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Notes and Comments: The Maryland Sheriff v. Modern and Efficient Administration of Justice

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THE MARYLAND SHERIFF v. MODERN AND EFFICIENT ADMINISTRATION OF JUSTICE

In Maryland, as in other common law states, the office of sheriff has undergone a decline in importance without a corresponding reduction in power. This discrepancy is best exemplified in those metropolitan areas where separate police forces exercise independent and concurrent statutory duties.

INTRODUCTION

A federal grand jury in Baltimore is probing possible civil rights violations by two Anne Arundel County deputy sheriffs and a civilian who broke into the home of a Glen Burnie couple and illegally arrested the husband. The incident occurred January 10, 1972, when an "emergency" deputy sheriff, a part-time deputy, and a civilian friend riding with them attempted to serve a felony warrant from another county on a woman living on *Ryen* Road. Finding no such road in Glen Burnie, the trio served the warrant on *Ryan* Road instead. They charged the husband with assaulting one of the deputies when they turned to leave, and with resisting arrest when they took him into custody. The couple has charged that the three men assaulted and beat them when they ordered the men out of their house and attempted to call the Anne Arundel County Police. The County District Court judge exonerated the husband after only the prosecution had been presented because of discrepancies in the testimony of the deputies and the civilian, showing no basis for the arrest; a civil action against the deputies for injuries sustained by the couple is still pending.¹

To the court and to the grand jury the case is reduced to a matter of whether the deputy sheriffs acted reasonably in the performance of their duty to serve an arrest warrant:² a question of fact. From the standpoint of professionalized law enforcement, however, the case presents a fundamental question of law and social policy facing the legislature:³ what is to be done with the feudal office of sheriff in the space age? This is an especially acute problem in his role as conservator of the peace, where the sheriff and his deputies have found themselves operating separately and apart from larger, better-equipped, better-trained, and more efficient police forces with concurrent jurisdiction and little or no coordination between the two. Assessing the present

1. Balto. News-American, Feb. 11, 1972. § C (Cities and Counties), at 2, col. 4; *id.*, Mar. 2, 1972, § C (Cities and Counties), at 2, col. 8.

2. MD. ANN. CODE art. 87, § 5 (1969).

3. MD. CONST. art. 4, § 44; *Beasley v. Ridout*, 94 Md. 641, 52 A. 61 (1902).

awkwardness of the sheriff in metropolitan areas, where he is neither the primary nor the only law enforcement officer, requires some consideration of the historical development of the office.

ORIGIN OF SHERIFFS

The origin of the office is not known.⁴ Sir Edward Coke (1552–1634) found the prototype of a sheriff in the Roman *vice comes*, an adjutant to the *pro-consul* appointed to oversee a province of the empire,⁵ the *vice comes* being a prefect who exercised the powers of the *pro-consul* during his absence.⁶ The Saxon king Alfred the Great (849–901) repartitioned the isle of Britain into counties, or “shires,” about the year 872.⁷ At the head of each shire he placed an earl with a deputy known as a “reeve,” a Saxon term meaning “keeper.”⁸ The shire reeve became the shireve which, ultimately, became the sheriff.⁹ As the earls spent most of their time attending the king, the practical administration of the county business fell on the sheriff almost completely.¹⁰ By the time of Edward the Confessor (1002–1066), King of Britain from 1042 until the Conquest, the office of sheriff had taken the shape it was to keep for the next several centuries.¹¹

POWERS AND DUTIES OF THE SHERIFF AT COMMON LAW

All the powers and duties currently possessed by a sheriff in the United States are traceable to his common law counterpart in England.¹² At common law he was the governor or keeper of the county, charged with the custody of the county to preserve the interests of the crown and to keep the peace among the inhabitants.¹³ Lord Coke described three broad categories in the nature of the office: 1) in the administration of justice, he was responsible for the service of process and the return of impartial juries; 2) in the enforcement of

4. Boland, *The Ancient Office of Sheriff*, 211 L. T. 177 (March 30, 1951) [hereinafter cited as Boland].

5. M. DALTON, *THE OFFICE AND AUTHORITY OF SHERIFFS* 5 (1682) [hereinafter cited as DALTON], citing COKE UPON LITTLETON f. 168; W. BLACKSTONE, *COMMENTARIES* 339 (5th ed. 1773) [hereinafter cited as BLACKSTONE].

