

# Proceduralismo e *judicial review*: critica, difesa, approccio condizionale

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*Proceduralism and Judicial Review: Criticism, Defence, Conditional Approach*

*Abstract:* This article examines the tension between judicial review and the procedural conception of democracy, critically analyzing the legitimacy of judges' power to strike down laws passed by democratically elected representatives. The research initially articulates the procedural critique of judicial review, highlighting how it deprives citizens of the capacity to decide and correct their decisions autonomously through equal participation. Subsequently, it explores the procedural defense of judicial review as an essential tool for protecting democratic structure and the fundamental values that sustain it. The article then proposes a conditional approach that transcends the critique/defense dichotomy by introducing the concepts of "majoritarian nonneutrality" and "majoritarian defeasibility". On these grounds, it argues that judicial review can find shared procedural legitimacy through the adoption of a qualified majority in constitutional court voting, thereby recognizing both the presumption of constitutionality of democratically approved laws and the necessity of protecting the procedural and axiological foundations of democracy from potential majoritarian drift.

*Keywords:* Constitutionalism, Democratic theory, Separation of powers, Political equality, Judicial review.

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