

A Plan for the Restoration of Constitutional County Sheriffs

The more laws, the less justice – M. Tullius Cicero

Nothing is more destructive of respect for the government and the law of the land than passing laws which cannot be enforced. – Albert Einstein

“Don't push me, bureaucrat!”-- G.W. McClintock (John Wayne)

Introduction

A key to the restoration of the republic is the reconstituting of the proper role of the local county sheriff. This is a top priority and the first step towards the restoration of the republic.

This must be based on knowledgeable citizens understanding the proper relationship they have with all local government bodies, councils, commissions and legislatures. This means that the local sheriff must understand his role and relationship to those who elected him as well as the importance of his position as ultimate protector, under law, of those citizens' rights.

Today most county sheriffs have little better understanding of the organizing principles of the republic, the state and federal constitutions or their own county charters than does the average citizen. This must change for us to have any hope in restoring the republic. The position of county sheriff is one of the most important offices in the land as its proper functioning insures the protection and prospering of the citizens he represents. It is in the roots that the greenest grass grows.

Stated another way, the foundation of the republic determines the strength of the superstructure on which it rests. Without that solid foundation, the whole building will collapse.

A Summary History of the Office of Sheriff

The office of county sheriff is an institution of long standing. The word sheriff is derived from the Old English, or Anglo-Saxon, language as “*shire reeve*,” the king’s protector. He was usually responsible for collection of taxes on behalf of the king. Most Americans are familiar with the story of Robin Hood and the Sheriff of Nottingham legend. In that case, an authoritarian king allowed a sheriff to take advantage of the people and to serve his own interests. Conversely, an honorable sheriff would work on behalf of the people and their enjoyment and use of the king's land.

In America, the concept of the sheriff as established in English law changed as a result of the recognition that the people were sovereign and not the king. Here, the sheriff is still the protector of the land and the people but the citizens are sovereign. The sheriff is responsible for protecting the rights of the people in their use of the land but the entity he is protecting is the county and not the king’s shire. He no longer collects the taxes but is established instead as the primary “*peace officer*” of his county.

First we must understand the difference between a “*peace officer*” and a “*law enforcement officer*” (LEO). The primary role of the peace officer is that of upholding the constitution and keeping the peace through enforcement of the laws involving property and persons. If you are over 50 you no doubt are familiar with that traditional role.

It is extremely important to understand the difference between a peace officer and a law enforcement officer. The peace officer is tasked first to uphold and defend the constitution and then to keep the peace and maintain order. His role is not enforcement of any specific or particular law unless he is ordered by a court of jurisdiction to execute a warrant or order. In other words, in lieu of a specific warrant or court order, the sheriff, as peace officer, is the judge and the jury in determining how any law will be enforced in any given instant circumstance. That is the specific and unique role of the sheriff.

That unique role provides for a vital protection of the citizen's rights in his county. If a sheriff determines, on his own, that it is more important to keep the peace and maintain order than to enforce a specific law, then that is his decision alone to make. That also explains why the position is elected and not appointed or employed.

The Evolution of the Law Enforcement Officer (LEO) and the Meaning of Law

If one were to review most state constitutions, codes or statutes he would find that almost all the original references were to sheriffs and police as "*peace officers*" and not as "*law enforcement officers*." I know of no original establishment of local police powers where the term "*law enforcement officer*" was ever used. The term, and the concept, simply didn't exist.

The role of a law enforcement officer is, instead, a bureaucratic position created to ensure the enforcement of statutory infractions along with criminal statutes. "*Infractional*" law enforcement leaves little room for thinking on the officer's part. There is much less emphasis on keeping the peace and maintaining order and consequently, much less reliance or concern about the maintenance of constitutional rights. That system is more concerned with compliance, revenue, incarceration and punishment than justice or rights.

The primary reason for such change is because of the virtual explosion of laws issued not only by federal and state legislatures but also by unconstitutional federal agencies as well. Most of these laws have been initiated through the creation of "*statutory and infractional offenses*" that are not actually crimes against persons or property. Skeptics are encouraged to read "*Three Felonies a Day*" by Harry Silvergate to verify that last statement. According to Silvergate, the average citizen is likely to commit three "crimes" every day just by going about their daily lives without even knowing it.

