2015

'Truth and Reconciliation': A Critical Step Toward Eliminating Race and Gender Violations in Tenure Wars

Angela Mae Kupenda
Mississippi College School of Law, akupenda@mc.edu

Tamara F. Lawson
St. Thomas University School of Law

'TRUTH AND RECONCILIATION': A CRITICAL STEP TOWARD ELIMINATING RACE AND GENDER VIOLATIONS IN TENURE WARS

ANGELA MAE KUPENDA* AND TAMARA F. LAWSON**

We will not withhold forgiveness
Even from those who do not ask.[1]

INTRODUCTION

Women and other underrepresented groups have fought valiantly to render legal education inclusive regardless of one's race or gender. Clashing with a status quo denying

---

* Professor of Law, Mississippi College School of Law. I appreciate the conference presentation opportunities that helped shape ideas presented here, including presentations at the: Society of American Law Teachers' Teaching Conference, hosted by the University of California, Berkeley School of Law in 2008; Association of Black Women in Higher Education, hosted by Princeton University in 2008; and American Association of University Professors Conference on the State of Higher Education, Washington, D.C., in 2011. A related paper was published in a conference edition of THE CRIT: CRITICAL STUDIES JOURNAL, University of Idaho, in 2011. I greatly appreciate my co-author, Professor Tamara Lawson, who years ago encouraged me to publish my prior essay. Recently, when Prof. Lawson and I shared a conversation at the 8th Annual Lutie A. Lytle Black Women Law Faculty Writing Workshop, hosted by University of Wisconsin-Madison in 2014, she suggested we should address the post-tenure experience and suggest, after the war, "peacetime strategies." We co-presented a summary of this working article at the 2015 American Association of Law Schools Cross-Cutting Program, "The More Things Change . . . : Exploring Solutions to Persisting Discrimination in Legal Academia," Washington, D.C.

We are also indebted to the editors and contributors of PRESUMED INCOMPETENT: THE INTERSECTIONS OF RACE AND CLASS FOR WOMEN IN ACADEMIA (Gabriella Gutiérrez y Muhs, Yolanda Flores Niemann, Carmen G. González & Angela P. Harris eds., 2012). I also thank my home institution and Dean Wendy B. Scott for supporting faculty scholarship. Contact information: 151 East Griffith St., Jackson, MS 39201; email: akupenda@mc.edu.

** Professor, St. Thomas University School of Law; LL.M., Georgetown University Law Center, 2003; J.D., University of San Francisco School of Law, 1995; B.A., Claremont McKenna College, 1992. Special thanks to my research assistant Kathryn E. Lecusay for her help on this project. Contact information: 16401 NW 37th Avenue, Miami Gardens, FL 33054; email: tlawson@stu.edu.

1 MAYA ANGELOU, HIS DAY IS DONE: A NELSON MANDELA TRIBUTE 35 (2014).

access to individuals in underrepresented groups, they battled first just to gain admission to law schools as students and then to be admitted to the Bar.[2] The struggle continued as they also sought to be hired on the permanent faculty at various institutions.[3]

After securing faculty appointments, candidates from underrepresented groups have continued to wage tenure wars for decades, just for their survival in the academy.[4] They confront many obstacles,[5] including inconsistent application of rules and requirements,[6] micro-aggressions,[7] and overt hostilities[8] to their successes.

In other words, individuals from underrepresented groups appear to be in a war to obtain tenure and otherwise succeed at their institutions.[9] While it has been said that, "All is fair in love and war," even in war there are rules of engagement.[10] Therefore, in tenure wars, rules

---

2 *See generally* Gwen Hoerr Jordan, *Acts of (Incremental) Change: From Myra Bradwell to Hillary Clinton*, 9 NEV. L.J. 580 (2009); William C. Kidder, *The Struggle for Access from Sweatt to Grutter: A History of African American, Latino, and American Indian Law School Admissions, 1950–2000*, 19 HARV. BLACKLETTER L.J. 1 (2003); Morrison Torrey, Jennifer Ries & Elaine Spiliopoulos, *What Every First-Year Female Law Student Should Know*, 7 COLUM. J. GENDER & L. 267 (1998); Floyd Weatherspoon, *The Status of African American Males in the Legal Profession: A Pipeline of Institutional Roadblocks and Barriers*, 80 MISS. L.J. 259 (2010).

3 *See* Stephanie B. Goldberg, *Who's Afraid of Derrick Bell: A Conversation on Harvard, Storytelling and the Meaning of Color*, 78 A.B.A. J. 56 (1992) (discussing Bell's scholarship and his protests against Harvard's failure to hire Black women on the tenure-track law faculty).

4 See the many stories and articles collected in PRESUMED INCOMPETENT: THE INTERSECTIONS OF RACE AND CLASS FOR WOMEN IN ACADEMIA (Gabriella Gutiérrez y Muhs, Yolanda Flores Niemann, Carmen G. González & Angela P. Harris eds., 2012) [hereinafter PRESUMED INCOMPETENT].

5 *See generally* Peter C. Alexander, *Silent Screams from within the Academy: Let My People Grow*, 59 OHIO ST. L.J. 1311 (1998); Angela Mae Kupenda, *Facing Down the Spooks*, *in* PRESUMED INCOMPETENT, *supra* note 4, at 20 [hereinafter Kupenda, *Facing Down the Spooks*]; Vincene Verdun & Vernellia R. Randall, *The Hollow Piercing Scream: An Ode for Black Faculty in the Tenure Canal*, 7 HASTINGS WOMEN'S L.J. 133 (1996).

6 *See* Yolanda Flores Nieman, *A Case Study of Stereotype Threat, Stigma, Racism, and Tokenism in Academe*, *in* PRESUMED INCOMPETENT, *supra* note 4, at 336, 347–49.

7 PRESUMED INCOMPETENT, *supra* note 4, at 3.

8 *See* Serena Easton, *On Being Special*, *in* PRESUMED INCOMPETENT, *supra* note 4, at 152, 152; Francisca de la Riva-Holly, *Igualades*, *in* PRESUMED INCOMPETENT, *supra* note 4, at 287, 294–95.

9 *See* Angela Mae Kupenda, *Academic War Strategies for Nonviolent Armies of One*, 4 THE CRIT: CRITICAL STUD. J. 111 (2011) [hereinafter Kupenda, *Academic War Strategies*].

10 Interestingly, even United States Supreme Court Justice Scalia has alluded to "democratic rules of engagement" in urging the Court to stay out of the "culture war" related to sexual orientation. *See* Lawrence v.

apply too.[11] Actually, the American Bar Association requires law schools to employ clear rules of engagement in tenure evaluations,[12] akin to how the United Nations collectively prescribes rules of war between nation states as well as punishes violations committed on the battlefield.[13] When innocent nations are attacked by illegal acts of aggression, a coalition of the willing allies within the United Nations defends against the aggression.[14] Unfortunately tenure candidates from underrepresented groups may find themselves at schools lacking such a coalition of willing allies to defend against aggression inflicted upon them.[15]

The war-like attacks during tenure bids appear to be part of a battle to maintain the racial and gender status quo of underrepresentation in the academy.[16] This resemblance to war-like assaults compelled Professor Kupenda to compare the tenure bid for women and other underrepresented groups as requiring war-like strategies in response. In *Academic War Strategies for Nonviolent Armies of One*, Professor Kupenda utilized lessons learned from unsuccessful military war efforts to explore how pre-tenured faculty, especially those from underrepresented groups, could improve their chances of success by seeing their

---

Texas, 539 U.S. 558, 602 (2003) (Scalia, J., dissenting).