6. I J. BACKUS, *A DIGEST OF LAWS RELATING TO THE OFFICES AND DUTIES OF SHERIFF, CORONER AND CONSTABLE* 2 (1812) [hereinafter cited as BACKUS].

7. DALTON 1.

8. BACKUS 2.

9. DALTON 1.

10. *Id.* at 2.

11. I W. HOLDSWORTH, *A HISTORY OF ENGLISH LAW* 12 (7th ed. 1956).

12. I W. ANDERSON, *A TREATISE ON THE LAW OF SHERIFFS* 36 (1941).

13. DALTON 5.

laws, he was responsible for making execution of judgments; and 3) in the government of the county, he was principally responsible for conserving the peace.¹⁴ Prior to 1215 sheriffs also had a large measure of judicial authority in addition to their ministerial duties.¹⁵ Together with the coroners they presided over the Sheriff's Tourn, a criminal court of limited jurisdiction, but presided without them over the civil County Court.¹⁶ The ordinance of Richard I of 1194 prohibited sheriffs from being appointed justices in their own or any other county where they had been sheriff; the Magna Carta in 1215 finally prohibited sheriffs from hearing pleas against the crown altogether.¹⁷ In the United States, the judicial powers, functions, and duties of the sheriff have been abrogated and he is a ministerial and executive officer only.¹⁸

In his ministerial capacity, the sheriff was the bailiff of the king.¹⁹ He supervised the royal lands, franchises, and suits and collected the rents, debts, fines, and forfeitures due the crown. In addition, he seized, to the use of the king, shipwrecks, escheats, treasure troves, whales, and the property of felons, fugitives, and outlaws.²⁰ As an officer of the court, the sheriff attended the judges, kept their courts operating properly, executed their orders, and made proclamation of statutes.²¹ Although the ancient ministerial duties of the sheriff associated with kings have atrophied in the United States, his attendance on and relation to the courts in the United States most resemble his role at common law.

But the sheriff most familiar to the general public, both 500 years ago in Nottingham and today in the United States, is the peace officer. At common law he was the principal conservator of the king's peace, superior in authority to any nobleman in the county.²² He was to defend his country against any enemies of the king who came upon the land,²³ suppress any riot, insurrection, or rebellion,²⁴ and pursue, apprehend, arrest, and imprison all traitors, murderers, robbers, and other felons.²⁵ To accomplish these ends he might summon the *posse comitatus*, that is, the "power of the county,"²⁶ to help him.²⁷ Once a

14. W. MURFREE, A TREATISE ON THE LAW OF SHERIFFS AND OTHER MINISTERIAL OFFICERS 2 (1884), citing COKE UPON LITTLETON f. 168 (a).

15. DALTON 25.

16. BOLAND 177.

17. 1 W. HOLDSWORTH, *supra* note 11, at 13.

18. 1 W. ANDERSON, *supra* note 12, at 10.

19. BLACKSTONE 344.

20. DALTON 36.

21. *Id.* at 36-37.

22. BACKUS 7.

23. *Id.*

24. BOLAND 177.

25. BLACKSTONE 343.

26. Anyone over fifteen years of age and less than a peer in rank was subject to fine and/or imprisonment for failure to respond to the call of the sheriff for help. *Id.*

27. BACKUS 7.

person was taken into custody, it became the duty of the sheriff to assure his appearance in court at the appointed time.²⁸ To accomplish this, he could commit him to "gaol" (another of his responsibilities),²⁹ require him to post sureties, or take a recognizance from him.³⁰