As a consequence the United States now has the highest imprisonment rate of any country on the planet at a rate of 750:100,00 of population. That is more than 2.25 million persons incarcerated in local jails and in state and federal prisons. There are another 5 million currently under state and federal parole supervision or probationary control! The vast majority are for violating "*victimless*" crimes as a result of this explosion of statutory laws and regulations. Did you know that the US has a far larger population of convicts and ex-cons than it does military active duty members and living veterans? This, in the "freest nation on earth?" Do you think that's healthy for our country?

These types of statutes are called "*prior restraint*" laws, such as drunk driving and substance abuse. No actual crime was committed but the expectation that a crime could be permitted is the theory of their authority to "*interdict*." Other traffic, property (i.e., zoning), administrative and regulatory infractions have many unintended consequences, including the actual and social costs of imprisonment, with little to recommend them.

These are not truly laws dealing with real crime where identifiable harm, injury or property damage has

actually occurred but instead are “statutory” infractions. Many are subjective or emotionally based and are not “*objective harm*” laws.

In statutory infractions another citizen is not usually the complainant. Instead, it is the entity of the state that is the complaining party. They are laws of “*potential*” harm where no actual harm (and thus, no true crime) was committed at the point of statutory infraction. As a result these statutes accelerate the criminalization of the population for what are actually minor, non-criminal infractions and where no harm has come to another or their property. The War on Drugs is a perfect, but not the only, example. Statutory infractions related to the **hyper-regulatory state** give rise to all kinds of false 'criminality.'

Federal regulatory agency regulations pouring out of Washington fail to address any actual crime that causes harm or property damage. They are only rules against some unidentifiable potential harm that might happen to “the people” – a vague description, to say the least. These *statutory infractions* are most obviously seen in the areas of the environment, food, health, occupation and safety. A perfect example is the federal agency called OSHA – the Occupational Safety and Health Administration whose mission allegedly is to “...*assure safe and healthful working conditions for working men and women by setting and enforcing .standards and by providing training, outreach, education and assistance.*”

As an important aside, this writing has relentlessly and consistently referred to these rogue agencies as illegal and unconstitutional. In its mission statement OSHA explains why: its job is both the “*setting*” and the “*enforcing*” of standards. Under the Constitution those two duties were wisely and deliberately separated so that no branch could be creator, arbiter and enforcer of the law. Under the Constitution the legislative branch makes the laws and the executive branch enforces them. In OSHA those duties were unconstitutionally recombined, with the results that we are observing today.

Statutory infractions growing out of the phony war on drugs exploded following September 11th, 2001 with a resolution of a global war on terror. It makes no sense to make war on a tactic but perfect sense if the goal is total government control of people. The PATRIOT Act and the Intelligence Reform and Terrorism Prevention Act (IRTPA) breezed through the House and the Senate with nary a whisper of dissent.

Signed into law by President Bush in December, 2004, the new laws unleashed all manner of mischief (including the setting up of watch lists for terrorists on domestic and international flights) while ignoring basic human rights guaranteed by the emasculated Constitution. From there it has been downhill for average Joe or Jane citizen's rights: Homeland Security, TSA, enhancements to the FBI, BATFE, the IRS...the list goes on.

LEOs – law enforcement officers, is a category that didn't exist until just a few years ago. It would likely be unnerving to many people, to learn just how many of them are employed by federal agencies such as the Department of the Interior for example. Also unnerving would be knowing the number of US government bureaucrats who are now authorized to carry firearms and use deadly force in carrying out their “duties.” How has this all happened especially when there has been no change in Constitutional authority? One reason: Mission Creep.

Thirty-five federal agencies now have LEOs and approximately 50,000 employees authorized to carry firearms. The number increases year after year. The population of the US has grown ~80 times (from 3.9 million) since the Constitution was signed and ratified. The number of federal crimes has grown

thousands of times along and the number of enforcement officers 1000 times. Do you believe the population has 12 times more criminal behavior rate than in 1789? Neither do I.

With that explosion of statutory law since 9/11 has come this inevitable mushrooming of LEOs along with their expanded jurisdictions. federal funds are now flowing rivers of money into local police and sheriff's departments with the "official" purpose of supplementing their staffing, equipment and training budgets. Often the sums are significant, representing in some cases up to a third of those budgets.

The unofficial purpose, of course, is to control such departments and tie them up with memos of "agreement" and "understandings" that have overt demands and restrictions on their actions that go along with the money. That "free" money is, of course, not free at all. Federal strings are always attached. This has been the primary reason that the traditional understanding of the duties of "police officers" has morphed into "law enforcement officers," mostly without citizens even being aware of it happening.

