

**Adam Ferguson, Collection of Essays:
Ferguson's posthumous works**

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'He (Adam Ferguson) has left behind him many interesting papers on the subjects which had chiefly occupied his thoughts from the time of his last academical appointment, but a great mass of letters and other valuable documents had been indiscriminately destroyed by his direction, some years before his death.'¹ In 1824, Minister of Canongate, Rev. John Lee, later Principal of the University of Edinburgh, concluded his brief biography of Adam Ferguson with these words. We can rely on Lee's statement all the more because when Ferguson died on the 22nd of February 1816 in St. Andrews, Lee lived near Ferguson's as professor of church history at St. Mary's College, St. Andrews.

It seemed to be usual at that time for writers to destroy their notes and letters before their death. Adam Smith, another Adam of the Scottish enlightenment, also burnt 'sixteen manuscript volumes on jurisprudence'.² According to Thompson, it was Ferguson who helped physically failing Smith to do so.³ This is a great loss to posterity. But Ferguson's case was fortunate. Lee himself endeavoured to collect the documents related to Ferguson in order to write 'a more complete life of the Professor.'⁴

Lee had a huge collection of books, pamphlets, manuscripts and autograph letters chiefly concerned with Scottish history and church history. They were sold by auction at several times. The auction catalogues show the details of Lee's library. Most of the documents relative to Ferguson are

listed as DR ADAM FERGUSON: Collection of Papers in his handwriting (See Appendix 1, hereafter cited as Lee's Collection) in the following auction catalogue: *Catalogue of the extensive & valuable collection of manuscripts and autograph letters of eminent personages, of the late Rev. John Lee, D. D., Principal of the University of Edinburgh, comprising many interesting materials for Scottish History, especially relative to the Church and Universities, and peculiarly rich in autograph letters by celebrated personages, . . .* Which will be sold by auction by Mr. T. Nisbet, His great room, No. 11 Hanover Street, Edinburgh, on Thursday, April 4, 1861, and two following days. at one o'clock.⁵

Some of Lee's Collection are now housed in Edinburgh University Library. It seems that they were bought either by the library itself or by someone else who sold or donated them to it. Among them are the following important materials: No. 442 Series of seventy-two Letters from Dr Adam Ferguson to Sir John Macpherson (EUL Dc. 1. 77), in which we can see Ferguson's remarks on the American Revolution and the French Revolution⁶ and No. 454 Journal of Proceedings of his Majesty's Commissioners (EUL Dc. 1. 6), which also contains Ferguson's writings on the American Revolution.⁷ However, there are still some curious but unlocated items, for example: No. 449 Bundle of Miscellaneous Papers, Memoranda, Notes, &c., mostly in the handwriting of Dr Ferguson, including "A Dialogue," 1772; also Proof Sheets of Progress of the Roman Republic with Corrections in his handwriting and No. 453 Very important and valuable series of papers relative to the American War, comprising many documents in the handwriting of Dr Ferguson as secretary of the Commission for quieting the disorders in America.

What is 'many interesting papers' which, as Lee said in his biography, 'Ferguson has left behind him'? It is probably neither of the above mentioned two items, for its subjects are neither the Roman Republic nor the

American problem. According to Lee its subjects are those 'which had chiefly occupied his thoughts from the time of his last academical appointment', namely, moral philosophy. If it is concerned with moral philosophy, we can identify it with No. 441 Series of thirty-two Treatises on various Subjects, (Metaphysics, &c.) with MS Catalogue (hereafter cited as Series) listed in Lee's Collection. Furthermore, the Series seems to be identified with the Collection of Essays, etc. (hereafter cited as Collection) listed in *Edinburgh University Library: Index to Manuscripts* (Dc. 1. 42)⁸, for the Collection is also composed of thirty-two essays. Then, what is 'MS Catalogue' in Lee's description? It is probably the following detailed contents attached to the Collection: Contents of MSS of Dr Adam Ferguson in the Possession of Sir John Macpherson Baronet (See Appendix 2). As the contents show, considerable parts of the essays of the Collection have something to do with moral philosophy with which 'many interesting papers', as Lee says, is concerned.

We learn from the attached contents mentioned above that the original owner of the Collection was John Macpherson who attended Ferguson's moral philosophy class and then became one of his most closest friends. As I wrote above, it was also Lee who collected many of Ferguson's letters addressed to Macpherson. The Collection was sent by Ferguson himself to Macpherson. Macpherson seemed to have an intention of publishing it, for he wrote to Robert Ferguson, nephew of Adam Ferguson, on the 23rd of March 1816 as follows: 'He (Adam Ferguson) sent me two yeas ago his valuable manuscripts. I shall take care that the public shall benefit by their contents.'⁹ But Macpherson died in 1821 without publishing it. We do not know when and how the Series came into Lee's hands after Macpherson's death.

There is some difference between the Series and the Collections. As I pointed out earlier, both of them are composed of thirty-two essays.

However, in the Collection one essay and some other writings are added just after essay No. 32. These added materials are not mentioned in the contents. The added essay is beginning with the words, 'A Little Boy'¹⁰, without title. The handwriting of 'A Little Boy' obviously differs from Ferguson's. But the opinions and the discussions in it seem to have something to do with those in thirty-two essays. We do not know who wrote it. However, because it was bound with Ferguson's essays, it seems not unreasonable to suppose that someone wrote down what Ferguson had said, or rewrote Ferguson's original essay. All other writings are written by Ferguson himself. Most of them are short fragments on various subjects. But there are interesting materials among them. Some are concerned with the Roman History and others are drafts of the epitaph which he was preparing probably for himself. The most interesting among them is, I think, the Memorial which is written in the last five pages of the Collection.¹¹

The Collection has been known in Japan much earlier. It was mentioned as early as 1956 in H. Mizuta's *Shakai Shisoshi no Tabi*¹² which stimulated the post-war Japanese studies on the history of economic and social thought by offering very valuable information about Adam Smith and his intellectual background. Mizuta listed the titles of thirty-two essays in his book, and noticed particularly Ferguson's opinion on the French Revolution.¹³ According to Mizuta, E. C. Mossner and A. Macfie were much interested in the Collection. Macfie, who was informed by Mizuta of the fact that Edinburgh University Library owned the Collection, told Mizuta his intention of editing the Collection after his retirement. But he did not edit it. On the other hand Mossner edited and published two essays, No. 5 and No. 25.¹⁴