THE SHERIFF AS A CONSTITUTIONAL OFFICER IN MARYLAND

The sheriff of England was to become the sheriff of the English colonies. The Charter of Maryland from King Charles I (1600-1649) in 1632 granted Caecilius Calvert, Baron of Baltimore, "absolute" power to appoint "Judges, Magistrates and Officers" as "shall seem most fitting" but did not mention sheriffs in particular.³¹ The sheriff was, however, one of the first officers to be appointed. In 1636 the governor, appointed by Lord Calvert, and his advisory council reorganized the government of the colony, dividing it into counties and naming a sheriff in each county.³² By 1658 the office of sheriff had stabilized.³³ Appointed by the governor, the sheriff served all writs and warrants, punished criminals as directed, collected taxes, maintained prisons, took bail, held inquests, and made election returns. He was the representative of the proprietor in each county and to him, alone, answerable; he was not subordinate to the county courts, and the people had only the power to regulate his fees through acts of the assembly.³⁴ A 1662 act of the assembly directed that sheriffs not hold office longer than one year. Despite this, the sheriffs managed to stay in power, if not in office, much longer.³⁵ Public reaction to this and other abuses of county sheriffs reached a peak in 1724, after which sheriffs were called before the assembly to answer for neglect or oppression.³⁶ Maryland adopted its first constitution under the Republic in November, 1776, again specifically providing for the office of sheriff, and this time making it an *elective* office.³⁷ Otherwise, the sheriff remained the same as at common law and under British statutes then in force, which prohibited him from farming out his bailiwick,³⁸ and required him to arrest (and authorized him to make records of) those who committed any riot.³⁹

28. DALTON 32.

29. BACKUS 7.

30. DALTON 26.

31. MARYLAND MANUAL 1971-1972, at 608 (1972).

32. N. MERENESS, MARYLAND AS A PROPRIETARY PROVINCE 184 (1968).

33. See F. SPARKS, THE CAUSES OF THE MARYLAND REVOLUTION OF 1689, at 10 (1896).

34. *Id.* 25-26.

35. N. MERENESS, *supra* note 32, at 187.

36. *Id.*

37. P. CROWL, MARYLAND DURING AND AFTER THE REVOLUTION 33 (1941).

38. Sheriffs, 4 Hen. 4, c.5 (1402), 1 J. ALEXANDER, BRITISH STATUTES IN FORCE IN MARYLAND 278 (2d. ed. 1912).

39. Riots, 13 Hen. 4, c.7 (1411), 1 ALEXANDER, *supra* note 38, at 287.

Maryland and its sheriffs were to operate under this constitution for the next 91 years. In that time, the Maryland Court of Appeals and the Supreme Court of the United States spoke to the nature of his office on three occasions. The Maryland court, in 1845, reaffirmed the common law power of the sheriff to summon the *posse comitatus* using an analogy between the obligation of a bank president to collect and pay a tax on capital stockholders, and the duty of "[e]very citizen summoned by an executive office to aid . . . in the preservation of the public peace, or in the service of civil or criminal process, or in the arrest of a felon . . ."⁴⁰ Ten years later, the Supreme Court overturned a judgment of the Federal District Court of Maryland against the bond furnished by the sheriff for refusing to protect a person from "unlawful conduct and threatened violence," and ruled that neglect of his duties as a conservator of the peace was "punishable by indictment only."⁴¹ The case which had the greatest impact on the office of sheriff in Maryland was the landmark Baltimore Police Case of 1860, which upheld the transfer of control over the Baltimore City Police Department from the Mayor and City Council of Baltimore to a State Board of Supervisors.⁴²

Two schools of thought existed as to sheriffs who were constitutional officers but whose powers and duties were not enumerated in the constitution. The majority view was that, because the sheriff was a constitutional officer, the legislature might impose *additional* duties upon him, but could not restrict or reduce the powers granted him by the constitution (*i.e.*, those powers recognized by custom and common law at the time the constitution was adopted).⁴³ A minority of states where the office of sheriff was named in the constitution took the position that its failure to include his powers and duties made them subject to legislative restriction.⁴⁴ In his separate concurring opinion to *Baltimore v. State*,⁴⁵ Chief Judge LeGrand focused on the constitutional standing of the sheriff in Maryland:

The 20th section of the fourth Article of the Constitution, which mentions the office, and provides for filling it, does not specify or describe the powers and duties of the sheriff. *These are left to the common law and the Acts of Assembly. . . . There is nothing to prohibit the Legislature from adding to or diminishing his duties, provided those added be not in conflict with his office as sheriff. . . .*⁴⁶

40. *State v. Mayhew*, 27 Md. 333, 344, 2 Gill. 487, 501 (1845).

41. *South v. Maryland*, 59 U.S. (18 How.) 396, 403 (1855).

42. *Baltimore v. State*, 15 Md. 376, 74 Am. Dec. 572 (1860).

43. 1 W. ANDERSON, *supra* note 12, at 37; W. MURFREE, *supra* note 14, at v.

