

The First Queen's Counsel



Francis Bacon, the first Queen's Council and King's Council, learned in the law

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It was probably in 1592 that Queen Elizabeth I created Francis Bacon her Queen's Counsel Extraordinary and one of her Counsel learned in the law, giving him precedence within the bar over the royal Sergeants-at-Law. Although directly appointed by the Queen, this was not a formal creation, in that Bacon was neither granted a patent of appointment nor paid an annual fee (i.e. salary). It was an honorary position with duties that were not clearly defined, except that advising the Queen and protecting her interests, examining prisoners suspected of treason or other grave offences, drawing up official reports, and assisting the law officers of the Crown in state prosecutions, were some of the services Francis was called upon to perform. This appears to have been the first such appointment, and in effect was the birth of what later became known as the Queen's or King's Counsel ('QC' or 'KC' for short). Previous to this "extraordinary" appointment, the Queen's Counsel learned in the law had been composed of only the royal Sergeants and the Attorney and Solicitor General; and only these together with the Serjeants had previously been allowed to sit and act within the bar (the precincts of the court room reserved for the judge), whilst utter (outer) barristers and other lawyers sat outside the bar and just in front of the general public.

Lord Campbell, the Victorian Lord Chief Justice, certainly thought the office unprecedented. In his "Life of Lord Bacon" in his *The Lives of the Lord Chancellors* (1845), volume 2, chapter 1, p. 16, he wrote: "He [Bacon] now acquired such a reputation in his profession that the Queen, for the benefit of his assistance in her state prosecutions and revenue cases, appointed him her 'Counsel Extraordinary'. This was the first appointment of the sort, the counsel for the Crown hitherto having been only the royal Sergeants, who had the highest rank, and the Attorney and Solicitor General, with the Attorney of the Duchy of Lancaster and the Attorney of the Court of Augmentations... he was allowed no salary and he had only a few stray briefs, with small fees, on occasions when it was thought he might be of service to the Crown. The Queen frequently admitted him to her presence and conversed with him not only about matters of law, but points of general learning and affairs of state".

King James continued Francis Bacon in this appointment when he came to the throne in 1603, and in 1604 he granted a patent plus a fee of £40 a year for life, thereby establishing the office and bringing it into ordinary. The office was thereafter known as Kings Counsel in the Ordinary, or just King's Counsel. This precedent was followed later in the creation of further KC's or QCs. When Bacon was promoted to Solicitor General in 1607, King James appointed Henry Montagu as King's Counsel, a position Montagu held for four years. Starting in 1626, when he came to the throne, Charles I appointed nine King's Counsel. After Charles, successive Sovereigns increased the number of King's or Queen's Counsel, gradually superseding the Sergeants-at-Law, until during the 19th century the latter ceased to exist.

Queen's Counsel or King's Counsel was a member of the Sovereign's Counsel learned in the law, but with the difference that it was a direct appointment by the Sovereign, whereas others of the learned counsel (with the exception of its leading members, the Sovereign's Counsel in Ordinary) were informally appointed by the law officers of the Crown. Members of the

learned counsel were selected from the Sergeants-at-Law and utter-barristers who assisted the Sergeants.

The Sergeants-at-Law were barristers who had passed the bar and took precedence over all other lawyers. They were a small, highly respected and powerful elite group of lawyers, members of the oldest formally created order in England, which had been brought into existence by Henry II. Within the order there were three levels of Sergeants-at-Law: (1) Sergeants-at-Law, (2) the King's Sergeants, and (3) the King's Premier Serjeant and King's Ancient Serjeant. Except for the King's Sergeants, Sergeants-at-Law were created by Writ of Summons under the Great Seal of the Realm. The selection process was that the Sergeants, having discussed among themselves prospective candidates from amongst the utter barristers, would then make recommendations to the Chief Justice of the Common Pleas, who would pass these names on to the Lord Chancellor, who would then appoint the new Sergeants. The Sergeants had exclusive jurisdiction over the Court of Common Pleas, being the only lawyers allowed to argue a case there. At the same time they had rights of audience in the other central common law courts (the Court of King's Bench and Exchequer of Pleas) and precedence over all other lawyers. Only Sergeants-at-Law could become judges of these courts. Socially, the Sergeants ranked above Knights Bachelor and Companions of the Bath.

