

Who Was Tycho Brahe? And Why Does It Matter?

By James W. Narron



Edmund Burke once admonished us that “People will not look forward to posterity who never look backward to their ancestors.” I was recently reminded of that aphorism and the simplicity and elegance of curiosity about things past, old things.

The latch mechanism on the front door of my home has opened and closed and locked that door since 1880. Symptomatic of advanced age, it had become slow and cranky. I was surprised one morning by a bolted assembly and a note telling me to use another door. Dwight Edwards, our friend and general contractor for many years was working on a project for my wife and me and had removed the lock assembly in its entirety and taken it to his shop. I saw him the following day as excited as a child with a new toy, all atwitter to explain to me the locking system used in the 1870s, how it compared to those of today, and what welding and brazing and fabricating he had done the previous evening to make the lock of our ancestors work for us and our posterity.

Dwight’s principal employment is working on old buildings; his principal enjoyment is working on old machinery of any kind. He uses tools made smooth by hands long gone, figuratively by his “grandfathers” hands.

I was put in mind of Dwight’s fascination with things old while in the breakroom at our firm recently. Two younger lawyers were there for mediation or deposition and one was remarking that a certain applicant to be considered for the vacancy on our District Court Bench had, insofar as he knew, no court experience, never tried a case in District Court. Trying to pry from that assumed fact the conclusion of his logic, I mentioned that one of our great Supreme Court Justices built his reputation as a scholar, not a trial lawyer. Blank looks. I mentioned, further, that the same Justice had been Chief Justice of the Massachusetts Supreme Court. Blank looks. This Justice was shot through the neck at Antietam, left for dead in the field, and miraculously survived. The same fellow wrote a book, the first line of which was “The life of the law has not been logic; it has been experience.” More blank looks.

So, I tried another: This second fellow replaced the first on the High Court, was formerly the Chief Judge of the New York Court of Appeals, was before that an appellate lawyer, not a trial lawyer, and was author of “The Nature of the Judicial Process.” Still blank looks.

Our next generation of lawyers is smarter and manifestly better prepared than the lawyers of my generation. They are demonstrably happier, attuned to work-life balance, while my generation mostly knew only work. But I must say, anecdotally at least but I fear it is systemic, there is a lack of Dwight’s curiosity about how the law got where it is, about the evolution of lawyers and the ju-

diary and the law practice. In some measure, they are carpenters who do not know Pythagoras or his theorem, even if they may know the “3-4-5 Rule.” That is too bad.

It is too bad not only because it reflects a loss of learning, a deficiency of elegance—it is sad for those reasons and more—but also, and fundamentally, my young friends at the Bar have missed out on the singular delight of the law. They do not know the joy of using their grandfathers’ tools. Lives of great men do not remind them that they can make their lives sublime; there is as much ignorance of their grandfathers’ tools as of their grandfathers, their lives and their work.

So, in our firm, we have a reading list for our summer clerks. It is our way of introducing the history of the law and lawyers, which knowledge is the only path to an understanding of where the law is and where the law and the law practice are going. More than that, the goal in our firm is to turn out architects, not rough carpenters; builders, not tradesmen. Surely, those whose charge it is to take the law forward must know something of O. W. Holmes, Jr., and of his successor, Benjamin Nathan Cardozo.

This is the suggested reading list, from which one or several volumes are to be selected, and reported on, formally or informally, at the end of the clerkship:

1. “An Introduction to Law—Essays of General Interest Selected from the Pages of the Harvard Law Review,” with a preface by Arthur E. Sutherland, Jr. (The Harvard L. Rev. Assoc., 1977). This volume includes Lon Fuller’s “The Case of the Speluncean Explorers,” O. W. Holmes, “The Path of the Law,” and numerous essays on judges, the courts, the practice of law, and selected fields of legal controversy.
2. Catherine Drinker Bowen, “The Lion and the Throne” (1956). This history of the tension between equity and the law at the time of Lord Edward Coke is a classic which was required reading of all who clerked for Justice Hugo L. Black.
3. Theodore F. T. Pluckett, “A Concise History of the Common Law” (5th ed., 1956). When common law pleading was replaced by notice pleading, there came about, almost immediately, a lamentable loss of learning and knowledge of the historic causes of action—the “experience” which has been the life of the law. Killing feudalism fostered new growth and a new economy. The law and the courts, pushed forward by lawyers filing actions, suits, briefs, and motions, led the way. We are on the cusp of another great transformation wrought by technology; understanding what may have been the greatest transformation in common law jurisdictions is likely essential to an understanding of the great transformation to come, of where we go from here.
4. “Selected Writings of Benjamin Nathan Cardozo (including The Choice of Tycho Brache),” edited by Margaret E. Hall with