11 *Cf.* Perry v. Sindermann, 408 U.S. 593, 593 (1972) (even with de facto tenure policy, teachers are entitled to due process and the right procedure).

12 American Bar Association Legal Education Standards, Rule 405(b) provides: "A law school shall have an established and announced policy with respect to academic freedom and tenure . . . . " AM. BAR ASS'N, REVISED STANDARDS AND RULES FOR APPROVAL OF LAW SCHOOLS 27, Standard 405(b) (2014–2015), http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/201406_revised_standards_clean_copy.authcheckdam.pdf [http://perma.cc/K62R-N4LD].

13 *Cf. Forum on Preserving America's Global Leadership through International Law and Justice*, 64 GUILD PRAC. 129, 130 (2007); James L. Kenworthy, *The Unraveling of the Seattle Conference and the Future of the WTO*, 5 GEO. PUB. POL'Y REV. 103, 103 (2000).

14 *See, e.g.*, Michael J. Davidson, *War and the Doubtful Soldier*, 19 NOTRE DAME J.L. ETHICS & PUB. POL'Y 91, 119 (2005).

15 *See* Patricia M. Wald, *Breaking the Glass Ceiling: Will We Ever Rid the Legal Profession of 'The Ugly Residue of Discrimination'?*, 16 HUM. RTS. 40, 42 (1989) ("[P]owerful allies are indispensable—and women often lack a mentor or guru of impeccable credentials to defend their 'scholarship' against attack, push their virtues, deflect their opponents.").

16 The structural status quos, even in the absence of intentional discrimination, are present similarly in our broader society outside the ivory tower. *See generally* DARIA ROITHMAYR, REPRODUCING RACISM: HOW EVERYDAY CHOICES LOCK IN WHITE ADVANTAGE 4–11 (2014) (discussing the locked in nature of White advantage even in the absence of intentional racism).

preparation and application for tenure as a war-like effort.[17] Employing tactical strategies similar to those suggested by Kupenda[18] and others,[19] many have fought for tenure one decision at a time. Slowly, faculty tenure victories have increased the diversity of law faculty and brought more diverse voices into legal education.[20]

Through many tenure victories, faculty from underrepresented groups confronted various discriminatory violations[21] of the rules and surmounted struggles with gender and/or racial inequality. Just as the country adding a person of color to a high position does not make the country itself post-racial, similarly, the ivory tower is not automatically made post-racial with the addition of some faculty from underrepresented groups. While a given minority warrior may obtain tenure despite a bloody institutional war, obtaining tenure for this person does not mean that the academy, or her institution, is now welcoming. Actually, racial and gender tensions within the legal academy generally, and within legal educational institutions more specifically, continue to linger.[22]

---

17 The pre-tenure war strategies included: obtaining intelligence; defining goals of engagement; identifying and nurturing allies; forming strategic alliances; identifying the non-allies and any enemies; making calculated power stands, using cost-benefit analysis; following through with public relations work, which builds morale; and losing dispensable battles to win an ultimate victory. *See* Kupenda, *Academic War Strategies*, *supra* note 9.

18 Kupenda presented *Academic War Strategies* at several academic conferences where it was well received. Among those who benefitted from the lessons include the co-authors here, now tenured professors having won the war.

19 *See, e.g.*, Yolanda Flores Niemann, *Lessons from the Experiences of Women of Color Working in Academia*, *in* PRESUMED INCOMPETENT, *supra* note 4, at 446; Adrien K. Wing, *Lessons from a Portrait: Keep Calm and Carry On*, *in* PRESUMED INCOMPETENT, *supra* note 4, at 356.

20 *But cf.* Carmen G. González, *Women of Color in Legal Education: Challenging the Presumption of Incompetence*, 61 FED. LAW. 48, 49 (2014) ("The number of female law professors of color will likely drop even further as declining law school enrollments make layoffs and hiring freezes more common, especially at middle- and lower-tier law schools, where women of color are concentrated.").

21 In discussing tenure atrocities and violations, the authors here are not focusing on proof required to prevail in civil lawsuits alleging constitutional or statutory discrimination. The concern here is not about proving a legal case and not about redress with civil liability or punitive measures. Rather, the focus in this Article is on individual and institutional healing redress where a now member of the law school permanent community was treated during the tenure process with less than the dignity afforded others who are not from underrepresented groups. Hence, the goal here is not a lawsuit. Rather, the goal is in healing the institution and the individual whose dignity was violated.

22 As stated by several of the editors of *Presumed Incompetent* in a subsequent work:

> [D]espite decades of efforts to increase faculty, staff, and student diversity, the culture of academia remains distinctly white, male, heterosexual, and middle- to upper-class. Faculty

Therefore, in this Article, the co-authors confront one of the next generation issues for underrepresented groups in legal education: what happens after tenure victories, especially for the victors in a war wrought with gender and racial inequities? Even if all is fair in love, war, and tenure battles, it remains most troubling when, even in this century, acts of racial and/or gender aggression are targeted at qualified tenure candidates. These violations of the "tenure rules of engagement" based on implicit or explicit racial or gender bias preserve discriminatory practices that impact underrepresented groups and maintain the status quo in the academy and in the country.

Racial and gender discrimination persists in legal academia in part because the dignity of individuals is undervalued, especially where the individuals are not male or where they are not white. This undervaluing of their dignity and humanity becomes so entrenched institutionally that violations of the rules in the tenure process against the underrepresented are simply ignored, or excused or subsumed as normal or ordinary scars of a bid for tenure.[23] Intersectional biases, such as those based on race and gender, exacerbate a tenure candidate's fight for dignity and the respect generally accorded others without question. Continued violations of the rules create institutional barriers for underrepresented groups.[24] The resulting assaults to the dignity of tenure-track faculty, based on obvious and inherent characteristics as gender and race, cause them significant harm and inhibit their academic contributions post-tenure.

Most recently, the highly acclaimed and groundbreaking book, *Presumed Incompetent: The Intersections of Race and Class for Women in Academia*,[25] captured voices of, and experiences of injury to the dignity of, women of color in the academy. This Article will build upon those collective and powerful narratives. Notably, many of the narratives

---

> members whose identities differ from this unspoken and largely uncontested norm find themselves, to a greater or lesser degree, presumed incompetent . . . .

Carmen G. González & Angela P. Harris, *Presumed Incompetent: Continuing the Conversation (Part I)*, 29 BERKELEY J. GENDER L. & JUST. 183, 183 (2014).

23 *Cf.* Meera E. Deo, *Empirically Derived Compelling State Interests in Affirmative Action Jurisprudence*, 65 HASTINGS L.J. 661, 692 (2014) ("Daily 'microagressions,' [sic] outright discrimination, and other racial challenges that people of color endure are often relatively invisible—at least to those who do not experience it themselves.").

