

# The Fundamental Constitutions of Carolina (1669)

WITH COMMENTARY BY DAVID WALBERT

## As you read...

### READING THE FUNDAMENTAL CONSTITUTIONS

The Fundamental Constitutions of Carolina contains 120 detailed paragraphs explaining the Lords Proprietors' vision for Carolina and its government. Given its complexity and its provisions for landed nobility and serfs, it isn't surprising that this document was rejected by most people already living in Carolina and was never ratified by the colonial assembly. It's a very difficult document to read now, and we've presented it here mainly to give you a sense of just how complicated it really was.

### WHO WROTE THE FUNDAMENTAL CONSTITUTIONS?

John Locke, who was the secretary for one of the Lords Proprietors, Anthony Ashley-Cooper, Earl of Shaftesbury, is usually thought to have written the Fundamental Constitutions. Locke later wrote works of liberal political philosophy, arguing for individual rights, that influenced American revolutionaries such as Thomas Jefferson, and his ideas about fundamental rights to life, liberty, and property can be seen in the Declaration of Independence and the U.S. Constitution.

The Fundamental Constitutions contain some of Locke's cherished ideas, such as religious freedom and a fairly low (for the time) property requirement for voting. But they also set up a feudal system, something Locke's later writing opposed. Some historians think that Locke had only a minor influence on the document, while others think he wrote what Shaftesbury paid him to write.

### FUN WITH FEUDALISM

We won't try to define all of the legal terms in this document — you can probably assume that if we didn't define it, the average person living in Carolina in 1669 didn't know what it meant, either. But here are a few terms you might find interesting:

#### **caziques and landgraves**

The Charter of Carolina said that the Lords Proprietors could grant titles, but not titles currently in use in England (see sidebar on this page for a list of those titles). That left them free to make up their own. *Cazique* was a term used for chiefs of certain native peoples of the Caribbean, while *landgrave* was a title of nobility used in central Europe.

The Lords Proprietors did grant a number of these titles along with large tracts of land. Christoph von Graffenried, the founder of New Bern, was a landgrave, and Wikipedia (see

<http://en.wikipedia.org/wiki/Cassiques>) lists a few dozen titled nobility of colonial South Carolina. The American Revolution effectively did away with titles of nobility, and the U.S. Constitution prohibits both the U.S. and state governments from granting titles and bars anyone holding public office from accepting titles from foreign governments.

**leet-men**

“Leet” refers to a manor, and a “leet-man” was a serf who was legally tied to — and could not leave — the manor on which he lived. Paragraph 23 says that serfs’ status would be hereditary. To our knowledge, there were never any leet-men in North Carolina — although there were, of course, African slaves.

Our sovereign lord the King having, out of his royal grace and bounty, granted unto us the province of Carolina, with all the royalties, properties, jurisdictions, and privileges of a county palatine, as large and ample as the county palatine of Durham, with other great privileges; for the better settlement of the government of the said place, and establishing the interest of the lords proprietors with equality and without confusion; and that the government of this province may be made most agreeable to the monarchy under which we live and of which this province is a part; and that we may avoid erecting a numerous democracy, we, the lords and proprietors of the province aforesaid, have agreed to this following form of government, to be perpetually established amongst us, unto which we do oblige ourselves, our heirs and successors, In the most binding ways that can be devised.

One. The eldest of the lords proprietors shall be palatine; and, upon the decease of the palatine, the eldest of the seven surviving proprietors shall always succeed him.

Two. There shall be seven other chief offices erected, viz: the admirals, chamberlains, chancellors, constables, chief justices, high stewards, and treasurers; which places shall be enjoyed by none but the lords proprietors, to be assigned at first by lot, and, upon the vacancy of any one of the seven great offices, by death or otherwise, the eldest proprietor shall have his choice of the said place.

Three. The whole province shall be divided into counties; each county shall consist of eight signiories, eight baronies, and four precincts; each precinct shall consist of six colonies.

Four. Each signiory, barony, and colony shall consist of twelve thousand acres; the eight signiories being the share of the eight proprietors, and the eight baronies of the nobility; both which shares, being each of them one-fifth of the whole, are to be perpetually annexed, the one to the proprietors, the other to the hereditary nobility, leaving the colonies, being three-fifths, amongst the people; so that in setting out and planting the lands, the balance of the government may be preserved.

Five. At any time before the year one thousand seven hundred and one, any of the lords proprietors shall have power to relinquish, alienate, and dispose to any other person his proprietorship, and all the signiories, powers, and interest thereunto belonging, wholly anti entirely together, and not otherwise. But after the year one thousand seven hundred, those who are then lords proprietors shall not have power to alienate or make over their proprietorship, with the signiories and privileges thereunto belonging, or any part thereof, to any person whatsoever, otherwise than in section eighteen; but it shall all descend unto their heirs male, and for want of heirs male, it shall all descend on that landgrave or

cazique of Carolina who is descended of the next heirs female of the proprietor; and, for want of such heirs, it shall descend on the next heir general; and, for want of such heirs, the remaining seven proprietors shall, upon the vacancy, choose a landgrave to succeed the deceased proprietors, who, being chosen by the majority of the seven surviving proprietors, he and his heirs, successively shall be proprietors, as fully to all intents and purposes as any of the rest.