Furthermore another three interesting essays have been published. Essay No. 14, on the French Revolution, which Mizuta had noted earlier, was published by Y. Kubo in Japan.¹⁵ H. Medick referred to Ferguson's discussion on

the division of labour in essay No. 15 and cited some part of it in his introduction to German translation of Ferguson's *Essay on the History of Civil Society*.¹⁶ Then, I published the full text of essay No. 15.¹⁷ Moreover I published essay No. 34 Memorial¹⁸. When I published essay No. 15, I was greatly surprised to hear from R. Sher that 'the Edinburgh University Library Rare Book Room now has a full typescript¹⁹ of the Essays, made by a woman who recently completed a thesis on Ferguson.' The name of the woman mentioned here is Winifred Philip and the title of her thesis is The contribution of Adam Ferguson to Social Science, Ph.D. diss. Surrey University, 1986. Her effort to decipher and transcribe the manuscripts is great. However, her edition is, as Sher says, 'far from satisfaction'.²⁰ There are many words missed or wrongly deciphered. It seems that we need more complete edition of the Collection today.

- (1) *Supplement to the Fourth, Fifth and Sixth Editions of the Encyclopaedia Britannica*, Vol. 4, Edinburgh, 1824, p. 243.
- (2) H. W. Thompson, *A Scottish Man of Feeling: Being some account of Henry Mackenzie and of the Golden Age of Burns and Scott*, Oxford University Press, 1931, p. 256.
- (3) It is generally said that J. Black and J. Hutton, Smith's literary executors, burnt his manuscripts on his request. I have learnt Thommson's statement from J. B. Fagg, Adam Ferguson: Scottish Cato, Ph.D. diss. University of North Carolina at Chapel Hill, 1986, pp. 255-6.
- (4) Anon. Adam Ferguson, *Edinburgh Review*, 125, 1867, p. 50.
- (5) Beside this catalogue there remain the following four auction catalogues of Lee's library: *Catalogue of the first part of the extensive & valuable library, of the Rev. John Lee, D. D., L. L. D., & Principal of the University of Edinburgh, consisting of rare works on theology, history, philosophy, belles lettres, & various other branches of literature; and particularly, a large collection of uncommon editions of the bible, chiefly in English*. Which will be sold by auction by C. B. Tait & Co. in their great room, No. 11, Hanover Street, on Monday, February 28, 1842, and eleven following lawful days, at one o'clock; *Catalogue of the first*

portion of the extensive library of the late very Rev. John Lee, D. D., Principal of the University of Edinburgh, consisting of a highly valuable and interesting collection of books, in Scottish history and antiquities, . . . Which will be sold by auction by Mr. T. Nisbet, in his great room, No. 11 Hanover Street, Edinburgh, on Friday, November 18, 1859, and thirteen following lawful days, at one o'clock; Catalogue of the second portion of the extensive library of the late very Rev. John Lee, D. D., Principal of the University of Edinburgh, consisting of a highly valuable and interesting collection of books, in Scottish history and antiquities, . . . Which will be sold by auction by Mr. T. Nisbet, in his great room, No. 11 Hanover Street, Edinburgh, on Tuesday, February 14, 1860, and seven following lawful days, at one o'clock; Catalogue of the interesting collection of rare & curious pamphlets, formed by the late very Rev. John Lee, D. D., Principal of the University of Edinburgh. Which will be sold by auction by Mr T. Chapman (Successor to the late Mr T. Nisbet), in His Great Room, No. 11 Hanover Street, Edinburgh, on Friday, May 29, 1863, at One o'clock.

- (6) D. Kettler, *The social and political thought of Adam Ferguson*, Ohio State University Press, 1965, p. 92.
- (7) Y. Amoh, *Ferguson to Scotland Keimo*, (*Ferguson and the Scottish Enlightenment*), Tokyo, 1993, pp. 265ff.
- (8) *Edinburgh University Library, Index to Manuscripts*, 1964, vol. 1, p. 538.
- (9) James Ferguson and Robert Menzies Fergusson ed., *Records of the clan and name of Fergusson Ferguson and Fergus*, Edinburgh, 1895.
- (10) Hereafter cited as No. 33, A little boy.
- (11) Memorial respecting the measures to be pursued on the present immediate prospect of a final separation of the American colonys from Great Britain (hereafter cited No. 34 Memorial). As for the full text, see Y. Amoh, Adam Ferguson and the American Revolution, *Kochi University Review*, No. 37, 1990.
- (12) H. Mizuta, *Shakai Shisoshi no Tabi*, (*History of social thought through a journey*), Tokyo, 1956.
- (13) *Ibid.*, p. 74.
- (14) E. C. Mossner ed., Of the principle of moral estimation. A discourse between David Hume, Robert Clerk and Adam Smith, *Journal of the History of Ideas*, vol. 21, no. 2, 1960; Do., 'Adam Ferguson's Dialogue

- on a Highland Jaunt' with Robert Adam, William Cleghorn, David Hume, and William Wilkie, in C. Camden ed., *Restoration and Eighteenth-Century Literature*, U. of Chicago P., 1963.
- (15) Y. Kubo, Adam Ferguson and the French Revolution, *Kwansei Gakuin University Annual Studies*, vol. 11, 1962.
- (16) Adam Ferguson: *Versuch über die Geschichte der bürgerlichen Gesellschaft*, herausgegeben und eingeleitet von Zwi Batscha und Hans Medick, übersetzt von Hans Medick, Suhrkamp Verlag, 1986.
- (17) Y. Amoh, Adam Ferguson and the division of labour, *Kochi University Review*, no. 29, 1987.
- (18) See note 11.
- (19) *The Unpublished Essays of Adam Ferguson*, 3vols., deciphered and commented upon by Winifred Philip, Doctor of Philosophy of the University of Surrey, 1986.
- (20) R. B. Sher, Adam Ferguson, Adam Smith and the Problem of National Defense, *Journal of Modern History*, 61, June 1989, p. 265, note 9.

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Thirty-two essays of the Collection are considerably different in length. The shortest essay, No. 26, consists of only six pages. The longest, No. 5, is over fifty pages although some pages of it are regrettably missing. Essay No. 27 is composed of two parts. Putting them together, whole pages become seventy two. We are not sure when each essay was written. However, it is possible for us to conjecture from the watermarks of the paper on which they were written¹ that the greater part of them were written sometime in the early years of the nineteenth century. If so, we can see in the Collection a development of Ferguson's thought after his last work, *Principles of Moral and Political Sciences*, 1792.

