

**150 Years of Catholic Mavericks on Aboriginal Land Rights
– from Fr Duncan McNab to Bob Katter**

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Thank you for the honour of being invited to St Leo's College here at the University of Queensland, my law school alma mater, to deliver the 2025 Duhig Lecture. It's great to be back amongst some of our respected elders: Leneen Forde, Sally Anne Atkinson and Bob Katter. I last spoke formally here at St Leo's 42 years ago when I launched my first book *Too Much Order with Too Little Law*. I have to confess that the book was fairly critical of the government of Sir John Bjelke Petersen – the government you joined shortly thereafter, Bob.

Next month marks the 150th anniversary of the arrival of Fr Duncan McNab in Queensland. He was a Scottish priest who worked in poor parishes back in Scotland. Many of his parishioners were Irish. Like many Scots, he did not have a great liking for Irish who were poor and ill-educated. He was a relation of Mary MacKillop, our one Australian canonised saint. He had a great desire to come down under and minister amongst Aboriginal people. He worked in Queensland for five years – from 1875 until 1880.

I have entitled this evening's remarks: '150 Years of Catholic Mavericks on Aboriginal Land Rights – from Fr Duncan McNab to Bob Katter'. Both McNab and Katter devoted great energy agitating for the land rights of Aboriginal people. While acknowledging the Aboriginal communal sense of perpetual land ownership, they saw a need for Aboriginal individuals and families, just like any other individuals and families, to have access and use of land for residence and business enterprises, including farming and cattle breeding. Tonight, I want to suggest that the time is ripe to heed the call of these mavericks, all the time being attentive to Aboriginal aspirations.

Sir James Duhig, Irish cleric, was a longtime archbishop of Brisbane. He did not expend much energy or resources on ministry to Aboriginal people, but he had a keen sense of the injustice suffered by the dispossession of the first Australians. His biographer Fr Tom Boland highlights two instances of Duhig taking up the 'unpopular cause of the Aborigines, though he showed no advanced understanding of their problems'. At the end of World War I, Duhig spoke to an audience including members of parliament:

All nations that have risen to great power have done so mostly by subjugating weaker peoples. When a nation sets out on a mission of discovery and civilization, her ambition is laudable and her conquests fair, for they are conquests of peace, and not of war. But

even in such cases the civilizing power must respect the rights of the native races. In this connection, we might well ponder on the deplorable fate of the Aboriginal races of this island continent of Australia. No one can say that the native race has benefited by the presence of the white man. Europeans brought with their particular civilization all the vices of the white man, and unfortunately the Aboriginal has taken more to the vices than to the virtues. Today he is an outcast in his own country, and the blame may well be laid at our door.

Then in 1935 Italy had invaded Abyssinia. There was spirited discussion amongst Catholics in the archdiocese. Duhig 'warned against taking a prejudiced view of the Italian people and against caricaturing Mussolini'. He called for some moral consistency. He told his congregation:

We talk about and boast about our White Australia, but there was a time when Australia was as black as Abyssinia. The white people took this country without so much as a "by your leave" of the Aboriginal people. Those who are the severest critics of Italy might examine our conscience now. One hundred years ago we might have saved this race. . . . Today there is but a vestige of it, and that vestige is treated very much akin to the slaves of the Emperor of Abyssinia. At all events, we imprison them within compounds or stations. . . . We might well be accused of hypocrisy.

The Italian consul-general wrote to Duhig thanking him for his spirited intervention. It's appropriate that we honour Duhig by recalling the efforts made by one maverick priest in the archdiocese 60 years before.

When McNab arrived in Brisbane, he found it difficult to convince the Irish bishop James Quinn to provide any resources for the Aboriginal ministry. Like most senior Irish clerics who came to these shores in the nineteenth century, Quinn was anxious to dedicate his limited resources to pulling the poor illiterate Irish parishioners up by their bootstraps. I being a Brennan and my mother an O'Hara benefited from that episcopal preference, as did many of you students and alumnae of St Leo's College.