Six. That the number of eight proprietors may be constantly kept, if, upon the vacancy of any proprietorship, the seven surviving proprietors shall not choose a landgrave to be a proprietor before the second biennial parliament after the vacancy, then the next biennial parliament but one, after such vacancy, shall have power to choose any landgrave to be a proprietor.

Seven. Whosoever, after the year one thousand seven hundred, either by inheritance or choice, shall succeed any proprietor in his proprietorship, and signories thereunto belonging; shall be obliged to take the name and arms of that proprietor whom he succeeds; which from thenceforth shall be the name and arms of his family and their posterity.

Eight. Whatsoever landgrave or cazique shall any way come to be a proprietor, shall take the signories annexed to the said proprietorship; but his former dignity, with the baronies annexed, shall devolve into the hands of the lords proprietors.

Nine. There shall be just as many landgraves as there are counties, and twice as many caziques, and no more. These shall be the hereditary nobility of the province, and by right of their dignity be members of parliament. Each landscape shall have four baronies, and each cazique two baronies, hereditarily and unalterably annexed to and settled upon the said dignity.

Ten. The first landgrave and caziques of the twelve first counties to be planted shall be nominated thus, that is to say: of the twelve landgraves, the lords proprietors shall each of them, separately for himself, nominate and choose one; and the remaining four landgraves of the first twelve shall be nominated and chosen by the palatine's court. In like manner, of the twenty-four first caziques, each proprietor for himself shall nominate and choose two, and the remaining eight shall be nominated and chosen by the palatine's court; and when the twelve first counties shall be planted, the lords proprietors shall again in the same manner nominate and choose twelve more landgraves and twenty-four more caziques, for the next twelve counties to be planted; that is to say, two-thirds of each number by the single nomination of each proprietor for himself, and the remaining third by the joint election of the palatine's court, and so proceed in the same manner till the whole province of Carolina be set out and planted, according to the proportions in these fundamental constitutions.

Eleven. Any landgrave or cazique, at any time before the year one thousand seven hundred and one, shall have power to alienate, sell, or make over, to any other person, his dignity, with the baronies thereunto belonging, all entirely together. But after the year one thousand seven hundred, no landgrave or cazique shall have power to alienate, sell, make over, or let the hereditary baronies of his dignity, or any part thereof, otherwise than as in section eighteen; but they shall all entirely, with the dignity thereunto belonging, descend unto his heirs male; and for want of heirs male, all entirely and undivided to the next heir general; and for want of such heirs, shall devolve into the hands of the lords proprietors.

Twelve. That the due number of landgraves and caziques may be always kept up, if, upon the devolution of any landgraveship or caziqueship, the palatine's court shall not settle the devolved dignity with the baronies thereunto annexed, before the second biennial parliament after such devolution, the next biennial parliament but one after such devolution shall have power to make any one landgrave or cazique in the room of him who dying without heirs, his dignity and baronies devolved.

Thirteen. No one person shall have more than one dignity, with the signiories or baronies thereunto belonging. But whensoever it shall happen that any one who is already proprietor, landgrave, or cazique shall have any of these dignities descend to him by inheritance, it shall be at his choice to keep which of the dignities, with the lands annexed, he shall like best; but shall leave the other, with the lands annexed, to be enjoyed by him who, not being his heir apparent and certain successor to his present dignity, is next of blood.

Fourteen. Whosoever, by right of inheritance, shall come to be landgrave or cazique, shall take the name and arms of his predecessor in that dignity, to be from thenceforth the name and arms of his family and their posterity.

Fifteen. Since the dignity of proprietor, landgrave, or cazique cannot be divided, and the signiories or baronies thereunto annexed must forever all entirely descend with and accompany that dignity, whensoever, for want of heirs male, it shall descend on the issue female, the eldest daughter and her heirs shall be preferred, and in the inheritance of those dignities, and in the signiories or baronies annexed, there shall be no coheirs.

Sixteen. In every signiory, barony, and manor, the respective lord shall have power, in his own name, to hold court-leet there, for trying of all causes, both civil and criminal; but where it shall concern any person being no inhabitant, vassal, or leet-man of the said signiory, barony, or manor, he, upon paying down of forty shillings to the lords proprietors' use, shall have an appeal from the signiory or barony court to the county court, and from the manor court to the precinct court.

Seventeen. Every manor shall consist of not less than three thousand acres, and not above twelve thousand acres, in one entire piece and colony, but any three thousand acres or more in one piece, and the possession of one man shall not be a manor, unless it be constituted a manor by the grant of the palatine's court.

Eighteen. The lords of signiories and baronies shall have power only of granting estates not exceeding three lives, or twenty-one years, in two-thirds of said signiories or baronies, and the remaining third shall be always demesne.