forward by Edwin W. Patterson (Matthew Bender 1975 reprint of 1947 ed.) In a noted commencement address the erudite jurist uses the example of the early Danish astronomer, Tycho Brache, for whom King Frederick built a great observatory at Uraniborg. Following the king's death, the young prince, his successor, sent his flippant courtiers to question the great man and the fortune spent by the state on a feckless charting of the skies. The great astronomer showed the messengers from the new king his tables and charts, 700 stars, each set down in its proper place. "And is this all?" they said. 'Not all, I hope' said Tycho, 'for I think before I die I shall have marked a thousand.' . . . 'To what end,' said the messengers, 'to what end the travail and the waste? Show its uses to us now, show then now before we go.'" Here the learned judge quotes the famous poem by Alfred Noyes, "Watchers of the Skies," which tells the story and illustrates the great and noble values to which we should all aspire:

"The men that follow me with more delicate art
 "May add their tens of thousands; yet my sum
 "Will save them just that five and twenty years
 "Of patience, bring them sooner to their goal,
 "That Kingdom of the law I shall not see.
 "We are on the verge of great discoveries.
 "I feel them as a dreamer feels the dawn
 "Before his eyes are opened. Many of you
 "Will see them. In that day you will recall
 "This, our last meeting at Uraniborg,
 "And how I told you that this work of ours
 "Would lead to victories for the coming age.
 "The victors may forget us. What of that?
 "Theirs be the palms, the shouting and the praise,
 "Ours be the fathers' glory in the sons."

5. Julius J. Mackee, *Vignettes of Legal History* (1965), and Second Series [same title] (1977), the perennial favorite of our summer clerks.

6. G. Edward White, "The American Judicial Tradition—Profiles of Leading American Judges" (1976), part biography, part history, part law, the author takes us behind the mystique of judging and brings us closer to an understanding of the role of the judiciary in America.

7. There are numerous biographies of Chief Justice John Marshall on my shelves, including a new one published this year. Probably my favorite is Leonard Baker, "John Marshall: A Life in Law" (1974).

8. More than the life of Holmes, who was Boston Brahmin, born into an educated family with a Harvard history, the stories of judges from more humble circumstances who struggled to educate themselves and whose intellect ultimately helped to shape a nation are just fascinating. Two of my favorite are Hugo L. Black and William O. Douglas. See, "Justice Hugo L. Black, A Symposium," 9 Southwestern L. Rev. No. 4 (1977), Hugo L. Black, Jr., "My Father, A Remembrance" (1975), William O. Douglas, "The Early Years—Go East, Young Man" (1974).

9. Gerald Gunther, "Learned Hand, The Man and the Judge"

(1994)—a constitutional scholar and gifted writer on the life and times of a giant of the American judiciary.

10. Ken Gormley, "Archibald Cox, Conscience of a Nation" (1997), may be the best lawyer biography I have ever had the pleasure to read.

This is my "beginner's list" and I add to it frequently. Over many years, this pastime of mine—collecting and reading books on the law and those who make and practice it—has added immensely to the enjoyment I have found in my work. I fancy that I have gained from the great pleasure of this continuing exploration of the literature of the law not just a few stories, not just inspiration from lives of service and achievement, but also something more than that: something that your summer clerks—and you—can have for the taking. Sir Francis Bacon said it best:

"Reading maketh a full man; conference a ready man; and writing an exact man. And therefore, if a man write little, he had need have a great memory; if he confer little, he had need have a present wit; and if he read little, he had need have much cunning, to seem to know that he doth not. Histories make men wise . . ."

So, that is why it does matter.

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