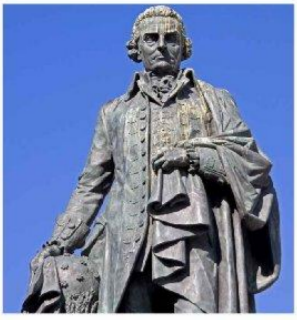


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### Lectures on Jurisprudence

van Smith, Adam

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14 Highlights | Geel (14)

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### Markeren (Geel) | Loc. 742

The end of justice is to secure from injury. A man may be injured in several respects: First, as a man. Secondly, as a member of a family.

Thirdly, as a member of a state.

As a man he may be injured in his body, reputation, or estate. As a member of a family he may be injured as a father, as a son, as a husband or wife, as a master or servant, as a guardian or pupil. For the two last are to be considered in a family relation, till such time as the pupil can take care of himself. As a member of a state, a magistrate may be injured by disobedience, or a subject by oppression, &c. A man may be injured: First, in his body by wounding, maiming, murdering, or by infringing his liberty. Secondly, in his reputation, either by falsely representing him as a proper object of resentment or punishment, as by calling him a thief or robber, or by depreciating his real worth, and endeavouring to degrade him below the level of his profession. A physician's character is injured when we endeavour to persuade the world he kills his patients instead of curing them, for by such a report he loses his business. We do not however injure a man when we do not give him all the praise that is due to his merit. We do not injure Sir Isaac Newton or Mr. Pope when we say that Sir Isaac was no better philosopher than Descartes, or that Mr. Pope was no better poet than the ordinary ones of his own time. By these expressions we do not bestow on them all the praise that they deserve, yet we do them no injury, for we do not throw them below the ordinary rank of men in their own professions. These rights which a man has to the preservation of his body and reputation from injury are called natural, or as the civilians express them *iura hominum naturalia*. Thirdly, a man may be injured in his estate. His rights to his estate are called acquired or *iura adventitia*, and are of two kinds, real and personal.

## Markeren (Geel) | Loc. 770

A real right is that whose object is a real thing and which can be claimed a quocumque possessore. Such are all possessions, houses, furniture. Personal rights are such as can be claimed by a law-suit from a particular person, but not a quocumque possessore. Such are all debts and contracts, the payment or performance of which can be demanded only from one person. If I buy a horse and have him delivered to me, though the former owner sell him to another, I can claim him a quocumque possessore; but if he was not delivered to me I can only pursue the seller. Real rights are of four kinds, property, servitudes, pledges, and exclusive privileges. Property is our possessions of every kind, which if anyway lost, or taken from us by stealth or violence, may be redemanded a quocumque possessore. Servitudes are burdens upon the property of another. Thus I may have a liberty of passing through a field belonging to another which lies between me and the highway, or if my neighbour have plenty of water in his fields and I have none in mine for my cattle, I may have a right to drive them to his. Such burdens on the property of another are called servitudes. These rights were originally personal, but the trouble and expense of numerous lawsuits in order to get possession of them, when the adjacent property which was burdened with them passed through a number of hands, induced legislators to make them real and claimable a quocumque possessore. Afterwards the property was transferred with these servitudes upon it. Pledges, which include all pawns and mortgages, are securities for something else to which we have a right. The laws of most civilized nations have considered them as real rights, and give a liberty to claim them as such. Exclusive privileges are such as that of a bookseller to vend a book for a certain number of years, and to hinder any other person from doing it during that period. These rights are for the most part creatures of the civil law, though some few of them are natural, as in a state of hunters even before the origin of civil government, if a man has started a hare and pursued her for some time, he has an exclusive privilege to hunt her, by which he can hinder any other to come in upon her with a fresh pack of hounds. An heir has also an exclusive privilege of hindering any person to take possession of the inheritance left him while he is deliberating whether or not it will be for his interest to take possession of it and pay off the debts with which it is burdened. Personal rights are of three kinds, as they arise from contract, quasi contract, or delinquency. The foundation of contract is the reasonable expectation, which the person who promises raises in the person to whom he binds himself; of which the satisfaction may be extorted by force. Quasi contract is the right which one has to a compensation for necessary trouble and expense about another man's affairs. If a person finds a watch in the highway he has a claim to a reward, and to the defraying of his expenses in finding out the owner. If a man lend me a sum of money, he has a right not only to the sum, but to interest also. Delinquency is founded upon damage done to any person, whether through malice or culpable negligence. A person has a right to claim these only from a certain person. The objects of these seven rights make up the whole of a man's estate. The

## Markeren (Geel) | Loc. 844

Superior age, superior abilities of body and of mind, ancient family and superior wealth seem to be the four things that give one man authority over another. The second principle which induces men to obey the civil magistrate is utility. Every one is sensible of the necessity of this principle to preserve justice and peace in the society. By civil institutions the poorest may get redress of injuries from the wealthiest and most powerful; and though there may be some irregularities in particular cases, as undoubtedly there are, yet we submit to them to avoid greater evils. It is the sense of public utility, more than of private, which influences men to obedience. It may sometimes be for my interest to disobey, and to wish government overturned, but I am sensible that other men are of a different opinion from me, and would not assist me if

