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Whose Fundamental Constitutions? Locke, Slavery, and Manuscript Evidence

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Article abstract

This article uses the methods that Locke advocated in his *Essay Concerning Human Understanding* to evaluate manuscript evidence from five different schemes and two drafts of the *Fundamental Constitutions of Carolina*, to thereby determine what role, if any, John Locke had in writing it, and in advocating for slavery and absolutism. It focuses on the influential claims put forward by David Armitage 20 years ago, that Locke was responsible for actively promoting slavery in Carolina's *Fundamental Constitutions*. It enables the reader to view, and judge, the relevant evidence. The author concludes, and invites the reader to conclude, that Armitage's main claims lack foundation in the manuscript evidence. That evidence instead points towards the legal power of those who owned Carolina, the Lords Proprietors, and to the crown, which granted Carolina's charter, and to the logic of a different theory of government, patriarchalism, for the rationale behind both slavery and absolutism. The central ideas behind slavery and colonization were epitomized, as Locke understood, by Sir Robert Filmer, who wrote the book to which Locke responded in his *Two Treatises of Government*. Filmer's ally, Sir Henry Spelman, like Filmer a deeply committed royalist who believed in the king's unlimited prerogatives, composed the original 1629 Carolina charter that shaped the *Fundamental Constitutions*. Misattributing the authorship of particular clauses to Locke is a symptom of a larger failure to distinguish the impact of momentous debates over authority and race in the seventeenth century. Locke's theories did, in practice as well as principle, reject the theory of domination put forward by Filmer, and argued instead for human rights and democracy that were inclusive and capacious. The manuscript evidence has the potential to reshape how modern democratic theory is understood in the present.

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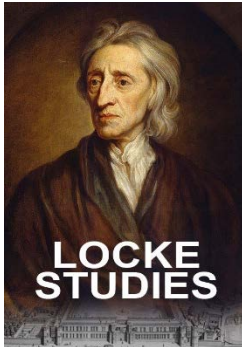
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Whose *Fundamental Constitutions*? Locke, Slavery, and Manuscript Evidence

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Abstract: This article uses the methods that Locke advocated in his *Essay Concerning Human Understanding* to evaluate manuscript evidence from five different schemes and two drafts of the *Fundamental Constitutions* of Carolina, to thereby determine what role, if any, John Locke had in writing it, and in advocating for slavery and absolutism. It focuses on the influential claims put forward by David Armitage 20 years ago, that Locke was responsible for actively promoting slavery in Carolina's *Fundamental Constitutions*. It enables the reader to view, and judge, the relevant evidence. The author concludes, and invites the reader to conclude, that Armitage's main claims lack foundation in the manuscript evidence. That evidence instead points towards the legal power of those who owned Carolina, the Lords Proprietors, and to the crown, which granted Carolina's charter, and to the logic of a different theory of government, patriarchalism, for the rationale behind both slavery and absolutism. The central ideas behind slavery and colonization were epitomized, as Locke understood, by Sir Robert Filmer, who wrote the book to which Locke responded in his *Two Treatises of Government*. Filmer's ally, Sir Henry Spelman, like Filmer a deeply committed royalist who believed in the king's unlimited prerogatives, composed the original 1629 Carolina charter that shaped the *Fundamental Constitutions*. Misattributing the authorship of particular clauses to Locke is a symptom of a larger failure to distinguish the impact of momentous debates over authority and race in the seventeenth century. Locke's theories did, in practice as well as principle, reject the theory of domination put forward by Filmer, and argued instead for human rights and democracy that were inclusive and capacious. The manuscript evidence has the potential to reshape how modern democratic theory is understood in the present.

Keywords: Locke, slavery, *Fundamental Constitutions of Carolina*, *Two Treatises of Government*, human understanding, evidence, manuscripts, absolutism, patriarchalism, Lords Proprietors, Sir Robert Filmer, David Armitage, human rights, democracy, race, racism, seals, law, legality, Carolina

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1. Introduction

In the wake of World War II, John Locke's 250-year-old ideas were understood by many to provide the basic underpinnings of democratic principles. They were foundational to the universal declaration of human rights in 1948.¹ Not only the United Nations, but also allied countries promoted them widely as part of efforts to fight fascism and spread democracy.² But of late, it seems ridiculous to speak of Locke's ideas in the context of human rights or consent to government. In a recent review article in the *London Review of Books*, Colin Kidd summarized a broadly accepted perspective when he alleged that Locke had an impact on neither the Glorious Revolution nor the American Revolution; that his ideas about the perfect constitution were embodied in the reactionary *Fundamental Constitutions* of Carolina; that he had been rightly criticized for his involvement in slavery and colonialism; and that he should not even be called a liberal, since liberalism did not exist until the nineteenth century. He agreed with J.G.A. Pocock's argument that republicanism was the more important set of ideas for American revolutionaries, ideas not about democracy but about balance of power between king, lords, and people. Americans were not influenced by Locke, he asserts, but by Aristotle, Livy, and Polybius.³

In the past fifty years, as Kidd summarized, many scholars have been anxious to prove Locke's irrelevance. Never mind that Locke's *Two Treatises on Government* was first published and went through three editions after the Glorious Revolution of 1688, and that Locke openly framed his introduction as a justification of it. Or that he was promoted to

¹ My thanks to those who read and gave feedback on earlier drafts: Patrick Connolly, John Dunn, Steven Pincus, Theresa Bejan, Brian Smith, and the anonymous reviewers for *Locke Studies*, as well as the editor, Daniel Layman, who made detailed suggestions. Thanks also to Shelley Weinberg and the John Locke Society conference organizers for 2023, who invited me to give a plenary lecture, and for the conversation afterwards, which spurred me to do the research that led to this article. Thanks also to Michael Becker, Boone Ayala, Chloe Kauffman, Angelina Lincoln, Miranda Christy, Grace Baty, Bernard Cooperman and Stefano Villani, as well as to the members of the Georgetown Political theory workshop, especially Stefan Eich and Mark Fisher, for the rich discussion of the near final draft. Finally, special thanks to wonderful archivists: Kyle Triplett at the New York Public Library and Patrick McCawley at the South Carolina Department of Archives & History, both of whom have now put their manuscript copies of the *Fundamental Constitutions* online, and to Nick Shaftesbury (the Twelfth Earl) and to Mark Forrest, the archivist at St. Giles, for allowing me to examine their collections.

Universal Declaration of Human Rights (Washington DC: US Government Printing Office, 1949). Passed by the United Nations December 1948. One example of many that make this obvious connection is James W. Nickel, *Making Sense of Human Rights: Philosophical Reflections on the Universal Declaration of Human Rights* (Berkeley: UC Press, 1987), 6.

² Locke's writings on government, in particular, were translated into many different languages, such as Italian. See, for example, John Locke, *Due Trattati sul Governo* (Turin: Unione tipografico-editrice torinese, 1948).

³ Colin Kidd, "Antidote to Marx," review of *America's Philosopher: John Locke in American Intellectual Life*, by Claire Rydell Arcenas, *London Review of Books*, January 4, <https://www.lrb.co.uk/the-paper/v46/no1/colin-kidd/antidote-to-marx>. Kidd is reviewing Claire Rydell Arcenas, *America's Philosopher: John Locke in American Intellectual Life* (Chicago: University of Chicago Press, 2023). Arcenas does not focus on Locke's ideas themselves, but on usage and debates among Americans. She does not reach quite the same conclusions as Kidd.

a position of some power on the Board of Trade in 1695, on the insistence of his Whig allies, due to his influence.⁴ Never mind as well that during the 1760s and 1770s, Locke's name was cited more often than that of any other thinker in American newspapers, or that Jefferson said he relied on Locke's ideas (along with those of Locke's ally Algernon Sidney) when composing the Declaration of Independence.⁵

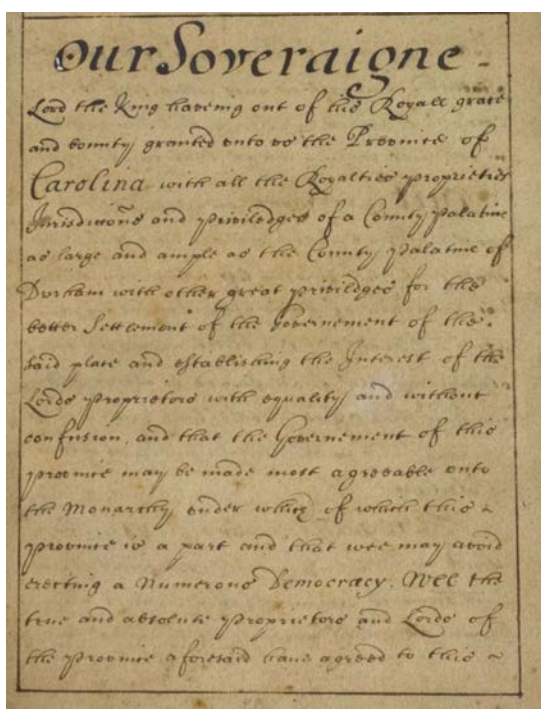
In this essay I engage the scholarship on Locke and slavery, and particularly the claim that the *Fundamental Constitutions* was Locke's ideal constitution, the best expression of his ideas and principles. That claim, I argue, ignores the predominant political theory of the seventeenth century, the theory that justified empire and slavery: the patriarchal theory of the rights of Christian princes, of hereditary lordship and debasement. It obscures the fierce debates over human rights and power in the seventeenth century, debates that laid the logical and eventually legal foundations for democracy. Here I use Locke's own methods of human understanding to analyze the evidence, methods that he developed to complement his theories of government based on consent, methods that engage the reader directly in analyzing the evidence for themselves. Such analysis shows not only that the primary authorship of the *Fundamental Constitutions* should be ascribed to others, but that the principles behind the *Fundamental Constitutions* (1669) were those Locke's *Two Treatises* (1689) argued against.

⁴ Peter Laslett, "John Locke, the Great Recoinage, and the Origins of the Board of Trade: 1695-1698," *William and Mary Quarterly* 14, no. 3 (1957): 370-402; Holly Brewer, "Slavery, Sovereignty, and 'Inheritable Blood': Reconsidering John Locke and the Origins of American Slavery," *The American Historical Review* 122, no. 4 (October 1, 2017): 1038-78. <https://academic.oup.com/ahr/article/122/4/1038/4320238>.

⁵ Donald S. Lutz, "The Relative Influence of European Writers on Late Eighteenth-Century American Political Thought," *American Political Science Review* 78, no.1 (March 1984): 189-197, <https://doi.org/10.2307/1961257>; On Locke's influence on him, and on the Declaration of Independence, Jefferson reflected repeatedly in his correspondence: "The object of the Declaration of Independence . . . was . . . not to find out new principles, or new arguments, never before thought of, not merely to say things which had never been said before; but to place before mankind the common sense of the subject . . . Neither aiming at originality of principle or sentiment, nor yet copied from any particular and previous writing, it was intended to be an expression of the American mind . . . All its authority rests then on the harmonizing sentiments of the day, whether expressed in conversation, in letters, printed essays, or in the elementary books of public right, as Aristotle, Cicero, Locke, Sidney, etc." From Thomas Jefferson to Henry Lee, 8 May 1825, *Founders Online*, National Archives, <https://founders.archives.gov/documents/Jefferson/98-01-02-5212>. In 1789, he requested engravings of the three men who laid the foundations for natural law: "I have duly received your favor of the 5th. inst. with respect to the busts & pictures I will put off till my return from America all of them except Bacon, Locke and Newton, whose pictures I will trouble you to have copied for me: and as I consider them as the three greatest men that have ever lived, without any exception, and as having laid the foundations of those superstructures which have been raised in the Physical & Moral sciences." From Thomas Jefferson to John Trumbull, 15 February 1789, *Founders Online*, National Archives, <https://founders.archives.gov/documents/Jefferson/01-14-02-0321>. [Original source: Julian P. Boyd, ed., *The Papers of Thomas Jefferson*, vol. 14, 8 October 1788-26 March 1789, (Princeton: Princeton University Press, 1958), 561]. Locke and Sidney shared similar ideas about the basis of government and were, arguably, allies in the Whig resistance during the exclusion crisis. See, for example, Richard Ashcraft, *Revolutionary Politics and Locke's Two Treatises of Government* (Princeton, NJ: Princeton University Press, 1986).

Could Locke be the philosophical inspiration behind the *Fundamental Constitutions*, a frame of government that supported arbitrary and absolute power as well as slavery and disdained the entire idea of democracy? The preamble begins:

Our Sovereigne Lord the King having out of his Royall grace and bounty granted unto us the Province of Carolina with all the Royalties proprieties 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 unto the Monarchy under which [we live] of which this province is a part and that wee may avoid erecting a Numerous Democracy. Wee the true and absolute Proprietors and Lords of this Province have agreed . . .



⁶ Figure 1. Charleston Library Company Copy (1669C), § 1

This preamble was obviously written in the voice of and on behalf of the “Absolute Proprietors and Lords” who signed the document. It explicitly opposes “Democracy.” The entire document upholds and celebrates feudal and hereditary principles and hereditary titles, as well as the power of the king. If this document was in fact written mostly by Locke and embodies ideals that he adhered to throughout his life, then all those spreading and

⁶ First page from the Charleston Library Company’s manuscript copy of the *Fundamental Constitutions*, dated July 21, 1669 (first scheme), but based on the second scheme from March 1, 1669/70. Explored in full in the pages that follow (1669C). Charleston Library Company, *Fundamental Constitutions of Carolina*, Ms. 378.
[https://lcdl.library.cofc.edu/lcdl/catalog/lcdl:53757?tify={%22pages%22:\[70\],%22panX%22:0.362,%22panY%22:0.635,%22view%22:%22info%22,%22zoom%22:0.505}](https://lcdl.library.cofc.edu/lcdl/catalog/lcdl:53757?tify={%22pages%22:[70],%22panX%22:0.362,%22panY%22:0.635,%22view%22:%22info%22,%22zoom%22:0.505})

sharing Locke's treatises in the wake of World War II as an antidote to authoritarian principles and to fascism were blind and misguided.

Whether or not the *Fundamental Constitutions* represents the *summa* of Locke's ideas about government comes down to manuscript evidence. Did Locke compose his *Two Treatises* of 1689 while also supporting absolutism, arbitrary power, and slavery via the *Fundamental Constitutions*? While the issue has been debated for three centuries, and some claims were made in the nineteenth century about Locke's possible authorship, the current consensus about Locke's role in the *Fundamental Constitutions* has been shaped by David Armitage's influential article of 2004. Armitage therein made a number of sweeping claims about Locke's responsibility for this document, and particularly about his support of slavery, via the manuscript evidence.⁷ The scholarly community has rested great weight on his interpretation, one which, as of this writing, has been cited 451 times, often supportively, since it was published 20 years ago.⁸

His conclusions aligned with what Charles Mills earlier called a "racial contract." That is, Armitage's explosive findings indicated that Locke intended to exclude black people from his theory of equality. Mills' claims echoed what Carole Pateman called a "sexual contract" for the exclusion of women from consent. Locke secretly supported absolute and arbitrary power, including the powers of masters over slaves, or such is the implication of Armitage's findings. While the exclusions of women (at least partially, based on Locke's claim that women choose husbands who can represent them) and children (based on their immaturity of judgement) were explicit in the published text of his *Two Treatises of Government*, no such exclusion based on race appears in any of his published works.⁹ The argument that Locke did intend deliberate racial exclusions rests, at present, on Armitage's claims about Locke's supposed authorship of the *Fundamental Constitutions of Carolina* in 1669 and revisions of that manuscript in 1682. The latter implication is an issue that was particularly pivotal for Armitage, as it overlapped with other claims that Locke wrote his most important text, the *Two Treatises of Government*, at roughly the same time.

⁷ David Armitage, "John Locke, Carolina, and the Two Treatises of Government," *Political Theory*, no. 32 (2004): 601-627, <https://doi.org/10.1177/0090591704267122>. I note that I did not set out to disprove his manuscript claims. In the process of finding and taking photos of the various manuscripts in order to include them on the slaverylawpower.org project (for which I am project director), I was tracking his citations, among others, to make sure I included relevant material.

⁸ According to Google Scholar, accessed 9/2/2024, Armitage's "Locke & Carolina" had 451 citations. Many other books and studies, which have in turn been influential, have drawn on Armitage's interpretation. See, for example, Jennifer Pitts, "Political Theory of Empire and Imperialism," *Annual Review of Political Science* 13, no. 13, 2010 (June 15, 2010): 211-35, <https://doi.org/10.1146/annurev.polisci.051508.214538>; Lisa Lowe, *The Intimacies of Four Continents* (Durham, NC: Duke University Press, 2015); Adam Dahl, *Empire of the People: Settler Colonialism and the Foundations of Modern Democratic Thought* (Lawrence, KS: University Press of Kansas, 2018).

⁹ Carole Pateman, *The Sexual Contract* (Stanford: Stanford University Press, 2018); Charles W. Mills, *The Racial Contract* (Ithaca, NY: Cornell University Press, 2022); Carole Pateman and Charles Mills, *The Contract and Domination* (Hoboken, NJ: John Wiley & Sons, 2013); Holly Brewer, *By Birth Or Consent: Children, Law, and the Anglo-American Revolution in Authority* (Williamsburg, VA: Omohundro Institute of Early American History and Culture, 2005).

