

CORSICA, NEW ZEALAND AND HUMAN RIGHTS

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The American and French revolutionaries of 1776 and 1789–1793 invoked the sovereignty of the people to dethrone their kings and make declarations of human rights. In 1755 and 1794, the people of Corsica invoked the same principle to declare their independence first from Genoa and then from France. By agreement with Britain, in 1794 they adopted a constitution guaranteeing human rights, and elected George III to be their king. In the 1830s, under threat from foreign forces, representatives of the people of New Zealand invoked the same principle. They declared their independence and by agreement with Britain they enthroned Queen Victoria on condition of obtaining guarantees of all the rights and privileges of British subjects. By these agreements that are less well known than the revolutions of 1776 and 1789 Britain accepted the sovereignty of both British and foreign peoples as exercised through their representatives, of an elected monarchy and of the duty of governments to guarantee human rights in England and in the Empire.

This article looks at early examples of the protection of human rights through constitutional texts adopted by the United Kingdom. It is an area in which Tony Smith, my good friend and former colleague in chambers, has, in his own words, "had a longstanding interest", specifically in relation to both the United Kingdom and New Zealand.¹ His contribution to this area of the law is original and highly influential, in particular his publications on the law of protest.² The constitution of the Anglo-Corsican Kingdom of 1794 provides an early but short-lived model. The Treaty of Waitangi 1840 provides a simpler model which has been successful to a degree of which the signatories may be proud.

On 14 June 1794, the elected representatives of the people of Corsica met to make a new constitution. Unanimously, they declared the separation of Corsica from France and voted the union

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1 ATH Smith "Inching towards an Australian Bill of Rights: Cousinly Comments on the Australian National Human Rights Consultation Report" (2010) 33 UNSWLJ 171 at 171.

2 See for example ATH Smith *The Offences Against Public Order* (Sweet & Maxwell, London, 1987).

of Corsica to the Crown of what was then the United Kingdom of Great Britain. They elected as their king George III and his successors according to the laws of Great Britain. On 19 June, all the members of the Corsican Assembly signed the new constitution. The same day, Sir Gilbert Elliot formally accepted, in the name of the King, the Crown and sovereignty of Corsica, according to that constitution. The Corsican language of the new constitution can easily be read by a person who understands French or Italian. The English language version of the constitution and related documents were published by Edmund Burke (1728–1797) in *The Annual Register* for 1794.³

For much of the period since 1284, Corsica had been controlled by Genoa. After Genoa became unable to govern the island, by the Treaty of Versailles of 15 May 1768 it ceded control, but not sovereignty, of the island to France. Corsica was formally incorporated into France by a decree made by the revolutionary National Convention on 30 November 1789. The Anglo-Corsican Kingdom lasted only from 1794 to 1796, when the French again took control.⁴

George III reigned in Britain from 1760 to 1820. His election as king of Corsica occurred no more than 18 years after 13 of the British American colonies had declared, on 4 July 1776, that George III was such a tyrant that it had become necessary for them to dissolve their union with Great Britain and "to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them".⁵ In electing George III as king, the people of Corsica were invoking the very same natural or human rights as the peoples of the 13 American colonies had invoked to declare themselves independent republics, namely the sovereignty of the people and the right to resist oppression. These principles were also invoked in France both in September 1791, when France became a constitutional monarchy, and on 24 June 1793, when France adopted its first republican constitution.

The Corsicans chose the monarchical constitution of 1794 to free themselves from the increasing anarchy, violence and anti-clericalism of the French First Republic, known as the Reign of Terror. But the Corsican constitution was a form of republicanism as radical as that adopted in Paris in 1793. In Paris, on 21 January 1793, the end of the monarchy was marked by the execution of the living King, who was alleged to be a tyrant. In Corsica the monarchy was transformed into a new institution for the cooperation between peoples. Of the 54 members of the British Commonwealth, 14 have the heirs of George III as their head of state. There is little difference between those countries which are constitutional monarchies and those which are republics. Montesquieu (1753–1794) in his *Spirit of*

3 Edmund Burke *The Annual Register, or a View of the History, Politics, and Literature for the Year 1794* (2nd ed, Dodsley, London, 1806) vol 36 "Chronicle" at 95–111. The constitution is at 103–109.