Nineteen. Any lord of a manor may alienate, sell, or dispose to any other person and his heirs forever, his manor, all entirely together with all the privileges and leet-men thereunto belonging, so far forth as any colony lands; but no grant of any part thereof, either in fee, or for any longer term than three lives, or one-and-twenty years, shall stand good against the next heir.

Twenty. No manor, for want of issue male, shall be divided amongst coheirs; but the manor, if there be but one, shall all entirely descend the eldest daughter and her heirs. If there be more minors than one, the eldest daughter first shall have her choice, the second next, and so on, beginning again at the eldest, until all the manors be taken up; that so the privileges which belong to manors being indivisible, the lands of the manors, to which they are annexed, may be kept entire and the manor not lose those privileges which, upon parcelling out to several owners, must necessarily cease.

Twenty-one. Every lord of a manor, within his own manor, shall have all the rights, powers, jurisdictions, and privileges which a landgrave or cazique hath in his baronies.

Twenty-two. In every signiory, barony, and manor, all the leet-men shall be under the jurisdiction of the respective lords of the said signiory, barony, or manor, without appeal from him. Nor shall any leet-man or leet-woman have liberty to go off from the land of their particular lord and live anywhere else, without license obtained from their said lord, under hand and seal.

Twenty-three. All the children of leet-men shall be leet-men, and so to all generations.

Twenty-four. No man shall be capable of having a court-leet or leet-men but a proprietor, landgrave, cazique, or lord of a manor.

Twenty-five. Whoever shall voluntarily enter himself a leet-man in the registry of the county court, shall be a leet-man.

Twenty-six. Whoever is lord of leet-men, shall, upon the marriage of a leet-man or leet-woman of his, give them ten acres of land for their lives; they paying to him therefor not more than one-eighth part of all the yearly produce and growth of the said ten acres.

Twenty-seven. No landgrave or cazique shall be tried for any criminal cause in any but the chief justice's court, and that by a jury of his peers.

Twenty-eight. There shall be eight supreme courts. The first called the palatine's court, consisting of the palatine and the other seven proprietors. The other seven courts of the other seven great officers, shall consist each of them of a proprietor, and six councillors added to him. Under each of these latter seven courts shall be a college of twelve assistants. The twelve assistants of the several colleges shall be chosen, two out of the landgraves, caziques, or eldest sons of the proprietors, by the palatine's court; two out of the landgraves by the landgraves' chamber; two out of the caziques by the caziques' chamber; four more of the twelve shall be chosen by the commons' chamber, out of such as have been or are members of parliament, sheriffs, or justices of the county court, or the younger sons of proprietors, or the eldest sons of landgraves or caziques; the two others shall be chosen by the palatine's court, out of the same sort of persons out of which the commons' chamber is to choose.

Twenty-nine. Out of these colleges shall be chosen at first, by the palatine's court, six councillors, to be joined with each proprietor in his court; of which six one shall be of those who were chosen into any of the colleges by the palatine's court, out of the landgraves, caziques, or eldest sons of proprietors; one out of those who were chosen by the landgraves' chamber; one out of those who were chosen by the caziques' chamber; two out of those who were chosen by the commons' chamber; and one out of those who were chosen by the palatine's court, out of the proprietors' younger sons, or eldest sorts of landgraves, caziques, or commons, qualified as aforesaid.

Thirty. When it shall happen that any councillor dies, and thereby there is a vacancy, the grand council shall have power to remove any councillor that is willing to be removed out of any of the proprietors' courts, to fill up the vacancy; provided they take a man of the same degree and choice the other was of, whose place is to be filled up. But if no councillor consent to be removed, or upon such remove, the last remaining vacant place, in any of the proprietors' courts, shall be filled up by the choice of the grand council, who shall have power to remove out of any of the colleges any assistant, who is of the same degree and choice that councillor was of into whose vacant place he is to succeed. The grand council also have power to remove any assistant, that is willing, out of one college into another,

provided he be of the same degree and choice. But the last remaining vacant place in any college shall be filled up by the same choice, and out of the same degree of persons the assistant was of who is dead or removed. No place shall be vacant in any proprietor's court above six months. No place shall be vacant in any college longer than the next session of parliament.

Thirty-one. No man, being a member of the grand council, or of any of the seven colleges, shall be turned out but for misdemeanor, of which the grand council shall be judge; and the vacancy of the person so put out shall be filled, not by the election of the grand council, but by those who first chose him, and out of the same degree he was of who is expelled. But it is not hereby to be understood that the grand council hath any power to turn out any one of the lords proprietors or their deputies, the lords proprietors having in themselves an inherent original right.

Thirty-two. All elections in the parliament, in the several chambers of the parliament, and in the grand council, shall be passed by balloting.