44. *State v. Dews*, R. M. Charl. 397, 404 (Ga. Super. Ct. 1835); *People v. Draper*, 25 Barb. 344, 362 (N.Y. 1857).

45. 15 Md. 376, 74 Am. Dec. 572 (1860).

46. *Id.* at 488 (emphasis added).

He cited with approval an 1835 Georgia decision⁴⁷ that the sheriff was a "purely" ministerial officer and, "[t]he idea that the duties of a ministerial officer cannot be changed, will . . . be a flagrant absurdity"⁴⁸

The dictum of Judge LeGrand in 1860 became the law of Maryland in 1867 with the adoption of the present Maryland constitution. The sheriff was again named in the constitution, and his election was required every fourth year in Baltimore City and each county.⁴⁹ An important addition was that the sheriff would "exercise such powers and perform such duties as now are or may hereafter be *fixed by law*."⁵⁰ In 1902 the Court "set at rest" the question in upholding an act transferring care and custody of the Anne Arundel County jail from the county sheriff to a newly-created Board of Visitors. The constitutionality of the act was challenged on the ground that maintenance of the jail was one of the common law duties of the sheriff.⁵¹ Viewing the phraseology of the 1867 constitution in light of the *Baltimore v. State*⁵² interpretation of the earlier constitution, the Court of Appeals concluded, "The language could not have been more explicit or plainer in meaning, if the Constitution said 'The powers and duties of Sheriffs shall be such as now are or may hereafter be conferred and prescribed by legislative enactment.'⁵³ This position has been reaffirmed by the court twice with a minimum of fanfare.⁵⁴

THE LEGISLATIVE HANDLING OF THE SHERIFF

In Maryland, then, the rule repeated by the court before, during, and after the present constitution is that the office of sheriff is strictly ministerial, its duties prescribed by law and subject to change by the legislature. The constitution itself only establishes qualifications for holding the office, requires a sheriff to account for and pay all fees he collects to the county or city treasury, and directs him to exercise the powers and duties "fixed by law."⁵⁵ This vests almost complete authority and control over the sheriff in the hands of the legislature. The General Assembly has placed some restrictions on the sheriff, such as requiring him to take an oath,⁵⁶ post a bond,⁵⁷ serve civil and

47. *State v. Dews*, R. M. Charl. 397 (Ga. Super. Ct. 1835).

48. 15 Md. at 489.

49. MD. CONST. art. 4, § 44.

50. *Id.* (emphasis added).

51. *Beasley v. Ridout*, 94 Md. 641, 52 A. 61 (1902).

52. 15 Md. 376, 74 Am. Dec. 572 (1860).

53. 94 Md. at 656-57, 52 A. at 65.

54. *Crosse v. Bd. of Supervisors of Elections*, 243 Md. 555, 221 A.2d 431 (1966); *Green v. State*, 122 Md. 288, 89 A. 608 (1914).

55. MD. CONST. art. 4, § 44.

56. MD. ANN. CODE art. 87, § 1 (1969).

57. *Id.* § 2.

criminal process and writs,⁵⁸ take bail or cash on certain occasions,⁵⁹ keep prisoners in safe custody,⁶⁰ and remove convicts to the penitentiary.⁶¹ Further, sheriffs and deputies have, if their "usual duties include the making of arrests," full authority of police officers to arrest without a warrant.⁶² These provisions are only codifications of the duties of the sheriff at common law, duties which he retains in Maryland until expressly deprived of them.⁶³ The General Assembly has, by not removing any of the common law powers of the sheriff, left him essentially as he was at common law. Arguments urging that those peacekeeping and ministerial functions of the sheriff which have been given to other agencies are therefore taken from the sheriff have been defeated by the rule against implied repeal.⁶⁴ The General Assembly has, rather than accept its responsibility for the state sheriffs, relegated that responsibility to the individual jurisdictions served by the sheriffs.⁶⁵ This seed of conflict between State Police, county police, Baltimore City Police, municipal police, special police and the sheriffs, sown by the General Assembly on the state level, bears fruit on the local level.

