INDIGENOUS PEOPLES AND GOVERNANCE STRUCTURES: A COMPARATIVE ANALYSIS OF LAND AND RESOURCE MANAGEMENT RIGHTS by Garth Nettheim; Gary D Meyers; Donna Craig [(2002), Aboriginal Studies Press Australian Institute of Aboriginal and Torres Strait Islander Studies, Canberra, Australia, viii+489 pages, ISBN 0-85575-379-X, soft cover]

Through a comparative study of native title as recognised and administered in jurisdictions across the globe, this text aims to act as a point of reference for the Australian experience. It is hoped that this text will encourage further recognition and extension of the rights of indigenous people and acknowledge their strength in asserting their autonomy. The text discusses the failure of governments to understand their indigenous populations and provides a contemporary global study that serves to ensure that Aboriginal rights, beliefs and aspirations are to be no longer undermined.[1]

The project that gave impetus to the text arose from an Australian Research Council Collaborative Research Grant in 1997-1999, under which the authors worked alongside the National Native Title Tribunal. The focus of the project was to "develop recommendations for a more adequate fit"[2] regarding traditional and non-indigenous forms of land law and governance. The authors recognised through the High Court cases, *Mabo*[3] and *Millirpum v Nabalco,*[4] that although Australian law understood the essence of the relationship of Aboriginal people to their land, it was not adequately reflected through governance structures. The challenge set was thus to develop a research project that could reflect global innovations providing for the co-existence of land holding and governance under indigenous laws with those in mainstream Australian law. With the text focusing on the importance of participation, the authors have suggested that a beneficial result would be one where the established systems were adapted so that they could effectively promote participation between indigenous and non-indigenous cultures.[5]

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[1] At 4.
[2] At 3.
[3] Mabo v Queensland (1992) 175 Commonwealth Law Reports 1.
[4] (1971) 17 Federal Law Reports 141.
[5] At 2.

The text begins by setting parameters for the research undertaken by discussing current international law standards.[6] States are recommended to treat those standards as guidelines when seeking guidance on addressing their own indigenous issues. International law serves the function of allowing indigenous people to be heard and to work towards participating in a very real way in matters regarding "their land and waters, natural resources, wildlife and environment."[7]

The authors find current international law a sufficiently strong basis for governments to work from when making decisions that stand to affect indigenous people. Further, the challenge governments should set for themselves is to "establish governance structures for an interface between government and indigenous peoples that can produce effective decisions in non-indigenous terms, and, at the same time, accord as closely as possible with indigenous structure and process."[8]

The next major part of the text provides comparative studies through a critical look at other states' governance structures,[9] starting with the United States. This chapter[10] reviews the management powers held by the United States Indian Tribes over their environment (reservations) and their rights to control and access natural resources on and off those reservations.[11] Their powers, established predominately through "common law recognition of their occupation of land prior to white settlement",[12] is a trend highlighted by most of the studies provided.

The history of the recognition and regulation of American Indians throughout periods of settlement and colonisation, up until the introduction of the self-determination policy, has resulted in two main avenues for indigenous people to exercise control over their land and resources, namely, "inherent sovereignty" and "federal trust responsibility."[13] Unfortunately, analysis provided by the Supreme

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[6] At 9.
[7] Ibid.
[8] At 24.
[9] This section also discusses indigenous experiences in the United States, Alaska, Canada, New Zealand, Greenland and Scandinavia.
[10] Chapter 3.
[11] At 27.
[12] Ibid.
[13] At 32.

Court in its decisions serves to highlight a "fundamental misunderstanding of tribal sovereignty"[14] and that only in environmental protection are there provisions for indigenous people to enforce any form of control reservation wide. Yet this is an area of contention too, seeing strict conservation laws impinge upon the ability for indigenous people to enjoy spiritual and religious freedom. An interesting example provided by the authors was that it is strictly prohibited to kill a bald or golden eagle, yet many tribes revere the eagle and use their feathers in religious ceremonies.

Overall, United States Indian Tribes are recognised as having a fundamental inherent sovereignty over their land. Such rights, however, are accompanied by a long list of limits, such as those distinguished by Treaty, Federal Statute, or by implication. In practice, American indigenous people have extensive powers over their reservations but there still lies (as in the Australian experience) the fundamental and crucial problem of properly recognising the source of these rights and how they are to be included in the governmental order of the day.

Indigenous Alaskans have battled the harsh climate to inhabit their land for over 11,000 years.[15] Their connection with the land raises a particular need for them to have control over their own political institutions and have meaningful input into their governance.[16] To see how particular rights of native Alaskans have perpetuated, the authors assessed the legislative forms of recognition and commented on the progression of the policy behind it. The indigenous Alaskans have endured an unpredictable history. They received early recognition for prior sovereignty that was later relinquished, resulting in the development of corporations that allowed minimal involvement in their assessment of land selection rights. The authors noted that this particular model has removed any connection with the native Alaskan traditional way of governance. For indigenous Alaskans self-governance is essential to their culture and yet the current scheme ignores their interests.[17]

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[14] Ibid.
[15] At 62.
[16] At 61.
[17] At 72.

