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Binder / Frenzel Q&A

The Business of Congress After September 11

The terrorist attacks on September 11, which caused plane crashes in New York, Pennsylvania, and Washington, D.C., resulted in thousands of deaths, billions of dollars in damage, and an American public that was stunned by the events it had watched unfold on television. In addition to the heavy emotional toll, federal, state, and local governments scrambled to address new policy problems, including massive clean-up efforts, compensation for victims, and homeland security.

How did Congress address the immediate crisis and move forward in the days and months that followed? How will the events of September 11 continue to influence the congressional agenda in the second session? The Brookings Institution asked two of its scholars—congressional expert **Sarah Binder** and former Congressman **Bill Frenzel**—to discuss how the 107th Congress dealt with the effects of the attacks in the days immediately following September 11, how lawmakers balanced the emergency with other pending legislation, and what the public can expect from Congress in the first months of the second session.

Q: Is there any historic precedent for how the terrorist attacks of September 11 have focused Congress so intently on one major issue that needs so much money and attention?


Sarah Binder

Sarah Binder: The only event that comes close to approaching September 11 in terms of its impact on Congress and the nation is the 1941 bombing of Pearl Harbor, but it is difficult to compare the current Congress with the ones that met during World War II. For one thing, today's partisan environment bears little resemblance to the 1930s and early 1940s. When President [Franklin D.] Roosevelt faced the Congress, he had the advantage of leading a House and Senate controlled by his own party by very large margins. Today, President Bush must work with a House that his party controls by the slimmest of margins, and a Senate controlled by Democrats. Today's divided government poses a challenge for a wartime president that FDR never had to face.


Bill Frenzel

Bill Frenzel: When I was a congressman, there was nothing that commanded the level of attention that September 11 did. I started my congressional career when Vietnam was winding down, and the other significant crises that took place while I was in office—the hostages in Iran, the run-up to the Gulf War—paled in comparison to what we saw this fall. In fact, as Sarah said, only Pearl Harbor was comparable in terms of the level and impact of devastation.

A Look Back and

Sarah Binder is a fellow in Governmental Studies at the Brookings Institution, an associate professor of political science at George Washington University, and the former press secretary and legislative aide to U.S. Representative Lee H. Hamilton (D-Ind.). She is the co-author of *Politics or Principle? Filibustering in the United States Senate* and the author of *Minority Rights, Majority Rule: Partisanship and the Development of Congress.*

Bill Frenzel is a guest scholar in Governmental Studies at the Brookings Institution and a former member of the U.S. House of Representatives (R-Minn., 1971-1991). He is a member of the bipartisan commission on Social Security convened by President George W. Bush in 2001.

Q: But haven't there been other changes in American government and society that make the situation after September 11, 2001, different from the situation after December 7, 1941?

Binder: Sure. The context in which legislators and the president meet to conduct business differs considerably from the legislative environment of the 1930s and 1940s. The legislative agenda was much smaller than the one we see today, as America had experienced neither the momentous wartime growth of the federal government nor the mammoth expansion of federal programs that occurred during the Great Society congresses of the 1960s. So it was much easier for Congress to focus on wartime legislative proposals, as legislators were sacrificing little of whatever personal or partisan legislative agendas they may have held. The events of September 11, on the other hand, radically shifted the congressional agenda, causing numerous pending social and economic proposals to stall.

Q: In what other ways is the post-September 11 world different from the post-December 7 world?

Binder: We can draw some interesting comparisons between the day-to-day business of Congress during the two war periods. First, both presidents enjoyed very strong public support, bolstering their position in facing the Congress. Today, there is essentially no domestic political opposition to the war against terrorism and the administration's agenda of destroying the al Qaeda network. And although there may have been some early opposition to FDR from isolationists resisting international entanglements, any domestic opposition basically ended when Americans were attacked at home by the Japanese assault on Pearl Harbor.

