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It is gratifying that some Congress members are developing legislation to provide a Continuity of Government (COG) for America in the event of a terrorist attack using weapons of mass destruction. The bombings of September 11, 2001 and the anthrax attacks later that year have heightened awareness that terrorists conceivably could "decapitate" the U.S. Government. They could kill all the presidential line of succession, the Supreme Court, and the senior leaders of Congress.

The Constitution doesn't say who is to follow the Vice President in line of succession to be President. (The line of succession has been changed several times by statute only.) It says that state governors can name successors to Senators who vacate their offices, but requires "writs of election" to replace members of the House of Representatives. The President can nominate Supreme Court justices, possibly an impractical process for COG following a catastrophe. It's very apparent that new provisions are needed in the nuclear age.

Some of these new provisions might require a Constitutional amendment, but most seem only to require creative application of the present powers of Congress. It is axiomatic that it almost always is wiser and easier to enact statutes than to amend the Constitution. (That only seventeen times since the Bill of Rights have amendments been successfully passed surely proves the axiom.)

It also is true that individual states have enacted a wide variety of laws on how to hold special elections for the U.S. Senate and, if left free to do so, might prescribe different ways to fill mass vacancies in their delegations to the House of Representatives. That wouldn't necessarily be a bad thing, so long as their approaches had in common that each system met the requirement of a republic to represent the full spectrum of the electorate.

Rep. Brian Baird has proposed an amendment to the Constitution that would give state governors the power to name interim members to both houses of Congress if vacancies occur, as they do for vacancies in the Senate (some other Congress members disagree.) Law professor Akhil Amar of Yale University has written that this almost surely would mean amending the Constitution.

But perhaps the term "Writ of Election" in Article I and the Seventeenth Amendment could be defined to mean something other than that governors order special elections. Perhaps a "writ of election" could stipulate that persons elected to a state office (such as lieutenant governor or speaker of the most populous body of a state legislature) inherently is elected a pro tempore supernumerary member of Congress. Further supernumeraries could be other holders of state elective offices, in order of their ranking in their states. Such a process could remove a need for amending the Constitution to ensure a COG House of Representatives.

Nothing in the Constitution keeps Congress from meeting outside of Washington, and it sometimes has done so. Almost any military base, college complex, or convention center could be adapted as an emergency capitol. (Cold War plans were for it to meet in a bunker in West Virginia if a nuclear war occurred.) The host city for the capitol should be decided

by the order that states ratified the Constitution. Delaware then would be the first alternative, and perhaps Dover Air Force Base would be the potential facility to house the government in exile from Washington.

It has been reported that some Congressmen think governors of the states should be added to the presidential line of succession. That opens the question of precedence among the states. A criterion to ensure that the largest possible electorate is represented might be the number of members of Congress from each state, i.e., state governors would be ranked according to the populations of their states. If the national leadership were destroyed, the "senior governor" logically would travel to the city where the interim Congress convened.

It has been suggested that some other court should be designated supernumerary for the Supreme Court; this perhaps would require amending the Constitution. Which court(s) should get this role hasn't been reported. The two Circuit Courts of Appeal that meet in Washington, D.C. generally are considered next in prestige to the Supreme Court, but no order of precedence is known for the other eleven circuit courts. one factor might be that the court should meet as close as possible to the city where the president or Congress resides. If Dover became the alternate capital, that would make the Third Circuit Court (whose seat is in Philadelphia) the supernumerary Supreme Court.

It might be that a COG president could issue interim appointments to the Supreme Court for the members of a specific Court of Appeals, subject to confirmation by a COG Senate. That would permit a Court to sit as soon as its members were named. Theoretically, this wouldn't even require a statute, much less a constitutional amendment.

The Cold War plans for reconstituting the government after a nuclear war apparently were flawed because they envisioned evacuating the government upon early warning of a missile attack. The government would have been destroyed before it could relocate. The same would be true in event of decapitation of the government by terrorist attack or natural disaster. The concept of building a new government from resources that already are outside Washington seems much more feasible. America will be well served if Congress enacts a program before it is needed.