

Contents

<i>Foreword by Richard Falk</i>	xi
<i>Acknowledgments</i>	xvii
<i>Table of Cases</i>	xix
<i>Table of Treaties and Legislation</i>	xxv
<i>Table of Other Authorities</i>	xli
<b>1 Introduction: In from the Margins</b>	<b>1</b>
1.1 The Problem, the Stakes, and the Purpose of This Book	1
1.2 The Approach and Method	7
1.3 The Structure of the Book	8
<b>PART I THE CONCEPT</b>	
<b>2 Advancing a Legal Definition of the Right</b>	<b>15</b>
2.1 Introduction	15
2.2 Contemporary Term Usage	18
2.3 Clarifying the Conceptual Relationships	20
2.4 Cognate Terms: Relation and Differentiation for Legal Definition	27
2.5 Distinct from Antecedent Terms	34
2.6 Distinct from Corroborative Concepts	35
2.7 Identifying the ‘Common Core’	38
2.8 Conclusion: A Consolidated Contemporary Working Definition	39
<b>3 Clarifying the Nature and Legal Function of the Right</b>	<b>41</b>
3.1 Introduction	41
3.2 Nature of the Right	43

3.3	Type of Right	51
3.4	Function of the Right	65
3.5	Conclusion: A Potentially Enforceable Human Right and <i>Lex Specialis</i> Rule of Exception	74
<b>4</b>	<b>Identifying the Elements and Legal Content of the Right</b>	<b>76</b>
4.1	Introduction	76
4.2	Primary Triggers or Conditions for Activation: The ‘Right to Resist What?’	77
4.3	Secondary Triggers or Conditions for Activation: The ‘Right to Resist When?’	86
4.4	Personal Scope, the Rights-Holders: ‘Who May Resist?’	88
4.5	Personal Scope, the Duty-Bearers: ‘Who Has a Corresponding Duty?’	90
4.6	Object and Purpose: The ‘Right to Resist Why?’	93
4.7	Material Scope of Application: The ‘Right to Resist How?’	105
4.8	Conclusion: An Analytical Framework to Identify and Compare Elements and Content	110
<b>PART II THE LAW</b>		
<b>5</b>	<b>Domestic Provision in Constitutional Law</b>	<b>115</b>
5.1	Introduction	115
5.2	Provision in ‘Ancient Constitutions’ or Equivalent Law	117
5.3	Middle Ages ‘Constitutions’ or Public Law Equivalents, Including Customary Law	122
5.4	Modern Revolutionary Republican and Anti-colonial Foundational Declarations and Constitutions	129
5.5	Contemporary Constitutional Provisions	141
5.6	Conclusion	164
<b>6</b>	<b>Recognition in General or Customary International Law</b>	<b>167</b>
6.1	Introduction	167
6.2	Clarifying Recognition in the Absence of Express Provision	169
6.3	Limited Implied Recognition: UN General Assembly Resolution 2625	181
6.4	Broader Implied Recognition: The Universal Declaration of Human Rights	199
6.5	Implied Recognition of a Right-Duty: The Nuremberg Principles	210

<i>Contents</i>		<i>ix</i>
6.6	Corroborative Sources Indicative of Customary Recognition	215
6.7	Conclusion	227
7	<b>Provision in Treaty Law and Other International Codification</b>	230
7.1	Introduction	230
7.2	Submersion in the Universal Human Rights System	232
7.3	Fragmentation in the Regional Human Rights Systems	249
7.4	‘Soft Law’ Codification: Draft Article 7 of the Draft UN Declaration on the Right to Peace	271
7.5	Conclusion	281
8	<b>Conclusions and an Agenda for Reconsideration</b>	283
8.1	The Case for Reinstatement and Reconsideration	283
8.2	The Human Right to Resist Reconsidered as a Contemporary Legal Concept	283
8.3	Reconsidering the Human Right to Resist in Contemporary Positive Law	287
8.4	An Agenda for Further Reconsideration by Scholars, Practitioners, and Human Rights Advocates Generally	292
	<i>Bibliography</i>	295
	<i>Index</i>	317