Moving the Political Battle to the Courts

Mark Lilla is a committed Democrat who admonishes his party for the its descent into Identity Politics in The Once and Future Liberal- After Identity Politics

> *Distrust of the legislative process and increased reliance on the courts to achieve their goals also detached liberal Democratic elites from a wider base. To pass legislation you need to persuade very different sorts of people that it makes sense, which might require compromise but also helps ensure that the law will not provoke a mass reaction that leaves you in a worse position than when you began. Legislation can be tweaked, and negotiations about it are usually about how to balance a number of relative goods. In ordinary democratic politics, groups represent interests that can be defended but also balanced against each other when necessary to get agreement. To get standing in court, on the other hand, all you have to do is present your case as a matter of absolute legal right, and the only people you have to persuade are the judges assigned to your case.*

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Depending on the courts moved the conversation from the Democratic process and made the court selection the center of the political battle. It was foolish to assume that the Democrats would always be in control of that process.