McNab undertook something of a personal crusade. After a year getting around the colony, he wrote to John Douglas, Minister for Lands and soon to be premier. The *Crown Lands Alienation Act of 1868* permitted individuals to apply for grazing homestead leases on payment of a minimal rent. McNab thought Aboriginal persons should be eligible at least on the same terms as other applicants or preferably without payment of the annual rent. He submitted applications for leases on behalf of three named Aboriginals. In his letter to Douglas he stated:

I am convinced that the Aborigines have a perfect right, both in equity and law, to what they ask. To comply with the conditions required in the forms supplied would be a renunciation of that right. They conceive and maintain that because they and their ancestors, from time immemorial, have occupied and possessed those lands and their appurtenances for their use and benefit, especially of residence, hunting, fishing, and

of otherwise providing for the necessities of life, and .also had always the right of tillage and pasturage, they ought to be acknowledged, without expense, the rightful owners of the specified homesteads.

.....

Compliance with their request will prove a common benefit to the colonists and the aborigines. Others are prepared to make similar applications; but not in such numbers as to embarrass the Government. A good Government would readily grant them title deeds, as well as every facility for usefully occupying the land, and, moreover, aid them to do so, especially in the beginning. In the hope that you may immediately furnish me with a favourable solution of the difficulty.

Needless to say, the three applications were rejected even though each applicant attested in accordance with the Act: 'I did not arrive in this colony after the first of March, 1868, at the public expense, either wholly or in part, within three years ; and I further declare, that I have not entered into any agreement to sell, demise, or mortgage the said portion.'

McNab wrote at length to Douglas on 2 September 1876:

To stop the present hostilities in the North, I should advise that the aborigines be treated as men, and not merely shot down as vermin ; that terms of peace and protection be proposed to them through an interpreter from a friendly tribe, who should declare to them the benevolent disposition of the Government, and its ability and intention to protect them, and to chastise them should they assail the colonists. Let a certain amount of provisions be supplied to them, avowedly as compensation for the preserved fish that was stolen from them by Europeans. Let them and the colonists and the native police plainly understand that murder by any party will be treated as a capital offence, and that minor faults will be punished in proportion to the gravity of the crime ; and then, as far as practicable, rigorously and impartially enforce the law. Chastise alike, the blacks for killing or · maiming the cattle of the colonists, and the latter for destroying the game of the former till they are otherwise provided for. Finally, let their right to live, and to land for their maintenance, be acknowledged; and, in reparation for the damage they have sustained by the advent of the whites into their country, let assistance be rendered them (as I shall presently describe) to be civilized and settled, and I doubt not that peace can be secured.

...

Now some of the blacks wish to change the mode of their occupation of the soil. When they are so minded, why should they not be free to do so? The law contemplates such provision to be made for them; and therefore, it empowers the Governor to grant in trust, or by proclamation, to reserve Crown lands for their use and benefit. I should like to see them amply supplied with land, and their right to it acknowledged and secured to them by the Government, because it is their own; because their being well settled on

it is a necessary condition for their preservation, and because the more they have and the better it is, the less assistance they will require from the Government in the commencement, and the sooner they will be able to maintain themselves, and then become a credit and a benefit to the country. They require but little of agricultural, and therefore a larger pastoral area. But how can and ought they to be settled on particular plots of land?

McNab kept petitioning parliament, government and church authorities, but to no avail.

I came to Queensland in 1982 as adviser to the Queensland Catholic Bishops on Aboriginal Affairs. I travelled the state and got to know most of the elected leaders on what were then the Aboriginal reserves. They were seeking secure land title and some capacity for self-determination. In 1983, Bob Katter became the Minister for Indigenous Affairs. He held that portfolio for some years. He was Minister for Northern Development and Aboriginal and Islander Affairs from 1983 to 1987 and Minister for Northern Development, Community Services and Ethnic Affairs from 1987 to 1989. He was passionate in his advocacy for those Aboriginal and Torres Strait Islander persons he knew who were anxious to utilise the newly secured land titles for practical purposes, including the running of pastoral operations and the building of family homes.