### Markeren (Geel) | Loc. 864

has been a common doctrine in this country that contract is the foundation of allegiance to the civil magistrate . But that this is not the case will appear from the following reasons. In the first place the doctrine of an original contract is peculiar to Great Britain, yet government takes place where it was never thought of, which is even the case with the greater part of people in this country. Ask a common careporter or day-labourer why he obeys the civil magistrate, he will tell you that it is right to do so, that he sees others do it, that he would be punished if he refused to do it, or perhaps that it is a sin against God not to do it. But you will never hear him mention a contract as the foundation of his obedience. Secondly, when certain powers of government were at first entrusted to certain persons upon certain conditions, it is true that the obedience of those who entrusted it might be founded on a contract, but their posterity have nothing to do with it, they are not conscious of it, and therefore cannot be bound by it. It may indeed be said that by remaining in the country you tacitly consent to the contract and are bound by it. But how can you avoid staying in it? You were not consulted whether you should be born in it or not. And how can you get out of it? Most people know no other language nor country, are poor, and obliged to stay not far from the place where they were born, to labour for a subsistence. They cannot, therefore, be said to give any consent to a contract, though they may have the strongest sense of obedience. To say that by staying in a country a man agrees to a contract of obedience to government is just the same with carrying a man into a ship and after he is at a distance from land to tell him that by being in the ship he has contracted to obey the master. The foundation of a duty cannot be a principle with which mankind is entirely unacquainted. They must have some idea, however confused, of the principle upon which they act.

### Markeren (Geel) | Loc. 896

They must, therefore, be on a different footing, the less can by no means involve in it the greater contract. Contract is not therefore the principle of obedience to civil government, but the principles of authority and utility formerly explained.

### Markeren (Geel) | Loc. 959

The powers of government are three, to wit, the legislative, which makes laws for the public good: the judicial, or that which obliges private persons to obey these laws, and punishes those who disobey: the executive, or as some call it, the federal power, to which belongs the making war and peace.

### Markeren (Geel) | Loc. 2290

We formerly explained the nature of rights, and divided them into natural and acquired. The former need no explanation; the latter are divided into real and personal. Real rights are property, servitude, pledge, and exclusive privilege. We are first to treat of property. Property is acquired five ways. First, by occupation, or the taking possession of what formerly belonged to nobody. Second, by accession, when a man has a right to one thing in consequence of another, as of a horse's shoes along with the horse. Third, by prescription, which is a right to a thing belonging to another arising from long and uninterrupted possession. Fourth, by succession to our ancestors or any other person, whether by a will or without one. Fifth, by voluntary transference, when one man delivers over his right to another.

## Markeren (Geel) | Loc. 2312

The first thing that requires notice in occupation among hunters is what constitutes it, and when it begins, whether it be on the discovery of the wild beast or after it is actually in possession. Lawyers have varied on this head, some give a part to the person who has formerly wounded a wild beast, though he have given up the chase, and others do not. All agree that it is a breach of property to break in on the chase of a wild beast which another has started, though some are of opinion that if another should wound the beast in its flight he is entitled to a share, as he rendered the taking of it more easy upon the whole. Among savages property begins and ends with possession, and they seem scarce to have any idea of anything as their own which is not about their own bodies. Among shepherds the idea of property is further extended. Not only what they carry about with them, but also what they have deposited in their hovels, is their own. They consider their cattle as their own while they have a habit of returning to them. When the generality of beasts are occupied, they consider them as their own even after they have lost the habit of returning home, and they may be claimed for a certain time after they have strayed. But property receives its greatest extension from agriculture. When it first became necessary to cultivate the earth, no person had any property in it, and the little plot which was dressed near their hovels would be common to the whole village, and the fruits would be equally divided among the individuals. There are the remains of a common land property in our own country at this day. In many places there is a piece of ground belonging equally to several persons, and after harvest, cattle are, in many places, allowed to feed where they please. Private property in land never begins till a division be made from common agreement, which is generally when cities begin to be built, as everyone would choose that his house, which is a permanent object, should be entirely his own. Moveable property may be occupied in the very first beginnings of society, but lands cannot be occupied without an actual division. An Arab or a Tartar will drive his flocks over an immense country without supposing a single grain of sand in it his own. By the laws of many countries there are some things, however, that cannot be occupied by any private person. Treasure and derelict goods, by the laws of Britain, belong to the king. This arises from that natural influence of superiors which draws everything to itself that it can without a violation of the most manifest rules of justice. In like manner seas and rivers cannot be occupied by any private person: unless it is particularly specified in your charter, you cannot take large fishes in a river running through your own estate. A sea surrounded by several nations cannot be occupied by any one, but all must have a part of the jurisdiction, but any nation may hinder another from fishing in its bays, or approaching its coasts with vessels of war.

