

reauracies are initially established for very basic purposes, but over time will almost invariably develop into self-aggrandizing and self-indulgent institutions. Without the competitive discipline of the marketplace, and *with* the coercive power of the government, bureaucracies will eventually exceed their bounds and consume everything in their paths until the economy collapses or the bureaucracy is abolished.

THERE'S NOTHING new in that. Edward Gibbon surveyed the wreckage of the Roman Empire, with its bloated welfare state, its bulimic bureaucracies, and its rapacious military class, and observed that "no State, Without being soon exhausted, can maintain above the hundredth part of its members in arms and idleness." The same year that Gibbon published his *Decline and Fall of the Roman Empire* in England, English subjects in Philadelphia declared their sovereign a tyrant. One of the indictments of George III in the Declaration of Independence was that "He has erected a multitude of new offices, and sent hither swarms of officers

to harass our people, and eat out their substance."

The 20th Century's revival of big government clearly is entering a familiar terminal stage: when the bureaucracies not only consume a vast share of the society's productivity, but become abusive of the population and ultimately obstructive of the very ends they were originally designed to serve. The ancient civilizations collapsed at this stage; the later civilizations have often recovered through a sudden, radical downsizing. In 1776, Americans kicked the British bureaucracy out. In 1846, the British Parliament in a single day repealed thousands of the mercantile restrictions erected by the same bureaucracy in its own country.

CALIFORNIA CONSERVATIVES who are disheartened by the many disappointments in Sacramento this year can look at these forces with great confidence. As Abraham Lincoln told the Illinois Republican Convention in 1858, "The result is not doubtful. We shall not fail — if we stand firm, we shall not fail. Wise counsels may accelerate or mistakes delay it, but sooner or later the victory is sure to come." **CPR**

No-Fault Auto Insurance, Contingency Fee Limits

Alliance Initiatives Threaten Lawyer Paychecks, Not Conservative Principles

Thomas Proulx

IN "PURE NO-FAULT AND WAGE AND PRICE CONTROLS," published in *CPR's* Summer 1995 issue, Shawn Steel accuses the Alliance to Revitalize California of promoting socialism by pushing two tort reform initiatives — one to establish a no-fault auto insurance system and another to limit lawyers' contingency fees in cases where early settlements are offered.

Calling it more "Marxist...than conservative," Steel has this to say about no-fault: "No-fault,' of course, means just that: No one is at fault. Everyone is a victim." He goes on to warn: "This is precisely the concern Bill Bennett raises regarding America's crisis of responsi-

bility and the decline of our culture." Yikes! Who would have ever thought that revamping the auto insurance system that has spawned those "Hit me, I need the money" bumper stickers would further debase our culture?

THE PROBLEM with Steel's argument is that it's only name-deep. "No-fault" does *not* mean just that. What it is, fundamentally, is a proposal to replace our existing *third-party* auto insurance system, in which you buy insurance to cover others, with a *first-party* system, in which you would buy insurance to cover yourself. It is not, as Steel implies, a proposal to let those who cause accidents avoid financial responsibility for the injuries

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they cause others. They are not responsible today; their insurance companies are. Indeed, the law mandating auto insurance, which Steel himself says should be strengthened, effectively requires drivers to insulate themselves from personal responsibility for the harm they cause.

GIVEN THAT even good conservatives like Steel believe that we should rely on insurance, not the responsible driver, to pay the losses suffered by accident victims, the question we conservatives ought to ask ourselves is whether a first-party insurance arrangement, such as the Alliance proposes, fosters more personal responsibility than the present third-party system. Without a doubt, it does. It makes each driver responsible for insuring himself and his passengers. The insurance benefits you get are the benefits you bought.

Today, the benefits you get are the benefits the guy who hit you bought. If he bought nothing, you get nothing — no matter how much liability insurance you bought. (Of course, you would get something if you had *first-party* uninsured motorist coverage.) Conversely, if he bought \$1 million in liability coverage and you broke the law and went uninsured, no problem; he's got you covered. This is the system Steel thinks we must defend to keep America from sliding further into its "crisis of responsibility."

Steel's argument against the Alliance's proposed limitations on lawyers' contingency fees is equally superfi-

cial. Sure, prices ought to be set by free market forces and not government controls. But in the narrow area our initiative addresses — attorney contingency fees charged against damages that a defendant readily offers to pay — the choice is between current lawyer price-fixing and *some* government controls.

Today, lawyers typically charge 33 percent even in cases that settle after the lawyer has done nothing more than write a letter to an insurance company. Personal injury victims, who are hardly in a position to size up the strength of their own cases, pay the standard fee without attempting to negotiate it down because they know it's, well, standard. Our initiative would place a cap of 15 percent on the fees charged in these easy-settling, slam-dunk cases, and, by the way, require lawyers to tell their clients that they can negotiate a fee lower than the 15 percent cap.

STEEL IS dead wrong in arguing that conservatives who support these measures have been tempted by the "temporary fun" of lawyer-bashing to cast aside their principles. Leading conservatives such as Steve Forbes, Ron Unz, Arthur Laffer, and John Harrington support our effort because they think our society wastes far too much of its productive resources on lawyers and lawsuits. As a trial lawyer, Steel certainly has every reason to feel threatened by the initiatives. But what's threatened is his paycheck, not his conservative principles. CPR