LOCAL HANDLING OF THE SHERIFF

No two county sheriffs look legally alike. In sixteen counties the sheriff is the primary law enforcement officer next to the State Police. Throughout the rest of the state the sheriff and his deputies operate coextensively with police forces with county-wide jurisdiction. In each of these areas the functions of the sheriff and of the police, as fixed by the local county government, vary widely. It is here that the amorphism of the office of sheriff becomes menacing: Anne Arundel, Baltimore, Harford, Howard, Montgomery, and Prince George's counties, and Baltimore City.

Anne Arundel County.—The Maryland Code authorizes the sheriff to appoint at least fourteen deputies and, in an emergency, "any able-bodied citizen."⁶⁶ The Anne Arundel County Code lists the duties of the sheriffs as collecting, recording, and reporting fees and costs charged in civil and criminal cases.⁶⁷ The county charter charges the

58. *Id.* § 5.

59. MD. ANN. CODE art. 87, § 6 (Supp. 1972).

60. MD. ANN. CODE art. 87, § 45 (1969).

61. *Id.* § 26.

62. MD. ANN. CODE art. 27, § 594B (1971).

63. *Baltimore v. State*, 15 Md. 376, 74 Am. Dec. 572 (1860).

64. *Scott v. State*, 1 Md. App. 481, 487, 231 A.2d 728, 732 (1967).

65. MD. ANN. CODE art. 87, § 37 (1969), provides: "The sheriffs of the several counties and of Baltimore City and their deputies shall receive annually the respective salaries herein prescribed for performing the duties required of them by the Constitution and by the public general laws and by their respective public local laws . . ." (emphasis added).

66. MD. ANN. CODE art. 87, § 37(c) (Supp. 1972).

67. ANNE ARUNDEL COUNTY, MD., CODE § 5-1100 (1967).

county *police* department, commanded and administered by a chief of police who is experienced in law enforcement and appointed solely on his qualifications for the position,⁶⁸ with the preservation of peace, prevention of crime, enforcement of the law, apprehension of criminals, and maintenance of the jail.⁶⁹

Baltimore County.—The Maryland Code authorizes the sheriff of Baltimore County to appoint four full-time deputies under the “merit” system, prohibits him from appointing part-time deputies, and makes the office subject to the rules and regulations passed by the county council.⁷⁰ The Baltimore County Code merely sets forth a procedure for the sheriff to follow in collecting fines and forfeitures imposed by the county court and in paying them over to the county.⁷¹ However, it falls on the police department to preserve the peace, prevent crime, protect persons and property, enforce the law, and arrest offenders.⁷² Even the common law duty of the sheriff to “serve and execute any and all writs, warrants, subpoenas and commitments” in civil and criminal cases is conferred upon the police department.⁷³

Harford County.—The Maryland Code speaks only to the salary and power to appoint deputies of the Harford County sheriff.⁷⁴ The county code requires him to keep a public record on prisoners at the county jail,⁷⁵ furnish food to the prisoners and supplies to the jail,⁷⁶ make service of process,⁷⁷ and be *ex officio* chairman of the Harford County Police Commission.⁷⁸ The county police may also execute warrants, and are responsible for detecting and preventing crime, apprehending and arresting criminals, and enforcing criminal and motor vehicle laws.⁷⁹ The police chief is to be chosen by the board on the basis of his experience, ability, health, knowledge, character, reputation, and fitness.⁸⁰

Howard County.—Under the Maryland Code, the Howard County sheriff may appoint deputies as authorized by the county commissioners, and additional deputies when necessary for public safety only.⁸¹ His duties under the local laws are to appoint a warden and guards for the county jail, provide supplies for the jail, and keep records

68. ANNE ARUNDEL COUNTY, MD., CHARTER § 543 (1967).

69. *Id.* § 544.

70. MD. ANN. CODE art. 87, § 37(c) (Supp. 1972).

71. BALTIMORE COUNTY, MD., CODE §§ 7-100 to-101 (1968).

72. BALTIMORE COUNTY, MD., CODE § 24-3 (Supp. 1971).

73. BALTIMORE COUNTY, MD., CODE § 24-4 (1968).

74. MD. ANN. CODE art. 87, § 37(1) (Supp. 1972).

75. HARFORD COUNTY, MD., CODE § 478 (1965).

76. HARFORD COUNTY, MD., CODE § 479 (Supp. 1971).

77. HARFORD COUNTY, MD., CODE § 481 (1965).

78. *Id.* § 485.

