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

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> self-determination. Each of these terms (like the term 'treaty') opens a Pandora's box of possibilities.(p4)

Chapter 1 analyses the use of these terms. Chapters 2 and 3 discuss treaty proposals during the 1980s. Chapter 4 deals with government and Aboriginal participation in the relevant international fora. Chapter 5 considers developments in New Zealand and Canada. The conclusion considers how an instrument of reconciliation might be finalised by 2001.

Brennan argues that Aboriginal and Torres Strait Islander people have special status. They are not simply a self-identifying group in need of welfare assistance. They are not just poor whites. They are the descendants of the first occupants of Australia and the custodians of Aboriginal culture and heritage.

> Aborigines have a right to continue the management of their community affairs as autonomously as possible within the Australian nation provided they do not act contrary to the common good nor interfere with the rights of others, and provided all community members are given a realistic choice between their community life and the lifestyle available to other Australians.(p6)

It is the limitations which Brennan puts on self-determination which are likely to cause most concern among Aboriginal and Torres Strait Islander people. Brennan notes that in recent years indigenous people have argued that their people are 'peoples' in the international law sense who also have the collective right to determine their future, whether as part of the nation state or as a separate state with international recognition. Governments are only prepared to recognise internal self-determination which would entitle indigenous groups to more autonomy within the domestic political arrangements of the nation (p45).

Brennan notes that there is a diversity of opinion among Aboriginal and Torres Strait Islander people as to the questions of a treaty, self-determination and sovereignty. Some Aboriginal people, particularly around the Aboriginal Provisional Government (APG), have argued that sovereignty has never been surrendered: for this group a treaty would mean an agreement negotiated between separate nations governed by international law. Other Aboriginal people see themselves as Australian citizens, but seek autonomy within Australia: for this group a domestic agreement under Australian law would be sufficient.

Brennan notes that "in the end the call for sovereignty may be no more than an ambit claim for more autonomy within the Australian nation" (p18). Such may be the case, however the evidence presented in the book shows the extent to which Aboriginal people demand recognition of Aboriginal sovereignty and resent the pre-determined limitations placed on selfdetermination by the government. The discussions concerning the revision between 1986 and 1989 of the International Labour Organisation (ILO) convention dealing with indigenous and tribal people is illustrative. The Australian government suggested that a distinction be made between internal and external self-determination, the former being a restricted right exercisable within the limits of the state. Indigenous representatives were unanimous in their insistence on the unqualified right to self-determination (p121). Indeed, Aborigines who attended the ILO conference in 1988 withdrew because there was insufficient regard for the right of self-determination. Geoff Clarke (from the National Coalition of Aboriginal Organisations) argued that:

> We define our rights in terms of self-determination. We are not looking to dismember your states and you know it. But we do insist on the right to control our territories, our resources, the organisation of our societies, our own decisionmaking institutions.(p122)

Similarly Michael Mansell argued against the acceptance of any of the four treaty options proposed in the 1983 Senate Standing Committee on Constitutional and Legal Affair's report on the issue. He showed that the options were based on the assumption that "Aborigines are Australian citizens and ought to be" (cited p90). The acceptance of these options required the acceptance of "the legitimacy of the invasion of this country" (cited p90). As Australian Aborigines rather than Aboriginal Australians, Mansell argued for the recognition of indigenous rights that flow from that separate identity. "If we are not part of the Australian nation but a separate nation of people unto ourselves, then we have to get our act together" (cited p91). While Brennan puts Mansell's position in his book, it is clear that it is not one with which he agrees, nor is it one he believes to be widespread within the Aboriginal and Torres Strait Islander community (see pp153, 154, 159). It is unfortunate that Brennan is so dismissive of the Aboriginal Provisional Government and its "self-elected leaders". The APG provides an important voice in Aboriginal politics.

Brennan argues from a position which he would define as politically achievable:

> Sovereignty as defined in international law and as understood by Australian parliamentarians is non-negotiable. For Aboriginal advocates, it is sterile ground for debate...(p153)

And again:

> If Aboriginal leaders are prepared to abandon the rhetoric of sovereignty and if Aborigines generally want to see themselves as citizens of a sovereign nation, Australia, there may be the possibility of negotiating an agreement with them about the terms of their participation in the life of the nation.(p57)

For Brennan, self-determination is a fluid concept that means more than self-sufficiency and self-management. It need "only" be confined by the proviso that it is subject to the Constitution and laws of Australia (p153). If these limitations are too restrictive for Aboriginal people, they have been regarded as too permissive by the Coalition parties in the federal arena. In 1988 the Coalition Opposition failed to support a resolution acknowledging Aboriginal prior occupation, dispossession and entitlement to self-determination. The Coalition's difficulty with the resolution concerned the reference to selfmanagement and self-determination. Section 2(b) of the resolution affirmed "the entitlement of Aborigines and Torres Strait Islanders to self-management and self-determination subject to the Constitution and the laws of the Commonwealth of Australia" (p84). The Coalition would support self- determination only with further qualifications "in common with all other Australians". Brennan notes that with the amendments the resolution would have been so weak that it would not have affirmed the sole rationale for special laws and measures for Aborigines. He states "Aboriginal entitlement to self-determination must go beyond that which is enjoyed in common with other Australians" (p86).

Brennan's book is useful for tracing the vicissitudes of public policy in relation to questions of a treaty, land rights and self-determination during the 1980s. The broken promises, the contradictions and inconsistencies, the lack of commitment make for depressing reading. In a sense this political history of Aboriginal affairs throws into focus Brennan's own political position in relation to reconciliation. There is little doubt of his commitment to a just resolution, but it is a commitment tempered by what can be achieved within the political context of federal governments. This context is politically conservative in relation to indigenous rights. For instance, Brennan alerts us to the point that without clear definitions the stronger term of self-determination becomes synonymous with, and diminished in meaning to the weaker concept of self-management. In the ATSIC legislation the term "self-determination" does not appear at all, it is replaced with "self-management" and "self-sufficiency". Brennan argues that some Aboriginal people definitely want more than these concepts imply and that:

> [E]ven if we do not subscribe to the separate nation idea, we must as a community remain open to allowing the descendants of the traditional owners of this land to determine their future as well as manage their own affairs, to set their agendas, though subject to the Constitution and laws of the Commonwealth.(p48)

There are a number of areas in Brennan's book which could be updated in the light of more recent events. The High Court decision in *Mabo* impacts on Brennan's discussion of the land rights issue. The Council for Reconciliation has been formed and begun its work. The establishment of the Council has seen a return to federal bipartisanship in Aboriginal and Torres Strait Islander affairs. In the international arena the Federal Minister for Aboriginal Affairs, Robert Tickner, has promoted the use of the concept of self-determination, although it is still defined within the limits of the Australian nation. In the domestic scene the Aboriginal Social Justice Commission has been established within the Human Rights and Equal Opportunity Commission. Mick Dodson has been appointed the first Commissioner. Finally the Aboriginal Provisional Government has continued to exert, some would say a growing, influence over the way Aboriginal people have themselves been defining the issues of sovereignty and self-determination.

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THE MAORI MAGNA CARTA: NEW ZEALAND LAW AND THE TREATY OF WAITANGI, by Paul McHugh, Auckland, Oxford University Press 1991, 392pp, $39.95 ISBN 0195582268

At the recent Folk Law Conference held in Wellington an interesting discussion took place on the "status" of Maori language. Lawyers discussed

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