4 Histories of Corsica include: Desmond Gregory *The Ungovernable Rock: A History of the Anglo-Corsican Kingdom and Its Role in Britain's Mediterranean Strategy during the Revolutionary War, 1793–1797* (Associated University Presses, Cranbury (New Jersey), 1985); and Michel Vergé-Franceschi *Histoire de Corse: le pays de la grandeur* (Éditions du Félin, Paris, 1996).

5 United States Declaration of Independence (adopted 4 July 1776).

Laws of 1749 and Voltaire (1694–1778) in his *Dictionnaire Philosophique* of 1752 had each described England as a republic in disguise or a republic under a king.⁶ In England King Charles I had been executed in 1649, and James II had fled into exile in 1688. After the revolution of 1688 and the Act of Settlement 1701,⁷ there was no need to kill a king. By 1794 the institution of monarchy had been transformed into the constitutional form we know today.

The 1794 constitution of Corsica was based in part on the constitution under which the island had been governed by General Pasquale Paoli (1725–1807) from 1755, when it obtained independence from Genoa, until 1769, when the French took control. For the 21 years following 1769, Paoli lived in exile in London. Thus the 1794 constitution came to be modelled in part upon the constitutions of Britain and of Ireland. Paoli was impressed by the reforms of 1782 by which the Parliament of Ireland had been freed of much of the control from Westminster. As is well known, the constitution of the United Kingdom has never been in the form of a single written text. But if the contemporary constitution of Britain had been reduced to a single text at that time, it would have had much in common with the 1794 constitution of Corsica, save for the franchise. In the 18th and early 19th centuries, the franchise in Britain was limited to the small proportion of men who owned land, and there remained laws discriminating against anyone who was not a Protestant. By contrast, all Corsican citizens who were also owners of land were entitled to elect representatives to be members of the legislature and most Corsicans owned some land. If there had been a written British constitution in 1794, it would have recognised the rule of law and most of the individual rights which were guaranteed by the Corsican constitution. These included the rights not to be subject to taxation without the consent of the Parliament of Corsica, freedom of speech in the legislature, liberty of the press, right of petition, rights of personal liberty and property, access to justice before an impartial judiciary and jury, and freedom of religion. All of these rights, save for freedom of religion, were in the tradition represented by Magna Carta 1215–1297, the Statute of Liberties 1354, the Petition of Right 1628, the Massachusetts Body of Liberties 1641, the Agreement of the People 1649, the Bill of Rights and the Claim of Right 1689, and the Declarations of Rights made in 1776 in Virginia and other former colonies in America.⁸

6 Charles Louis de Secondat, Baron de Montesquieu *Complete Works: Vol 1 The Spirit of Laws* (T Evans & W Davis, London, 1777) at Book V, ch 19; and Voltaire *Dictionnaire Philosophique* (René Pomeau (ed), Flammarion, Paris, 1964) at 307.

7 Act of Settlement 1701 (Eng) 12 & 13 Will III c 2.

8 Statute of Liberties 1354 (Eng) 28 Edw III c 3; Petition of Right 1628 (Eng) 3 Cha I c 1; Bill of Rights 1689 (Eng) 1 Will & Mar sess 2 c 2; and Claim of Right 1689 (Scot) c 28.

The sovereignty of the people was proclaimed in the opening words of the 1755 constitution of Corsica. It reads:⁹

The General Diet of the People of Corsica, legitimately Master of itself, convoked according to the form [established by] the General [Paoli] in the city of Corte, the 16, 17, 18 November 1755, having reconquered its Liberty, wishing to give durable and constant form to its government, reducing it to a constitution from which the Felicity of the Nation will derive ...

The circumstances which led Corsica to adopt first the constitution of 1755 and later that of 1794 were recounted in 1768 by James Boswell (1740–1795) following his then recent visit to Corsica.¹⁰ Boswell was at that time a 28-year-old Scottish lawyer, but he was already acquainted with Jean-Jacques Rousseau (1712–1778), Voltaire (1694–1778) and Dr Johnson (1709–1784), who later became the subject of the biography which was to make Boswell's reputation as a writer. His account has been described as "a much-translated best seller".¹¹

