On a shelf not far from where I am writing these words sit a half a dozen or so books disparaging Congress and complaining about the congressional role in the constitutional separation of powers. These books date mostly from the late 1940s and the early 1960s, and typically their authors are liberal Democrats. In those years, Congress was unresponsive to liberal Democrats and, naturally enough, aggrieved members of that articulate tribe sought solutions in structural reform.

In fact, instead of reforms weakening Congress what they—and we—got was a considerably strengthened presidency. This was mostly a product of World War II and not the result of liberal complaints. Before World War II Congress would not enact even the modest recommendations of the Brownlow Commission to give the president a handful of assistants with “a passion for anonymity,” and it killed the National Resources Planning Board outright. After World War II everything changed: Congress gave the president responsibility for smoothing the effects of the business cycle,
created a Defense Department and two presidential agencies—the NSC and the CIA—that enhanced the potential for presidential dominance of national security affairs, and laid the groundwork for the growth of a presidential branch, politically responsive to both Democratic and Republican presidents.

**Congress and the goring of oxen**

Though it took time for the presidential branch to grow into its potential, the growth of this branch, separate and at arm’s length from the executive branch that it runs in the president’s behalf, is the big news of the postwar era—indeed, of the last half-century in American government. It is customary today to acknowledge that Harry Truman’s primary agenda, in the field of foreign affairs, was quite successfully enacted even though Congress was dominated by a conservative coalition, and what Truman wanted in the way of peacetime international involvement was for the United States quite unprecedented. Dwight Eisenhower’s agenda was also largely international in its impact. Looking back, it seems that almost all Eisenhower really cared about was protecting the international position of the United States from diminution by Republican isolationists. Everything else was expendable.

Congress responded sluggishly and in its customary piecemeal fashion. It was right around John Kennedy’s first year in office that liberals rediscovered that old roadblock in Congress, a “deadlock of democracy,” as one of them put it. It was Congress that had thwarted the second New Deal after 1937, the packing of the Supreme Court, and Harry Truman’s domestic program; it was Congress that had stalled civil rights and buried Medicare; it was Congress that had sponsored the Bricker Amendment to limit the president’s power to make treaties. Are memories so short that we do not recall these dear, departed days when Congress was the graveyard of the forward-looking proposals of liberal presidents? Then, Congress was a creaky eighteenth-century machine unsuited to the modern age, and Congress-bashers were liberal Democrats.

To be sure, Congress had a few defenders, mostly Republicans and Dixiecrats, who found in its musty cloakrooms and windy debates a citadel (as one of them said) of old-time legislative virtues, where the historic functions of oversight and scrutiny were performed, where the run-away proposals of the presidency could be subjected to the sober second thoughts of the people’s own elected representatives, and so on.
Why rehash all this? In part, it is to try to make the perfectly obvious point that Congress-bashing then was what people did when they controlled the presidency but didn’t control Congress. And that, in part, is what Congress-bashing is about now. Today, Republicans and conservatives are doing most (although not all) of the complaining. It is worth a small bet that a fair number of editorial pages claimed that the separation of powers made a lot of sense during the Kennedy-Johnson years—but no longer say the same today. On the other side, backers of FDR’s scheme to pack the Court have turned into vigorous defenders of the judicial status quo since Earl Warren’s time.

There is nothing wrong with letting the goring of oxen determine what side we take in a political argument. In a civilized country, however, it makes sense to keep political arguments civil, and not to let push come to shove too often. There is something uncivil, in my view, about insisting upon constitutional reforms to cure political ailments. What liberal critics of Congress needed was not constitutional reform. What they needed was the 89th Congress, which, in due course, enacted much of the agenda that the Democratic party had built up over the previous two decades. History didn’t stop with the rise of the presidential branch and the enactment of the second New Deal/New Frontier/Great Society. President Johnson overreached. He concealed from Congress the costs of the Vietnam War. He created a credibility gap.

This, among other things, began to change Congress. The legislative branch no longer was altogether comfortable relying on the massaged numbers and other unreliable information coming over from the presidential branch. They began to create a legislative bureaucracy to cope with this challenge. They beefed up the General Accounting Office and the Congressional Research Service. They created an Office of Technology Assessment and a Congressional Budget Office. They doubled and redoubled their personal staffs and committee staffs.

Sentiments supporting this expansion began, oddly enough, after a landslide election in which the Democratic party swept the presidency and both houses of Congress. So mistrust between the branches in recent history has by no means been entirely a partisan matter. Nevertheless, Richard Nixon’s presidency, conducted entirely in unhappy harness with a Democratic Congress, did not improve relations between the two branches of government. Johnson may have been deceitful, but Nixon,
especially after his reelection in 1972, was positively confrontational.

It was Nixon's policy to disregard comity between the branches. This, and not merely his commission of impeachable offenses, fueled the impeachment effort in Congress. That effort was never wholly partisan. Republicans as well as Democrats voted articles of impeachment that included complaints specifically related to obstruction of the discharge of congressional responsibilities.