24 *See, e.g.*, Kupenda, *Facing Down the Spooks*, *supra* note 5, at 20–22 (administrator suggesting additional tenure requirements for women of color).

25 PRESUMED INCOMPETENT, *supra* note 4.

reflected in *Presumed Incompetent* are "pre-tenure" experiences of women of color.[26] Therefore, drawing on *Academic War Strategies for Nonviolent Armies of One*,[27] which compares seeking tenure to waging a solo, non-violent battle wherein strategic alliances are an essential component of tenure success, this Article proposes a continuation of the war analogy.

This Article relies on theories of post-war strategies of truth and reconciliation as a means to change the culture in legal academia, even after atrocious tenure battles. An institution with truth and reconciliation processes has a chance to heal and enhance productivity. Thus, institutional measures to become more welcoming of all members of the faculty are also measures that favor institutional progress, which is critical in these troublesome times in legal education.

This Article, seeking to usher in institutional and individual healing, will be divided into five Parts. Given the institution has waged a war to maintain the status quo of exclusion, and the individuals from underrepresented groups have employed war-like strategies to be respected and embraced within the institution, it becomes time to bring closure to the war efforts and commence individual and institutional healing. Thus, Part I seeks this closure by first providing the metaphorical framing for the tenure wars, especially as to post-war strategies of truth-telling and reconciliation. Helena Cobban explains in her book, *Amnesty after Atrocity?: Healing Nations after Genocide and War Crimes*,[28] the critical necessity for social healing in the aftermath of war atrocities. One important component of all the approaches discussed by Cobban is truth-telling: the acknowledgment of the collective harm.

Part II will address the great value of telling the truth after the war has ceased. After an institutional war with assaults to the dignity of the underrepresented, truth and

---

26 *Cf.* Maritza I. Reyes, Angela Mae Kupenda, Angela Onwuachi-Willig, Stephanie M. Wildman & Adrien K. Wing, *Reflections on Presumed Incompetent: The Intersections of Race and Class for Women in Academia Symposium—The Plenary Panel*, 29 BERKELEY J. GENDER L. & JUST. 195, 244–45 (2014) (briefly addressing challenges women of color academics face even post-tenure).

27 Kupenda, *Academic War Strategies*, *supra* note 9.

28 HELENA COBBAN, AMNESTY AFTER ATROCITY?: HEALING NATIONS AFTER GENOCIDE AND WAR CRIMES (2007). In making the analogy to war in this paper, we use the terms "war" and "atrocity." We believe that this terminology creates an appropriate analogy to describe the discrimination and injuries that some faculty members endure. We do, however, respectfully acknowledge the differences between the atrocities visited upon groups during wars and conflicts, such as those described in Cobban's book, and those atrocities visited upon faculty from underrepresented groups in tenure wars.

reconciliation is the first critical step for restoring dignity. Even if the underrepresented emerges with tenure, the warrior still emerges wounded. Furthermore, even if tenure is ultimately granted, the acts of aggression remain unaddressed. Both the individual and the institution are left without a therapeutic way to respond to the trauma experienced. Thus, the process of "truth and reconciliation" is needed to bring healing to the injuries and prevent future acts of aggression. Part III of this Article specifically is concerned with the importance of reconciliation after truth-telling.

Part IV of this Article will consider the barriers to the application of truth and reconciliation processes, specifically by discussing practical obstacles to such a healing process. Regardless of barriers, the necessity of telling the truth about violations of the tenure rules and the harm suffered is obvious. For the wounded victors, telling the truth, even if only to ourselves, and reconciling those injuries within the institutional framework of the law school structure are critical for personal and structural transformation, and for the elimination of persisting discrimination. Identifying the obstacles to this process is considered in this Part.

The Conclusion will offer introductory comments for future work. After the tenure war and after, or concurrent with, truth and reconciliation processes, "peacetime" strategies are essential to enhance one's academic life long-term. Future work includes the development of best practices to achieve reconciliation and best practices in formulating and implementing peacetime strategies.

While peacetime strategies benefit the formerly warring institution and faculty, the first and most critical step for institutional transformation is truth-telling about the atrocities. Hence, the goal of this paper is to facilitate the beginning process of truth-telling and reconciliation. The authors here conclude we must facilitate that step, even if we tell the truth only to ourselves, and even if we, as faculty from underrepresented groups, alone seek the reconciliation process. While truth-telling and reconciliation will certainly benefit the entire institution, the process is a healing step for individual faculty, especially for the one wronged. Hence, as stated in the Article's opening quote by Maya Angelou in celebrating the life and racial reconciliatory work of Nelson Mandela, "We [must] not withhold forgiveness/Even from those who do not ask."[29]

---

29 ANGELOU, HIS DAY IS DONE, *supra* note 1, at 35.

I. War, What is it Good For?—Framing

"WAR . . . what is it good for, absolutely nothing, . . . say it again . . . ."[30] War is typically labeled as negative, a consequence of failed diplomacy or an unresolvable dispute that yields violence, senseless loss of life, and devastation to a region. From a humanitarian perspective, war is always best avoided. However, the ideals of peacetime are not eternally realistic and wars do unfortunately occur.

In the context of analyzing the tenure wars in the legal academy, war, and its corollary rules and theories, is useful as a framing tool. The rules of war frame the discussion of the metaphorical battlefield on which the tenure wars unfold. The frame of wartime and peacetime will be strategically maneuvered throughout the Article to help illuminate needed remedial measures for violations that occur during the tenure process as well as to suggest best practices that could improve the process and post-tenure productivity for both faculty candidates and their institutions.

War, no matter how aggressive or how violent, has rules. Rules of war are well developed in public international law and articulated in various international treaties.[31]

---

30 EDWIN STARR, WAR (Motown Label 1969).

31 *See, e.g., Instructions for the Government of Armies of the United States in the Field (Lieber Code). 24 April 1863.*, INT'L COMM. OF THE RED CROSS, https://www.icrc.org/ihl/INTRO/110?OpenDocument [https://perma.cc/5EQ2-226Q] (last visited Feb. 26, 2015); *The Universal Declaration of Human Rights*, UNITED NATIONS, http://www.un.org/en/documents/udhr/ [http://perma.cc/LTZ4-89GY] (last visited Feb. 26, 2015); *Charter of the United Nations and the Statute of the International Court of Justice*, UNITED NATIONS (1945), https://treaties.un.org/doc/publication/ctc/uncharter.pdf [https://perma.cc/Q5B2-XYTE]; *Convention on the Prevention and Punishment of the Crime of Genocide*, UNITED NATIONS, http://legal.un.org/avl/ha/cppcg/cppcg.html [http://perma.cc/3BKZ-6SS8] (last visited Feb. 26, 2015); *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, UNITED NATIONS, http://www.hrweb.org/legal/cat.html [http://perma.cc/2RWA-QRT3] (last visited Feb. 26, 2015); *Geneva Conventions*, INT'L COMM. OF THE RED CROSS, https://www.icrc.org/en/war-and-law/treaties-customary-law/geneva-conventions [https://perma.cc/QFY3-CSC5] (last visited Feb. 26, 2015); INT'L COMM. OF THE RED CROSS, 1980 CONVENTION ON CERTAIN CONVENTIONAL WEAPONS (1980), https://www.icrc.org/eng/assets/files/other/1980_ccw.en.pdf [https://perma.cc/8SW2-G6F9] (July 29, 2015); *Articles of the Chemical Weapons Convention*, ORG. FOR THE PROHIBITION OF CHEMICAL WEAPONS, http://www.opcw.org/chemical-weapons-convention/articles/ [http://perma.cc/3AKR-BQS7] (last visited Feb. 26, 2015); *Convention on the Physical Protection of Nuclear Material*, INT'L ATOMIC ENERGY AGENCY, https://www.iaea.org/Publications/Documents/Conventions/cppnm.html [https://perma.cc/98LV-NW27] (last visited Feb. 26, 2015). The law of war, also known as international humanitarian law, is the branch of public international law governing wartime conduct (*jus in bello*), and it is distinct from the legal regime governing acceptable justifications to engage in war (*jus ad bellum*). IHL Primer Series, International Humanitarian Law Research Initiative, Program on Humanitarian Policy and Conflict, HARVARD UNIVERSITY 1, 1 (2009), http://www3.nd.edu/~cpence/eewt/IHLRI2009.pdf [http://perma.cc/T2QJ-MY74].

