REVIEW ESSAY - THE RELUCTANT SHERIFF

IV Ashton*

Dr. Haas sums up his basic approach as follows: "I propose that the United States adopt a foreign policy based on the notion of regulation." That theme is one of several things that makes this an important book. The theme and the title go right to the heart of the challenge for United States foreign policy in the post cold war world. As important, they do it in a way that is easy to understand, thereby enhancing the possibility that larger segments of the American public will rise to the challenge. This is not a heavy treatise built on a foundation of jargon making it accessible only to specialists and international relations of international law. Instead, it is brisk, direct, and makes effective use of the regulation, sheriff, and posse metaphors to frame the important questions.

Appropriate political structures, in Dr. Haas’ view, are necessary for an effective American foreign policy and for a peaceful world. Political structures represent a kind of “regulation” in the international arena. The cold war provided a bi-polar political structure that offered a place for almost all nation states and provided a compass for American foreign policy. The end of the cold war, with nearly 200 nation states adrift, made American foreign policy directionless. The absence of a political framework for small or less powerful countries increases the risk of anarchy. The absence of a coherent foreign policy erodes the basis for the necessary political support for any kind of international engagement by the United States.

"The reluctant sheriff” explains that all of the post cold war empirical evidence suggests that the United States must exercise leadership. In order for this to happen, there must be an intellectual framework within the United States from which coherent foreign policy directions can be extracted, and there must be a reasonable political consensus supporting international engagement by the United States.

Coherence in either the intellectual framework or the actual foreign policy requires simple and understandable goals. Dr. Haas suggests stability as the central goal of a post cold war American foreign policy. Pursuit of this goal will, on occasion, justify United States intervention, which sometimes will take the form of military intervention, which

* Mr. IV Ashton is the Director of Institutional Projects and Special Assistant to the Dean at Chicago-Kent College of Law, Illinois Institute of Technology. This is a book review of Dr. Richard Haas’s book: The Reluctant Sheriff, written by Henry H. Perritt, Jr., Dean and Professor of Law at Chicago-Kent College of Law.
sometimes will take the form of military intervention. When this is appropriate, the United States will act in the role of a sheriff.

The posse metaphor signifies that while the United States is the preeminent military power, it is not sufficiently powerful to act effectively alone. It needs participation by other states to support any military intervention. Thus, the United States as sheriff can act effectively only by persuading others to join its “posse.”

The stability goal means that use of force in the international arena must be opposed.

The implications of Dr. Haas’ second central goal, free trade, is less clear. Whether major threats to free trade would justify military intervention is doubtful. Presumably the means used to promote free trade would range up to, but not beyond, economic sanctions. There also, the United States could play the role of sheriff but could not act effectively alone and must enlist others in its posse.

Dr. Haas erroneously distinguishes sheriffs from police officers, asserting that police officers, but not sheriffs, need explicit legal authority to perform their law enforcement functions. On the contrary, the duty of a sheriff in Anglo-American law traditionally was to execute writs (specific orders in specific cases) issued by courts. A sheriff acting without such judicial authority would be no different from an ordinary citizen in his legal capacity and would be subject to civil liability for conversion of property, trespass, battery, and false imprisonment.

In one respect, that is a mere lawyer’s quibble over a metaphor. The metaphor provides firm support for Dr. Haas’ essential point, which relates to the role of the posse and the sheriff’s relationship with it. In the wild west, the sheriff’s legal authority from a writ issued by a court, typically an arrest warrant, did him little good as a practical matter. In order to effectuate his authority, he needed sufficient physical force to overcome the resistance of the subject of the writ. The posse provided that coercive supplement to the sheriff. As a theoretical matter, all citizens were obligated to obey the sheriff’s command to join a posse. In fact, however, whether the sheriff could form a posse was a political matter and depended on persuasion and collective interest rather than the law.

This is exactly the relationship between international law and peace enforcement in the post cold war world. In theory, and under international law, the United States’ role as organizer and leader of peace enforcement efforts depends on legal authority - a United Nations (“UN”) Security Council resolution, or the privilege of self defense under customary international law and article 52 of the United Nations charter. But the existence of these sources of legal authority are hardly sufficient, they do little more than the arrest warrant did for the sheriff in the wild west. What really matters is the political practicability of organizing a posse, and that depends on collective self-interest and on persuasion at the political level.
But to stop there understates the role of international law, just like Dr. Haas' book understates the role of the writ for the wild west sheriff.

The sheriff in the wild west faced a lawsuit and damages if he acted and organized a posse without a writ. But that was not the important point. What is important about the antecedent of the metaphor is that the sheriff would not be able to organize a posse as a political matter without a writ. He had no legitimacy without a writ. A posse, whether or not organized by the sheriff, was a lynch mob unless there was a writ authorizing its formation and activity. Lynch mobs of course formed from time to time, but the sheriff had stronger rhetorical leverage and thus was more persuasive when he could say to potential posse members, “Do your duty. We must enforce the law and order” rather than saying, “Join my lynch mob.” Similarly, in the post cold war international arena unilateral action occurs, and to be sure, it is not subject to the obrobrium attached to the term “lynch mob.” Nevertheless, sources of legitimacy found in international law play a major role in the rhetoric leading up to the modern form of a posse. The United States had a stronger moral position and thus could be more persuasive in desert storm because it had Security Council resolutions. Similarly, in Bosnia, the United States organized North Atlantic Treaty Organization Implementation Force was more practicable because there was a source of legitimacy both in peace keeping UN Security Council resolutions and in the privilege of self-defense because the signatories of the Dayton Accords. Bosnia, Serbia, and Croatia had requested NATO assistance, thereby triggering the privilege of self-defense under Article 52 and customary international law.

The intellectual challenge for students of international law and international relations, and the policy challenge is to work out the relationship between the United States role as sheriff and the appropriate metaphor for the writ in the post cold war world. As Dr. Haas points out, the mechanisms for obtaining international writs, the UN Security Council process especially, is convoluted. Its performance in Bosnia was disgraceful.

But there may be a richer array of choices than Dr. Haas suggests. There may be intermediate possibilities between waiting for a UN Security Council resolution sufficiently explicit to represent a writ authorizing military action, and unilateral action by the United States without any basis of authority in international law. One obvious possibility is commitments by regional authorities. More needs to be done to understand why NATO succeeded where the UN failed in Bosnia. Even if regional possibilities for issuing post cold war writs can be worked out, that source of authority must be reconciled with the UN Security Council’s authority under Article 53. Controversy has swelled for years around the issue whether entire Security Council authority is necessary for regional action (most people think not) and whether the absence of post action authority negates the legitimacy of continued regional action.
The need for legitimacy is just as great with respect to the posse engaged in application of economic sanctions as with one engaged in military intervention. The recent uproar over application of Helms-Burton and the Iran Sanctions Act to punish those violating the United States' economic sanctions against Cuba and Iran are examples. The rest of the world does not consider extra territorial application of United States' law to be legitimate in the absence of some kind of imprimatur under international law (and maybe even with such an imprimatur).

The most immediate problem is for the United States to decide what it will do if the World Trade Organization ("WTO") decides adversely to it in Helms-Burton or Iran Sanctions Act cases. There will be a concrete decision under international law. There will be no question of the United States' obligation to comply with it. In the long run, compliance will enhance the stature of the WTO institutions. In the long run stronger WTO institutions will enhance free trade. But the United States has, in the international trade arena as in the military arena, sufficient strength to act unilaterally. It is possible for it to ignore the "writ", though in this case as the target of the posse rather than its leader.

Second, there should be a clearer understanding of the role of international law as a mechanism for crystallizing political positions through rhetoric.