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“Absolute Power and Authority”: John Locke and the Revisions of the *Fundamental Constitutions of Carolina*

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Abstract:

This essay offers a detailed textual study of the *Fundamental Constitutions of Carolina* in light of its history of extensive revisions. In due course, it considers Locke's considerable secretarial presence and, more guardedly, his authorial presence in these revisions. The *Fundamental Constitutions* imagined an *aristocratic republic* in a *colonial* setting; and its fundamental ideology was one of *proprietary absolutism*. Its ever-changing articles on absolute power, slavery, and religion are of greatest interest. Important in themselves, they also invite inquiry into their points of contact with Locke's political theory.

Keywords: *Fundamental Constitutions of Carolina*, John Locke, proprietary absolutism, slavery

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1. Introduction

In the *Two Treatises of Government*, the anonymous author of 1689/1690 unleashed a fierce and unrelenting assault on absolute power and patriarchal authority, for these were the tyrannical analogues of slavery, that “vile and miserable an Estate of Man.” The opening salvo of the treatises took dead aim at those authors “who would flatter princes with an Opinion, that they have a Divine Right to absolute Power,” for they “make War upon all Government.”¹ A few readers soon enough suspected, correctly, that the author was John Locke. Their suspicions would be vindicated when the codicil to his will was unsealed upon his death in 1704. A few other readers suspected, correctly or not and certainly later, that he was also the author of the original *Fundamental Constitutions of Carolina* of 1669.² Their suspicions would be neither vindicated nor falsified, down to our time. To this day, Locke’s authorial role is unclear or ambiguous. But what is clear and not at all ambiguous is that the Royal Charters that made possible the *Fundamental Constitutions* proclaimed, as the *Two Treatises* would not, the “absolute power and authority” of the Lords Proprietors over the entirety of Carolina. And, analogous to subinfeudation, the Lords Proprietors, in turn, granted some of their absolute power and authority downward, to free white male commoners. They promised in an awesome article, so infamous to us now: “Every freeman of Carolina shall have absolute power and authority over his Negro slaves, of what opinion or religion soever” (164, 183, 204, 240).³

This essay is a detailed textual study of the *Fundamental Constitutions of Carolina* in light of the Royal Charters and other colonial documents, as well as

¹ John Locke, *Two Treatises of Government*, ed. Peter Laslett, student edition (Cambridge: Cambridge University Press, 1988), I.1, 142.

² The best available modern edition of the 1669 (revised) and 1670 versions, collated, is in John Locke, *Political Essays*, ed. Mark Goldie (Cambridge: Cambridge University Press, 1997), 160–81. Also see the 1669 version in Langdon Cheves, ed., *The Shaftesbury Papers and Other Records relating to Carolina* (1897; repr., Charleston: South Carolina Historical Society, 2000), 93–117 that attempts to visually represent its revisions (lined through excisions, angle-bracketed interlineations, and so forth). A thorough census and analysis of the various versions, amidst Locke’s other colonial writings, will appear in John Locke, *Colonial Writings*, ed. David Armitage, The Clarendon Edition of the Works of John Locke. (Oxford: Clarendon Press, forthcoming).

³ References to page numbers in the body of this essay are to the articles in the two Royal Charters and the five versions of the *Fundamental Constitutions* in Mattie Erma Edwards Parker, ed., *North Carolina Charters and Constitutions, 1578–1698* (Raleigh: Carolina Charter Tercentenary Commission, 1963). Minor changes in spelling or punctuation between different versions of the same article are only seldom noted. Besides Parker, *North Carolina Charters*, see the overview of these and other colonial documents in William S. Powell, “Carolina in the Seventeenth Century: An Annotated Bibliography of Contemporary Publications,” *North Carolina Historical Review* 41 (1964): 74–104.

the history of its revisions.⁴ The *Fundamental Constitutions* is a telling and important legal document, expressive of an abstract and decidedly English projection onto the new world that morphed over time as a result of transactions with settler colonists and native Americans. It is representative of “American political thought” in some ways and unique in others. It is surely as telling about the colonizing mindset as are the sermons of New England preachers or the chroniclers of Virginia planters. It has received due regard in histories of the two Carolinas, South and North, though with dramatically different assessments of its success in practice.⁵ In political theory, it has gained such notice as it has because of Locke’s association with it.⁶

In this essay, Locke is in view but not at the center of attention. That is not an inapt characterization of the document itself. Locke was not alone at the center of its composition or serial revision. No single person was at any one time much less over time, not even Anthony Ashley Cooper, later the (first) Earl of Shaftesbury who was otherwise the animating force calling Carolina into being. But Locke’s “secretarial presence” is noteworthy and his “authorial presence” an intriguing

⁴ I am especially indebted to Mark Goldie, “The Unacknowledged Republic: Office-Holding in Early Modern England,” in *The Politics of the Excluded, c. 1500–1850*, ed. Tim Harris (New York: Palgrave, 2001), 153–94; idem, “Locke and America,” in *A Companion to Locke*, ed. Matthew Stuart (London: Blackwell, 2016), 27–44; J. R. Milton, “John Locke and the *Fundamental Constitutions of Carolina*” *Locke Newsletter* 21 (1990): 111–33; idem, “The Unscholastic Statesman: Locke and the Earl of Shaftesbury,” in *Anthony Ashley Cooper, First Earl of Shaftesbury, 1622–1683*, ed. John Spurr (Farnham, Surrey: Ashgate Publishing, 2011), 153–81; and David Armitage, “John Locke, Carolina, and the *Two Treatises of Government*,” *Political Theory* 32 (2004): 602–27, as well as to these authors personally.

⁵ See, among others cited elsewhere in this essay, John S. Bassett, *The Constitutional Beginnings of North Carolina* (Baltimore: Johns Hopkins University Press, 1894); Michelle LeMaster and Bradford J. Wood, eds., *Creating and Contesting Carolina: Proprietary Era Histories* (Columbia: University of South Carolina Press, 2013); Louis H. Roper and Bertrand van Ruymbeke, eds., *Constructing Early Modern Empires: Proprietary Ventures in the Atlantic World, 1500–1750* (Leiden: Brill, 2007); Bertrand van Ruymbeke, *From New Babylon to Eden: The Huguenots and Their Migration to Colonial South Carolina* (Columbia: University of South Carolina Press, 2006); Clarence L. Ver Steeg, *Origins of a Southern Mosaic* (Athens: University of Georgia Press, 1975); Robert M. Weir, *Colonial South Carolina: A History* (Columbia: University of South Carolina Press, 1983); and Peter H. Wood, *Black Majority: Negroes in Colonial South Carolina From 1670 through the Stono Rebellion* (New York: Alfred A. Knopf, 1974).

⁶ See, among others cited elsewhere in this essay, Nagamitsu Miura, *John Locke and the Native Americans: Early English Liberalism and its Colonial Reality* (Cambridge: Cambridge Scholars Publishing, 2013); David Wootton, ed., *Political Writings of John Locke*, (New York: Mentor, 1993); Christopher Tomlins, *Freedom Bound: Law, Labor, and Civic Identity in Colonizing English America, 1580–1865* (Cambridge: Cambridge University Press, 2010); and Teresa M. Bejan, *Mere Civility: Disagreement and the Limits of Toleration* (Cambridge: Harvard University Press, 2017).

mystery worth continued investigation.⁷ We will likely never know with certainty the extent of his presence in the original document or its subsequent revisions. However, this essay hopes that closer attention to the nearly constant state of change of the *Fundamental Constitutions* will shed further light on Carolina's "colonial imaginary" and some key points of contact with Locke's political theory.

Towards that end, the first section provides an overview of the *Fundamental Constitutions*. The second focusses on its constitutional vision of an *aristocratic republic* in a *colonial* setting. The third attends to its fundamental ideology of *proprietary absolutism*, that is, the sustained declaration beginning with the Royal Charters that the Lords Proprietors ruled Carolina with absolute power and authority. The fourth pays close attention to the fate of the intertwined articles on slavery and religion, especially the volatile career of the infamous article on absolute power and "Negro slaves." The final section queries Locke's role in the revisions and ventures some thoughts about their resonance with his political theory.

2. Constituting a New Colony

Drafted and sealed in London in the summer of 1669, the *Fundamental Constitutions of Carolina* issued forth as the instrument of government for the latest English colony in the New World. In manuscript, it was taken aboard *The Carolina* in August *en route* to its destination on the southeastern shore of "America." Authorized by "we, the true and absolute Lords and Proprietors of this Province" (132), the document would endure officially for sixty years until 1729 when Carolina ceased to be a proprietary colony and came under direct royal control.⁸ In these six decades, it would appear under seal in five formal versions, some in manuscript, others in print, not to mention four variations in the first version of 1669. Revised versions were sealed and issued in 1670, 1682 (in both January and August), and 1698.⁹ (There were also suggested revisions that never came to account in an official version).¹⁰ Moreover, in 1691, the Lords Proprietors

⁷ The language of "authorial" and "secretarial presence" comes from Mark Goldie, "Life," in *The Continuum Companion to Locke*, ed. S. J. Savonius-Wroth, Paul Schuurman, and Jonathan Walmsley (London: Continuum, 2010), 1–36.

⁸ The year 1719 is a more realistic date for the denouement of the *Fundamental Constitutions*, given the colonists' uprising against the Lords Proprietors' last-appointed governor, Robert Johnson. As a result, an interim governor elected by the colonists agreed to serve in the name of the king; and the first Royal Governor was sent in 1721. On 14 May 1729, the Crown officially took control of the colony.

⁹ See the appendix for fuller descriptions of these versions and variations.

¹⁰ The most striking example of these intended but unrealized revisions appear in the margins of a copy of the 1670 print version in the Ayer Collection at the Newberry Library. Ayer 150.5 .C25 L7 1669.

promulgated a set of laws to stand in for the *Fundamental Constitutions*. And in 1693, they dramatically suspended the constitutional instrument altogether in response to serious protests by the colonists and corruption by the governor, himself a Lord Proprietor. When the *Fundamental Constitutions* returned in its final (though incomplete) version of 1698, it was a radical reduction of its earlier selves, yet a sign of the constitutional persistence of the Lords Proprietors in their new world project.

The revisions over time are thus informative about the determination (even fixation) of the Lords Proprietors to get their document just right in settling the colony and securing their power. But they also convey the Lords Proprietors' responses to practical exigencies and settler resistance to their rule. That resistance is, ironically, partial testimony to such success the document had in practice since settler resistance to one version was based on loyalty to another. Because of revisions and resistance, the juridical life of the *Fundamental Constitutions* proved fitful, all the more dramatic for an instrument that claimed to be, in a phrase more or less common to the conclusion of all versions (152, 184, 206, 232, 240), "the sacred and unalterable form and Rule of government of Carolina for ever."¹¹

The "form and Rule of government" was broadly conceived. It principally included political institutions and a judicial system of interlocking courts. But there was also the "government" of social classes, land distribution, town planning, militia service, Indian relations, and religious worship. Nearly everything was to be registered, sworn before a "Register" in office: births, marriages, deaths, deeds, leases, judgments, mortgages, contracts, church membership, and profession of fealty to the Lords Proprietors and the *Fundamental Constitutions*. Registration even determined how old one was, in the first three versions: "The time of everyone's Age shall be Recorded from the day that his Birth is entered in the Registry, and not before" (147, 180, 201). The much-revised version of August 1682 made birth *and* death "the time of Registering it" and added a weekly fine for newlyweds who failed to promptly register their marriage (226).

The instrument of government was thus considerably complex, socially and politically. It was also informed by plans and particulars that were, by turns, practical *and* utopian. That is, the *Fundamental Constitutions* was a continuously revised working draft for an actual polity that also conveyed a vision of new possibilities. It was deemed the "Grand Model."¹² Recognizably English and

¹¹ There were some slight differences, and one very important one, in August 1682 (discussed below). This claim was about *fundamental* laws, not the multiplicity of ordinary ones that would in fact change and were to be null and void after 30 or 60 or 100 years, depending on the version.

¹² As with so much else in the *Fundamental Constitutions*, the Grand Model was a vision, never a completed actuality. The Lords Proprietors recognized this. They admitted at the outset in their first "Instructions Annexed to the Commission for the Governor and Council" (issued on 27 July 1669) that "it will not be possible to put our Grand Model of Government in practice, at first" though

manorial in conception, the Grand Model did not, in its utopian moments, put forth a fancifully good, imaginary society. But it did lay out in advance of any actual experience a form of colonial governance that was novel in many ways. It put to paper a scheme found nowhere among other colonies in America, notably Virginia and New England, which would have been the likeliest models to have imitated. Furthermore, its vision was also intended to be promotional, even propagandistic. It had to entice settlers to come to Carolina from Britain directly or via Barbados,¹³ among other countries, with promises of land, a measure of self-governance, elective church membership, and liberty of conscience. Until the Grand Model imagined in the *Fundamental Constitutions* could actually be “putt into practice,”¹⁴ it was also supplemented by Temporary Laws and by periodic Instructions issued from London by the Lords Proprietors, as well as certain provisional laws made by the colonial parliament. Taken together, as leading proprietor Anthony Ashley Cooper put it to a prominent colonist who was then his deputy, Maurice Mathews, “in our Fundamentall Constitutions and in Instructions you will finde the compasse you are to be steere by.”¹⁵

The steering committee behind the initial articles and instructions was composed of Ashley and seven other Lords Proprietors who, in 1663, had been given “absolute power and authority” over Carolina in a royal charter by Charles II (83). Their gift of power and authority was reiterated and expanded in a second charter of 1665 (98) when the territorial reach of Carolina was extended further north and south along the Atlantic coast, and westward across the (then-unknown)

“we may come as nigh the aforesaid Model as is practicable.” Cheves, *Shaftesbury Papers*, 119–20. The phrase “Grand Model” was also used, more narrowly, to describe the city planning for Charles Town. See Thomas D. Wilson, *The Ashley Cooper Plan: The Founding of Carolina and the Origins of Southern Political Culture* (Chapel Hill: University of North Carolina Press, 2016), 99–135, crediting Locke with being “Carolina’s first city planner.” Wilson, *Ashley Cooper Plan*, 3.