It is necessary to understand this recent history of the relations between Congress and the president in order to understand the provenance of the War Powers Act, the Boland Amendment, numerous other instances of congressional micromanagement, the unprecedented involvement of the NSC in the Iran-contra affair, and like manifestations of tension and mistrust between Congress and the president. These tensions are, to a certain degree, now embedded in law and in the routines of responsible public officials; they cannot be made to disappear with a wave of a magic wand. They are, for the most part, regrettable in the consequences they have had for congressional-presidential relations, but they reflect real responses to real problems in these relations. Congressional responses, so far as I can see, have been completely legal, constitutional, and—in the light of historical circumstances—understandable. The best way to turn the relations between the legislative and the presidential branches around would be for the presidential side to take vigorous initiatives to restore comity. As head of the branch far more capable of taking initiatives, and the branch far more responsible for the underlying problem, this effort at restoration is in the first instance up to the President.

**President Bush and the item veto**

In this respect, President Bush is doing a decent job, giving evidence of reaching out constructively. It is not my impression that the Bush administration has done a lot of Congress-bashing. After all, what Bush needs isn't a weakened Congress so much as a Republican Congress. Over the long run (though probably not in time to do Bush much good) Republicans are bound to regret despairing of the latter and therefore seeking the former. We have seen enough turns of the wheel over the last half-century to be reasonably confident that sooner or later Republicans will start to do better in congressional elections. The presidential item veto, the Administration's main Congress-bashing proposal, won't help Repub-
licans in Congress deal with a Democratic president when the time comes, as sooner or later it will, for a Democrat to be elected president.

The item veto would effectively take congressional politics out of the legislative process, and would weaken Congress a lot. It would encourage members of Congress, majority and minority alike, to be irresponsible and to stick the president with embarrassing public choices. It would reduce the incentives for members to acquire knowledge about public policy or indeed to serve.

By allocating legislative responsibilities to Congress, the Constitution as originally (and currently) designed forces representatives of diverse interests to cooperate. Because what Congress does as a collectivity matters, legislative work elicits the committed participation of members. The item veto would greatly trivialize the work product of Congress by requiring the president's acquiescence on each detail of legislation. Members would lose their independent capacity to craft legislation. Their individual views and knowledge would dwindle in importance; only the marshalling of a herd capable of overturning a veto would matter in Congress.

The item veto is, in short, a truly radical idea. It is also almost certainly unconstitutional. To espouse it requires a readiness to give up entirely on the separation of powers and on the constitutional design of the American government. There are plenty of people, some of them well-meaning, who are ready to do that. I am not, nor should people who identify themselves as conservatives or liberals or anywhere in the political mainstream.

The separation of powers is actually a good idea. It gives a necessary weight to the great heterogeneity of our nation—by far the largest and most heterogeneous nation unequivocally to have succeeded at democratic self-government in world history. It would take a medium-sized book to make all the qualifications and all the connections that would do justice to this argument. The conclusion is worth restating anyway: the item veto is a root-and-branch attack on the separation of powers; it is a very radical and a very bad idea.

**Term limitations**

Less serious in its impact, but still destructive, is the proposal to limit the terms of members of Congress. This proposal relies heavily for its appeal upon ignorance in the population at large about what members of Congress actually do. For in order to take seri-
ously the idea of limiting congressional terms, one must believe that the job of a representative in Congress is relatively simple, and quickly and easily mastered. It is not.

The job of a member of Congress is varied and complex. It includes: (1) Managing a small group of offices that attempt on request to assist distressed constituents, state and local governments, and enterprises in the home district that may have business with the federal government. This ombudsman function gives members an opportunity to monitor the performance of the government in its dealings with citizens and can serve to identify areas of general need. (2) Serving on committees that oversee executive-branch activity on a broad spectrum of subjects (such as immigration, copyright protection, telecommunications, or health policy) and that undertake to frame issues of national scope for legislative action. This entails mastering complicated subject matter; working with staff members, expert outsiders, and colleagues to build coalitions; understanding justifications; and answering objections. (3) Participating in general legislative work. Members have to vote on everything, not merely on the work of their own committees. They have to inform themselves of the merits of bills, and stand ready to cooperate with colleagues whose support they will need to advance their own proposals. (4) Keeping track of their own political business. This means watching over and occasionally participating in the politics of their own states and localities, and mending fences with interest groups, friends and neighbors, backers, political rivals, and allies. (5) Educating all the varied people with whom they come in contact about issues that are high on the agenda and about reasonable expectations of performance. This includes the performance of the government, the Congress, and the member.

Plenty of members never try to master the job, or try and fail, and these members would be expendable. The objection might still be raised that constituents, not an excess of constitutional limitations, ought to decide who represents whom in Congress. But that aside, what about the rather substantial minority of members who learn their jobs, do their homework, strive to make an impact on public policy, and—through long experience and application to work—actually make a difference? Can we, or should we, dispense with them as well?

