

## Foundation Atrocities and Public History: The role of lawyers in finding truth

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Public history can be understood as history as it is understood by the public. In this it may be distinct from history as understood by academic historians and, indeed, historical fact. The law and legal scholars can and should play a greater role in settling the disputes around public history. Public history is of major significance in shaping society, institutions and states. It plays a core role in shaping national mind sets and nationalism. The very existence of a nation can depend on public history. This is of critical importance in post imperial situations and in the face of continued or renewed imperialism. Public history can counter cultural imperialism or support cultural imperialism.

It is not surprising that public history is riven with disputes. The past is in a very real sense up for grabs and those with significant resources can take control of public history. What people believe of the past can be quite different from what academic historians believe. In addition even academic historians may not be immune to the socio-cultural (or even legal) hierarchy frame in which they work.

The legal definition of genocide will be used to illustrate the role lawyers can play in public history disputes. The occurrence of atrocities and genocide can be at the heart of nationalism, separatism and identity. The claim of a state to legitimately represent or govern a people is no more challenged than by neglect of the group in favour of another group, the commission of atrocities against the group and most starkly genocide. Australian identity is informed by the neglect by British officers in the First World War. Irish identity is informed by British discrimination.

While it may seem that the extreme of genocide might not be able to be hidden or distracted from, this is something that occurs. Instances of genocide are indeed covered up or contested. While nobody contests that the Great Famine in Ireland occurred, the complicity of the British government in its consequences is widely contested. Over the years it has been presented as the result of Irish incompetence, an unfortunate and unavoidable natural disaster, an instance of British governmental inefficiency and an instance of major neglect. Recently it has been argued to be genocide. The Holodomor in Ukraine was at first entirely covered up. It is only in the 1980s that the extent of the suffering was revealed. It has subsequently been through a similar trajectory of interpretations as the Irish famine. Scholarship now makes it clear that it was a calculated attack on the Ukrainian people in a more significant manner than the Irish famine could ever be seen.

In both cases, there are significant resources expended to deny the full factual history of these events. This is because much still depends on this history. While the Irish nation is strong and independent, the national identity of Northern Ireland remains a contested issue. Ukraine on the other hand is faced with both external and internal challenges to its history in the face of continuing attempts to delegitimise its statehood. While the issue of whether Latvia suffered genocide under the Soviet Union is important, it is perhaps of less current significance than the issue in Ukraine. Of course there are still significant pressures that seek to undermine Latvian nationhood and the issue is salient.

The argument here is that legal scholars are in a special position to support the truth in claims of genocide and denials. A Court may not be able to settle all such disputes especially historical ones. However legal scholars are in a position to sit in the role of the Court and examine the evidence in a dispassionate and independent legal manner. They are able to apply the law to these facts in the correct learned manner and conclude. Thus a legal scholar may publish in a respected journal a conclusion as to whether the facts of the Holodomor or the Irish Famine meet the legal definition of Genocide. In doing this they make a significant contribution to scholarship and society by supporting the truth in a world of growing and loud disputes in public history that are in danger of being settled in favour of those with better resources or less scruples.