Frenzel: That's a good point about public support. After September 11, both parties knew what the American people wanted and tried to deliver it. The airline bailout legislation, for example, was quickly drawn and obviously flawed. Absent an emergency, there would have been heated debate, many amendments, and an uncertain outcome. But the fact was that the airlines were in big trouble, and lawmakers had to do something about it. In periods of crisis, legislation that is less than perfect tends to move quickly. As a lawmaker, when you pass bills in an emergency, you know you're going to make mistakes. The reality is that the emergency warrants quick and sometimes imperfect work, but it is more important to get bills passed in order to help the nation move forward.

Q: Let's examine some of the specifics. The agenda confronting Congress changed drastically on September 11, didn't it?

Frenzel: You bet it did. Contentious issues—campaign finance reform, a patients' bill of rights, and changes to Medicare benefits—were moved to the back burner while emergency issues such as disaster relief, an airline bailout, airport security, and homeland security enforcement powers were given immediate priority. In an emergency, the Congress can move swiftly, and it did. The normal diversions that add so much time to the legislative process—including budget restrictions, partisanship, parochialism, and members' philosophical leanings—were not ignored, but they were reduced. The emergency issues were generally given low-decibel, modest debate, and dispatched promptly.

Q: When the nation is facing a threat like the current one, does Congress generally concede to all of the president's requests?

Binder: After September 11, Congress acquiesced quickly to President Bush's demands for financial support for New York and for the airline industry, but it did not completely give in to his requests. Congress refused, for example, to give the administration a blank check and authority over how appropriated funds

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would be spent. But in comparison to the partisan deadlock that often arose before September 11, Congress made a concerted effort to ensure swift legislative action on the president's requests. When little domestic opposition exists, legislators have considerable leeway to defer to the president's wartime agenda, even if they differ over the ways and means of responding to the crisis itself. Other big issues on the agenda, as a consequence, get sidetracked, many even evaporating from legislators' active agendas, as Bill suggested. The summer preoccupations with a Social Security "lockbox," prescription drug benefits, and the rights of managed care patients all but disappeared after September 11. Much of this is because the events of that day command far greater attention than domestic priorities. But it is also the consequence of a rapidly deteriorating economy and the war on terrorism's need for dwindling federal dollars.

The same atmosphere prevailed in the 1940s, when few members of Congress wanted to be viewed as obstructing the president's ability to prosecute a war. In fact, Congress approved a series of war powers acts in the early 1940s intended to delegate considerable economic powers to the president and the administration. But just as today's Congress has not completely deferred to the president's preferences, lawmakers in the 1940s occasionally challenged FDR. The further Roosevelt's legislative requests strayed from the war effort, the more resistance he encountered from an increasingly fractured Democratic party. For example, although FDR eventually prevailed, he met with concerted opposition to a series of economic stabilization measures. Likewise, Democrats today have been willing to challenge the president on measures not directly tied to the war effort, as seen in the unfinished battle over an economic stimulus bill. The bill passed the House, but stalled in the Senate because the two parties disagree over the right way to bolster a failing economy. With control of both chambers at stake in the upcoming midterm elections, Bush's popularity alone is unlikely to convince Democrats to concede to the Republican plan.

Frenzel: The contentious issues moved to the back end of the line after September 11. They are not dead, and will probably return in 2002. Other issues that were moving toward consensus or in which both parties had made heavy political investments, like education reform and election procedural reform, kept moving forward. The education reauthorization bill passed and election reform legislation will probably pass in the first half of 2002. Both parties saw virtue and political benefit in each of those bills and perhaps felt pressure from their constituents to finish work on them.

What happened to appropriations bills and budget limitations was not as pretty. Once September 11 swept away the last of the budget restraints of the 1990 Budget Enforcement Act, the congressional urge to spend ballooned. The myth of the Social Security "lockbox" was shattered; discretionary spending will increase about 8.5 percent; and baselines will continue to escalate. The major damage to the budget was done by the September 11 attack and the economy, but Congress was quick to pile on.