The resistance by the Corsicans to the Genoese who ruled their island was already the subject of widespread interest in Europe. According to Boswell, General Paoli had encouraged him to write his account, which he described as "my little monument to liberty".¹² The first sentence of Boswell's account foreshadows the American Declaration of Independence made eight years later. Boswell's words are: "Liberty is so natural, and so dear to mankind, whether as individuals, or as members of society, that it is indispensably necessary to our happiness".¹³ Jefferson's famous words include: "all men are ... endowed by their Creator with certain unalienable Rights, ... among these are Life, Liberty and the pursuit of Happiness." Boswell's account also refers to people "entering into society",¹⁴ and to the rights which were to be proclaimed in Virginia in 1776 ("all men ... have certain inherent rights, of which, when they enter into a state of society, they cannot ... deprive ... their posterity")¹⁵ and

9 Dorothy Carrington "The Corsican Constitution of Pasquale Paoli (1755–1769)" (1973) 88 *The English Historical Review* 481. The original text reads (at 482, n 1):

La Dieta Generale del Popolo di Corsica, Lecitivamente Patrone di se medesimo ... Volendo, riauquistata la sua Libertà, dar forma durevole, e costante al suo governo riducendoli a costituzione tale, che da essa ne derivi la felicità della Nazione ...

10 James Boswell *An Account of Corsica, the Journal of a Tour to that Island; and Memoirs of Pascal Paoli* (2nd ed, Edward & Charles Dilly, London, 1768).

11 Linda Colley *The Gun, the Ship and the Pen* (Profile Books, London, 2021) at 17.

12 Boswell, above n 10, at xv.

13 At 1.

14 At 3.

15 Virginia Declaration of Rights (adopted 12 June 1776), art 1.

proclaimed again in France in 1789.¹⁶ These ideas were not, of course, original to Boswell. Such language can be traced to Magna Carta, the other laws cited above and to such well-known writers as Sir John Fortescue (1394–1479) and John Locke (1602–1704).¹⁷ Such language had recently been used in England by Lord Camden, the Chief Justice ("The great end, for which men entered into society, was to secure their property").¹⁸

The idea of liberty for the revolutionaries in America in 1776 and France in 1789–1793 was resistance to a tyrannical king who was one of their own people. Boswell's and the Corsicans' idea of liberty was resistance to, and independence from, foreign rulers. It is this idea of liberty that became most prominent in the 20th century with the independence of Ireland, India and other former colonies in Africa, Asia and elsewhere. Boswell wrote that models of liberty could be found in the histories of the Swiss and the Dutch. The Swiss had rebelled against the Austrian Habsburgs. The Dutch had won their independence from Habsburg Spain in 1581 with the support of both France and England. Corsica, he said, was another example:¹⁹

There, a brave and resolute nation, has now for upwards of six and thirty years, maintained a constant struggle against the oppression of the republic of Genoa. ... Europe now turns her eyes upon them, and with astonishment sees them on the eve of emancipating themselves for ever from a foreign yoke, and becoming a free and independent people.

He asserted:²⁰

... the plain and fundamental principle, that the Corsicans are men, and have a right to liberty; which, if usurped by any power whatever, they have at all time a just title to vindicate. ... For however a people may ... submit for a season to a certain degree of tyranny; if it is long continued, and pushed to an exorbitant length, nature will revolt, and the original rights of men will call for redress.

16 Déclaration des Droits de l'Homme et du Citoyen (26 August 1789) (Translation: Declaration of Human and Civic Rights), arts 1 and 2. The full text of this and the Virginia Declaration can be found in Michael Tugendhat *Liberty Intact: Human Rights in English Law* (Oxford University Press, Oxford, 2016) at 219 and 221. See also Boswell, above n 10, at 125–163.

17 Tugendhat, above n 16, at 33 and 211–214; Michael Tugendhat and Elizabeth de Montlaur Martin *Les droits du genre humain: la liberté en France et en Angleterre (1159–1793)* (Société de Législation Comparée, Paris, 2021) (Translation: *The rights of humanity: liberty in France and England (1159–1793)*) at 138–140 and 280–282; John Fortescue *On the Laws and Governance of England* (Shelley Lockwood (ed), Cambridge University Press, Cambridge, 1997); and John Locke *Two Treatises of Government* (Peter Laslett (ed), Cambridge University Press, Cambridge, 1988) at 355.

18 *Entick v Carrington* (1765) 19 St Tr 1029, 95 ER 807 (Comm Pleas).

19 Boswell, above n 10, at 7. According to Boswell, the Corsican war of independence from Genoa commenced in 1729: at 90.

