LAND RIGHTS QUEENSLAND STYLE by Frank Brennan, University of Queensland Press, St Lucia, 1992, 182pp, $29.95, ISBN0 7022 24073

In 1970, a student, the late Peter Tobin, came into my office at Sydney University Law School and asked whether I had ever looked at Queensland's laws for Aborigines and Torres Strait Islanders. I said that I had not. So he left with me copies of the 1965 legislation. When I read it, my hair stood on end, and I prepared a human rights analysis for the Australian Section of the International Commission of Jurists. By the time it was published (Nettheim, G, *Out Lawed: Queensland's Aborigines and Islanders and the Rule of Law* (1973)), the 1965 legislation had been marginally improved by 1971 Acts. Further changes during the 1970s — a decade of dramatic developments in Aboriginal affairs generally in Australia — warranted a revised analysis which still found major problems in Queensland law and policy (Nettheim, G, *Victims of the Law. Black Queenslanders Today* (1981)). The violations of international law standards of human rights in general, and of racial discrimination in particular, were so manifest that the Commonwealth Parliament was persuaded to pass overriding legislation specifically directed at Queensland (*Aboriginal and Torres Strait Islanders (Queensland Discriminatory Laws)) Act* 1975 (Cth), and *Racial Discrimination Act*, 1975 (Cth), especially s10). As late as the 1970s, Queensland was still embracing policies of "segregation and protection" towards its indigenous citizens at a time when most other Australian governments had progressed beyond "assimilation" to a policy called "integration", which acknowledged the right of Aborigines and Torres Strait Islanders to maintain their cultural identity should they choose to do so. It was this acknowledgment that underlay the widespread acceptance of the case for land rights from the late 1960s. But not in Queensland.

The continuing criticism of Queensland as Australia's "deep North" must, however, have had some impact. As the 1980s began, the Bjelke-Petersen state government announced that it would repeal its special Acts and make fresh provision for Aboriginal and Islander reserves and communities. The original proposal was for 50 year leases. This was replaced by a proposal to use existing obscure provisions of the *Land Act* 1962 (Qld) to issue to community councils Deeds of Grant in Trust (DOGITs).

1982 was a critical year in these developments. In May of that year, a statement of claim was filed in the High Court of Australia on behalf of Eddie Mabo and other Murray Island plaintiffs who were offended at the proposal to vest title in the community council — rather than in the traditional owners under Meriam law. In July, at a meeting at Bamaga on Cape York, Queensland officials were told by members of the Aboriginal and Islander Advisory Councils that the government's proposals were unacceptable.

Frank Brennan's invaluable book first follows developments in Queensland law and politics from "the Bamaga showdown" to the demise of the National Party government in 1989. By this time, through numerous amendments, the legislation was beginning to look less inadequate. Brennan continues the story through the first years of the Goss ALP government, to the enactment and subsequent amendment of the *Aboriginal Land Act* 1991 (Qld)

and the *Torres Strait Island Land Act* 1991 (Qld). Queensland now scarcely deserves the title of the most recalcitrant State in regard to Aboriginal rights — Western Australia and Tasmania are the laggard jurisdictions today.

Many factors contributed to the gradual improvement of the Queensland legislation. One was the assertiveness of Aborigines and Torres Strait Islanders themselves, as evidenced in the "Bamaga showdown". Brennan writes:

> Bamaga, July 1982, was a turning point in government-Aboriginal power relations in Queensland. The Aborigines effected a change in government policy which was more than the fine print of land tenure. They also effected a change in style in the National Party government's dealings with them, especially after the dumping of Mr Tomkins [the Minister] and the later dismissal of Mr Killoran [Departmental head]. Though there were still to be many abuses of consultation processes, never again could government divide reserve residents and their leaders from vocal urban Aborigines and Aboriginal supporters. Never again could government insist on exclusive access to people on the reserves. Never again could government brazenly misrepresent to the public what were Aboriginal aspirations and demands. (p59)