Part of those funds are being directed into the "militarization" of those local departments to thwart imagined or real "terrorist" threats they might be faced with in the future. In addition, the closer the feds work with local police and sheriff's departments the closer the two come to adopt the same "mind set." This affinity naturally develops between those who are providing the "free" money – buying equipment, providing training, and so forth – and those on the receiving end. The sense of dependency – "don't bite the hand that feeds you" – develops further.

In this environment it is easy to see how the LEO mentality has migrated into local policing agencies and sheriff's offices at the expense of the "peace officer" attitude. Such a change might have been barely acceptable except that it has come with a nearly complete disregard for the issues of jurisdictional responsibilities and citizens' rights. That makes such change totally unacceptable.

One may remember how the Constitution was originally portrayed through movies such as *Tombstone*, *True Grit* and *McLintock!* There was a jurisdictional tension between local sheriffs and federal marshals. That tension wasn't just a cinematic device. It reflected a reality of The Old West that should still exist in the New West as it is a timeless principle, again.

How Did It Happen?.

In the early years of the republic the role of the federal government in law enforcement was very limited. A careful reading of the Constitution will reveal very few instances of federal criminal jurisdiction. Expansion of that role is largely attributed, at least in the beginning, through the efforts of J. Edgar Hoover of the FBI and Harry J. Anslinger of the Federal Bureau of Narcotics (FBN) who were essentially out of work following the end of Prohibition. Looking for additional work to justify their continued existence they successfully found it and ever since then federal LEO positions have exploded in number. There were more than 50 specialized federal law-enforcement agencies created in the 20th Century. The lesson? Mission Creep helps build Bureaus and bureaucracy.

From the beginning the jurisdictional role of US Marshals or Agents was very limited whenever they came into a county. Their role was limited by the nature and structure of the Constitution and the republic it created. If a US Marshal entered an *inhabited, established* county in order to serve a federal warrant he was required to check in with the county sheriff and get permission to execute the warrant.

Unless he was executing a constitutional, lawful and legal federal warrant, a US Marshal *had no authority to execute any other law within that county*. Unless he was deputized by the sheriff, he had no power to execute any other duty. Only if he was operating outside of inhabited established counties did he have any enforcement powers or duties. Inside an organized county, the sheriff was, and is, the supreme law enforcement authority.

The US Marshal had enforcement jurisdiction inside Indian lands and reservations, and in territories before they became states. He also had enforcement duties in any area in a state that was not yet a designated county provided that he had received permission from state officials or was operating under orders from a federal court in coordination with a state court that had proper jurisdiction. So US Marshals were severely limited in their powers.

This led, as could be expected, to confrontations between federal agents and local sheriffs. Often the federal agents chafed under such requirements to submit to the local, but higher, authority. When a federal agent tried to ignore or usurp a sheriff's jurisdiction the sheriff was forced to obtain a federal circuit judge to rein them in. The point we're making is that informed citizens need to make the same distinction today and support their local sheriff as the highest authority in the county.

The cause of this jurisdictional "*tension*" was the authority "*chain*" specifically and deliberately created by the federal and state constitutions. Here's why:

- ⤴ The People were created and endowed with rights regardless of origin.
- ⤴ The People created the entity of the state.
- ⤴ The separate states then created a federal government through the Constitutional Convention as an agent of the States in a subservient role to accomplish a very few specifically enumerated tasks known as "delegated powers." Remember that government entities have no rights, only delegated powers derived ultimately from the People.
- ⤴ Each state then created counties or parishes as political subdivisions which were chartered to allow for the election of officials for each of the various branches and offices in that county, including the office of county sheriff.
- ⤴ Those elected officials then may appoint officers to operate the various branches who then hire employees to carry out their specific enumerated functions and duties.
- ⤴ Those officers and employees are subordinate to the county sheriff when they are operating within the jurisdiction of the county on any issue of constitutional authority. In other words, they are only allowed to execute orders and warrants when approved by the sheriff to do so.

The flow of authority, then, flows from the sovereign citizen *upward* through the States to the federal government and not the other way around. Even when it's an issue of federal jurisdiction, when an employee or official of the federal government enters a county to perform their duties under the law, they must report to the sheriff. *In all cases* the States and the federal government are ultimately subservient to the People.

