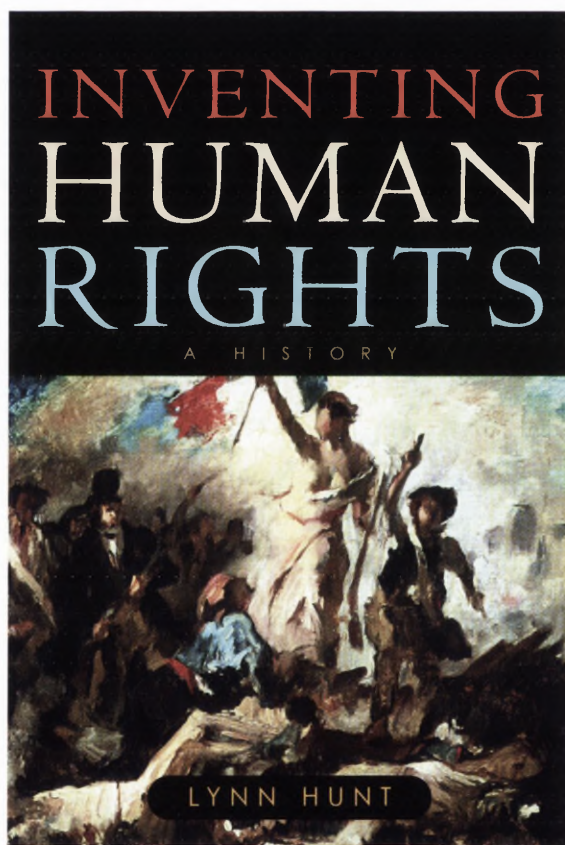
The factors that characterise the human animal include our ability to empathise with the suffering of those we have never met; our ability to get on with our lives despite that suffering and our empathy with it; and our capacity, in particular circumstances, to kill or torture people we have grown up with who have done us no harm.

Lynn Hunt's book addresses the way in which our ability to empathise with others led in the 18th century to human rights becoming a focus of international political debate and action. Previously, discussions of rights had been more narrowly focused on the rights of a particular class or group, such as the *Petition of Right* addressed to King Charles I of England in 1628, and the *Bill of Rights* presented to and accepted by William of Orange and Mary, before they were confirmed as the monarchs of England in 1689.

Those earlier documents spoke about rights under the law and rights as subjects of the monarch of England. The new language of human rights, however, embodied in the *American Declaration of Independence* of 1776, spoke of universal rights applying to all men and existing prior to and outside the law:

'We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are Life, Liberty and the pursuit of happiness...'

In 1789, the newly evolved National Assembly of France took the language of universal rights further when it adopted the *Declaration of the Rights of Man and Citizen*.³ It begins:



'The representatives of the French people, constituted as a National Assembly, and considering that ignorance, neglect or contempt of the rights of man are the sole causes of public misfortunes and governmental corruption, have resolved to set forth in a solemn declaration the natural inalienable and sacred rights of man ...'

Professor Hunt's history of thinking on human rights includes some surprising elements. Her emphasis on the importance of empathy leads her to examine the early history of the novel. Novels such as *Julie or the New Heloise* (1761) by Jean Jacques Rousseau, and *Pamela* (1740) and *Clarissa* (1747-8) by Samuel Richardson, created a sensation in both England and France. In each case, the heroine was not a person of royal blood or from the upper classes, but an ordinary young woman without riches or power. The

novels were written in epistolary form consisting of letters from the heroine and another important person in her life. Thus, the reader came to experience the joys and sorrows of the heroine through her eyes and to empathise with her. Professor Hunt argues that these novels played an important educative role, so that the ability to empathise with others – including people beyond one's immediate family or social circle – became part of the public psyche. This paved the way for human rights theory to develop in the second half of the 18th century.

Professor Hunt links these changes in public attitudes and consciousness to the growth of opposition to judicially ordered torture. The case that provided the focus for a campaign against judicial torture was that of Jean Calas, >>

who was ordered to be 'broken on the wheel' after being convicted of the murder of his son. The young Calas had probably committed suicide. But his family, upon finding his body and, in order to allow him to be buried 'in hallowed ground', had suppressed the fact of his suicide, claiming that he had been murdered. As the family's story fell apart, suspicion of murder fell upon them, the official theory being that the son had been murdered because of his refusal to follow the family's choice of religion. An appeal court confirmed the conviction of Calas senior, but not those of other members of the family, hoping that the names of accomplices would be provided under the agony of his slow and horrible execution. But Jean Calas went to his death protesting his innocence with his dying words.