¹³ See the 1664–65 “Concessions and Agreements” in Parker, *North Carolina Charters*, 107–25 and the “Barbadoes Concessions” in Cheves, *Shaftesbury Papers*, 29–46, and other promotional documents, including the discourse on “Carolina” with its précis of the *Fundamental Constitutions* in John Ogilby, *America* (London, 1670). The précis was copied nearly word-for-word in a later colonial document dated 1682 under the title, “The modell drawn up by the lord Ashley for the government of Carolina.” It was unsigned and its purpose unclear. The copyist claimed to be working “to the best of my memorie having had a copy thereof.” The copyist may have been (or been under the purview of) Joseph Oldys who, as Deputy Secretary of the province, entered a transcription of the first variation of the 1669 version, presumably in his possession, into the colonial register on “14 9ber 1682 p me [14 November 1682].” See Ruth S. Green, “The South Carolina Archives Copy of the Fundamental Constitutions of Carolina, Dated July 21, 1669,” *South Carolina Historical Magazine* 71 (1970): 100. The copied précis of “The modell” is in the State Archives of North Carolina, P.C. 293.

¹⁴ Cheves, *Shaftesbury Papers*, 120, 323.

¹⁵ Cheves, *Shaftesbury Papers*, 399.

continent to the Pacific “South Seas” (77, 91).¹⁶ The original eight proprietors were figures of considerable wealth, power, and ambition. All of them had supported the Restoration of the Stuart monarchy under Charles II in 1660. They were, as listed in each and every article of both charters: Edward, Earl of Clarendon; George, Duke of Albemarle; William, Lord Craven; John, Lord Berkeley; Anthony, Lord Ashley; Sir George Carteret; Sir William Berkeley; and Sir John Colleton. (Berkeley was spelled “Barkley” in 1663 and corrected in 1665). By the time of the second royal charter, Clarendon (Edward Hyde) was Lord Chancellor and Albemarle (George Monck) was Master of Horse (and former New Model Army general who helped engineer the Restoration). Carteret and John Berkeley were councilors to the king. William Berkeley, John’s brother, was Governor of Virginia. Colleton was a baronet and an expatriate royalist who had a large, slave-labored plantation in Barbados and who likely led the initiative to petition the king for Carolina in the first place. He died after the royal charters were issued but before the propagation of the *Fundamental Constitutions* of 1669. His son Sir Peter inherited his baronetcy, proprietorship, and plantation; and he would be immediately active in the affairs of the colony, acting by turns from London and Barbados.¹⁷ Ashley was at the time Chancellor of the Exchequer who would go on to become the (first) Earl of Shaftesbury, Lord Chancellor and, eventually, plotter taking flight. Of the eight, Ashley proved to be the dynamo of the Carolina project.¹⁸ In 1666, Locke became his personal secretary and, by 1668, was installed as the Secretary of the Lords Proprietors, a post he would hold until 1675. Ashley would also appoint him secretary to the new Council of Trade and Plantations. The eight proprietors had their own secretaries who would play roles, usually anonymously, in the revisions of the *Fundamental Constitutions*.¹⁹

The composition and competence of “the true and absolute lords and proprietors,” as they styled themselves, changed considerably over time. There were “nearly fifty” Lords Proprietors in all, during the six decades of proprietary

¹⁶ This brought the northern settlement around Albemarle Sound (in contemporary North Carolina) into the governing frame centered on Charles Town (in contemporary South Carolina). However, there was never to be unification between the two settlements, or anything like uniformity in actual governance.

¹⁷ See J. E. Buchanan, “The Colleton Family and the Early History of South Carolina and Barbados, 1646–1775,” (PhD diss., University of Edinburgh, 1989) on the Colleton family. On Sir John’s early initiative to secure the charter, see Charles H. Lesser, *South Carolina Begins: The Records of a Proprietary Colony, 1663–1721* (Charleston: South Carolina Department of Archives and History, 1995), 4.

¹⁸ K. H. D. Haley, “John Locke and the Shaftesbury Household,” and “Trade and Plantations,” chapters 11 and 12 in *The First Earl of Shaftesbury* (Oxford: The Clarendon Press, 1968), 202–65.

¹⁹ For example, “Sir John Colleton handled the affairs of the proprietorship himself with some help from scriveners, clerks, and his ‘man’.” Lesser, *South Carolina Begins*, 14.

Carolina.²⁰ After the original eight, each subsequent “true and absolute” lord received his share in the proprietorship by purchase or by inheritance (as, for example, did Anthony Ashley Cooper who became the Third Earl of Shaftesbury). Only a couple of them ever lived in or governed Carolina on site. From its inception, the *Fundamental Constitutions* allowed a resident proprietor to serve as governor, if he so wished; and one (Seth Sothell) served—disastrously—as governor of both the settlement at Albemarle Sound in the north of Carolina and, later, Charles Town in the south. Due to his misdemeanors and corrupt mal-governance, the seven other Lords Proprietors in London maneuvered to dismiss him in November 1691, claiming as their basis not the original but the version of January 1682.²¹ In the wake of the constitution’s suspension in 1693 and its resumption in 1698, the successor Lords Proprietors had come to display little of the zeal or expertise originally exemplified by Ashley or the Colletons. An informed indictment contends that, near the end,

Carolina was acquired by a group of men in England, of no great importance, only one or two of whom were at any time in public life or had had any experience in administration. . . . It is difficult to imagine a more unfit body for the administration of a colony than were these proprietors, particularly after 1700. Invested with supreme authority as rulers and landlords, they were chiefly interested in the profits of their proprietorship.

When these profits failed to match the fiscal and executive demands of colonial governance, “they were willing to give up their rights and surrender their charter to the crown.”²²

3. The Governance of an Aristocratic Republic

But until its bitter end, the *Fundamental Constitutions* continued to be proclaimed the Grand Model for what was in effect an *aristocratic republic* in a *colonial* setting.²³ It was in this sense that the intended instrument of Carolina’s government was a “hybrid constitution,” with its constitutive elements jostling for

²⁰ Powell, “Carolina in the Seventeenth Century,” 6. Also see Powell, *The Proprietors of Carolina* (Raleigh: Carolina Charter Tercentenary Commission, 1963).

²¹ William J. Rivers, *A Sketch of the History of South Carolina*, (Charleston, SC: McCarter, 1856), 430–33.

²² Charles McLean Andrews, *The Colonial Period of American History: The Settlements, III* (New Haven: Yale University Press, 1937), 224–25.

²³ I follow Goldie, “Unacknowledged Republic,” 178 in describing Carolina as an “aristocratic republic.” Compare “Gothic, class-structured republicanism” in Wilson, *Ashley Cooper Plan*, 69.

pre-eminence.²⁴ Republican elements were deemed necessary, in all versions, for “the Balance of the Government” (133, 165, 187, 209). From the beginning nearly to the end, there was to be a biennial Parliament (167, 135, 188, 211, 237).²⁵ Parliament was populated in part by elected representatives of the male freeholders, chosen by secret ballot (a rare method among the American colonies).²⁶ At first these members comprised the “Commons Chamber” (157), one of four parliamentary chambers; in 1698 they were reconstituted as members of “the lower House,” alongside a single upper house (235). Elected members of Parliament, in turn, were candidates for selection as “councilors” for the various high courts, and thus capable of serving on the “Grand Council,” which was to perform supreme executive functions, especially “peace and war, Leagues, Treaties, etc., with any of the Neighbour Indians” (142, 195, 217). The Lords Proprietors later called the Grand Council the “Senate of Carolina” when explaining to the Governor “the additions & alterations” they had recently made to the version of August 1682.²⁷

Other elements of republican self-rule included “Grand Juries” in which select freeholders participated alongside nobles in presenting to judges “such grievances, Misdemeanors, exigencies, or defects which they shall think necessary for the Public Good of the Country” (144, 176, 198, 220). Criminal trials were to be by juries operating under “consent of the Majority,” not unanimity (145, 177); and after 1670 no criminal or civil cause could be tried against a freeman “without a Jury of his Peers” (183, 205, 230, 237). The much-revised version of August 1682, furthermore, instituted a unique system for selecting juries. The names of eligible freeholders were to be “writ in Little pieces of parchment of Equal bigness and rolled up,” shaken together in a box, “and then, by a child under ten years old” the selected jurymen’s names were drawn out (221). Outliving the *Fundamental*

²⁴ The phrase “hybrid constitution” originates from Vicki Hsueh, *Hybrid Constitutions: Challenging Legacies of Law, Privilege, and Culture in Colonial America* (Durham: Duke University Press, 2010), though I interpret the elements of the hybrid somewhat differently, placing special emphasis on what I am calling “proprietary absolutism.”

²⁵ In 1699, triennial parliaments were introduced; and they were made law in South Carolina, starting with the Triennial Act of 1721.

²⁶ On balloting, see also “*Carolina* A draught of some laws,” MS Locke c. 39, fol. 2. This is a typescript translation of a manuscript, once owned by Peter Laslett, now held at the John Carter Brown Library in Providence, RI.

²⁷ It is named the “Senate of Carolina” in a letter from the Lords Proprietors to Governor & Council of Ashley River, 10 May 1682, in Rivers, *Sketch*, 396. The so-called “Grand Council” as described in the *Fundamental Constitutions*, never came about. But an actual working body consisting of the Governor, the proprietors’ deputies, and five elected freemen assumed that title in Carolina.

Constitutions altogether, “South Carolina adopted this system and preserved it until after the American Revolution.”²⁸

There were no stipulations for a standing army, the bugbear of (English and later American) republicanism.²⁹ Instead, all “inhabitants and freemen” between the ages of 17 and 60 were “bound to bear Arms and serve as Soldiers” if ordered by the Grand Council (151, 184, 205). The August 1682 version underscored the republican safeguards against a standing army, stating that “there must never be in Carolina a select militia, wherein one part of the people shall be armed and the other not, nor any standing forces in pay.” But in light of recent hostilities with Indians, it hedged its safeguard to read: “except only in such frontier garrisons” as appointed by proprietors and parliament (231).

These republican features were nonetheless the allowance or by-the-leave of the Lords Proprietors. The proprietors allowed more (and changed what they allowed) when complaints by settlers and demands by immigrants (especially the Scots and French Huguenots) pressed them to it. In the August 1682 version, for example, the longest article (#81) in it or any other version was added to address the balance of power. The political institutions reserved for the nobility were reduced from two chambers to one, thus raising the percentage of power exercised by “the chamber of the Commons” (224). Moreover, “only the parliament itself” could “suspend, remit, or mitigate the Execution” of any sentence (224). It was also given extended time to sit and conduct business, within a two-month period. The quorum of members needed for legislation was raised (in new #82), thus elevating the standing of the commons, being the largest chamber (225). And controversies over the election of members of parliament—of which there had been several before 1682, and many more to follow—were to be settled by “Juries drawn by lot . . . as well Nobleman as commons” (223). In its conclusion, the much-revised document raised the procedural bar in a further republican direction regarding the addition of “any new articles.” They must be “confirmed by the hands and seals of all the Proprietors, all the members of Grand Council, all the members of parliament two successive parliaments” before enactment (232). This new requirement followed the repeated claim of previous versions, as modified by a

²⁸ M. Eugene Sirmans, *Colonial South Carolina: A Political History, 1663–1763* (Chapel Hill: University of North Carolina Press, 1966), 37.

²⁹ “Republicanism” is used here to refer very generally to the various ideologies promoting or defending a republic. In this sense, with reference to a standing army, including Shaftesbury’s denunciation of “a King governing by an Army,” see J. G. A. Pocock, *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition* (Princeton: Princeton University Press, 1975), 410–28, esp. 413. For refinements in understanding republicanism, see Quentin Skinner, *Liberty Before Liberalism* (Cambridge: Cambridge University Press, 1998), and more recently, Rachel Hammersley, *James Harrington: An Intellectual Biography* (Oxford: Oxford University Press, 2019).

rather startling if pragmatic qualification: “These fundamental Constitutions . . . shall be, and Remain, the sacred and unalterable form and Rule of government of Carolina forever, *unless*, in the variety of human affairs, any future Exigency should Require any addition or alteration to be made in any part of them” (232, emphasis added).

Deserving notice, these further republican modifications to the *Fundamental Constitutions* of August 1682 nevertheless failed to appease a goodly number of colonists, including twelve members who were excluded from parliament in 1685. Still proclaiming allegiance to King and Lords Proprietors, they refused to subscribe to the revised text on the grounds that they had *already* subscribed and were bound *only* to the 1669 original. A constitution that changed so demonstrably in so few years, the excluded members declared, using the document’s own words against it, was “contrary to the nature of a fundamentall sacred and unalterable law.”³⁰ Given the unwarranted and unwelcome changes in the versions of 1670 and 1682, the new *Fundamental Constitutions* were neither legal nor binding, they and others proclaimed.³¹ What strange twists: allegiance was professed by the colonists to the Lords Proprietors and their original constitutions in order to challenge the Lords Proprietors and their current constitutions.

However much of a republic was imagined in the *Fundamental Constitutions*, it was certainly an *aristocratic* one. The royal charters expressly allowed the Lords Proprietors to confer upon select inhabitants “such marks of favour and Titles of honour as they shall think fit,” as long as they “be not the same” as those used in England (85, 100). There thus came about two novel ranks of “hereditary Nobility,” appearing in all versions of the *Fundamental Constitutions*. Members of the senior nobility were named “landgraves” (of German provenance), among the first named of which was John Locke.³² Members of the lesser nobility were to be known as “caciques” (inspired by a Taino and Kiawah title for “chief”). (There were also Lords of Manors with “all the Powers, Jurisdictions, and Privileges which a Landgrave or Cacique has,” within their own manors [136, 169, 190, 212]). In each of the original counties in the Carolina “province,” there was to be one landgrave and two caciques, each with “Name and Arms” attending their “Dignity.” Landgraves were to have “perpetually annexed” to their dignity four “Baronies” consisting of 12,000 acres of land per barony. Two such baronies were to go to each

³⁰ “Declaration of Twelve Members, November 20, 1685,” discussed in Sirmans, *Colonial South Carolina*, 43–47.