The exact date of Bacon's appointment by Queen Elizabeth as her Queen's Counsel Extraordinary is not known, but the indications are that it occurred in 1592, once he had become a real rather than just an honorary Ancient of Gray's Inn. Almost certainly he would have had to abide by the strict rules of Gray's Inn regarding the process and time required for education, training and eventual practice. The basic requirements and successive stages of development were:-

1. Student – 3 years (Oxford & Cambridge) or 1 year (Inn of Chancery) → degree.
2. Inner Barrister – 6 (-9) years → called to the bar
3. Utter Barrister (non-practising) – 5 years studying → allowed to practise in court
4. Utter Barrister (practising) – 5 years practice → Ancient
5. Ancient (experienced barrister, able to be considered for appointment as a Serjeant-in-law)
6. Reader – one year term – plays a part in educating law students at the Inns of Chancery and at Gray's Inn – member of the Pension, the ruling council of Gray's Inn
7. Treasurer – elected head of Gray's Inn

Francis Bacon's progress was as follows:-

- Student at Cambridge University: April 1573 - December 1576 (ca. 3 years)
- 27 June 1576: 'entered' Gray's Inn, admitted to the Grand Company of Ancients as an honorary Ancient (confirmed Nov 1576)
- Inner Barrister: 27 June 1576 (1580) – 27 June 1582 (6 years)
- 25 Sept 1576 – March 1579: studied abroad as attaché to English ambassador to France
- April 1579 – May 1580, resident at Leicester House
- May 1580, took up residence in Gray's Inn

- 27 June 1582 , called to the bar, admitted Utter Barrister
- Utter Barrister (non-practising): 27 June 1582 – 27 June 1587 (5 years),
 - 1582: compiled *Notes on the State of Christendom*
 - 1585-6: wrote *A Letter of Advice to the Queen*
- Bencher: 10 February 1586
- 27 June 1587, passed the bar and allowed to practise in court (5 years)
- Utter Barrister (practising): 27 June 1587 – 27 June 1592 (5 years),
 - 1587: involved in writing the dumb show in the 1587-8 Gray's Inn Christmas Revels
- Reader: 23 November – end June 1587 (Readers are appointed for one year only)
 - 1588: involved in writing *The Misfortunes of Arthur*
- Dean of the Chapel: 1589
 - 1589: wrote *An Advertisement Touching the Controversies of the Church of England (1586–9)*
 - 1591: wrote letter to Burghley in exasperation, threatening that if his Lordship would not carry him on he would give up all care of service to Burghley and the Queen, and sell his small inheritance, in order to become some “sorry bookmaker or a true pioneer in that mine of truth which Anaxagoras said lay so deep” (1591)
- Ancient (not just honorary): 27 June 1592.
 - Summer 1592: wrote letter to Burghley, still hoping for help and commenting, “I wax now somewhat ancient”.
- Queens Counsel Learned, Extraordinary: 1592(?) – the first such appointment made.
 - 1592: wrote *Certain Observations made upon a Libel* (1592).
 - 1592: wrote *A Conference of Pleasure* for Essex to perform at the Queen’s Accession Day Tournament (17 November 1592).
 - 1593: wrote *Temporis Partus Maximus* ('The Virile Offspring of Time'), an early sketch outlining his proposed Great Instauration.
 - 1593: *Venus and Adonis* published.
 - May 1593: wrote to the Queen stating that he was “ready to do that for your service which I never would do for mine own gain ... My mind turneth upon other wheels than those of profit”.
 - 1593: as an MP, advised the House of Commons against accepting the Queen and her Government’s request for the raising of a triple subsidy (taxation) in half the normal time, lest it cause hardship and rebellion, and for the House of Commons to determine the matter together with the Government, lest it diminish the House of Commons prerogative to discuss such questions in private and without pressure from the Queen and Government. This infuriated the Queen, who denied him access to her presence and told him that “he must nevermore look to her for favour or promotion”. The denial of

access lasted until summer 1594 and the denial of favour or promotion lasted until the end of the reign.