Thus, it is the responsibility of the county sheriff *to insure that the rights and liberties of citizens are upheld and to protect them from usurpation or abrogation either by the state or the federal government. In other words, it is the sheriff's job to protect the land and the People from any potential "Kings and Queens" (supposedly "public servants") of the state capitol and Washington, D.C.*

With this understanding one can see how this order of authority that flows upward from the people makes perfect sense. The sheriff's position is the closest to the people who elected him which keeps

him sensitive to their needs and rights, and reminds him daily of how tenuous his position is if he strays. None of the other elected officials in a county are responsible for the direct enforcement of the law. County commissioners can create local ordinances. State legislators can create codes or statutes. But only the sheriff is fully charged with the responsibility of enforcing them inside his county. That makes his position truly unique.

It's worth repeating: the sheriff is the **only elected law officer** in the county for a reason. The governor of the state or the president of the United States is **not a law officer but an executive officer**. The same holds true with the US Attorney General or the state's attorney general. They are not charged with the direct enforcement of law but only their *proper execution-procedurally*. The **highest calling and the greatest responsibility for 'law enforcement' lies with the only directly-elected officer charged with that duty: the county sheriff**.

The sheriff is the only elected officer who swears to **support and defend** both the federal and the state constitution as a peace officer. He is performing the first and primary duty: defending and protecting the people living on the land of his jurisdiction in a county.

Remember that the Attorney General of the United States, a state patrol commander or a municipal police chief is not elected, they are appointed. That includes employees of the FBI, the DEA, the IRS, the BATFE, NFS, BLM or any federal agency. They are not elected and therefore are not directly accountable to the people. By definition they must be subservient to the people's elected official where they reside or travel: the county sheriff.

The county sheriff is the highest elected law officer in the county, even when the President or state Governor is in his county. Accordingly, any other federal, state or local police officer or law enforcement officer **must report** to the sheriff for jurisdictional review and approval before they can execute their warrants or orders. The Supreme Court and other courts have confirmed this in their decisions, reflecting the reality that pre-existed the creation of the Constitution. This arrangement is not a fluke, a historical error or misreading. It is deliberate, done by design, that protects the rights of the People.

The role of peace officer (PO) has, as noted earlier, largely morphed or mutated into law enforcement officer (LEO) through the process known as "*mission creep*." Mission creep is a term that first evolved in the military services. Wikipedia explains:

"[Mission creep is a] gradual increase in scope: a tendency of military operations in foreign countries to increase gradually in scope and demand further commitment of personnel and resources as the situation develops."

When applied to the realm of rights and liberties, the Founders understood this process long ago. Thomas Jefferson, in a letter to Edward Carrington in 1788, wrote that "*the natural progress of things is for liberty to yield, and government to gain ground.*"

A Plan to Restore the Constitutional Sheriff to Each County

In order to restore the republic then, it is extremely important to restore the proper role of the various offices to proper order.

The following are the key elements needed for a comprehensive plan to insure the proper operation of a constitutional county sheriff's office:

1. Arrange a citizens' meeting with the county sheriff and his key deputies to discuss and determine the degree of compliance and agreement to this plan. Affirm that all officers have properly filed their oaths of office.
2. Review all relevant agreements with federal agencies including the Drug Enforcement Agency (DEA), the US Forest Service, the Bureau of Land Management and the FBI as well as with other state and local law enforcement agencies. From that review determine the level of Constitutional compliance between the sheriff's office and those agencies.
3. Review the applicable law and jurisdictional issues in order to discover areas of unlawful jurisdictional intrusion or over-reach in practice or enforcement. See "A Treatise on the Law of Sheriffs, Coroners and Constables with Forms," by Walter H. Anderson (see below)
4. Develop and provide specific training and educational materials for the sheriff's office personnel. Develop their understanding of materials as they apply to interacting with county citizens and those agencies.
5. If the sheriff doesn't have an active Posse and Sheriff's Auxiliary, establish one immediately.
6. Develop metrics to measure the completion of the educational training and compliance by the sheriff's office personnel.
7. Establish periodic reviews to insure that new staff members are trained and kept current on Constitutional compliance according to their oaths of office.
8. Develop simple scorecard or dashboard compliance commentary for regular publication in the journal of record for each county.
9. Provide website links to both Sheriff Mack.com, <http://www.sheriffmack.com/> and Oathkeepers, <http://oathkeepers.org/oath/>
10. Provide contact information for sheriffs in Grant and Josephine counties in Oregon, and in San Miguel, Colorado and other counties currently employing the principles of a constitutional sheriff. This will facilitate training and the exchange of information to promote this County Sheriff Project.

It is strongly recommended that this plan be coordinated with a 2 or 3 person or larger citizens' forum in each county to help implement the plan through the sheriff's office. The forum should meet and report on a regular basis with his office.

