

PRESERVING DEMOCRACY AFTER THE UNTHINKABLE

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WASHINGTON - Last September's terrorist attacks and their aftermath raised many constitutional questions about the nature and limits of freedom. Now, seven months later, political leaders are coming to grips with new constitutional questions that could be raised in the event of another assault on the nation's capital.

With the Capitol complex targeted once with anthrax and probably by the airline hijackers, too, lawmakers are contemplating ways to keep the legislative branch functioning in the event an attack wiped out substantial numbers of members of Congress. It's a speculative exercise, but in the new century no one argues that it is not a prudent one.

The debate, largely conducted in hallway conversations rather than on the floor of either house of Congress or in the media, also illuminates important points about the nature of American political institutions and the connections between American voters and American leaders.

For example, it has brought into sharp focus the distance between members of the Senate and members of the public. And it has underlined the intimacy between the House and the people.

Here's why: If a terror attack took out large numbers of senators, they could be replaced relatively rapidly. In every state but Oregon, where a special election is required, governors are empowered to appoint interim senators who generally serve until a special election or the end of the original term.

But no such provision applies in the House; Article I, Section 2, Clause 4 of the Constitution requires that vacancies be filled by special elections, which ordinarily take weeks, if not months.

Senators, who until 1913 were elected by the state legislatures, never have had the organic ties to the people of their states that their colleagues in the House possess. The late Representative Morris K. Udall, Democrat of Arizona, may have been a giant on Capitol Hill and even a legitimate 1976 presidential candidate, but he always had to tend to difficult political issues back in Tucson. Representative John D. Dingell, Democrat of Michigan, may be the scourge of bureaucrats and fat cats, but he is fiercely attentive to his district in and around Dearborn.

The House is the only part of the federal government that has always been elected directly by the people, which is one of the reasons that a potential terrorist attack on Washington raises so many difficult issues for House members.

Presidential succession was addressed by the 25th Amendment, which permits a president, with congressional assent, to fill a vacancy in the vice presidency, a provision that led to the ascent of Gerald R. Ford in 1974, the only president to take office without voter participation. Providing swift appointment of large numbers of House members would jeopardize more than two centuries of cherished tradition and alter the character of the chamber. Even so, most House members acknowledge that some emergency measures might be needed.

The leading proposal has been offered by Representative Brian Baird, a Washington state Democrat who has been haunted by the scene he observed in the back of the Capitol Police headquarters shortly after the Sept. 11 attacks, as lawmakers argued about whether it was safe to return to their offices and the two legislative

chambers. Baird wonders what would have happened if the hijackers had rammed a plane into Capitol Hill.

The Baird proposal calls for a constitutional amendment to permit governors to name temporary successors to dead or incapacitated House members. This provision, which would go into effect only if a quarter of the House were killed or incapacitated, would permit the temporary lawmakers to serve for 90 days or until special elections were conducted.

Two former House speakers - Newt Gingrich, Republican of Georgia, and Thomas Foley, Democrat of Washington state - favor a simple alteration of House rules to permit lawmakers to designate in advance their own temporary successors.

Some lawmakers do not want to think about this issue. Others say that Congress would come up with a solution if it had to. Many worry about any deviation from the principle of direct election of House members, even in a tragic situation in which the nation may be led by an unelected Cabinet member serving as president after a devastating attack.

"There are no political benefits to dealing with this," Baird says. "There is no PAC money at stake, and there is no polling. But if this is needed and we haven't done something, we will have done a great disservice. We're like a parent who doesn't want to make a will."

Without a functioning House, the ancient rhythms and legal requirements of American political life would be jeopardized. Having congressional authority resting solely in the Senate would be a repudiation of the pact of compromise that helped create the Constitution in the first place. A government that lacked a functioning House might lack the legitimacy that the nation would need.

"There are complexities to this," Baird says. "But the whole Constitution was written over

the course of a summer. If we put our minds to this, we could solve it."

A nation in crisis doesn't need a constitutional crisis.