In fact many topics of the Collection have something to do with those of the *Principles*. For example, the discussions in the essay No. 25, the criticisms of Hume's utility and Smith's sympathy, are considered as a development of those in the *Principles*.² Furthermore, we can perceive a stoic

approach to ethics, which L. Castiglione stresses in his preface to the reprint of the *Principles*,³ more distinctly in the Collection than in the *Principles*. Ferguson says towards the end of the essay No. 1 as follows:

The period of being is not his own. To be in the next impending moment is as much at the will of his maker as the first act of respiration that took possession of the life he was to lead on his dismissal from the parents womb.

If when this respiration ceases, he be worthy of admission to an (*sic*) higher scene and if his nature be susceptible of farther existence, he may hope and rejoice in the prospect: but if it cannot be, who can repine that the order of nature is observed in his case as well as in that of every other being ?

If a voluntary sacrifice were required to the order of such a system, who that perceives that order could be reluctant in performing it? Or what can be a more real occasion of joy on any event than to know that it comes from the destination of supreme wisdom, goodness and almighty power?

Under such government it is joyous to live and it is a triumph to die.⁴

These words might lead us to call old Ferguson a 'Scottish Cato' as an anonymous biographer did in the *Edinburgh Review*,⁵ or a 'Modern Epictetus' as George Dempster did in his letter to Sir Adam Ferguson.⁶ But there is a different tone of discussion in the Collection, which seems to be contradictory to a mere Stoic passivity. Human being is not only governed by nature, but he can control it by his intelligent power. Ferguson states:

Intelligent creatures destined for active life may observe and avail themselves of these secondary causes are enabled in a certain degree to controul or direct the course of nature itself. By the use of menstrua

they can dissolve salts and minerals. By the use of seeds they can propagate plants, change the productions of nature or cover the barren hills with wood and remove the wild beast to make way for profitable herds and flocks.⁷

Furthermore, the Collection contains many essays which are not concerned only with moral philosophy. We can list essays Nos. 4, 5, 9, 11, 14, 15, 16, 26 and 28 as such essays. Some of these essays are relating to the subjects of which none of Ferguson's published works treated. So we can detect hitherto unknown aspects of Ferguson's thoughts in the Collection. For example, essay No. 16,⁹ on humour, is much interesting. One of Carlyle's friends said that 'he (Ferguson) was excellent at serious works, but could turn nothing into ridicule, as he had no humour.'⁹ This was the crucial point when Raynor denied the fact that Ferguson wrote *Sister Peg*.¹⁰ However, Ferguson did write an essay on humour. It is said that Ferguson, a highlander and a Gaelic speaker, 'has not achieved the mastery of the foreign language (English) . . . It is not always easy to discover what he is saying.'¹¹ But the Collection contains two clever philosophical dialogues (Nos. 5, 25), and one of them, No. 5, is the longest essay in the Collection as I pointed out earlier. Sher refers to these dialogues in order to testify 'Ferguson's capacity to compose a witty, well-written, sustained political satire' and to defeat Raynor's arguments.¹²

It follows from what has been said that the Collection is not considered only as the writings of Ferguson, a Scottish Cato. It is very important materials for us to reconstruct Ferguson's thoughts as a whole.

(1) See Appendix 2

(2) A. Ferguson, *Principles of Moral and Political Sciences*, Edinburgh, 1792, vol. 2, pp. 117-126.

- (3) *Principles of Moral and Political Science* by Adam Ferguson. With a New Preface by Lawrence Castiglione, AMS, 1973.
- (4) Essay No. 1, Of Perfection and Happiness, pp. 24-5.
- (5) Anon., Adam Ferguson, *op.cit.*, p. 48.
- (6) Cited in Fagg, *op. cit.*, p. 323.
- (7) Essay No. 13, Of cause and effect, ends and means, order, combination and design, p. 12.
- (8) See Appendix 3.
- (9) *The Autobiography of Dr. Alexander Carlyle of Inveresk 1722-1805*, ed. by J. H. Burton, with a new intro. by R. B. Sher, Thoemmes, 1990, p. 426.
- (10) *Sister Peg: A pamphlet hitherto unknown by David Hume*, edited with an introduction and notes by David Raynor, Cambridge University Press, 1982. See introduction, p. 4.
- (11) D. Forbes, Introduction to his edition of *An Essay on the History of Civil Society*, Edinburgh, 1966, p. xxv.
- (12) Richard B. Sher, A review: *Sister Peg*, ed by David R. Raynor, Cambridge Univ. Press, *Philosophical Books* 24, April 1983.

Appendix 1

Lee's collection

441. Series of thirty-two Treatises on various Subjects, (Metaphysics, &c.) with MS. Catalogue. (Collection of essays, etc. EUL Dc. 1. 42)
442. Series of seventy-two Letters from Dr Adam Ferguson to Sir John Macpherson, extending from 1773 to 1808, with Index; a very interesting series of letters, containing Dr Ferguson's remarks on the public affairs of the time. (EUL Dc. 1. 77)
443. Collection of seventy-nine Letters addressed to Dr Ferguson by Sir John Macpherson, Mr William Pulteney, Lady Spenser, Lady Warwick, Mr Robert Ferguson, Lord Stanhope, General Clerk, Mr William Eden, Mr Robert F. Greville, Lord Warwick, &c., &c.
444. Collection of Fifty-seven Letters, addressed for the most part to Dr Ferguson, by Lord Shelburne, Sir John Macpherson, Lord Stanhope, Mr W. Eden, Lord Mahon, Mr William Strahan, Lord Warwick, General Putnam, Adam Smith, Alexander Monypenny, Robert Ferguson, &c., including several letters of Dr Ferguson, addressed to Adam Smith and others.
445. Collection of forty Letters addressed to Dr Ferguson by Sir John Macpherson, Mr Pulteney, Mr F. Greville, Lord Warwick, Mr Andrew Stewart, &c.
446. Collection of ten Letters and Papers, chiefly relating to the Ossian Controversy, . . . 1782, &c.
447. Bundle of Scrolls and Copies of Letters to Lord Germain, Earl Stanhope, and others, for the most part in the handwriting of Dr Ferguson.
448. Nineteen Letters addressed to Dr Ferguson by Colonel Campbell,

General Fletcher, Captain Thomas Dalziel, and Mr James Macpherson, also note in John Home's handwriting regarding Mr Pitt's opinion of the tragedy of Douglas.

