

## *Non- Majoritarian Difficulty Squared*

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The problem with the political power of courts has been discussed both in scientific and popular debates for many decades, especially in the United States. Critics have pointed to many decisions in which unelected judges, lacking democratic legitimacy, ruled on matters which should have been supposedly decided by legislatures directly elected by the people. While there are strong arguments against this type of judicial review given its non-democratic character, proponents of powerful constitutional courts have come out with strong counterarguments. In this article, I seek to discuss the usefulness of the arguments for constitutional review in the case of international courts, specifically the European Court of Human Rights. I will try to assess if the arguments in defense of national judicial review are applicable also as a defense for a regional human rights court.

The choice of the European Court of Human Rights as a court for discussion is obvious – it has developed into the most active, exploited and respected regional human rights judicial body which delivers judgments capable of influencing policies across the whole of Europe.

With the growing influence of courts and their rulings, the question of legitimacy came under review. Alexander Bickel famously coined the situation in which unelected judges have the power to override the will of the direct people's representatives in the

Congress as a countermajoritarian difficulty. The first chapter briefly sketches the problem of the countermajoritarian (or non-majoritarian) difficulty and introduces the most important arguments against the power of courts. The discussion is complimented by arguments of the defenders of judicial review. After a brief introduction to the field, arguments are applied to the situation of the European Courts of Human Rights. Finally, the way in which the Court and its member states try to improve its legitimacy are introduced and discussed.