³¹ Also see related complaints circa May 1691 in an unsigned address by colonists to Lord Proprietor and Governor Seth Sothell. See Rivers, *Sketch*, 418–30. Roper finds such complaints “unctuous self-justification,” “remarkable even by the high standards of disingenuousness that prevailed in proprietary Carolina.” Louis H. Roper, *Conceiving Carolina: Proprietors, Planters, and Plots, 1662–1729* (New York: Palgrave Macmillan, 2004), 103, 105.

³² Along with James Carteret and Sir John Yeamans, Cheves, *Shaftesbury Papers*, 323.

cacique. These landholdings—staggeringly large, impossibly surveyed, and nowhere fully actualized—were in principle indivisible and to descend to “Heirs male” (135, 168, 189, 211). Within each barony, the respective Lord held personal “Court-leet” for trying all cases, save for murder. No landgrave or cacique could be tried for any criminal cause except in one of the eight proprietors’ “Supreme Courts,” and then only by “a Jury of his Peers” (169, 190, 213), namely, other colonial aristocrats. Acting collectively in Parliament, both landgraves and caciques had their own special chambers (146, 179, 200, 225), at least until the last version of 1698 placed both noble ranks into a single “upper house,” balancing the freeholders in the “lower House” (235). Whether two chambers or one, this still meant that a small handful of aristocrats had the same political power in Parliament as did the elected representatives of property-owning commoners. Sitting on the Grand Council was also an automatic prerogative for the colonial aristocracy, without election.

Even the republican features of the Grand Model were hardly democratic. Indeed, the preface to *all* versions plainly announced the intention to “avoid Erecting a numerous Democracy” (132, 165, 186, 208, 234). Women, it nearly goes without saying, were not enfranchised, though they could inherit noble rank “for want of Heirs Male” (169, 189, 212). With no boys in line, a few widows of Lords Proprietors inherited their husband’s proprietorships, notably Lady Francis Culpepper Berkeley. Moreover, a few widows of landgraves became landgraves in the same manner and in their own right. Bearing on women’s property rights, more generally, the Lords Proprietors promised land to women “servants” to encourage immigration. And in all but the 1698 version, special provision was made for a nobleman to grant ten acres of land to any newly-married “leetman or leetwoman” (169, 190, 212).³³

Property requirements underscored democratic exclusions just as much as lady proprietors, female landgraves, and leetwomen. To vote, “a Man” must have “no less than fifty Acres of Freehold.” Five hundred acres were required to stand for Parliament; 300 to perform the duties of a “Grand Jury-man;” and 200 to sit on “a Petty Jury” (145, 177-78, 199, 222). Other property requirements applied to lesser offices, as well. For example, to be a county “sheriff” required 500 acres; a “constable” needed 100; and to keep records of births, marriages, and deaths, a “register” had to surpass 50 acres (180, 219). There were no property requirements for paid lawyers, because there were to be no professional lawyers since “to Plead for Money or Reward” was “a base and vile thing” (145, 177, 222). Neither democratic nor republican was a related article that “absolutely Prohibited” anyone from offering up to the public any “Comments and Expositions on any part of these Fundamental Constitutions,” for such “serve only to obscure and perplex” (147, 179, 201, 225).

³³ Also see Lesser, *South Carolina Begins*, 285–86 on women’s property as noted in probate records, beginning with Margaret Jackson’s willing her estate, “whatever it be.”

No articulated justification was ever expressly offered for all the undemocratic property requirements in Carolina until the last version of 1698. In that last severely-reduced document (of 41 articles, down from the 125 in the previous one) it was finally declared that “All Power and Dominion is most naturally founded in Property” (235). It was “that Just Maxim of Government” upon which “the Balance of Power” depended (236).³⁴ The more “money paid” into the general assessment by any “County or place” (236), the more representation bought. Property requirements also brought to the surface the internal jostling of the aristocratic and republican features of the hybrid constitution. It reaffirmed the dignity of “such an Order of persons, made noble and Invested with great powers and privileges” (236). But it also sought to limit the powers and pelf of this order of aristocrats, and further empower property-owning commoners. These provisions and revisions went well beyond those articulated at greater length in the August 1682 version. It required that landgraves and caciques actually reside in Carolina to hold property and to receive baronies, which were reduced to 4000 acres. Aristocrats’ representatives in the newly-designated “upper house” of parliament were to be no more than “half the number of the Commons” (236). Commoners of whatever property-hold were now allowed to sit on juries trying noblemen when there was an insufficient number of aristocratic peers “legally had” (237). And the former restrictions on free commoners holding or claiming “any Land in Carolina, by Purchase or Gift or otherwise from the Natives” that had been in all previous versions of the *Fundamental Constitutions* (150, 183, 205, 230) disappeared. Trade with the Indians was now no longer expressly prohibited, presumably free and open to all.

In light of its “just Maxim,” the 1698 document also required landgraves and caciques to maintain a minimum amount of property to hold their rank—although it balked about exact amounts. Article #7 was declarative, but with unfilled blanks.

And since all Power and Dominion is most naturally founded in Property, and that it is reasonable that every man who is Empowered to dispose of the Property and Estate of others should have a Property of his own, whereby he is tied in Interest to the Good and Welfare of that place and Government whereby he is Entrusted with such Power, it is, therefore, Declared and appointed that no person shall be admitted, or shall continue to Sit or vote, in Parliament as a Landgrave [or Cacique] who has not actually taken up, and has in his possession, at least _____ acres, part of the land granted him in his Patent, and _____ Slaves, or in the possession of his Tenants

³⁴ Some scholars—among them, H. F. Russell-Smith, *Harrington and His Oceana: A Study of a 17th Century Utopia and Its Influence in America* (Cambridge: Cambridge University Press, 1914); Parker, *North Carolina Charters*, 128; Sirmans, *Colonial South Carolina*, 10; Lesser, *South Carolina Begins*, 427; Hsueh, *Hybrid Constitutions*, 55–82; and Wilson, *Ashley Cooper Plan*, 104—trace this maxim to James Harrington.

_____ acres of Land, and whose real and personal Estate shall not be worth at least _____ pounds (235).³⁵

This last, incomplete version of the *Fundamental Constitutions* also imagined scenarios where aristocrats fell beneath an unstated minimum, disqualifying them from Parliament. And should the aristocrat “continue Defective” in property threshold or simply being absentee for forty years, then he would “be for ever utterly Excluded” from Parliament, and his dignity and title “Cease and be utterly lost” (236). Notably, the electoral fate of commoners—now delimited to those who were “a Householder, and has a family” (235)—was also held in abeyance. Blanks were left for the minimum number of acres and pounds sterling needed to vote. All these blanks in 1698 were presumably to be determined in the future by those elite eight who were chartered “the true and absolute lords of Carolina.”

4. Proprietary Absolutism as Colonial Ideology

The original pronouncement by the Lords Proprietors to be “the true and absolute lords of Carolina” (132) made *proprietary absolutism* the avowed ideology informing the *Fundamental Constitutions*. “There was already a powerful ideology of absolutism available,” given Restoration political thought associated with the Stuart monarchy.³⁶ The Royal Charters of 1663 and 1665 granted to the Lords Proprietors, by letters patent, absolute power and authority over “all the Soil, Lands, Fields, Woods, Mountains, Farms, Lakes, Rivers, Bays and Islets” of the huge province (77, 92). Every one of the particular items of proprietary power and authority lodged in the two charters was conveyed in absolutist language when granted “to all and every of them” (84, 100), whether making laws, holding court, exacting punishments, granting pardons, encouraging immigration, transporting resources, importing commodities, catching “Whales, Sturgeons, and other royal fishes,” trading with natives, surveying lands, laying out towns, erecting manors, quarrying minerals, salvaging shipwrecks, collecting taxes, and/or subinfeudating tenants, allowing them tenants of their own.³⁷

³⁵ Following Parker, *North Carolina Charters*, 325: “A blank in the manuscript is indicated thus: _____.”

³⁶ John Marshall, “Whig Thought,” in *The Final Crisis of the Stuart Monarchy: The Revolutions of 1688–1691 in their British, Atlantic, and European Contexts*, ed. Tim Harris and Stephen Taylor (London: The Boydell Press, 2015), 58; on Restoration political thought, see Mark Goldie, “Restoration Political Thought,” in *The Reigns of Charles II and James VII and II*, ed. Lionel K. J. Glassey (London: Basingstoke, 1997), 12–35.

³⁷ The English law statute of *quia emptores terrarum* from the reign of Edward was judged “notwithstanding” for the Lords Proprietors in Carolina, thus allowing them to permit land sales or gifts unfettered by common law restrictions (85, 100).

Proprietary absolutism also entailed creating titles of nobility, advowing ministers of churches, permitting religious liberties, establishing ports, building forts, raising militias, manning navies, and imposing martial law. Being “situate among so many barbarous nations,” moreover, the Lords Proprietors also had conferred upon them the awesome power to “make war” against “savages, and other Enemies.” Indeed, cribbing Grotian just-war doctrine, it explicitly allowed them “to vanquish and take them, and being taken, to put them to death, by the law of war, or to save them, at their pleasure” (86–87, 102). In all these matters, the Lords Proprietors held, among other majestic phrases, “absolute power and authority” (83, 98).³⁸ English legal precedent backed their absolutism since, according to the charters, the Lords Proprietors were granted all “Rights, Jurisdictions, Privileges, Prerogatives, Royalties, Liberties, Immunities, and Franchises of what kind soever” within and over Carolina. And of these, furthermore: “To have, use, exercise, and enjoy, and in as ample manner as any Bishop of Durham, in our Kingdom of England, ever heretofore have held, used, or enjoyed, or of right ought or could have, use, or enjoy” (77, 92).

The absolutism conveyed in the charters and backed by the Bishop of Durham clause was not utterly limitless. It was hedged around most obviously by the sovereignty of the crown. Laws made by the Lords Proprietors were also to be “consonant to reason and, as near as may be conveniently, agreeable” to established English law (80, 95). But the interpretation and implementation of these guarded limits still fell to the Lords Proprietors themselves. (How often might it be convenient *not* to follow English legal precedent; and what was not in *some* way or another consonant to reason?) Even then, the charters made clear that there was to be no royal oversight of such matters. The absolutism, moreover and more importantly, was laid out discursively; it was the avowed ideology or political theory of a discourse about the prospects of absolute governance in Carolina. It was never a statement of fact about how polity and social life were actually governed. In this regard, it was of a piece with the Stuarts’ (and especially Charles II’s) claims of royal absolutism in England. But matters were never as actually absolutistic as the royal and proprietary discourses maintained. In England, there were the considerable political activities of the officially “excluded,”³⁹ much less the extreme actualities of civil war and regicide. In Carolina, there was the sheer novelty of the undertaking at so great a distance from

³⁸ Other absolutist locutions were used in the charters, as well: “full and absolute power;” “full power and absolute authority;” “full power, liberty, and license;” “full and free license, liberty, and authority;” and “full and absolute license, power and authority.” John Oldmixon, *The British Empire in America* (London, 1708), 330 claimed the first charter granted the Lords Proprietors the “Power of Life and Limb and everything necessary to an absolute Propriety.”

³⁹ See the essays in Tim Harris, ed., *The Politics of the Excluded, c. 1500–1850* (New York: Palgrave, 2001).

England with no guarantees of success in governing absolutely, not to mention Indian attacks, foreign threats, and settler resistance.

The Bishop of Durham clause was the principal constituent of the absolutism proclaimed in the Royal Charters and so the *Fundamental Constitutions*. It hearkened to the eleventh century when English borderlands like the counties of Durham, Chester, and Lancashire were granted sub-regal, quasi-sovereign powers as reward for and complement to their provision of military defense. In the *Institutes*, Sir Edward Coke proclaimed the Bishop of Durham (and the palatines of the other counties) “kinglike.”⁴⁰ The Bishop of Durham clause was thus not new to the charters of Carolina or even the colonial New World. Indeed, it had been on royal offer in the very first (short-lived) Carolina charter (65) granted to Robert Heath in 1629. It also backed the extensive powers granted in other charters of proprietary colonies, particularly those of Maryland in 1632 and earlier in Avalon (Newfoundland) in 1610 and 1623.⁴¹ (So extensive a grant, drawn from English history, would come to an end prior to the issuance of the Pennsylvania charter of 1681 which otherwise granted wide powers to the lone proprietor, William Penn).⁴² The Bishop of Durham clause was thus one important means by which the Stuarts handsomely rewarded loyal subjects who were financially able to undertake colonial adventures and expand trade. It also exerted an imperial if removed presence through proprietary agents acting on frontier borders that faced imminent hostilities with native peoples or the Spanish and French. The invocation of the clause for Carolina in the 1660s was the first such issuance of Charles II after the Restoration, returning to his father’s model before the Protectorate.⁴³ Unique

⁴⁰ Edward Coke, *The Fourth Part of the Institutes of the Laws of England* (London, 1644), 205, quoted in Hampton Carson, “The Genesis of the Charter of Pennsylvania,” *Pennsylvania Magazine of History and Biography* 43 (1919), 318–19. Under the Durham clause, the Lords Proprietors were “virtual monarchs.” Ken MacMillan, *Sovereignty and Possession in the English New World: The Legal Foundations of America, 1576–1640* (Cambridge: Cambridge University Press, 2006), 98. William Stubbs, *The Constitutional History of England, in its Origin and Development*, (Oxford: Oxford University Press, 1874), 1:363 saw the palatinate franchise as an *imperium in imperio*, the contested phrase in the debates between Federalists and Antifederalists over the ratification of the U.S. Constitution.