449. Bundle of Miscellaneous Papers, Memoranda, Notes, &c., mostly in the handwriting of Dr Ferguson, including "A Dialogue," 1772; also Proof Sheets of Progress of the Roman Republic with Corrections in his handwriting.
450. Papers (five) relating to the Dispute between Dr Ferguson and the Town Council of Edinburgh as to his Removal from the Moral Philosophy Chair, including letters of Principal Robertson and Dr Blair on the Subject.
451. Sundry Printed Papers, Passes, &c. relative to the Rebellion in Scotland of 1745-46.
452. Cupar Election Papers; Copy-Act of Council Appointing Messrs Bruce and Duncan to teach Professor Ferguson's Classes, 1774; Memorandum about Tutor to Earl of Morton's Sons; Diploma Perthense Reverendi Magistri Adami Ferguson, 1757.
453. Very Important and Valuable Series of Papers relative to the American War, comprising many documents in the handwriting of Dr Ferguson as Secretary of the Commission for quieting the Disorders in America.
454. Journal of Proceedings of his Majesty's Commissioners appointed in Pursuance of an Act of Parliament of the 18th year of his Majesty's Reign, to treat, consult, and agree upon the means of quieting the disorders subsisting in certain of the Colonies, Plantations, and Provinces of North America; *mostly in the handwriting of Dr Ferguson.* (EUL Dc.1. 6)
455. Bundle of Miscellaneous Papers.

Appendix 2

Contents of MSS of Dr. Adam Ferguson in the Possession of Sir John Macpherson Baronet

No. 1 Of Perfection and Happiness (25, 1806)*

Separately and conjointly considered. The effect of happiness. What is suppos'd to be happiness ; in the enjoyment of health, equanimity, conscious safety, and the occupations of a well regulated mind.

Happiness variously pursued ; the chief end of our being. The happiness of man consulted in the formation of his corporeal and mental faculties. His superiority to other animals.

The continual exercise of his faculties necessary to his happiness. The difference in what consists the pleasures of a worthy and a vicious mind.

The employment of the mind in useful attainments and active benevolence, necessary to respectability and happiness in life ; to which end present ease must be sacrificed to future attainments instanced in the labours of the student and schollar.

Man, to be happy, must be wise, intrepid, benevolent, and temperate; relying on the wisdom and goodness of his maker, lives happy in this world, and meets death with fortitude and hope.

No. 2 What may be affirmed or apprehended of the Supreme Creative Being (9, 1799)

That he acts from design, and means to obtain an end. The irresist-

* The first numeral denotes the number of pages of MS. and the second the year of the watermarks of the paper.

ble evidence of a first cause and creative being, in the beauty, diversity, yet regularity, and analogy preserved in things the most different. Happiness the end of our being. Mere enjoyments do not constitute happiness.

The contemplation of God's works lifts the mind up to the creator and disposes man to acts of affection and good will towards his fellow-creatures, the true means of happiness. Free agency. The various forms of created things as affording pleasure, tend to make man happy.

The superiority of man over other animals in being endowed with a reasonable soul; which enables him to look forward to another and a better world, to be an inhabitant perhaps of another system.

No. 3 Of History and its appropriate Style (27, 1806)

Literature as applied to history. Poetry or works of imagination. History descriptive and narrative. Strict adherence to truth in history; its importance.

Display of genius and brilliancy of language in works of imagination and information; its danger when truth is lost sight of to some readers. Abuse of talents.

History its use, and value as an example. The danger of a party historian as being likely to mislead. Simple matter of fact best in history. How to distinguish the faithful historian.

Character of Livy as an (*sic*) historian; his eloquence; not to be imitated as an (*sic*) historian. A historian should be a moralist as well as a narrator of facts. Perfection not to be expected in history any more than any other human art.

Statesmen and warriors actually engaged not to be relied on as faithful historians. Of those most likely to be faithful historians.

Of the use of metaphors as an ornament of speech, condemned in

history. Truth the very essence of history. Advice to historians. Some authors known by characteristic traits in their compositions; not so authors of true genius and capacity.

No. 4 Of Statesmen and Warriors (36, 1799)

Their proper functions defined. Generals and armies. The importance of discipline aided by vigour of body and mind, the essential requisites to make a good soldier.

Of the duties of a general; choice of position; to gain the confidence of his soldiers, and instill the principle of rigid honour in his officers; to set the example in his own person.

Genuine patriotism more observable in free governments; its importance as a stimulus to acts of heroism. Occasional rewards for acts of bravery necessary. National estimation a known principle of valour.

The necessity of promotion being open to every soldier without distinction of rank; this principle more observable in the French Revolutionary army; its effect.

The several requisites to ensure the zeal of the soldier inumerated.

State of the French Army before the revolution; abject state of the common soldier, and the entire change the revolution effected; its consequences.

Of statesmen; the advantages of the union of the talents of a statesman and general, inumerated. The ancients superior in the science of government, and the knowledge of men and manners: The two functions of statesman and general generally united in ancient times: Their separation.

Suggestions for the improvement of the military department.

No. 5 An Excursion in the Highlands: Discourse on various Subjects (58, 1799)

The diversion of hunting and shooting consider'd; as ¹ a recreation &c. The operation of instinct in animals contrasted with that of free will in man.

In what consists what may be called supreme good; Epicurus and Zeno's opinions.

The principle of action in man various. Sense of beauty and deformity as applied to architecture &c. Virtue and vice. Variety; how far it contributes to happiness, the real end of our life. Happiness and perfection the same. Evidence of a first cause in the wisdom and goodness displayed in the order of things. Scale of gradation to perfection and happiness. The principle of moral approbation; Distinction of right and wrong. Estimation of moral character.

No. 6 Of Happiness and Merit (12, 1802)

Are they different objects, or the same object under different points of view? Enjoyment and suffering, their various and opposite effect on some minds. The power of truth and wisdom in correcting errors of the mind.

True happiness consists not in riches or worldly enjoyment, but in mental attainments which is wisdom. What the signs of happiness and merit in the rich and poor man.

Of benevolence or charity. Fortitude. The terms happiness and merit frequently misapplied. Who are the truly happy?

(1) 'the' deleted

No. 7 Distinction of Value and its Source in Existence (35, 1808)

Distinction, good and evil, happiness and misery, mind and matter. Variety, the primary feature throughout nature. Man a variety; his infancy, youth and manhood; his faculties.