Thirty-three. The palatine's court shall consist of the palatine and seven proprietors, wherein nothing shall be acted without the presence and consent of the palatine or his deputy, and three other of the proprietors or their deputies. This court shall have power to call parliaments, to pardon all offences, to make elections of all officers in the proprietor's dispose, and to nominate and appoint port towns; and also shall have power by their order to the treasurer to dispose of all public treasure, excepting money granted by the parliament, and by them directed to some particular public use; and also shall have a negative upon all acts, orders, votes, and judgments of the grand council and the parliament, except only as in sections six and twelve; and shall have all the powers granted to the lords proprietors, by their patent from our sovereign lord the King, except in such things as are limited by these fundamental constitutions.

Thirty-four. The palatine himself, when he in person shall be either in the army or any of the proprietors' courts, shall then have the power of general or of that proprietor in whose court he is then present, and the proprietor, in whose court the palatine then presides, shall, during his presence there, be but as one of the council.

Thirty-five. The councillor's court, consisting of one of the proprietors, and his six councillors, who shall be called vice-chancellors' shall have the custody of the seal of the palatine, under which charters of lands, or otherwise, commissions and grants of the palatine's court shall pass. And it shall not be lawful to put the seal of the palatinate to any writing which is not signed by the palatine or his deputy and three other proprietors or their deputies. To this court also belong all state matters, despatches, and treaties with the neighbor Indians. To this court also belong all invasions of the law, of liberty of conscience, and all invasions of the public peace, upon presence of religion, as also the license of printing. The twelve assistants belonging to this court shall be called recorders.

Thirty-six. Whatever passes under the seal of the palatinate, shall be registered in the proprietor's court to which the matter therein contained belongs.

Thirty-seven. The chancellor or his deputy shall be always speaker in parliament, and president of the grand council, and, in his and his deputy's absence, one of the vice-chancellors.

Thirty-eight. The chief justice's court, consisting of one of the proprietors and his six councillors, who shall be called justices of the bench, shall judge all appeals in cases both civil and criminal, except all such cases as shall be under the jurisdiction and cognizance of

any other of the proprietor's courts, which shall be tried in those courts respectively. The government and regulation of registries of writings and contracts shall belong to the jurisdiction of this court. The twelve assistants of this court shall be called masters.

Thirty-nine. The constable's court, consisting of one of the proprietors and his six councillors, who shall be called marshals, shall order and determine of all military affairs by land, and all landforces, arms, ammunition, artillery, garrisons, forts, &c., and whatever belongs unto war. His twelve assistants shall be called lieutenant-generals.

Forty. In time of actual war the constable, while he is in the army, shall be general of the army, and the six councillors, or such of them as the palatine's court shall for that time or service appoint, shall be the immediate great officers under him, and the lieutenant-generals next to them.

Forty-one. The admiral's court, consisting of one of the proprietors and his six councillors, called consuls, shall have the care and inspection over all ports, moles, and navigable rivers, so far as the tide flows, and also all the public shipping of Carolina, and stores thereunto belonging, and all maritime affairs. This court also shall have the power of the court of admiralty; and shall have power to constitute judges in port-towns to try cases belonging to law-merchant, as shall be most convenient for trade. The twelve assistants belonging to this court shall be called proconsuls.

Forty-two. In time of actual war, the admiral, whilst he is at sea shall command in chief, and his six councillors, or such of them as the palatine's court shall for that time or service appoint, shall be the immediate great officers under him, and the proconsuls next to them.

Forty-three. The treasurer's court, consisting of a proprietor and his six councillors, called under-treasurers, shall take care of all matters that concern the public revenue and treasury. The twelve assistants shall be called auditors.

Forty-four. The high steward's court, consisting of a proprietor and his six councillors, called comptrollers, shall have the care of all foreign and domestic trade, manufactures, public buildings, workhouses, highways, passages by water above the flood of the tide, drains, sewers, and banks against inundation, bridges, posts, carriers, fairs, markets, corruption or infection of the common air or water, and all things in order to the public commerce and health; also setting out and surveying of lands; and also setting out and appointing places for towns to be built on in the precincts, and the prescribing and determining the figure and bigness of the said towns, according to such models as the said court shall order; contrary or differing from which models it shall not be lawful for any one to build in any town. This court shall have power also to make any public building, or any new highway, or enlarge any old highway, upon any man's land whatsoever; as also to make cuts, channels, banks, locks, and bridges, for making rivers navigable, or for draining fens, or any other public use. The damage the owner of such lands (on or through which any such public things shall be made) shall receive thereby shall be valued, and satisfaction made by such ways as the grand council shall appoint. The twelve assistants belonging to this court shall be called surveyors.

Forty-five. The chamberlain's court, consisting of a proprietor and six councillors, called vice-chamberlains, shall have the care of all ceremonies, precedence, heraldry, reception of public messengers, pedigrees, the registry of all births, burials, and marriages, legitimation, and all cases concerning matrimony, or arising from it; and shall also have power to regulate all fashions, habits, badges, games, and sports. To this court it shall also

belong to convocate the grand council. The twelve assistants belonging to this court shall be called provosts.

Forty-six. All causes belonging to or under the jurisdiction of any of the proprietors' courts, shall in them respectively be tried, and ultimately determined, without any further appeal.