By 1985, the Hawke Labor Government was pledging to take action for land rights and self-determination, taking on the slow to move Queensland government. I attended a large meeting on Palm Island which was being addressed by Clyde Holding, Bob Hawke's Minister for Aboriginal Affairs. The elected Aboriginal leaders were in attendance. As ever, Bob Katter was running late, very late. I was sitting beside Holding's lead public servant George Brownbill. When Bob arrived, he did not even acknowledge Holding or Brownbill. He worked the room, greeting every Aboriginal leader by name and inquiring about their latest concern with cattle, fencing, housing or whatever. By the time Bob had got halfway around the room, Brownbill turned to me and suggested that he and Holding may as well just go back to Canberra. I did not demur.

The latest report of the Native Title Tribunal reports that there were 616 registered native title determinations as of 30 June 2024 covering a total area of 4,004,167 square kilometres or 52.1 per cent of the land mass of Australia. By June 2024, Indigenous Land Use Agreements (ILUAs) were already registered over 2,780,701 square kilometres or 36.2 per cent of the land mass of Australia and approximately 51,980 square kilometres of sea (see Map 2). Now that's a lot of land.

After the *Mabo* decision, the Parliament enacted the *Native Title Act* and instituted an Aboriginal Land Fund to provide some compensation to those who had lost their native title prior to the *Racial Discrimination Act* in 1975. The Aboriginal and Torres Strait Islander Land and Sea Future Fund had 2271 million dollars as at 30 June 2024. Last financial year, the Fund made \$64.9m available for land purchases, maintenance and development.

Twenty years ago, Cape York Aboriginal leader Noel Pearson responded to the calls for greater private ownership and use of lands within communally held lands. He rightly warned: '[L]and reform -- which enables community members to own their homes, facilitates the development of private enterprises and encourages external investment on Aboriginal lands to enable indigenous development -- is a legitimate agenda. But re-contesting land rights is not.'

While acknowledging the success of ATSIC's home loan program, he pointed out: 'But the home loan program has only been able to operate off Aboriginal land -- in the mainstream towns and cities. On Aboriginal land, housing is mostly a disaster. There is no home ownership'.

He acknowledged that there were 'serious challenges involved in trying to reconcile the imperatives of the modern world and indigenous people's ancient culture of communal ownership.' He lamented: 'Over the past 30 years we have assumed that some kind of organic reconciliation would evolve; it hasn't.' Well, it's now 50 years and we're still waiting!

Pearson concluded: 'The communal will always lie at the core of our tradition and identity: it is what some might call the spiritual hearth. But social development requires families to come to the fore; and economic development requires individuals to come to the fore, to be mobile and not look to the communal for material sustenance.'

In 2017, the Cape York Partnership reported that 'the Cape York Land Council started an important conversation about the future....The fight for land rights has been largely successful. We are now land rich, but still dirt poor. The key challenge will be the use of land to generate and sustain livelihoods for our people.'

They said: 'Despite our Land Rights successes, First Nations people often observe we are "land rich but dirt poor". Land is not effectively used to build wealth. Wealth is not just about money: it is also about culture, country and kinship. It is about ensuring for generations to come First Nations people do not just survive but thrive.'

In recent times, Senator Jacinta Nampijinpa Price has taken up the call about being 'land rich but dirt poor'. The time has come to redesign the land-holding and land fund arrangements so that at least some First Australians might be both land rich and well off. It's time to heed the calls of the mavericks like McNab and Katter.

We could start by looking at some of the initiatives in Canada where there is a First Nations Bank of Canada which conducts a First Nations Market Housing Fund offering 'flexible options for home ownership, including the On Reserve Settlement Land Housing Loan Program and the First Nation Market Housing Fund Program (FNMHF)'. There is also the Canada Mortgage and Housing Corporation (CMHC) which includes support for construction of a house on reserves'.

It should not be beyond the wit and wisdom of twenty-first century Aboriginal leaders, lawyers, business entrepreneurs and their advisers to design a system of land title ensuring that native title lands remain ultimately in the communal hands of traditional owners while being available for mortgage and long-term exclusive possession by individuals, collectives and family groups. Mortgages could be underwritten by the First Nations Bank which would always ensure the protection of native title.

Tonight we remember Fr Duncan McNab who came amongst us here in Queensland 150 years ago and we salute the Honourable Bob Katter who has served 50 years in our parliaments. I think the great ecclesiastical landowner James Duhig would approve their efforts and this suggested initiative.