In 2017 I explored the connections between Locke's *Two Treatises* and his actions on the Board of Trade in the 1690s, especially with respect to slavery. In the 1690s Locke took steps to change earlier policies advocated by Charles II and James II that had promoted slavery, including the bounty of 50 acres of land that Charles II had offered for buying a slave. I argued that slavery in this era emerged from a set of ideologies associated with absolutism and paternalism, which legitimated Charles II's policies. I narrowed the implications of Armitage's claims about Locke's authorship of the *Fundamental Constitutions* by emphasizing, as had others before Armitage, that Locke was fulfilling the role of secretary or clerk, making copies of a legal document and adding some input, but hardly the main author of the document. I showed that Locke's attitudes must have shifted significantly over time. I assumed, as have many others, that Armitage's pivotal 2004 article had accurately represented the facts of the manuscript evidence within the various versions of the *Fundamental Constitutions*.¹⁰

Armitage's claims were that the manuscript evidence showed that Locke was the main author of those Constitutions and that he had played a pivotal role in advocating for absolute and arbitrary power as well as slavery as a practical policy. Armitage's claims about the evidence included the following:

1. That Locke added key words about the absolute "power &" authority of masters over slaves to a draft version of the *Fundamental Constitutions* among the Shaftesbury Papers in the National Archives in the UK (version 1670A, in the list below), and that those revisions were in Locke's own handwriting.
2. That Locke continued to play a role in amending the *Fundamental Constitutions* through 1682, when he was in the early stages of drafting the *Two Treatises of Government*. Locke made many corrections at that point to a printed typescript of the *Fundamental Constitutions* (now held by the New York Public Library, version 1682D in the list below), all of which were accepted, Armitage claimed. But Locke did not choose to correct the paragraph allowing masters "absolute power and authority" over slaves.
3. That therefore the *Fundamental Constitutions* retained this execrable paragraph about the "absolute power and authority" of masters over slaves as shown in the August 17, 1682 manuscript copies (versions 1682AugA & B in the list below).
4. That an early manuscript copy of the *Fundamental Constitutions*, which contained strong language supporting absolute and arbitrary power as well as slavery, embodied Locke's distinctive ideas. Armitage therefore infers it was written or influenced by Locke (Version 1669B).

From this manuscript evidence, Armitage concludes that Locke continued to support slavery in practice and was perhaps creating the ideological grounding for it even as he was writing his *Two Treatises of Government* in 1682. The only way to reconcile this apparent contradiction is to conclude that Locke supported slavery for Black people and also was secretly a proponent of absolute and arbitrary power.

Charles Mills put the implications of Armitage's claims best in his recent essay on "Locke on slavery," (2021) unfinished when he died, but edited and published by others. Mills agreed that Locke's *Two Treatises* is opposed to slavery, and particularly to hereditary slavery. He asks rhetorically: "how could hereditary enslavement (as in New World slavery in general, and as enshrined in the Carolina Constitution) possibly be

¹⁰ Brewer, "Slavery, Sovereignty, and 'Inheritable Blood,'" 1038–78.

justified in a way consistent with Lockean principles?” Mills interpretation rests on Armitage’s “colonial” reading of Locke. He quotes Armitage: “There is no mistaking either [Locke’s] tacit commitment to this brutal provision [the *Fundamental Constitutions*’ insistence on the slaveholder’s absolute arbitrary power] or to the hold that the master slave relationship had over his political imagination both before and after the composition of the *Two Treatises*.”¹¹ Thus, Mills continues, the thesis of the repentant Locke, from whose eyes (by the time of the *Two Treatises*) the scales have fallen, cannot be sustained: his theory and his practice were coeval.”¹² Mills concludes: “So that brings us naturally, and finally, to the possible solution that Locke was a racist. . . . Locke’s practice over decades being better explained by racism than any competing hypothesis.” He ends his article with the chilling words that the only possible means of reconciling Locke’s theory and practices is that Locke partook of a general racism existing everywhere in English society, whether he admitted it or not: “Locke as racist.”¹³

Thus, Armitage’s review of the manuscript sources has provided a basis for a critical reading of Locke’s theory of government. Armitage emphasizes that such a theory, one that many scholars now understand as foundational to democracy, is by definition exclusionary despite egalitarian appearances. Consent is only for some, and exclusions from consent are not based on the mutable characteristics of age or immaturity but rather on the immutable basis of skin color.

It is a problem for scholars that the manuscript evidence on which we rely is difficult to verify. In Armitage’s case, his article cited nine manuscript copies of the *Fundamental Constitutions* at four different archives, as well as other manuscripts elsewhere. The logistical cost of consulting all those manuscripts was steep in 2004, involving extensive travel. In the 20 years since, it has become easier to share images of manuscripts, but consulting them is still a Herculean feat, requiring extensive travel: I have just retraced those steps.

I did not expect to disagree with Armitage’s main claims about the evidence. I was wrong.

What do the manuscripts indicate about who wrote the *Fundamental Constitutions*, and whether Locke supported slavery? Instead of relying on established authorities to answer this question, we should, as Locke emphasized in his *Essay Concerning Human Understanding*, examine the evidence for ourselves:

It matters not what Men's Fancies are, 'tis the Knowledge of Things that is only to be priz'd; it is this alone gives a Value to our reasonings, and preference to one man's knowledge over another's, that it is of things as they really are, and not of dreams and fancies.¹⁴

¹¹ Charles W. Mills, “Locke on slavery,” *The Lockean Mind*, ed. Jessica Gordon-Roth and Shelley Weinberg (New York: Routledge, 2021), 487-497, esp. 491, 493. The material in brackets was inserted by Mills.

¹² Mills, “Locke on slavery,” 493.

¹³ Mills, “Locke on slavery,” 495, 497.

¹⁴ *John Locke: Essay Concerning Human Understanding*, ed. Alexander Campbell Fraser (New York: Dover, 1959), “Of the Reality of Knowledge,” Book IV, ch. 4, §1 (2:227).

Locke condemned relying on mere logic to come to abstract conclusions without examining the evidence:

The greatest part of our knowledge depends upon deductions and intermediate ideas: and in those cases where we are fain to substitute assent instead of knowledge, and take propositions for true, without being certain they are so, we have need to find out, examine, and compare the grounds of their probability.¹⁵

He sets up a process for doing so that includes “finding out truths,” and then “the regular and methodical disposition of them, and laying them in a clear and fit order, to make their connection and force be plainly and easily perceived.” He warns:

[T]hey who have not so far looked into those forms, are not sure by virtue of syllogism, that the conclusion certainly follows from the premises; they only take it to be so by an implicit faith in their teachers and a confidence in those forms of argumentation; but this is still but believing, not being certain.¹⁶

I invite you, the reader, to examine that evidence via digital photographs.

Armitage provides us with the following argument: (1) Locke was the main author of the *Fundamental Constitutions*; (2) Locke inserted key language supporting slavery into the *Fundamental Constitutions*; (3) The manuscript evidence shows that Locke continued to support slavery between 1669 and 1682, through the period when Armitage believes that Locke had finished writing the *Two Treatises*; (4) Therefore, Locke’s critics, and most especially Josiah Tucker in a treatise written in 1776, and Jeremy Bentham in 1833, were correct. Armitage ends his article with this condemning sentence:

Tucker and Bentham’s assaults on Locke may have been malevolent but they were theoretically acute; little did they know that, in light of Locke’s political activities in the summer of 1682, they were also historically accurate.¹⁷

Tucker’s 1776 book, which was both highlighted and quoted by Armitage, identified Locke’s ideas about consent to government as the core principle of the misguided American rebels, whom he described as “Mr. Locke’s Disciples.”¹⁸ Let them rebel, he asserted, as any attempt they made at self-government would soon fall apart. Government based on the consent of the governed is *de facto* ridiculous, “extravagant,” and

¹⁵ *Essay Concerning Human Understanding*, Book 4, Ch.17, §2, §3, §4: pp. 668-678.

¹⁶ *Essay Concerning Human Understanding*, Book 4, Ch.17, §2, §3, §4: pp. 668-678.

¹⁷ Armitage, “Locke & Carolina,” 620.

¹⁸ Josiah Tucker, *A Series of Answers to Certain Popular Objections against Separating from the Rebellious Colonies* (Gloucester: R. Raikes, 1776), 1, 99.

“detrimental to the Peace of Society.” Just look at what kind of Constitution Locke had created: the *Fundamental Constitutions*.¹⁹

In his Fundamental Laws of the Province of Carolina, he lays it down as an invariable Maxim, [Constitution CX] “That every Freeman of Carolina shall have ABSOLUTE POWER, AND AUTHORITY over his Negro Slaves.”²⁰

Tucker joyfully concludes that Locke supported slavery.

Such is the language of the humane Mr. Locke! The great and glorious Assertor of the natural Rights and Liberties of Mankind.” He ends, “Republicans in general are for leveling all Distinctions above them, and at the same Time for tyrannizing over those, whom Chance or Misfortune have placed blow them. And most undoubtedly a stronger Proof of this Conduct could not have been given, that what is contained in the above assertion of Mr. LOCKE.”²¹

Tucker then quotes a single passage from the *Two Treatises*:

There is another Sort of Servants, which by a peculiar Name we call SLAVES, who being Captives taken in a just War, are by the Right of Nature, subjected to the ABSOLUTE DOMINION, AND ARBITRARY POWER of their masters.²²

I will not here retrace arguments about how Tucker is misreading the *Two Treatises*. Many other scholars have done so, including Mills in the article cited above and myself in “Slavery, Sovereignty, and Inheritable Blood.”²³ Here I focus instead on whether these were in fact Locke’s *Fundamental Constitutions*, and whether Locke was the author of these words about the absolute power of masters over “negro slaves” as maintained by Tucker, Dean of Gloucester (whose other sermons and books supported the King and the Church of England), by many nineteenth century defenders of slavery, and recently and decisively by David Armitage. The pages below include images of the relevant pages and passages in the manuscripts. I then put the process of the crafting of the *Fundamental Constitutions* of 1669 into historical and legal context to show that in fact this was hardly Locke’s ideal Constitution. To the contrary, it came primarily from the pen of those

¹⁹ Tucker, *Rebellious Colonies*, 15-17, 102-103.

²⁰ Tucker, 100-103.

²¹ Tucker, 103.

²² Tucker, 103.

²³ See John Dunn, *The Political Thought of John Locke: An Historical Account of the Argument of the ‘Two Treatises of Government’* (Cambridge: Cambridge University Press, 1982); James Farr, “‘So Vile and Miserable an Estate’ the Problem of Slavery in Locke’s Political Thought,” *Political Theory* 14, no. 2 (1986): 263-289; Wayne Glausser, “Three Approaches to Locke and the Slave Trade,” *Journal of the History of Ideas* 51, no. 2 (1990): 199–216, <https://doi.org/10.2307/2709512>; Ruth W. Grant, *John Locke’s Liberalism* (Chicago: University of Chicago Press, 1991).

against whom he began to argue. Aside from anything else, it had to legally conform to Carolina's charter, originally written in 1629. Most of those who had to legally approve the *Fundamental Constitutions* were royalists who disapproved of democracy. Finally, I provide a longitudinal analysis of who began to attribute to Locke responsibility for the slavery sections and for what purpose they made such attributions. Over the long run, those who made the strongest claims for Locke's authorship were contributing to pro-slavery (in the nineteenth century) and neo-liberal (in the twentieth century) readings of Locke's philosophy. Both readings undercut the power of Locke's appeals to human rights as bases for liberal democratic policies. These claims rely on evidence from manuscript archives. By placing them in a deeper textual context, it is possible to undertake a fresh examination of Locke's theories.

The *Fundamental Constitutions*, first composed in 1669, provided a frame of government for the new colony of Carolina. It was not the first such step, nor would it be the last, as, despite the Proprietors' promise that it would provide a permanent frame of government, they revised it four times over the next 30 years. But it was also a document that emerged alongside other crucial legal frameworks for the colony. The *Fundamental Constitutions* used much of the language of, and conformed to, the Charter for Carolina first issued by Charles I in 1629. Charles II reissued that charter in 1663.²⁴

That initial charter of 1629 fit with the ideals expressed by James I in his Trew Law of Free Monarchies (1598). It was almost certainly written by Sir Henry Spelman, who like Sir Robert Filmer (they likely knew each other) was helping Charles I to justify his stance against parliament. Spelman modeled the charter for Carolina on the Palatinate of Durham, on which he also based the charters for Barbados and Maryland, written in these same few years between 1628 and 1632. Durham's charter, as Spelman had determined in his antiquarian researches, dated back to the Norman conquest, one of the few remaining English provincial charters that did. It notably lacked any provisions for representation in Parliament, either for borough or city. Indeed, James I had vetoed parliamentary efforts to grant Durham representation.²⁵ Spelman, like Filmer, was one of

²⁴ Charles II's charter to the Proprietors in 1663 allowed them to grant titles of nobility so long as they were not already used in England and named the eight Proprietors "the true and absolute Lords and Proprietors of the said Province." "The first charter granted by King Chas. II," Westminster, March 24, 1663. Charles II issued a second charter in June 1665 which expanded the boundaries of Carolina but otherwise appears substantially the same. Summaries of both are printed in [Calendar of State Papers, Colonial, America and West Indies](#), ed. Noel Sainsbury, Her Majesty's Stationery Office, London, 1880, 5: 125–126, item 427, and 5:306–7, item 1011. These charters for Carolina, including the original 1629 charter upon which the charter of 1663 and the revision of 1665 were closely modeled, dictated that it had to conform to the rights and privileges and norms of the Palatinate of Durham. "Sir Robert Heath's Patent 5 Charles Ist.", 30 Oct. 1629, [The Colonial Records of North Carolina Josiah Tucker, A Series of Answers to Certain Popular Objections against Separating from the Rebellious Colonie](#), ed. William L. Saunders, Secretary of State. Vol. I, 1662 to 1712. (Raleigh: P. M. Hale, 1886), 5-13 or transcription from the original at the National Archives (TNA) Shaftesbury Papers, PRO 30/24/48/1; <https://slaverylawpower.org/original-charter-of-carolina-1629/>

²⁵ James I vetoed three explicit requests by Parliament to create representation for Durham. See the introduction to the 1604–1629 volume of the History of Parliament, section xiv (on representation and accountability), by Andrew Thrush. <https://www.historyofparliamentonline.org/volume/1604-1629/survey/xiv-representation-and-accountability> For Spelman's role in writing most crown charters see "Records of the Council on New England," *Proceedings of the American Antiquarian Society*, 1867, especially 13, 63.

a coterie of legal historians and theorists of government who, promoted by James I and Charles I in the 1630s and 1640s, articulated legal and theoretical grounds to privilege the absolute powers of the crown and of lords (including Lords Proprietors) under him. In doing so they were retracing a history to support a present (and future) theory and vision of how the world should look. It was arguably not to Filmer but to this charter, and to its embodiment in the *Fundamental Constitutions*, that Locke was actually responding in *Two Treatises of Government*.²⁶

The eight Proprietors to whom Charles II granted the province had supported his restoration to the crown. While some, like George Monck, the newly created Duke of Albemarle, and Anthony Ashley Cooper, later the Earl of Shaftesbury, had allied with Cromwell during most of the Civil Wars and under the Commonwealth, the others were all firm cavaliers and royalists, men who had gone into exile with their king. These were the Proprietors who made the laws for their new colony.

Moreover, as is clear from the original records of Charles II's privy council, Charles II decided to grant these men the colony in response to a petition from Peter Colleton and Thomas Modyford of Barbados. Modyford was a former governor of Barbados, and Charles II would later appoint him governor of Jamaica. Even then Modyford was a factor, or retailer of slaves, for the king's Royal African Company, headed by James, Duke of York, the king's brother. Modyford and Colleton wanted to extend Barbados' sugar plantations, and slavery, into Carolina, arguing that Robert Heath and his heirs had never properly settled Carolina, despite their earlier patent, and so that it should be regranted. While Charles II named only Colleton as one of the Proprietors, the others were all members of his privy council.²⁷ Almost immediately after being granted the colony, these Proprietors appointed a planter, a fellow councilor of Colleton's and Modyford's from Barbados, John Yeamans, as their new governor in 1665. Yeamans shortly afterwards began a settlement at Cape Fear.

At this time, before Locke was involved, and before the first version of the *Fundamental Constitutions* was written, the Proprietors actively recruited settlers from Barbados, and promised them up to 100 acres of land apiece for themselves, and 50 acres for each family member, servant, or slave whom they transported.²⁸

The *Fundamental Constitutions* emerged from Proprietors who had already expressed opposition to democracy and support for slavery, monarchy, and hierarchical government, the same ideas expressed in the original 1629 charter, which also argued for complete dispossession of native American claims to the land. In the English Civil War

²⁶ See J.G. A. Pocock, *The Ancient Constitution and the Feudal Law* (Cambridge: Cambridge University Press, 1957), chs. 6 & 7. Pocock identifies Spelman as the historian who named, discovered, and characterized feudal law from ancient records. Filmer and Spelman, both, sought to use these claims about a past to justify the king's powers, and, in Spelman's case, to craft charters for the new world. For more about their political role, see F. Smith Fussner, *The Historical Revolution: English Historical Writing and Thought, 1580-1640* (New York: Routledge, 1962), 108-109: "The example of Filmer may suggest why the problem of feudalism was to remain one of the central historical and antiquarian problems of the age. It was in terms of feudal tenures and feudal suzerainty that royalist writers were to make their case for political sovereignty."

²⁷ TNA CO/5/286/5-8.

²⁸ TNA CO/5/286/9-10.

that had just concluded, most of these Proprietors were on the side of the former Charles I and supported the principles of government emblematically laid out by Sir Robert Filmer and his fellow supporter of absolutist government under Charles I, Spelman. Charles I's charter for Carolina, written by Spelman in 1629, stated explicitly that Robert Heath, the first proprietor and his heirs, were to be "absolute lords and proprietors" over the land and those who lived upon it. Charles I's charter granted Heath as proprietor the ability to condemn or pardon all those who lived in his dominion for crimes that he could define—the power of life and death.

