

Batman's Plan Has an Insurmountable Obstacle *12 September 1835*

Sir Mr. **Batman**'s speculation on the southern coast of New South Wales, cannot fail to excite the most lively attention and concern in the minds of the colonists of the South Australian Provinces. If, in the observations I shall have to offer on this important subject, anything should appear to clash with Mr. **Batman**'s views and pretensions, I could wish it to be understood, that I entertain a very friendly feeling towards that gentleman, and would be happy to see him prosper in any legitimate spirited enterprise; yet, a sense of public duty ought ever to supersede a desire of obliging friends at the expense of the community. I do not even despair of convincing Mr. **Batman** and his co-speculators, that the whole scheme is an impracticable, as it would be injurious to the best interests of the British people and colonists; at variance with the duties of a subject of the British Crown; the law of Nations, the law of nature; the common usages established amongst civilized nations, and highly detrimental to the safety and well-being of the colonists of New South Wales and Van Diemen's Land by forming a depot, exempt from the control of Government as a receptacle for runaway convicts, and all other desperate characters, who would flock to Port Phillip, endangering the peace and prosperity of the colonists, becoming Buccaneers, and forming themselves into bands of robbers on land, without means of restraining their depredations. I can foresee all these evils, and many more, should Mr. **Batman**'s plan be carried into effect.

I would particularly caution speculators against being drawn into a share, and engaging in schemes which will eventually bring on them and their families distress, desolation and despair, without possible remedy or redress.

The first point we are to consider is a simple matter of fact, at once involving Mr. **Batman**'s professed claims, and those of all others who may unguardedly join in the scheme. When Captain Philips was first appointed Governor of New South Wales and its dependencies, the limits of the British possessions in the Southern Ocean were declared fixed by Act of Parliament, from the 10th to the 44th degree of south

latitudes, and the western extreme bounded by the 135th degree of east longitude.

Port Phillip was taken possession of in 1801 by Lieutenant Murray, of the Royal Navy, in the name of George the Third, and afterwards a settlement was there formed, under the command of a British officer sent from Sydney. This settlement was relinquished; but the British Government still remains in the sovereignty of the country, and his portion of the moment either tacitly or by public proclamation, abandoned its recognised right over any portion of the various territories within the pre-scribed boundaries, as established by the aforementioned Act of Parliament.

Here, then, in the very onset, Mr. **Batman**'s pretensions meet with an insurmountable obstacle. It would appear that he rests his claim on a compact with a chief, who did not know, before he was told by Mr. **Batman**, that he had full and sovereign power over the country; or a certain portion of the country which gave him birth, and, therefore, he also possessed a power to dispose of and sell that land (which he can only hold in trust) in whomsoever he pleases.

Another part of the argument is, that by some of the primitive English planters, in New England and other British provinces in North America purchased land from the Indians, so have individuals an equal right to avail themselves of the precedent in buying large tracts from the Aborigines of New South Wales. It will soon be observed, that there exists not the slightest analogy between the two cases; I shall dismiss all the abovementioned points *ad seriatim*, and I trust I shall be able to prove, that not one of the arguments adduced in support of Mr. **Batman**'s pretensions, can be allowed upon any one sound principle of just reasoning.

It is not my wish to strengthen the hands of the Government, but to advocate the cause of the people. Monopolies of all sorts have at all times been viewed in an odious light, except by those who profit by them. To render such a monopoly anything but an intolerable grievance and usurpation, it would be necessary that the monopolist should command a proportionate quantity of capital and labour, so that others may derive benefit from the land as well as himself. Sir Henry Torrens, in some remarks he offered on the colony then intended to be formed at Swan River, advocated the principle that, in

order to succeed, there ought to be an equal and due distribution of land, labour and capital ; and I think no one will deny the accuracy of his remarks. Did Mr. **Batman** possess a capital equal in extent to his lofty project and the land he now claims as his own he might command a due proportion of labor, and the evil might thereby be lessened; but as this is not the case, what can the whole scheme reach to but to rent, sell and dispose of parcels of land to others, without being able to give a just title to his tenants and purchasers. The Seigniorial right is vested in the British crown, and nothing less than an Act of Parliament could indemnify Mr. **Batman**. But how would even Parliament in the plenitude of its power, go about granting that to one individual which would be of so great injury to the colonists and an insult to the people ? When I mention seigniorial right, I do not thereby intend to insinuate, that the right of bartering, selling or granting of waste land, is absolutely and positively vested in the crown; but that all such lands are the property of the British Nation; the King being merely the Trustee, holding such lands for the benefit of the people, and ought in justice and fairness to see that they are made proper use of; and, above all, prevent any one or more individuals from usurping a right so sacred; but this doctrine must be received with modifications. It has been argued, and there exists a diversity of opinions on his head, that the Aborigines of a country are the actual possessors thereof, and may dispose of the lands to foreigners. On the other hand, it has been recognised by the universal consent of all civilized nations, that the earliest discoverer of a region exercises the right of proprietorship over it, provided such region is found in a state of nature, uncultivated and unproductive, and of scarcely any utility either to the Aborigines or their fellow creatures. The right of priority has, however, sometimes been superseded on the score of negligence or inability, and, after a lapse of years it been considered lawful for some other nation to occupy the waste region, and determine the limits of its possessions so acquired. This was the case with Great Britain and her colonies in New South Wales and its dependencies. The relative obligations and positions of civilized nations, must be regulated by some certain fixed principles, otherwise, all would be confusion; "Might will overcome Right," but this does not affect the principle itself. Hence the claims, on the part

