

Act, this probably was further evidence to the Negro that society and the government it reflects was basically discriminatory.⁴⁴ The "resentment, even hatred, of the police, as the symbol of authority,"⁴⁵ is yet another indication of the conclusion that, however inarticulate the violence may have been as an expression of protest, it did have as an objective opposition to society and government. As one commentator put it, the violence was a "protest against forces which reduce individuals to second-class citizens, political, cultural, and psychological nonentities * * *."⁴⁶

Whether this view of society was justified is irrelevant to the issue of whether or not there was a violent opposition to the laws of government or to the structure of society. The existence of an insurrection should not depend on the political acumen of the insurgents nor on the rightness of their cause. The only question should be whether there in fact existed direct violent opposition to government. It is submitted that this question as applied to Watts should be answered in the affirmative and that the exclusion clause, as presently written, should relieve insurers of liability.

At present, insurers do not appear ready to contest their liability for losses from such demonstrations as occurred in Watts.⁴⁷ Nevertheless, in view of the increasing number of insurance claims arising from civil demonstrations, insurers may decide to assert the defense of insurrection. Because of this possibility, solutions to the problem posed by the present form of the exclusion clause should be proposed and examined. Such solutions must presuppose the existence of a fire policy available at reasonable rates. Only when such availability is established should the question be raised whether the policyholder is able to procure protection which clearly covers civil demonstration losses. This approach (treating policy availability at reasonable rates before adequacy of coverage) will be employed below in an examination of the ability of the insurance industry, the states, and, finally, the federal government to implement solutions.

The ability of insurers to effect solutions themselves is limited by state control over the business of insurance. In some areas, states have permitted insurers to act with a degree of independence; here insurers can effect solutions, subject, of course, to state acquiescence. In other areas, however, the state has exercised its control to the fullest;⁴⁸ here insurers are restricted to suggesting solutions. As an example of the former, California insurers have been considering the voluntary formation of an insurance pool or association which would provide protection for some of those experiencing difficulty in securing insurance.⁴⁹ This "pool" approach would, of course, be subject to the same problem which exists absent a pool: the insurers remain the evaluators of insurability.⁵⁰ Thus, while a voluntary pool makes it somewhat easier for certain property owners to procure protection, those who are deemed uninsurable risks by the insurers remain unprotected.⁵¹

An example of an area in which the states have exercised their control to the fullest is fire and casualty rate regulation.⁵² Insurance industry action in lowering rates so as to make policy availability more than illusory must satisfy the various requirements considered in formulating and approving rating structures.⁵³

Any change in the form of the exclusion clause (for example, deletion of insurrection as an excluded peril) would also be subject to strict state control.⁵⁴ While the insurance industry could propose clarification or modification of the exclusion clause, actual changes would depend upon the states.

Turning now to state solutions, the scope of state regulation of insurance is sufficiently comprehensive to enable a state to require insurers operating within

⁴⁴ *Id.* at 4.

⁴⁵ *Id.* at 2.

⁴⁶ *Id.* at 88.

⁴⁷ *J. Am. Ins.*, Nov.-Dec. 1965, p. 5.

⁴⁸ As will be discussed below, rates and policy forms are strictly regulated by the states. See statutes cited note 62 *infra*; cases cited note 54 *infra*.

⁴⁹ State of California, Department of Insurance Press Release, Nov. 22, 1965.

⁵⁰ This is a "problem" only insofar as it is assumed to be desirable that all property owners in civil demonstration areas be protected by insurance. Undeniably, insurers' obligations to their stockholders and policyholders require selection of risks.

⁵¹ The factor motivating consideration of a pool might be the same as motivated the California automobile insurers to form a voluntary pool: if the insurers do not act themselves, the state will impose its plan upon them.

⁵² *E.g.*, N.Y. Ins. Law § 186(2).

⁵³ See statutes cited note 62 *infra*.

⁵⁴ *Union Mut. Life Co. v. Bailey*, 99 Colo. 570, 575, 64 P. 2d 1267, 1269 (1937); *New York Life Ins. Co. v. Hardison*, 199 Mass. 190, 199, 85 N.E. 410, 413 (1908).