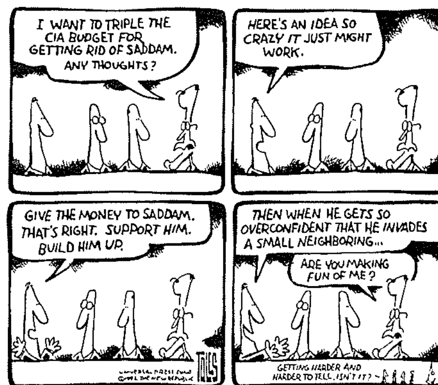
U.S. News & World Report (Oct. 26, 1992), in a typical media account, declared that the Bush administration "continued to provide billions of dollars in loans to Saddam Hussein after [Iraq's] war with Iran ended in 1988. Despite evidence that Iraqi agents were stealing some of the American loan money and using it to buy and build biological, chemical, and nuclear weapons, the Bush administration *increased* the amount of the loans." Then, in August 1990, Iraq invaded Kuwait.

One problem with this account is that the U.S. government never loaned Iraq any money. What really happened, according to Juster, is that in 1989, in the belief "that the evolution of normal relations with Iraq was in America's interest," the Bush administration decided to keep making Commodity Credit Corporation (CCC) credit guarantees available for export sales of farm products to Iraq (as the United States had done during the 1980–88 Iran-Iraq war). The CCC credit guarantees were not loans but a form of insurance that greased the wheels of commerce. They were issued to U.S. exporters selling wheat, rice, or other farm products to Iraq. In essence, the guarantees allowed U.S. banks to pay the exporters for the farm products and then extend credit to Iraq for the purchases, with Washington agreeing to pay the banks if Iraq defaulted.

The decision to make the credit guarantees available may have been unwise, Juster observes, but a lack of wisdom is not the same as criminal wrongdoing. The guarantees, he acknowledges, did free Iraqi funds that could have been used for arms purchases. However, because of the three-year payment schedule, that



Pre-Gulf War efforts to improve relations with Iraq later seemed incredible—even criminal—to some.

happened only in the early years, during the Iran-Iraq war. Then Iraq had to begin repaying American banks. In fact, during fiscal 1990 (up until the invasion of Kuwait), Iraq paid out $455 million *more* in hard currency under the CCC program than it received in new credit. Iraq met all its scheduled payments until sanctions were imposed after the invasion of Kuwait. Iraq then owed about $1.9 billion under the CCC program—and it still owes that amount to the U.S. government or U.S. banks. All but $392 million of the total represents loans piled up before George Bush assumed the presidency.

The pre–Gulf War policy toward Iraq could have been the subject of a serious debate, Juster notes. Unfortunately, he says, the effort by the news media and others "to criminalize foreign policy differences" prevented such a debate from taking place.

ECONOMICS, LABOR & BUSINESS

The Blessings Of Bankruptcy

"The Freedom to Fail" by Jonathan Foreman, in *Audacity* (Winter 1994), 60 Fifth Ave., New York, N.Y. 10011.

Since colonial days, the clash of creditors and debtors has left many marks on American history, particularly in hard times. Until this century, periodic battles over bankruptcy legislation were waged with great passion. They pitted Jeffersonians against Federalists, farmers against merchants, and southern and western interests against the Northeast. But out of the conflicts has come something distinctly American, argues Foreman, a New York lawyer. Bankruptcy laws in other nations usually have been designed only to protect creditors, he says, but in the United States

such laws have often shielded debtors, too.

The harsh bankruptcy law of 18th-century England permitted creditors not only to seize a debtor's assets but to have him put in prison. In colonial America, most loans were unsecured, which made it hard to proceed against a debtor's property. Imprisonment was thus the creditor's ultimate weapon—though it was rarely used.

Armed uprisings against courts and creditors in the troubled 1780s, including Shays's Rebellion in 1786, led to the bankruptcy and contracts clauses of the Constitution, which give Congress sole power to enact bankruptcy laws. That power lay dormant until the panics of 1792 and '97, brought on by waves of speculation. Some prominent Americans were among the debtors. Robert Morris, the financier of the Revolution, went to jail in Philadelphia for three years. In 1800, Congress enacted a bankruptcy law allowing foreclosure but not imprisonment. Backed by Federalists, along with urban and commercial interests, the measure was opposed by southerners and farmers. "Is commerce so much the basis of the existence of the United States as to call for a bankrupt law?" asked Thomas Jefferson. He and his followers won the law's repeal in 1803.

New bankruptcy laws were enacted in 1841 and 1867. Each was subsequently repealed. The economic upheavals of the 1890s revived interest in such laws. Despite the opposition of farmers, who strongly objected to letting creditors foreclose against debtors without their consent, Congress passed the Bankruptcy Act of 1898. It allowed both voluntary and involuntary bankruptcies, but barred creditors from forcing farmers into involuntary bankruptcy.