In 1663, Charles II reissued this same charter to the eight new Proprietors of Carolina. The King claimed that as a Christian Prince, he had by right of discovery the ability to grant the lands of non-Christians (which meant all native American Indians) to anyone he pleased, along with the right to govern them as well as to have dominion and governance over any who lived upon those lands (and oceans, and inlets, and rivers and marshes). The king's charter granted him the ability to condemn people for crimes or to pardon them, or the power of life and death; this charter was merely reissued by Charles II to the new Proprietors of Carolina in 1663. Filmer elaborated on this mentalité when he argued that government should be based on hereditary privilege, and that kings had the power to do whatever they wanted, including dispossessing native peoples and killing their subjects, just as fathers had absolute power of life and death over their children, servants, and slaves.²⁹

Locke was secretary to Anthony Ashley Cooper, and in such a capacity was one of a number of secretaries and clerks who interacted with the different versions of the *Fundamental Constitutions*. He began working for Cooper, later Shaftesbury, in 1667, and there is no evidence of his involvement in the Carolina project until 1669 at the earliest, long after King Charles II and the Proprietors had taken these earlier actions.³⁰ As the historian John Milton noted after his close analysis of some of the manuscript versions of the *Fundamental Constitutions*, Locke was actively involved in some of the

²⁹ John Yeamans, the first governor appointed by the Proprietors in 1665, had owned a plantation in Barbados and had orders to replicate its policies, e.g., "Commission from the Lords Proprietors of Carolina to Sir Jno. Yeamans, Governor of the County of Clarendon, &c., and his Council," Jan, 1665, in *Calendar of State Papers*, 5:270, item 913. See also the Proprietors' call for settlers, which outlined the form of government and headright policies including explicitly granting headrights to masters of one hundred acres for each "man servant" and "for every woman servant and slave 50 acres," principles later laid out more fully in the *Fundamental Constitutions*: "New Plantation at Cape Florida, Carolina," late 1666 or early 1667 (it made these promises of land only to those who arrived there before June 1667, so was made substantially in advance), TNA, PRO 30/24/48, no. 83, also in *Calendar of State Papers* vol. 9: 1675–1676 and *Addenda 1574–1674*, ed. W. Noel Sainsbury (London, 1893), 144, item 377. Barbadian settlers provided many of the first settlers to Carolina. See especially Peter Wood, *Black Majority* (New York: Knopf, 1974), esp. ch. 1, "A Colony of a Colony;" and Edward B. Rugemer, *Slave Law and the Politics of Resistance in the Early Atlantic World* (Cambridge: Harvard University Press, 2018) esp. ch. 2 "Animate Capital." For the 1629 original charter of Carolina, see <https://slaverylawpower.org/original-charter-of-carolina-1629/>, 2 ("absolute lords") and 3 (power of life & death).

On Filmer, see generally, *Filmer: Patriarcha and Other Writings*, ed. Johann Sommerville (Cambridge: Cambridge University Press, 1991), esp. chapters 1 & 2. Filmer's views on these questions are discussed in detail below.

³⁰ Locke met Shaftesbury in 1666 when he treated him for an illness but became his personal physician and secretary only in the summer of 1667.

editing and transcription of the *Fundamental Constitutions* in 1670 but was not the sole author.³¹ Armitage also found annotations on the 1682 draft in Locke's handwriting, along with annotations in the handwriting of others.

It is important to realize, however, that neither Locke nor any of these clerks and secretaries were the formal signatories. To make it legal, and to make any changes to the document legal, all Proprietors had to sign the document and imprint their seals.

2. The Fundamental Constitutions: Five Schemes & Two Drafts

I have examined nine manuscript copies of the *Fundamental Constitutions* dating between 1669 and 1698, as well as four printed copies, dated between 1670 and 1698, in addition to the first printed copy that linked Locke's name to the document, published in 1720, after Locke's death. To enable a clearer analysis, I provide a list of all those versions here, in chronological order. I have used the mark ** to designate the most important versions that I will analyze most closely.

The “*first scheme*,” or the first version of the *Fundamental Constitutions*, exists only in manuscript. It was brought by the new governor, along with his official instructions from the Proprietors and a group of colonists when he left London for Carolina in August 1669, and is a copy of a missing signed and sealed original. It was dated just before their embarkation: July 21, 1669. This version was regarded in Carolina itself as the official version since it contained language stating that it should never be modified. This version, 1669A, survives in the South Carolina archives. The first page sections are missing, but all are numbered. It has 81 sections. At the end are indications of signatures and also circles to mark the seals of six Proprietors: Albemarle®, Craven®, Jo. Berkeley®, Ashley®, G. Carteret®, P. Colleton. Ashley, of course, is the signature of Anthony Ashley Cooper, later the Earl of Shaftesbury, Locke's mentor.³²

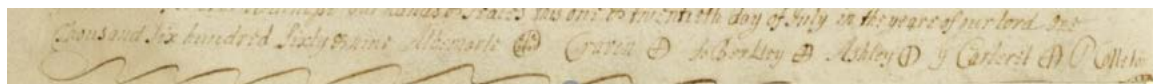


Figure 2. Signature line in 1669A

³¹ J. R. Milton, “John Locke and the Fundamental Constitutions of Carolina,” *Locke Newsletter*, vol. 19 (1990):111-33.

³² The ® indicates that the document contained a notation about the seal of each proprietor after their last name. Each was unique. I could also have written “seal,” which is sometimes done in legal documents today. Note the seal for Colleton, who was listed last, was probably cut off. South Carolina Department of Archives and History, Ms. S213011. The first nine sections are missing. Images of the original are now available here (after my request): https://scdah.access.preservica.com/index.php?name=SO_4e4f39d9-dbo1-4b16-aca2-f208febf2f33. They will also be available and transcribed on slaverylawpower.org.

Mattie Erma E. Parker, “The First Fundamental Constitutions of Carolina,” *South Carolina Historical Magazine*, 71, no. 2 (April 1970): 78-85. Parker identified this copy at the South Carolina archives as the oldest version for the first time. She notes that the other editors of the North Carolina Colonial Records Project, William S. Powell and John T. Juricek, after studying the issue, both agreed with her that this was the first version, and that the London version (here designated 1670A) among the Shaftesbury Papers was a revision of this one. Parker notes that this version was forgotten in the nineteenth century, and only recently rediscovered. John Milton, in his survey of the various manuscript copies, agreed that it was likely the first.

Two additional manuscript copies, both with the same date, are clearly identified as “Copy” but have alterations to the official version (1669A), one of them significant. These copies were made for use in the “precincts” (or governmental units) of Carolina, which were each supposed to have a copy, *according to the final paragraph of these two manuscripts*, a paragraph only appearing at the end of these two copies. Copy **1669B** is entitled “Copy of the model of Governement Prepared for the Province of Carolina &c.” It ends with:

[A] true Copy of these fundamental Constitutions shall be kept in a great Book by the Register of every Precinct, there to be Subscribed [signed] by all the Inhabitants of the said Precinct and no Freeman of Carolina, above 16 yeares old, shall have any estate or Possession in Carolina, or Protection or Benefitt of the Law, who hath not legally subscribed these fundamental Constitutions as in Article the 80th/.³³

Copy **1669C** similarly ends with: A “Copie of these fundamentall Constitutions shall be kept in a great booke by the Register of every precinct to bee Subscribed [signed] before the Register.”³⁴ Note that the “register” played an important role in each precinct, as explained by the *Fundamental Constitutions* themselves. These two manuscripts also contain no indication of signatures. Such evidence, including the location of these manuscripts in the United States in the 19th century, when both were collected, thus strongly suggest that the changes were made in Carolina itself by the registrars or other Carolina officials who wanted to establish the validity of the original July 21, 1669, first scheme date, even though these “copies” were created later. The first **1669B** (New York Public Library Copy), has 81 sections. The other, the Charleston Library Company Copy, **1669C**, has 120 sections. Despite bearing the date of July 21, 1669, the latter contains text nearly identical to the first printed edition from 1670, which has the same number of sections (see below). 1669C, despite its technical date, thus corresponds to the second scheme (1670P, below).³⁵

*1669D, the next important version, chronologically, is a *draft manuscript copy* that includes some of Locke’s handwriting as well as that of others. Locke helped to copy the

³³ “Constitutions of Carolina &c ...” MssCol 1970. Formerly part of the Ford Collection. First 10 §§ are missing. Note that according to a letter from several colonists to Seth Sothell, a Proprietor, in c. 1688, they used the 1669 first scheme widely in the colony for at least four years, before the second scheme (the one dated March 1, 1670) was sent to them in 1673, and even afterwards many insisted that it was the only valid one since it was supposedly unalterable. This is one of those copies. Still, the governors of the colony seem to have updated their models as they were implemented, as explained more below. TNA CO 5/287, pp. 150-159.

³⁴ Charleston Library Company, [Locke] *Fundamental Constitutions of Carolina*, Ms. 378. Note that the archivists/librarians’ annotation at the beginning attributes it to Locke, but it is not Locke’s handwriting.
[https://lcdl.library.cofc.edu/lcdl/catalog/lcdl:53757?tify={%22pages%22:\[70\],%22panX%22:0.362,%22panY%22:0.635,%22view%22:%22info%22,%22zoom%22:0.505}](https://lcdl.library.cofc.edu/lcdl/catalog/lcdl:53757?tify={%22pages%22:[70],%22panX%22:0.362,%22panY%22:0.635,%22view%22:%22info%22,%22zoom%22:0.505})

³⁵ New York Public Library (NYPL) “A Coppie...” MssCol 1970; Charleston Library Company, [Locke] *Fundamental Constitutions of Carolina*, Ms. 378; *Fundamental Constitutions of Carolina* [1670], n.p., n.d. Available on EEBO. Their copy is from Houghton Library at Harvard.

first scheme (1669A) and also made, alongside others, corrections and additions. There is no indication that this version was signed. This copy is part of the papers of the First Earl of Shaftesbury, donated to the National Archives UK in the nineteenth century. Therefore, its provenance and connection to Locke are clear. It has 111 sections and is clearly a draft in between the first manuscript version and the first printed version (the second scheme). While it includes the date from the earlier signed first scheme of July 21, 1669, it has been substantially amended. It anticipates the printed, signed copy of March 1, 1670. This is Version **1670D (D for draft)**.³⁶

The “second scheme,” or second signed version, March 1, 1669 [1670 new style], was published as **1670P**. As of this writing, no one has found the original manuscript copy with the signatures that 1670P must have been based on. The printed copy did contain a reference to the Proprietors’ signs and seals. It remains today the most widely reprinted version.³⁷

The “third scheme,” was signed by all Proprietors in January 1682. A manuscript copy **1682JanA**, survives in the National Archives, where it is included in general colonial records for Carolina rather than as part of the Shaftesbury Papers. It was printed twice: once in 1682 (**1682JanP**) and again in 1684 as part of a larger book **1684P**. Like the second scheme, it contains 120 sections (and has only minor changes).³⁸

**1682D, the next copy, is *the only other draft copy* and also contains Locke’s annotations. It is the printed copy from above, 1682JanP, but with many annotations in

³⁶ In the nineteenth century, when the Shaftesbury Papers were donated to the UK National Archives (then the Public Record Office) it was thought this London version (1670D) was the earliest version. It was published, and the editor, Noel Sainsbury, mistakenly claimed that it was all in Locke’s handwriting, an error then repeated by many Locke scholars. The original manuscript is TNA PRO 30/24/47/3. It is a separate volume, untitled. *Thirty Third Annual Report of the Deputy Keeper of the Public Records* (London, 1872), 3: ix, 211, 258-269. This version, and the claim, were repeated in Langdon Cheves, “The Shaftesbury Papers and Other Records Relating to Carolina . . . prior to the Year 1676,” *Collections of the South Carolina Historical Society*, V (1897), 93-117. Milton, in “John Locke and the Fundamental Constitutions,” agreed with Parker in correcting that error, a fact which is obvious. Only parts of 1670A are in Locke’s handwriting. Milton wrote that the claim of the then Deputy Keeper of the Records, Noel Sainsbury, were “quite untrue.” “Some portions of it indisputably were in Locke’s handwriting, but the greater part of it, indisputably, is not” (115). Also see Parker, *North Carolina Charters and Constitutions 1578-1698* (Raleigh, NC: Carolina Charter Tercentenary Commission, 1963).

³⁷ Multiple copies of this printed version survive. It is called merely the *Fundamental Constitutions of Carolina* and has no date and no publisher. It was published sometime after March 1, 1670, but possibly a couple of years later as indicated in Locke’s manuscripts MS Locke f. 48, pp. 11, 26. (see Milton, “John Locke and the Fundamental Constitutions of Carolina,” 132). This has been the most republished version of the *Fundamental Constitutions*. This copy also corresponds in most respects to manuscript 1669C, at the Charleston Library Company.

³⁸ TNA CO 5/287, pp. 23-42. This copy is actually misdated JULY 1681 by Adam Mathew digital database <https://www.colonialamerica.amdigital.co.uk/> (apparently a scanning error). Twelfth day of Jan’y sixteen eight one. I note this specifically because when I first searched here, I thought maybe I had found yet a different copy. Not so. It was the same I had already examined at TNA. For the printed copies: *Fundamental Constitutions of Carolina* [n.p., n.d.,] likely 1682. It was reprinted in *Carolina Described more Fully* (Dublin: n.p., 1684), 33-56.

different hands. This is the second manuscript copy in the New York Public Library. It is **1682D** (D for draft) and has 127 sections.³⁹

****The “fourth scheme”** survives in two manuscripts, both with indications that they are copies of a signed (missing) version dated August 17, 1682 (**1682AugA** and **1682AugB**). Both survive in the National Archives, the second in the Shaftesbury Papers. Another signed copy was sent to Carolina shortly after being signed but does not seem to have survived in the Carolina archives. There is no printed version of the fourth scheme. It has 126 sections. They are identical, except that the second contains notations in the margins.⁴⁰

The “fifth scheme” was made after Locke was no longer directly involved with Carolina. It is dated April 1698 in manuscript **1698A** and printed **1698P**. The Proprietors shortened it significantly. It contains only 41 sections. Both the manuscript and published copy indicate was signed by the Proprietors.⁴¹

Finally, after Locke’s death in 1704, an edition was published that linked Locke’s name for the first time publicly to the *Fundamental Constitutions*. It was published as part of a larger collection of supposed Locke ephemera and is dated 1720. I designate it **1720P**. It has 120 sections and is a reprint of 1670P except with Roman as opposed to Arabic numbering of the paragraphs.⁴²

3. Manuscript Claim #1

Armitage’s most explosive claim concerned Locke’s contributions to 1670D, the version between the first and second signed schemes, which survives today among the Shaftesbury papers.⁴³ This version shows the process of revising the document between the first scheme (signed July 21, 1669) and the second scheme (signed March 1, 1670), and thus probably dates to January or February of 1670. Armitage claimed that Locke was the key author of this version and in particular, was responsible for adding two key words: “power &” to a sentence about the “absolute power of masters over his negro slaves.” Armitage’s exact words were: “Though none of his later detractors could have known it, Locke himself had augmented the slaveholders’ “absolute Authority” by adding that “<power and>” in the 1669 [1670A] manuscript now among the Shaftesbury papers.”⁴⁴

³⁹ NYPL *Fundamental Constitutions*, which is the same as the printed copy from 1682 above, but with annotations. Call number KC + 82.

⁴⁰ TNA CO 5/287, pp. 47-64, and TNA PRO 30/24/48, pp. 126-145.

⁴¹ The manuscript is TNA CO 5/288, pp. 126-30 (April 1698). The printed copy is in *The Two Charters for Carolina Granted by Charles II . . . with the First and Last Fundamental Constitutions* (London: Richard Parker, 1698), 53-60.

⁴² “Fundamental Constitutions of Carolina” in Pierre Des Maizeaux, ed., *A Collection of Several Pieces of Mr. John Locke, Never Before Printed* (London: J. Bettenham, 1720), 1-53.

⁴³ Milton also suspected that the earliest version was the manuscript copy in the South Carolina archives, but he had not seen it.

⁴⁴ Armitage, “Locke and Carolina,” 609. Armitage’s footnote here is confusing, as note 41 (the one at the end of this sentence) includes only secondary sources. The prior note (40) mentions the following pages of TNA PRO 30/24/47/3 fols. 58r, 59-60r, 58r-59r, 65r, 66r. Armitage then notes that this copy

But did Locke add these words? Below is the relevant image from the manuscript that Armitage was referring to (1670D). The insertion of “power &” between “absolute” and “authority” in the 101st provision in this draft of the *Fundamental Constitutions* is clear enough. With abbreviations spelled out and additions included it reads: “Every Freeman of Carolina shall have absolute power & Authority over his Negro Slaves of what opinion or Religion soever.”⁴⁵ Note particularly the racialization of status: “Negro Slaves.” It’s an important, and disturbing, passage. But is it in Locke’s handwriting?

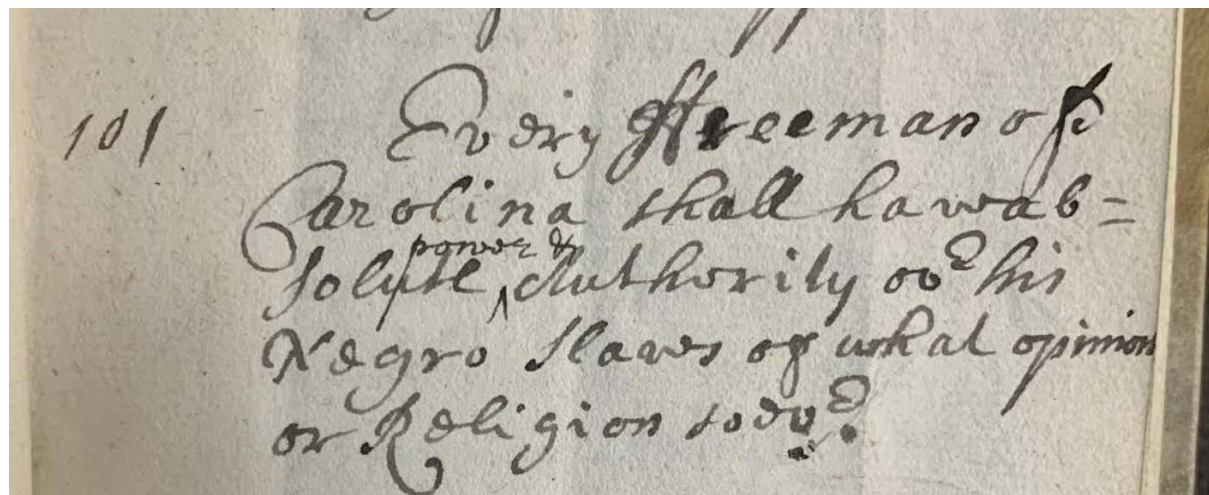


Figure 3. 1669D §101

As someone who has read a great deal of Locke’s handwriting, and as one familiar with Armitage’s claim, I was astonished when I read the manuscript at the National Archives in the summer of 2023. It did not look anything like Locke’s handwriting. In consternation, I began by sharing the images with scholars familiar with Locke’s handwriting for their opinions. The first responded “hell no,” an opinion with which others agreed. To my comments about the differences between the formation of the letters p, w, e, and r, others added the discrepancy in the writing of the ampersand (&).⁴⁶

For those unfamiliar with Locke’s handwriting, I include below a sample, from the same year, of a similar passage. Here Locke, acting as a clerk, was summarizing letters from officials in Carolina to the Lords Proprietors (focusing on each official’s request). Below each request, Locke summarized the discussion of those issues during the meeting and then the Lords Proprietors’ recommendations.