Happiness and perfection, various ideas of. Ambition which prompts to exertion, and its opposite indolence; their influence.

The grand distinction of man as an intelligent being. That the present scene is projected for the advancement of his intellectual progress; considered in a review of his progress through life. Origin of laws; commerce &c. Man as a member of society. Incitements to active exertion in the love of his country &c. in calling forth his energies promotes his happiness; the whole order of things tend to the same end. Political societies, states &c.

Man's infancy: Faculty of speech. Distribution² of good & evil, pleasure and pain tend to make him happy; the superiority of mind over matter. The wisdom and goodness of God manifested in all the works of creation, all tending to man's happiness.

No. 8 Of the comparative Forms of Being (10, 1808)

Of the intellectual or world of minds. The subserviency of all nature to man. Variety and analogy most observable in the aspect of things. Law of gravitation. Planetary system, variety of worlds in infinite space.

The intellectual and animal part of man considered. Probability of other worlds for the reception of minds. Progress of intelligence in the human mind. Characters. World of spirits, countless number of its in-

(2) Replaces 'Distinction'

habitants. Our knowledge here limited. To act well our part is to insure our happiness.

No. 9 Reputed Pleasures of Imagination (9, 1806)

The objects of conception from which these pleasures result are beauty, novelty and grandeur. Of beauty: Distinction of excellence in mind.

Novelty and grandeur &c.

No. 10 On Wisdom (17, 1808)

Metaphysics. Discernment and choice the essence of wisdom, Generalization.

Pleasure. The happiness to be perfect is a state of the greatest enjoyment. The choice of pleasure and rejection of pain, evil propensities to be restrained and properly regulated. To perform the duties of the present moment with benignity and diligence is to be wise and happy. The danger of the substitution of pleasure and pain for good and evil without proper discernment. Philosophy of Zeno and Epicurus.

No. 11 Of the Categories or Constituents of Discourse and Fabrick of Thought. Language (11, 1808)

Of the constituents of discourse. Subject, quality, quantity, number, relations, action or passion, time and place. The primary order of being is power. Man an intelligent power combined with animal life. The power intelligent consists of 2 points; the cognitive and selective powers; divided into 2 branches of science, logic and ethics; described.

Of language. Misapplication of some terms in language, such as pleasure, good, ambition, honour, religion &c.

Figurative and mysterious language sometimes of more effect than

the simple and concise.

No. 12 Of the Distinctions which Mankind experience or apprehend in the Nature of Things, to direct them in what they pursue or avoid (20, 1807)

The most comprehensive of these are good and evil. Of what may be called good. Pleasure and pain; distinction of pleasure, true pleasure is virtue; various ideas of pleasure; man of liberal mind; miser; friend; enemy; benevolent; malicious.

Distinction of good and evil; of right and wrong; profit and loss as connected with right and wrong; happiness or misery.

What results from these distinctions.

No. 13 Of Cause and Effect, Ends and Means, Order, Combination and Design (25, 1799)

Power, the first element of importance in being. Cause and effect, the exertion and result of power. Of will. The relation of cause and effect: There must be a first cause self existent.

Cause and effect leads to result or end. The specific end of intelligence is good. Cause judged by the effect.

The beneficence and goodness of the first cause manifest. Could not that power which gave being to the means, accomplish the end without any means?

The whole creation made for man to exercise his faculties and forward his progress to perfectability, and happiness.

The wisdom and goodness of God manifest in the arrangements of nature relative to man.

The contemplation of the works of creation one great source of happiness; the atheist who indeavours to undermine this happiness

compared to a robber.

Religion, its abuse. The zealots fury &c. &c. No jury or court of inquisition adequate to try causes for impiety or atheism. Arguments for and against atheism. Evidence of a first cause.

No. 14 Of the French Revolution with its actual and still impending Consequences in Europe (20, 1806)

State of France: Manners of the French people. French Monarchs previous to the revolution. Haughtiness, arrogance and pride of the noblesse.

State of the French Army. Atheism the prevailing philosophy. Pride and profligacy of the French court.

The parliament; arbitrary proceedings of the Commons, National Assembly. Soldiers join the mob. King of Prussia's proceedings; his defect. Change of system in the French army, promotion laid open to the meanest soldier. Termination of the monarchy.

Conduct of the neighbouring nations. Success of the French arms, to what owing. Bonaparte on his return from Egypt solicits peace, is refused.

European League against France. War in the then turbulent state of France necessary to her. Jealousies of the allied powers among themselves.

Great Britain; her situation &c. with respect to France and the European powers.

No. 15 Of the Separation of Departments, Professions and Tasks resulting from the Progress of Arts in Society (23, 1806)

Progress of arts. The separation of departments in the formation of one article of art or manufacture, considered.

How far some departments of art or manufacture affect the morals of the people employed. Of slavery, subordination, rich and poor, vices peculiar to each. Political slavery.

How far the being engaged in any particular branch of trade or manufacture confines the thoughts and the exercise of the faculties. Of the requisite qualifications to form a gentleman.

Of scholars, men of science, statesmen, warriors, qualifications of each; connection and separation of their several departments.

The statesman and warrior united in the Roman Commonwealth. Knowledge of men and manners necessary in these departments.

On education. Public seminaries, their inadequacy; the inattention to their rules, forms &c. The separation of some departments prejudicial to society. The statesman should be a warrior and warrior a statesman.

No. 16 Of the Freedom of Wit and Humour and their Value as a test of Rectitude & Truth (10, 1809)

Of the laws of nature or physical laws relative to man. Self preservation, congregation, estimation, with the qualities belonging to each.

Of esteem and contempt well or ill directed, and as terminating in virtue or vice. Of ridicule and laughter; where ridicule ought to be used and where reprobation; both frequently misplaced.

The power of ridicule as a figure of speech in rhetoric; its frequent misapplication; not always a test of truth or justice; arising from some odd combination or incongruity.

Freedom of wit and humour, as an innocent relaxation to the mind; different from ridicule which should be a weapon to shame immorality.

Of calumny. Law of libel. Tryal by jury &c.

No. 17 Waking Dreams (20, 1806)

Of the first cause, and the intelligent and perceptible power in man and what it leads to.

On the works of the creation. Man; his infancy, manhood.

The ruling passions of man are interest, dignity and pleasure. In what they consist; Happiness the object of all tho' variously pursued. The whole order of things tend to man's happiness.