79. HARFORD COUNTY, MD., CODE § 461A(1) (Supp. 1971), states that the police are “peace officers and . . . have full powers as such with respect to criminal matters and the enforcement of laws.”

80. *Id.* § 461A(c).

81. MD. ANN. CODE art. 87, § 37(m) (Supp. 1972).

on prisoners in the jail.^{8 2} The duties of preserving the peace, preventing crime, protecting persons and property, and arresting those who break the law are those of the Howard County Police Department.^{8 3}

Montgomery County.—The Maryland Code directs the Montgomery County sheriff to appoint sixteen deputies “to do and perform at any time in any place in said county any service incident to the office of deputy sheriff. . . .”^{8 4} The county code is no more illuminating as to what his duties are. It authorizes him to appoint special deputies with “the same power and authority as deputy sheriffs possess,” and requires him to have his office in the county courthouse.^{8 5} The Montgomery County Police^{8 6} function to prevent and detect crime, preserve peace and order, enforce all laws and ordinances, arrest all violators, and serve all writs, warrants, and subpoenas issued by the circuit court.^{8 7}

Prince George's County.—The salary and power of appointing deputies of the Prince George's County sheriff are not specified in the Maryland Code.^{8 8} The county code, however, is rather specific: the sheriff must attend the orphan's court and serve all writs, summonses, orders, petitions, and other legal papers directed to him by the court.^{8 9} He is to take custody of persons sentenced for violations of municipal ordinances in the county.^{9 0} He must board and feed prisoners confined in the county jail,^{9 1} and keep records of their confinement.^{9 2} He has the power to hire guards for the jail^{9 3} and to change the rules and regulations for the maintenance of the jail and the discipline of the prisoners.^{9 4} It is still the lot of the county police to protect life and property, preserve peace and order, prevent crime, arrest lawbreakers, enforce the law, and serve summonses and other court papers.^{9 5}

Baltimore City.—The sheriff of Baltimore City is authorized by the Maryland Code to appoint 39 deputies.^{9 6} The local laws of Baltimore City impose on them the duty to subpoena witnesses and to return writs and process issued by the court.^{9 7} The Police Department of Baltimore City is responsible for safeguarding lives and property,

82. HOWARD COUNTY, MD., CODE §§ 284-86 (1965).

83. *Id.* § 248.

84. MD. ANN. CODE art. 87, § 37(o)(2) (Supp. 1972).

85. MONTGOMERY COUNTY, MD., CODE §§ 2-100 to-101 (1965).

86. *Id.* § 18-11, provides that Montgomery County police “shall have all of the powers possessed by deputy sheriffs of the state under the general law of the state, or the local laws of the county heretofore in existence, insofar as such powers are in reference to the criminal jurisdiction of such deputy sheriffs in making arrests, or in any manner enforcing the laws of the state.” (emphasis added).

87. *Id.* § 96-2.

88. MD. ANN. CODE art. 87, § 37(p) (Supp. 1972).

89. PRINCE GEORGE'S COUNTY, MD., CODE OF PUBLIC LOCAL LAWS § 70-3 (1963).

90. *Id.* § 70-2.

91. *Id.* § 70-1.

92. *Id.* § 70-4.

93. *Id.* § 70-7.

94. *Id.* § 70-12.

95. PRINCE GEORGE'S COUNTY, MD., CODE OF ORDINANCES & RESOLUTIONS § 15-2 (1967).

96. MD. ANN. CODE art. 87, § 37(x) (Supp. 1972).

97. BALTIMORE, MD., CODE OF PUBLIC LOCAL LAWS §§ 22-43 to -48 (1969).

preserving the public peace, detecting and preventing crime, apprehending and arresting suspects and criminals, preserving order, enforcing the law, and maintaining an orderly flow of traffic.⁹⁸

THE PROBLEMS

The common law sheriff in Maryland is suffering, outwardly from neglect, inwardly from old age. It has, for all practical effect, been superseded by younger forces better adapted to preserving law and order in an urban setting. The General Assembly and county councils have established their police forces, given them all the law enforcement responsibility that sheriffs possessed at common law, and yet have never officially acknowledged how thorough this pre-emption has been.⁹⁹ If, by delegating control over the sheriffs to their respective jurisdictions, the General Assembly planned to give the people control over their own sheriffs, then that plan has failed. The sheriff has all his common law characteristics except those expressly removed by statute.¹⁰⁰ The legislature has placed no specific restrictions on the office; the county and local governments have not limited his powers. Thus, with all his common law powers to choose from, and the police doing most or all of them, it is the sheriff himself who is left to interpret the scope of his office as the spirit moves him. Disorganization is inherent in such a situation. Only tacit understandings of custom and usage between the police and sheriffs avert the most wasteful duplication of efforts.