In this first example, entitled “Proposals & Wants,” Locke summarizes a request from a planter named Woodward, who “desires to come to England wanting necessarys & servants.” Locke then summarizes the Proprietors’ responses by name (under the section that begins “council”). These notes are all in Locke’s handwriting. Consider in particular

was printed in *Locke’s Political Essays*, ed. Mark Goldie (Cambridge: Cambridge University Press, 1997). 177, 178, 179-180.

⁴⁵ Note that in the 1660s “ff” was the primary way of writing a capital F.

⁴⁶ The “hell no” was from Patrick Connolly at Johns Hopkins University.

the shape of the ampersand in the title. Then consider Locke's e's, which almost always look like our c's.

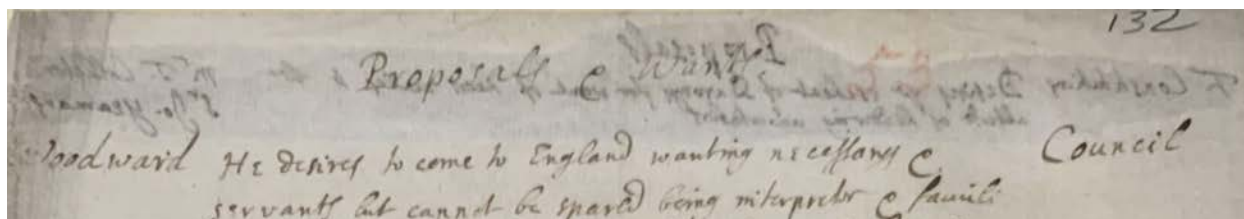


Figure 4. “Proposals & Wants” 1 November 1670 (in Locke’s hand)

A specific sentence further along in these notes repeats the key words from FC 1670D, particularly the words “power &” and “absolute.” I have excerpted it below, with close-ups of the words to compare.

The handwriting in these two samples does not match, not for any letter. Note how the p connects to the o and the shape of the e; these differ dramatically across the two samples, as do the r and the p. Also different is the ampersand, which is more like a c with a tail (how Locke always makes it), rather than & or +. It does not take a specialist to see that the “power &” insertion was not by Locke.⁴⁷

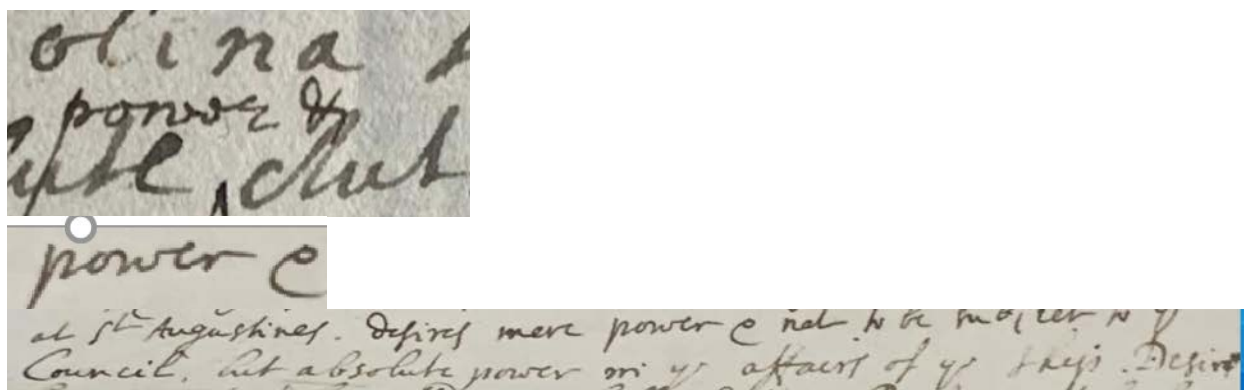


Figure 5. “Power &” Comparison

Below is a longer version of the same passage from the letter Locke was summarizing, along with a transcription. In it, Captain Brayne was requesting more power aboard his ship.

⁴⁷ TNA PRO 30/24/48, p. 104. In the original these pages are in a large fold-out super long (and wide) page. This is one of many such summary reports in Locke’s handwriting from these two years. This one is dated 1 November 1670.

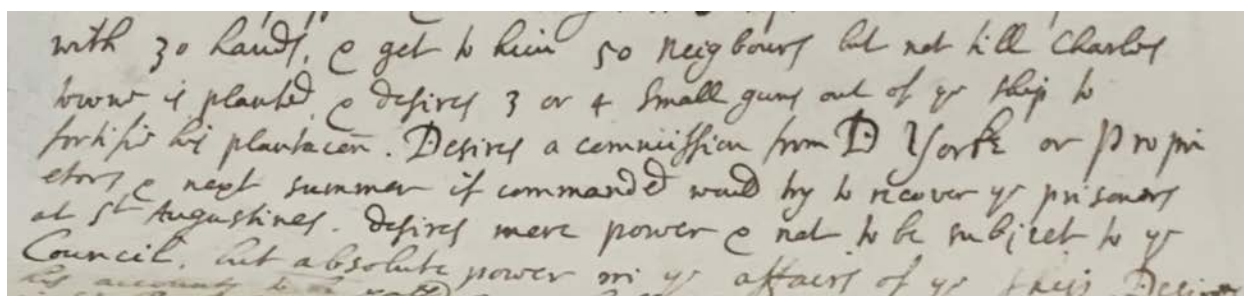


Figure 6. “Proposals & Wants” Continued (in Locke’s hand)

Transcription (with two extra lines included at the beginning for clarity:

[Brayne] Desires 5000 acres of land promised him by Sir P. Colleton for his venture at Cape Feare & discovery with Sanford which he will plant *with 30 hands. & get to him 50 neigbours but not till Charles towne is planted & desires 3 or 4 Small guns out of the ship to fortifie his plantation. Desires a commission from Duke of Yorke or Proprietors & next summer if commanded would try to recover the prisoners at St. Augustines desires more power & not to be subject to the Council but absolute power in the affairs of the Ship.*

The point, to be clear, is mainly that these two words, “power &,” in this draft version 1670D of the *Fundamental Constitutions* (FC) are obviously not in Locke’s handwriting. But a secondary point is equally fundamental, made clear by examining such minutiae about the process of governance. Locke *really* was acting as a secretary or what we might call a clerk, relaying requests and summarizing the Proprietors’ responses, which concerned ships sent with new supplies and servants and orders. Locke was not in charge. While Locke’s handwriting does appear in a few other places in this draft 1670D version of the *Fundamental Constitutions*, his additions have nothing to do with slavery.⁴⁸ He was one of several contributors to the document, one doing his clerical part to create a revised version that the Proprietors were willing to sign. The *Fundamental Constitutions*, to repeat, was a legal document signed by the Lords Proprietors, with their seals, and the entire document was written to comply with Carolina’s charter, a distinct and paramount legal document, granted by the king.

The first printed version of the FC (1670P), dated March 1, 1669 [1670], contains both the passage related to absolute power and another paragraph related to slavery that appears in every version. In this first printed version, these paragraphs were numbered 107 and 110.

Throughout these years Locke continued to be involved on some level. According to his account book, the Proprietors paid him more than £20 in 1671 for his work related to Carolina and the *Fundamental Constitutions*.⁴⁹ This payment included the costs for producing and posting multiple manuscript copies on vellum. It seems likely that he was

⁴⁸ For more examples of Locke’s additions, see Milton, “Locke and the Fundamental Constitutions.”

⁴⁹ On Locke’s payments, see “Two Ledgers containing John Locke’s accounts, 1671–1704,” Bodleian Library, MS. Locke c. 1: esp. Locke’s ledger, 1671–1702, 16–17.

in turn paying others to make these copies. These other manuscript copies from 1671, which seem now to be lost, predate slightly the *Fundamental Constitution's* publication. So far, we have tracked how Locke played an active role as secretary to the Lords Proprietors of Carolina, who had a grant from the king to establish the colony using rules from the king's charter. They appointed officials, sent arms and supplies, and answered the "wants" of those colonists they put in power. It was not Locke's colony, and its constitution was not his constitution. But he was involved.

In a comprehensive survey of these versions of the *Fundamental Constitutions* in 1990, especially FC 1670D, John Milton assessed the evidence and concluded that Locke contributed to this draft but could not be assumed to be the sole author.⁵⁰ As Armitage did later, Milton discusses Locke's correspondence with two Frenchmen about the *Fundamental Constitutions* in 1678, after Locke shared a copy of it with them. One of them referred to it as "*vos constitutions*," the other as "*vos loix*." These are the only two quotes that Armitage shares, implying that Locke had informed them that he was the sole author. But one of them, Henri Justel, offered further observations that dispel such an opinion. "*il y a de bonnes choses dans les Constitutions de la Caroline mais on pourroit y ajouter et les rectifier. Il n'appartient [sic] pas a tous les hommes de faire des loix*." This sentence roughly translates as: "There are some good things in the Constitutions of Carolina but one must add to and rectify them. The right does not belong to all men to make laws."⁵¹ As Milton commented in his astute analysis of Locke's potential authorship: "It is difficult to imagine that Justel would have used such coolly disparaging language if he had believed himself to be writing to the main or sole author of the Constitutions. Since Justel's beliefs about the authorship of the Constitutions must have been derived solely from Locke, one can only believe that Locke had not claimed to be their author."⁵² Another interpretation is that Locke had shared with Justel his frustration about what he was unable to change.

It is notable, if understandable, that Armitage excluded evidence that challenged his claims; He disagreed with Milton's conclusions about Locke's role, even though he clearly relied on Milton's assemblage of evidence. Milton found multiple pieces of evidence among Locke's surviving papers of Locke's notes for suggested revisions to the *Fundamental Constitutions* that never made their way into either 1669D or the printed version 1670P. Milton's analysis indicates that Locke had some input into a document that was primarily written by others. Locke made two corrections, for example, to the sentence below (from ms. 1670D), replacing "officer" with "court" and "innovations" with "invasions." The revised sentence reads "To the court also belongs all invasions of the law of liberty of conscience." The first correction was a shift in how a problem should be remedied (by the courts) and the second was correcting someone else's transcription

⁵⁰ I agree with Milton in many respects, but I note that he was not able to see the three U.S. copies, and so came to some misunderstandings about their dating and consequently of the whole. In particular, he suspected that the South Carolina archives was the first version, based on the interpretation of Mattie Parker. Discussed at note 29 above.

⁵¹ John Locke, *The Correspondence of John Locke*, ed. E.S. de Beer (Oxford: Clarendon Press, 1976), 2:47, 68, 105.

⁵² Milton, "Fundamental Constitutions," 126.

error. It is hard to disagree with Milton's remark that "It is not easy to understand how Locke could have been unsure as to whether a certain word should read 'invasions' or 'innovations' if he had himself been the author of the original text."⁵³

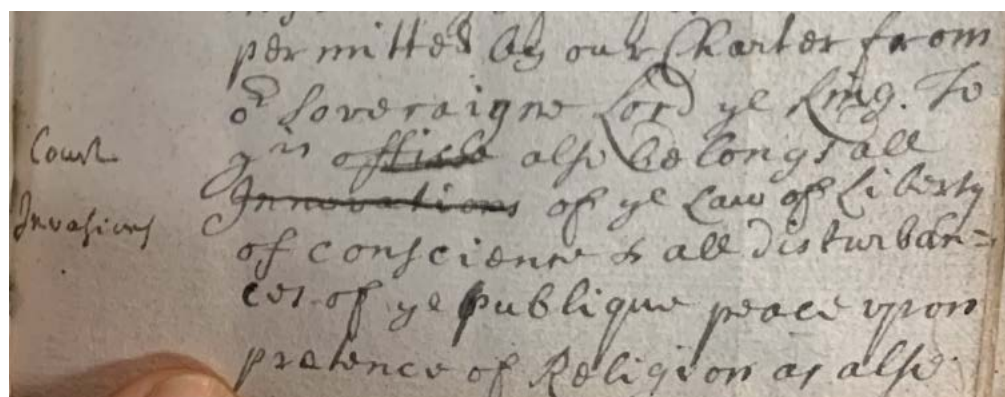


Figure 7. 1669D §34 excerpt (Locke's corrections are in the margin)

Over the next four years, Locke would continue to be involved in the colonies, as is clear from a variety of records, including in an official capacity. Charles II created Locke's mentor, Anthony Ashley Cooper, the Earl of Shaftesbury and Lord Chancellor in 1672, naming him head of the Council on Foreign Plantations and appointing Locke secretary of that council between 1672 and 1674.⁵⁴ During those years, Shaftesbury (with Locke as secretary) opposed enslaving native peoples as part of Carolina laws. For example, item 8 of the "temporary laws of Carolina to be added to the former" from December 1671, in Locke's handwriting, was "No Indian upon any pretence whatsoever to be made a slave or without his own consent to be carried out of our country."⁵⁵ Early in 1675, Charles II dismissed both Shaftesbury and Locke from all posts, and the Council asked Locke to return his secretarial records of the Council's proceedings.⁵⁶

The situation only became worse. In the spring of 1675, Shaftesbury led opposition to a bill favored by the King, which in Shaftesbury's view, and that of many in the Lords and

⁵³ Ms. 1670D, p. 45, Milton, "Fundamental Constitutions," 121.

⁵⁴ Locke's name appears on records of the Council on Foreign Plantations as secretary early in 1672. Typical of his work are letters that he endorsed as received or that for which he copied responses. See, e.g., July 1672 (letter from Barbados, endorsed by Locke as secretary to the Council), TNA CO 1/29, Nos. 17, 17 I., II November 1672, endorsed by Locke as secretary, TNA CO 1/29, Nos. 43, 43. I. II.

⁵⁵ "Temporary laws of Carolina to be added to the former," Dec ? 1671, CO 5/286, p. 78. The published calendar record notes that these legal revisions are in "Locke's hand." *Calendar of State Papers: Colonial*, 7:311. I note "apparently" because I have not seen the original. Brian Smith, "One Body of People: Locke on Punishment, Native Land Rights, and the Protestant Evangelism of North America," *Locke Studies* 18 (November 25, 2018): 1–40.

⁵⁶ On March 12, 1675, the Council ordered "That all books and papers which were lately in possession of the Council of Plantations be enquired after and taken into the Council Office and a list made. Also, that enquiry be made for globes, maps, sea charts, and journals. That Mr. Slingsby, Dr. Worsley, and Mr. Locke attend their Lordships to give account herein." "Order of the Committee of Trade and Plantations," TNA CO 391/1 p. 9. Locke turned over those records on March 18 CO 391/1, p. 10.

Commons, would have required oaths in support of the king's absolute powers and of frightening limits on anyone's ability to criticize or limit him. That summer Locke apparently wrote up those debates at Shaftesbury's request, and in November, Shaftesbury had them printed anonymously. Immediately after, the court party in the house of Lords ordered them burnt by the common hangman. Locke, understandably, then fled to France "for his health."⁵⁷

Locke did, during this period, briefly own shares in the Royal African Company, apparently as a sign of royal favor, between February 1672 and June 1675. In June of 1675, Locke sold his shares in the Royal African Company without any profit: he noted in his account book that they "all went." Shaftesbury, who had been more deeply involved with the Royal African Company and for longer, likewise sold his shares, shortly before Charles II had him imprisoned in the Tower of London and denied him *habeas corpus*.⁵⁸

⁵⁷ [Locke and Shaftesbury], *Letter from a person of Quality to his Friend in the Country*, n.p., n.d., anonymous, [November 1675], reprinted in Des Maizeaux, *A Collection of Several Pieces of Mr. Locke*, 57-162. Also see the "Dedication" to the volume written by Des Maizeaux himself, which contains this description of events (unpaginated). The Lords ordered them burnt on November 8, which was done on November 10. Locke begins a journal of his adventures with: "In the evening I went to Gravesend.,," on November 12, and crossed the channel on November 14 on the yacht of John Berkeley, one of the Lords Proprietors, whom Charles II had just appointed as ambassador to France. See "Journal 1675-76," p. 1 and "John Locke Chronology," <https://openpublishing.psu.edu/locke/chron/c1675.html>. *Locke's Journals have now been scanned by the Bodleian (Locke mss F1, page 1)*. Note this page is mostly in shorthand. Esmond Samuel DeBeer, *The Correspondence of John Locke* (Oxford: Clarendon, 1976), 1:307. The third Earl of Shaftesbury, though only 3 years old in 1675, wrote in 1705 "it was for something of this kind that got air," that Locke went to France. "His health served as a very just excuse." K. H. D. Haley, *The First Earl of Shaftesbury* (Oxford: Clarendon, 1968), 392.

For the date of the House of Lords order to burn the *Letter*, see Maurice Cranston, *John Locke: A Biography* (New York: Longmans, 1959), 161. On Shaftesbury's experiences in the Tower, see Haley, 399-440.

