

**THE RULES OF EVIDENCE
AS APPLICABLE TO THE
CREDIBILITY OF HISTORY**

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The Rules of Evidence as Applicable to the Credibility of History by W. Forsyth

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BY
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TO WHICH IS ADDED
THE DISCUSSION THEREON.

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TO believe without any evidence at all is irrational; but to disbelieve against sufficient evidence is equally irrational.

By sufficient evidence I mean such an amount of proof as satisfies an unprejudiced mind beyond all reasonable doubt. Mathematical truth alone admits of *demonstration*. All other kinds of truth can only be proved by probabilities, which vary in an almost infinite degree, from the faintest kind of presumption to what is called moral certainty, which is accepted as practically equivalent to demonstration.

Upon evidence depends all our knowledge of past events; and it is astonishing how little is often sufficient to satisfy us. The mere fact of its being written in a book is enough to make no inconsiderable number of readers believe in the truth of a statement, without reflecting whether the author had or had not the means of ascertaining the truth; for if he had, we may be justified in putting faith in his honesty; but if he had not, his own assertion is worth nothing.

By proof I mean anything that serves, either mediately or immediately, to convince the mind of the truth or falsehood of a fact or proposition; and proofs differ according to the subject-matter of the thing to be proved.

One of the most common, and, at the same time, most satisfactory modes of proof as to things which do not fall within the experience of the senses is Induction, by which is meant the inference drawn from proved or admitted facts. It is for instance by induction that the general facts of Natural History are proved. When we say that all ruminant animals are cloven-footed, we cannot show any necessary connection between these physical phenomena, but having ascertained by a very large number of instances that they co-exist, and that in

no single case that has come under the observation of naturalists they fail, we are led irresistibly to the conclusion that the proposition is universally true, and we should predicate with confidence if a new race of animals were discovered in some hitherto unknown region, that if they are ruminants they are also cloven-footed. The underlying ground of belief in this case is our innate conviction of the prevalence of uniformity in Nature in things of the same kind. This uniformity we call a Law.

One test of the probability of a fact is its consistency with other facts previously known or admitted to be true—such as the constitution of human nature, the ordinary course of events, or some well-established truth. But it must be borne in mind, as Laplace has said, although perhaps in a different sense, that "Probability has reference partly to our ignorance, partly to our knowledge." We must be tolerably sure we do know the other facts—and that they are not really inconsistent with the fact in dispute. Otherwise we shall be following the example of the King of Siam, who rejected as incredible the statement of the Dutch ambassador, that water could become a solid mass. This was simply because he had never seen or heard of it before; and it was contrary to his limited experience, or what he thought a law of nature. Hume felt the difficulty of this instance in the way of his argument against miracles, and attempts to get over it by saying that though the fact was not contrary to the king's experience, it was not conformable to it. But this is not a fair way of putting it. Frost *was* contrary to the king's experience as much as walking on the water without support is contrary to ours. And it cannot be denied that when by universal experience certain laws of nature are known to exist, it requires the strongest possible evidence to make us believe in any deviation from them. Hume's famous argument against miracles is, that no testimony is sufficient to establish a miracle, unless the testimony be of such a kind that its falsehood would be more miraculous than the fact, and that no human testimony can have such force as to prove a miracle, because it is always more likely that the testimony should be false than that the miracle should be true.

The late John Stuart Mill has dealt with this argument in his *Logic*, and, I think, conclusively. He says that Hume's celebrated doctrine, that nothing is credible which is contrary to experience, or at variance with the laws of nature, is merely the very plain and harmless proposition that whatever is contrary to a complete induction is incredible. And he goes on to show that any alleged fact is only contradictory to a law of causation when it is said to happen without an adequate coun-

teracting cause. "Now," says Mill, "in the case of an alleged miracle the assertion is the exact opposite of this A miracle is no contradiction to the law of cause and effect; it is a new effect supposed to be produced by the introduction of a new cause." He adds, truly enough, "That if we do not already believe in supernatural agencies no miracle can prove to us their existence." And we may freely admit with him, that "there is an antecedent improbability in every miracle, which in order to outweigh it, requires an extraordinary strength of *antecedent* probability derived from the special circumstances of the case." I shall have occasion to allude to the subject of miracles again hereafter.