Forty-seven. The proprietors' courts have a power to mitigate all fines and suspend all execution in criminal causes, either before or after sentence, in any of the other inferior courts respectively.

Forty-eight. In all debates, hearings, or trials, in any of the proprietors' courts, the twelve assistants belonging to the said courts, respectively, shall have liberty to be present, but shall not interpose, unless their opinions be required, nor have any vote at all; but their business shall be, by the direction of the respective courts, to prepare such business as shall be committed to them; as also to bear such offices, and despatch such affairs, either where the court is kept or elsewhere, as the court shall think fit.

Forty-nine. In all the proprietors' courts, the proprietor, and any three of his councillors, shall make a quorum: Provided, always, That for the better despatch of business, it shall be in the power of the palatine's court to direct what sort of causes shall be heard and determined by a quorum of any three.

Fifty. The grand council shall consist of the palatine and seven proprietors, and the forty-two councillors of the several proprietors' courts, who shall have power to determine any controversy that may arise between any of the proprietors' courts, about their respective jurisdictions, or between the members of the same court, about their manner and methods of proceedings; to make peace and war, leagues, treaties, &c., with any of the neighbor Indians; to issue out their general orders to the constable's and admiral's courts, for the raising, disposing, or disbanding the forces, by land or by sea.

Fifty-one. The grand council shall prepare all matters to be proposed in parliament. Nor shall any matter whatsoever be proposed in parliament, but what has first passed the grand council; which, after having been read three several days in the parliament, shall by majority oft votes be passed or rejected;

Fifty-two. The grand council shall always be judges of all causes and appeals that concern the palatine, or any of the lords proprietors, or any councillor of any proprietor's court, in any cause, which should otherwise have been tried in the court of which the said councillor is judge himself.

Fifty-three. The grand council, by their warrants to the treasurer's court, shall dispose of all the money given by the parliament, and by them directed to any particular public use.

Fifty-four. The quorum of the grand council shall be thirteen, whereof a proprietor or his deputy shall be always one.

Fifty-five. The grand council shall meet the first Tuesday in every month, and as much oftener as either they shall think fit, or they shall be convocated by the chamberlain's court.

Fifty-six. The palatine, or any of the lords proprietors, shall have power, under hand and seal, to be registered in the grand council, to make a deputy, who shall have the same power to all intents and purposes as he himself who deposes him; except in confirming acts of parliament, as in section seventy-six, and except also in nominating and choosing landgraves and caziques, as in section ten. All such deputations shall cease and determine at the end of four years, and at any time shall be revocable at the pleasure of the deputator.

Fifty-seven. No deputy of any proprietor shall have any power whilst the deputator is in any part of Carolina, except the proprietor whose deputy he is be a minor.

Fifty-eight. During the minority of any proprietor, his guardian shall have power to constitute and appoint his deputy.

Fifty-nine. The eldest of the lords proprietors, who shall be personally in Carolina, shall of course be the palatine's deputy, and if no proprietor be in Carolina, he shall choose his deputy out of the heirs apparent of any of the proprietors, if any such be there; and if there be no heir apparent of any of the lords proprietors above one-and-twenty years old in Carolina, then he shall choose for deputy any one of the landgraves of the grand council; till he have by deputation under hand and seal chosen any one of the forementioned heirs apparent or landgraves to be his deputy, the eldest man of the landgraves, and, for want of a landgrave, the eldest man of the caziques, who shall be personally in Carolina, shall of course be his deputy.

Sixty. Each proprietor's deputy shall be always one of his six councillors, respectively; and in case any of the proprietors hath not, in his absence out of Carolina, a deputy, commissioned under his hand and seal, the eldest nobleman of his court shall of course be his deputy.

Sixty-one. In every county there shall be a court, consisting of a sheriff, and four justices of the county, for every precinct one. The sheriff shall be an inhabitant of the county, and have at least five hundred acres of freehold within the said county; and the justices shall be inhabitants, and have each of them five hundred acres apiece freehold within the precinct for which they serve respectively. These five shall be chosen from time to time and commissioned by the palatine's court.

Sixty-two. For any personal causes exceeding the value of two hundred pounds sterling, or in title of land, or in any criminal cause, either party upon paying twenty pounds sterling to the lords proprietors' use, shall have liberty of appeal from the county court unto the respective proprietor's court.

Sixty-three. In every precinct there shall be a court, consisting of a steward and four justices of the precinct, being inhabitants and having three hundred acres of freehold within the said precinct, who shall judge all criminal causes; except for treason, murder, and any other offences punishable with death, and except all criminal causes of the nobility; and shall judge also all civil causes whatsoever; and in all personal actions not exceeding fifty pounds sterling, without appeal; but where the cause shall exceed that value, or concern a title of land, and in all criminal causes, there either party, upon paying five pounds sterling to the lords proprietors' use, shall have liberty of appeal to the county court.

Sixty-four. No cause shall be twice tried in any one court, upon any reason or presence whatsoever.

