

Chicago-Kent College of Law

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Book Review (reviewing, Richard N. Haas, *The Reluctant Sheriff: The United States After the Cold War*)

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BOOK REVIEWS

RICHARD HAAS, *The Reluctant Sheriff: The United States After the Cold War*, New York, Council on Foreign Relations (1997)

Henry H. Perritt, Jr.*

Dr. Haas sums up his basic approach in terms of law: "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 US 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 in international relations or 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 left nearly 200 nation states adrift and 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 US.

Coherence in either the intellectual framework or in actual foreign policy requires simple and understandable goals. Dr. Haas suggests sta-

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bility as the central goal of a post cold war American foreign policy. Pursuit of this goal will, on occasion, justify US intervention, which 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 implications of Dr. Haas' second central goal - free trade - are 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 US 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 meer 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 the exactly the relationship between international law and peace enforcement in the post cold war world. In theory, and under international law, the US role as organizer and leader of peace enforcement efforts depends on legal authority - a UN Security Council resolution, or the privilege of self defense under customary international law and article 51 of the UN 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 law suit 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 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 US organized NATO IFOR 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 US 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 maybe 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 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 *to punish* those violating US economic sanctions against Cuba and Iran are examples. The rest of the world does not consider extra territorial application of US law to be legitimate in the absence of some kind of imprimatur under international law (and maybe even with such an imprimatur).