Further, when these rules of war are violated there are consequences to the violations. However, in tenure wars, although there are American Bar Association accreditation rules that govern tenure and promotion,[32] and although all law schools have internal rules listed in the faculty handbook, which govern tenure and promotion, there are seldom consequences to the violation of any of these academic rules in tenure wars. The lack of enforcement creates a systemic problem, and leaves faculty tenure candidates vulnerable to victimization by continued violation of the rules. Impunity is a dangerous by-product of lax enforcement, and can embolden future violators that have no fear of consequences. Moreover, without appropriate redress, the faculty member, as well as the institution, is left without a therapeutic way to respond to the trauma experienced.

When violations occur during war, tribunals provide legal redress for the war crimes.[33] Even in instances where war crimes are not criminally prosecuted, they receive redress through a truth and reconciliation commission,[34] a form of mediation which seeks to create an accurate historical record of the crimes. In the truth and reconciliation setting, perpetrators provide accurate accounts of the violations in exchange for amnesty from criminal prosecution. Some war crimes have been addressed with a combination of both prosecution and truth and reconciliation.[35] It is debatable which method, or combinations of methods, best redress the harm of the violation. The specific remedial measure deployed is based on the unique needs of the region in which the war crimes and atrocities occur.

Every war is different. (E.g., all tenure is local.) Each conflict is intertwined with a unique contextual backdrop. (E.g., every faculty candidate's teaching, scholarship, and service, adds to the complexion of the institution.) The specific issues of the war-torn region impacts the ability, ease, and speed of the post-war recovery. Depending on the length of the war or severity of the war crimes, specific interventions may be needed to

---

32 Legal Education Standard 405(b) of the American Bar Association provides: "A law school shall have an established and announced policy with respect to academic freedom and tenure . . . ." ABA, 2014 REVISED STANDARDS AND RULES, *supra* note 12, at 27, Standard 405(b). *See also* Interpretation 405-3, *supra* note 12, at 28 ("A law school shall have a comprehensive system for evaluating candidates for promotion and tenure or other forms of security of position, including written criteria and procedures that are made available to the faculty.").

33 Such as, for example, the International Criminal Tribunal for Rwanda, the International Criminal Tribunal for the former Yugoslavia, and the International Criminal Court.

34 COBBAN, *supra* note 28, at 4, 8–10.

35 *See generally* Abdul Tejan-Cole, *The Complementary and Conflicting Relationship between the Special Court for Sierra Leone and the Truth and Reconciliation Commission*, 6 YALE HUM. RTS. & DEV. L.J. 139 (2003).

address the unique harms inflicted. (E.g., the history of the academic institution can impact whether it can promptly recover, especially considering whether there has been a build-up of unaddressed violations, or particularly severe violations, which prolong the recovery process.)

In *Amnesty after Atrocity? Healing Nations after Genocide and War Crimes*,[36] Helena Cobban analyzes the redress of war crimes, specifically looking at three different regions and the ways in which remedial measures are used in each region. Cobban discusses the Rwandan genocide,[37] apartheid in South Africa,[38] and the civil war in Mozambique.[39] Post-conflict justice was uniquely different in each country. The International Criminal Tribunal for Rwanda was one means to address the Rwandan genocide and perpetrators were criminally prosecuted and sentenced.[40] In South Africa, the South African government formed a Truth and Reconciliation Commission in which no one was prosecuted but an accurate historical record of the offenses was voluntarily created in exchange for amnesty.[41] In Mozambique, a blanket amnesty was provided and "a veil of silence and intentional forgetting was formally laid over all those deeds."[42] The goal of each of these methods was to address the violations and the perpetrators but mostly to *restore peace* in the regions and *prevent* future atrocities.

Harvard law professor Martha Minow articulates some of the important goals that need to be achieved in post-war rebuilding.[43] A portion of her list includes:

1. Overcome communal and official denial of the atrocity; gain public acknowledgment.

---

36 COBBAN, *supra* note 28.

37 COBBAN, *supra* note 28, at 25–79.

38 COBBAN, *supra* note 28, at 85 ("In 1973, the UN General Assembly quite justifiably ratified a treaty that declared that 'apartheid is a crime against humanity.'"). *See also* G.A. Res. 3068 (XXVIII), U.N. GAOR, Supp. No. 30, U.N. Doc. A/9030 (Nov. 30, 1973).

39 COBBAN, *supra* note 28, at 136–82.

40 COBBAN, *supra* note 28, at 18.

41 COBBAN, *supra* note 28, at 4, 8–12.

42 COBBAN, *supra* note 28, at 4–5.

43 COBBAN, *supra* note 28, at 22–23 (citing Martha Minow, *Hope for Healing*, *in* TRUTH V. JUSTICE: THE MORALITY OF TRUTH COMMISSIONS 53 (Robert I. Rotberg & Dennis Thompson eds., 2000)).

2. Obtain the facts in an account as full as possible in order to meet victims' need to know, to build a record for history, and to ensure minimal accountability and visibility of perpetrators. . . .
4. Promote reconciliation across social divisions; reconstruct the moral and social systems devastated by violence.
5. Promote psychological healing for individuals, groups, victims, bystanders, and offenders.
6. Restore dignity to victims.
7. Punish, exclude, shame, and diminish offenders for their offenses.[44]

Cobban suggests that Minow's goals provide an essential starting point to achieve post-war stability. However, one of Cobban's main observations in application of the goals to each region she studied was that there is no such thing as a "one size fits all" remedy when it comes to achieving peace and prevention in a war-torn region.[45] Thus, it is important to be mindful not to let external pressures, motivated by those outside the community, dominate the peacetime solutions. Cobban suggests that post-war peace and prevention strategies must be custom-tailored with internal community stakeholders in mind.

In translating the war frame to the academic tenure wars, one must similarly keep the goals of restoring the peace, preventing future violations, and rebuilding institutional stability as the highest priorities.