No. 18 Of the Distinctions on which We act in Human Life (16, 1806)

Of the distinctions of good and evil, happiness and misery.

Distinctions of pleasure and pain, profit and loss, excellence and defect, their ascendancy in the human mind.

Characters, the miser, votary of pleasure, sensualist &c. the object of all is happiness.

No. 19 Of the Categories (31, 1807)

Of the word categories. The power and goodness of God. All things made for the progress of man to perfectability. Man, the cause of his own happiness or misery.

Categories of Aristotle. All being is power. Power of resistance, force &c.

Of vegetation, organisation, animation. The intelligent power, communication &c.

Of the first cause or eternal power. Man's existence. Perceptions, senses, communication or intercourse. Society. Works of creation the language of God to man. The necessity of being good to be happy. Man's happiness depends on himself.

Of the mind or intelligent power in man. Contemplation of God's

works leads the mind up to God and happiness.

No. 20 Of the Distinctions on which it is the Lot of Man to deliberate (16, 1806)

Of the constituents of good and evil: Happiness and misery; enjoyment and suffering; excellence and defect; beauty and deformity; right and wrong; virtue and vice; prosperity and adversity; pleasure and pain; profit and loss. On the choice of one or more of these particulars the characters of men depend.

Of the interested; the voluptuous; the highminded &c. Good and evil incident to each; to secure the good and avoid the evil, is wisdom.

Conscience, the supreme arbiter and bias of nature may mistake. Happiness is the chief good.

What is happiness? Epicurus and Zeno's seeming contradiction. To be virtuous is to be happy.

Self preservation, its influences on man's conduct, selfishness, prudence &c.

No. 21 Of the Intellectual System (21, 1806)

Of the mind or intellectual part of man; subserviency of matter to mind. The dangers and difficulties man has to encounter through life, is but an exercise for the expansion of the germ of intelligence with which he is possessed.

Matter of no value but in its relation to mind.

Is the existence of matter necessary to give us the knowledge of God and of one another? The connection of mind and matter; our perceptions; sensations &c. Of the material world, bodies; expansion, contraction, attraction &c. The wisdom and goodness of God visible in the intellectual and material world, and tend to man's progress to

perfectability and happiness.

No. 22 Of the Sciences of which the subject is Mind (14, 1801)

Of the sciences. Classification. Natural history. What may be observed in matter; plants; animals; man &c. Peculiar properties and laws of nature respecting each.

Of the general and special laws of nature respecting the different orders of being. Classification, arrangement &c. Mechanism, laws of motion, gravitation.

Of mind, moral and physical science.

No. 23 Of Good and Evil, Perfection & Defect (24, 1806; 1801)

Of the constituents of good and evil. It is the lot of intelligent being to be susceptible of good and evil.

What is the chief end of man? His nature and present state considered. The agreeable and disagreeable sensations incident to the mind of man. Health, tranquility of mind, tender affections of a parent, friendship, patriotism; contrasted with the possession of hatred, envy, &c. &c. in the mind.

The pleasures to a well affected mind in contemplating the works of creation. The avoiding what is disagreeable and obtaining what is, the end of our being.

Free will. Man's happiness depends on the right government of his passions and prejudices, and propriety of his conduct through life; In health, sickness &c.

Of pleasure and pain as affecting happiness: The Epicurean and Stoick doctrine respecting happiness, pleasure &c.

Of perfection and defect. What is the excellence or perfection of intelligent being? What the defects? That happiness and perfection are

the same.

- No. 24 Of the first Law of Living Nature, Preserve thyself: How far this law may be carried without incurring the appellation of selfish (6 , 1806)

Of the disinterested, and the selfish. The noble minded & worthy frequently neglect their own concerns to advance the happiness of others. Of the glutton and charitable man. The good man's enjoyment is in the exercise of benevolence and charity.

Character of Aurelius. Who are the truly selfish and the disinterested?

- No. 25 Of the Principle of Moral Estimation: A discourse between David Hume, Robert Clerk and Adam Smith (31, 1800)

Mr. Hume's History of England; his style of writing, scepticism and opinions. Essay on morality; that virtue is founded on utility.

Whether virtue is to be approved for its utility or external effect; or its value as proceeding from mind. Happiness is seated in the mind, the comparison of innocence, benevolence & candour. Self denial considered in respect to happiness; who are the happy? To distinguish good from evil necessary to our happiness.

On the merit of Adam Smith's book on moral estimation. Of the means of being admonished of our faults. Distinction of right and wrong. Sympathy as a moral sentiment or approbation. On the danger of confounding or misapplying terms when advanced in theory.

Of the distinctions of virtue & vice; Happiness and misery. What is the chief good, or means of happiness?

No. 26 Of Liberty and Necessity (6 , 1806)

Of liberty; civil, political, moral and physical. The evidence of liberty is the same with that of our existence.

Of the will. Cause and effect. No will without an object.

No. 27 Of the things that are or may be <Part First> (31, 1801)

The evidence of being. Our conceptions of things. Proof of intelligent power and wisdom in the works of creation. Man's neglect of the means of his happiness.

Variety tho most striking feature of nature; consummate wisdom, goodness and order visible in the whole, in things tho most minutes as well as things of magnitudes. Value of mind over matter. All things contribute to the exercise of mind.

Of the fabrication and propagation of organized forms, by seeds, germs, &c. as proving the wisdom, goodness and power of God. The ingenuity of man exercised in preparing and selecting them for his wants.

Whether the goodness of God is manifested in the multiplicity of the wants of man? His feeble and defenceless state in infancy, his progress; his intelligent nature; speech; perceptions and contemplations on nature's works, up to the creator of all things. Happiness, the supreme perfection to which the progress of created intelligence points. Man's free will. Discernment of good from evil.

By what means is the germ of intelligence in man cultivated and brought forward in the ways of wisdom and goodness.

The wisdom and goodness of God evident even in our wants, and the whole order of things. Man's supremacy, and for whose use all things are made; that as the capacity of his progress is indefinite, those steps

which we observe him make are but a part in the scheme of a nature which is destined to endure for ever and of which this scene is but the prelude.

Of the mode of reclaiming the vicious. Why does not man arrive at perfection and happiness at once, without going through the trials and ills of this life?

No. 27 Of the things that are or may be <Part Second> (41, 1806)

Of mind and its operations. Of the body, existence, perceptions.

Being is the power of thinking and acting &c. The wonderful power of God, visible and acting on all the works of creation. Planetary system &c.

