



## Communicating Ideal Social Institution: A Reading of Francis Bacon's *Of Judicature*

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### ABSTRACT

Francis Bacon's essay "*Of Judicature*" is a probe into valuable insights regarding the office of a judge and the concept of justice. Bacon emphasizes the importance of judges being knowledgeable, impartial, and courageous in their decision-making. They should possess a deep understanding of the law and its applications. He considers a Judge's position as a reasonable centre holding the faith and trust of the people in a society. Judges play a crucial role in upholding justice and ensuring that the legal system functions fairly and efficiently. Bacon stresses the need for judges to maintain their integrity and independence, avoiding external influences and personal biases. The Essay "*Of Judicature*", views justice as a fundamental principle of society, which is essential for maintaining order and stability, where he highlights the importance of justice. The present paper offers a reading of Bacon's 'Of Judicature' in understanding the Office of Judges as an important social institution in guiding the people to opt for the right action on the right path and constructively strengthening the human psychology in institutionalizing faith and trust of the people in the legal system.

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### INTRODUCTION

Sir Francis Bacon, a statesman, politician, and one of the most influential lawyers of the Jacobean era in England, was a man marked by an ambivalent nature. This duality is famously captured by Pope (1734), who described him as the "*wisest, brightest, and the meanest of mankind*." This complex character is further illustrated by Churchill (1956), who noted that Bacon was "*the ambitious lawyer, who had*

*dabbed in politics with Essex and crept back to obedience when his patron fell"* (p. 164).

Bacon's profound engagement with the legal system is exemplified in his essay 'Of Judicature,' which was dedicated to Sir John Hutton upon his appointment to the bench of the Court of the Common Pleas (Vickers, 1999). As Lord Chancellor, Bacon presented Hutton with his patent, complimenting him on possessing the very judicial virtues outlined in the essay. Indeed, Bacon's legal philosophy was as ambitious as his scientific work, a point underscored by Kocher (1957):

"The world sometimes forgets that Francis Bacon was a great jurist as well as a great philosopher of natural science. All his life, he fought for basic reforms in both fields, and, in both, his proposals have the same unready, unaccomplished grandeur. In the physical sciences, he expected to carry the world well past Aristotle. In law, by his concept of the legal maxim, he hoped to stand higher than Coke in the eyes of posterity and, by his digests of case and statute law, to emulate on English soil the innovations of Justinian. Moreover, of prime importance to his total philosophy, he believed his inductive method as valid in the one field as in the other. About these large matters I shall make such remarks as the scope of a single essay allows. (p. 3)"

In the essay, Bacon articulates a judicial philosophy centered on fair and impartial justice, asserting that judges must deliver verdicts unaffected by personal opinions or external pressures. He contends that justice should be grounded in the law, with judges adhering to established principles and precedents, and emphasizes that it must prioritize the protection of human rights and dignity through consistency in its application. Bacon thus presents a vision for an ideal judicial system, one composed of wise and virtuous judges and defined by efficient court proceedings that minimize delays. For Bacon, the effective and fair function of a judge is paramount for establishing the legal system as a potent social institution for the welfare of all. This paper will therefore offer a detailed analysis of the principles and intentions within Francis Bacon's essay 'Of Judicature'.

## **METHOD**

This study employs a qualitative research methodology, conducting an in-depth analytical study of Francis Bacon's seminal essay, 'Of Judicature'. Rather than relying on numerical data, this approach is rooted in a close reading and textual interpretation of the primary source. The research develops its central arguments by systematically identifying and exploring the associations and correlations between the core concepts Bacon presents. This analytical lens is particularly suited to Bacon's writing style, as his method in the essays is often "to assemble a series of observations on a topic, juxtaposing them without explicit connection" (Vickers,

1999). Therefore, by dissecting the text in this manner and forging the links that Bacon leaves implicit, the paper aims to construct a cohesive and detailed understanding of his judicial philosophy as articulated in this specific work.

