CONSTITUTIONAL DIALOGUE AND
THE CIVIL RIGHTS ACT OF 1964

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I. INTRODUCTION

The Civil Rights Act of 1964 represented a seminal legislative accomplishment of the twentieth century. Its eleven titles addressed racial discrimination in voting (Title I), public accommodations (Title II), public facilities (Title III), public education (Title IV), publicly financed programs (Title VI) and employment (Title VII). It sought to remedy legislatively the Jim Crow laws and practices that had long contributed to making blacks second-class citizens in America and it provided the Executive Branch tools, especially in Title III and VI, to help implement Brown v. Board of Education.

In view of the bill's focus on racial discrimination, one would expect the legislative discussion to have centered around the injustice of segregation and the burden it imposed on American society. Much of it did. Yet legislators devoted a substantial portion of their attention to constitutional issues relevant to the bill.

Academic discussions of constitutional interpretation tend to focus on the work of the federal judiciary generally and the Supreme Court specifically. Constitutional law, especially at America's law schools but more universally, too, focuses on the pronouncements of the Supreme Court. In recent years, however, a number of scholars have noted that a significant body of constitutional interpretation does, and should, occur outside of the courts, in the executive and legislative branches of our federal government. Abundant

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