- Jan-Feb 1594: pleaded his first case in the Queen's Bench and Exchequer Chamber
 - 1594: wrote *A True Report of the Detestable Treason intended by Dr Roderigo Lopez*
 - 1594: position of Attorney-General fell vacant; intimations given that he might be appointed to this position, but only if he would recant his conduct in Parliament, which he refused to do. Essex promotes him for this position.
- May 1594: appointed Deputy Chief Steward of the Duchy of Lancaster.
 - May 1594: given woodland by Queen, from which he could raise some finance.
- June 1594: appointed by Queen to assist in the investigation into the 'Walpole Plot'.
- July 1594: sent by Queen on mission to the north (of England?); received his MA in Cambridge at a specially convened ceremony.
- Aug-Sept 1594: examination of prisoners in another Catholic conspiracy.
 - Summer 1594: wrote to Essex explaining that he neither had much hope nor much desire for the position of Solicitor-General, because he was so preoccupied with "the waters of Parnassus" which entirely quenched his thirst for other things.
- Co-Treasurer of Gray's Inn: 28 Jan 1594 – 26 Nov 1594
 - Responsible for the 1594-5 Christmas Revels, *The Prince of Purpoole and the Order of the Knights of the Helmet*, during which *A Comedy of Errors* was played.
 - 1595: wrote *The Philautia Device* and *The Device of the Indian Prince* for Essex to perform at the Queen's Accession Day Tournament (17 November 1595)
 - 1595: wrote 'The Sussex Speech'
 - 1596: wrote *Maxims of the Law*
- Double Reader (i.e. Reader for a second time): Lent 1600

On 24 March 1603 Queen Elizabeth died. Succeeded by King James VI of Scotland, the latter was crowned King James I of England on 25 July 1603. Francis Bacon's legal and official progress thereafter was as follows:-

- 23 July 1603: knighted by King James
- August 1604: King's Counsel Learned, Ordinary (also known simply as King's Counsel)
- Treasurer of Gray's Inn: (nine years) 17 October 1608 – 26 October 1617
- 25 June 1607: appointed Solicitor-General.
- July 1608: appointed Clerk of the Star Chamber.
- 1611: appointed Judge of the Marshal's Court and President of the Court of the Verge.
- 26 Oct 1613: appointed Attorney-General and Chief Advisor to the Crown.

- 9 June 1616: appointed Privy Councillor.
- 7 March 1617: appointed Lord Keeper of the Great Seal. (Immediately upon being appointed, the new Lord Keeper had to act as a temporary 'regent' of England for a few months whilst King James visited Scotland.)
- 4 January 1618: appointed Lord Chancellor.
- 12 July 1618: created Baron Verulam of Verulam.
- 3rd February 1621: created Viscount St Alban.

Associated letters and information

Rawley's Life of Bacon

Being returned from travels, he applied himself to the study of the Common Law; which he took upon him to be his profession. In which he obtained to great excellency; though he made that (as himself said,) but as an accessory and not as his principal study. He wrote several tractates upon that subject. Wherein, though some great Masters of the Law did out-go him in bulk and particularities of cases, yet in the science of the grounds and mysteries of the law he was exceeded by none. In this way he was, after a while, sworn of the Queen's Counsel Learned, Extraordinary; a grace (if I err not) scarce known before.

William Rawley, 'Life of Bacon'

May 1593

TO THE QUEEN.

Madam,

Remembering that your Majesty had been gracious to me both in countenancing me and conferring upon me the reversion of a good place, and perceiving your Majesty had taken some displeasure towards me, both these were arguments to move me to offer unto your Majesty my service, to the end to have means to deserve your benefit and to repair my error. Upon this ground I affected myself to no great matter, but only a place of my profession, such as I do see divers younger in proceeding to myself, and men of no great note, do without blame aspire unto. But if any of my friends do press this matter, I do assure your Majesty my spirit is not with them. It sufficeth me that I have let your Majesty know that I am ready to do that for your service which I never would do for mine own gain. And if your Majesty like others better, I shall with the Lacedemonian be glad that there is such choice of abler men than myself. Your Majesty's favour indeed, and access to your royal person, I did ever, encouraged by your own speeches, seek and desire; and I would be very glad to be reintegrate in that. But I will not wrong mine own good mind so much as to stand upon it now, when your Majesty may conceive I do it but to make my profit of it. **But my mind turneth upon**

other wheels than those of profit. The conclusion shall be that I wish your Majesty served answerable to yourself. *Principis est virtus mazima nosse suos*. Thus I most humbly crave pardon of my boldness and plainness.

God preserve your Majesty.

January 1595 (?)

TO MY LORD OF ESSEX.