II. The Value of Telling the Truth After the War

Truth-telling is an essential part of the academic mission. "It is the responsibility of intellectuals to speak the truth and expose lies."[46] A core objective of this Article is to expose the truth that one's successful emergence from a tenure war, tenured, is not sufficient to heal the wounded faculty warrior if she was unjustly injured on the metaphoric battlefield. Unaddressed wounds will fester, and continue to harm the faculty and the institution

---

44 COBBAN, *supra* note 28, at 22–23 (citing Minow, *supra* note 43, at 312–13).

45 COBBAN, *supra* note 28, at 23 ("[A]ttaining social peace, the ending of the atrocities, and the rebuilding of the kinds of links inside society that can prevent the future commission of atrocities are . . . highest priorities.").

46 Noam Chomsky, *The Responsibility of Intellectuals*, N.Y. REVIEW OF BOOKS, Feb. 23, 1967, http://www.chomsky.info/articles/19670223.htm [http://perma.cc/NQN5-4H3G] (last visited Feb. 28, 2015).

because the injury is a collective one. Telling the truth after war, even after a tenure war, addresses this collective injury. It first brings the injury to light and makes a record of it.

One of Professor Minow's key goals suggests that overcoming communal and official denial of the violation and gaining public acknowledgment of it are first steps in the post-war rebuilding process.[47] It is important that the faculty and the institution pursue this goal by being open to the truth-telling about the harm suffered as a remedial measure toward peace and prevention. Telling the truth, even if only to oneself, is a component of this critical first step in the truth and reconciliation process.

Truth-telling has therapeutic value.[48] The simple process of sharing one's story can be healing.[49] In some ways the truth-telling process has already unofficially begun in the academy based in part on the book *Presumed Incompetent*, a collection of true stories of faculty members and their lived experiences of injury within their respective institutions. In her book review of *Presumed Incompetent: The Intersections of Race and Class for Women in America*, Dean Wendy Scott writes about the value of wounded warriors telling these true stories:

> I felt vindicated by these women who shared their stories, some of whom are role models or friends whose stories I knew, most of whom I had never met but who inspired me nonetheless. Like Professor Matsuda, I extend my thanks to the women who produced this volume "for taking the hard path of truth-telling." Their truth-telling journey ensures that *Presumed Incompetent* will help the next generation of women develop strategies for creating a successful career without losing their identity.[50]

Telling the truth after the war also fulfills the need to obtain a full account of the facts and build a historical record, also a key goal on Professor Minow's list of post-war rebuilding.[51] With essential facts exposed, not only can healing begin, but remedial activities can be fashioned and best practices devised to address prevention.

---

47 COBBAN, *supra* note 28, at 22–23 (citing Minow, *supra* note 43, at 312–13).

48 COBBAN, *supra* note 28, at 127.

49 Wendy B. Scott, *Book Review of Presumed Incompetent: The Intersections of Race and Class for Women in Academia*, 37 HARV. J. L. & GENDER 1 (2013); *see generally* PRESUMED INCOMPETENT, *supra* note 4.

50 Scott, *supra* note 49, at 6.

51 COBBAN, *supra* note 28, at 22–23 (citing Minow, *supra* note 43, at 312–13).

The post-war strategy of truth-telling was most notably employed in South Africa after the end of apartheid in 1994,[52] with the Truth and Reconciliation Commission ("TRC"). The foundational germ for beginning the restorative process was set out in South Africa's Interim Constitution of April 27, 1994:

> [T]here is a need for understanding but not for vengeance, a need for reparation but not for retaliation, a need for ubuntu[53] but not for victimisation. In order to advance such reconciliation and reconstruction, amnesty shall be granted in respect of acts, omissions and offenses associated with political objectives and committed in the course of the conflicts of the past. . . . With this Constitution and these commitments we, the people of South Africa, open a new chapter of history of our country.[54]

The Interim Constitution is quite significant because it set the tone and opportunity for a therapeutic jurisprudential response to the past trauma experienced. Additionally, the Interim Constitution provided a new legal frame, a peacetime frame, under which healing could occur, and past violations could be addressed. While the pain had been endured and the aftermath of the injuries still evident, many Black South Africans believed that the truth-telling of the Truth and Reconciliation Commission process "helped wipe away some of the pain."[55]

In Cobban's book, she identifies aspects of South Africa's "truth and reconciliation" approach that are preferable to the retribution approach of the international criminal tribunal, which is commonly preferred by Western lawyers. Western lawyers are most familiar with the prosecutorial model; however, it provides the least amount of therapeutic jurisprudence to its participants.[56] One value that truth and reconciliation prescribes is

---

52 *Cf.* COBBAN, *supra* note 28, at 83–85 (discussing apartheid, during the 350 years prior to 1994 there was a systemic oppression of non-Whites in South Africa, wherein non-Whites represented eighty-seven percent of the population).

53 Ubuntu is an ancient African word meaning "humanity to others." It also means "I am what I am because of who we all are." *The Ubuntu Story*, UBUNTU, http://www.ubuntu.com/about/about-ubuntu [http://perma.cc/4AQZ-5TUA] (last visited Feb. 28, 2015).

54 S. AFR. (INTERIM) CONST., 1993, CH. 15.

55 COBBAN, *supra* note 28, at 122.

56 The prosecutorial model of the tribunal does not provide sufficient healing opportunities for the victim. Some might even argue that the victim is re-victimized in the criminal trial process. Additionally the prosecutorial model does not develop a clear and accurate record of the harms because the perpetrator is in an

restorative justice.[57] "'Truth, the road to reconciliation' was a slogan TRC often used . . . ."[58] Hermann Giliomee, a distinguished Afrikaner historian, opined: "Despite its flaws . . . the TRC performed an important therapeutic role in providing victims with the opportunity to tell their story and in acknowledging their suffering."[59]

Therapeutic jurisprudence scholars have long opined that TRCs are more victim-centered than traditional criminal prosecutorial models.[60] "[M]any people outside South Africa have written about the nearly cathartic sense of healing they believed was experienced by former victims of apartheid when . . . the TRC allowed them to retell their stories in a sympathetic public setting."[61] Truth-telling has an important value toward restoring peace.

In academic tenure wars, truth and reconciliation is valuable after the war. Truth-telling is key to the acknowledgment of the collective harm, harm experienced by both the faculty and the institution. Yet, the victim-centered focus of the truth and reconciliation model gives the wounded faculty warrior a voice and an opportunity, in a safe space, to share the trauma experienced. In the academic setting, it is important to allow faculty members, especially junior faculty members, to be able to speak up without fear of retribution. Additionally, it is important to have a mechanism wherein senior faculty members can speak up as well without fear of punishment.[62] Silence breeds impunity and can breed the wrong instructional culture.

Telling the truth, even if only to ourselves, is healing and therapeutic as well as productive in routing out persisting incidents of discrimination in tenure wars.

---

adversarial posture and not motivated to tell the truth about what occurred. Further, the lack of historic record undermines prevention.

57 COBBAN, *supra* note 28, at 23.

58 COBBAN, *supra* note 28, at 128.

59 COBBAN, *supra* note 28, at 120.

60 COBBAN, *supra* note 28, at 127 (while many found the TRC helpful, others did not). *See also* Amy D. Ronner, *Songs of Validation, Voice, and Voluntary Participation: Therapeutic Jurisprudence, Miranda and Juveniles*, 71 U. CIN. L. REV. 89, 90 (2002) ("broadly proposes that therapeutic jurisprudence can elevate and improve the law in many ways").

