

## XIII. FOUNDATIONS OF LAW, LESSON 12: NOTICE AND OPPORTUNITY: PROTECTING THE COMMON LAW OFFICE OF SHERIFF

### A. Historical Origins of the Office of Sheriff

#### §1. Origin of the Office of Sheriff\*

The office of sheriff is one of the oldest offices known to the common law system of jurisprudence. It is an office of great dignity and greater antiquity. Indeed, some legal antiquarians find themselves not contented with antedating the Norman Conquest for the establishment of the genesis of the office of sheriff but profess to find the prototype of the sheriff in the Roman Pro-consul and that of the Earl or Count in the consul. This view is founded upon (alleged and perhaps, apocryphal) Laws of Edward the Confessor, and Lord Coke lent the prestige of his great name, learning, and ability in favor of this view, but this has been pronounced a mere fancy by Mr. Hargreves.

True it is that in England and all of the American States, the office of sheriff is in existence and is one of great utility and greater responsibility on the part of the holder of this dignified and ancient office. Anderson, W. H. (1941). *A Treatise on the Law of Sheriffs, Coroners and Constables with Forms*.

#### §2. Origin of the Name of "Sheriff"\*

The word "sheriff" evolved from the Saxon word "Scyre," signifying shire, meaning county, and the word "Reve," signifying keeper. The pronunciation or enunciation of these two words combined, developed by a quasi-process of evolution into the modern word "sheriff." Anderson, W. H. (1941). *A Treatise on the Law of Sheriffs, Coroners and Constables with Forms*.

*Real Law, Real Simple*

### B. Common Law Duties of the Sheriff

#### §6. Powers and Duties of Sheriff Generally Considered

It hardly needs to be said that the modern office of sheriff carries with it, both in England and in America, all of the common law powers, duties, and responsibilities attendant upon an office of such antiquity and high dignity, except insofar as the same have been legally modified within the constitutional ambit of legislative enactments. It is not only the power but the duty of sheriffs in their various jurisdictions to preserve the peace, enforce the laws, and arrest and commit to jail felons and other infractors of statutory or common law, and to execute all process directed to them and attend upon the trial courts of record, and to preserve peace and quiet, to execute and carry out the mandates, orders, and directions of the courts.

**The sheriff may and is bound ex officio to pursue and take all traitors, murderers, felons, and other misdoers and commit them to jail for safe custody. He is also to defend his**

**country against any of its enemies when they come into the land;** and for this purpose, as well as for keeping the peace or pursuing felons, he may command all the people of his county to attend him; which is called the posse comitatus, or the power of the county; and thus summoned, every person above fifteen years old, and in England under the degree of peer, is bound to attend upon warning under pain of fine and imprisonment. It is also in England a contempt against the King's prerogative to neglect to attend the posse comitatus, or power of the county, upon being thereunto required by the sheriff or justices.

Differently stated, the powers and duties of the sheriff are analogous to those imposed by law upon peace officers of modern municipalities, exercised by the sheriff in a larger territory that the lives of the citizens, their persons, property, health, and morals shall be protected and made safe. In the exercise of executive and administrative functions, in conserving the public peace, in vindicating the law, and in preserving the rights of the government, **the sheriff represents the sovereignty of the State and has no superior in their county.** When a situation arises calling for it, it becomes the sheriff's right, and it is their duty, to determine what the public safety and tranquility demand, and to act accordingly. The sheriff must, of course, act according to law; but if, holding a felony warrant, they should deem it necessary to take custody of a disturber held by a constable under a misdemeanor warrant, and it is their duty to do so, it is the duty of the constable to yield. In such a situation, the justification of the constable lies in the rightful exercise of overruling authority by the sheriff. **Anderson, W. H. (1941). A Treatise on the Law of Sheriffs, Coroners and Constables with Forms.**

**§ 44. The Sheriff Essentially a Common Law Officer** “From the very title and by virtue of occupying the office of sheriff, it carries with it all the common law powers and duties, except as modified by the state constitutions and by statutes. **The sheriff is the chief law enforcement officer in the county today, even as he was at common law.** His jurisdiction is coextensive within the county, including all municipalities and townships. Where the State Constitution provides for the election of that officer without prescribing in express conditions the duties which shall attach to the office, it is presumed that the duties are those attaching to the office of common law.” **Anderson, W. H. (1941). A Treatise on the Law of Sheriffs, Coroners and Constables with Forms.**

### E. Legislative Authority and the Office of Sheriff

“When the office of sheriff is a constitutional office in any state, recognized and designated eo nomine as a part of the machinery of the state government, the sheriff ex vi termini must possess in that state all the substantial powers appertaining to the office by common law. **It is competent for the state legislature to impose upon him new duties growing out of public policy or convenience, but it cannot strip him of his time-honored and common law functions, and devolve them upon the incumbents of other offices created by legislative authority.**” **Murfree, A Treatise on the Law of Sheriffs and Other Ministerial Offices, § 41 (1884).**

### F. Protecting the Office of Sheriff as the Last Line of Defense

1. **Legislative Interference:** Some legislatures may attempt to remove or restrict the powers of the sheriff's office through legislation, which can undermine the traditional authority and autonomy of the sheriff. Such attempts may infringe upon the separation of powers principle and the sheriff's common law duties, potentially leading to legal challenges and conflicts between branches of government.
2. **Salary Control Attempts:** Government entities may try to control the sheriff's office by manipulating or controlling the sheriff's salary. This could involve withholding or reducing funding for the sheriff's department, thereby limiting its ability to operate effectively and independently. Salary control attempts can undermine the sheriff's authority and independence, affecting their ability to carry out their duties in accordance with the law and the needs of the community.
3. **Budgetary Constraints:** By limiting funding for sheriffs' departments, the government can cripple their ability to enforce the law effectively, ensuring that they remain beholden to the state's agenda.
4. **Political Interference:** Government officials may exert pressure on sheriffs, forcing them to align with corrupt practices or risk facing political repercussions. This manipulation ensures that sheriffs serve the interests of the government, rather than the people.
5. **Legal Challenges:** Intentionally instigating legal challenges against sheriffs, whether through frivolous lawsuits or unwarranted accusations, can tarnish their reputation and undermine their authority, allowing the government to further control their actions.
6. **Public Perception:** By fostering negative public perception of sheriffs and law enforcement agencies, the government can erode public trust, making it easier to manipulate public opinion and maintain control over the population.
7. **Technology Challenges:** Governments may deliberately withhold or restrict access to advanced technology from sheriffs' departments, hindering their ability to combat crime effectively and maintain order within their jurisdictions.
8. **Staffing Shortages:** Deliberately creating staffing shortages within sheriffs' departments weakens their ability to enforce the law, ensuring that they remain reliant on government support and unable to challenge its authority.
9. **Legislative Interference:** Through targeted legislation, the government can strip sheriffs of their powers and autonomy, consolidating control over law enforcement and furthering their own agenda without opposition.
10. **Salary Control Attempts:** Manipulating sheriffs' salaries allows the government to exert financial pressure, ensuring their compliance with government directives and preventing them from acting independently.
11. **Mandatory Training Changes:** Requiring sheriffs to undergo training at police academies, controlled by the government, ensures that they are indoctrinated with a biased understanding of their role, limiting their ability to challenge government authority."