Mugged by Reality

Renowned liberal George McGovern, a former senator from South Dakota and the 1972 Democratic presidential nominee, bought the Stratford Inn, in Connecticut, in 1988. During the next few years (before he finally gave up), he writes in *Inc.* (Dec. 1993), he learned a lot about business that he wishes he had known before.

I learned first of all that over the past 20 years America has become the most litigious society in the world. . . . As the owner of the Stratford Inn, I was on the receiving end of a couple of lawsuits. . . . In one case, a man left our lounge late one night and headed for his car, which was parked in our parking lot. He got into a fight along the way, and later sued the hotel for not providing more security in the parking area.

On another occasion, a person leaving our restaurant and lounge lost his footing and fell, allegedly suffering a costly injury. He promptly sued us for damages. Both of the suits were subsequently dismissed, but not without a first-rate legal defense that did not come cheaply. . . .

The second lesson I learned by owning the Stratford Inn is that legislators and government regulators must more carefully consider the economic and management burdens we have been imposing on U.S. business. As an innkeeper, I wanted excellent safeguards against a fire. But I was startled to be told that our two-story structure, which had large sliding doors opening from every guest room to all-concrete decks, required us to meet fire regulations more appropriate to the Waldorf-Astoria. . . .

I'm for protecting the health and well-being of both workers and consumers. I'm for a clean environment and economic justice. But I'm convinced we can pursue those worthy goals and still cut down vastly on the incredible paperwork, the complicated tax forms, the number of minute regulations, and the seemingly endless reporting requirements that afflict American business. Many businesses, especially small independents such as the Stratford Inn, simply can't pass costs on to their customers and remain competitive or profitable.

That law, modified many times, survived until the 1970s. The enormous Penn Central bankruptcy—which involved liabilities of $3.3 billion and took a decade to sort out—brought home the fact that the bankruptcy law was not designed for an age of big business. The case saw, among other things, "the absurd spectacle of a single [court-appointed] lawyer attempting to run a huge company."

In 1978, Congress adopted a new Bankruptcy Code. Instead of just turning bankrupt operations over to outside trustees, it gives managers who want to remain in charge the benefit of the doubt. It has critics on both Left and Right. The former argue, ironically, that the law is too permissive, allowing executives to remain in control of companies they have run into the ground. Some conservatives would like to see bankrupt firms quickly liquidated so that their assets can be efficiently redistributed by the market. Foreman thinks the new law has got it about right. Why lose "the synergy of a working business" in a liquidation? Abuses, he insists, are rare. Thanks to the code, he notes, the Federated chain of department stores, Continental Airlines, and Macy's are all still in business, with employees still on the job.

How CEOs Got Theirs

"CEO Pay: Why Such a Contentious Issue?" by Margaret M. Blair, in *Brookings Review* (Winter 1994), 1775 Mass. Ave. N.W., Washington, D.C. 20036.

Since 1987, according to annual *Business Week* surveys of about 250 companies, there have been 277 cases in which a corporate executive made more than $5 million in a given year, and 77 in which an executive made more than $10 million. For 13 lucky executives, total compensation in 1992 topped $20 million. Three took home more than $60 million. Popular resentment is such that last year Congress provided tax penalties under certain circumstances for firms that pay executives more than $1 million. The multimillion-dollar salaries of ballplayers, entertainers, and TV anchorpeople do not seem to diminish their popularity much. Why, then, do many Americans get upset about CEOs' high pay?

The answer, says Blair, a researcher at the Brookings Institution, lies in the fact that the same economic forces that pushed executive pay to astronomical heights during the 1980s often were simultaneously making the jobs of many ordinary Americans less secure. Indeed, many executives earned their big rewards by closing down factories and offices and slicing payrolls.

Before the mid-'80s, Blair notes, extremely high pay for executives was rare. During the 30 fat years after World War II, U.S. corporations, especially in manufacturing, generated enormous surpluses, allowing most large firms to satisfy investors, workers, and managers. Salaries of executives generally varied with the size of the company, while bonuses depended on how fast it was growing.

By the early 1980s, returns to capital, already on a downward trend, reached a postwar low, while real interest rates soared. Stock prices languished, encouraging corporate raiders and hostile takeovers. They also encouraged a movement to tie executive compensation more closely to the returns achieved for stockholders. Stock options, which could yield enormous payoffs if stock prices rose, soon became a big part of executive pay packages.

Improved stock performance was often achieved, Blair writes, through "corporate restructuring that resulted in layoffs, cutbacks, and tremendous pressures on rank-and-file workers and mid-level managers." This began in smaller firms during the early 1980s, and is still working its way through the economy, with major layoffs and cutbacks having taken place even at such giants as IBM, General Motors, and Sears.

Of course, many of the highest-paid executives in the past few years have been at growing firms such as Hospital Corporation of America, Toys 'R Us, and Walt Disney. Nevertheless, says Blair, "there are plenty of companies like Martin Marietta, General Dynamics, General Electric, RJR Nabisco, Time Warner, ITT, and Unisys, all of whose CEOs made the list of the 15 highest paid executives in years when their companies were undergoing significant downsizing." And that has made the CEOs' jackpot hard for many to stomach.