⁵⁸ I have spent some time, first by myself, and then in conversation with Brian Smith (in June 2024), analyzing the evidence from Locke's account books and from the Royal African Company records. In brief, it might appear that Locke profited from the stock when he sold all of it in June 1675 because he noted that 200£ was "increase" underneath his initial 400£ stock purchase (Bodleian Library, MS. Locke c. 1, folio 78). But careful examination of Locke's account book in combination with the Royal African Company Minute Book (TNA T 70/100, p. 1-8, 150) shows that the 200£ was merely an extra subscription or levy, a required "increase" of funds that the company levied on all shareholders after their 1671 bankruptcy, in proportions comparable to the shares owned. They required the extra payment from shareholders because they needed new funds. According to the company minute book, Locke purchased 400£ of stock in February 1672 from John Portman, a London Goldsmith (and original stockholder) and then had to contribute an additional 200£ levy. Payment was to be made in tenths of the share amounts owed, over a period of months, paid directly to the company. That demand for the additional levy in tenths corresponds to the payments on folios 15, 21-22 of Locke's account book. "Royal African Company Minute Book," TNA T 70/100, p. 1-8, 150. Locke sold those shares on June 18, 1675, for 600£. "MG paid me for my stock and all went," Locke account book, folio 23. The sale is confirmed in the RAC Minute Book. But the amount was not all his. Locke seems to have pledged to purchase the initial 400£ (not paid it outright) but by 1674 realized he could not make the payments and split the stock (and the extra 200£ levies owed) with Thomas Stringer, who was Locke's and Shaftesbury's accountant. So, in June 1675, Locke received 300£. That amount corresponded to the amount he had either pledged (to Portman) or paid directly to the Royal African Company, less what Stringer had contributed.

Stringer's investment of half the value is made clear not only in Locke's main account book in the pages referenced above but in his yearly account book for 1674, MS Locke f. 13. Locke kept these accounts

Meanwhile Charles II and his brother James, Duke of York, were actively promoting slavery and the slave trade on many fronts. The Royal African Company was governed by the Duke of York, to whom Charles II had given perpetual rights to any claims to English forts in Africa by charter in 1663. The Royal African Company's privileges were upheld by the king's letters and via the courts. English wars with the Dutch in 1664-1667 and in 1672-1674 were fought partly over slave trading forts on the West African coast; English attacks on those forts began in 1662 and were crucial to the cause of the war. The Royal African Company, while in some ways a separate company with its own "adventurers," was in other ways part of the king's government, protected by the crown, consulted regularly by the privy council as though it were a subcommittee, and permitted to use royal navy ships for free.⁵⁹

4. Manuscript Claim #2

Armitage made two further crucial claims about Locke's involvement in revisions of those constitutions in 1682. First, Armitage claimed that Locke made extensive manuscript annotations to a printed copy of the *Fundamental Constitutions* in 1682 (1682D) and that Locke was an "equal partner" in those revisions. Armitage further claimed that "all" Locke's suggestions were integrated into the revised *Fundamental Constitutions* signed by all the Proprietors in August 1682. Armitage emphasizes that the

at the back of an almanac for the year 1674. On p. 10 of his handwritten notes at the end he wrote: "T. Stringer pd for me for ye Guyny company 29 Mar. 20£," an amount which corresponds to the entry on p. 15 of his main account book, noted above. On p. 18 in the same little book, he wrote "T. Stringer 2 June. I sealed to him covenants about his Moity [half] in ye royall African Company." My remaining question, since both the initial 400£, due to Portman, and Locke's pay for his service to the Council (100£ per year) are unclear in this account book, is whether his payment for his service on the council was partly in the form of the stock. This question deserves a separate treatment, complete with images. Intriguingly, Portman was a substantial investor in the RAC (he sold Locke only a small part of his stock) and was one of the twelve London goldsmiths who lent Charles II substantial sums before the stop on the Exchequer in 1672. For the amount that Locke was supposed to be paid, see MS Locke b. 1 Locke's miscellaneous accounts, p. 21. "By order of the Council dated 22 dec 1674 to pay out of the yearley sum of 100£ allowed for the charges of the sd Councill unto John Locke Esq treas. of the sd moiety for his pains & charges & service to the debts of the sd boarde." On the back was written "To Mr. Locke ye accomptant 100£."

See p. 8 RAC Minute Book, for Shaftesbury's subscription of £1200. Shaftesbury also was assistant governor or sub-governor of the RAC between 1665 and January 1674, when he ceased attending all meetings. James, Duke of York, attended many throughout his tenure as its governor between 1663 and 1688. Shaftesbury had more trouble divesting himself of his RAC shares than Locke; after repeated attempts that began in June 1675, he was able to divest completely only in February 1677. See RAC Minute Book, 120–131. Also see Brewer, "Slavery, Sovereignty, and Inheritable Blood."

⁵⁹ See George Frederick Zook, *The Company of Royal Adventurers Trading into Africa* (Lancaster, PA: New Era Printing, 1919), which traces the origin of the second war with the Dutch to English attacks on Dutch slave trading forts off the African Coast. Also see Brewer, "Slavery, Sovereignty, and Inheritable Blood," and Brewer, "[Creating a Common Law of Slavery for England and its New World Empire](https://doi.org/10.1017/S0738248021000407)," *Law and History Review* 39, no. 4 (November 2021):765-834, <https://doi.org/10.1017/S0738248021000407>. Note that the Royal African Company records were kept as part of the treasury records for the crown. They are still recorded this way today. TNA T 70/100. The "T" in this call number stands for "Treasury." Note as well that, according to the official record book, all of the meetings of the Royal African Company were held at the Royal palace at Whitehall until 1677.

crucial paragraph giving masters “absolute power & authority” over their slaves “went untouched in the 1682 revisions even as Locke renumbered it with all the rest.”⁶⁰

As noted above, the NYPL copy (1682D) on which Locke made these annotations is a printed copy of another signed manuscript copy (1682JanP) dated January 12, 1681 [1682].⁶¹

All three January 1682 signed copies, two in manuscript and one printed, contain the two paragraphs about slavery. The first, the item about “charity” (and conversion not leading to freedom) is article §106 in these versions, which appear to be textually identical.⁶²

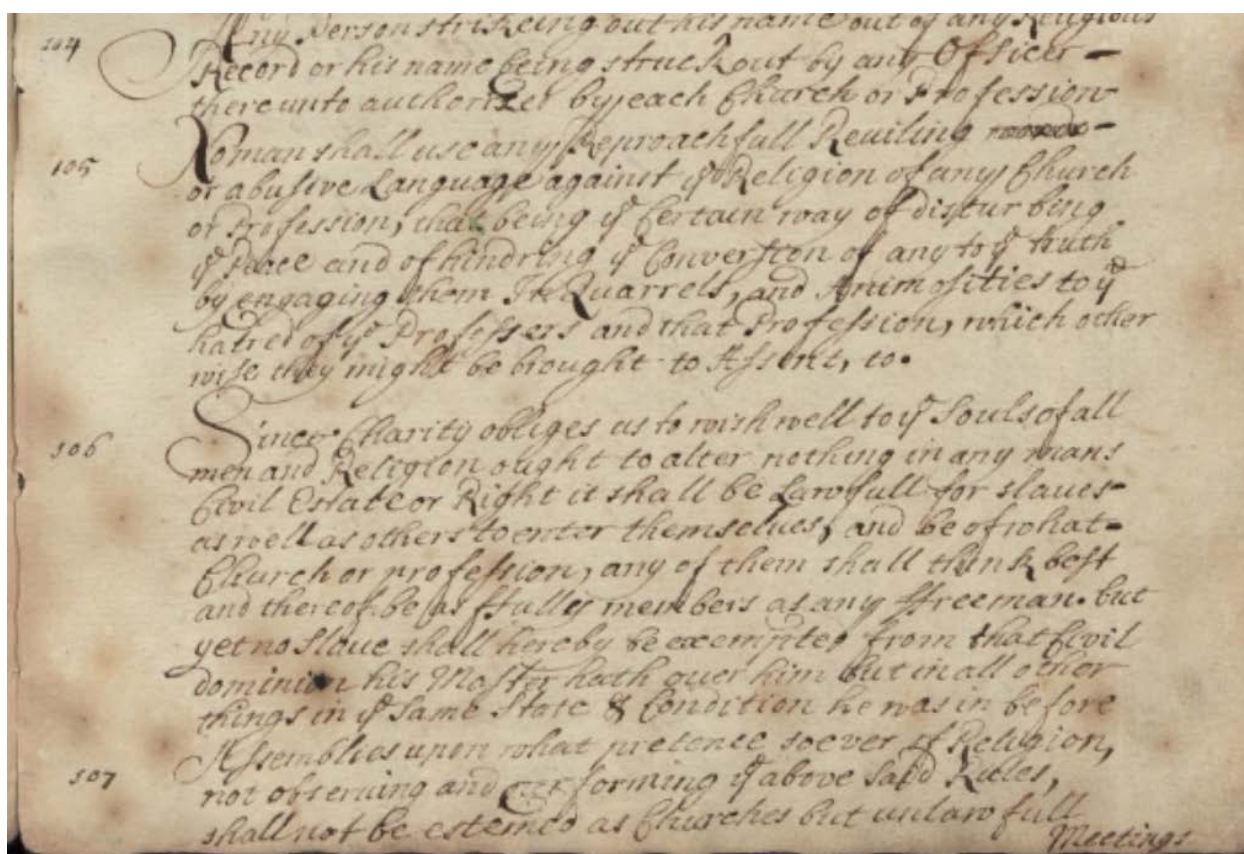


Figure 8. 1682JanA §104-107 Note §106 on “charity” (conversion does not equal freedom)

The paragraph about absolute power of masters over slaves is at §109 in 1682JanA.

⁶⁰ Armitage, “Locke and Carolina,” 615, 619.

⁶¹ CO 5/287/ 23-42. This copy is misdated July 1681 by the Adam Mathew database <https://www.colonialamerica.amdigital.co.uk/>, apparently as a result of inaccurate handwritten text recognition (HTR) technology.

⁶² TNA CO 5/287/39.

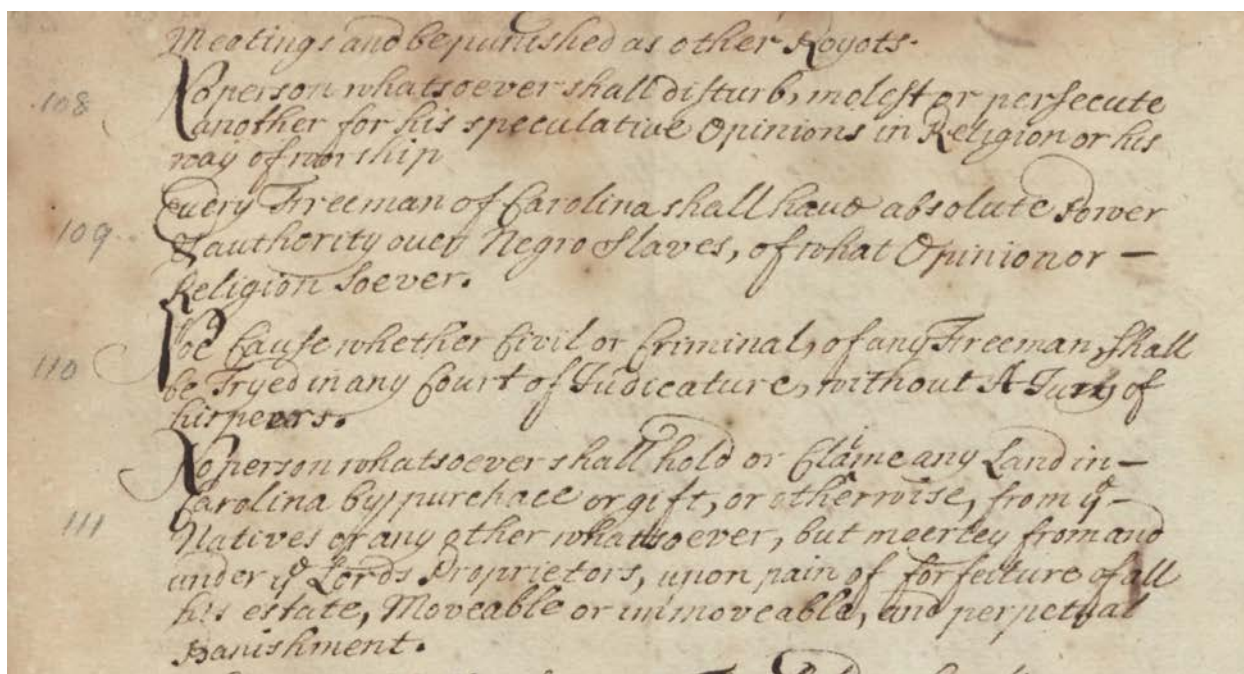


Figure 9. 1682JanA §§108-111. Note §109.

The printed copy of the FC (1682JanP) is identical to the manuscript 1682JanA, including in terms of the numbering. It (1682JanP) was the basis for new revisions, with many comments on a draft, 1682D.

Locke likely did make several comments and queries in 1682D, much as he had in 1670D. But it is also clear that the comments by Locke in 1682D were made in conversation with others. One example of an addition possibly by Locke was to recommend that all votes “shall bee by ballot.” If it is by Locke (the & is not his, but other letters are similar), this is evidence that Locke wanted members of the Grand Council to have a more private, and therefore more independent, vote.⁶³

⁶³ OED s.v. “ballot” makes clear that it always meant anonymous placing of markers or pieces of paper into a box or urn in the late 16th and 17th centuries. Compare: “To convey each man his bean or ballot into the box” *Readie Way to a Free Commonwealth* [1660] 2nd ed. London, 1673, 58. Or “Boxes, into whiche he will, he maie let fall his ballot, that no man can perceive hym.” W. Thomas, *Historie of Italie*, f. 79.

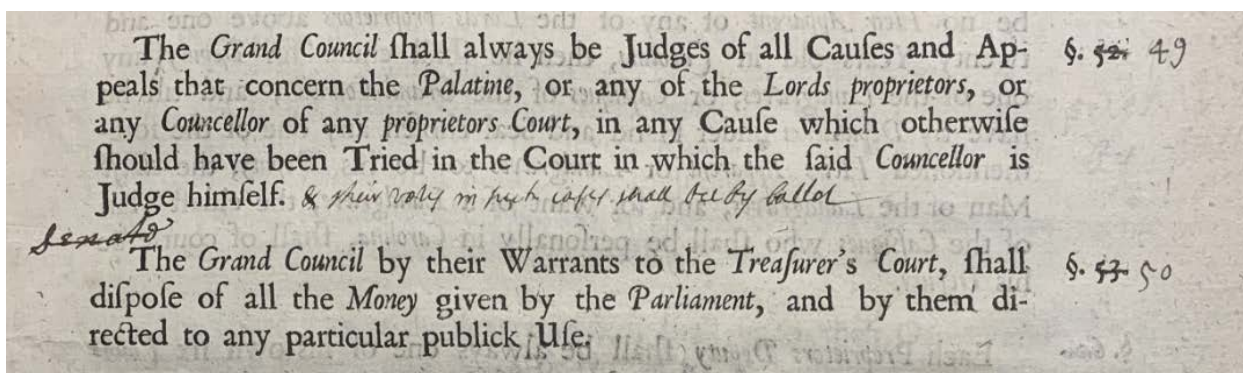


Figure 10. 1682D §§ 49-50

Another, clearer example that is likely Locke's is on the right side of the image below: "except the Palatine be the same person whose deputy, who the when present shall be as in §33." Locke likely did have an impact on these revisions, but only a minor one.

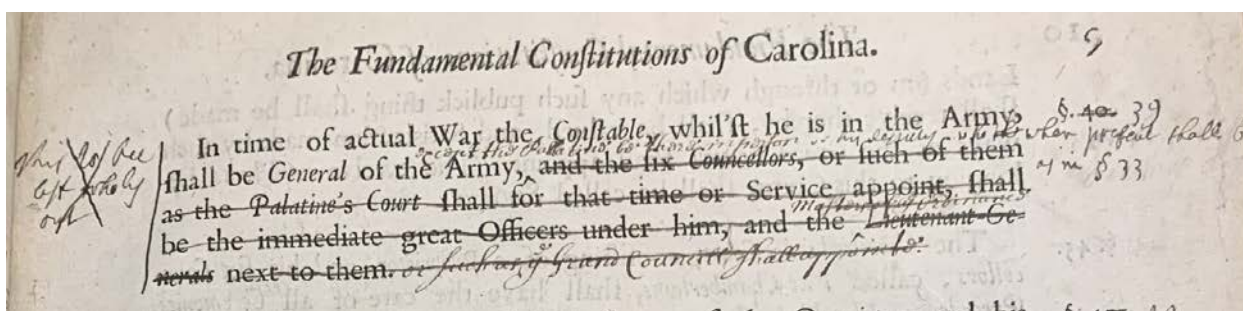


Figure 11. 1682D § 39

These handwritten additions in version 1682D were incorporated into Versions 1682AugA & B, the fourth scheme of the *Fundamental Constitutions*, signed by the Proprietors.

Below is the draft version of 1682D for §84, followed immediately by §84 in the corrected signed version of August 17 (1682AugA). Note that none of the additions in Figure 12, in either version, are in Locke's handwriting.

