

Police Restraint in Riots

Less Violence Linked to Less Force, But Looting Victim Wants Protection

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Perhaps no aspect of the recent wave of riots has done as much to enrage and confuse the public as the pictures of looters staggering under loads of booty past policemen.

These scenes have brought complaints from Congressmen, merchants, housewives, editorial writers and others that big-city police forces have gone soft on criminals and Negroes. Indeed, officials in many of the major cities that experienced rioting following the slaying of the Rev. Dr. Martin Luther King Jr. did instruct their policemen to use force only as a last resort.

This was a change of strategy from the sometimes trigger-happy responses that turned Detroit, Newark and other communities into battlegrounds last summer. In general it probably kept personal violence—but not necessarily burning and looting—at a relatively low level.

Where to Draw Line?

The implications of this decision to encourage restraint in handling urban riots is raising fundamental legal and moral questions throughout the land.

Where, for instance, should the Government draw the line between using force to apprehend looters and protect the property of those being robbed?

What recourse, if any, does an individual have if he is beaten or robbed as an outgrowth of this restraint?

The policy of restraint was recommended by the President's National Advisory Commission on Civil Disorders. It was also urged on the nation's big-city police officials in a series of riot control seminars conducted last winter by the Justice Department.

In calling for less gunplay by the police, the commission cited two considerations — one practical and the other moral — that have become a center of controversy.

The practical argument was that if the police used their guns to stop looting they would

exacerbate the riot.

"The use of excessive force—even the inappropriate display of weapons—may be inflammatory and lead to even worse disorder," the commission said.

The moral question was whether looting or vandalism were serious enough to justify the use of deadly force.

"Are bullets the correct response to offenses of this sort?" the commission asked.

The desire to spare human life, rather than to protect property at the expense of it, apparently figured in the decision to restrain the police violence. Officials have said so privately, and, as one officer at the riot scene here put it, "I'm not going to shoot a kid over a pair of shoes."

But probably the main reason for the decision by the police not to use their guns to halt looting was that it might not have done any good and might have made things much worse.

Deadly Force Authorized

Under normal circumstances, policemen are authorized to use deadly force to stop perpetrators of major crimes and nondeadly force to hold those in less serious crimes. Also, if an arrestee's resistance endangers an officer's life, the officer can legally use his gun.

But in most riot situations the police might not see the worst offenders, the ones who smash windows and set fires. Often by the time the police arrive, all they find is heavily laden looters.

The looters generally are too numerous to arrest and too inconsequential to shoot. So the best the police can do is to force those within reach to leave their burdens and move on.

On one occasion here the police came upon looters in the act of window-smashing and burning but withdrew rather

than use their guns. There were not enough policemen to control the situation without gunplay, so the Public Safety Commissioner, Patrick V. Murphy, pulled his men out to avoid shooting.

Regardless of whether the police restraint is motivated by pragmatism or compassion, it has provoked the charge that lawless elements have put pressure on the Government into hedging on its traditional responsibility to protect citizen's property.

It may be that more property would have been destroyed if the public had used their guns (the insured damage was \$85-million in Detroit and \$15-million in Newark, compared with \$13.3-million last week in Washington), but that is impossible to prove.

The Bill Grows

Thus, it is probably inevitable that the Government, having chosen not to use all the force that the law allows to protect property, will be increasingly called upon in the future to help pay for the property damage that flows from this decision.

So far, the insurance industry apparently has not attempted to avoid paying for riot damage by invoking the exemption for "insurrection" losses. However, insurance riot losses have soared from about \$8.5-million in 1964 to \$125-million to \$200-million last summer. The insurance industry would probably need help if it had to continue to pay for the losses.

Bills have been introduced in Congress to provide Federal subsidies to cover some insurance losses caused by riots. Under a 1965 law the Government pays as much as 40 per cent of the cost if flood insurance premiums, and the same principle could be applied to riots.

Beyond this, riot victims may be able to sue the Government for failing to provide the protection that it theoretically could and should have provided. The law is in a state of great flux in this regard.

English Statute Followed

There has been a trend in state courts and legislatures in recent years to do away with the ancient immunity from suit that states and municipalities otherwise would enjoy. The reason for this is a belief that enlightened government should pay for the damage it causes.

But an opposite trend has developed with regard to the laws

of 14 states—all enacted long before the current wave of Negro riots—that require cities to pay for riot damage that results from their officials' failure to quell disturbances.

The states that still have these laws are Connecticut, Kansas, Kentucky, Maine, Maryland, Massachusetts, Missouri, Montana, New Hampshire, New Jersey, Pennsylvania, Rhode Island, South Carolina and Wisconsin.

These laws have their roots in the English statute of Winchester of 1285, which granted rioted victims compensation on the theory that a person's neighbors had a collective responsibility to maintain order or pay for a failure to do so. But these states have had sec-

ond thoughts as the prospect of large-scale destruction has become imminent. New York suspended its law in 1942 as part of its preparation for World War II. California abolished its law in 1963. Illinois followed in 1965, and Louisiana repealed its law in 1966.

City officials of the other states that have laws of this type are complaining that the cities can be bankrupted by them, and more are expected to be repealed.

Most state and local governments are already pressed for funds, so the Federal Government may eventually have to pay the bill, especially if it continues to support the policy of meeting looting and vandalism with a minimum use of force.