



Universiteit
Leiden
The Netherlands

On the nature of the right to resist: a rights-based theory of the *ius resistendi* in liberal democracies

Claret, F.

Citation

Claret, F. (2023, September 7). *On the nature of the right to resist: a rights-based theory of the *ius resistendi* in liberal democracies*. Retrieved from <https://hdl.handle.net/1887/3638809>

Version: Publisher's Version

License: [Licence agreement concerning inclusion of doctoral thesis in the Institutional Repository of the University of Leiden](#)

Downloaded from: <https://hdl.handle.net/1887/3638809>

Note: To cite this publication please use the final published version (if applicable).



Universiteit
Leiden

On the nature of the right to resist.
A rights-based theory of the *ius resistendi* in liberal democracies.

Francesc Claret Traïd

On the nature of the right to resist.
A rights-based theory of the *ius resistendi* in liberal democracies.

PROEFSCHRIFT

ter verkrijging van
de graad van doctor aan de Universiteit Leiden,
op gezag van rector magnificus prof.dr.ir. H. Bijl,
volgens besluit van het college voor promoties
te verdedigen op donderdag 7 september 2023
klokke 12:30 uur

door
Francesc Claret Traïd
geboren te Barcelona in 1971

Promotor: Prof. dr. A. Ellian

Copromotor: Dr. G. Molier

Promotiecommissie: Prof.dr. B.R. Rijpkema

Prof.dr. J.M. ten Voorde

Prof.dr. L.J. van den Herik

Dr. M. Klos

Dr. G. van der Schyff (Tilburg University)

Prof.dr. J.W. Sap (Open Universiteit, Heerlen)

“Italian resistance was an action of the people, uniting different generations in the fight to conquer freedom. That led to the development of civil and ideal unity. Resistance became European, and in her name, Europe found the strength to unite to become a space of peace, of solidarity and of cooperation. This is why we should never forget the men and the women that chose to fight, to rebel against war, simply to disobey the dictatorship. Europe was born after the horrors of Nazism and fascism. Europe’s construction represents not only the political response but also a fundamental driving force of the process of integration of our democratic societies (...). Let’s never forget that Nazism and fascism are not opinions, they are crimes. And even today we must fight with conviction so that fascism does not ever come back, under any form. To all those that fight for ideas and for democracy and social equality. To those that disobey intolerance and prevarication every day. Good liberation to all!”.

David Sassoli, former President of the European Parliament, statement through twitter (@EP_President) on the occasion of the Liberation Day of Italy, 25 April 2021 (own translation).

Acknowledgments

To my parents, for everything.

To Andrés and Rebeca.

To my friends and family, for cheering me up at times of despair and for encouraging me at every step of this amazing journey.

And especially to Professor Afshin Ellian, my supervisor, for supporting and accompanying my proposals and for giving me the opportunity to develop an idea that truly became a passion. For encouraging me and for the discussions. For the genuine joy of meeting and for challenging my assumptions. For showing that academic rigor can have an enormous impact when combined with social conscience.

TABLE OF CONTENTS

INTRODUCTION	8
THEORETICAL FRAMEWORK	12
PART ONE	18
CHAPTER I: ABOUT RESISTANCE	18
1.1. The evolving interpretations of the <i>ius resistendi</i> in western thought.....	18
1.2. Contemporary debates about resistance.	32
1.3. The functions of the right to resist.	35
CHAPTER II: IDEOLOGY, LAW, AND THE RIGHT TO RESIST	40
2.1. The ideology.....	41
2.2. The epistemic nature; law and power.	44
2.2.1. <i>Violence</i>	49
2.3. Genetic reasons; the morality of law.	59
2.3.1. <i>Dignity and justice</i>	64
2.4. The functional roles: democracy.	68
2.4.1. <i>The principles of democratic practice</i>	73
CHAPTER III: THE OBLIGATION TO OBEY THE LAW	82
3.1. Why do we obey the law?	83
3.2. Blame it on the state.	94
3.3. Blame it on non-public interests.....	99
3.4. Blame it on the people.	102
3.5. The right to do wrong.....	106
PART TWO	112
CHAPTER IV: THE LEGAL CHARACTER OF THE RIGHT TO RESIST	112
4.1. A positive right	112
4.2. A legal analysis of the right to resist.....	120
4.2.1. <i>The Hohfeldian incidents</i>	120
4.2.2. <i>Will and Interest theories</i>	124
4.2.3. <i>Fuller's principles</i>	126
4.3. Punishing dissent.	130

4.3.1. <i>Protections against punishment</i>	142
CHAPTER V: A RIGHTS-BASED THEORY OF THE RIGHT TO RESIST	148
5.1. A broader conception of rights.....	148
5.2. The normative value of the right to resist.....	153
5.3. The place of the <i>ius resistendi</i> in the legal order.	159
5.4. The right to resist is not a human right.....	164
5.5. An individual right of collective expression.	170
5.6. The right to resist as sovereignty: the exception over the exception.	177
5.7. The ultima ratio.	183
VI. CONCLUSIONS	188
Bibliography	196
Summary in English	224
Samenvatting (Summary in Dutch)	228
Curriculum Vitae	234