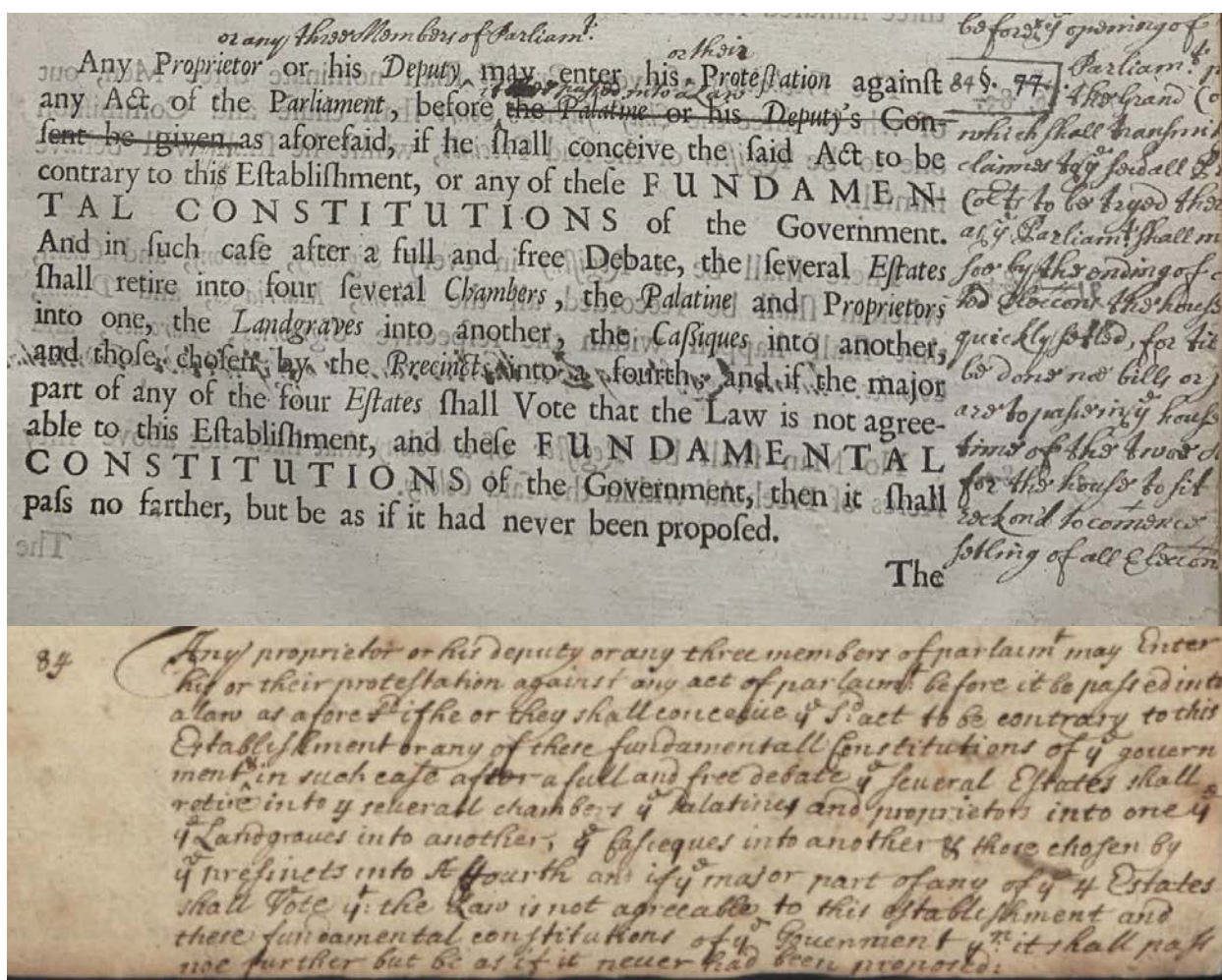


Figure 12. 1682D §84

We have so far observed that though few emendations of 1682D were by Locke, most were accepted. But what is most problematic in terms of Armitage's assertions, especially given his claim that "all" Locke's suggestions were incorporated into the August 1682 signed copy (the fourth scheme), is that the two copies of the manuscript versions of the *Fundamental Constitutions* for August 1682 (1682AugA & 1682AugB) removed the infamous paragraph about the absolute powers of Freemen over "negro slaves."⁶⁴

Here is the evidence. In version 1682D, the article about "absolute Power and Authority over his Negro Slaves" is still there, though someone has renumbered it to §116 (from §109, which it had been in 1682JanA & 1682JanP).

⁶⁴ The copy being sent to Carolina. 1682AugA (CO 5/287, pp. 47-64) was the same in its paragraphs as the PRO (Shaftesbury) copy 1682AugB except that the PRO version has comments in the margins explaining how each numbered paragraph appeared in the prior version (compared to 1682JanA&B).

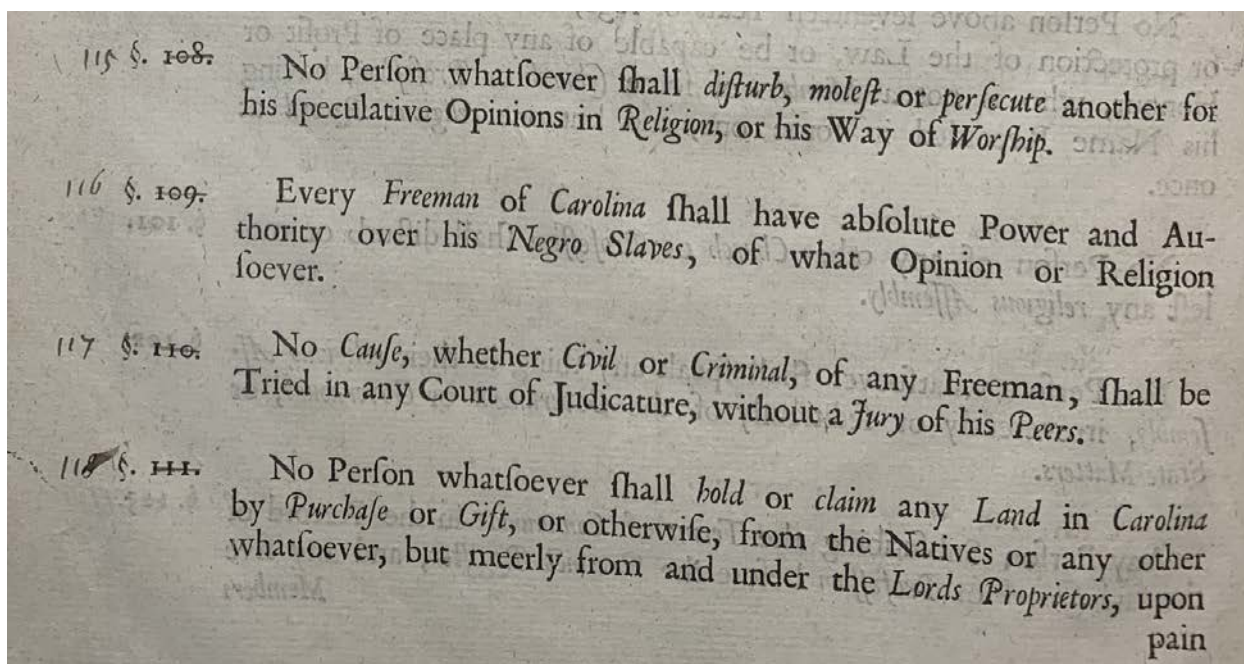


Figure 13. 1682D §115-118

But what happened in the fourth scheme to these revisions to that paragraph? Below is the first page of 1682AugA, a copy of the one sent to Carolina on August 17, 1682, and sealed and signed by all the Proprietors. The small "fourth" for fourth scheme is visible in the top left corner.



Figure 14. 1682AugA §1

Almost all the MS suggestions in 1682D were incorporated into the text of 1682AugA. Here, 1682AugA contains the same paragraph, with the same numbering, about charity, stating that enslaved persons could convert but could not change their status by doing so.⁶⁵

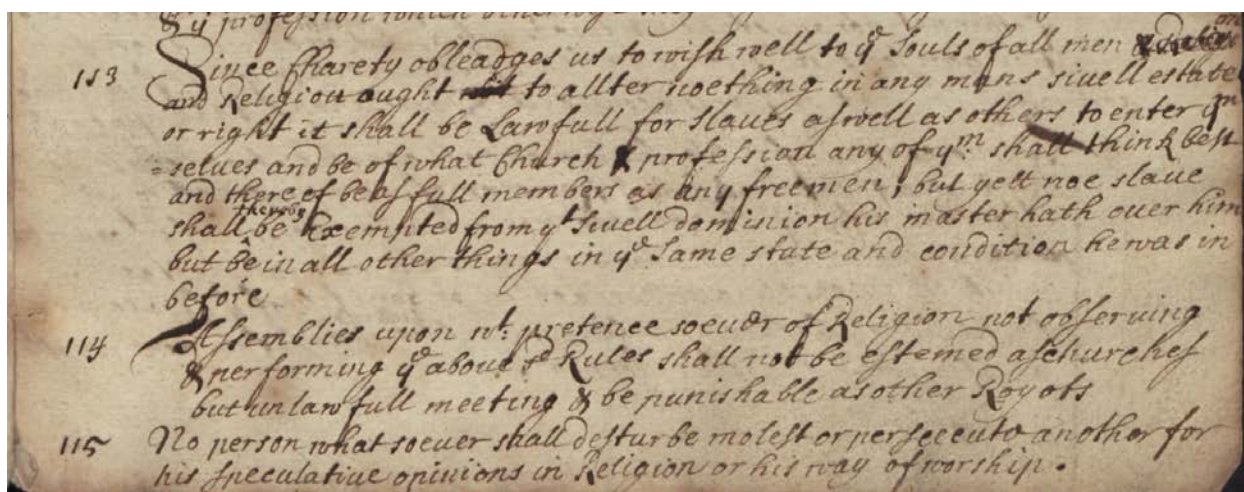


Figure 15. 1682AugA §§113-115

Therefore, in the manuscript of August 17, 1682 (1682AugA), the paragraph about slavery should be assigned §116. Instead, the crucial paragraph about the absolute power of Freemen over slaves is missing. The next paragraph was merely moved up. So §117, which that begins with “No Cause,” was merely moved up to §116.

⁶⁵ CO 5/287/61

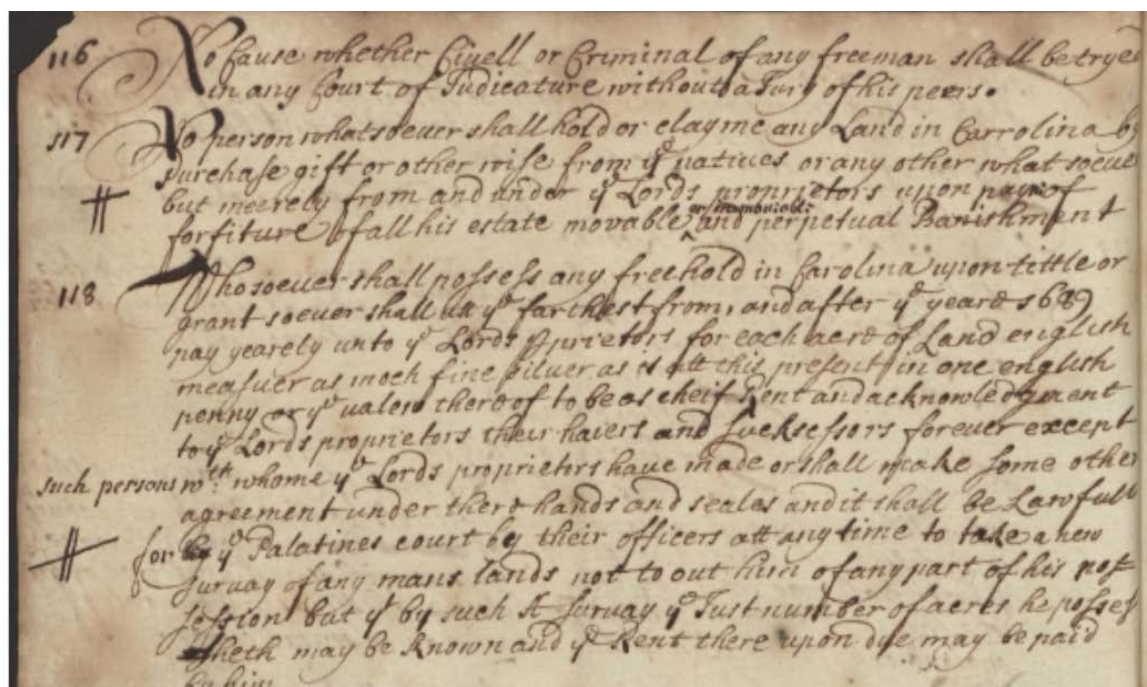


Figure 16. 1682 AugA §§116-118

Between the draft (1682D), or sometime in the spring or summer of 1682, someone removed the paragraph about the absolute power of masters over slaves. The paragraph is missing from both manuscript copies (1682AugA & 1682AugB). At first, I thought that there might have been another paragraph removed, because 1682D has 127 entries.

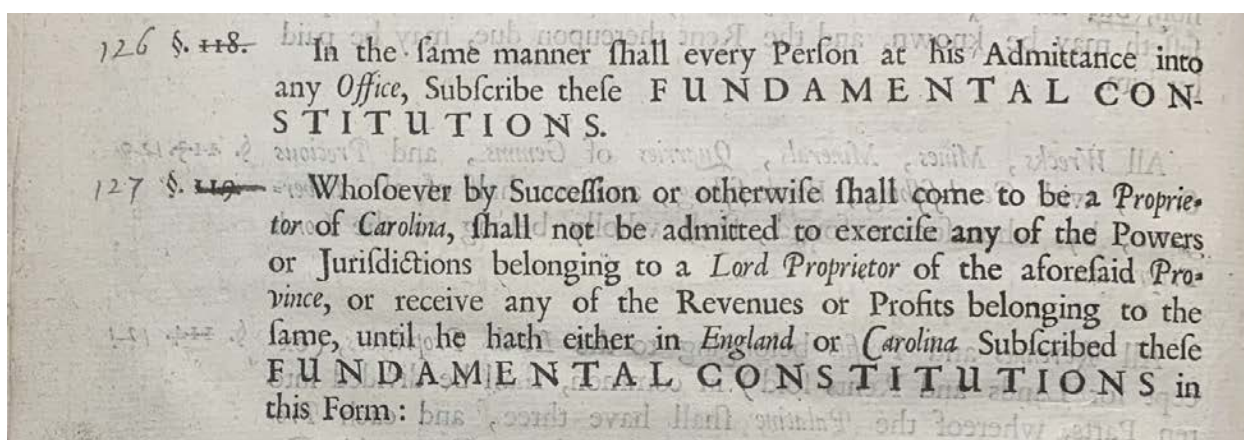


Figure 17. 1682D §§126-7

MS. copies 1682AugA & B are two numbers off from 1682D.

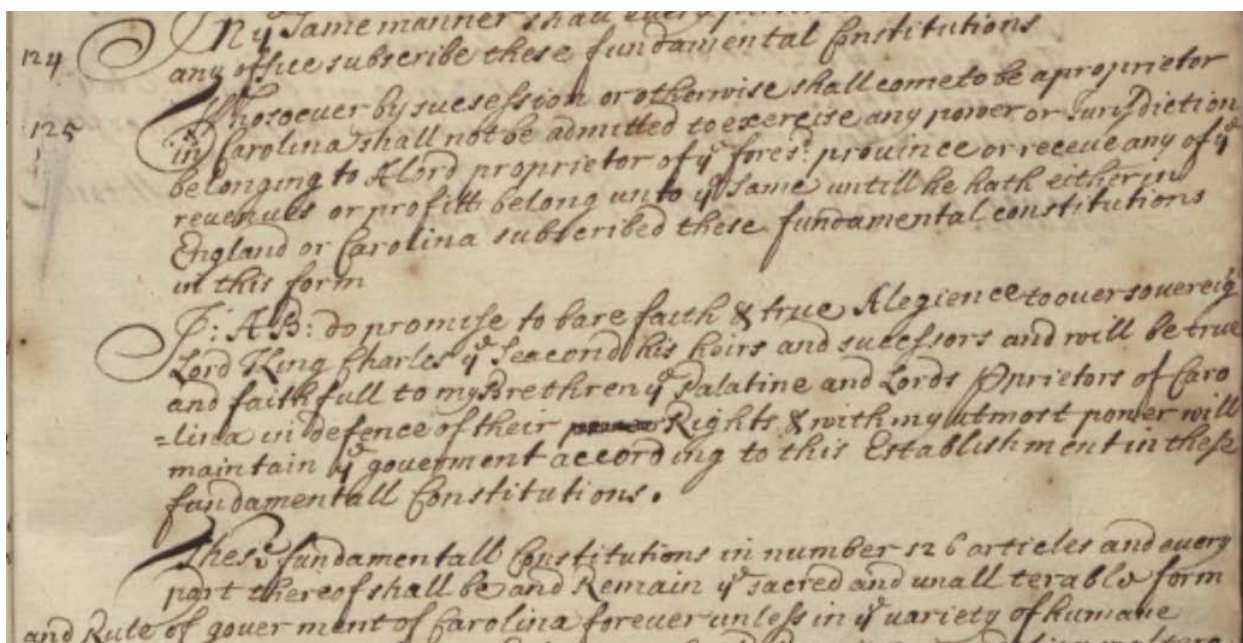


Figure 18. 1682AugA

But then I realized that 1682D did not assign the number 123 to any paragraph, skipping from paragraph §122 to §124, as one can see below. Whoever was reordering the numbers in 1682D to accommodate new paragraphs merely made a numbering mistake.

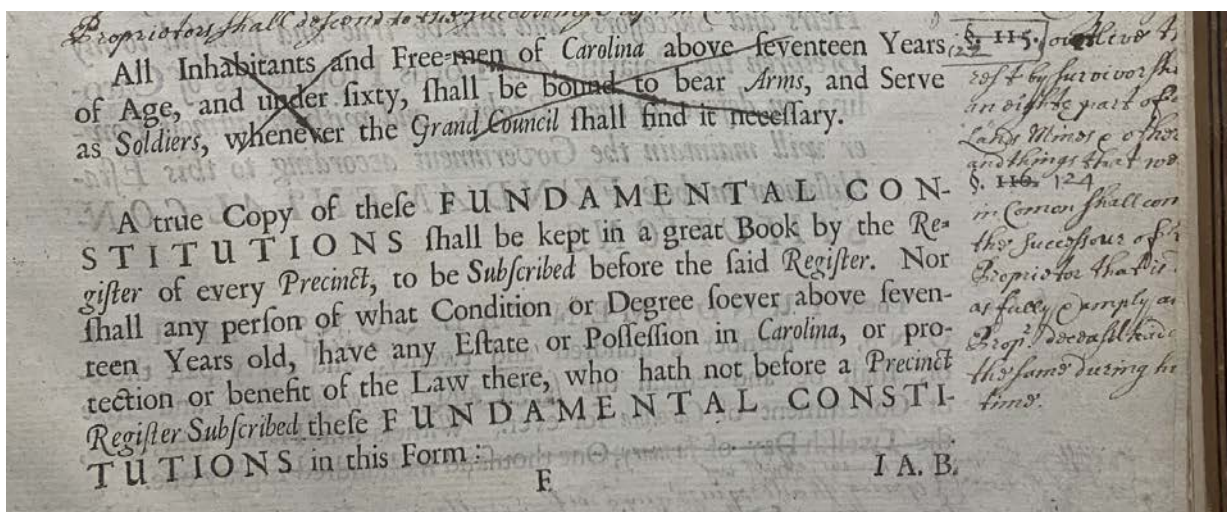


Figure 19. 1682D §122, §124

Just to prove the point: In manuscript 1682AugB, the “charity” paragraph (that denies freedom to slaves who convert, discussed below) is still §113.

