CHAPTER 10

 Discrimination and Diplomacy: Recovering the Fuller National Stake in 1960s Civil Rights Reform

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ABSTRACT

The conventional understanding of the history behind the passage of the Civil Rights Act of 1964 leaves out an important issue: the role of foreign relations. Legal scholarship on the basis for federal legislative power to regulate civil rights often focuses on the question of whether the Commerce Power was an appropriate basis for civil rights legislation. Congress turned to the Commerce Power because its earlier attempt to regulate race discrimination by private actors under the enabling clauses of the Thirteenth and Fourteenth Amendments was struck down by the Supreme Court. Concerned about that precedent, in the 1960s the Kennedy Administration and members of Congress saw the Commerce Clause as a promising source of congressional regulatory power. Evidence about the impact of race discrimination on interstate commerce was brought before the Senate Commerce Committee, and legislators debated whether the bill was really about commerce, or really about a moral issue, before passing the bill. This story leaves out an important issue, for a key Kennedy Administration witness before the Committee was Secretary of State Dean Rusk whose focus was neither commerce nor morality, but foreign affairs. The nation had a crucial stake in civil rights reform, Rusk argued, because race discrimination hampered U.S. relations with other nations during the crucial period of the Cold War. There was widespread international media coverage of brutal resistance to the civil rights movement, undermining U.S. prestige around the world, with hampered U.S. Cold War leadership. Rusk urged Congress to pass the civil rights bill to safeguard the nation’s standing in the world, and he suggested that foreign relations concerns supported a broad reading of Congressional power. In essence, national security required a recalibration of federalism. This history can inform contemporary debates about the scope of Congressional power. In recent years, Congress’ regulatory power under the civil rights enabling clauses has been constricted, and Congress’ Commerce Power remains uncertain. Recovering the fuller national stake underlying the Civil Rights Act of 1964 can help us with the question of the proper scope of national authority over civil rights today.
INTRODUCTION

What was at stake when Congress debated the Civil Rights Act of 1964? What reasons were given for federal government support for this extension of federal power? The standard account of this history centers on the need for federal action on the issue of civil rights, concerns about the scope of Congress’ constitutional power under the 14th Amendment enabling clause, the turn to the commerce power as an alternative, and the evidence of the impact of segregation and discrimination on interstate commerce.¹ There is much to be said for the standard account, but it is only part of the story.

What of the broader history of civil rights? The story of American civil rights reform has sometimes been seen as a fairly simple narrative of an active grassroots movement, with charismatic leadership, pressing the case for racial justice, and the government responding. Historians have complicated this story in a number of ways, giving us a richer view of the grassroots, illuminating the politics within the movement, highlighting the role of women and of religion, and reexamining the role of massive resistance.² Scholars have also focused on the question of what, from the federal government’s perspective, was at stake in 1960s civil rights reform. Reexamining civil rights history as an aspect of Cold War history, taking seriously the ubiquitous use of foreign policy arguments in civil rights debates, finding in State Department archives copious documentation of the negative impact of race discrimination on U.S. foreign relations, we see an extensive record of the relationship between civil rights and foreign relations. There is a Cold War history, an international history, underlying U.S. civil rights reform.³