My singular good Lord, I may perceive by my Lord Keeper, that your Lordship, BB the time served, signified unto him an intention to confer with his Lordship at better Opportunity; which in regard of your several and weighty occasions I have thought good to put your Lordship in remembrance of; that now, at his coming to the Court, it may be executed: desiring your good Lordship nevertheless not to conceive out of this my diligence in soliciting this matter that I am either much in appetite or much in hope. **For as for appetite, the waters of Parnassus are not like the waters of the Spaw, that give a stomach; but rather they quench appetite and desires.** And for hope, how can he hope much, that can allege no other reason than the reason of an evil debtor, who will persuade his creditor to lend him new sums and to enter further in with him to make him satisfy the old; and to her Majesty no other reason, but the reason of a waterman; **I am her first man, of those who serve in Counsel of Law.*** And so I commit your Lordship to God's best preservation.

*Bacon was her Majesty's "first man of those who serve in Council of Law" because he was the Queen's Counsel Extraordinary, who had precedence over all the Sergeants-in-Law. The office of Solicitor-General was the next position immediately above him, which was now vacant because Coke, who had been the Solicitor-General had been moved to the next superior position of Attorney-General. Therefore there was not any candidate for the Solicitorship senior to Francis.

21 March 1595

To THE LORD HIGH TREASURER

After the remembrance of my humble and bounden duty, it may please your good Lordship: The last term I drew myself to my house in the country, expecting that the Queen would have placed another Solicitor; and so I confess, a little to help digestion and to be out of eye, I absented myself. For I understood her Majesty not only to continue in her delay but (as I was advertised chiefly by my Lord of Essex) to be retrograde (to use the word apted to the highest powers); Since which time I have as in mine own conceit given over the suit, though I leave it to her Majesty's tenderness and the constancy of my honourable friends, so it be without pressing.

And now my writing to your Lordship is chiefly to give you thanks. For surely if a man consider the travail and not the event, a man is often more bound to his honourable friends for suit denied than for a suit succeeding. Herewithal I am bold to make unto

your Lordship three requests, which ought to be very reasonable because they come so many at once. But I cannot call that reasonable which is only grounded upon favour. The first is, that your Lordship would yet *tueri opus tuum*, and give as much life unto this present suit for the Solicitor's place as may be without offending the Queen (for that were not good for me). The next is, that if I did show myself too credulous to idle hearsays in regard of my right honourable kinsman and good friend Sir Robert Cecil (whose good nature did well answer my honest liberty), your Lordship will impute it to the complexion of a suitor, and of a tired sea-sick suitor, and not to mine own inclination. Lastly, that howsoever this matter go, yet I may enjoy your Lordship's good favour and help as I have done in regard of my private estate, which as I have not altogether neglected so I have but negligently attended, and which hath been bettered only by yourself (the Queen except), and not by any other in matter of importance. This last request I find it more necessary for me to make, because **(though I am glad of her Majesty's favour, that I may with more ease practise the law, which percase I may use now and then for my countenance)** yet to speak plainly, though perhaps vainly, I do not think that the ordinary practice of the law, not serving the Queen in place, will be admitted for a good account of the poor talent which God hath given me; so as I make reckoning I shall reap no great benefit to myself in that course. Thus again desiring the continuance of your Lordship's goodness as I have hitherto found, and on my part sought also to deserve, I commend your good Lordship to God's good preservation.

From Gray's Inn, this 21st of March, 1594. [i.e. 1595]

Your Lordship's most humbly bounden,

Fa. BACON.

25 May 1595

TO THE LORD KEEPER

It may please your Lordship,

I thought good to step aside for nine days, which is the durance of a wonder, and not for any dislike in the world; for I think her Majesty hath done me as great a favour in making an end of this matter, as if she had enlarged me from some restraint. And I humbly pray your Lordship, if it so please you, to deliver to her Majesty from me, that I would have been glad to have done her Majesty service now in the best of my years, and the same mind remains in me still; and that it may be, when her Majesty hath tried others, she will think of him that she hath cast aside. For I will take it (upon that which her Majesty hath often said) that she doth reserve me and not reject me. And so I leave your good Lordship to God's good preservation. From Twicknam Park this 25th of May, 1595.

Your Lordship's much bounden,

Fa. BACON.