That in contemplating these mighty works, man cannot doubt the wonderful power and the existence of God. Heathen Gods. Man's place in the scale of nature. Multiplicity of suns and planets. Man, in point of magnitude in the scale of nature, but as an atom. His intelligent nature; Powers of his mind in comparing, examining and unfolding the works of creation and to adore the maker.

Beauty and variety of the animal, vegetable and mineral kingdoms. Works and engenuity (*sic*) of man. The design of nature is to furnish materials for the exercise of the powers of his mind.

Boundless variety yet analogy exhibited in all the works of creation, wisdom and goodness evident throughout the whole and in nothing more than the organization of the human body. The accommodations which nature affords him for all his wants; in his habitation, food and clothing &c.

Of the wants of man as affecting his happiness. Free will. A just notion of rectitude and virtue is the road to happiness and safety from evil. The wants of man are but so many means for the exercise of his

energies and the powers of his mind in his way to perfection and happiness.

Of the proper conduct of men. Prudence, moderation in prosperity, fortitude in adversity, and benevolence, the foundation of virtue for the exercise of which there is an ample field. Of Socrates, Newton, Zeno, Epictetus and Marcus Aurelius, as moralists.

No. 28 Of Nature and Art (15, 1806)

Of the contradictory sense in which the terms art and nature are employed. Skill and industry of man. Where nature is to be consulted. Order, taste and invention in exercising the ingenuity tends to man's happiness.

In history, poetry and painting nature is imitated. Man has in himself the materials of an art in his progress to indefinite perfection. Nature to direct men in their choice of a line of conduct. In what sense nature may be said to suggest the rule of life for man.

No. 29 Of the different Aspects of Moral Science (18, 1806)

The effect of curiosity. Man neglects things of importance, for what is strange, alarming, or unknown. The character of morality of man as a member of society, its importance.

Self love, seemingly at variance with morality. Of the selfish. Character of Marcus Aurelius, his ideas of self. Priests and statesmen, consider morality as an obligation or a duty; Socrates as the chief good of man.

Superiority of mind over matter. Of the laws of nature in the material world. Science, mechanism, optics (*sic*) &c. &c. leads man to the most important apprehension of the wisdom and goodness of God. The first and most important study to man, is the knowledge of himself.

Of happiness. As the consciousness of good and evil belongs to a living conscious sentient being only; so happiness or misery is seated in the mind. Of the constituents of happiness or misery. In what sense a man is selfish in procuring his own peace of mind and happiness. To be virtuous is to be happy.

Man's progress to perfection and happiness.

No. 30 Of Laws of Nature in the Department of Active Man (9 , 1806)

Of the laws of self preservation, society, progression.

Of moral approbation, estimation. Our consciousness of being, right and wrong, joy and peace with their opposites. Conscience the lamp of God in the soul of man, its operations. The great object of human desire, is happiness. The danger of giving way to a sudden impulse without consulting conscience, or the sense of right and wrong.

Characters. The various ascendancy of the different laws of nature in the human mind. The miser, the highminded &c. &c.

No. 31 Of the Intellectual or Conscious Powers: Conceptive, Cognitive, and Spontaneous (20, 1806)

Of the power cognitive and the sources of knowledge. Evidence of existence, perceptions &c.

Of things existing by necessity, time and space, first cause or creative power.

Cognitive power. Instinct. End and means, in the animal kingdom &c. Design evident in every part of creation. Variety a primary feature of creation.

Of the supreme creative power. Planetary system. Sceptic's objections, answered.

Of the ends most obvious in the system of living nature.

No. 32 Characteristics of Man's Nature (48, 1806)

Of the mind of man, its energies. Difference of mind from body and of mind from mind. Consciousness and perception, the first instincts of the mind. Various opinions of the constituents of good and evil.

Of habit. Instinct. Opinions are to man the constituents of excellence or defect, happiness or misery.

Of riches as affecting happiness. The pleasures of sense.

On what we may safely rely for happiness. Evil propensities, the will to do good as opposing them; forgetfulness of injuries &c.

Symptoms of a just and vigorous mind. Character of Aurelius.

Envy, its effects. Candour; the cultivation of agreeable thoughts, habits and affections, is in the power of all, and is the sure road to happiness.

Of fear and jealousy. Operations of fear in the weaker animals; in man's infancy; in manhood, the sense of honour, shame &c. prevails over that of fear. Deliberate and manly firmness, is the specific safety to man on all occasions. Fear of death. Self preservation. The weakness and decline of age intended to wean us from the world. The virtuous need not fear death.

Of the fear of tyranny. If you would be free, you must not wear the chain. Where wisdom reigns fear is the lot of guilt. The good of a state depends on what its members can do. On the use of arms &c.

Jealousy described; its effects, and what may be effected towards its cure. Distrust and treachery are the bane of human life. Anecdote of Persia and his physician. Suspicion the child of guilt and conscious vileness. Self esteem. Pride. Modesty &c.

Of the sense of perfection in the works of the creator in the minds of the virtuous; misapplied it leads to guilt or folly. The coxcomb. Tyrant

&c. mistaken notion of excellence.

Ambition as the desire of riches &c. Licentiousness the ambition of the mob. Action natural to man; proper choice of an object. The good of mankind to every individual is at home. The fair and candid is the friend of man, and his occupations and pursuits lead to happiness. On the employment of time. Proper choice of studies. The first and most important to man, is the knowledge of himself and his state, and the knowledge of his maker. Of man's felicity and happiness &c.

Appendix 3

No. 16 Of the freedom of wit and humour and their value as a test of rectitude and truth*

[1] The laws of nature or physical laws relative to man have been comprised under three general titles.

- 1 The law of selfpreservation
- 2 The law of society or congregation
- 3 The law of estimation

The 1st comprehends many or most of the animal instincts and propensities with the love of ease and safety etc.

The second comprehend¹ together with some animal instincts the preference of company to solitude, sympathy, benevolence, love, friendship, justice and good repute.

The third comprehends all the phenomena of esteem or contempt whether well or ill founded and terminating [2] in vice or virtue such as vanity and pride, integrity, magnanimity and elevation of mind. Well directed it is the principle of magnanimity and just ambition. Ill directed it is the principle of arrogance, pride, vanity and erroneous ambi-

* In this transcription, Ferguson's spelling has been retained, but not his extensive and inconsistent capitalization, and the punctuation has been modified as an aid to modern comprehension.