20 At 70–72.

Boswell was not the first to be interested in Corsica's struggle against Genoa. Nineteen years earlier, in 1749, Montesquieu had referred sympathetically to the Corsicans, saying (in the form quoted by Boswell) that "[a] republic in Italy held a nation of islanders under her obedience. But her political, and civil constitution among them, was bad."²¹

Boswell gave a lengthy description of the 1755 Corsican constitution and how it worked in practice. He concluded that it was based on the soundest principles of democratic rule. There was a wide franchise, public positions were filled by election and elected officials were accountable for their actions before both the assembly of the people's representatives and the courts. Paoli "was entirely dependent upon the people, elected by them, and answerable to them for his conduct".²² When, in 1761, Genoa issued a manifesto to try to persuade the Corsicans to submit peacefully, the Corsicans issued their own memorial to the sovereigns of Europe calling on them to intervene *dritto d'umanità* to give peace to a nation that had done so much for freedom.²³ According to Boswell's translation of this phrase, the Corsicans invoked "the rights of humanity".²⁴ Whether or not the translation is correct, Boswell was, so far as known to the author, the first to use that English phrase to refer to the human right to liberty. In 1764, French troops arrived in Corsica, prompting the Corsicans to send a remonstrance in the name of the nation to the French King "to preserve to the nation its rights, prerogatives, liberty and independency".²⁵ Boswell quoted Hobbes in support of the Corsican resistance:²⁶

By reason of the wicked oppression of the bad, even a good people, must in self-defence, have recourse to the qualities of war, force and fraud, nay to savage rapacity.

And he reminded his readers of the publicity and support that Rousseau had given to their cause in 1762. In his immensely influential *Of the Social Contract*, Rousseau wrote of "[t]he valour and the constancy with which that brave people hath recovered and defended its liberty".²⁷ He added: "I have

21 Montesquieu, above n 6, at Book X, ch 8 as cited in Boswell, above n 10, at 82–83. Boswell cites the edition published in Edinburgh.

22 Boswell, above n 10, at 134. See also at 128–134, 144–153 and 161; and Colley, above n 11, at 18–25.

23 Boswell, above n 10, at 253.

24 At 137.

25 At 141.

26 Thomas Hobbes *Elementa Philosophica de Cive* (Apud Ludovicum & Danielem Elzevirios, Amsterdam, 1657) at "Epistola Dedicatoria" as cited in Boswell, above n 10, at 205. The original text reads: "Hic propter malorum pravitatem, recurrendum etiam bonis est, si se tueri volunt, ad virtutes Bellicas vim & dolum, id est, ad serinam rapacitatem."

27 Jean-Jacques Rousseau *Of the Social Contract* (1762) at Book II, ch 10 as cited in Boswell, above n 10, at 363–364.

some presentiment that one day that little island will astonish Europe."²⁸ Rousseau had also embarked upon drafting a constitution for Corsica, but, according to Boswell, Paoli's aim was not to adopt that constitution, but to employ Rousseau to give publicity to the heroic resistance of the Corsicans.²⁹

In Protestant England there was a strongly held view that Catholics were associated with arbitrary and authoritarian rule and divided loyalties. It was perhaps with this in mind that Boswell noted that the Corsicans were zealous Catholics, who at the same time were opposed to the temporal power of the church. They had exiled their bishops, who had supported the Genoese cause. In response to this, the Pope had sent to the island a substitute bishop, an act which led the Genoese to consider that the Pope was supporting the Corsicans against them.

The admiration of Montesquieu, Rousseau and Boswell, amongst others, for the Corsicans' courageous resistance to oppression by foreigners was not the only reason their struggle for independence was of interest to other Europeans. Another reason for the interest that Corsica aroused was its potential usefulness as a naval base. A fleet stationed there might command the seas along the coasts of Southern France, the Italian peninsula and further into the Mediterranean. Boswell noted that France had concerns as to the possible consequences of Corsican success against Genoa. France always had an eye to this island and began to be apprehensive that the Corsicans might entirely throw off the yoke of Genoa. If that happened, Corsica would either become a free state, which the powers of Europe would protect, or, perhaps, the Corsicans would put themselves under the sovereignty of some great nation. The French concern was prompted by the fact that, in 1745, Britain had sent some ships to assist the Corsicans against Genoa. According to Boswell, Britain had done this on the basis

28 Rousseau, above n 27, at Book II, ch 10 as cited in Boswell, above n 10, at 364. See Jean-Jacques Rousseau *Of The Social Contract and Other Political Writings* (Quintin Hoare (translator), Penguin Books, London, 2012) at 52 and 187.