History, from the Greek *ἱστορία*, properly signifies "investigation" or "research," and implies, therefore, etymologically, a narrative based upon inquiry about facts.

Few persons consider what the evidence is of the genuineness of books attributed to authors who lived before the invention of printing, most of which are derived from manuscripts which themselves were only copies, the originals having been utterly destroyed or lost. This includes all the histories of Greece and Rome written by classic authors. I have dealt with this subject in a lecture I delivered in 1872, in the Hall of the Inner Temple, which has since been published under the title of *History of Ancient Manuscripts*. I have not time to enter upon it here, but it is a very interesting subject of inquiry. I will only mention what Tischendorf, the great German Biblical scholar says, about the manuscripts of the New Testament: "Providence has ordained for the New Testament more sources of the greatest antiquity than are possessed by all the old Greek literature put together."

In one of his essays Lord Macaulay says of history:—"Perfectly and absolutely true it cannot be: for to be perfectly and absolutely true, it ought to record *all* the slightest particulars of the slightest transactions—all the things done, and all the words uttered during the time of which it treats. The omission of any circumstance, however insignificant, would be a defect. If history were written thus, the Bodleian library would not contain the occurrences of a week." And Lord Macaulay might have added that no one would care to have such a mass of useless verbiage in existence. He is surely wrong in saying that history is not absolutely true simply because it does not give us *all* the particulars of the slightest transactions. Even in a court of justice we do not think that a witness is not telling the absolute truth because he does not relate every particular, however insignificant, of the fact or conversation to which he

deposes. And this leads me to consider the difference between historical and judicial evidence. The late Sir George Cornewall Lewis says in that most valuable and learned work, *The Credibility of the Early Roman History* (Preface, p. 16), "Historical evidence, like judicial evidence, is founded on the testimony of credible witnesses. Unless those witnesses had personal and immediate perception of the facts which they report, unless they said and heard what they undertake to relate as having happened, their evidence is not entitled to credit. As all original witnesses must be contemporary with the events which they attest, it is a necessary condition for the credibility of a witness that he be a contemporary, though a contemporary is not necessarily a credible witness. Unless, therefore, a historical account can be traced by probable proof to the testimony of contemporaries, the first condition of credibility fails." If, however, it is meant to be asserted that the same degree of certainty ought to be required in historical that is required in judicial evidence, it would be exacting too much, and carrying scepticism too far. In the first place, the thing is an impossibility, and the consequence would be, that we should be logically compelled to withhold our belief from nine-tenths of so-called historical facts about which we have really no doubt at all. But, secondly, the circumstances are wholly different. Judicial inquiries relate to minute and special facts in dispute, where two parties are opposed to each other, and it is the duty and interest of both to adduce the best evidence of which the thing to be proved is susceptible. And in all civilized communities, their systems of jurisprudence lay down technical rules of evidence—in some countries much more strict than in others—which circumscribe the range of proofs. For instance, in France, hearsay evidence is always admitted; in England it is always excluded. In some parts of Germany a sort of arithmetical scale is applied to the testimony of witnesses. Different countries apply different rules of legal presumption, which are really not instruments of truth, but technical and positive modes of quieting controversy. But, to quote the words of an eminent writer on the law of evidence, "However widely different codes may vary from each other in matters of arbitrary positive institution, and of mere artificial creation, the general means of investigating the truth of contested facts must be common to all. Every rational system which provides the means of proof must be founded on experience and reason, on a well-grounded knowledge of human nature and conduct, on a consideration of the value of testimony, and on the weight due to coincident circumstances."—Starkie *On the Law of Evidence* (Preface).