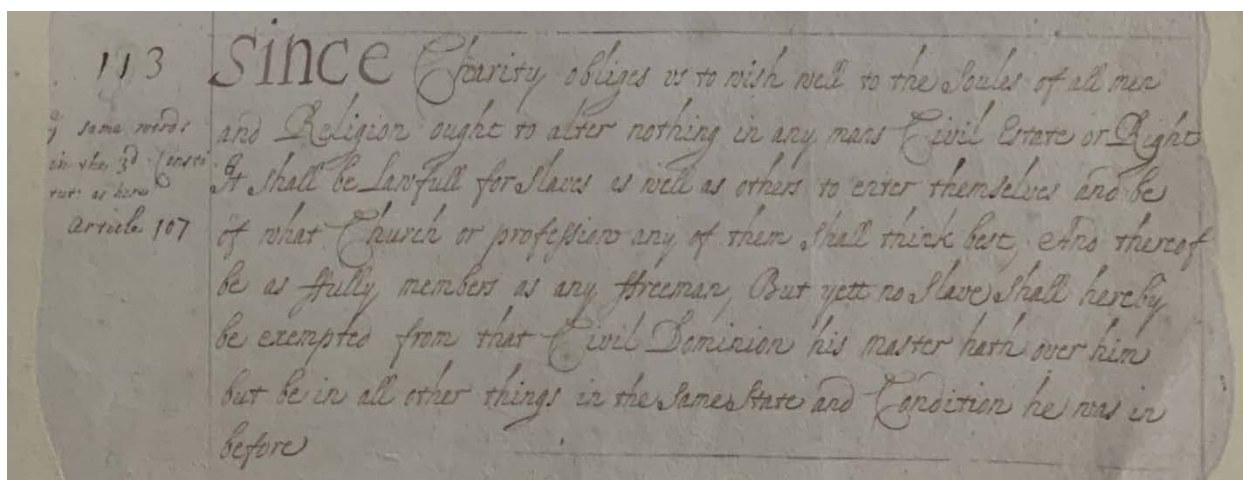


Figure 20. 1682AugB §113

Likewise, in 1682AugB, the crucial paragraph about absolute power of masters over slaves should have been §116. But there, too, it is gone.⁶⁶ The consistency across both copies of the fourth scheme of the *Fundamental Constitutions* indicates that the paragraph that gave every freeman absolute power over his slaves was deliberately excluded.

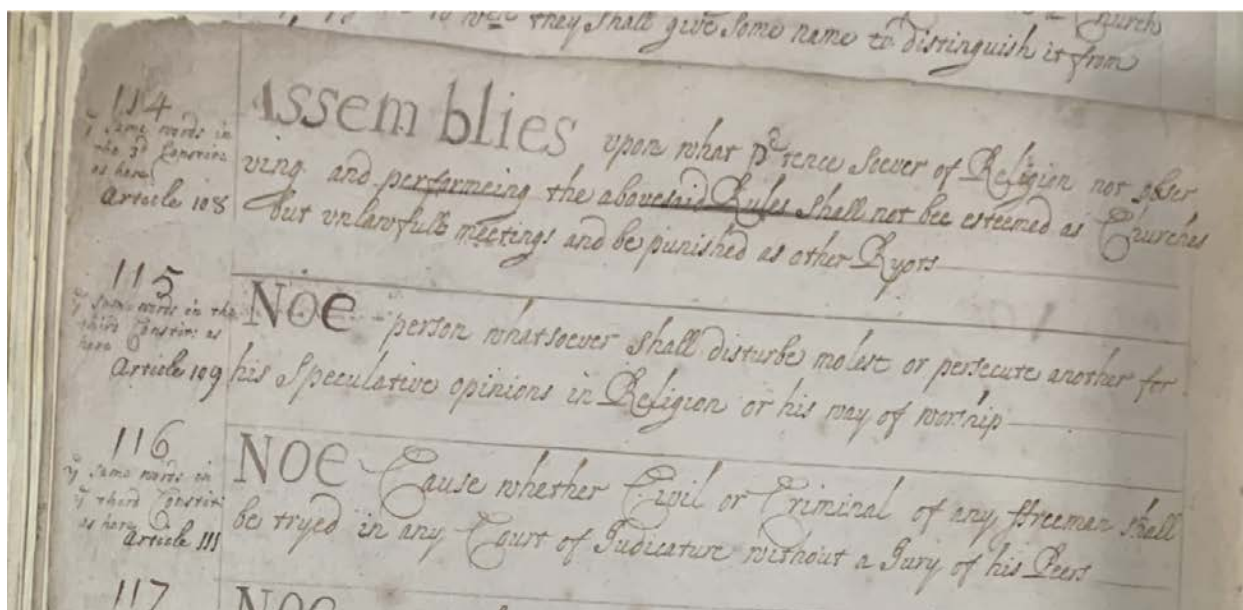


Figure 21. 1682AugB §§114-116

⁶⁶ Two other scholars, it turns out, both noticed that the paragraph had gone missing in at least one of the August 1682 copies. Neither directly critiqued Armitage's claims. James Farr, "Absolute Power and Authority': John Locke and the Revisions of The Fundamental Constitutions of Carolina," *Locke Studies* 20 (October 2020): 1-49 <https://doi.org/10.5206/ls.2020.10310>; Brad Hinshelwood, "The Carolinian Context of John Locke's Theory of Slavery," *Political Theory* 41, no. 4 (August 2013): 562-90 <https://doi.org/10.1177/0090591713485446>.

Item §116 in 1682AugB should have been the clause granting every Freeman of Carolina absolute power over “negro slaves.” But that clause is nowhere to be found.

Concerning Locke’s purported alterations of 1682, Armitage claimed that “His contributions were also evidently taken seriously for all made their way into the revised...FC of August 1682.” He claimed that the paragraph about the absolute power of masters over slaves “went untouched in the 1682 revisions even as Locke renumbered it with all the rest.”⁶⁷ But while the paragraph might have remained untouched in 1682D, it was gone by August. The fourth scheme (1682AugA & B), signed by the Proprietors, lacked that paragraph.

If, as Armitage alleges, the 1682 evidence provides positive proof of Locke’s attitudes, and Locke was the definitive influence on the revisions, then by that logic Locke *must* have played a role in removing the paragraph about the absolute power and authority over slaves from the FC in 1682. But the evidence indicates that Locke never had such definitive influence, whether for good or ill. In the end, it was up to the Proprietors. Below is the final paragraph of the signed version of August 17, 1682, which emphasizes that the document had to be signed and sealed by all Proprietors (as had just been done) to be valid. The last paragraph of the August 17, 1682 copies includes the handwritten annotations from 1682D. It repeated “witness our hands and seals,” which meant the signatures and seals of the Proprietors, along with some new words: “Any new Article confirm’d by the hands and Seales of all the Proprietors all the Members of the Grand Councill, and all the Members of Parliament two Successive Parliaments shall be added to these Fundamental Constitutions and from thenceforth be esteem’d as apart of them to all intents & purposes.” Such words make clear the extent to which this was a negotiated legal document and who had to agree to any legal changes.

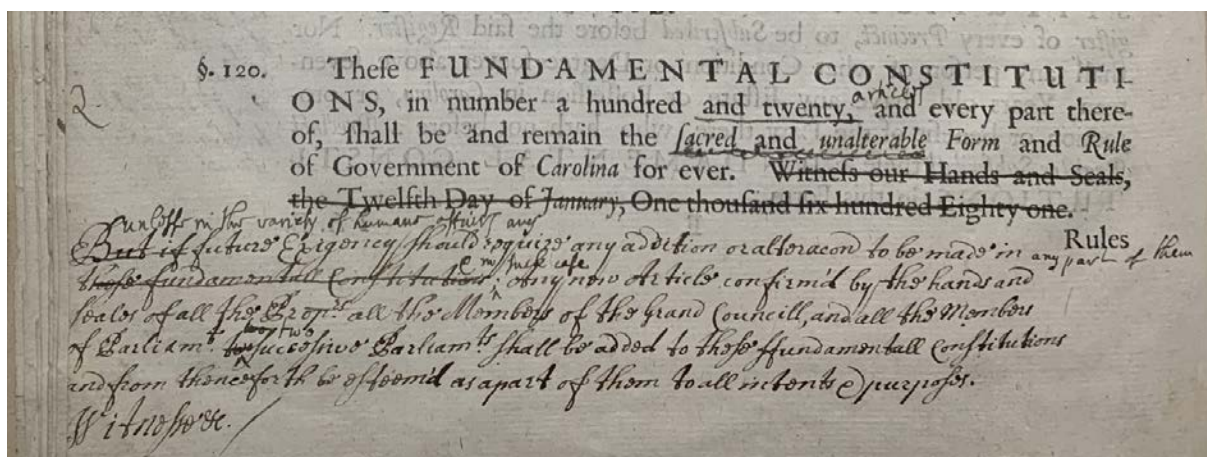


Figure 22. 1682D §126 (original number not crossed out)

⁶⁷ Armitage, “Locke and Carolina,” 615, 619.

These fundamentall Constitutions in number 126 articles and every part thereof shall be and Remain y^e sacred and unalterable forme of gouernment of Carolina forever unless in y^e variety of humane affaiers any future Exigency should Requier any addition or alteration to be made in any part of y^e in such case any new articles confirmed by y^e hands and seales of all y^e Proprietors all y^e members of Grand Council all y^e members of parliament two successive parliamt^{ts} shall be added to these constitutions and from thence forth to be Extremed as part of y^e to all intents and purposes with nee our hands and Seals & y^e great seale of our province this seventeenth day of August in y^e yeare of our Lord god one thousand six hundre eighty and two

Figure 23. 1682AugA §124 (incorrectly listing 126 articles)

Below (Figure 24) is what the seals embossed on every final signed copy of the *Fundamental Constitutions* in schemes 1-5 below would have looked like. This was a legal document.⁶⁸ Note the signatures of the Lords Proprietors above their personal seals. In this case, Locke was one of fourteen witnesses who signed on the reverse, one of two witnesses for each of the Proprietors' signatures to verify the validity of each sign and seal on the front. Locke, of course, was a witness for Shaftesbury.



Figure 24. Seals on “Articles of Agreement” among proprietors, 6 May, 1674

Were these *Locke's Fundamental Constitutions*? He certainly had a role in their authorship and inserted occasional text into the draft version (1670D) and, in 1682D, possibly annotated revisions on topics ranging from who had the power to appoint the Palatine to religious toleration and voting. But so did others. And the approval for any

⁶⁸ SCDAA S131003 “Articles of Agreement Between the Lords Proprietors” 6 May 1674.

changes came down to the Proprietors. There is no evidence that he weighed in on the slavery question. To the extent that he did, it must have been to silently remove the most crucial provision in 1682.

In terms of who had final authority over the character of government in Carolina, that person was, indirectly, King Charles II, who issued the charter, a charter originally drafted in 1629. More immediately, in terms of norms of supervision, that say belonged to the Proprietors of the colony, who had to sign off on every version of the *Fundamental Constitutions*, which was in fact the operative frame of government for the colony, under which governors and judges were appointed and laws issued. Each Proprietor, under the *Fundamental Constitutions*, also had the right to appoint delegates to the Carolina “Parliament” and the records of those appointments, like the others fill three volumes of formal orders and instructions from the period between 1669 and 1719. These were letters and instructions from the Proprietors to the governors of the colony that survive among the records of the Carolina Department of Archives and history, a testament to that relatively constant and interactive supervision.⁶⁹ Locke was a legal witness to verify the validity of Shaftesbury’s signature and seal, in at least the one instance discussed above. But his was not the voice that mattered, in the end. Everyone involved at the time understood that reality.

Indeed, the question of who among the proprietors had most sway also connected directly to who was king, and to politics in England. So, whereas in August 1682, the proprietors had signed off on a “fourth scheme” that excluded the crucial clauses about the absolute power of masters over slaves, in March of 1685, immediately after the death of Charles II and the accession of James II as king, the proprietors revoked the fourth scheme and instructed the governor to abide by the third scheme. James II, it should be remembered, was still the governor of the Royal African Company, and had been since its inception (under a slightly different name) in 1660. He was a strong proponent of slavery. So, it is unsurprising that a new group of proprietors assumed power at that point. In Carolina itself, those instructions had an immediate impact. As some settlers wrote in 1688:

Then came new instructions, dated 12 March 1685, repealing all former instructions, and ordering the third set of fundamental constitutions to be subscribed and practised as unalterable. The Commons protested against this in December 1685, and against all Constitutions but those of 1669. On the 19th November 1686, Parliament, consisting of eight deputies of the proprietors and twenty commoners, met at Charles-town, and twelve of the commoners refused to subscribe to the constitutions of 1682, and were ordered by Governor Joseph Moreton to leave the House. The seven remaining commoners and the deputies then proceeded to enact several laws, against which the excluded members protested.⁷⁰

⁶⁹ See, e.g., SCDAH: All three have the same call number: mss S213010 “Commissions & Instructions from the Lords Proprietors 1671-1691,” the second volume is 1685-1710, and the third is 1715-1720. There are many other materials, but these are the main evidence of interactions.

⁷⁰ TNA CO 5/287, 150-159.

Thus, all the elected commoners, more than half of whom refused to subscribe allegiance to the third scheme of the Constitutions in 1686, preferring instead either the fourth scheme or the original first scheme of 1669, (neither of which contained the crucial clauses about masters absolute power over slaves), were ejected from having a vote or voice in Carolina's government altogether. The consequence was twofold: not only did the eight deputies of the Proprietors outweigh the seven remaining commoners' votes in the grand council which made Carolina's laws, but the Proprietors with the most political clout in England at any given point were calling all the shots via whichever form of the *Fundamental Constitutions* was then in force.

5. Manuscript Claim #3

Armitage concludes his article with the claim that the appearance of the language of the power of masters over slaves in what he claims was an even earlier draft, was "*idiomatically Lockean* in its insistence on the slaveholder's 'absolute arbitrary Power, over the Lives, Liberties and Persons of his Slaves, and their Posterities.' . . . 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 both before and during the composition and revision of the *Two Treatises*." Armitage's analysis on this point has been emphasized by other scholars as particularly convincing to them.⁷¹

Before examining the manuscript evidence for this final claim, it makes sense to pause to consider Armitage's logic. Armitage declares that putting the words 'absolute' and 'arbitrary power' together is unusual, "idiomatic" to Locke. Armitage's point, in other words, is that Locke was atypical in putting those words together, and that therefore this phrase was probably written by him or influenced by him. Furthermore, Armitage claims that this idea had a hold over Locke's "political imagination" as he was crafting his most important treatises on government.

So, what was this supposed "earliest manuscript" that Armitage connected to Locke? It was 1669B, the "coppie" of the original version from July 21, 1669 (1669A) that was made locally, and slightly altered, in the colonies, sometime after 1670. 1669B is very similar to 1669A in most respects. It has 81 articles, the only other version of that length. It is all in one handwriting, so not a draft. It is, as the manuscript itself highlights, a "coppie" made for use in a local precinct office in Carolina. Sloppily done, some sentences are incompletely copied out, as in item 77, which ends in the middle of a sentence. Items 71 & 72 were copied in the wrong order and then renumbered. The major difference was the single additional paragraph, an addition to item §73. The original article §73 in the 1669A version at the South Carolina archives contains only the paragraph about "charity."

⁷¹ Armitage, "Locke & Carolina," 619; and see James Farr, "Absolute Power and Authority," 39. Farr writes, following Armitage's provocative suggestion about "idiomatically Lockean," that "Locke likely authored those words."

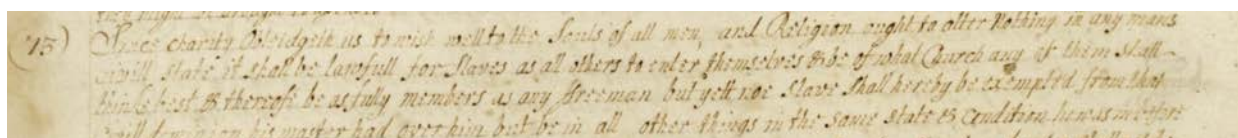


Figure 25. 1669A §73 (entire text of “charity” article)

(73) Since charity Oblidgeth us to wish well to the Souls of all men, and Religion ought to alter nothing in any mans civil state it shall be lawfull for Slaves as all others to enter themselves to be of what Church any of them shall thinke best & thereof be as fully members as any Freeman but yet noe slave shall hereby be exempted from that civill dominion his master had over him, but in all other things in the same state & condition he was before.

This passage does maintain that slaves would not be freed by conversion. But it says nothing about absolute or arbitrary power.