61 COBBAN, *supra* note 28, at 127.

62 COBBAN, *supra* note 28, at 22–23 (Professor Minow's list of goals includes building a historical record while at the same time ensuring minimal accountability and visibility of perpetrators).

III. The Importance of Reconciliation After the Truth Has Been Aired

When Professors Kupenda and Lawson recently presented the idea of truth and reconciliation as a restorative tool after tenure wars at the American Association of Law Schools ("AALS") 2015 Annual Meeting in Washington, D.C., one consistent comment received from faculty members in the audience was that although they agreed with the truth-telling aspect of the thesis, they were somewhat challenged by the reconciliation portion of the process. They admitted that they feared that they would be unable to reconcile with the individuals on their own respective faculties that had done them harm during their "tenure war." However, Professors Kupenda and Lawson urged in response to this feedback that the reconciliation step is equally important as the truth-telling step, because without the reconciliation step the wounded warrior is unable to move forward past the injury and become a fully productive member of the tenured faculty.

Reconciliation is an important part of the restorative process, and has therapeutic value. "Reconciliation is not just a symbolic hug. . . . It is hard to reconcile."[63] In South Africa, the TRC's success was judged on several categories related to reconciliation: 1) restoring the human dignity of victims; 2) restoring the human dignity of perpetrators; 3) forgiveness, apologies and acknowledgments, and acts of reconciliation; 4) reconciliation without forgiveness; and 5) restitution or reparation.[64]

In the context of a law faculty, reconciliation is an important step because the likelihood of faculty members working together for twenty years post-tenure is more the norm than the

---

63 COBBAN, *supra* note 28, at 123. As Cobban explained:

> [T]he TRC's rules never *required* victims to forgive or perpetrators to express any apologies or other signs of repentance or remorse. Under the law, all that the Amnesty Committee could require of perpetrators was that they tell all that they knew about gross rights violations committed by themselves or others. In short, they did not have to express any particular personal stand—whether of shame, repugnance, or repudiation—toward the truths thus revealed; and indeed, it sometimes seemed to observers that perpetrators recounted their misdeeds with a quite neutral tone, or even with a distressing degree of smirking or pride.
>
> Nevertheless, many TRC commissioners went beyond the minimalist requirements of the legislation and urged both victims to forgive and perpetrators to express some remorse.

COBBAN, *supra* note 28, at 129.

64 COBBAN, *supra* note 28, at 128–29.

exception. The goal is that both the wounded faculty warrior and the perpetrator of a violation of the rules could productively coexist on the same tenured faculty because of the truth and reconciliation process, as opposed to ignoring that any past injury occurred. One South African church leader described the truth and reconciliation process as "having less to do with perpetrators and victims than with the broader 'Mandela project' of reconciliation. . . . We fail if we see the TRC as only one event."[65] Truth and reconciliation as a process is a means to an end. It definitely does not address all issues that may co-exist within a faculty or its larger institutional framework. However, the key is peace and prevention after the war.

Professor Minow suggested key goals in post-war rebuilding include attention focused on reconciliation, such as promoting reconciliation across divisions, and promoting psychological healing for individuals groups, victims, bystanders, and offenders.[66] An intended aspect of the reconciliation process is to affirmatively promote professional healing, as well as the psychological healing of the larger community that experienced the collectively traumatic injury of the violation.

Notably, Professor Minow includes bystanders in her list of groups that need reconciliation. In the context of a faculty, and faculty tenure decisions, most of this activity occurs in meetings. Faculty members in these meetings are actively or passively involved in the outcome of the meeting. Some faculty, although not the target of the tenure war or the victim of the violation of the rules, may too feel injury or trauma as a bystander to the event.

The reconciliation process is important for its therapeutic value for bystanders as well. These bystanders can include alumni of the school who helplessly observed the atrocious violations against faculty during the tenure wars, either while they were students or even after graduation. Thus TRC could help bring some disillusioned alumni back in communion with the law school.

TRC focused much of its attention on individual reconciliation but there was also an aim toward national reconciliation. Thus, in addition to faculty reconciliation, institutional reconciliation can also be achieved. One South African commissioner, Goldstone, worded the value of institutional truth and reconciliation this way: "The greatest value of the TRC is that we now have *one* history of what happened in the apartheid years. That was a great

---

65 COBBAN, *supra* note 28, at 122.

66 COBBAN, *supra* note 28, at 23. For the more extended list of goals, see *supra* text accompanying note 44.

gift to the nation. White South Africans cannot deny what happened."[67] Goldstone went on to say that certain policies intended to be remedial were much easier to enact because of the revelations learned during the truth and reconciliation process.[68]

Thus, after the truth has been aired, institutions may become more willing to amend internal policies to both remediate past injuries and to prevent future ones as new faculty candidates enter the tenure process. Ideally, the reconciliation process will encourage an institution to move towards a "best practices model" and away from a culture of impunity. Before best practices can be formulated, however, the obstacles to truth and reconciliation must be explored.

IV. Obstacles to a Truth and Reconciliation Process

The war-like tenure bid processes for women and underrepresented groups are amply documented in *Presumed Incompetent*.[69] Most of the atrocities reported in that collection, however, are about the pre-tenure processes. Even if tenure is ultimately granted, often the acts of aggression remain unaddressed. Both the individual and the institution are left without a therapeutic way to respond to the trauma experienced. Furthermore, the impact of the violations experienced pre-tenure persists even post-tenure. Yes, a process for truth and reconciliation, similar to the processes discussed in this Article, is the first critical

---

67 COBBAN, *supra* note 28, at 134.

68 COBBAN, *supra* note 28, at 134.

69 While *Presumed Incompetent* focuses on women of color in academia, the atrocities experienced by other underrepresented groups have also been documented. *See generally* Jordan, *supra* note 2; Stephanie A. Shields, *Waking up to Privilege: Intersectionality and Opportunity*, *in* PRESUMED INCOMPETENT, *supra* note 4, at 29; Weatherspoon, *supra* note 2.

Although many of the reported violations in *Presumed Incompetent* are experienced by women of color seeking tenure in predominantly white institutions, race- and gender- based violations may also be inflicted by people of color upon other people of color. *See* Reyes, Kupenda, Onwuachi-Willig, Wildman & Wing, *supra* note 26, at 235–40. One scholar explains the lack of discussion on interracial justice problems as follows:

> [L]ack of attention to interracial justice issues, which applies to the courts and litigants as well as legal scholars, may be political. Discussion of interracial conflict is considered taboo, a subject too explosive for whites who do not want to be perceived as saying simply "see, they're racist too" and for people of color who do not want to detract societal and legal attention from the whites' position atop the racial hierarchy.

ERIC K. YAMAMOTO, INTERRACIAL JUSTICE: CONFLICT & RECONCILIATION IN POST-CIVIL RIGHTS AMERICA 47 (1999).

step for restoring dignity when the wounded warrior emerges with tenure. The process of truth and reconciliation is needed to bring healing to the injuries experienced and also, importantly, to prevent future acts of aggression.

