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Be It Resolved . . .

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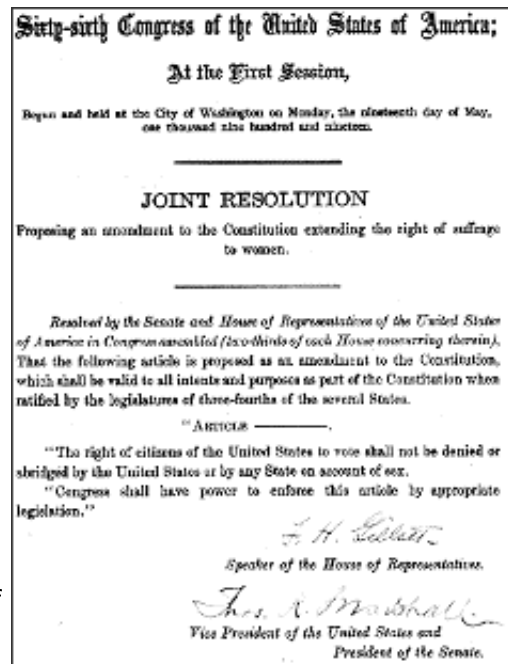
In prior postings ([here](#)^[1] and [here](#)^[2]), I have objected to Senate and House resolutions that condemned political expression by MoveOn.org and Rush Limbaugh. I did not claim that Congress lacks the authority to issue such resolutions. Rather, my claim was that such pronouncements skew the marketplace in political ideas and may chill expression by some with strongly held political viewpoints — perhaps especially those who have business before Congress.

The issue of congressional resolutions has surfaced once again, although this time in a very different context. On Wednesday, the House Foreign Affairs Committee approved [H.Res. 106](#)^[3] — the “Affirmation of the United States Record on the Armenian Genocide Resolution.” The resolution, which includes findings concerning the Ottoman Empire’s execution and displacement of Armenians from 1915-23, “call[s] upon the President to ensure that the foreign policy of the United States reflects appropriate understanding and sensitivity concerning issues related to human rights, ethnic cleansing, and genocide documented in the United States record relating to the Armenian Genocide, and for other purposes.” House Speaker Nancy Pelosi has vowed to bring the measure to the floor for a vote. President Bush, who has made annual statements condemning the atrocities against Armenians, lobbied to block the resolution in committee. He has [expressed disappointment](#)^[4] that it was voted out of committee, and has vowed to help defeat its passage. The President’s interest in the resolution is obvious: Turkey is a valuable ally in the Iraq War. The country serves as a critical staging ground for the shipment of supplies into Iraq. Turkish officials, particularly legislators, have [reacted strongly](#)^[5] to the resolution. They have threatened to cease providing logistical support to the United States, have stepped up military operations on the Iraq border, and have recalled their ambassador to Washington.

From the earliest days of the republic, congressional resolutions (joint, concurrent, and simple) have been issued to express the opinion or will of one or both chambers of Congress. Most “symbolically expressive” resolutions are not at all controversial. For example, resolutions have been proposed or enacted which [celebrate children](#)^[6] as “the hopes and dreams of the people of the United States,” [recognize Ramadan](#)^[7] and express “the deepest respect to Muslims in the United States and throughout the world,” [acknowledge military gallantry](#)^[8], and [designate March](#)^[9] as “Women’s History Month.” Such “feel good” expression does no harm, and indeed can inform the public of important national policies and priorities.

As the fallout from the Armenian genocide resolution demonstrates, the calculus may be substantially different, and the stakes much higher, when Congress expresses itself on matters of foreign affairs.

The Constitution divides the power to conduct foreign relations between the Executive and Legislative branches. Part of that power resides, of course, in the issuance of formal statements by the branches. History shows that congressional resolutions, in particular, can be important policy-initiating and policy-shaping statements. Previous congressional resolutions have called on the President of Pakistan to hold free and fair elections and on the Chinese government to resolve political crises without violence. Congress also supports



presidential foreign policy initiatives through resolutions. For example, Congress expressed gratitude to the United Kingdom for allowing U.S. bombers stationed there to participate in the April, 1986 raid of terrorist bases in Libya. This dialogue — between Congress and other nations and between the branches of government — surely ought to be encouraged.

But Congress is no ordinary speaker. As no legal restraints apply to its many “symbolic” resolutions, it must determine for itself when and on what matters of foreign affairs it wishes to speak. Congress, in other words, must necessarily self-censor. On the world stage, as in the domestic market for political expression, Congress must be acutely aware of the ramifications of its expression — for diplomacy and, in the case of the genocide resolution, even military operations. The President and Congress will not always agree on foreign affairs policies or agendas. Setting aside Congress’s undoubted ability to speak to matters of substantive foreign policy and war, what if any norms or considerations ought to guide Congress when considering whether to issue symbolic resolutions on controversial matters like [Japanese “comfort women”](#) ^[10] or Armenian genocide? Should it generally hold its collective tongue where the controversy does not concern any *direct* American interest? When it is particularly important that the United States speak with a “single voice”? When its expression may interfere with ongoing military operations, endanger lives, or result in the breaking of diplomatic ties? Or should Congress, like other speakers, rely upon the marketplace — including presidential resolutions — to counter any purported ill effects from its expression, and speak boldly even in the face of likely hostile audience reactions?

I confess to being far more certain that Congress ought to limit or abandon resolution-making in the domestic political sphere than I am of any plausible duty of self-censorship in the foreign arena, where Congress of course has a recognized constitutional role to play. I welcome your thoughts and comments.

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URLs in this post:

[1] here :

http://www.concurringopinions.com/archives/2007/09/the_politics_of_free_speech1.html

[2] here: http://www.concurringopinions.com/archives/2007/10/a_rush_to_conde.html

[3] H.Res. 106: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_bills&docid=f:hr106ih.txt.pdf

[4] expressed disappointment:

<http://www.whitehouse.gov/news/releases/2007/10/20071010-1.html>

[5] reacted strongly: http://www.nytimes.com/aponline/world/AP-Turkey-US-Genocide.html?_r=1&oref=slogin

[6] celebrate children: <http://nlci.org/DLN2004/resolutionpage.htm>

[7] recognize Ramadan: <http://usinfo.state.gov/xarchives/display.html?p=washfile-english&x=20071003165444mlenuhret0.9762384&m=October>

[8] acknowledge military gallantry: <http://www.congress.gov/cgi-bin/query/D?c104:1:./temp/~c104f5pD4x::>

[9] designate March: <http://www.tulane.edu/~wc/months/whm.html>

[10] Japanese “comfort women”: <http://www.zmag.org/content/showarticle.cfm?ItemID=10155>

[11] : <http://clerk.house.gov/evs/2007/roll928.xml>

[12] : http://www.dailystar.com.lb/article.asp?edition_id=10&categ_id=2&article_id=85961

[13] : <http://muslimsagainstharia.blogspot.com/2007/10/armenian-genocide-bill.html>

[14] : <http://clerk.house.gov/evs/2005/roll637.xml>