The following symbols have been used to record special features of the manuscript and editorial modifications other than those of capitalization or punctuation:

Numbers in Square brackets, [. . .], denote the pages of MS.

Braces, { . . . }, denote redundant textual material.

Angular brackets, < . . > , denote textual material added by the present editor to restore or complete the author's intended sense.

(1) *Sic*. Presumably 'comprehends' was intended.

tion.

In either way it is one of the strongest or most powerful principles in human nature.

In respect to character or dignity it is approbation or admiration or the contrary, reprobation or contempt in all their phases and phenomena. Among the phenomena of reprobation may be reckoned ridicule or laughter.

To dissapprove is to be displeased as to approve is to be pleased.

These different affections admit of indefinite gradations.

In exception to the general rule ridicule or laughter though {tho} excited by defect is not dissplesure, but is in a [3] peculiar manner respecting others joyous and acceptable, and appears to derogate from the beneficent character of nature founded in the tendency of evil or defect to give pain and of good or excellence to give pleasure hereby exciting^a a will to avoid the one and aim at the other.

This law indeed even with respect to the ridiculous holds in the concern which every man takes in his own character. Laughter is pleasing but no one likes to be laughed at.

The buffoon who makes him ridiculous expects to be esteemd for his art in doing so.

The follies and defects of mankind are so numerous and frequent that if each were matter of hatred or serious indignation, human life would be a scene of melancholy, anguish and despair such as the parent feels for the defects of his children or the coxcomb feels for the dissappointments of his vanity.

It appears therefore [4] among the final causes suggested of the beneficent kind that {what} every one² hates to be laughed at in his own person and is therefore directed to shun the ridiculous. Yet many of the defects and errors so frequent in human life may be matter of

animadversion and censure without casting the gloom of melancholy or severe displeasure over so many of the scenes of society and intercourse as might furnish occasion to serious discontent.

Meanwhile it is well known that nature does not admit of ridicule or laughter in every case of reprobation. And it were of consequence to distinguish the province of serious indignation from that <of> ridicule, laughter or merriment.

This distinction like many others is obvious in the extremes but slight and difficult in some of the intermediate occasions that ³ in certain degrees admit either of ridicule or serious reprobation. [5] Malice we may assume is ever matter of serious reprobation not of ridicule. Timidity is sometimes the one and sometimes the other. So is dullness of fancy and insensibility of heart, irascibility and tameness etc. etc.

Reprobation is the lot of crime and depravity.

Ridicule is the lot of imbecility and defect.

Just reprobation is the test of one.

Just ridicule is the test of the other.

But actual reprobation or actual laughter may be erroneous and mislead and is not without inquiry to be received as a test of demerit or of defect.

The rhetorician by his figures of speech can lay the colours of depravity on the innocent, or the colours of defect and ridicule on the respectable and the just. The powers of epithet and metaphor to these effects are well known. The epithet of Divus Julius made a [6] saint or sanctified a bloody adventurer in search of power.

The designation of contented cuckold was meant to throw contempt

(2) Replaces 'person'

(3) 'admit' deleted

on Marius Aurelius and in some minds may have had its effect.

An imaginary personage with nothing of Socrates but the name brought ridicule or disrespect on that person who has in fact remained the admiration of ages.

The ridicule always implies some supposed defect, the imputation of it is no more a test of truth or reality than the imputation of a crime is a test of guilt.

Ridicule is most commonly the effect of incongruity or some kind of odd combination: some features of meanness with pride or vanity, a dish clout pinned to the tail of a person otherwise finely dressed. It is possible therefore to clap such additions on respectable subjects and to raise [7] a laugh. The Lord Mayor of London on horse is an object of respect, but so mounted and eating custard on horseback on his⁴ way to the conventicle is ridiculous.

Lord Shaftsbury⁵ contends for the freedom of wit and humour and in whatever sense his words are understood it must be granted. For in all human establishment, if wise and just, crimes alone are restrained. Every innocent act of the mind is free. And it is in proportion to this degree of freedom that minds can enjoy themselves or make any valuable attainment. Under ⁶ restraint the genius is suppressed as lamps in a box are soon extinguished: but wit and humour may incur the guilt of {a} crimes and crimes in every shape must be restrained. The danger or safety of this policy depends intirely on the character of the tribunal before which such crimes are tryed. Neither [8] the ordinary magistrate nor the priest is safely entrusted with this branch of judicature.

(4) Replaces 'the'

(5) Shaftsbury, *An Essay on the Freedom of Wit and Humour: In a letter to Friend*, London, 1709.

(6) 'respect' deleted

The culprit has a right to be tried by his fellow citizens who are equally interested in the safety of his innocence or the punishment of his guilt.

But in the terms, wit and humour, the noble author does not seem to mean ridicule but rather what is commonly termed good humour or exemption from acrimony or personal animosity too common in controversies or theological disputes. He himself indeed seldom attempts ridicule properly so called, or when he does so, should be sensible that the ridicule employs against certain controversy under analogy of foot ball as it is just in some sectarian contests might be unjust if applied to matter of serious debate in national councils or in pleadings before a tribunal of [9] justice.

Ridicule like any other rhetorical figure may be employed in any cause. The art itself like any other power compared to its opposite weakness or defect is good, but to be loved must be employed for beneficial not mischievous purposes and even so employed is not the test either of truth or of justice.

Notwithstanding the general rule that crimes of every form are to be restrained, it is well understood in the policy of free nations, that it is less dangerous to overlook matters actually criminal than to unsheathe the sword of the magistrate in every case to repress them. Everything human has its defects or abuses and the abuses of power are more tremendous than those of the despicable and unauthorised delinquent. *Summum Jus* therefore may be *Summa Injuria*⁷ when to correct the smallest disorders an open is made for much [10] greater.

There is therefore no article in the criminal code more to be guarded than the law of libel.

(7) The rigour of the law is the height of injustice. Cicero, *De Officiis*.

It may perhaps be safely admitted that, altho calumny is punished, mere ridicule may be overlooked. There are evils in society which ridicule alone can suppress such as solemn impostures under grave pretences of religion or wisdom or science. And even where merit itself is unjustly attacked with this weapon, it is difficult to ascertain the damage of being laughed at before a tribunal of justice.

As it is difficult⁸ to form any general rule in this matter or to be secure of its safe application if formed, the trial by jure is perhaps the best expedient that has been devised against the evils whether of criminality or penalty that may be incurred in this matter.

(8) The last four words replace 'If we should not be able'