Sixty-five. For treason, murder, and all other offences punishable with death, there shall be a commission, twice a year at least, granted onto one or more members of the grand council or colleges; who shall come as itinerant judges to the several counties, and with the sheriff and four justices shall hold assizes to judge all such causes; but, upon paying of fifty pounds sterling to the lords proprietors' use, there shall be liberty of appeal to the respective proprietor's court.

Sixty-six. The grand jury at the several assizes shall, upon their oaths, and under their hands and seals, deliver in to their itinerant judges a presentment of such grievances,

misdemeanors, exigencies, or defects, which they think necessary for the public good of the country; which presentments shall, by the itinerant judges, at the end of their circuit, be delivered in to the grand council at their next sitting. And whatsoever therein concerns the execution of laws already made, the several proprietors' courts, in the matters belonging to each of them, respectively, shall take cognizance of it, and give such order about it as shall be effectual for the due execution of the laws. But whatever concerns the making of any new law, shall be referred to the several respective courts to which that matter belongs, and be by them prepared and brought to the grand council.

Sixty-seven. For terms, there shall be quarterly such a certain number of days, not exceeding one-and-twenty at any one time, as the several respective courts shall appoint. The time for the beginning of the term, in the precinct court, shall be the first Monday in January, April, July, and October; in the county court, the first Monday in February, May, August, and November; and in the proprietors' courts the first Monday in March, June, September, and December.

Sixty-eight. In the precinct court no man shall be a juryman under fifty acres of freehold. In the county court, or at the assizes, no man shall be a grand-juryman under three hundred acres of freehold; and no man shall be a petty-juryman under two hundred acres of freehold. In the proprietors' courts no man shall be a juryman under five hundred acres of freehold.

Sixty-nine. Every jury shall consist of twelve men; and it shall not be necessary they should all agree, but the verdict shall be according to the consent of the majority.

Seventy. It shall be a base and vile thing to plead for money or reward; nor shall any one (except he be a near kinsman, not farther off than cousin-german to the party concerned) be permitted to plead another-man's cause, till, before the judge in open court, he hath taken an oath that he doth not plead for money or reward, nor hath nor will receive, nor directly nor indirectly bargained with the party whose cause he is going to plead, for money or any other reward for pleading his cause.

Seventy-one. There shall be a parliament, consisting of the proprietors or their deputies, the landgraves, and caziques, and one freeholder out of every precinct, to be chosen by the freeholders of the said precinct, respectively. They shall sit all together in one room, and have every member one vote.

Seventy-two. No man shall be chosen a member of parliament who has less than five hundred acres of freehold within the precinct for which he is chosen; nor shall any have a vote in choosing the said member that hath less than fifty acres of freehold within the said precinct.

Seventy-three. A new parliament shall be assembled the first Monday of the month of November every second year, and shall meet and sit in the town they last sat in, without any summons, unless by the palatine's court they be summoned to meet at any other place. And if there shall be any occasion of a parliament in these intervals, it shall be in the power of the palatine's court to assemble them in forty days' notice, and at such time and place as the said court shall think fit; and the palatine's court shall have power to dissolve the said parliament when they shall think fit.

Seventy-four. At the opening of every parliament, the first thing that shall be done shall be the reading of these fundamental constitutions, which the palatine and proprietors, and the rest of the members then present, shall subscribe. Nor shall any person whatsoever

sit or vote in the parliament till he hath that session subscribed these fundamental constitutions, in a book kept for that purpose by the clerk of the parliament.

Seventy-five. In order to the due election of members for the biennial parliament, it shall be lawful for the freeholders of the respective precincts to meet the first Tuesday in September every two years in the same town or place that they last met in, to choose parliament men; and there choose those members that are to sit the next November following, unless the steward of the precinct shall, by sufficient notice thirty days before, appoint some other place for their meeting in order to the election.

Seventy-six. No act or order of parliament shall be of any force, unless it be ratified in open parliament, during the same session, by the palatine or his deputy, and three more of the lords proprietors or their deputies; and then not to continue longer in force but until the next biennial parliament, unless in the mean time it be ratified under the hands and seals of the palatine himself, and three more of the lords proprietors themselves, and by their order published at the next biennial parliament.

Seventy-seven. Any proprietor or his deputy may enter his protestation against any act of the parliament, before the palatine or his deputy's consent be given as aforesaid, if he shall conceive the said act to be contrary to this establishment, or any of these fundamental constitutions of the Government. And in such case, after full and free debate, the several estates shall retire into four several chambers; the palatine and proprietors into one; the landgraves into another; the caziques into another; and those chosen by the precincts into a fourth; and if the major part of any of the four estates shall vote that the law is not agreeable to this establishment, and these fundamental constitutions of the government, then it shall pass no farther, but be as if it had never been proposed.

Seventy-eight. The quorum of the parliament shall be one-half of those who are members and capable of sitting in the house that present session of parliament. The quorum of each of the chambers of parliament shall be one-half of the members of that chamber.