Still, there are many obstacles, as discussed below, to employing truth and reconciliation processes in our academic institutions.

A. Obstacles Based On a Lack of Mutuality

Ordinarily when one thinks about truth and reconciliation, one likely imagines the offender and the victim coming together with the offender truthfully confessing to the committed wrongs, asking for forgiveness, and accepting responsibility.[70] This reasonable view is that asking for forgiveness and remorse is critical to rebuild brokenness and reconcile separated parties. True, it would be very conducive to institutional and individual health, for those who visited assaults upon the tenure-track professor based on her race or gender to admit to their wrongdoing, embrace notions of equality, and cease their wrongdoing. But, what if this does not occur? How can the wounded professor reconcile if the institution is made up of a majority of colleagues and administrators who are unwilling, or unable, to tell the truth about the harm they inflicted? Sadly, this may likely be the case.

The institution may consist of many individuals who are unaware of their implicit bias, prejudice, and racism.[71] Many white law faculty may have never had a professor or teacher who was not white, or a supervisor who was not white. Some who have lived very non-diverse lives may be unaware, and have never been challenged, as to their racial or gender biases, beliefs, and hurtful statements. Others may be self- and institutionally-aware, but may be so invested in the maintenance of the institutional status quo that they reject institutional progress to maintain these structural ineffective systems. They may fear that elimination of bias may lead to a true merit-based system, meaning they would have to work harder and compete more vigorously to receive the same salaries or other benefits. [72]

---

70 Surveys suggest that many victims in Rwanda had this view. *See* COBBAN, *supra* note 28, at 65 (quoting National University of Rwanda, Centre for Conflict Management, *Perceptions about the gacaca law in Rwanda: Evidence from a multi-method study*, *in* LES JURISDICTIONS GACACA ET LES PROCESSUS DE RÉCONCILIATION NATIONALE 115 (2001) ("In the opinion of most (89%) respondents, lasting peace can only be ensured when the authors of genocide recognize their faults, ask for forgiveness, and show the desire for reconciliation.")).

71 *See generally* Sylvia R. Lazos, *Are Student Teaching Evaluations Holding Back Women and Minorities: The Perils of "Doing" Gender and Race in the Classroom*, *in* PRESUMED INCOMPETENT, *supra* note 4, at 164, 174–75 (discussing prevalence of implicit bias).

72 *See* Angela Mae Kupenda, *To Whom it May Concern: Re: Brown III*, 27 N.C. CENT. L. REV. 216, 219

Under these circumstances, within an environment not bent on open repentance, reconciliation for the wounded warrior means she has to forgive without receiving apologies or recognition of the harms. While she must forgive for her own healing, it is crucial that she does not forget the atrocities. Forgetting, where institutional bias continues to rage, could be personally dangerous for the one wounded, as she must be aware that, though her war for tenure is over, landmines or pockets of racism or sexism may still be present with the potential to sabotage her progress and that of others.[73] Moreover, forgetting the racism or sexism in the actions and structures she confronted could lead her into a state of denial, which then would make her less helpful for others from underrepresented groups who follow her through the tenure process. She could then unfortunately become one of the colleagues who deny the existence of the atrocities[74] for others who suffer, just as some denied her own observations in her own tenure war.

Feigning forgetting the atrocities, just to get along and just to be considered collegial,[75] is likewise not an option, although she may be encouraged to do so. Still, some forms of forgetting and forgiveness are critical for her to be able to engage with the building of a new order out of the same institution that so wrongfully treated her. As Cobban points out in her book, there is "the need, as societies emerge from the horrors of political violence, to give the goal of building a democratic and hope-filled political order going forward some priority over the desire to look back and tease apart the ever-complex and contentious matter of precisely who did what . . . ."[76] The wounded faculty member may have difficulty prioritizing or balancing remembering the past, lest it not be repeated, versus forgetting the past, in order to build a new more just institution. Though difficult, overcoming this obstacle is critical.

Whether she wants to admit it or not, the newly tenured faculty member is now a part of, and even a senior member of, an institutional structure which if not transformed will continue to visit atrocities upon others. If she just blends into the institution, or permanently disengages from the institution, without taking any steps to change it, she is now part of

---

(2005) (discussing how blacks' abilities are unfairly critiqued, while the presumption of smartness for whites may incite laziness).

73 *See* Reyes, Kupenda, Onwuachi-Willig, Wildman & Wing, *supra* note 26, at 244.

74 *See* Kupenda, *Facing Down the Spooks*, *supra* note 5, at 24.

75 *Cf.* COBBAN, *supra* note 28, at 13 (addressing how some "seem strongly guided by a set of deeply held norms that act *against* the discussion of painful events in public").

76 COBBAN, *supra* note 28, at xii.

opposition to justice and collegiality that future tenure warriors from underrepresented groups must continue to face and war against.

Her choices are to either become a part of an institution that continues to visit atrocities upon others as it battles to maintain a status quo of exclusion *or* to seek to transform the institution of which she is now a part. Transforming her institution begins with the truth and reconciliation process. However, the truth and reconciliation process may be blocked as her institution and colleagues may not seek, or even be open, to reconcile with the now tenured though wounded warrior.

Part of the lack of mutuality rests in the lack of formal institutional change prior to the truth-telling and reconciliation processes. In Cobban's book, truth and reconciliation processes occurred after the end of structural violence and as a part of building "a new democratic and inclusive political order."[77] In South Africa, the end of legalized apartheid meant a new constitution and a new order. This new order meant a chance for at least political and legal transformation, if not complete social and economic change. However for the tenured academic warrior, the unjust order may still be in place, with no formally ordered transformation.

At the end of a tenure war filled with atrocities, truth-telling and reconciliation are steps in the best interests of the institution. Yet without political transformation, it is blocked. Without the reconciliation, the tenured faculty member is similarly blocked in her personal healing and progress.

B. Obstacles Based on So Many Different and Complicit Wrongdoers

Where there are many wrongdoers, it is difficult to identify and address them all for a full accounting. As stated in Rwanda about punishing after genocide,

> In general, the concept of justice is that the guilty one should be punished, and the punishment should be comparable to the crime. But in a case like that of the genocide, there is no punishment that could be equal to the wrongs they committed. . . . No one is going to kill a million![78]

While this Article is concerned with reconciliation, rather than getting even, the point

77 COBBAN, *supra* note 28, at ix.

78 COBBAN, *supra* note 28, at 78.

of the quote is relevant. While a law school may not have a million professors, many of the institution's faculty and administrators may have participated in the racial and gender atrocities visited upon a tenure candidate from an underrepresented group.