29 Boswell, above n 10, at 363 and 367. At about the same time, Rousseau embarked upon his unfinished proposal for a constitution for Corsica: Jean-Jacques Rousseau *Projet de constitution pour la Corse* (Pierre Hidalgo (ed), La Gaya Scienza, 2012) (Translation: *Proposal for a constitution for Corsica*). Rousseau's draft is not in the form of a short document with a preamble and a list of rights, such as the 1775 and 1794 constitutions of Corsica and the American and French constitutions of 1789 and 1791. His draft is a lengthy discourse on politics and economics, with much in common, both in style and content, with Book II of Thomas More's *Utopia* (1516). Rousseau wrote that the fundamental law of Corsica should be equality (at 17 and 67). While he thought that it was impossible to destroy the right to property, Corsica should set the narrowest limits to that right, making it always subject to the common good. The state should own as much property as possible and the citizens as little (at 47–48). To encourage people to have children, any Corsican citizen who had reached the age of 40 and was not married should be deprived of his rights as a citizen for life. A father of more than five children should be awarded property by the state, but children absent from Corsica for more than a year were not to be counted (at 62 and 65). Rousseau acknowledged that Corsicans held views which were quite contrary to his own and he said that he did not intend to persuade them to adopt his view. He discussed political rights but omitted to mention the civil rights (other than property) which are characteristic of the American and French declarations of rights made in the period 1776–1789 and of the Corsican constitution of 1794.

that they were responding to the request of an ally, the King of Sardinia, who had taken the cause of the Corsicans to heart. So, France at first forced the Corsicans back under the dominion of Genoa.³⁰

Others who were impressed by the Corsicans' struggle were the discontented settlers in America, including the American "Sons of Liberty", the groups formed in 1765 to resist British colonial rule. In 1769 an inn was named Paoli and soon gave its name to the town 20 miles from Philadelphia.

The British government also learnt much from the independence movements in Corsica and America. In the opening words of the 1794 constitution, the Corsicans again asserted the principle of the sovereignty of the people and the British government accepted it in the name of George III. These words read:³¹

We, the representatives of the Corsican nation, free and independent, lawfully assembled in a general meeting, possessed of a special authority to form the present constitutional act, have unanimously decreed, under the auspices of the Supreme Being, the following articles ...

What made it possible for Corsica to choose in 1794 to join the British Empire was the distinctive nature of the British concept of monarchy. Unlike, for example, in France, the British monarchs were not required to reside in, or even to visit, all their kingdoms. No king of Ireland had visited Ireland since Richard II in 1399. No king of Scotland had visited that country after 1603, when James VI left to become James I of England. George I and II had demonstrated, by their visits to Hanover, that the King was permitted to be absent even from England for long periods.

The Corsican election of George III also revealed the extent to which the British concept of constitutional monarchy had departed from the concept of hereditary sovereignty which had been claimed by the Stuarts and which was still claimed by Louis XVI. The title of the Hanoverian monarchs to the British throne was based on the Bill of Rights and the Claim of Right 1689 and the Act of Settlement 1701. There were multiple other members of the Stuart family whose hereditary claims to the throne were overreached by those statutes because they were Catholics, the first of whom was James Francis Stuart (1688–1766). Thus, the settlements of the thrones of England, Wales and Scotland on the Protestants William of Orange in 1689 and the Elector George of Hanover in 1701

30 Boswell, above n 10, at 21 and 110.

31 Alberto Aquarone, Mario D'Addio and Guglielmo Negri *Le costituzioni italiane* (Edizioni di Comunità, Milan, 1958); and Michael Tugendhat "La Corse et la dématérialisation de la monarchie" (2019) 2 *Tribonien* 38 (Translation: Corsica and the dematerialisation of monarchy) at 45. The original text reads: "I Rappresentanti del Popolo Corso, Libero, ed indipendente, legalmente radunati in Assemblea generale, e specialmente autorizzati a formare il presente Atto Costituzionale, lo hanno unanimemente decretato sotto gli auspici dell'Ente Supremo, e nella maniera che segue".

were tantamount to elections by the Parliaments of England and Scotland. As Burke remarked in 1790:³²

The nation was ... free [in 1688] to take whatever course it pleased for filling the throne ... on the same grounds on which they might have wholly abolished their monarchy, and every other part of the constitution.