⁴¹ For Maryland, see Tim Thornton, “The Palatinate of Durham and the Maryland Charter,” *American Journal of Legal History* 45 (2001): 235–55.

⁴² For Pennsylvania, see Carson, “Genesis of the Charter”; Jean Soderlund, ed., *William Penn and the Founding of Pennsylvania: A Documentary History* (Philadelphia: University of Pennsylvania Press, 1983); and Andrew Murphy, *William Penn: A Life* (New York: Oxford University Press, 2019). Locke was well aware and critical of Penn’s *Frame of Government* (London, 1682). See fragment on “Pennsylvania Laws,” in *A Letter concerning Toleration and Other Writings*, ed. Mark Goldie (Indianapolis: Liberty Fund, 2010), 182.

⁴³ For the languages of empire under the Protectorate, see David Armitage, “The Cromwellian Protectorate and the Languages of Empire,” *Historical Journal* 35 (1992): 531–55.

among the colonial charters, it extended its grant of absolute power and authority to eight proprietors, not just one.

When unleashing their *Fundamental Constitutions* in 1669 and in all subsequent versions, the Lords Proprietors invoked in the very first sentence the spirit and most of the letter of the Bishop of Durham clause. However, “County Palatine of Durham” replaced “Bishop of Durham” as referent, for there was no Bishop of Carolina and indeed none of the eight proprietors were clerics.⁴⁴ This replacement distinguished the text if not the juridical import of the *Fundamental Constitutions* from the charters, as did its silence on “agreeableness” to English law or any “constancy to reason.” The Lords Proprietors simply left off these not-negligible but unenforceable limits to their chartered claim of proprietary absolutism. However, being eight and sharing absolute power and authority, they nonetheless had to create an *office* of Palatine for *one* person among them to hold (which changed the meaning and referent of “palatine”).⁴⁵ And this occasioned one of the earliest revisions of their governing document. The first version called for the palatine to be “chosen, by themselves” (132), and to serve for life, but it was revised in the printed 1670 version to read (and henceforth remained) “the eldest of the Proprietors” (153, 165, 186, 208). The proprietor “eldest in age” also figured atop the “rules of precedency” in the versions of 1670 and the pair of 1682 (185, 206, 232), save the final one of 1698 that dropped the rules altogether. The August 1682 version belatedly clarified succession, such that “upon the decease of the Palatine, the Eldest of those who were the proprietors” *originally in 1669* was to become palatine, not the heir male of the deceased palatine or some recently-joined, more elderly proprietor. When, of the original eight, “none of them are living” (208, emphasis added), the eldest among the remaining newer proprietors would be elevated to the office of Palatine.

The Lords Proprietors—particularly the Palatine—held the most important posts and reins of government within Carolina’s aristocratic republic. They ruled from London through their chosen deputies in Carolina. As “great Officers,” proclaimed in all but the last version, each presided over a “supreme Court” with different substantive jurisdictions, as Chancellor, Chief Justice, High Constable, Admiral, Treasurer, High Steward, and Chamberlain. The Palatine’s Court perched above them all, consisting of the palatine and his fellow proprietors (139–41). For

⁴⁴ Besides the word “palatine” in “county palatine,” there was another change in the language of political geography. In the *Fundamental Constitutions*, Carolina was no longer deemed to be a “county,” as it had been at first (for example, 121), but rather a “province” consisting of twelve counties initially (167), the first ones of which were named after Lords Proprietors—Clarendon, Craven, and Colleton. Counties, in turn, consisted of eight “seigniories” (one per proprietor), eight “baronies” (distributed among the landed nobility), and four “precincts” divided into six “colonies.”

⁴⁵ This initiated a history of semantic change. See Albert Matthews, *The Word Palatine in America* (Cambridge, MA: John Wilson & Son, 1905).

reasons nowhere recorded, this entire juridical apparatus was abandoned in the 1698 version, amidst a broader reorganization of the government (which was still a vision, not an actual functioning order). It substituted a single “Proprietors’ Court” for the previous eight courts, though in effect it was the Palatine’s Court renamed, while throwing over the other seven.

In all versions of the *Fundamental Constitutions*—including that of 1698—the Palatine and three other proprietors on the Palatine’s (or Proprietors’) Court were needed to make quorum in order to conduct business. This proprietary quorum was needed to provide “consent” for the widest imaginable range of governmental powers: to call Parliaments, pardon offenses, dispose of “public Treasure,” and “have a Negative upon all Acts, Orders, Votes, and Judgments of the grand Council and the Parliament” (139, 171, 192, 214, 234). With full veto powers, the proprietors also formed their own chamber in Parliament, above those representing the nobility and the commons, and they were seated automatically on the Grand Council. The latter body was presided over by the Palatine or his deputy, usually the Governor, who himself was appointed by the Lords Proprietors and answered to them alone.

Naturally, grand material benefits were promised to the Lords Proprietors as a constituent pay-off of their absolutism. In the first four versions of the *Fundamental Constitutions* each proprietor was granted a “seigniory” of 12,000 acres in *each* county (133, 165, 186, 209). The last version of 1698 finally curtailed this amount, doubtless to ameliorate increasingly loud settler complaints, by making each seigniory in each county “Four thousand acres, or there-about” (237). These were still staggering figures. Moreover, until the 1698 version, the *Fundamental Constitutions* demanded that, after 1689, “any Freehold in Carolina” must pay to the Lords Proprietors a “Chief Rent” for each acre of land they owned, in “fine silver” equivalent to an English penny (151, 183, 205, 230). The proprietors pledged not to take away any freeholders’ land, but they threatened periodic surveys “at any time” to determine exact acreage that owed rent. And far more natural bounty was claimed by and for the Lords Proprietors than ever was made by and for the Bishop of Durham or other county palatines in England. Starting with the very first version of 1669, the Carolina establishment required thus: “All wrecks, Mines, Minerals, Quarries of Gems and precious stones, with whale fishing, and one half of Ambergris, by whosoever found, shall wholly belong to the Lords Proprietors” (151, 184, 205, 230). An early revision added “Pearl fishing,” for good measure (151).

So, while there were distinctively republican features in the hybridized plans for Carolina, as modified by aristocratic provisions, black letter law made the Palatine and Lords Proprietors supremely authoritative over population, land, and natural resources, as well as law and government. And, in an oath-taking age, sworn allegiance was a mandate. An oath that “Subscribed these Fundamental Constitutions,” taken before a Register, was required of all “Aliens” who wished to be naturalized (thus all incoming settlers), as well as all owners of property, all office-holders, all persons who merely have “protection and benefit of the Law

there” (184, 205, 231), and even all members of Parliament—including Palatine and Proprietors—at the opening of each session (146, 178, 199, 223, 237). Naturally, the oath thereby required submission to the Lords Proprietors—as to their absolute power and authority—in this form of 1669 and 1670:

I, A. B., do promise to bear Faith and true Allegiance to our Sovereign Lord King Charles the Second; and will be true and faithful to the Palatine and Lords Proprietors of Carolina; and, with my utmost power, will defend them and maintain the Government, according to this Establishment in these Fundamental Constitutions (151, 184).

This oath was modified in the January 1682 version—in the aftermath of the Exclusion Crisis in England—to include being faithful to Charles II *and* his “heirs and successors,” as well as to “the Palatine and Lords Proprietors of Carolina” whose “Rights” must be defended (231). The final form of the oath in 1698, four years after the death of Queen Mary, naturally dropped reference to any “heirs” of “our late Sovereign Lord King” Charles II (151, 184, 205, 234), pledging only to “our Sovereign Lord King William” and to the Lords Proprietors, as well as to *their* “heirs and Successors” (240).

Succession and inheritance were thus as much a concern in the colonial imaginary of the *Fundamental Constitutions* as in English society and polity, generally. All versions—save the last much-shortened one of 1698—explicitly grounded and stabilized its colonial aristocratic republic on lines of heredity. Proprietors, aristocrats, lords of manor, and freemen would have their rank and place in Carolina bestowed upon their heirs, starting with the eldest of “Heirs male” (with various complex rules should there be no males in line). Even the imagined class of “leetmen”—a lower order of more-or-less permanently indentured servants at first called “vassals”⁴⁶—passed on their status, hereditarily: “All the Children of Leet men shall be Leet men, and so to all generations” (137, 169, 190, 212). (Reference to “leetmen” disappears in the 1698 version, but “slaves” remain). Intriguingly and investment-consciously, the eight proprietors circa 1669 chose to lag any formal requirement regarding their *own* heirs until “after the year 1700” (133, 166, 187, 209). They thus granted to themselves the “power to relinquish, Alienate, and dispose to *any* other person, his Proprietorship” (133, 165, 187, 209,

⁴⁶ There has been debate about how “feudal” the Carolina regime was intended to be, given this lower order of indentured servants. Goldie is surely correct in saying that “feudalism” is “not an accurate description of its regime,” on paper or in practice. See Goldie’s editorial remark in Locke, *Political Essays*, 161. But the earlier use of “vassal” (and not “leetman”) in the first variation of the 1669 version and the repeated phrase later—“Vassal or Leetman” (136, 168, 189, 211)—is suggestive how the Lords Proprietors imagined this class in light of the inherited terms of English history. The class, so named, would appear to be Shaftesbury’s invention or introduction. He was in any case the only Lord Proprietor on record using the term in official correspondence, doing so when mandating to his agent Andrew Percival the use of “leetmen” for his designed (but unrealized) seignory on “Lock Island.” Cheves, *Shaftesbury Papers*, 443–45.

emphasis added). So, in the very beginning, the hereditarian manorial society envisioned for a future Carolina accommodated the original Lords Proprietors' immediate pecuniary interests during their own lifetimes. They could sell their proprietorship to "successors," if they chose to do so, whether or not they had heirs of their own.

So, the phrase "heirs and successors" was all over the governing document in its five versions, as it had been in both royal charters. And when, in the print version of 1670, the phrase was somehow omitted from the oath of allegiance to the Palatine and Lords Proprietors of Carolina, a painstaking secretary—in fact, John Locke—wrote "heirs & successors" with his characteristic ampersand directly onto the copies before they were distributed.⁴⁷ Secretary Locke also corrected a related matter about birth-order inheritance, striking "st" and adding "r" to make "youngest" read "younger Sons of Proprietors, the eldest first, and so in order" in the 6th rule of precedence. Attending the question of inheritance in the text and subsequent revisions was a concern to fix the fate of heirs who were minors. A minor who inherited a proprietorship was to have his affairs in Carolina overseen by a "deputy" appointed by "his Guardian" in England (143, 175, 196, 218, 235). A *proposed* (but unrealized) revision (preserved on a print copy of the 1670 version)⁴⁸ would have shifted guardianship and lowered the age: "if ye proprietor is a mynor the Grand Counsell shall manage his affaires till hee is 18 yeares ould." But the Lords Proprietors rejected or overlooked the proposed revision—that power being theirs, too. Minority age stayed at 21, with guardianship deputed from England.

Last but hardly least of the tenets of proprietary absolutism, the royal charters' exemption of Carolina from the statute of *quia emptores terrarum* (xvii, 85, 100, 129) granted to the Lords Proprietors the powers of subinfeudation, namely, the right to subdivide their lands and let some of their tenants take tenants of their own. Analogously to their powers of subinfeudation, the Lords Proprietors went further, taking license beyond the royal charters to bestow "absolute power and

⁴⁷ See Locke's hand on extant copies at the Newberry Library, The John Carter Brown Library, the New York Public Library, and the Public Record Office. Locke's handwritten addition also appears in copies of the 1670 printing of the *Fundamental Constitutions* in the Bodleian Library (Ashmole F4, 42), the British National Archives (CO/1/25/13, fols. 19–32), and the Library of Congress (JK1403. 1669). (Thanks to the reviewer for providing these references to important primary material). Locke's ampersand looks (to me) like an over-sized letter "e" with a swooshing tail, perhaps to capture the French "et" or his rendition of the Greek *rho*. For the latter, see the "Textual Introduction," to Locke, *An Essay concerning Toleration and Other Writings on Law and Politics, 1667–1683*, ed. J. R. Milton and Philip Milton, The Clarendon Edition of the Works of John Locke (Oxford: Clarendon Press, 2006), 246.

⁴⁸ Written in the margins of the copy of the 1670 version at the Newberry Library. Ayer 150.5 .C25 L7 1669.

authority” onto *others*.⁴⁹ That is, they allowed some persons over whom they held absolute power and authority to hold absolute power and authority over yet others. They extended their proprietary absolutism down the political and social order, as it were, further modifying the colonial aristocratic republic that Carolina was intended to be. In their commission to the first appointed governor, William Sayle, five days after sealing the first *Fundamental Constitutions* on 21 July 1669, the proprietors were politically and terminologically explicit about this. Dictating as “we the Lords & absolute Proprietors of the Province,” they placed their trust and confidence in the governor “for the faithful management of the power & authority by us to you.” They specified that three of the ten members of the Grand Council were to be chosen by them as their “Deputies” and for those deputies to have “full & absolute power & authority for us & in our names.” This held for the selling or conveyance of land, as well as other governmental matters touching upon the proprietors’ “Interest & Dominion in the Territory.” Invoking “our fundamental constitutions & form of government,” the Lords Proprietors further empowered the governor, should he depart or be absent from Carolina, to appoint a successor with “as full, large & ample powers as we . . . have given” to him, by their commission.⁵⁰ This downward empowerment was echoed in articles in the various versions of the *Fundamental Constitutions*, though stated somewhat less forcefully therein (143, 175, 196, 218, 235). However, in *most* versions and variations, the *Fundamental Constitutions* was altogether *more* forceful going down the social ranks, when conveying the Lords Proprietors’ absolute power and authority *over* freemen, *to* said freemen *over* their *slaves*: “Every Freeman of Carolina shall have absolute power and authority over his Negro slaves, of what opinion or Religion soever” (164, 183, 204, 240). It was an awesome extension of absolutism, passed on from Lords Proprietors to the owners of slaves.