But history deals with general rather than particular facts—with results rather than details—and from the nature and necessity of the case must be content with looser modes of proof than is necessary or expedient in judicial trials. All that we are entitled to ask from her is such an amount of evidence for the truth of the facts which she records as would satisfy the understanding of a reasonable man in the ordinary affairs of life. Every day we act upon evidence which, if offered in a court of justice, would be rejected. Too often we act upon very slight and insufficient evidence, especially in cases affecting the character of others; but in so far as we do this we act wrongly; and in the same manner we act wrongly when we accept as true the mere statement of a historian on any question where truth is of importance, when we have it in our power to examine his authorities and judge of their value for ourselves.

It is part of the constitution of human nature to confide in the veracity of others. If this were not so, a man's belief would be limited to matters within his own personal experience, and no progress could be made in knowledge, nor would improvement be possible. There is a tacit assumption, when we yield to the force of oral evidence, of what I may call the major premiss of our syllogism, viz., that men will generally speak the truth. Experience teaches us, if indeed it is not an intuitive impulse, to put faith in human testimony.

How beautiful is the trusting simplicity of childhood, and the absolute reliance which a child places in the word of its parents. But as we grow older this confidence is shaken, and experience compels us to acquiesce in the truth of the melancholy maxim of Lord Chatham, that "confidence is a plant of slow growth in an aged bosom." That stern monitor experience tells us that it by no means follows that because we have contemporary testimony to a fact the fact is true. Witnesses are often mistaken, and their evidence is not unfrequently false. We must, therefore, so far as is possible, apply certain rules by which to test the probability of its truth. I have already alluded to one test of probability, and that is the agreement of the fact with other facts known or admitted to be true. Another test is the concurrence of the testimony of independent witnesses, always supposing that each of them has had the means of knowing the fact or facts to be ascertained. Of course I exclude all copying from the same original, and this, perhaps, is implied in the word independent. As Archbishop Whately has observed, "For though in such a case each of the witnesses should be considered as unworthy of credit, and even much more likely to speak falsehood than

truth, still the chances might be infinite against their all agreeing in the same falsehood" (*Rhetoric*, pt. i. ch. ii. sec. 4). And in his *Philosophy of Rhetoric*, Dr. Campbell says: "It deserves likewise to be attended to on this subject, that in a number of concurrent testimonies (in cases wherein there could have been no previous concert) there is a probability distinct from that which may be termed the sum of the probabilities resulting from the testimonies of the witnesses, a probability which would remain even though the witnesses were of such a character as to merit no faith at all. This probability arises purely from the concurrence itself. That such a concurrence should spring from chance is as one to infinite; that is, in other words, morally impossible." Lord Mansfield once said, with reference to the credit to be given to certain reporters, "It is objected that these are books of no authority, but if both the reporters were the worst that ever reported, if substantially they report a case in the same way, it is demonstration of the truth of what they report or they could not agree" (*R. v. George*, 1 Cowp. 16).

Generally speaking, the silence of contemporary writers as to a fact throws strong suspicion on its genuineness. But this test is not conclusive, for we may have overpowering evidence *aliunde* of its truth. Lord Macaulay says: "We have read books called histories of England under the reign of George II. in which the rise of Methodism is not even mentioned." And Varnhagen von Ense mentions in his Diary that Humboldt had adduced "three important and perfectly undeniable matters of fact as to which no evidence is to be found where it would be most anticipated. In the archives of Barcelona no trace of the triumphal entry of Columbus into that city; in Marco Polo no allusion to the Chinese Wall; in the archives of Portugal nothing about the voyages of Amerigo Vespucci in the service of that crown." But notwithstanding this, the silence of contemporary authority is one of the notes of falsehood with respect to an alleged historical fact. How do we know that the story of William Tell and his shooting an arrow at an apple on his son's head is untrue? Because we do not find it in contemporary history; and the first mention of it as a Swiss legend occurs in the chronicle of Melchior Russ, registrar at Lucerne, some two hundred years later. But, in addition, we find that the same story is told in Saxo Grammaticus, who wrote in the twelfth century, of a Danish hero; a similar tale was current in Ireland; and in the *Bilkingsaga* it is told of the mythical Egil, the brother of Wieland, the smith. It also occurs in the legendary fables of Holstein, Norway, and other countries; and although it is impossible to trace the origin of the story, it is certain that no