Moreover, it may be difficult to have "a sharp dyadic distinction" to separate oppressors and victims.[79] Some who violated the tenure candidate may have been violated themselves as they sought tenure. Some may have injured the candidate to prevent harm to themselves by racially or gender oppressive faculty who are seen as more powerful in other ways too. Thus, individual faculty may visit atrocities upon underrepresented groups without any intent to destroy them or eliminate them from the university, but for other self-serving purposes or for their own survival.[80]

Others have benefitted based on institutional favoritism of the status quo. Hence these beneficiaries may not be open to truth-telling and institutional change. This scenario was evident in South Africa and affected the ending of the conflict:

> Voices that criticized apartheid were more numerous among English-speaking Whites than among Afrikaners. Yet, most English-speaking Whites remained passive but grateful beneficiaries of the apartheid system. Several factors accounted for this situation, including . . . the desire of many English-speaking Whites to hang onto the lovely lifestyle that apartheid allowed them, and feelings of unabashed racial superiority over the country's non-White peoples.[81]

Others within the institution may see their wrongs as lesser than other, more severe violations against individuals from underrepresented groups.[82] Some may feel convicted but without knowledge of how to provide redress and free their consciences,[83] so they do nothing to address their past actions. Thus, with the various motivations and types of atrocities, a huge obstacle is presented for truth-telling and reconciliation.

---

79 COBBAN, *supra* note 28, at 14.

80 *Cf.* COBBAN, *supra* note 28, at 48 ("double intentionality" required for legal determination of genocide).

81 COBBAN, *supra* note 28, at 89.

82 *Cf.* COBBAN, *supra* note 28, at 98 ("The focus on gross human rights violations (as defined in the law) may have left many grievances form the apartheid era unaddressed.").

83 *Cf.* COBBAN, *supra* note 28, at 119, 120–21.

The wounded tenure warrior must remember that her goals are reconciliation with her institution and the transformation of the institution into one leaning toward more justice. Seeing the reconciliation as one with the institution, rather than with individual wrongdoers who are continuing in atrocious behavior, can be a more palatable perspective. But seeing reconciliation more broadly as with the institution can, in some ways, make one's attempt at reconciliation a more onerous burden. Nelson Mandela once said: "In a sick country every step to health is an insult to those who live on its sickness."[84] Trying to make the institution healthy while others seek to continue its sicker traditions can be an overwhelming effort for a potentially lone warrior, already tired and wounded.

C. Given the Other Obstacles, the Wounded Victor May Not Be up to Taking on the Truth and Reconciliation Process

Given the other obstacles discussed in this Article, truth and reconciliation in an unwilling institution with ongoing bias will likely be a most difficult undertaking. The newly tenured and wounded faculty member may not be up to the difficulties inherent in trying to clear all of these obstacles. Further, she may be working alone, at least until she recruits others to the cause of institutional improvement and full rejection of racism and sexism.[85]

The wounded state of the victor places her first in need of personal healing. She may require physical and/or emotional or mental separation from her institution for a while, for this healing to even begin. The healing may be hindered by ongoing blatant inequities or micro-aggressions which she may still be experiencing at her institution. Even if she marshals strength to seek a truth and reconciliation process, she may find herself continually wounded by those in her institution who refuse to confront injustice with the truth and use various means to silence, or discredit, her. The warrior may be called to exude untold strength for a long period of time.

The time required for a completed process may be even longer than the tenured warrior's expected time at her institution. As stated post-apartheid by a witness, "It [may]

---

84 NELSON MANDELA, CONVERSATIONS WITH MYSELF 270 (2010).

85 Even with the trepidation as to the future of legal education, institutions and faculty may be unwilling, or unable, to examine how lingering racism, sexism, hostility, and lack of collegiality in the institution may hinder its progress in becoming a more responsive institution to the increasingly diverse and changing population.

take decades, generations, [to] assimilate the truths . . . piece by piece."[86] And the truths must be assembled, and told, before the reconciliation is complete.

CONCLUSION

If those from underrepresented groups who do obtain tenure do not truly tell the truth and seek institutional reconciliation, then they become a part of an institution rooted in injustice. Unfortunately, though understandably, this happens. As a result, the academic life stories of the injured, such as those stories collected in *Presumed Incompetent*, continue to occur. And the racism and sexism of legal institutions continues to torment and exclude the full potential of many professors. The continued assault on underrepresented faculty, then, is a continued assault on, or holding back of the progress of, the entire institution.

Our hope with this Article is that truth and reconciliation processes will occur more often, and as a result, atrocities will happen less in the generations that come. Regardless of the above stated obstacles, the necessity of telling the truth about violations of the tenure rules and the harm suffered is obvious. Cobban's work illustrates how these processes benefitted countries after serious atrocities and wars. For the wounded victors, telling the truth, even if only to themselves, and reconciling those injuries within the institutional framework of the law school structure are critical for personal and structural transformation, and for the elimination of persistent discrimination. This beginning work has focused primarily on presenting the value of, and the obstacles to, truth-telling and the reconciliation processes in academic institutions following tenure battles wrought with racial and gender violations.

We hope in a subsequent work to formulate and analyze best practices to accomplish this process. These best practices will include both practical suggestions for the tenured warrior and suggestions for her institution.

Once truth and reconciliation occurs, the institution and underrepresented faculty member are then posed for the next step. In another future work, we hope to address that next step, after the tenure war, "peacetime" strategies. Post-tenure and after reconciliation, the war strategy becomes an inefficient, if not obsolete, mechanism to achieve future success. What are former warriors to do at that point to adjust and thrive post-tenure? Notwithstanding the success of the war-time effort, after the official battle for the status and security of tenure is won and some truth-telling has occurred, some underrepresented

---

86 COBBAN, *supra* note 28, at 122.

faculty members will still struggle post-tenure in a new mission to remain productive and fulfilled in their academic posts.[87]

Faculty growth for underrepresented groups comes about by shifting the uses of wartime strategies to peacetime strategies. The development and explanation of these peacetime strategies will be a subject of future work. Peacetime strategies are essential to enhance one's academic life long-term. Even post-war, the strategic alliances formed during the tenure battle are still fertile and can be optimized during peacetime for continued professional growth. Faculty growth comes about by shifting the use of wartime strategies to peacetime strategies of successful diplomacy, compromise, and proactive conflict resolution, toward a unified goal of continued collective achievement within the academy. The many additional peacetime strategies may include disarmament, or laying the weapons down and honoring others' "white flags"; leaving some troops on the ground to quell little uprisings and to act as peace-keeping forces; shaping new immigration/migration policies; rebuilding war-torn areas, even when the damage to others was justified for self preservation; rehabilitation for wounded warriors; adapting to realities/limitations; and reallocation of resources through post-war industries and new targets.

Women and other underrepresented faculty can try to recover after tenure battles, bravely tell the truth, seek to reconcile, and shift their war efforts to engage with their schools in reconstructive ways during relative peacetimes to help construct institutions more committed to justice for all. Building such institutions is the next charge for this generation. The shift in perspective and strategy is critical for the faculty member to not merely survive, but to thrive for many post-tenure, peacetime years. Through this process, the embattled, tenured faculty member can strive to emerge as a willing, constructive member of a more equality-filled institution that wages war no more.

For this to happen, though, the tenured, though wounded, faculty member must engage in a truth-telling and reconciliation process. Telling the truth is critical to begin this transformation. Thus, we must first tell the truth and begin to reconcile within our institutions, even if the reconciliation effort is not mutual. Hence, faculty from underrepresented groups must tell the truth, even if we tell the truth only to ourselves.

---

87 Reyes, Kupenda, Onwuachi-Willig, Wildman & Wing, *supra* note 26, at 244–45.