Seventy-nine. To avoid multiplicity of laws, which by degrees always change the right foundations of the original government, all acts of parliament whatsoever, in whatsoever form passed or enacted, shall, at the end of a hundred years after their enacting, respectively cease and determine of themselves, and without any repeal become null and void, as if no such acts or laws had ever been made.

Eighty. Since multiplicity of comments, as well as of laws, have great inconveniencies, and serve only to obscure and perplex, all manner of comments and expositions on any part of these fundamental constitutions, or on any part of the common or statute laws of Carolina, are absolutely prohibited.

Eighty-one. There shall be a registry in every precinct, wherein shall be enrolled all deeds, leases, judgments, mortgages, and other conveyances, which may concern any of the lands within the said precinct; and all such conveyances not so entered and registered shall not be of force against any person or party to the said contract or conveyance.

Eighty-two. No man shall be register of any precinct who hath not at least three hundred acres of freehold within the said precinct.

Eighty-three. The freeholders of every precinct shall nominate three men; out of which three the chief justice's court shall choose and commission one to be register of the said precinct, whilst he shall well behave himself.

Eighty-four. There shall be a registry in every signiory, barony, and colony, wherein shall be recorded all the births, marriages, and deaths that shall happen within the respective signiories, baronies, and colonies.

Eighty-five. No man shall be register of a colony that hath not above fifty acres of freehold within the said colony.

Eighty-six. The time of every one's age, that is born in Carolina, shall be reckoned from the day that his birth is entered in the registry, and not before.

Eighty-seven. No marriage shall be lawful, whatever contract and ceremony they have used, till both the parties mutually own it before the register of the place where they were married, and he register it, with the names of the father and mother of each party.

Eighty-eight. No man shall administer to the goods, or have a right to them, or enter upon the estate of any person deceased, till his death be registered in the respective registry.

Eighty-nine. He that doth not enter in the respective registry the birth or death of any person that is born or dies in his house or ground, shall pay to the said register one shilling per week for each such neglect, reckoning from the time of each birth or death, respectively, to the time of entering it in the register.

Ninety. In like manner, the births, marriages, and deaths of the lords proprietors, landgraves, and caziques shall be registered in the chamberlain's court.

Ninety-one. There shall be in every colony one constable, to be chosen annually, by the freeholders of the colony; his estate shall be above a hundred acres of freehold within the said colony, and such subordinate officers appointed for his assistance as the county court shall find requisite, and shall be established by the said county court. The election of the subordinate annual officers shall be also in the freeholders of the colony.

Ninety-two. All towns incorporate shall be governed by a mayor, twelve aldermen, and twenty-four of the common council. The said common council shall be chosen by the present householders of the said town; the aldermen shall be chosen out of the common council; and the mayor out of the aldermen, by the palatine's court.

Ninety-three. It being of great consequence to the plantation that port-towns should be built and preserved; therefore, whosoever shall lade or unlade any commodity at any other place than a port-town, shall forfeit to the lords proprietors, for each ton so laden or unladen, the sum of ten pounds sterling; except only such goods as the palatine's court shall license to be laden or unladen elsewhere.

Ninety-four. The first port-town upon every river shall be in a colony, and be a port-town forever.

Ninety-five. No man shall be permitted to be a freeman of Carolina, or to have any estate or habitation within it, that doth not acknowledge a God, and that God is publicly and solemnly to be worshipped.

Ninety-six. [As the country comes to be sufficiently planted and distributed into fit divisions, it shall belong to the parliament to take care for the building of churches, and the public maintenance of divines, to be employed in the exercise of religion, according to the Church of England; which 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.](3)

Ninety-seven. 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, that civil peace may be maintained amidst diversity of opinions, and our agreement and compact with all men may be duly and faithfully observed; the violation whereof, upon what presence soever, cannot be without great offence to Almighty God, and great scandal to the true religion which we profess; and also that Jews, heathens, and other dissenters from the purity of Christian religion may not be scared and kept at a distance from it, but, by having an opportunity of acquainting themselves with the truth and reasonableness of its doctrines, and the peaceableness and inoffensiveness of its professors, may, by good usage and persuasion, and all those convincing methods of gentleness and meekness, suitable to the rules and design of the gospel, be won ever to embrace and unfeignedly receive the truth; therefore, any seven or more persons agreeing in any religion, shall constitute a church or profession, to which they shall give some name, to distinguish it from others.

Ninety-eight. The terms of admittance and communion with any church or profession shall be written in a book, and therein be subscribed by all the members of the said church or profession; which book shall be kept by the public register of the precinct wherein they reside.

Ninety-nine. The time of every one's subscription and admittance shall be dated in the said book or religious record.

One hundred. In the terms of communion of every church or profession, these following shall be three; without which no agreement or assembly of men, upon presence of religion, shall be accounted a church or profession within these rules:

1st. "That there is a God."

II. "That God is publicly to be worshipped."

III. "That it is lawful and the duty of every man, being thereunto called by those that govern, to bear witness to truth; and that every church or profession shall, in their terms of communion, set down the external way whereby they witness a truth as in the presence of God, whether it be by laying hands on or kissing the bible, as in the Church of England, or by holding up the hand, or any other sensible way."