Q: How do you think Congress did this past fall in terms of setting aside their differences to move legislation?

Binder: I think it's safe to say that Congress got very high marks for its bipartisan behavior following the September 11 attacks. By all accounts, the leadership of the two parties worked in concert with President Bush to address his initial request for financial aid. Less noticed, perhaps—but no less important—was Congress's ability to act "bicamerally," if you will. Although differences between the House and Senate have

often killed major issues in recent years, including prescription drug coverage and a patients' bill of rights, no such bicameral roadblocks emerged this time around.

Frenzel: In a national emergency, the country is drawn together. Congress, which is both representative and highly sensitive, was able to respond immediately and almost unanimously to the events of September 11. Polls showed the public approved of both Congress' attitude and response. After that, bipartisanship and the general feeling of unity in Congress began to wane. As public fears of further terrorist actions abated, the pressures on Congress to act together declined. Instead, pressures driven by party differences and by what are expected to be close elections in 2002 began to move the House and Senate back to their normal, competitive mode. By the time Congress adjourned in December, little unity remained. If the war on terrorism goes badly, or if most Americans fear that more attacks at home are likely, congressional unity will return. If not, the law of the jungle will prevail.

Legislation on Terrorism

Before the first session of the 107th Congress adjourned in December, lawmakers cleared nine bills and three joint resolutions related to the September 11 terrorist attacks. Congress also approved ten other resolutions, which are not signed by the president and do not have the force of law, and introduced roughly 200 bills or resolutions that saw some or no action. The following terrorism-related bills and joint resolutions were signed into law by President George W. Bush following Sept. 11:

H.R. 2882:	Public Safety Officer Benefits bill
H.R. 2883:	Intelligence Authorization Act, FY02
H.R. 2888:	2001 Emergency Supplemental Appropriations Act
H.R. 2926:	Air Transportation Safety and System Stabilization Act
H.R. 3162:	Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001
H.J. Res. 71:	Designating Sept. 11 as Patriot Day
S. 1424:	Amending Immigration and Nationality Act to provide permanent authority for the admission of "S" visa non-immigrants
S. 1438:	Defense Authorization Act, FY02
S. 1447:	Aviation and Transportation Security Act
S. 1465:	A bill to authorize the president to exercise waivers of foreign assistance restrictions with respect to Pakistan through Sept. 30, 2003, and for other purposes
S.J. Res. 22:	Joint resolution expressing the sense of Congress regarding the terrorist attacks
S.J. Res. 23:	Authorization for Use of Military Force

Source: THOMAS (http://thomas.loc.gov), as of Jan. 14, 2002.

Binder: What is striking about this initial bipartisanship was how different it was from the president's style of building bipartisan coalitions in the first months of his administration before the terrorist attacks. In building these coalitions (for instance, on the tax cut enacted last spring), Bush reached out primarily to centrist Democrats to build a winning coalition with his Republican base. He did not, however, reach out to the Democratic leadership—what some would refer to as a preferred path for building truly bipartisan solutions. After September 11, Bush met weekly with House and Senate leaders from both parties. So in giving high marks to the Congress for its bipartisanship, it's important to recognize how the president's procedural tactics made such bipartisanship possible.

Not every measure proposed by the administration in response to the attacks, however, sailed so easily through the two parties and chambers. Aviation security and anti-terrorism bills elicited much greater opposition and conflict, although both were eventually signed into law. Interestingly, conflict over these measures grew along several different dimensions. Disagreements over the aviation security bill were as much between the House and Senate as between

Republicans and Democrats—the president expressing only limited support for the positions maintained by his House Republican base. Anti-terrorism measures also attracted considerable debate, with some Republicans on the right agreeing with Democrats on the left that the enhanced powers requested for the Justice Department intruded too much on citizens' civil liberties. In each of these cases, however, negotiators were able to reach final agreement with the president. The president was sufficiently flexible on his priorities and Congress was unwilling to be seen as obstructing him on legislative measures directly related to the attacks.