## RESULTS AND DISCUSSION

Over the ages, the essays of Bacon have been immortalized because of their aphoristic style, the intense verbal liveliness, the precision of word play, and the acute and direct argument that percolates within the thought process of the readers, and convinces them. In the present essay, Bacon starts with a prescriptive stance, “*judges ought to remember that their office is jus dicere, and not jus dare:...*” (‘Of Judicature’). Like this sentence, the entire essay is replete with similar Latin phrases and proverbs. In Latin, *jus dicere* means to declare the law, and *jus dare* is to give or make the law. While suggesting that a Judge’s duty is to interpret law(s) and not to make them, Bacon draws an analogy to the Roman Church who, as Bacon writes, being afraid of ‘exposition of Scripture’, does not hesitate to tamper with the interpretation of the scripture and speak things which are not at all present within the holy books. He goes on to delineate the virtues that should be possessed by a judge. For Bacon, a judge should be more learned than witty, more reverent than plausible (superficial), and more advised than confident. Within these criteria, what Bacon suggests is that a Judge should always have a very definite, objective outlook who can decide with a clear mind. For Bacon, a sound judge should never have his judgment muddled, and there is no scope for superficiality. However, in the last part of the sentence, he adds that he should be advised rather than confident. Probably what he meant was, a Judge, while formulating his judgement, should always be cautious rather than being overbold or dogmatic.

Drawing from the same strand of thought, Bacon highlights the responsibility of the judge. For the judges, integrity is the primary virtue. Bacon uses a quote from the Book of *Deuteronomy*, Old Testament, which says, “*Cursed is he that removeth the landmark.*” (cit.in ‘Of Judicature’) Through a reference quotation, Bacon draws the attention of the reader towards the responsibility that the judges have in interpreting the law. He opines that the Judge is at fault when he passes a wrong judgement “... the unjust judge that is the capital remover of landmarks”, which potentially can cause havoc. Bacon proceeds by alluding to the *Book of Vulgate*, which was the 4th-century Latin translation of the Bible. He writes, “*Fons turbatus, et vena corrupta, est justus cadens in causa sua corum adversario*” (cit.in ‘Of Judicature’).

The above statement used by Bacon in ‘Of Judicature’ is a slight variation from the original Vulgate. About the integrity of the judges that Bacon holds in high esteem, he uses the above quote to demonstrate how precious the integrity of a judge may turn out to be for mankind, for it is the judge and his judgement that

supports the righteous man and prevents him from falling when pitted against adversities (the manifestation of the wicked).

According to Bacon, there are four categories upon whom the reference of the office of the judges work. The parties that sue, the advocate, the clerks and ministers of justice, and the Sovereign or the State. Considering the parties who reach the court for the petition, Bacon again resorts to the scriptures. This time, he quotes from the *Book of Amos*- the third of the twelve minor prophets in the Hebrew Bible/ Old Testament. In the essay, the line "there be that turn judgement into wormwood"(cit.in 'Of Judicature'), the author suggests that to experience injustice for anyone is bitter, and if justice is delayed, the experience turns sour. The mention of wormwood relates to a state or source of bitterness or grief. According to the author, the principal duty of the judge is to suppress force and fraud, and on comparing, Bacon realizes that force is more damaging when overt than fraud, which is always covert, subtle, and disguised. Having said that, the author raises the judge to a godly stature and places him/her on the same altar. By virtue of being a judge, he should, like a god, intervene and take a stand to make inequality equal, to combat violent prosecution and cunningness. For Bacon, the judge is the virtue personified.

However, having risen to the divine alter, Bacon warns the judge of a singular mistake that every judge might be prone to committing, i.e., dictating a wrong judgment. For Bacon, "...there is no worse torture than the torture of laws." (cit.in 'Of Judicature'). For Bacon, prudence is an essential quality of the judge. They should be aware of 'hard constructions' and 'strained inferences' and should not subject any of the law seekers unlawfully to the tortures of the law. While dictating the penal laws, the judges should be meticulous lest what was meant for terror might be turned into a form of rigor.

The next portion of the essay exemplifies how farsighted the English author was. Although championing the Royalists' view and hailing from 16th-century England, he believed what the American Realists and the Critical Legal scholars would champion centuries later, that of contextualizing law and adding an angle of subjectivity. Bacon observes that if the penal laws have not evolved with time, the judge should, out of his own accord, interpret them by considering the context as well as the circumstances of the facts.

In the petitions of life and death, the author urges for mercy to be shown by the judges (as far as it is legally permissible). Bacon also points out that patience and gravity of hearing are the two attributes that are mandatorily required for a judge to chair a session in the court. Bacon suggests that an impatient, over-speaking judge is hardly a graceful one, and such qualities would definitely not enhance his credentials.