5. Slavery and Religion among the Carolinians

Slaves are mentioned in all versions of the *Fundamental Constitutions of Carolina*, starting with the first variation of the original 1669 one. Therefore, slavery was planned *before* there were slaves actually in the Carolina colony at Charles Town,

⁴⁹ The Royal Charters already came close to this offer or prerogative in matters of trade when they granted not only to the Lords Proprietors but “to all Inhabitants and dwellers . . . full power and absolute authority to import or unlade . . . all Merchandises and Goods whatsoever” (82, 97). The Lords Proprietors did *not* convey this power and authority to the settlers in the *Fundamental Constitutions*. Instead, they placed restrictions on “whosoever shall lade or unlade any commodity,” as well as a hefty fine of ten pounds sterling per ton for violators (181, 202, 227). The 1698 version was silent on the matter.

⁵⁰ Cheves, *Shaftesbury Papers*, 118–19.

on whatever scale intended.⁵¹ This was “natural” enough planning given that slavery already existed in Barbados and other English colonies. As noted above, Lords Proprietors Sir John and then Sir Peter Colleton owned and worked slaves on their Barbadian plantation, and Ashley had earlier stakes in the Caribbean slave trade. In combination, they were likely behind the insistence that slaves be constitutionally acknowledged in the governing document. Slaves of African heritage were in any case transported from Barbados to Carolina by future landgrave and governor Sir John Yeamans almost immediately after the founding of the colony.⁵² Slavery would then expand considerably through the six decades of proprietary rule—and well beyond.

In particular, slaves were mentioned in a definitive article in the *Fundamental Constitutions* that, except for insignificant differences of spelling and punctuation, endured from the beginning to the end of the document’s life, including in the radically reduced last version of 1698. The principal purpose of the article concerned church membership, thereby systematically connecting matters of slavery to those of religion, as did its infamous companion proclaiming a freeman’s power over his Negro slaves “of what opinion or religion soever” (164, 183, 204, 240). The article guaranteed elective church membership to *all* inhabitants of Carolina, regardless of rank in the social order, on pain of being religiously uncharitable. In 1669, as in 1670, 1682, and 1698, it read (here #107 of the printed version of 1670):

Since Charity obliges us to wish well to the Souls of all Men, and Religion ought to alter nothing in any Man’s Civil Estate or Right, It shall be lawful for Slaves, as well as others, to Enter themselves and be of what Church or Profession any of them shall think best, and thereof be as fully Members as any Freeman. But yet, no Slave shall hereby be exempted from that Civil Dominion his Master has over him, but be in all other things in the same State and Condition he was in before (150, 183, 204, 229, 239).⁵³

The charity of the Lords Proprietors was perhaps genuine enough. Regardless, the royal charters had given them “discretions” to allow diverse churches “for Conscience sake” and liberty “in matters of Religious concernment” (88, 104). But well-wishing to the souls of slaves had no bodily complement. Dominion was reinforced in no uncertain terms. With its echo of 1 Corinthians 7, slaves were to remain slaves, whatever their church or religion.

⁵¹ There is debate whether Carolina was intended to be a “slave society” or, less structurally, a “society with slaves.” For the latter, see Wilson, *Ashley Cooper Plan*, 42.

⁵² The captain of *The Carolina*, Henry Braine, may have brought aboard a slave before Yeamans’s slaves arrived. See Cheves, *Shaftesbury Papers*, 215n1.

⁵³ Also see Green, “The South Carolina Archives,” 99.

The endurance of the “charity” article—and therefore reference to “slaves”—was matched by *most* of the other articles regarding religion. Alongside the modified Bishop of Durham clause and the avowed avoidance of democracy, the sixteen (or so) of them formed the most stable core of the *Fundamental Constitutions* over the years. Four remained literally the same, word-for-word. Another nine exhibited minor but not insignificant changes. Three others, however, went through substantive changes of some importance. Taken together, some of these were protective and tolerant; others, regulative and punitive. In these differing edicts, the utopian imaginary of the *Fundamental Constitutions* proved itself complex and complicated. “Liberty” of “different opinions concerning matters of religion” was enshrined (148, 181, 203, 228), but controlling prohibitions were pervasive. Unlike slaves, whose religion changed nothing, a white Carolinian’s civic identity and enfranchisement depended on embracing certain beliefs—and disavowing others.

Monotheism was the stated theological minimum that must be embraced and acknowledged by any inhabitant of Carolina. The first of the sixteen or so religious articles in all versions of the *Fundamental Constitutions* dictated that everyone must “acknowledge a God, and that God is publicly and solemnly to be Worshipped” (148, 181, 202, 227, 238). Some theological tinkering came about in 1682. The January version added “and that there is a future being after this Life” (202), and the August version promised that this afterlife would be one “of happiness or misery” (227). Not only were atheists (and mortalists) to be excluded from Carolina, so too were political dissidents. Another permanent article made this perfectly clear. “No person whatsoever shall speak any thing in their Religious assembly Irreverently or seditiously of the Government or Governor or of State matters” (150, 182, 204, 229, 239). Any assembly pretending to religion that violated the “Rules” in the sixteen articles would not be considered churches at all, but “unlawful meetings, and be punishable as other Riots” (150, 183, 204, 230, 239).

While a plurality of churches was to be allowed, each one of them was required to have “a Book” stipulating their “Terms of Admittance and Communion” and subscribed to by each and every member. This book, moreover, was to be “kept by the public Register of the Precinct where they reside” (149, 182, 203, 228, 238). Every person had to be enrolled and “recorded” in “one, and but one” church. Anyone over the age of seventeen who was not recorded of a church was an outlaw, without “benefit or protection of the law” (149, 182, 203, 229, 239). This article was included in every version of the *Fundamental Constitutions*, as was a trio of prohibitions whose design or effect was to allow latitude and protection for conscientious belief and worship. Carolinians were not to “disturb or molest” any religious assembly; use “abusive language” against any churchgoer; or “persecute” others for their “way of worship” (150, 183, 204, 229, 239).

Toleration, within limits, was in effect colonial policy in every version save the last of 1698. The relevant article began:

But since the Natives of that Place, who will be concerned in our Plantation, are utterly Strangers to Christianity, whose Idolatry, Ignorance, or Mistake gives us no right to expel or use them ill; and those who remove from other Parts to Plant there will unavoidably be of different Opinions concerning Matters of Religion, the liberty whereof they will expect to have allowed them, and it will not be reasonable for us, on this account to keep them out.⁵⁴

The article went on further in this regard, referring to “Jews, Heathens, and other Dissenters from the purity of Christian Religion” (149, 181, 203, 228).⁵⁵ Upon pain of offending “Almighty God” and proving “great scandal to the true Religion,” they too should “not be scared and kept at a distance.” Their inclusion was to be allowed, even welcomed. For if well-treated and drawn closer, they might be successfully evangelized to embrace “the Truth” of “the Gospel” by the “convincing Methods of gentleness and meekness” (149, 181, 203, 228).⁵⁶ Most importantly, all these Others were not to be exempted from the ecclesiological point of the article. Just as a Christian freeman, any denizen of Carolina—whether native, slave, Jew or Dissenter—could join or form any church or profession they chose, as long as there was a minimum of seven registered congregants and a proper name given to it. The latter two requirements (regarding the seven who must have a name for their church) were spelled out even in the last version of 1698 (238), keeping up something of the spirit of toleration. However, the rest of the article was abandoned in 1698 for reasons one can only guess, say, to mollify settlers who chafed at any decree dictating how “the Natives of that place” should be regarded or treated.

A pair of articles—one added, the other seriously revised—explicitly trended away from toleration, however, even in the earlier versions of the *Fundamental Constitutions* that sought to protect the natives. The revised article concerned “the terms of Communion” required of any church or profession. Not only was it requisite to acknowledge (1) that there is a God (2) who was to be publicly worshipped, but also that any church or profession must (3) “Set down the External way whereby they witness a truth, as in the presence of God.” In the four variations of the original version of 1669, the third point continued: “whether it be by laying on hands and Kissing the Gospel, as in the Protestant and Papist

⁵⁴ When granting the colony, the Royal Charter of 1663 located it “in the parts of America not yet cultivated or planted, and only inhabited by some barbarous People who have no knowledge of Almighty God” (76).

⁵⁵ Reference to “Jews, Heathens” *et al* first appeared in the second variation of 1669.

⁵⁶ See Jack Turner, “John Locke, Christian Mission, and Colonial America,” *Modern Intellectual History* 8 (2011): 267–97.

Churches, or by holding up the hand or any other Sensible way" (149). Given the turbulence about English Catholicism at the time and Ashley's particular vehemence against popery,⁵⁷ the inclusion of "Papist Churches" in the colonial imaginary was quite remarkable and further sign of an initial policy of toleration towards all creeds, if only as a solicitation of settlers. Within a year however, this changed dramatically. Not only was the "Bible" substituted for the "Gospel," but reference to "Protestant and Papist Churches" was replaced by "the Church of England" (183) in article #100 of the 1670 version.⁵⁸ And the additional new article (#96) made even clearer the Lords Proprietors' intention to establish the Church of England in the colony. "Being the only true and Orthodox, and the National Religion of all the King's Dominions, is so also of Carolina, and therefore, it alone shall be allowed to receive public Maintenance by Grant of Parliament" (181). Government-funded maintenance included the building of Anglican churches and the upkeep of episcopalian divines. Though other churches were allowed to exist, none was to be publicly maintained or officially propagated in the same way as "the Religion of the Government of England," subsequent versions made perfectly clear (202, 227, 238).

An Anglican establishment brought further pressure against "papist churches," though no version of the *Fundamental Constitutions* expressly prohibited doctrinal Catholicism. In the much-revised version of August 1682, public maintenance of the Church of England was sustained, though it now exempted any "rents" or "chargeable" contributions to those believers whose convictions were "not conformable to the [Anglican] church" (227). In place of the previous establishmentarian requirements, the revised document now allowed that other churches could tax their "own members" for the maintenance of "their public ministers." This was true of every congregation of Christians, "not of the communion of the Church of Rome" (227). This article was directly followed by another forbidding any "ordained minister" to serve in Parliament "or have any civil office" at all (228).⁵⁹ Neither priests nor Catholic churches could survive such strictures, surely as intended. Other proprietors or their editorializing secretaries *would* have gone much further. "Any man becoming a papist shall be banished and

⁵⁷ See John Miller, *Popery and Politics in England, 1660–1688* (Cambridge: Cambridge University Press, 1973).

⁵⁸ There was also the lesser but not uninteresting editorial shift from "hands on *and* kissing the Gospel" to "hands on *or* kissing the Bible" (emphasis added).

⁵⁹ This ordinance in principle prohibited clergy, including Anglican clergy, beyond Catholic priests, of course. This may have been intended to appease and draw dissenters. It was also at odds with an assurance that some proprietor or secretarial editor wished to be incorporated but was not. "No man for his religion to be debarred from being chosen to any part of ye Government." Written in the margins of the copy of the 1670 print version at the Newberry Library. Ayer 150.5 .C25 L7 1669.

his estate forfeited to ye next protestant haere for want of such to ye proprietor no Papist shall bee an inhabitant.”⁶⁰

The religious article that experienced the greatest volatility over time was none other than the infamous one granting freemen “absolute power and authority” over their slaves, no matter how Christian or monotheistic they might be. Vexed and never-settled, it came and went, revised or restored in the many different variations and versions of the *Fundamental Constitutions*. Indeed, the first variation of the initial 1669 version neither contained such an article nor made any reference to “Negro” slaves. It did, however, offer up the very first articulation of the “charity” article concerned for the souls of “slaves, as well as others,” including any “inhabitant or vassal.” The wording of the “charity” article, as already noted, would persist unchanged across the historical arc of the colonial document, down to the final truncated version of 1698. However, the second variation of the 1669 original unveiled a major and even horrific addition to (and separate paragraph within) the “charity” article. The article of the first variation was broken into two paragraphs, but worded as before and would always be. But the new third paragraph called up the most brutal features of a master’s dominion. In anticipation of the infamous article, it read, even more severely:

Any freeman of Carolina, who hath Slaves, shall have an absolute arbitrary Power, over the Lives Liberties and Persons of his Slaves, and their Posterities, to punish them with Death or otherwise, whom and for what cause soever he shall think fitt.⁶¹

The master’s power was thus not only absolute but “arbitrary,” including the power of drawing death down upon his slave for any reason whatsoever. The addition did not even gesture toward the just-war doctrine that had featured in the Royal Charters in reference to the Lords Proprietors’ “power” (“by themselves or their Captains”) “to vanquish and take” captives for slaves (86, 102). Nor did it otherwise give an account how freemen came by their slaves or why or how one became a slave in the first place in order to deserve such a fate. It also made slavery in effect an *institution* by including “their Posterities.” And it did not racialize

⁶⁰ Written in the margins of the copy of the 1670 print version at the Newberry Library. Ayer 150.5 .C25 L7 1669. Of less gravity but significant nonetheless was sniping at the Pope. The author of the discourse on Carolina (whom I think was Locke) praised the *Fundamental Constitutions* for the “greatest latitude” of “*Liberty of Conscience*” and for its design to avoid contention over “Ceremonies.” Religious contention “eats out the great Cement of human conversation, *Charity*, and cannot be found in any one, who hath but modesty enough to think himself less than a *Pope*, and short of *Infallibility*.” [Locke?], “Carolina,” in *America* by Ogilby, 212. For discussion see James Farr, “Locke, ‘Some Americans,’ and the Discourse on *Carolina*,” *Locke Studies* 9 (2009), 19–94.

⁶¹ MS copy of the “Fundamental Constitutions” (1669), Ford Collection, New York Public Library, art. #73.

slavery as pertaining only to “Negro” slaves. *Any* slave of whatever race or heritage or means of enslavement was utterly vulnerable to “an absolute arbitrary Power.”