1620-1621

“You found me of the Learned Counsel Extraordinary, without patent or fee; a kind of *individuum vagum*. You established me and brought me into Ordinary. Soon after, you placed me Solicitor, where I served seven years.”

TO THE KING.

May it please your Majesty,

I thank God that I number my days both in thankfulness to him, and in warning to myself. I should likewise number your Majesty's benefits, which as (to take them in all kinds) they are without number; so even in this kind of steps and degrees of advancement, they are in greater number than scarcely any other of your subjects can say. For this is now the eighth time, that your Majesty hath raised me.

You found me of the Learned Counsel, Extraordinary, without patent or fee; a kind of *individuum vagum*. You established me, and brought me into Ordinary. Soon after, you placed me Solicitor, where I served seven years. Then your Majesty made me your Attorney or Procurator General. Then Privy Counsellor, while I was Attorney; a kind of miracle of your favour, that had not been in many ages. Thence Keeper of your Seal; and because that was a kind of planet and not fixed, Chancellor. And when your Majesty could raise me no higher, it was your grace to illustrate me with beams of honour; first making me Baron Verulam, and now Viscount St. Alban. So this is the eighth rise or reach, a diapason in music, even a good number and accord for a close. And so I may without superstition be buried in St. Alban's habit or vestment.

Besides the number, the obligation is increased by three notes or marks. First, that they proceed from such a King; for honours from some Kings are but great chances, or counters set high; but from your Majesty they are indeed dignities, by the co-operation of your grace. Secondly, in respect of the continuance of your Majesty's favour, which proceedeth as the divine favour from grace to grace. And, Thirdly, these splendours of honour are like your freest patents, *absque aliquo inde reddendo*. Offices have burdens of cares and labour; but honours have no burden but thankfulness, which doth rather raise men's spirits then *accable* them or press them down.

Then I must say, *quid retribuam*? I have nothing of mine own. That that God hath given me I shall offer and present unto your Majesty, which is care, and diligence, and assiduous endeavour, and that which is the chief, *cor unum et viam unam*, hoping that your Majesty will do, as your superior doth; that is, that finding my heart upright, you will bear with my other imperfections. And lastly, your Majesty shall have the best of my time, which I assure myself shall conclude in your favour, and survive in your remembrance. And that is my prayer for myself. The rest shall be in prayers for your Majesty.

(Letter of Bacon to the King 1620-1621, Spedding, *Letters and Life* viii 168.)

Serjeants-at-Law

The Serjeants-at-Law was an order of barristers at the English bar. The Serjeants were the oldest formally created order in England, having been brought into existence as a body by Henry II.

There were three levels or orders of Serjeants-at-Law:

1. Serjeants-at-Law
2. the King's Serjeants (particularly favoured Serjeants-at-Law)
3. the King's Premier Serjeant (the Monarch's most favoured Serjeant) and the King's Ancient Serjeant (the oldest).

Serjeants (except King's Serjeants) were created by Writ of Summons under the Great Seal of the Realm and wore a special and distinctive dress, the chief feature of which was the coif, a white lawn or silk skullcap afterwards represented by a round piece of white lace at the top of the wig.

The Serjeants had for many centuries exclusive jurisdiction over the Court of Common Pleas, being the only lawyers allowed to argue a case there. At the same time they had rights of audience in the other central common law courts (the Court of King's Bench and Exchequer of Pleas) and precedence over all other lawyers. Only Serjeants-at-Law could become judges of these courts right up into the 19th century. Despite holding a monopoly on cases in the Court of Common Pleas, Serjeants also took most of the business in the Court of King's Bench.

During the 16th century the Serjeants-at-Law were a small, though highly respected and powerful, elite. There were never more than ten alive, and on several occasions the number dwindled to one. Although Serjeants were the only lawyers who normally argued in court, they occasionally allowed other lawyers to help them in special cases. These lawyers became known as outer or "utter" barristers (because they were confined to the outer bar of the court); if they were allowed to act they had "passed the bar" towards becoming a Serjeant-at-Law.

After the creation of Queen's Counsel Extraordinary for Francis Bacon during the reign of Elizabeth I, followed by him being made King's Counsel in Ordinary by James I, the order gradually began to decline, with each monarch opting to create more King's or Queen's Counsel. The Serjeants' exclusive jurisdictions were ended during the 19th century, and with the Judicature Act 1873 coming into force in 1875, it was felt that there was no need to have such figures, and no more were created.

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