## Markeren (Geel) | Loc. 3331

From the above we may observe that whatever policy tends to raise the market price above the natural, tends to diminish public opulence. Dearness and scarcity are in effect the same thing. When commodities are in abundance, they can be sold to the inferior ranks of people, who can afford to give less for them, but not if they are scarce. So far, therefore, as goods are a conveniency to the society, the society lives less happy when only the few can possess them. Whatever therefore keeps goods above their natural price for a permanency, diminishes a nation's opulence. Such are

### Markeren (Geel) | Loc. 3344

Secondly, monopolies also destroy public opulence. The price of the monopolized goods is raised above what is sufficient for encouraging the labour. When only a certain person or persons have the liberty of importing a commodity, there is less of it imported than would otherwise be; the price of it is therefore higher, and fewer people supported by it. It is the concurrence of different labourers which always brings down the price. In monopolies, such as the Hudson's Bay and East India companies, the people engaged in them make the price what they please. Thirdly, exclusive privileges of corporations have the same effect. The butchers and bakers raise the price of their goods as they please, because none but their own corporation is allowed to sell in the market, and therefore their meat must be taken, whether good or not. On this account there is always required a magistrate to fix the prices. For any free commodity, such as broad cloth, there is no occasion for this, but it is necessary with bakers, who may agree among themselves to make the quantity and price what they please. Even a magistrate is not a good enough expedient for this, as he must always settle the price at the outside, else the remedy must be worse than the disease, for nobody would apply to these businesses, and a famine would ensue. On this account bakers and brewers have always profitable trades.

### Markeren (Geel) | Loc. 3594

Upon the whole we may observe on this subject, that the reason why our riches do not consist in money but commodities is, that money cannot be used for any of the purposes of life, but that commodities are fitted for our subsistence. The consumptibility, if we may use the word, of goods, is the great cause of human industry and an industrious people will always produce more than they consume. It is easy to show how small a proportion the cash in every country bears to the public opulence. It is generally supposed that there are thirty millions of money circulating in Britain, but the annual consumption amounts to much more than a hundred millions, for, computing the inhabitants of the island at ten millions, and allowing ten pounds per annum for the subsistence of each person, which is by much too little, the whole annual consumption amounts to that sum. So it appears that the circulating cash bears but a small proportion to the whole opulence of the country. It is probable, however, that there are not thirty millions in Britain, and in that case the proportion will be still less.

### Markeren (Geel) | Loc. 4383

There are some inconveniences, however, arising from a commercial spirit. The first we shall mention is that it confines the views of men. Where the division of labour is brought to perfection, every man has only a simple operation to perform; to this his whole attention is confined, and few ideas pass in his mind but what have an immediate connexion with it. When the mind is employed about a variety of objects, it is somehow expanded and enlarged, and on this account a country artist is generally acknowledged to have a range of thoughts much above a city one. The former is perhaps a joiner, a house carpenter, and a cabinetmaker, all in one, and his attention must of course be employed about a number of objects of very different kinds. The latter is perhaps only a cabinet-maker; that particular kind of work employs all his thoughts, and as he had not an opportunity of comparing a number of objects, his views of things beyond his own trade are by no means so extensive as those of the former. This must be much more the case when a person's whole attention is bestowed on the seventeenth part of a pin \* or the eightieth part of a button, so far divided are these manufactures. It is remarkable that in every commercial nation the low people are exceedingly stupid. The Dutch vulgar are eminently so, and the English are more so than the Scotch. The rule is general; in towns they are not so intelligent as in the country, nor in a rich country as in a poor one

### Markeren (Geel) | Loc. 4395

Another inconvenience attending commerce is that education is greatly neglected. In rich and commercial nations the division of labour, having reduced all trades to very simple operations, affords an opportunity of employing

### Markeren (Geel) | Loc. 4410

Another bad effect of commerce is that it sinks the courage of mankind, and tends to extinguish martial spirit. In all commercial countries the division of labour is infinite, and every one's thoughts are employed about one particular thing. In great trading towns, for example, the linen merchants are of several kinds, for the dealing in Hamburg and Irish linens are quite distinct professions. Some of the lawyers attend at King's Bench, some at the court of Common Pleas, and others at the Chancery. Each of them is, in a great measure, unacquainted with the business of his neighbour. In the same manner war comes to be a trade also. A man has then time to study only one branch of business, and it would be a great disadvantage to oblige every one to learn the military art and to keep himself in the practice of it. The defence of the country is therefore committed to a certain set of men who have nothing else ado, and among the bulk of the people military courage diminishes. By having their minds constantly employed on the arts of luxury, they grow effeminate and dastardly.

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