

**Professor David V. Williams at the Arts and Humanities Discussion Group:
History wars – lawyers, historians and their myths
Professor David V. Williams, University of Auckland, New Zealand**



*Professor David V. Williams
Photo: University of Auckland*

It was my pleasure to speak at the St Anne's Thursday Discussion Group in Trinity term this year. My topic was 'History wars – lawyers, historians and their myths'.

The talk noted the rather different approaches of historians and lawyers to the past. Historians prefer to write about the past in ways that explain what happened as understood by the participants in the historical events. Lawyers tend to draw on the past to find precedents to apply to the present and future.

For lawyers, myths provide a version of the past that may or may not be 'true' as history, but express a truth that people hold to be important. Historians are more likely to point out the historical errors in a myth.

I discussed three myths:

The myth believed by 17th century English lawyers that there was an ancient constitution dating back to Saxon times. Under this ancient constitution, Englishmen were obliged to obey a king only if the king protected the rights and liberties of his subjects. None of the documents relied on as evidence of this ancient constitution were, in fact, Saxon in their provenance. Lawyers were not concerned about that. They sought arguments that could be used to hold despotic Stuart kings to account. By the end of the 16th century Parliament and the courts had upheld the rights and liberties claimed.

The myth that Australia was an empty, desert land when the first fleet arrived at Botany Bay in 1788. Until the Mabo case in 1992, lawyers assumed that Australia was a *terra nullius*. This meant that English law always applied to the whole country. There were aboriginal peoples on the continent, but they had no law and no polity that counted in the eyes of European international law. Therefore, aboriginal peoples and any rights they claimed could be ignored. When the High Court rejected the *terra nullius* myth in Mabo, and recognised that there had always been aboriginal title rights, they adopted the views of an historian, Henry Reynolds. His views of history became the target of abuse from other historians and from political leaders upset by the 'black armband' view of history. This led to what came to be known as the 'history wars' in political and academic journals.

The Treaty of Waitangi is now viewed by judges and lawyers in New Zealand as part of the fabric of New Zealand society and a foundation stone of the nation. This too is a myth. Historians can point out the minor role that the Treaty played in the actual events of 1840 when New Zealand was annexed to the British Empire. Historians also express dismay about the retrospective reconstruction of history that appears in reports of the Waitangi Tribunal. The reports assume that the Crown's actions in the past can be judged by contemporary understandings of the principles of the Treaty of Waitangi.

In the lively and interesting discussion that followed my talk, St Anne's students contributed a range of insights drawn from the various disciplines of their own study. ★