Jennifer Kurz/Brookings

The events of September 11 radically shifted the congressional agenda, causing numerous pending social and economic proposals to stall.

— Sarah Binder

Q: Now that the immediate shock and political unity that followed September 11 is wearing off somewhat, what do you expect during the second session of Congress that's just beginning?

Frenzel: The second session of the 107th Congress will be more like the period before September 11 than the period between September 11 and Thanksgiving. The forces that drive the parties apart have now become stronger than the unifying forces. The closer Congress gets to the elections, the more aggressive both parties will become. Issues will also be more contentious as the parties strive to emphasize their differences, rather than their similarities.

Binder: I certainly agree with Bill on that. I'm skeptical as to whether this bipartisan and bicameral effectiveness will continue in the second session, for a number of reasons. First, in spite of September 11, all the ingredients that encouraged legislators to deadlock on major issues in the early months of the Bush administration are still in place. We still see very polarized political parties that hold extremely slim margins of leadership in each chamber, making it especially difficult for Bush and the Republicans to build the large bipartisan coalitions necessary for reaching major policy agreements. We see strong differences between the House and Senate on a number of issues, including preferred measures for addressing patients' rights, energy development and conservation, and faith-based initiatives. And we see the slimmest of Senate margins, a condition that makes it especially difficult to build cloture-proof, 60-vote majorities. Democrats are already willing to stand up to the president on measures unrelated to the war effort, and even on issues spurred by the war effort, like the economic stimulus bill. Democrats dug in against tax cut provisions preferred by the president and congressional Republicans.

Frenzel: In 2002, we'll see Congress revert to its normal rhythms. But Congress will be in or close to (depending on the fiscal stimulus) a deficit situation for fiscal 2002 and 2003. The economy has taken a severe hit, and its recovery, or lack thereof, will have a strong influence on the way Congress operates. The president's budget must be presented early in the year, when there is insufficient information available about a potential recovery. Congress's spending binge of discretionary increases of 10 percent in fiscal 2001 and 8.5 percent (before supplemental appropriations) in FY02 has already swollen spending baselines. Absent a strong, fast recovery, the fiscal 2003 budget could make lawmakers' lives even more unpleasant

than might even be expected in a year of close congressional elections. Absent more domestic terrorism, we can expect a contentious second session.

Binder: The economic context has certainly shifted radically since September. The year began with projections of huge budget surpluses, but today we find ourselves likely facing budget deficits for the duration of the Bush administration. To be sure, partisans differ over the causes of the emerging deficits. Some fault the president's tax cuts this past spring; others point to the impact of September 11 on the economy and the diversion of funds to war and recovery efforts. Regardless of the cause, we are no longer facing an ever-expanding federal treasury that would have provided ample funds for the major domestic initiatives that had been on the agenda before September 11. Even if there were the political will to return to issues such as prescription drug coverage and managed care reform, the new economic context likely makes enacting these programs prohibitively expensive.

Jennifer Kurz/Brookings

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— Bill Frenzel

I don't think, though, that all major issues will end in gridlock in the second session. The legislative horizon is not that bleak, although a lot will depend on Bush's domestic agenda for 2002. And that, of course, depends equally on the progress and direction of the war efforts in the interim. Both parties retain an incentive to meet public demands on major issues, as evidenced by the successful effort to reach final agreement in December on the president's education reform bill.

Q: You seem to feel that public pressure may keep Congress from falling back into partisanship and deadlock even after some of the unifying effects of September 11 fade away.

Binder: My view is that public pressures for action must compete with the political parties' differing views on how best to approach these measures. And so long as the economy remains sluggish and deficits are projected to rise, it will be extremely difficult for legislators and the president to agree on major policy changes—even if events are not overshadowed by the war against terrorism. I also think it's important to keep in mind sheer human limits in speculating about the agenda of the second session. Part of the reason domestic issues have taken a back seat to the war effort is simply that so many people can only work on so many issues at one time. Not only is the president's attention diverted by the war away from domestic issues, but his time is diverted as well. Another important consideration is that central to forwarding the president's agenda before September 11 had been Vice President Cheney, who is now deeply involved in the war effort.