William Blackstone (1723–1780) had said the same in 1765.³³ Charles I (1600–1649) had been executed in 1649, and James II (1633–1701) fled into exile in 1688. The former had attempted to raise taxes without the consent of Parliament and the latter to frustrate the will of Parliament by suspending the enforcement of the laws enacting religious discrimination. After these events, it was unlikely that any future monarch would risk dethronement by seeking to challenge the will of Parliament.

The powers conferred upon the King by the Corsican constitution were to be exercised by the Viceroy. This office was held by Sir Gilbert Elliot (1751–1814), a Scottish diplomat and politician who, at the same time, was a member of the House of Commons in Westminster. According to the constitution, he was not removeable by the legislature in Corsica, but could be removed by the King in London, which in practice meant by the government in London. In Corsica, consent to legislation was to be given by the Viceroy. It may have been intended that the Viceroy should be able to withhold consent to legislation. But, in practice, he could govern only by consent of the people of Corsica. As events were to prove, there was much resistance to the Viceroy's rule, for example on matters of taxation. So, the 1794 constitution might not have lasted, even without the opposition of France. In October 1795, the original trust between Paoli and Elliot had become outright hostility. The Viceroy secured Paoli's return to Britain on the orders of the British government. Paoli never returned to Corsica. But his removal from Corsica hardly made Elliot's task of governing the island any easier.

The main advantage which the people of Corsica sought to gain from the union with Britain was "the liberty of this island", which was to be defended by the Royal Navy from what was described as "the tyrannical anarchy of the present republic of France",³⁴ and government under a liberal constitution in terms drafted or agreed by Paoli. The main advantage which the British sought was that which had been discussed by Boswell and others. It would provide a port from which the Royal Navy could control access by the French to the Mediterranean from their ports of Toulon and Marseille. This enabled Britain to provide support to Austria and other allies who were attempting to defeat the then General Napoleon Bonaparte (1769–1821) in the War of the First Coalition in Italy.

32 Edmund Burke *Reflections on the Revolution in France* (Conor Cruise O'Brien (ed), Penguin Books, London, 1986) at 104.

33 William Blackstone *Commentaries on the Laws of England* (David Lemmings (ed), Oxford University Press, Oxford, 2016) vol 1 at 138–139.

34 Burke, above n 3, at 101.

Britain's involvement with Corsica ended in October 1796 when, following Napoleon's victories and Spain's entry into the French Revolutionary wars on the side of France, the Royal Navy temporarily withdrew from the Mediterranean. The French reoccupied the island. No one sought the consent of the people of Corsica for this transfer to France of power over Corsica, although it was instigated by that most famous Corsican, Napoleon. The end of British monarchy was formally marked in the treaty between Louis XVIII and the allies on 23 April 1814, by which Britain and her allies restored the French monarchy. By then, Britain had no further interest in Corsica. It has remained a reluctant department of France since that time, while still claiming to be a nation.

Over a century later Britain became party to an agreement guaranteeing the fundamental human rights which it had acknowledged in the constitution of the Anglo-Corsican Kingdom. In 1922, the British government agreed with the Irish people a form of constitution for the Irish Free State. The United Kingdom Parliament enacted the Irish Free State Constitution Act 1922,³⁵ by which Parliament recognised, among other rights, the rights which were enshrined in the 1796 Corsican constitution: the sovereignty of the people, equality, liberty of the person enforced by habeas corpus, property, respect for privacy and the home, freedom of conscience and religion, freedom of expression and assembly, the rights to education, to vote for members of the legislature, access to justice before an independent judiciary and trial by jury. In 1950, the United Kingdom ratified the European Convention on Human Rights and from 1959 it incorporated the human rights enumerated in that Convention into the constitutions under which the colonies were to become independent.³⁶ As mentioned above, these rights had previously been recognised under English common law and by statutes including Magna Carta 1297, the Petition of Right 1628, the Habeas Corpus Acts 1640–1862,³⁷ the Bill of Rights and Claim of Right 1689 and the Act of Settlement 1701. One of the most comprehensive early lists of rights was that drawn up for the English settlers in America, the Massachusetts Body of Liberties of 1641. In the 20th century, rights recognised in the 18th century were amongst those that became rules of international law set out in declarations and treaties such as the Universal Declaration of Human Rights and the European Convention on Human Rights.³⁸ By the Human Rights Act 1998 some of these rights were recognised as national rights in the United Kingdom.