In the next segment of the essay, Bacon defines the hearing process for a judge and segments it into four parts. To begin with, it is to direct the evidence, next is to

moderate the length, repetition, or irrelevance of speech, thirdly to select, recapitulate, and examine the similarity and differences of the points that have been laid down during the session. Bacon opines that if the judge speaks for any reason apart from the needs mentioned above, he/she has other motives to address. It might be for showcasing his/her capabilities, an impatience to hear, shortness of memory, or the want of drawing attention towards his/her own self.

By comparing the judge with God, the author finds it strange for advocates to prevail over him. For Bacon, the chair of the judge is like God, who *represseth the presumptuous and giveth grace to the modest*. Bacon uses the quote from the 'Epistle of James' (a book from the New Testament) to support his claim that the judge's existence on the social strata is on the same level as the faith of the people in the divine. He is a source of reverence and unquestionable faith. However, for the author, any kind of favoritism, partiality on the part of the judge, is a bizarre phenomenon to happen, and yet he does not forget to mention that a significant amount of applaud or praise for an advocate who has managed to win a case against all odds, is also necessary. Bacon has clearly taken references from Biblical sources, that is well in sync with the statement of R.Beck, "The biblical authors often portray God as a royal judge who brings justice to a fallen creation. This portrayal analogizes God's role in governing humanity to the role played by judges in human legal systems. The divine judge, like human judges, investigates and evaluates conduct, measuring human acts against applicable laws. Like human judges, he fashions punishments and rewards to accomplish justice in light of the conduct disclosed (Beck, 2017).

Later in the essay, the author mentions that the place of justice is a hallowed place, and so the entire establishment should distance itself from various kinds of scandal or corruption. Bacon understands that the citizens of a particular province place their trust in the establishment of the court because of their faith. However, when a scandal or any incident of corruption gets attached to it, the trust of the people does not remain the same, and the credibility of the judge, the advocates, the clerks, and the court is questioned (Wallace & Goodman-Delahunty, 2021).

The author argues that the attendance in the courtrooms depends on four things. The presence of the extravagant-suited bureaucrat counts for one. In the second category, Bacon considers that group of people who utilize the court proceedings to serve their own needs and advantages. Bacon considers them to resemble more of '*parasiti curiae*' (parasites of the court) rather than being '*amici curiae*' (a person or an organization who is permitted by the court to advise it). Bacon acknowledges the third group as the 'left hands of the courts'. These people are sinister tricksters who are adept in hoodwinking and conning people and thereby prevent justice from being meted out in a simple, straightforward manner. For describing the fourth group, Bacon uses animal imagery. In this group, Bacon

includes those people who extract payment and fees from the people for the legal counsel they provide in return. As of the client who is seeking legal advice in return for the payment, Bacon compares their condition to that of a sheep and the court of Justice to that of a bush. He describes that the sheep seek the bush as a means of survival during the harsh weather, and in the process, lose their fleece, which gets entangled within the bush.

In the last part of the essay, Bacon reminds the judges of one important Roman scripture. For him, the conclusion of the Roman Twelve Tables is the most important mandate that the judges should remember. "*Salus populi suprema lex*". This is a quotation from Cicero's *De Legibus Liber*, which means that the safety of the people is the most important law. Having mentioned this, Bacon points out that law, in itself, does not have any end but is a means to achieve the end of ensuring the safety of the people. However, Bacon considers law to be a very perplexing, confusing thing and therefore suggests a consultation between the Aristocracy and the Judiciary.

For yet another time, the author draws a reference from the 'Book of Kings' of the Old Testament, and compares the judges with the lions who supported Solomon's throne. However, he is careful enough to remind them that they are 'lions under the throne', just for supporting it. The judges should never consider themselves above the Sovereign or the State, and it is for the cause of these two entities that they serve.

Bacon concludes the essay by using another quotation from the scriptures of the Vulgate(1). He quotes, "*Nos scimus quia lex bona est, modo qui ea utatur legitime.*" Through this quotation, Bacon appeals to the judges to for the proper utilization of the laws, to strike a balance between over-confidence and under-confidence of the judges, and prevent any misinterpretation and overinterpretation of the mandates laid down as laws. On translating, the quotation means that the law is good if a man uses it lawfully. Thus, Bacon urges the judges to show that extra bit of subtlety and mastery through which law can be interpreted most fairly and help the entire system of judicature as a whole.