Voltaire took up the case by providing support to the Calas family and by writing publicly on the case. Professor Hunt notes that the original essay by Voltaire, in 1762, was directed against the evils of religious intolerance, and that it was not until four years later that Voltaire's focus turned to the cruelty of the criminal law system, including its use of torture both in questioning suspects and in executions. The campaign captured the public imagination and, over the next few decades, torture was abolished in most European countries and American states, with its full abolition in France occurring in 1789, the year of the *Declaration*.⁴

Professor Hunt makes another unexpected connection when discussing the change in public attitudes that led to judicial torture becoming unacceptable. She suggests that, for torture to become unacceptable in the public mind, attitudes to the human body required change. Thus, developments as diverse as restricting human excretion to non-public places; using a handkerchief rather than one's hand to blow one's nose; the enjoyment of music in private; a change of architecture in theatres so as to maintain quiet and attentiveness among audiences; the developing popularity of portraiture painting; and the popularity of the novel all contributed to a new sense of the separateness and dignity of one's own body and an appreciation of the same qualities in others. This new appreciation of the individual, combined with the arguments of Voltaire and the young Italian writer, Cesare Beccaria, and others produced dramatic changes to the law within a very short period of time.

Professor Hunt also describes the way in which the French *Declaration*, despite its level of abstraction, led the National Assembly to enact concrete reforms – first, easing the way for Protestants to gain full rights of citizenship, then adherents of the Jewish faith, followed by free persons of African origin, followed by the abolition of the slave trade and slavery itself, with the freed slaves attaining full rights. (Women, however, were not recognised as possessing any of 'the natural inalienable and sacred rights of man', despite increased rights to inherit property and to obtain divorce.)

Professor Hunt traces the development of more recent international documents (such as the adoption of the *Universal Declaration of Human Rights* by the UN in 1948, and subsequent international human rights instruments). She also acknowledges the great failures of empathy in Rwanda and Srebrenitza and the many lesser failures that continue

to occur. Even great powers, despite the prohibition on judicially ordained torture, are still tempted to resort to it in unregulated backrooms and through convenient proxy countries.

Professor Hunt's response to these failures is neither despair nor abandonment of the idea of universal human rights. The way ahead is greater dedication to the concept and the structures through which they may be enforced. She says:

'Human rights are our only bulwark against those evils [of violence, pain and domination]. We must still continually improve on the eighteenth century version of human rights, ensuring that the 'human' in the *Universal Declaration of Human Rights* leaves none of the ambiguities of 'man' in the 'rights of man'. ... The human rights framework, with its international bodies, international courts, and international conventions, might be exasperating in its slowness to respond or its repeated inability to achieve its ultimate goals, but there is no better structure available for confronting these issues. ... The history of human rights shows that rights are best defended in the end by the feelings, convictions, and actions of multitudes of individuals, who demand responses that accord with their inner sense of outrage.'

Inventing Human Rights is a very original contribution to the history of human rights. It leads the reader to a new way of thinking about the way in which ideas have developed. Its discussion of the history of human rights thinking leads to a better understanding of the importance of such thinking in our time.

The book is not only fascinating to read but provides the reader with important insights unlikely to be found elsewhere. I highly recommend it. ■

Notes: 1 Lynn Hunt is the Eugen Weber Professor of Modern European History at University Of California, Los Angeles, and former president of the American Historical Association. Professor Hunt is a specialist on the French Revolution. For a video version of a recent lecture by Professor Hunt, go to <http://www.uctv.tv/search-details.asp?showID=14182>. 2 Norton will be known to many readers through its publication of the *Norton Anthologies*, many of which still grace our home libraries, being left over from High School or first year university English studies. The company, established in 1923, is the oldest and largest publishing house owned wholly by its employees. It publishes Stephen Jay Gould, palaeontologist and evolutionary theorist; Richard Feynman, physicist; and Jared Diamond's *Guns, Germs and Steel*. See <http://www.wwnorton.com/>. 3 It is remarkable how diligently the National Assembly worked for several years debating and legislating for a new legal system before the period remembered as 'the Terror'. The earlier period is, unfortunately, not nearly so well-remembered. 4 For other recent discussions of both the history of and the inappropriateness of legalised torture, see Sarah Joseph, *Torture: the Fallacy of the Ticking Bomb*, and Neil James (executive director of the Australia Defence Association and original author of the Australian Defence Force's interrogation manual), *Torture: What Is It, Will It Work, Can It Be Justified?* in Andrew Lynch, Edwina MacDonald and George Williams (eds): *Law and Liberty in the War on Terror*, Federation Press, 2007.

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