Particularly significant was the choice of a new Minister, Mr Bob Katter, who in October 1983, introducing amendments in December, actually used in Parliament the hitherto taboo phrase "Aboriginal land rights". The Churches were also highly influential, particularly the Roman Catholic, Anglican and Uniting Churches. Frank Brennan SJ, barrister and Catholic priest, worked through the decade on behalf, at times, of all three churches, and regularly on behalf of the Roman Catholic bishops. He advised the church leaders, he consulted with Aboriginal and Islander communities throughout the state, he met regularly with government ministers and officials. He produced regular position papers and analyses of new or proposed legislative changes. In these roles, he proved to be one of the major actors, in developments at State level while, at the same time, he was also actively engaged in policy developments at the national level. No one is better placed to write this book.

The book contains six chapters. Chapters One, Two and Three trace the political and legislative developments under the National government, while Chapter Four pulls the developments together in a succinct account of "The Nationals' Land Rights Legacy 1989". This chapter contains two sections: 'Land Rights' and 'Self-Management'; for, in addition to the land rights legislation, Queensland had also enacted in 1984 *Community Services Acts* for both Aborigines and Torres Strait Islanders to deal with the management of "trust areas" and local government-type functions.

> The legislative package by now consisted of ten Acts of Parliament passed between 1982 and 1988 — showing the gradual and sporadic shifts made from the policy position of March 1982. (p68)

Chapter Four serves to pull all these strands together.

Chapter Five follows the political developments under the Goss Labor Government and Chapter Six summarises the legal position under the title "Goss Land Rights, 1991". This chapter contains no separate heading for 'Self-Management', though interesting further developments are possible if the Government accepts the recommendations in the Final Report of the Legislation Review Committee (November 1991). The Committee's

imaginative proposals recommend legislation authorising Aboriginal and Torres Strait Islanders to move, as they wish, into a system of "community government" under which they may assume responsibility for a range of activities previously conducted at state level. Brennan refers to this possibility in his "Conclusion" Chapter (p173). In this Chapter he also relates the Queensland developments to the reports of the Royal Commission into Aboriginal Deaths in Custody, the role of the Aboriginal and Torres Strait Islander Commission (ATSIC) and the Council for Aboriginal Reconciliation.

The book is thoroughly recommended for anyone seeking to track his or her way through the thickets of Queensland politics over the past decade and through the tangle of legislative acts and amendments that need to be comprehended in the attempt to gain a clear picture of the current land rights situation in Queensland under legislation.

The legislative picture is no longer, however, the whole picture. The other development that began in 1982 finally came to fruition on 3 June 1992 when the High Court stated the common law of Australia as leaving space for Aboriginal and Islander law — and rights under that law — to operate on its own terms, unless and until extinguished by a valid (and non-discriminatory) act of governmental power (*Mabo v Queensland* (1992) 66 ALJR 408).

Already, Aboriginal and Islander peoples, in Queensland and elsewhere, are assessing the adequacy of such land rights as are available to them under legislation against the common law principles declared for the first time in this country by the High Court. And governments will be under some pressure to improve their legislation where the common law comparison reveals clear inadequacies.

These processes are already under way in Queensland. For the purposes of making this comparison between legislation and common law, Aboriginal and Islander communities are fortunate to have as comprehensive and timely an aid as this book.

GARTH NETTHEIM*

SHARING THE COUNTRY: THE CASE FOR AN AGREEMENT BETWEEN BLACK AND WHITE AUSTRALIANS by Frank Brennan, Ringwood, Penguin Books, 1991, 176pp, $16.95, ISBN 014 0138676.

Frank Brennan's book is concerned with the process of reconciliation between Aboriginal and Torres Strait Islander people and non-indigenous people in Australia. As Brennan notes:

> [T]he starting point for reconciliation must be a consideration of the varied hopes and demands expressed by Aborigines for sovereignty, land rights and

* Professor of Law and Chair, Aboriginal Law Centre, University of New South Wales.