of Great Britain, on the sovereignty of the Australian Provinces, are just; whereas, I always considered that those of Spain on its American dominions unjust. Mexicans and Peruvians, when first discovered were governed by some fixed laws and their lands, rich in cultivation. I shall, in due course shew, that the law of nature, clearly embracing the law of necessity cannot have made a few scattered tribes, lords of vast tracts, when multitudes are confined within limits so narrow as to preclude the possibility of subsistence for the inhabitants. The earth is the gift of Heaven to the whole of its inhabitants, intended for equitable distribution. Here I shall merely observe, that whether a just right exists or not on the part of the British Government, of claiming the sovereignty of its Australian Provinces, this can only be a matter of discussion between that Government and the Aborigines, in no ways entitling individuals to barter or purchase land from the latter, without the sanction of the crown, the proper Trustee, as before observed, for securing an impartial distribution.

Upon a careful investigation, the whole scheme will be found involved in a perplexity of reasoning not easily unravelled. Does Mr. **Batman** mean to convey, that in purchasing 500,000 acres of land from a black chief, he has also, with the land, bought the sovereignty of the soil? Mr. **Batman** is a subject of the British crown, and how then is it possible for him to establish himself as sovereign in a country, solemnly taken possession of by the British Government? Should another line of argument be pursued, and should it be said that the speculator has only bought the land without the seigniorial right, then it would at once upset the whole claim; as if in case of dispute an appeal would determine the indefensible right of the British crown over the whole of its Australian Provinces. Again it must be understood, that a chief of a small Aboriginal tribe cannot by any natural right inherent in himself, dispose of land, which in justice and fairness, ought to be handed down to the posterity of such tribe; and the matter would not be much mended by transferring such immense property from a few blacks to a few individuals exempt from all control. We have before us an example - in former days some parts of the Highlands of Scotland abounded in a hardy race of men, where we now only find some scattered huts inhabited by a few shepherds in charge of large flocks of sheep. Avarice and usurpation have

depopulated those parts of Scotland, which days of old, subsisted thousands.

We have, in our days witnessed various usurpations in vast grants being given to companies, to the great detriment of other parts of our colonial communities. Who can observe, without feelings of deep regret, the humbug of the Van Diemen's land Company, which professed so many advantages in favour of Van Diemen's Land, and, under a direct obligation, to furnish a capital of half a million, in the very face of the people and the Government, depart from every such obligation. One thing is certain, that as the company has obtained a grant of two hundred and fifty thousand acres in various patches, including all the refuse between the company may now sell or otherwise dispose of its land at the current price given, and thus pocket some hundred thousand pounds, without having expended much above one-fourth of that sum. All this may be gathered from Mr. Bischoff's production, although evidently from the pen of Mr. Curr, who has, in this way, found means to praise himself in a most extravagant degree. We who are here upon the spot, know well what to make of these strange sayings and doings; but, as a matter of course, it has been found necessary to write something to keep the shareholders at Home in good humour.

We are told that Mr. **Batman** bought his large tract of land for about £200. If, at any future period the chief, so having sold the land, should discover that he has been imposed upon, and appeal to the judicial authorities, would they allow the purchase to stand good, if not an equitable bargain? We are also informed that Mr. **Batman** is to pay a tribute of about £200 per annum to the tribe - if so this would again involve a perplexity, for would the British Government, without its sanction, permit a British subject to become tributary to a foreign Prince, allowing that the seigniorial right in the soil is really invested in him.

Another argument is that the state of Pennsylvania was purchased by the Quakers from the American Indians. The truth is, the Charter had been previously granted, and the Quakers doubling the justice of possessing themselves of a country in prejudice to the Aborigines, offered a certain price for the land already granted by the Crown.

Beside which, the Indians of North America are a keen and cunning race, and made a very advantageous and equitable bargain.

Above all, if we reflect on the geographical situation of Van Diemen's Land and New South Wales, and particularly the short distance between the northern parts of this Island, and the opposite coast of New Holland we shall soon see that the possession of Port Phillip, without an efficient Government control, would shelter a number of desperate characters, who could with the greatest ease effect their escape from here and the settlement of New South Wales. History supplies many examples, how impracticable it has been found to put down Buccaneers and lawless banditti, and indeed the Governments of Europe were obliged to make a compromise with the Buccaneers, and appoint some of their most daring leaders Governors of various places, which really, established peace and order. The most fearful consequences to the peaceable and industrious inhabitants would follow, and it is serious this danger I would wish the Australian Colonists to be particularly guarded. I am, Sir, Yours, &c. J. J.

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