The “charity” article in the third variation of the 1669 turned around and shed the additional paragraph, standing alone once again as #98. However, a new article (#101) captured some of what had been withdrawn. It was the immediate precursor to the infamous article. “Every Freeman of Carolina,” it began, “shall have absolute Authority over his Negro Slaves, of what opinion or Religion soever” (150). The slaves in question were now at last racialized as “Negro” slaves. This may have been simple recognition that the first slaves in Carolina would be of African origin, given the Barbados pipeline. However, it could have been—or also have been—an attempt by the Lords Proprietors to pre-empt and prohibit the taking of *native Americans* as slaves. The proprietors, especially Ashley, made this clear in one of the first Temporary Laws: “Noe Indian upon any occasion or pretense whatsoever is to be made a slave or without his owne consent to be carried out of our Country.”⁶² The proprietors wanted trade and allies with the natives of the place, even “hoping in time to draw the Indians into our government.”⁶³ Clarifying in the *Fundamental Constitutions* that the slaves in question were to be of African descent therefore meant that Indians were not to be enslaved.⁶⁴

In short order, the article proclaiming “absolute Authority” for slave-owners was (further) revised in a more emphatic direction by a Lord Proprietor or an approved editorial secretary. The revision consisted in the inclusion of a pair of words—“power and”—indicated for insertion between “absolute” and “Authority,” to read “absolute power and Authority” (164).⁶⁵ And this revision was carried over into the fourth variation of the (article-unnumbered but paginated) 1669 version empowering a “ffreeman” over his chattel.⁶⁶ It was thereafter codified in the printed version of 1670 as article #110. It there read with fuller capitalization (183): “Every Freeman of Carolina shall have absolute Power and Authority over his Negro Slaves, of what Opinion or Religion soever.” It is this article, worded in just this way, that was to be quoted again and again over time, usually in condemnation, from contemporary scholars, back to English liberals, and further back (ironically) to Southern apologists for slavery (who, in the mid-nineteenth

⁶² Cheves, *Shaftesbury Papers*, 367; Rivers, *Sketch*, 353.

⁶³ Rivers, *Sketch*, 348, quoted in Alan Galloway, *The Indian Slave Trade: The Rise of the English Empire in the American South, 1670–1717* (New Haven: Yale University Press, 2002), 49.

⁶⁴ This enslave-no-Indian policy would govern Carolina settlers least of all.

⁶⁵ Original in National Archives, PRO 30/24/47/3.

⁶⁶ Charleston Library Society, (original shelf mark) MS 378, 64. It first read “absolute power and authority of” but “of” was crossed out and replaced by “over.”

century, claimed that owners' authority over their slaves was humane and caring, never absolute or arbitrary).⁶⁷

But the volatile career of the infamous article was not yet over in 1670. While its wording would never again be revised, the very presence of it in the *Fundamental Constitutions* proved surprisingly unstable. The decade of the 1670s gave rise to facts-on-the-ground that would lead to changes in the colonial document, some noted above with regard to the republican features of the colonial hybrid. Indian slavery would expand, despite the Lords Proprietors' initial attempts to restrict it. Indeed, Ashley (made Earl of Shaftesbury in 1672) would by 1674 have agents in Carolina—Henry Woodward and Andrew Percival—who undertook transactions in the trade for Indians that benefitted him directly. But the infamous article did not have its reference to “Negro” slaves retracted, *perhaps* a discursive hint that any trade *in* Indians, if not *with* them, was to be a matter for Lords Proprietors like Shaftesbury alone. (Again, not that anything like this occurred in fact, as settlers—especially those at Goose Creek—continued to barter in captured natives). So, in the issuance of a third version of the *Fundamental Constitutions* in print in January 1682, the article remained unchanged, save for being renumbered as #109.⁶⁸ The January version then underwent nearly immediate and thoroughgoing revision on matters large and small, as we have seen, culminating in the much-revised version of August 1682. In the course of its particular revisions, some assiduous secretary—again, Locke—renumbered the article to accommodate the new additional articles that preceded it. The renumbering suggested that there was no religious or moral or even editorial resistance to the article. It simply needed to find its properly numbered place in the revised document. The round of revisions in the months between January and August 1682 came to an end, proposing the article remain in the document as #116. But then came the most surprising twist in the fate of the infamous article.

When this latest fourth version of the *Fundamental Constitutions* was sealed on 17 August 1682, the article was not there. It had vanished. Mysteriously but clearly intentionally, the Lords Proprietors chose to accept almost all of the proposed editorial revisions to the overall document of January 1682, but *not* the renumbered article on “Negro slaves.” This was no clerical error or oversight because the document was renumbered yet again, sequentially continuous without

⁶⁷ Southern apologists for slavery, like J. D. B. de Bow, were critical of the *Fundamental Constitutions* (which they attributed solely to Locke) for being too harsh, too “Roman” about masters' power over their slaves. For discussion, see James Farr, “Locke, Natural Law, and New World Slavery,” *Political Theory* 36 (2008): 495–522.

⁶⁸ Parker, *North Carolina Charters*, 204 seriously erred in reproducing article #109 of the January 1682 version. She omitted “his,” making the article read: “Every freeman of Carolina shall have absolute power and authority over Negro slaves, of what religion or opinion soever.” Had the original actually read this way, it would have implied far greater scope of each freeman's power over anyone's slaves!

break. The proposed #117 on a freeman's promise of a jury-by-peers filled the void and became #116. This closed the gap left by the exclusion of the infamous article. It was simply not reproduced as it had been in the final variation of the 1669 version or in the versions of 1670 and January 1682. Significant as this was (and is), there is no ready answer why this happened, certainly nothing obvious in the extant record.

And then, the infamous article returned in the final version of 1698, for reasons that are no clearer than its disappearance in 1682. Absent for sixteen years, it came back as the penultimate article (#40), giving it, if anything, greater prominence in the entire document than its previous placements. Its absence, though, was not in one crucial way unique. In 1693, two years after issuing a set of substitute laws that failed to appease pro-slaving colonists, the Lords Proprietors suspended the *Fundamental Constitutions* altogether and thus *all* of its articles. The "absolute power and authority" of freemen over their slaves was now not inscribed in *any* fundamental laws of the colony, suspended with the rest of the articles for five more years. When the 1698 version was sealed on April 11, it reinstated not only a freeman's absolute power, notwithstanding his slaves' religious beliefs, but all the other articles on religion, as well, save the one on the "Natives of the place." For a document reduced to 41 articles—less than a third of its immediate predecessor—it nevertheless made slavery more prominent. Besides the "charity" article and its infamous complement, landgraves and caciques were now required to prove their worth by owning so many acres, so many pounds, "and _____ Slaves" (235).

The 1698 version, slightly more republican than its predecessors, introduced another new requirement that bore upon proprietary absolutism and therefore on all else in the *Fundamental Constitutions*, including slavery and religion. The Lords Proprietors conceded in this final revision that they now needed to have "the advice and consent of the Landgraves and Caciques and Commoners in this present Parliament" to make their legal blueprint "perpetually established amongst us" (234). True to its past inactions, the Parliament refused to give its advice and never granted its consent. After that there were no more revisions on offer, no final push for adoption. The document thus ended its life as it began: an aspirational text in the absolutist imagination of the Lords Proprietors and put to paper by their secretaries, the most prominent of whom was John Locke.

6. Locke's Presence in the Revisions

Locke played a significant role in composing and certainly in revising the *Fundamental Constitutions of Carolina*. In a letter of autumn 1673, Sir Peter Colleton wrote to him from Barbados hoping "that that excellent form of government in the composure of which you had so great a hand may speedily come

to be put in practice.”⁶⁹ This was written a few months after the 1670 print version had finally reached Carolina, and at a time when Locke was ordering up 100 copies of it, some in vellum, others in marbled paper, yet others plain.⁷⁰ There were similar notices over the years,⁷¹ but Colleton’s was particularly important at just that moment. In-the-know in both London and America, Colleton had by then been a Lord Proprietor for seven years and very active in the affairs of the colony alongside Ashley. He was in fairly frequent correspondence or personal contact with Locke who was then Secretary to the Lords Proprietors, as well as an original Landgrave among Carolina’s new nobility. As Secretary since 1668, Locke appears to have served as general overseer of the organization and “composure” of the *Fundamental Constitutions*, putting into a single whole the contents that were supplied by himself and other contributors. When it came to certain articles, he also seems to have been empowered or took the initiative to convey in his own language the general dictates, as he understood them, of his master Ashley and the other Lords Proprietors. The (future) Third Earl of Shaftesbury and Lord Proprietor by inheritance later complimented Locke as the first Earl’s “assistant pen.”⁷²

Locke’s presence in the *Fundamental Constitutions* was (and remains in the historical record) particularly evident in the significant revisions to two versions. As others have noted, as well,⁷³ his hand is clearly at work on both of them, with a broad range of editorial interventions—marginalia, queries, interlineations, additions, substitutions, numberings, and re-numberings. By my count, Locke intervened in fifty (maybe fifty-four) of the 110 articles of the third variation of 1669. Nineteen of these were substantial. And the number of Locke’s interventions

⁶⁹ Sir Peter Colleton to John Locke, October 1673, in *The Correspondence of John Locke*, ed. E. S. de Beer, The Clarendon Edition of the Works of John Locke, 8 vols., (Oxford: Clarendon Press, 1976), no. 279, 1:395.

⁷⁰ The 1670 version arrived in Carolina in February 1673. For the copies listed under the entry “Constitutions,” see Locke’s notebook on Carolina, Bodleian Library MS Locke, c. 30, fol. 4. The notebook “is the single most important unpublished source for the beginnings of South Carolina.” Lesser, *South Carolina Begins*, 40.

⁷¹ For example, Nicholas Toinard referred to “vos constitutions” in a 1679 letter to Locke in the context of Locke’s fantasizing about emigrating to “Lock Island” with Toinard as his “Emperor.” Nicholas Toinard to John Locke, 2/12 July 1679, *Correspondence*, no. 481, 2:44–48. For Locke’s reputation as Carolina lawgiver, see Milton, “John Locke and the Fundamental Constitutions,” 125–28; Goldie’s editorial remark in Locke, *Political Essays*, 161; and David Armitage, “Locke, Carolina, and the *Two Treatises*.”

⁷² Quoted in Maurice Cranston, *John Locke: A Biography* (Oxford: Oxford University Press, 1985), 159.

⁷³ Milton, “John Locke and the Fundamental Constitutions” and Goldie in Locke, *A Letter concerning Toleration* for the 1669 version; and Armitage, “Locke, Carolina, and the *Two Treatises*” for the 1682 version.

would be higher if excisions were counted, trusting that very many if not all were his.⁷⁴ The first article is entirely in Locke's hand. There he invoked the precedent of the "County Palatine of Durham" as legitimating the rule of "the true and absolute lords and Proprietors" so as to "avoid erecting a numerous Democracy." Locke did not revise the article, leaving it as he first formulated or recorded it. The second article took up the selection of the Palatine by the Lords Proprietors, "chosen, by themselves." It is also entirely in Locke's hand, with this decisive difference. It was rejected by him, struck through with a strong vertical line and replaced with a substitute, again in his hand, on the back of the preceding page. Revised, it deemed "the eldest of the Lords Proprietors" to be Palatine. We can reasonably surmise that Locke was the *author* of the precise words he wrote in the first two articles, and certainly in the revision to the second. Those words helped give the constitutional document its character, as literature and political theory. But on such weighty matters as invoking the Bishop of Durham clause or establishing the manner of the Palatine's selection only Ashley or the Lords Proprietors, collectively, could have been the *originator* and *authority* behind the articles or their revision, either in suggesting or approving Locke's words.⁷⁵

Due precisely to Locke's other revisions of the third variation of the 1669, the Lords Proprietors had it underscored that they had "in themselves an inherent original Right" to rule; their patent descended from "Our Sovereign Lord the King;" their eight courts were declared "supreme;" "Gospel" became "Bible;" negative "innovations" were clarified to be "invasions" of "the Law of Liberty of Conscience" (and the substitution made); the inheritance due to an "eldest daughter" was ensured to pass on to "her heires" alone; a leetman needed to "voluntarily enter himself" into the county registry, not just his "contract;" and the High Steward's court was charged with "commerce" and public health, especially an ecological concern for the "corruptions and infections of the common aire & water." These are some of the more striking phrases embodying crucial political concepts in this early variation of the *Fundamental Constitutions*; and they are of Locke's invention or articulation. Moreover, they stuck. Like many other editorial interventions of his, they proved *authoritative* in the sense that they would survive into the subsequent versions, beginning with the printed one of 1670. The dividing line between secretarial and authorial presence is not a bright one here.

Much the same can be said of Locke's secretarial-cum-authorial presence in the articles on religion. Secretary Locke changed these least (indeed scarcely at all) in the revisions he oversaw to the third variation of 1669. Moreover, they survived the

⁷⁴ Excluding excisions, the revised articles (with substantial ones bolded and italicized) were ## **1, 2, 3**, [5?], 7, **8**, 10, 11, 12, **13, 16, 17**, 19, 21, 22, **24, 25, 26, 27**, 28, **30, 32, 34, 37, 39, 40** [reformulated twice], 43, 44, **45, 46**, 50, 53, **54**, 57, 59, 60, 63, [64?], [65?], 67, 71, 74, 77, 79, 80, 81, 82, 84, 85, **90**, 95, 96, [103?], and 111 (though the actual number of articles was 110).

