

**Discrimination and Diplomacy: Recovering the Fuller
National Stake in 1960s Civil Rights Reform
(in Laura Beth Nielsen and Robert Nelson, eds.,
*Handbook of Employment Discrimination Research:
Rights and Realities* (Springer, 2005))**

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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 Commerce Clause has been constricted, and Congress' power under the civil rights enabling clauses 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.