One hundred and one. No person above seventeen years of age shall have any benefit or protection of the law, or be capable of any place of profit or honor, who is not a member of some church or profession, having his name recorded in some one, and but one religious record at once.

One hundred and two. No person of any other church or profession shall disturb or molest any religious assembly.

One hundred and three. No person whatsoever shall speak anything in their religious assembly irreverently or seditiously of the government or governors, or of state matters.

One hundred and four. Any person subscribing the terms of communion, in the record of the said church or profession, before the precinct register, and any five members of the said church or profession, shall be thereby made a member of the said church or profession.

One hundred and five. Any person striking out his own name out of any religious record, or his name being struck out by any officer hereunto authorized by each church or profession respectively, shall cease to be a member of that church or profession.

One hundred and six. No man shall use any reproachful, reviling, or abusive language against any religion of any church or profession; that being the certain way of disturbing the peace, and of hindering the conversion of any to the truth, by them in quarrels and animosities, to the hatred of the professors and that profession which otherwise they might be brought to assent to.

One hundred and seven. 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, therefore, be as fully members as any freeman. But yet no slave shall hereby be exempted from that civil dominion his master hath over him, but be in all things in the same state and condition he was In before.

One hundred and eight. Assemblies, upon what presence soever of religion, not observing and performing the above said rules, shall not be esteemed as churches, but unlawful meetings, and be punished as other riots.

One hundred and nine. No person whatsoever shall disturb, molest, or persecute another for his speculative opinions in religion, or his way of worship.

One hundred and ten. Every freeman of Carolina shall have absolute power and authority over his negro slaves, of what opinion or religion soever.

One hundred and eleven. No cause, whether civil or criminal, of any freeman, shall be tried in any court of judicature, without a jury of his peers.

One hundred and twelve. No person whatever shall hold or claim any land in Carolina by purchase or gift, or otherwise, from the natives, or any other whatsoever, but merely from and under the lords proprietors, upon pain of forfeiture of all his estate, movable or immovable, and perpetual banishment.

One hundred and thirteen. Whosoever shall possess any freehold in Carolina, upon what title or grant soever, shall, at the farthest, from and after the year one thousand six hundred and eighty-nine, pay yearly unto the lords proprietors, for each acre of land, English measure, as much fine silver as is at this present time in one English penny, or the value thereof, to be as a chief rent and acknowledgment to the lords proprietors, their heirs and successors, forever. And it shall be lawful for the palatine's court, by their officers, at any time to take a new survey of any man's land, not to oust him of any part of his possession, but that by such a survey the just number of acres he possesseth may be known, and the rent thereon due may be paid by him.

One hundred and fourteen. All wrecks, mines, minerals, quarries of gems, and precious stones, with pearl-fishing, whale-fishing, and one-half of all ambergris, by whomsoever found, shall wholly belong to the lords proprietors.

One hundred and fifteen. All revenues and profits belonging to the lords proprietors in common shall be divided into ten parts, whereof the palatine shall have three, and each proprietor one; but if the palatine shall govern by a deputy, the deputy shall have one of those three-tenths, and the palatine the other two-tenths.

One hundred and sixteen. All inhabitants and freemen of Carolina above seventeen years of age, and under sixty, shall be bound to bear arms and serve as soldiers, whenever the grand council shall find it necessary.

One hundred and seventeen. A true copy of these fundamental constitutions shall be kept in a great book by the register of every precinct, to be subscribed before the said register. Nor shall any person, of what degree or condition soever, above seventeen years

old, have any estate or possession in Carolina, or protection or benefit of the law there, who hath not, before a precinct register, subscribed these fundamental constitutions in this form:

“I, A. B., do promise to bear faith and true allegiance to our sovereign lord King Charles II, his heirs and successors; and will be true and faithful to the palatine and lords proprietors of Carolina, their heirs and successors; and with my utmost power will defend them, and maintain the government according to this establishment in these fundamental constitutions.”

One hundred and eighteen. Whatsoever alien<sup>1</sup> shall, in this form, before any precinct register, subscribe these fundamental constitutions, shall be thereby naturalized.

One hundred and nineteen. In the same manner shall every person, at his admittance into any office, subscribe these fundamental constitutions.

One hundred and twenty. These fundamental constitutions, in number a hundred and twenty, and every part thereof, shall be and remain the sacred and unalterable form and rule of government of Carolina forever. Witness our hands and seals, the first day of March, sixteen hundred and sixty-nine.

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## Notes

1. “Alien” here means a citizen of another country or colony.

## About the author

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David Walbert is Editorial and Web Director for LEARN NC in the University of North Carolina at Chapel Hill School of Education. He is responsible for all of LEARN NC’s educational publications, oversees development of various web applications including LEARN NC’s website and content management systems, and is the organization’s primary web, information, and visual designer. He has worked with LEARN NC since August 1997.

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