35 Irish Free State Constitution Act 1922 (UK) 13 Geo V sess 2 c 1.

36 European Convention on Human Rights 213 UNTS 222 (opened for signature 4 November 1950, entered into force 3 September 1953).

37 Habeas Corpus Act 1640 (Eng) 16 Cha I c 10; Habeas Corpus Act 1679 (Eng) 31 Cha II c 2; Habeas Corpus Act 1803 (UK) 43 Geo III c 140; Habeas Corpus Act 1804 (UK) 44 Geo III c 102; Habeas Corpus Act 1816 (UK) 56 Geo III c 100; and Habeas Corpus Act 1862 (UK) 25 & 26 Vict c 20.

38 Universal Declaration of Human Rights GA Res 217A (1948); and European Convention on Human Rights, above n 36.

Corsica was not the first Catholic people to be incorporated into the British Empire. Quebec and other territories in the New World had been ceded to Britain following their victorious wars with France. Catholics were, as a result, necessarily tolerated in those territories in which they formed all, or almost all, of the population.³⁹ The toleration of Catholics in Quebec created a striking contrast with the continued discrimination against Catholics in Ireland, where they also formed the majority of the population, and in Britain, where they formed a small but significant minority. In Ireland and Britain anyone who was not a Protestant was discriminated against by exclusion from the right to hold land, to vote, to hold public office, to obtain a university education and other disabilities. John Locke (1632–1704), Blackstone and other liberal thinkers recognised that such discrimination required justification. Blackstone advanced as a justification that the tenets of Catholics were "calculated for the introduction of all slavery, both civil and religious".⁴⁰ He added that:⁴¹

... while they acknowledge a foreign power [ie the Pope], superior to the sovereignty of the kingdom, they cannot complain if the laws of that kingdom will not treat them upon the footing of good subjects.

Such discrimination on grounds of religion was reduced by statutes enacted in 1778 and 1791, but remained in the United Kingdom until reduced and then abolished by the Act of 1829.⁴² It seems to have escaped Blackstone and the many British people who shared his views that the Corsicans were Catholics, who fought and died to live under the most liberal constitution of the day, based on male suffrage broader than existed in England and upon religious toleration. Moreover, they were able to do this in a country situated no more than a short sea journey from the Pope in Rome, who had demonstrated support for their struggle for independence from Genoa. The Corsicans cared about freedom of religion. What they called "the destruction of all religion" by the French Revolution was the only example cited by Burke in *The Annual Register* to illustrate what they referred to as the tyranny of the French Republic.⁴³

The Anglo-Corsican Kingdom is rarely mentioned by historians of the British Empire. It deserves to be, not only for its constitution. The Anglo-Corsican Kingdom demonstrates that the question whether colonialism in general, or the British Empire in particular, is to be condemned or defended is not an abstract question. In reality, the question for the inhabitants of a small or relatively weak population and for a strong power such as 18th-century Britain is the question adverted to by Boswell

39 See for example the British North America (Quebec) Act 1774 (GB) 14 Geo III c 83.

40 William Blackstone *Commentaries on the Laws of England* (Ruth Paley (ed), Oxford University Press, Oxford, 2016) vol 4 at 34.

41 At 36.

42 The English legislation included the Papists Act 1778 (GB) 18 Geo III c 60; Roman Catholic Relief Act 1791 (GB) 31 Geo III c 32; and Roman Catholic Relief Act 1829 (UK) 10 Geo IV c 7. There were separate enactments in Ireland.

43 Burke, above n 3, at 98.

in relation to Corsica. Independence may be an ideal, but an impossible one. The only practical alternative to rule by an oppressive foreign power may be voluntary submission to one that is seen as less oppressive. For the Corsicans the practical question was whether becoming British subjects was better or worse than any alternatives which were viable at the time the question fell to be answered, namely rule by Genoa, or by the French revolutionaries led by the Jacobins or Napoleon. In the case of America in 1776, a majority of the people of the 13 colonies decided that independence became a viable alternative to empire when, following her defeat by Britain in the Seven Years' War (1756–1763), France ceased to present a threat to the colonies from Louisiana and Quebec and instead was ready to support the Americans against Britain. In the case of Corsica in 1794, the people unanimously decided that union with Britain was better than being tyrannised by the Jacobin revolutionaries who were then terrorising France. In 1796, the Corsicans were not asked what they wanted.