A conclusion summarized after reading this crisp, concise and lucid piece as an important academic and social document, it is appropriate to mention that a judge and the broader legal system represent one of society's most fundamental social institutions, serving as the formal mechanism through which communities establish order, resolve disputes, and maintain social cohesion. While interpreting the take on the 'Office of a Judge', it might be stated that a judge occupies a unique position within society as an impartial arbiter who interprets and applies the law. This role encompasses several key dimensions regarding the following:

1. **Authority and Legitimacy:** Judges derive their power from societal consensus and legal frameworks, representing state authority in its most visible form. Their decisions carry the weight of legitimate force, backed by the state's

monopoly on violence, yet their authority ultimately rests on public acceptance of their role.

2. **Impartiality and Independence:** The judicial office is designed to stand apart from political pressures and personal interests. This institutional independence allows judges to make decisions based on legal principles rather than popular opinion or political expediency, serving as a crucial check on other forms of power.
3. **Interpretive Function:** Judges don't merely apply predetermined rules mechanically. They interpret legal texts, precedents, and principles, effectively participating in the ongoing creation of law through their decisions. This makes them both guardians of the existing legal order and agents of legal evolution.

It is to establish here that the Legal System as a Social Institution functions as a comprehensive social institution that shapes behaviour and relationships across society. There is latent social control and order. The legal system establishes boundaries for acceptable behaviour through laws, sanctions, and enforcement mechanisms. It channels conflict into structured processes rather than allowing disputes to escalate into violence or chaos. Legal institutions provide a framework for the legitimate exercise of power. They establish who can make binding decisions, under what circumstances, and through what procedures. This creates predictability and stability in social relationships. Laws and legal procedures embody society's fundamental values and moral commitments. The legal system doesn't just enforce rules; it communicates what a society considers important, just, and worthy of protection. Legal setup is a set that guides on conflict Resolution. Beyond punishment, the legal system provides mechanisms for resolving disputes peacefully. Courts, mediation, and other legal processes offer alternatives to private revenge or force. The concept of Social Integration emerges from legal institutions that help in integrating diverse groups within society by establishing common standards and procedures that apply across different communities and social divisions.

The legal system also serves broader sociological functions, including legitimizing existing power structures, managing social change, and providing channels for grievances. It acts as both a conservative force that maintains stability and a progressive mechanism that can facilitate social transformation through legal reform and reinterpretation. Jacob Zeitlin observes in this context that “the need which Bacon thinks is the most serious is a study of human nature in the particular”(Zeitlin, 1928).

This institutional framework reflects the fundamental human need for predictable social order while providing flexibility to adapt to changing circumstances and value expressions. The effectiveness of any legal system depends

largely on its perceived legitimacy and the degree to which it successfully balances competing social needs and interests.

Thus, Francis Bacon's text, "Of Judicature", represents a foundational effort to systematize and institutionalize the administration of justice in early modern England. His work serves as a powerful social document because it captures the transition from feudal, personalized justice to a more structured, rational legal system.

Bacon's approach in establishing the judiciary as an institution was revolutionary for several reasons. He advocated for the separation of judicial functions from executive power, arguing that judges should operate independently to ensure impartial justice. This was a significant departure from the medieval system where justice was often dispensed by local lords or royal officials based on personal relationships and arbitrary decisions.

In his various legal treatises and speeches, Bacon emphasized the importance of legal precedent and systematic jurisprudence. He believed that laws should be clear, accessible, and consistently applied across all social classes. His famous assertion that "judges ought to remember that their office is to interpret law, and not to make law, or give law" ("Of Judicature") reflects his vision of an institutional framework where legal authority derives from established principles rather than individual whims and fancies.

## **CONCLUSION**

Bacon's writings, in general, also reveal the social tensions of his era. He recognized that effective judicature required public trust and legitimacy, which could only be achieved through transparency and predictability in legal proceedings. His advocacy for legal reform reflected broader social changes, including the rise of commercial society, the growth of literacy, and increasing demands for accountable governance. His insights on judicial reform were deeply interconnected with his broader philosophical project of advancing human knowledge and social progress. Bacon saw the establishment of reliable legal institutions as essential to creating a stable society where commerce, learning, and civil discourse could flourish. His writings were thus important documentation on not just legal theory but the social aspirations of an emerging modern state seeking to balance authority with justice. Through his comprehensive approach to legal institutionalization, Bacon's work remains a testament to the complex process of transforming social customs into formal institutional structures that could serve a rapidly changing society.

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