⁷⁵ On "author" as "writer" versus "originator," see Milton and Milton's editorial comment in Locke, *An Essay concerning Toleration*, 113.

subsequent revisions thereafter, save crucially for “Protestant and Papist Churches” giving way to the establishment of “the Church of England.” (This was a revision to which Locke may have protested, in vain).⁷⁶ In particular, the defining article on “charity” being owed the souls of all men, regardless of their civil condition, slave or free, has his authorial marks all over it. This is one of the sharpest points of contact between the *Fundamental Constitutions* and Locke’s political theory, early and late. There is certainly the spirit of toleration that pervades his later writings, with intimations earlier.⁷⁷ But “charity” is even more “Lockean” beyond toleration. It was a God-demanded moral duty which “we owe all one to another,” certainly in matters of differing religious creeds.⁷⁸ That is, charity was “an indispensable duty for all Christians to maintain love and charity in the diversity of contrary opinions.”⁷⁹ It was also the counter-weight to “Justice,” when providing the needy poor with “Title” to relief and the “Right” of surplusage of another’s “goods.”⁸⁰ And in 1692, he had the Rules of the Dry Club require of every new member—in the very way the *Fundamental Constitutions* required of every freeman—his “Consent” to the “Universal Charity and Good will to all Men, as Men, of what Church or Profession of Religion soever they are.”⁸¹

In this matter, the contact between the *Fundamental Constitutions* and Locke’s political thought is best brought out by comparing the article on charity to two passages in works separated by several years where Locke underscores in no uncertain terms that “religion ought to alter nothing in any man’s civil estate,” as the constitutional article puts it. Both rely upon the same biblical passage. In the

⁷⁶ As alleged in 1720 in the first edited collection of some of Locke’s “pieces.” Pierre Desmaizeaux, ed., *A Collection of Several Pieces of Mr John Locke* (London, 1720), 42n*.

⁷⁷ John Marshall, *John Locke, Toleration, and Early Enlightenment Culture* (Cambridge: Cambridge University Press, 2006), 595 argues that Locke was “the probable author of the appropriate sections on toleration.” Goldie, as editor of Locke’s *A Letter concerning Toleration*, xxv, 146–48 includes the *Constitutions’* religious articles, as if Locke’s authorship. Locke’s (changing) views on toleration have now been rendered even more complex by J. C. Walmsley and Felix Waldman, “John Locke and the Toleration of Catholics: A New Manuscript,” *The Historical Journal* 62 (2019): 1093–115, as well as by Jeffrey Collins, who argues “the toleration of the [Fundamental] Constitutions belonged to the politique tradition: it sought to pacify subjects, augment magisterial authority, and secure fundamentally political ends.” Collins, *In the Shadow of Leviathan: John Locke and the Politics of Conscience* (Cambridge: Cambridge University Press, 2020), 134.

⁷⁸ Locke, *Two Treatises*, II.93, 328.

⁷⁹ Locke, “Pacific Christians,” in *Political Essays*, 305.

⁸⁰ Locke, *Two Treatises*, I.42, 170.

⁸¹ John Locke, “The Rules of the Dry Club,” in *Literary and Historical Writings*, ed. J. R. Milton, The Clarendon Edition of the Works of John Locke (Oxford: Clarendon Press, 2019), 317.

Second Tract on Government (circa 1662) Locke invokes 1 Corinthians 7 when making a claim about religion and bondage.

And the Apostle Paul, the teacher of the Gentiles, confirms this point, 1 Cor., ch. 7, where he teaches that the civil condition of men is not to be altered at all by Christian religion and liberty but that bondservants, even though they were made subject to Christ, should still continue bondservants in their civil state and owe the same obedience as before to their masters.⁸²

He returns to the issue in *A Paraphrase and Notes on the Epistles of St. Paul* (written just before his death in 1704) when dealing explicitly with chapter 7, as he translates it: “Christianity changes noe thing in mens civil estate. but leaves them under the same obligations they were tied by before.”⁸³ The substance, cadence, and word-choice of these two passages are so similar to the article in the *Fundamental Constitutions* as to suggest the same author.

When Locke returned to the task of revising the *Fundamental Constitutions* in the summer of 1682, the article on charity—and thus the continuing bondage of slaves—would once again go unchanged. But much else would change as a direct result of Locke’s editorial interventions. His secretarial presence was again considerable, despite his not actually being Secretary to the Lords Proprietors any more, that role having ended in November 1675 when he left England for his travels in France. But he was still trusted by Shaftesbury to perform paramount colonial work, including making a number of important editorial interventions to the recently-completed third version of the *Fundamental Constitutions* of January 1682. Whereas Locke had worked with one other hand on the 1669 version, he here worked with two other hands, one of them being an unknown copyist and the other Sir Peter Colleton, no less. Locke was at least an “equal partner” with this Lord Proprietor in making revisions,⁸⁴ and at most he was a more commanding editor, answering Colleton’s marginal queries and even overruling a couple of Colleton’s suggested revisions. Locke’s “hand,” it might have seemed to Colleton, was still “so great” in the venture, as he had put it in his letter to Locke nine years earlier. On matters of substance, Locke amended at least twelve important articles and made numerous smaller interventions.⁸⁵ Among other things, he promoted the

⁸² Locke, *Political Essays*, 72.

⁸³ *A Paraphrase and Notes on the Epistles of St. Paul*, ed. Arthur W. Wainwright, The Clarendon Edition of the Works of John Locke (Oxford: Clarendon Press, 1987), 1:197. Locke raises “Slavery” in his note on verses 23 and 24 (202n23*); and he reiterates that “noething in any mans civil estate or rights is altered by his becoming a Christian.”

⁸⁴ Armitage, “Locke, Carolina, and the *Two Treatises*,” 615.

⁸⁵ Armitage, “Locke, Carolina, and the *Two Treatises*,” 625n73 determines that “Locke amended articles 13, 34, 39, 40, 52, 59, 67, 70, 73, 75, 116 and 120.”

Palatine's deputy to "Vice Palatine" in order that he officially might act as military general or assume power when the Palatine could not do so personally. He clarified that the election of members to the biennial parliament was to be "by ballot." He required that at least "sixty members" of Parliament be present when any "judgment" was handed down against anyone. He struck out "the Government" as that to which the owners of estates and denizens protected by the law owed loyalty, leaving only the Lords Proprietors "and these" *Fundamental Constitutions*. And, along with the third unknown hand, he hedged (and nearly negated) the dictate that the constitutions, in the wording of the January 1682 and all previous versions, "shall be, and remain the sacred and unalterable form and rule of government of Carolina forever" (206). Locke jaggedly underlined the phrase "sacred and unalterable" and then added (here in italics) to what the third hand had written, "*unless in the variety of human affairs any future exigency should require any addition or alteration to be made in any part of them; and in such case*" any new articles needed confirmation by the Lords Proprietors, the Grand Council, and "*by two*" successive Parliaments. All of these particular amendments were incorporated into the August 1682 version, post-secretary Locke having left an authorial mark on the latest iteration of the document intended to govern Carolina.

Locke was obviously not the only presence, secretarial or authorial, to be felt in the texts under revision. Already noted, other hands were at work with him or on their own. Moreover, when the 1670 and August 1682 versions were sealed, they had already come to contain further revisions and wholesale additions of articles, suggestive of a broad collective effort at revision at any one time and certainly over time. Most importantly, what Locke (or any other assisting pen) proposed for revision had to be approved by the Lords Proprietors, likely Shaftesbury from 1669 through the 1682 revisions. And frequently Locke's (or others') proposed revisions were not approved or were re-revised. One of the more important examples turned out to become article #81 in the August 1682 version. This article, recall, was the longest one in that or any other version and made a number of rather complex procedural requirements for the reading and passage of laws. During the preceding process of revision, this proposed amendment was written out by the third hand in an apparent act of copying what had been given or dictated to him.⁸⁶ This proposal, however, was completely crossed out (presumably) by Locke. And yet when the August 1682 version was sealed, it had been restored wholesale. Locke had been over-ruled.

The most striking instance of Locke's editorial interventions *not* coming to account concerns the re-numbering of the infamous article on slavery proclaiming the "absolute power and authority" of free men over their African slaves. Again, it was acting-secretary Locke who renumbered the article, turning January 1682's

⁸⁶ "Fundamental Constitutions," August 1682, fol. 3r, Rare Book Collection, *KC+ 1682, New York Public Library.

#109 into a proposed #116. The renumbering suggested an ongoing editorial process to accommodate newly proposed amendments having been introduced earlier in the document. This suggested no special scrutiny, no political reaction, no moral hesitation, just a new number.⁸⁷ But this relatively minor editorial business was unacceptable and rendered moot, for the entire article was excluded from the August 1682 version, and replaced by a new #116 (on jury trials). This example alone should inhibit anyone from claiming that Locke was “*the* author” of the *Fundamental Constitutions*. But that claim has largely (though not entirely) ceased in recent years.⁸⁸

Locke’s secretarial presence may be discerned in other variations or versions of the *Fundamental Constitutions*. The fourth variation of the 1669 version suggests his hand at work in formatting and numbering its pages, to judge by his numerals and by his practice, clearly identifiable elsewhere, of ruling lines for margins on each page. His telltale ampersand and recognizable handwriting, however, are not in evidence, although they are in the hard-copy revisions of the 1670 version. As noted earlier, Locke wrote on several copies all those additional “heirs & successors,” as well as changing “youngest” to “younger sons” in the rules of precedency.⁸⁹

It is natural to wonder (and tempting to speculate) about Locke’s presence, if any, in the revisions that led to the last version of the *Fundamental Constitutions* in 1698. These revisions were anticipated by the reconfigured eight Lords Proprietors (without the First Earl of Shaftesbury, though including his grandson, the Third Earl) no later than August 1695 when the Quaker John Archdale arrived in Carolina as its latest governor with their authority “to permanently settle the government by examining the *Fundamental Constitutions*, finding out what would be acceptable to the people, and proposing a new set to the proprietors for their confirmation.”⁹⁰ Shortly thereafter, Archdale was recalled, passing the task of revision to his successor, Joseph Blake. This task was underway in earnest by 1697 and came to fruition on 11 April 1698 by the authority of the Lords Proprietors. On that very day, they sent a letter to Blake and his governing council, acknowledging their action. “By the assistance of Major [Robert] Daniel and Capt. [Edmund] Bellinger, we have drawne up Constitutions for the just regulation of your

⁸⁷ Armitage, “Locke, Carolina, and the *Two Treatises*,” 619 argues: “There is therefore no mistaking either his tacit commitment to this brutal provision or to the hold the master-slave relationship had over his political imagination.”

⁸⁸ The claim persists today on many websites related to Carolina history.

⁸⁹ The addition of “heirs & successors,” as well as the change of “youngest” to “younger” in Locke’s hand may also be found on the copy in the Newberry Library, though the other intended (but unrealized) revisions are not in his hand.

⁹⁰ Rivers, *Sketch*, 180.

Government under our hands and seales.”⁹¹ Daniel was duly dispatched to Carolina with the document in hand where it met the same fate with the colonists: dead on arrival.⁹²

During this period, Locke was once again in colonial service not as a secretary but as one of the commissioners—arguably “the leading Commissioner”—of the new Board of Trade.⁹³ He had assumed this position in 1696 and would serve until 1700 under John Somers. Among his many duties, he actively oversaw the constitutional and commercial affairs of Carolina’s neighbor, Virginia.⁹⁴ Its governor James Blair wrote to Locke in January 1698 when the Carolina revisions were underway, hoping for Locke’s “opportunities to redress the Errours and abuses” in Blair’s colony, since God “made you such an eminent instrument in detecting the Constitution and Government of Virginia.”⁹⁵ *Perhaps* at that very moment, Locke was once again an “eminent instrument” in *Carolina’s* constitutional affairs, as well, as he had been on and off since 1669 and most importantly in 1682. A genealogist of early Carolina families claimed of Bellinger, the colony’s one-time attorney general and known reviser of the final version, that “in 1698, he returned to England and conferred with John Locke in revising the articles of the *Fundamental Constitutions*, under which the Lords Proprietors governed the province.”⁹⁶

⁹¹ A. S. Salley, ed., *Records in the British Public Record Office Relating to South Carolina, 1663–1684* (Atlanta: Foote and Davis, 1928), 43.

⁹² Rivers, *Sketch*, 323. The Lords Proprietors sent another letter to Blake on 16 August 1698 in reference to Daniel and the *Fundamental Constitutions* “because good laws without due exercise are a dead letter” (quoted in Edward McCrady, *The History of South Carolina Under the Proprietary Government, 1670–1719* [London: Macmillan, 1897], 300).

⁹³ Cranston, *John Locke*, 406. For discussion of Locke on the Board, see, among others, Peter Laslett, “John Locke, the Great Recoinage, and the Board of Trade, 1695–1698,” *William and Mary Quarterly* 14 (1957): 370–402; David Armitage, *The Ideological Origins of the British Empire* (Cambridge: Cambridge University Press, 2000), 165–66; Roger Woolhouse, *Locke: A Biography* (Cambridge: Cambridge University Press, 2007), 355–60, 374–75; and John Marshall, “London, Locke and 1690s Provisions for the Poor in Context: Beggars, Spinners, and Slaves,” in *Politics, Religion, and Ideas in Seventeenth- and Eighteenth-Century Britain: Essays in Honour of Mark Goldie*, ed. Justin Champion et al., (London: The Boydell Press, 2019), 181–200.

⁹⁴ On Locke’s Virginia connections, see Richard Ashcraft, “Political Theory and Political Reform: Locke’s Essay on Virginia,” *Western Political Quarterly* 2 (1969): 742–58; Turner, “John Locke, Christian Mission,” 267–97; and Holly Brewer, “Slavery, Sovereignty, and ‘Inheritable Blood’: Reconsidering John Locke and the Origins of American Slavery,” *American Historical Review* 122 (2017): 1038–78.

⁹⁵ James Blair to Locke, 20 January 1698, *Correspondence*, no. 2380, 6:302–3.

⁹⁶ Isabela C. Patterson, *Builders of Freedom and Their Descendants: A Genealogy of Related Families Whose Ancestors Were Champions of Liberty and Among the Early Settlers of America* (Augusta, GA: Walton Print Company, 1953), 93. I cannot find other confirmation of this.