Frenzel: Well, my view is that last September and October, lawmakers were unified in supporting the war on terrorism and were satisfied to temporarily set aside other issues. But by November, the perception of the urgency of the war had eroded somewhat. Its willingness to adjourn in December without passing an economic stimulus bill, for example, would have been unthinkable in September. A unified Congress will continue to support the war, but as soon as the war seems less urgent, the political forces that tend to divide

the Congress will get stronger. Both parties will give their domestic agendas higher priority. Those members who oppose the president's domestic policies will do so openly, while at the same time supporting him on the conduct and the costs of the war.

Q: Do you think the war on terrorism imposes special responsibilities on Congress to act in a more cooperative, less confrontational way when dealing with the president and his agenda?
Binder: There's no single, correct answer to that question. Reasonable people can differ on the appropriate role of Congress during wartime, just as they might differ on Congress's responsibilities when the nation is not at war. What we want to know, of course, is just what kind of balance Congress should strike in its relationship with the president. Certainly the Congress should not excessively defer to the president to the point that it loses its ability to serve as a constitutional check on the actions of the executive. But neither would most of us want to have a Congress that refuses to accede to the preferences of the president in times of dire emergency.

The constitutional character of the Congress—with 535 independent voices—is simply not equipped to act uniformly and with dispatch in times of real trouble. The challenge for Congress is to determine the appropriate balance of power between the branches. Interestingly, Congress has throughout its history oscillated between poles of deference and independence, shifting its authority over time. Congress wrote the president a blank check in 1964 when it passed the Tonkin Gulf resolution during the Vietnam conflict, but years later found itself trying to rein in the excesses of an "imperial" presidency. That our institutions are not rigidly fixed probably helps account for the resiliency of our political system.

Frenzel: In the fall of 1990, during the time leading up to the Gulf War, Congress was engaged in negotiations over the budget. Members were aggressive in their opposition to President [George H.W.] Bush's domestic program. At the same time, lawmakers knew that Bush needed the money for the Gulf War and so they didn't hold back in that regard. However, their support was not as unified or vigorous as it has been during the current debates over military action in Afghanistan.

Overall, though, members of Congress generally will not reserve all criticism of the president during a crisis. They may hold off for awhile, as they did in the aftermath of September 11, but ultimately partisanship returns. If other incidents occurred that reinforced the unified feeling of the American public in the way that September 11 did, then Congress's own unity may be restored, if temporarily.

Binder: No matter who controls the national agenda, there are signs that considerable authority and discretion have already shifted back to the executive in the aftermath of September 11. Congress has enacted (and in the case of military tribunals, the president has claimed) considerable powers for detaining and prosecuting suspected terrorists. We have also seen various agencies such as the CIA and the FBI reorient their priorities around fighting terrorism. As long as the president can claim that national security demands that policymakers dedicate time and resources to fighting terrorism, it may be difficult for Congress to shift the nation's attention and resources back to the domestic arena. The reappearance of budget deficits will also constrain legislators seeking to return to the agenda prevailing before the terrible events of September.

Frenzel: Another incident that focused the nation's attention during my time in office was the 1979-1980 hostage crisis in Iran. Not only were Republicans unhappy with the way President Carter handled it, but they

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used it as an election issue against him. Again, this was not an event that had the overwhelming impact that September 11 did on Congress and the country, but members were not afraid to openly criticize the president about it.

For members of Congress beginning the second session, the war goes on, but the full emergency wartime status was lifted before 2001 ended. That means members will be more vocal in their criticism of the president's domestic policies than they were this fall.

Binder: Even if there is a political or institutional will to challenge the president's control of the agenda, economic constraints may limit Congress's ability to do much about it. That may be the most enduring consequence of September 11 for the business of Congress.

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