It is a delusion to think that good public servants are a dime a dozen in each congressional district, and that only the good ones would queue up to take their twelve-year fling at congressional
office. But suppose they did. In case they acquired expertise, what would they do next? Make money, I suppose. Just about the time that their constituents and the American people at large could begin to expect a payoff because of the knowledge and experience that these able members had acquired at our expense, off they would go to some Washington law firm.

And what about their usefulness in the meantime? It would be limited, I'm afraid, by the greater expertise and better command of the territory by lobbyists, congressional staff, and downtown bureaucrats—career people one and all. So this is, once again, a proposal merely to weaken the fabric of Congress in the political system at large, and thereby to limit the effectiveness of the one set of actors most accessible to ordinary citizens.

The standard objection to this last statement is that members of Congress aren't all that accessible. Well, neither is Ralph Nader, who has long overstayed the dozen years that contemporary Congress-bashers wish to allocate to members. Neither is the author of Wall Street Journal editorials in praise of limitations. And it must be said that a very large number of members take their representational and ombudsman duties very seriously indeed. This includes holders of safe seats, some of whom fear primary-election opposition, some of whom are simply conscientious. A great many of them do pay attention—close attention—to their constituents. That is one of the reasons—maybe the most important reason—that so many of them are reelected. Much Congress-bashing these days actually complains about high reelection rates, as though a large population of ill-served constituents would be preferable.

**Congressional salaries**

While we have Ralph Nader on our minds, it is certainly appropriate to pay our disrespects to his completely off-the-wall effort, temporarily successful, at the head of a crazed phalanx of self-righteous disk jockeys and radio talk-show hosts, to deprive members of Congress of a salary increase. The issue of congressional salaries is a straightforward one. Many members, being well-to-do, don't need one. But some do. The expenses of maintaining two places of residence—in Washington and at home—make membership in Congress nearly unique and singularly expensive among upper-middle-class American jobs. Here is the point once more: it is a job, requiring skill and dedication to be done properly.
Moreover, membership in Congress brings responsibilities. National policy of the scope and scale now encompassed by acts of the federal government requires responsible, dedicated legislators. People with far less serious responsibilities in the private sector are ordinarily paid considerably better than members of Congress. Think, for example, how far down the organizational chart at General Motors or at CBS or at some other large corporation one would have to go before reaching executives making what members of Congress do, and compare their responsibilities with those of Congress and its members. Actually, most corporations won't say what their compensation packages are like. But at a major auto company, people who make around $100,000 a year are no higher than upper middle management, and certainly don't have responsibilities remotely comparable to those of members of Congress.

There is a case for decent congressional salaries to be made on at least two grounds: one is the rough equity or opportunity-cost ground that we ought not financially to penalize people who serve, and the second is the ground of need for those members who have the expense of families or college educations to think of, and who have no extraordinary private means. The long-run national disadvantage of failing to recognize the justice of these claims is of course a Congress deprived of people for whom these claims are exigent, normal middle-class people with family responsibilities and without money of their own. These are not the sorts of people a sane electorate should wish to prevent from serving.

Members of Congress, knowing very well of the irrational hostilities that the proposal of a congressional pay raise can stir up, have taken the unfortunate precaution of holding hostage the salaries of federal judges, who are now ludicrously underpaid by the admittedly opulent standards of the legal profession, and senior civil servants. An unhealthy impasse has been created owing, at bottom, to Congress-bashing of the most unattractive kind, which exploits the ignorance of ordinary citizens of the dimensions of the members' working lives, and incites citizens to a mindless social envy, in which it is assumed that paying a decent professional salary to professional officeholders is automatically some sort of rip-off.

Members of Congress now make about $98,000. The bottom salary for major-league baseball players is $100,000. Some law firms in New York start new graduates of good law schools at
$90,000 or more. How can we argue that members of Congress and others at the top of the federal government should not be paid at least a modest premium above these beginners' wages? There is, evidently, no talking sense to the American people on this subject.

I believe we can dismiss out of hand the charge that large numbers of members individually, or Congress collectively, live in a world all their own, divorced from realities of everyday life. The sophomores who have written attacks of this sort in recent years in the Atlantic, Newsweek, and elsewhere simply don't know what they are talking about. They abuse their access to large audiences by neglecting to explain the real conditions that govern the lives of members, conditions that provide ample doses of everyday life.

No doubt scandals involving various members have in recent times made Congress as an institution vulnerable to criticism. But much of this criticism is irresponsible and irrelevant. Suppose we were to discover instances of cupidity, unusual sexual activity, and abuses of power among the rather sizable staff of an important daily newspaper? Or a symphony orchestra? Or, God forbid, a university? I suppose that would shake our confidence in at least part of the collective output, but one would hope for relevant discriminations. One might distrust the ticket office, perhaps, but not the symphony's performance of Mozart; the stock tips, perhaps, but not the Washington page; the basketball program, but not the classics department. I do not think that the existence of scandal excuses us from attempting to draw sensible conclusions about institutions and their performance.

This sort of balanced and discriminating analysis isn't what proposals for item vetoes, limitations on terms of service, or depressed rates of pay are all about. They are about the ancient but now slightly shopworn American custom of Congress-bashing.