Approaches undertaken in Canada are mirrored to the greatest extent in New Zealand, where the relationship between the colonial masters of both states move through stages from rough equality to assimilation to limited self-determination.[18] It has been the courts that have had the overall task of interpreting indigenous rights and they have served well in reflecting governmental policy. The chapter on Canada has a common law focus and recounts the judicial approaches to understanding and dealing with indigenous rights – from *Calder v Attorney General of British Columbia*[19] in 1973, which raised similar issues to those faced by the High Court in *Mabo*,[20] to the recognition in *Guerin v The Queen*[21] that the Canadian Government owed a fiduciary obligation to Aboriginal people to protect their native title rights and interests in land.[22]

The overriding challenge before the Maori people of New Zealand has been the diminution of rights facilitated by the English and the New Zealand Courts since colonisation.[23] The Treaty of Waitangi, signed in 1840, was the means by which the British asserted sovereignty over New Zealand in a manner that, like in Canada, recognised the status and authority that should be accorded to the Maori people.[24] This Treaty was later to be regarded by the courts as a legal nullity[25] and this chapter[26] critiques the New Zealand experience by assessing landmark court decisions, commenting that it is predominately over the last 20 years that real and positive changes have been made regarding Maori rights.[27] The Waitangi Treaty that was initially ignored has regained its dominance through the establishment of the Waitangi Tribunal[28] which answers grievances from the indigenous people of New Zealand. Recent case law[29] has recognised and incorporated the principles of this

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[18] At 82-84.
[19] (1973) 34 Dominion Law Reports 3d 145, 203: at 86.
[20] Mabo v Queensland (1992) 175 Commonwealth Law Reports 1.
[21] [1984] 2 State Court Reports 335. Canada.
[22] At 87.
[23] At 125.
[24] At 122.
[25] At 125.
[26] Chapter 6.
[27] At 145.
[28] Set up in 1975: at 145.
[29] At 146.

treaty and the overall result has been the progressive refinement of Maori rights and social relationships in contemporary New Zealand.[30]

Greenland enjoys a high degree of political autonomy even though it relies on Denmark for some economic support.[31] The Inuit of Greenland who form the majority of Greenland's population arrived about 5,000 years ago and it is fluency in Inuit that is associated with Greenlandic identity.[32] The Greenland government by virtue of the 1978 Greenland Home Rule Act,[33] whilst remaining part of the Kingdom of Denmark, is responsible for local government, taxation, religious, welfare, and environmentally related issues. This autonomy allows the Greenland government to develop its own policy and laws with respect to the majority of matters that affect Greenland's indigenous people.[34] The government has successfully unified both the Danish and Inuit populations,[35] which has aided social development and indigenous recognition. Due to a remarkable type of commitment from the Danish government, Greenland has played a leadership role in indigenous recognition and development and enjoys a unique status under international law because of their persistence in relation to recognition and self-governance.[36]

Scandinavia's Sàmi have displayed a will as strong as the Inuit of Greenland to maintain access to most of their traditional land in spite of their governmental relationship being predominately one of "minority and majority".[37] In spite of their commitment to the preservation of their language and culture,[38] it was not until the Sàmi's demands for rights conflicted with the country's need for energy that they ceased to be ignored.[39] The 1987 Sàmi Act marked the move from the Sàmi being viewed as a "remote and exotic curiosity"[40] to the formation of a

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[30] At 147.
[31] At 189.
[32] Ibid.
[33] At 193.
[34] At 196.
[35] Ibid.
[36] At 204.
[37] At 209.
[38] Ibid.
[39] At 213.
[40] At 212.

Sàmi parliament.[41] The parliament acts as an advisory body responsible for the review of policy and proposed legislation of concern to Sàmi, and whilst it is uncertain to what extent the Sàmi parliament has authority over these matters, it is a positive step forward.[42]

There are eight chapters in the text devoted to the relevance of the case studies to Australia. The dominant emphasis behind this is that Australia is the state to most recently provide legal recognition of indigenous rights and which is struggling to draw itself in line with other states that have a more established relationship with their indigenous populations.[43] The text provides a detailed account of current land holding governance structures in each state of Australia and comments on the legislation and self-governance issues in each one of them.[44] It also highlights[45] the innovative movements made in the 1960s – starting with the Woodward Reports and the enactment of the 1976 Aboriginal Land Rights Act,[46] then closely follows the development of Native Title legislation[47] and representative bodies across Australia and negotiated agreements,[48] making the text an important point of reference for understanding these structures.[49] Final considerations focus on environmental resource management and how to develop strategies of governance whilst being mindful of the unique relationship that indigenous people have with the land.[50]

The text is well presented. Whilst there is no index, and endnotes are used instead of footnotes (does not assist quick referencing), the text is interesting to read. Analysis is made through example, which provides the reader with a sound context to each area of research. As well as providing a detailed account of Australia's progress in the area of indigenous issues, the text is useful for those interested in indigenous issues globally. An important thought that this thorough text leaves its readers with, is the need to recognise that the answer to developing

[41] Established in 1989: at 216.
[42] At 216.
[43] At 481.
[44] Chapter 11.
[45] Chapter 12.
[46] Northern Territory, 1976 Commonwealth of Australia.
[47] Starting with The Native Title Act 1993, Commonwealth of Australia.
[48] Chapter 15.
[49] Chapter 13.
[50] Chapter 14.

effective and equitable governance structures is a simple one. Australia needs to take note, as highlighted by examples that the legislative level of governance has proven to be the most problematic and that in order for structures to be truly representative the focus has to be on participation.[51] Thus, priority has to be given to the involvement by indigenous and non-indigenous people, in order to arrive at a better understanding of each other's needs, cultures and interests.

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[51] At 484.