It is also recommended that this plan be shared with other local elected officials such as county commissioners, city councils and mayors. Their understanding and support will be crucial to the successful implementation and maintenance of the project in each county.

The project should include the following three documents:

"A Treatise on the Law of Sheriffs, Coroners and Constables with Forms," by Walter H. Anderson, (1942, reprinted and published 1984 by James Von Schmidt). It can be accessed in .pdf format at <http://www.bcsbrigade.org/anderson-on-sheriffs.html>

"Unraveling Federal Jurisdiction within a State" by Sheriff Gil Gilbertson of Josephine County, Oregon. It can be accessed at www.defendruralamerica.com

"Proposed Rule Changes by the US Forest Service Law Enforcement," from the Western States Sheriff's Association, available in .pdf format at: <http://www.defendruralamerica.com/files/20110921WSSA.pdf>

The first document is the most comprehensive review of the Law of the Sheriff ever developed and is considered the standard that used to be followed. For some reason (hmm..wonder why?) it has fallen into disuse with the increasing federalization and militarization of all law enforcement in the country.

The other two documents review and reference areas where it is clear that the US Forest Service is attempting to overstep their lawful bounds within the States and the jurisdiction of the county sheriff in land use and law enforcement.

It is recommended that this plan begin its implementation within the mostly rural counties of the western states where there are large holdings of land by the federal government. It is there where the most intrusive and abusive infringements on the sovereign rights and powers of the people and the States, respectively, are routinely taking place by unlawful acts of an agency of the federal government.

It is at the county level where the critical functions of the sheriff as the ultimate elected protector and defender of the people and the land needs to be restored first. As the understanding and development of this plan within those rural counties proceeds, similar issues in more metropolitan counties will become obvious, providing motivation to adopt this plan there as well.

In the beginning there may be resistance to this plan by some county sheriffs. That is to be expected and is simply a reflection that this plan represents a change in the evolved status quo. Most people, by nature, are resistant to such changes even when they are intended for a positive purpose.

In addition, such a plan as this will be resisted (almost guaranteed) by federal “*authorities*” and LEOs in each jurisdiction. Each county and state should begin to prepare for that resistance from the outset. It should be met with patience and firmness along with the necessary state Acts and laws to arrest and punish illegal violations into states’ powers through federal encroachment.

All actions by local and state authorities should always be defensive in nature and should seek negotiation over violence. If violence comes, it must always come first from federal authorities operating outside of their lawful boundaries. In that event one **should publicly and loudly question** why a federal agency would even attempt to initiate such violence.

It must be understood by everyone involved that these changes are a necessary imperative in order to restore the proper role and functioning of all policing agencies to their historic, lawful and Constitutional one. The current trajectory of overreach by many federal (or even some state) agencies is not acceptable in our republic.

This plan, and similar ones developed to deal with similar issues, represents a reasonable due process approach to solve the issues involved. LEOs and their agencies that would refuse to honor such plans by their citizens and their sheriffs, and the potential for the vast improvement they represent, will require discipline through the political process to obtain acceptance. That discipline should be delivered by a growing population of active, thoughtful, knowledgeable and involved law-abiding citizens and sheriffs and sheriff’s posses working together.

A Closing Admonishment

The following needs to be emphasized to avoid having anyone intentionally (or otherwise) misconstrue the purposes behind the implementation of the County Sheriff Project:

Nothing in the County Sheriff Project should be construed as in any way an attempt to debilitate or degrade the enforcement of laws concerning actual crime against property or persons. In no way is the County Sheriff Project an effort to hinder or impede the proper execution or due process of law. It should also not be construed as an effort to effect a “super-sheriff” position of power.

The sheriff will still report to the people of his county through the ballot box and citizen review committees. Misbehaving sheriffs can also be recalled or voted out at the next election as with any elected position.

It will still be the job of executive authority such as the governor and state attorneys general to see to the proper execution of the laws and those executing them as well. The County Sheriff Project is designed to insure the proper functioning of a fully-informed, constitutional sheriff's department in every county in the land.

The bottom line is this: We the People control the sheriff as we do all elected officials and their appointed or employee subordinates. He is answerable to us. We the People control the state and federal governments. The sheriff determines how peace and order is kept in her/his county while supporting and defending the rights of the citizens and protection of the land. If the federal government attempts to ignore or abrogate those rights then it is reasonable that We the People must organize the defense of the county through the office of a constitutional sheriff.