Its lack of coordination with other agencies is symptomatic of internal structural weaknesses which preclude the sheriff from ever putting his own house in order. To begin, the office is an elective one. The sheriff need neither be experienced nor interested in making a career of law enforcement.¹⁰¹ He might not even *want* the job—he needs only to be elected.¹⁰² Hand in hand with this goes a conspicuous lack of education and training for sheriff or deputy. Further, it is doubtful that the office has the manpower to carry out all the duties of the office regardless of training.

The inadequacy of the office is matched only by the inaction of the legislature. Were the legislature to have no control over his office, the sheriff would be virtually impregnable. In Maryland, where the office is

98. *Id.* § 16-2.

99. *Id.* § 16-3 states: "All police officers of the department . . . shall be peace officers and shall have the same powers, with respect to criminal matters, and the enforcement of the laws related thereto, as sheriffs, constables, police and peace officers possessed at common law and have in their respective jurisdictions."

100. *Scott v. State*, 1 Md. App. 481, 231 A.2d 728 (1967).

101. MD. CONST. art. 4, § 44, prescribes only age, residence, and citizenship requirements. Neither the constitution, the code, nor the public local laws of the seven metropolitan areas considered require any law enforcement experience of the sheriff.

102. See generally, Comment, *Disorganization of Metropolitan Law Enforcement and Some Proposed Solutions*, 43 J. CRIM. L.C. & P.S. 63 (1952).

subject to legislative regulation, the sheriff has nevertheless managed to become largely autonomous, his position a comfortable niche in the local bureaucracy secured by political associations formed while in office.

SOME SOLUTIONS TO THE PROBLEM

The time has come for the legislature to exercise its long dormant authority over the office of sheriff in Maryland. If the legislature chooses to act, it has two courses of action. First, the office of sheriff could be completely abolished in those counties where he is essentially a mere process server. The police are responsible for keeping the peace and serving some process: they could as well be serving *all* process. Subtractions, alterations, and distributions of the duties of the sheriff have left a small miscellaneous assortment of functions which are unique to his office alone. Any or all of these could be distributed between the police department and the land records office. The keeping of the peace, maintenance of the jails, and execution of judgments no longer depend on the county sheriff where there are police counterparts performing these same functions.¹⁰³ In just those counties where there are both police and sheriff, this would result in a budget reduction of about \$350,000.¹⁰⁴

In the alternative, the office of sheriff could be retained and overhauled. Several housecleaning alternatives would be effective. One would be to define precisely and uniformly the function of the sheriff in terms of specific powers and duties to the exclusion of all others. In counties where there are police departments as well, this would at least give the right hand an idea of what the left was doing and avoid needless duplication of effort. Another possible revision or correction would be the adoption of standards for the personnel of the office and establishment of coordination with the police department. This coordinating link might range from a committee to liaison officers depending on the size of the departments.

A thorough and efficient improvement might result from making the current sheriff and his deputies a separate unit of the police department and to give them responsibility for serving all process and executing all judgments. There are numerous advantages to this means. It would have the effect of raising the standards and training of the office to those required of the police department. Under this system, coordination of activities with other agencies would be optimal. Further, it would be an appreciable addition of manpower to the police department. Most

103. Grinnell, *Can the Office of Sheriff be Abolished by the Legislature and His Functions Distributed in All Counties or in Any One County?* 24 MASS. L.Q. 5 (1939).

104. MD. ANN. CODE art. 87, § 37 (Supp. 1972). The figure is based only on those salaries for sheriffs and deputies in the seven jurisdictions for which specific salary figures are listed.

important to the police department, more patrolmen would be left free for patrol and the prevention of crime.

A third alternative, not considered, is leaving the ancient office of sheriff the anachronism it now stands.

Jonathan W. Acton, II