

Human Rights & Human Welfare

Volume 9

Issue 7 *July Roundtable: An Annotation of "What Next for Sri Lanka's 2.5 Million Tamils?" by Amantha Perera and "How to Defeat Insurgencies: Sri Lanka's Bad Example" by Bobby Ghosh*

Article 5

7-1-2009

Justice After War: Sri Lanka and the Rights and Duties of a Vanquisher

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Recommended Citation

Simmons, William Paul (2009) "Justice After War: Sri Lanka and the Rights and Duties of a Vanquisher," *Human Rights & Human Welfare*: Vol. 9: Iss. 7, Article 5.

Available at: <https://digitalcommons.du.edu/hrhw/vol9/iss7/5>



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Justice After War: Sri Lanka and the Rights and Duties of a Vanquisher

Abstract

Human rights scholars, attorneys, and activists will deservedly focus on the human rights abuses committed by the Sri Lankan military as the decades - long civil war against the Tamil Tigers came to a crushing end this past spring. The military's brutality, especially its failure to discriminate combatants from non-combatants, should be investigated by both domestic and transnational institutions. It remains to be seen whether such wanton disregard for civilian collateral damage will become the norm for regimes embroiled in civil wars and present yet another realpolitik threat to humanitarian law, or will Sri Lanka and other regimes face accountability for such abuses. Here, though, I would like to focus on an area where Sri Lanka's actions are still to be decided, namely, the responsibility of a state after it has been successful militarily. I will frame my remarks within the terms of recent advances in just war theory focusing on the moral responsibilities of a vanquisher.

Keywords

Human rights, Sri Lanka, Civil war, Liberation Tigers of Tamil Eelam, Peace, Reconciliation

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Justice after War: Sri Lanka and the Rights and Duties of a Vanquisher

by William Paul Simmons

Human rights scholars, attorneys, and activists will deservedly focus on the human rights abuses committed by the Sri Lankan military as the decades - long civil war against the Tamil Tigers came to a crushing end this past spring. The military's brutality, especially its failure to discriminate combatants from non-combatants, should be investigated by both domestic and transnational institutions. It remains to be seen whether such wanton disregard for civilian collateral damage will become the norm for regimes embroiled in civil wars and present yet another *realpolitik* threat to humanitarian law, or will Sri Lanka and other regimes face accountability for such abuses. Here, though, I would like to focus on an area where Sri Lanka's actions are still to be decided, namely, the responsibility of a state after it has been successful militarily. I will frame my remarks within the terms of recent advances in [just war theory](#) focusing on the moral responsibilities of a vanquisher.

Until the past decade or so, just war theorists limited their analyses to the causes (*jus ad bellum*) and conduct (*jus in bello*) of war. But, with an increased focus on transitional justice in such complex situations as the former Yugoslavia, Rwanda, Iraq and East Timor, more attention has been given to the actions and responsibilities of a state after a war (*jus post bellum*). To be acting justly, we are told that a state should not prolong the war beyond the appropriate time, should not unduly cause damage, and, in determining punishment, should discriminate between military personnel and civilians and between leaders and followers.

What should happen though when one side is completely defeated on the battlefield as in the Sri Lanka case? When one party of a conflict is vanquished, the cessation of war is something of a state of exception, where the victor's power is apparently limitless. The state would seem to have absolute power to extract whatever terms it may. We might all agree that a vanquisher cannot rightly kill all the men and enslave the women and children as was the custom among Ancient Greeks as evidenced by in the [infamous destruction of the island of Melos by the Athenians](#), but what moral authority should check a state's actions?

[John Locke](#), who famously held that [a vanquisher in a just war had "absolute power"](#) over the vanquished and could rightly take their lives even after a war, argued that the vanquisher could not rightly seize more of the vanquished's property than was necessary for reparations. After all, the vanquished's property rightly belonged to their heirs and was vital to their livelihood. To discriminate between combatants and non-combatants would require allowing the heirs of the combatants and other non-combatants to rebuild their lives with their own property. To exact more punishment would be an affront to their dignity and violate their inalienable rights.

To better understand the vanquisher's responsibility to respect these rights we need to consider the situation of the vanquished, as in this case, the Tamils in Sri Lanka. Are they not at the height of vulnerability, lacking any real political, social, economic, or military power? Are they in any position to assert their rights and realize their livelihoods, especially in the face of a jubilant vanquisher? Since the vanquished are particularly vulnerable, the state, I argue, is responsible to ensure their livelihoods and even to take affirmative measures to ensure the rights and dignity of

the vanquished. Without such affirmative measures the rights of vulnerable minority populations will forever be in jeopardy and at the whim of the majority.

Sri Lanka's civil war may have come to a close but the conditions that precipitated it remain. Tamils are still not fully integrated into the larger Sri Lankan society and their demands for semi-autonomy are still mostly unheard. [President Mahinda Rajapaksa](#) gave some lip service to integrating the Tamils by speaking a few words of his victory speech in Tamil and promising that he "would take care of" them. It seems that the President is willing to take on something of a [fiduciary](#) relationship, to act as a trustee for the best interest of the Tamils. However, to realize their rights and their dignity would require much more than a trustee relationship. It would mean taking seriously the demands for semi-autonomy, to attack the [structural violence](#) of poverty, to rehabilitate the displaced, and to end decades of discrimination.

Human rights tribunals, such as the [Inter-American Court of Human Rights](#), have increasingly held that vulnerable populations such as indigenous peoples, persons with disabilities, children, and women are deserving of special protection. What about the vanquished? Are they not deserving of special protection?

Jus post bellum requires eliminating the causes of the war and building a positive peace. Jus post bellum, somewhat paradoxically, means empowering those that have just been vanquished.

William Paul Simmons is Associate Professor of Political Science and Director of the Masters program in Social Justice and Human Rights at Arizona State University. His work has appeared in such journals as Philosophy and Social Criticism, Yale Human Rights & Development Law Journal, The Journal of International Human Rights, and Social Sciences Quarterly. A forthcoming book examines the potential for reinvigorating human rights law from the perspectives of marginalized peoples. He has served as a consultant on human rights and social justice issues in The Gambia (West Africa), China, and the United States.