Whether or not Locke actually “conferred” in the revisions of 1698, it would seem unlikely that he would not have known about them. The Board of Trade was in frequent contact with the Lords Proprietors and their secretaries, especially William Popple.⁹⁷ Another prominent commissioner on the Board, William Blathwayt, had strong Carolina ties and interests.⁹⁸ Locke was in communication with the most important Lord Proprietor at the time, namely, Anthony Ashley Cooper, his erstwhile pupil and soon to be the Third Earl of Shaftesbury (in 1699). Since 1683, Ashley had taken an active interest in his share of the proprietary and so the affairs of Carolina.⁹⁹ In 1694 his peers elected him Governor, as the most qualified among them. They wished him to take hands-on control of the colony (and directly oversee their mutual interests). However, he stood down to care for his ailing father, the Second Earl (who had not inherited the proprietorship, the First Earl having skipped over him). Shortly thereafter, Archdale was sent to Carolina as governor with the revision of the *Fundamental Constitutions* uppermost in mind. When the final version of 1698 passed, it bore Ashley’s signature and seal. Had Locke been apprised of the final revisions, as I am suggesting is possible, we can only surmise what his reaction might have been to them. But “charity” to slaves’ souls survived, as did the other articles on religion, and the infamous article returned to its final resting place as the penultimate article. On this version of events, Locke did not intervene, as he presumably could have done, or in any other way register an objection to the continuance of slavery or to the ideology of proprietary absolutism.

If Locke’s presence in the final revisions of the *Fundamental Constitutions* must for now or forever remain a mystery, so too must another that goes precisely to his political theory’s relation to absolutism as such and proprietary absolutism in particular. Locke’s political writings abound with references to “absolute power.”¹⁰⁰ This makes for another point of contact with the *Fundamental Constitutions* which trumpets it so loudly. Unlike “charity,” however, the point of contact here is to all appearances merely analytical, not one of positive endorsement or alignment. Indeed, the *Two Treatises of Government* comes off as an unrelenting assault on absolute power, a note on which this essay began. There are more than 40 explicit condemnations of “absolute power” therein, and the

⁹⁷ On Popple, see Caroline Robbins, “Absolute Liberty: The Life and Thought of William Popple, 1638–1708,” *William and Mary Quarterly* 24 (1967): 190–233.

⁹⁸ See Lesser, *South Carolina Begins*, 73.

⁹⁹ See Robert Voitle, *The Third Earl of Shaftesbury, 1671–1713* (Baton Rouge: Louisiana State University Press, 1984), 54–60. The third Earl passed on his proprietary duties and interest to his brother Maurice in 1699.

¹⁰⁰ See the overview in Clare Jackson, “Absolutism,” in *The Continuum Companion to Locke*, ed. S. J. Savonius-Wroth, Paul Schuurman, and Jonathan Walmsley (London: Continuum, 2010), 119–22.

number increases when including “Absolute Monarchy” which, among other things, is “no form of Civil Government at all.”¹⁰¹ “This new nothing” of absolute power is disproved by “the History of this, or any other Age.”¹⁰² A couple of caveats, however, are worth registering before coming to an end.

First, absolute power is not *invariably* denounced in the *Two Treatises*. Nor is it elsewhere in Locke’s writings.¹⁰³ Locke positively underscores it in the case of slavery, *if and only if justified* by an “act that deserves Death.” Paradigmatically, “Captives taken in a just War, are by the Right of Nature subjected to the Absolute Dominion and Arbitrary Power of their Masters. These men [have] forfeited their Lives, and with it their Liberties, and lost their Estates.” In such cases, the Master can “take away his life” or “make use of him to his own Service.”¹⁰⁴ It is to be doubted that Locke thought the bondage or death proclaimed in the *Two Treatises* was about the Africans or Indians of Carolina, given his strict conditions articulated in chapter 16 on conquest.¹⁰⁵ But the exceptional case of slavery (*when legitimate*) weighs upon how we think about Locke’s views of absolute power. And the way he phrases the matter in the *Two Treatises* sounds nothing so much as the short-lived, additional paragraph of the “charity” passage in the second variation of the *Fundamental Constitutions* of 1669. Again, it reads: “Any freeman of Carolina, who hath Slaves, shall have an absolute arbitrary Power, over the Lives

¹⁰¹ Locke, *Two Treatises*, II.90, 326.

¹⁰² Locke, *Two Treatises*, I.72, 194; II.92, 327.

¹⁰³ The *First Tract on Government* (1660) proclaimed “the supreme magistrate of every nation . . . must necessarily have an absolute and arbitrary power over all the indifferent actions of his people”—and nearly everything aside from religious belief was then to his mind indifferent (in *Political Essays*, 9; cf., 67). In contrast to his denial in the *Two Treatises* that fathers or “the Fatherhood” held absolute power, he allowed in *Some Thoughts* (1693) that the younger the child, “the more are they to be under the Absolute Power and Restraint of those, in whose hands they are.” John Locke, *Some Thoughts concerning Education*, ed. John W. Yolton and Jean S. Yolton, The Clarendon Edition of the Works of John Locke (Oxford: Clarendon Press, 2000), §39, 108–9.

¹⁰⁴ Locke, *Two Treatises*, II.85, 322–23; II.23, 284.

¹⁰⁵ On this point, see James Farr, “‘So Vile and Miserable an Estate’: The Problem of Slavery in Locke’s Political Thought,” *Political Theory* 14 (1986): 263–90; and Farr, “Locke, Natural Law, and New World Slavery,” 495–522 amidst a broader range of views on the justification of slavery in Locke’s writings, especially Barbara Arneil, *John Locke and America: The Defence of English Colonialism* (Oxford: Clarendon Press, 1996); William Uzgalis, “The Same Tyrannical Principle: The Lockean Legacy on Slavery,” in *Subjugation and Bondage*, ed. Tommy L. Lott, (New York: Roman and Littlefield, 1998), 49–77.; Wayne Glasner, “Three Approaches to Locke and the Slave Trade,” *Journal of the History of Ideas* 51 (1990): 199–216; Jennifer Welchman, “Locke on Slavery and Inalienable Rights,” *Canadian Journal of Philosophy* 25 (1995): 67–81; Jeremy Waldron, *God, Locke, and Equality: Christian Foundations in Locke’s Political Thought* (Cambridge: Cambridge University Press, 2002); Brad Hinshelwood, “The Carolinian Context of Locke’s Theory of Slavery,” *Political Theory* 41 (2013): 562–90; and Brewer, “Slavery, Sovereignty,” 1038–78.

Liberties and Persons of his Slaves, and their Posterities, to punish them with Death or otherwise, whom and for what cause soever he shall think fitt.”¹⁰⁶ Locke likely authored these words.

The other stand-out exception concerns cases of “Martial Discipline.” The Army, Locke writes, “requires an *absolute Obedience* to the command of every Superiour Officer, and it is justly Death to disobey.” Disallowing the seizure of a soldier’s personal property, the officer otherwise has an “absolute Power of Life and Death.” Making this exception forces Locke to concede considerable ground amidst his otherwise sustained assault on a power that claims to be absolute: “even *absolute Power*, where it is necessary, is *not Arbitrary* by being absolute, but is still limited by that reason, and confined to those ends, which required it in some Cases to be absolute.”¹⁰⁷ Locke is not absolutely against absolute power. His main animus is against *arbitrary* power. And the Lords Proprietors’ power is never claimed to be arbitrary in any of the versions or variations of the *Fundamental Constitutions*, only absolute.

Nowhere does Locke use the phrase “proprietary absolutism,” it being my attempt to name the political concept at work. For that matter, nowhere in his political writings of which I am aware does Locke directly address the power of an ordinary proprietor, much less the absolute power of the Lords Proprietors. This may be a sign that he simply did not reflect on the question as a theoretical one and that he kept strictly separate his roles as an agent of colonial administration and as a theorist of political power. Maybe, however, the matter might be approached somewhat obliquely, by way of conclusion. In a notebook circa 1670, Locke seemed to think that the colonial document on which he was then working presented a world-historical achievement in human governance. Of recent vintage, that achievement nonetheless deserved a place in the pantheon of the “forms” of “polity.” He listed those forms as “monarchy; aristocracy; democracy; mixed constitution; [and] fundamental constitutions.”¹⁰⁸ Upholding proprietary absolutism as it did, the “fundamental constitutions” ranked with the legitimate forms of governmental power known since antiquity.¹⁰⁹

¹⁰⁶ Again, MS copy of the “Fundamental Constitutions” (1669), Ford Collection, New York Public Library, art. #73. The only other notice of this crucial, “idiomatically Lockean” paragraph is in Armitage, “Locke, Carolina, and the *Two Treatises*,” 619.

¹⁰⁷ Locke, *Two Treatises* II.139, 361–62, emphasis in original. Also consider the extent of prerogative power in chapter 14 where “God-like Princes indeed had some Title to Arbitrary Power.” Locke, *Two Treatises*, II.166, 378.

¹⁰⁸ “Adversaria A,” in *Political Essays*, 215.

¹⁰⁹ This essay has benefitted from commentary or other assistance by David Armitage, Julia Brown, Andrew Day, Mary G. Dietz, Nick Dorzweiler, Mark Goldie, Bob Lanham, Charles Lesser, John Milton, Thomas Wilson, and an enormously helpful reviewer for *Locke Studies*, as well as

Northwestern University

staffs at the Charleston Library Society, the Newberry Library in Chicago, and the Manuscripts and Archives Division of the New York Public Library.

Appendix

A complete “Census of Known Manuscript and Printed Copies” of the *Fundamental Constitutions of Carolina* will appear in Locke’s *Colonial Writings* in The Clarendon Edition of the Works of John Locke, edited by David Armitage (forthcoming).

Herewith some briefer remarks about the versions, as well as the variations in the first version, relevant to this essay, especially its fourth section about the articles on slavery and religion.

There were five versions of the *Fundamental Constitutions of Carolina*, signed and sealed by the Lords Proprietors, bearing different dates at the end of the document: 21 July 1669 (manuscript, with eighty-one or 111 articles); 1 March 1670, new style (print, with 120 articles); 12 January 1682 (print, with 120 articles);¹¹⁰ 17 August 1682 (manuscript, with 125 articles); and 11 April 1698 (manuscript, with forty-one articles and blank spaces left in the text presumably to be filled in later). (I have shortened reference to these versions in the text above as 1669; 1670; January 1682; August 1682; and 1698).

The first (1669) and last (1698) versions do not have any “Rules of Precedency” following the articles at the end whereas each of the other versions has eleven of them in a list, starting with “The Lords Proprietors, the eldest in age first, and so in order,” the eldest being the Palatine. The Rules conclude with “The Male Line of the Proprietors,” with contingencies for deciding “the rest by the Chamberlain’s Court,” if need be (185, 207, 232).

The first version of 1669 has four known variations. The first variation is known only from a transcription dated 14 November 1682 by Joseph Oldys, then Deputy Secretary to the province. Parker argues that the original of this variation was the one that came to Carolina with the first shipboard settlers in 1670.¹¹¹ It consists of eighty-one articles. It sets a deadline of 1690/91 for proprietorships to be by inheritance only. There is a modern transcription in Green that refers to its being found in the South Carolina Department of Archives and History, Abstracts of Grants and Commissions of Lords Proprietors, part 2, 41–46.¹¹²

A second variation, in formal hand, bears the title, “Coppie Of the modell of Governement prepared for the Province of Carolina &c.” It also consists of eighty-one articles and uses the dateline of 1690/1691, but some articles differ from those in the first (the most dramatically different one concerns slavery, as discussed in

¹¹⁰ A *print* copy of this version with Locke’s, Colleton’s, and another’s handwritten insertions and marginalia (discussed in the text above) is at the New York Public Library (*KC + 1682). Two *manuscript* copies of the January 1682 version are to be found in the British National Archives (CO/5/287, fols. 12–21) and in the Royal Society in London (MS/366/11). Thanks, again, to the reviewer for the latter two references.

¹¹¹ Mattie Erma Edwards Parker, “The First Fundamental Constitutions of Carolina,” *South Carolina Historical Magazine* 71 (1970): 78–85.

¹¹² Green, “The South Carolina Archives Copy,” 86–100.

the text above). It is in the Ford Collection of the Manuscripts and Archives Division, New York Public Library, missing the first eight articles. A modern librarian penciled in “John Locke” under the title, though “VHP” (Victor Hugo Palsits, the long-serving chief of NYPL’s American history division) later correctly recorded “Not in Locke’s hand. A copy.”

A third variation contains 110 articles (though mis-numbered as 111). It sets a different deadline for proprietorships to be passed on only by inheritance, namely, 1700/1701 (with the dates spelled out). It is more clearly a work in progress, with less formal hands at work. Locke’s hand is present at the outset, and then in very many revisions (which were retained in the second version of 1670). The manuscript is in the National Archives PRO 30/24/47/3.

A fourth and final variation, in a different formal hand, paginated, has 110 unnumbered articles. The deadline remains 1700/1701 for mandatory hereditary proprietorships. It is in the Library Society of Charleston, once bearing the shelf mark MS #378. It was a gift to the Society in 1833 by the collector Robert Gilmore of Baltimore whose in-laws lived in Charleston. In the front matter (presumably from 1833) is handwritten: “The Constitutions of Carolina written by the celebrated Mr. Locke. The original manuscript.” At the end is offered the words “a facsimile of Mr. Locke’s signature” as well as fair likenesses of both the signature and Locke’s telltale paraph, as found at the end of many of the books in his personal library.¹¹³

Parker has done the most to compare the variations of the 1669 version. She identifies the four manuscript variations according to their present location (that is, Columbia [SC], New York, London, and Charleston). She also presumes that there is “at least one [other] draft, now unknown” and “probably other intervening drafts,” as well.¹¹⁴ She also dates their production in the order listed above, that is, “Columbia” being the first. Her reasoning is fairly persuasive, and in following her order I have numbered the four variations of the first version, accordingly, as first through fourth.

¹¹³ John Harrison and Peter Laslett, *The Library of John Locke* (Oxford: Oxford University Press, 1965).

¹¹⁴ Parker, “First Fundamental Constitutions,” 82.

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