New Zealand in the 1830s provides another example of a small island population which faced the prospect of having to abandon its independence and to choose between the leading 18th-century powers, but which obtained some guarantee of the rule of law and human rights from the British Crown. The Māori population was, of course, in a very different situation to that of the people of Corsica. They were not of European descent, did not share any European cultural or legal tradition and had only a recent history of contact with Europeans. It might have been expected that they would suffer the mistreatment that Britain had meted out to the indigenous populations of the Caribbean and North America whose lands were colonised by British settlers in the 16th to 18th centuries. In the 1830s, the British and the Māori chiefs were concerned that France or the United States might try to claim New Zealand. Because of this, British people, including an official, assisted in the preparation of the Declaration of Independence of 1835. By this, Māori chiefs declared themselves rulers of New Zealand, and were recognised as such by Britain. The Declaration asked King William IV to be a parent of the infant state, and it included a statement that the huihuinga (congress) would meet each year. It would act as a Parliament and its role would be to frame laws, dispense justice, preserve peace and good order, and regulate trade. In 1840, the Declaration was followed by Te Tiriti o Waitangi, signed between Māori chiefs and the British Crown. New Zealand became a colony under the British Crown, in which Māori retained rangatiratanga over their resources and taonga and were guaranteed by the Treaty British protection and all the rights and privileges of the British subjects of Queen Victoria.⁴⁴ In earlier cases of colonisation in the Americas and Australia, Britain had not guaranteed such rights to the indigenous populations.

The Kingdom of Corsica also raises an amusing counterfactual prospect. The effect of the union of Corsica and Britain in 1794 was that the people of Corsica became British subjects, or "brothers

44 Basil Keane "He Whakaputanga – Declaration of Independence" (20 June 2012) Te Ara – the Encyclopedia of New Zealand <www.teara.govt.nz>; and Janine Hayward "Principles of the Treaty of Waitangi – ngā mātaḥono o Te Tiriti o Waitangi" (20 June 2012) Te Ara – the Encyclopedia of New Zealand <www.teara.govt.nz>.

and fellow citizens", in the words of Elliot.⁴⁵ Napoleon had been born in 1769. His mother, Laetitia Ramolino, had six other surviving children born between 1775 and 1784, all of them born in Corsica. Napoleon's father had been an assistant to Paoli. Napoleon famously was sent to a military school in France and his brother Lucien followed him to France. It was after a dispute between the Bonaparte family and the followers of Paoli that the widowed Laetitia Ramolino and her remaining children left Corsica to join Napoleon and Lucien on 10 June 1793. If there had not been that dispute, or if Napoleon had chosen to return to live in Corsica instead of pursuing his career in France, they would all have been British subjects. Napoleon might have served in the British army.

Elliot had a distinguished career later in life. In 1797, he became the first Earl of Minto.⁴⁶ In 1806, he was appointed Governor-General of Bengal, where he continued to oppose Napoleon in other circumstances.⁴⁷ The Anglo-Corsican Kingdom is celebrated in Westminster Abbey with monuments both to Pasquale Paoli and to Sir Gilbert Elliot. Corsica provided a model, both for a liberal independent nation and for liberal imperialism.

45 See Burke, above n 3, at 110.

46 If any reader of this article is aware that Professor Moreham (who has co-edited this collection) is a descendant both of the first Earl of Minto and of Rev Nathaniel Turner whose mission station, Māngungu, was the scene of the largest signing of the Treaty of Waitangi, they might wonder whether the author contrived the choice of this subject. I did not. I was not aware of this remarkable coincidence until after I had submitted the draft. See further Tohu Whenua "Māngungu Mission" <www.tohuwhenua.nz>.

47 Michael Duffy "Kynynmound, Gilbert Elliot Murray [formerly Gilbert Elliot], first earl of Minto (1751–1814), governor-general of Bengal" in *Oxford Dictionary of National Biography* (Oxford University Press, Oxford, 2004).