The manuscript “coppie” 1669B, created sometime between 1670 and 1690, added this additional paragraph to article §73:

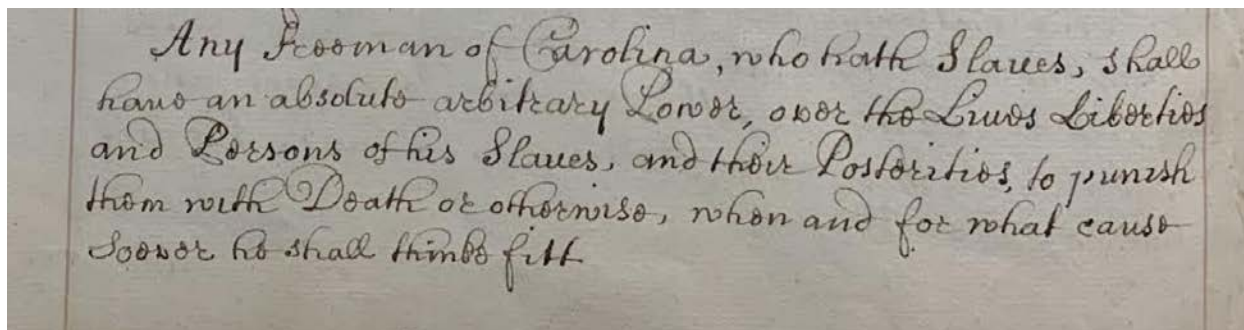


Figure 26. 1669B, new paragraph added to §73. Same § # as in 1669A

“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, when and for what cause soever he shall thinke fitt.”

I suspect that this paragraph was added because a local official heard that a new version of the *Fundamental Constitutions* (second scheme, March 1670) added a new item such as that, but they wanted to keep the first, authentic original scheme otherwise. Why add this paragraph? A local official who was a slaveowner might not want to be punished if he killed his slaves. Such a legal provision echoed article 20 of the Barbados slave code, first passed in 1661. As most of the colonists in South Carolina had come from Barbados, it would have been familiar to them:

Clause 20: And it is farther Enacted and ordeyned by the authoritie aforesaid that if any Negro under punishment of his Masters or his order for runing away or any other Crimes or misdemeanours. Toward his said Masters shall suffer his life or in Member noe person whatsoever shal bee accomptable to any Law therefore.⁷²

⁷² TNA CO 30/2/16-26, esp. 21.

The addition of this paragraph to article 73 of the 1669B copy of the *Fundamental Constitutions* in a Carolina precinct was likely inspired by a law and by crises of masters' power within an emerging system of slavery with which they were already familiar. Whoever added that clause wanted to shield owners from prosecution for murder. The addition here indicates that these copies of the *Fundamental Constitutions*, as kept in precincts, had a practical legal value. Everywhere slavery was emerging, the accountability of masters and overseers was an issue. It was not uncommon for masters to be prosecuted: In Maryland in 1658, a Dutch overseer, Overzee, was charged with the murder of a "black servant" or "slave" called Antonio. In London in 1677, Charles II stopped the digging up of the body of a black youth who had died after being, supposedly, castrated, on the orders of his master. Charles II's order stopped the murder investigation. Most other colonies would eventually pass laws exempting owners and overseers from accountability. This was not Locke. This was a culture of impunity, of absolute and arbitrary government.⁷³

But, to follow Armitage's argument, was it "idiomatically Lockean" to make such connections between arbitrary and absolute power? In 2024, we have access to search tools that Armitage lacked. Early English Books online (EEBO) has an outstanding feature, deriving from transcription efforts by thousands of scholars, called a proximity word search. It is still a work in progress, but this feature allows searching through hundreds of thousands of words. In fact, combining 'arbitrary' and 'absolute' using a proximity word search reveals that these words appear together in phrases printed in hundreds of books by hundreds of different authors during these decades. They were used almost always in the way that Locke used them, that is, as disapproving of absolute power. Using the word "arbitrary" in combination with "absolute" power was a means to criticize such power, as Locke did repeatedly in his *Two Treatises*:

Despotical Power is an Absolute, Arbitrary Power, one Man has over another, to take away his Life, whenever he pleases. This is a Power, which neither Nature gives, for it has made no such distinction between one Man and another, nor Compact can convey, for Man not having such an Arbitrary Power over his own Life, cannot give another man such a Power over it.⁷⁴

Moreover, the rest of the phrasing in the precinct "coppie" of the *Fundamental Constitutions*, 1669B §73, about "lives, liberties and persons of his slaves" or even "lives, liberties and persons," is not uniquely Lockean phraseology and was common enough. It is idiomatically seventeenth-century English. These words appear together in the Leveller tracts, for example, and in the charges for the impeachment of the Earl of Strafford in

⁷³ For Antonio's case, see Jacqueline Jones, *A Dreadful Deceit: The Myth of Race from the Colonial Era to Obama's America* (New York: Basic Books, 2013), 1–6; Andrew Fede, *Homicide Justified: The Legality of Killing Slaves in the United States and the Atlantic World* (Athens, GA: University of Georgia Press, 2017), esp. chap. 4. After the American Revolution, many states revoked the exemption, but it was rarely prosecuted, even then. For the London case, see Brewer, "Creating a Common Law of Slavery."

⁷⁴ John Locke., *Two Treatises of Government*, ed. Peter Laslett (Cambridge: Cambridge University Press, 1988), § 172. (Chapter on paternal, political, and despotical power).

1641. In both cases, they were used to condemn the tyrannical overreach of rulers. In terms of their meaning, when used in an approving way, as they were in 1669B, they align with the principles of Sir Robert Filmer, which Locke challenged in his *Two Treatises of Government*. Filmer wrote, approvingly: “The lordship which Adam by creation had over the whole world, and by right descending from him the patriarchs did enjoy, was as large and ample as the absolutest dominion of any monarch which hath been since the creation,” including “the power of life and death.” He continues that this right belongs to all fathers of families “Adam and the patriarchs had absolute power of life and death,” including over slaves and servants.⁷⁵ One of Locke’s strongest critiques of Filmer is that no one should have such a power over another person, that no one should be above the law.

This part of Armitage’s claim is now widely built upon by other scholars.⁷⁶ But it is a rather bizarre insinuation that Locke was the one really behind theories of absolutism that he otherwise opposed. By quoting passages of Locke wherein he summarized and criticized Filmer as though they were Locke’s, Armitage dissolves crucial distinctions between Locke on the one hand and Filmer and Spelman on the other. Armitage thereby flattens the fierce debates over power in the seventeenth century, debates that framed two revolutions.

In 1698, an entirely new group of Proprietors for Carolina rewrote the *Fundamental Constitutions* yet again. In that fifth scheme, the Proprietors reduced the *Fundamental Constitutions* to 41 articles and reinserted the paragraph giving “absolute power and authority,” to “Freemen,” over “negro slaves.” They were likely drawing on the “third scheme” which, as shown above, was the one in force as of March 1685. Locke was not involved.⁷⁷

In sum, Armitage’s key evidence is mistaken in the following ways:

1. John Locke did not add the words “power &” to the sentence about the absolute power and authority of masters over slaves in FC manuscript 1670D.
2. Locke was not the main or sole author of this or any version of the FC.
3. Yes, a copy of the FC in the New York Public Library (1682D) is a published text of the manuscript copy of January 1682. Yes, some of the annotations are likely in Locke’s handwriting. However, “all” of Locke’s suggestions were not accepted.

⁷⁵ Filmer, *Patriarcha*, ch. 1 §4 (p. 7), ch. 2 §3 (p. 16-17). Locke responds to these arguments, point by point, in the First Treatise.

⁷⁶ In addition to Farr, “Absolute Power and Authority,” see Mary Nyquist, “Locke’s ‘Of Slavery,’ Despotical Power, and Tyranny,” in *Arbitrary Rule: Slavery, Tyranny, and the Power of Life and Death*, ed. Mary Nyquist (Chicago: University of Chicago Press, 2013), ch. 10.

⁷⁷ The fifth scheme survives both in manuscript and print. The printed copy is in *The Two Charters for Carolina Granted by Charles II . . . with the First and Last Fundamental Constitutions*, 53-60. The manuscript is CO 5/288/126-30 April 1698. By this time the First Earl of Shaftesbury was long dead, and his son the second Earl, both named Anthony Ashley Cooper, would die the next year. It appears that the third Earl signed the 1698 copy, along with a whole new set of other Proprietors, including John Grenville, the Earl of Bath, William Craven, the Second Earl of Craven, the Earl of Carteret, Thomas Amy, and John Colleton.

4. While the paragraph about absolute power was retained in 1682D, it is absent from the two August 17, 1682, copies (1682AugA & B), both of them seemingly copies of a formally signed and sealed original. Not only was the paragraph about the absolute power and authority of masters removed, but that removal is the only substantial difference between these signed copies and the suggested changes in 1682D. If anything, then, Locke—or someone else—quietly removed that paragraph in August 1682, possibly anticipating that doing so might be controversial for some Proprietors, and that they would not sign it if alerted to the change. This removal of the statement is very important if we are reading manuscript evidence to determine Locke's thoughts and impact at this point. It is what someone with *less power* might do to introduce a change that would otherwise be refused.
5. The words added to copy 1669B, one of the precinct copies of the *Fundamental Constitutions*, are indeed dramatic, but they have no connection to Locke idiomatically or otherwise. Instead, they seem to have emerged locally from the ideological and legal position of Filmer, who advocated that Lords and masters and kings and fathers had “absolute arbitrary Power, over the Lives Liberties and Persons of his Slaves, and their Posterities, to punish them with Death or otherwise.”⁷⁸

Armitage also emphasized that the Proprietors rewarded Locke for his work on the 1669 revisions of the *Fundamental Constitutions*, by making him a “landgrave” of Carolina, one of the titles of nobility there. Locke's contribution was acknowledged in his landgrave patent, and he was given a patent certificate to attest to that honor, which he kept until the end of his life. It now resides among the Locke papers at the Bodleian, complete with seals. Indeed, a copy of that certificate was sent to Carolina, and still resides among the papers at the South Carolina archives. However, Armitage did not address, or presumably examine, whether Locke acted on the privileges to which he was entitled as landgrave. The answer is no. Locke never claimed the 12,000 acres, the “barony,” to which he was entitled. He never had any land surveyed. He purchased no slaves. It is unsurprising, therefore, that he mentioned no such land in his will. Other landgraves and cassiques, including non-resident titleholders, did claim theirs, populating Carolina with baronies, many of them later sold. What does it say of Locke that he kept the piece of parchment with the patent but never used the title or claimed the land?⁷⁹

⁷⁸ These are the words from copy 1669B. They echo Filmer's claims. See Filmer, *Patriarcha and other Writings*, ed. Johann P. Somerville (Cambridge University Press, 1991), 16, wherein Filmer stated that “the patriarchs had absolute power of life and death, of peace and war and the like, within their houses or families. He must give us leave to call them kings of their houses or families.” Filmer gave fathers of families power over their wives, children, and servants, and made such powers hereditary over their children in turn. Locke detested such an argument, as is made clear throughout his *Two Treatises*. See e.g., *Second Treatise* §24: “for the Master could not have power to kill him at any time” even a person who became his servant in “a state of slavery” after having been captured in a just war.

⁷⁹ On the landgrave patent, see Armitage, “Locke & Carolina,” 608. Locke's landgrave patent is Bod.MS Locke b. 5/9, and South Carolina Department of Archives and History (SCDAH) ms. S213010 “Commissions & Instructions from the Lords Proprietors 1671-1691,” fol. 18. (Note that the call number for all SCDAH records has changed since Armitage wrote.) In terms of Locke never using the title of Landgrave, that is clear in all of his letters. He identified himself as a student at Christ Church (meaning fellow, or scholar) until that title was taken from him in 1684, by the king. To verify my observation about the land, see Henry A.M. Smith, *The Baronies of Carolina*, Vol. 1 (1988), reprints a series of articles

6. Conclusion

In laying out the evidence in such a systematic way, I have explored how Armitage's claims about the manuscript evidence, upon inspection, lack the necessary proof. I have provided "the regular and methodological disposition" of the evidence, by "laying them in a clear and fit order." Judge for yourselves. As Locke wrote in the *Essay*:

So that we may in reason consider these four degrees: the first and highest is the discovering and finding out of truths; the second, the regular and methodical disposition of them, and laying them in a clear and fit order, to make their connexion and force be plainly and easily perceived; the third is the perceiving their connexion; and the fourth, a making a right conclusion. These several degrees may be observed in any mathematical demonstration; it being one thing to perceive the connexion of each part, as the demonstration is made by another; another to perceive the dependence of the conclusion on all the parts; a third, to make out a demonstration clearly and neatly one's self; and something different from all these, to have first found out these intermediate ideas or proofs by which it is made.⁸⁰

As Locke noted, it is one thing when "the demonstration is made by another, to perceive the dependence of the conclusion on all the parts." Most important, however, are the last steps "to make out a demonstration clearly and neatly one's self" and finally to see "these intermediate ideas or proofs by which it is made."

Many other academic fields, such as psychology, have been facing a replication crisis that has cast doubt on disciplinary methods.⁸¹ Perhaps we historians and political theorists also need to reconsider our methodological approach to sharing and examining crucial manuscript evidence, especially when such evidence underpins a crucial shift in interpretation, just as Locke recommended in his *Essay*. While we will no doubt disagree on some claims that are open to interpretation, many, such as the ones we have examined here, are easy to prove or disprove. Our evidence certainly can be made more transparent.

Though Armitage's claims about Locke's authorship of the paragraph about "absolute power and authority" over slaves was the most definitive intervention, the path to crediting Locke as the sole author of the *Fundamental Constitutions* and of this passage in particular was a twisted one. After Locke's death in 1720, Pierre Des Maizeaux published *A Collection of Several Pieces of Mr. John Locke, Never before Printed or not Extant in His Works*. Des Maizeaux claimed to have seen a copy of the *Fundamental*

published in the South Carolina Historical Magazine early in the 20th century, and includes elaborate maps of each of the baronies. Anthony Ashley Cooper had one, which went to his grandson Maurice Ashley Cooper eventually; Maurice sold it in 1719. Locke claimed none.

⁸⁰ Locke, *Essay Concerning Human Understanding*, Book 4, chapter 17, §3 (388).

⁸¹ "Replication Crisis," *Psychology Today*, <https://www.psychologytoday.com/us/basics/replication-crisis> "The replication crisis in psychology refers to concerns about the credibility of findings in psychological science. The term, which originated in the early 2010s, denotes that experimental results in behavioral science often cannot be replicated: Researchers do not obtain results comparable to the original, peer-reviewed study when repeating that study using similar procedures."

Constitutions with some annotations by Locke: “You have here those Constitutions, printed from Mr. Locke’s copy, wherein are several amendments made with his own hand. He had presented it, as a work of his, to one of his friends, who was pleased to communicate it to me.” Frustratingly, Des Maizeaux included none of these purported annotations.⁸² The version he included was merely the first published edition from March 1, 1670 (1670P). Des Maizeaux included the paragraph about the “absolute power and authority over his Negro Slaves,” for example, as item “CX,” which is the roman numeral equivalent of the first edition’s “110.” The roman numeral of Des Maizeaux’s edition reveals it to be the reference made by Josiah Tucker in 1776. Des Maizeaux’s edition, in other words, is what established the impression that Locke had authored the *Fundamental Constitutions* and was responsible for this passage.⁸³

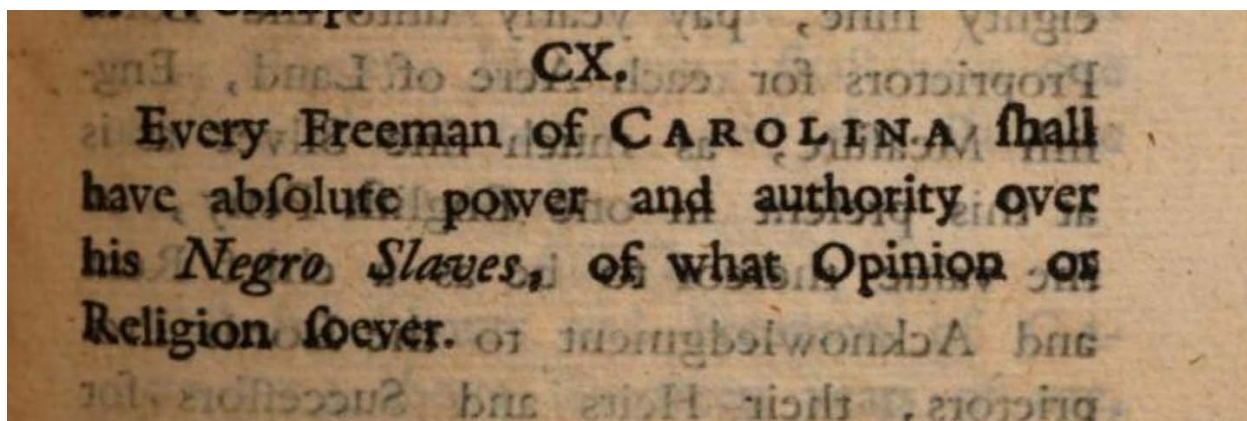


Figure 27. Des Maizeaux’s edition of “Fundamental Constitutions” 1720.

It was a claim then made repeatedly by defenders of slavery and the slave trade, including by John Scott, Lord Eldon, in debates in Parliament in January 1807. One observer noted acidly that “his Lordship would seldom refer to such a writer as Locke, except for such a purpose, nor can we fairly question the learned Lord’s sincerity when he advocates the slave trade.”⁸⁴ Locke, in other words, was regarded as too radical for Chancellor Eldon, who mentioned him only to discredit the anti-slavery cause. An anonymous critic of Lord Eldon noted that he had consulted all of the works that Locke had bequeathed to the Bodleian Library, works that Locke had published anonymously and wished to acknowledge, and that the *Fundamental Constitutions* was not among them and was therefore not something Locke wanted to acknowledge. He noted that the first inclusion of it as part of Locke’s works was by Des Maizeaux, but that it was not at all clear what role Locke played in writing it or whether he was responsible for the dreadful passage.

While Eldon’s attempt to defend the slave trade by claiming Locke’s approval for slavery failed and the bill to abolish the slave trade passed, Eldon’s strategy was widely

⁸² Des Maizeaux, ed., *Collection*, Dedication, sigs A4v–A5r.

⁸³ Des Maizeaux, ed., *Collection*, 47.

⁸⁴ “Defence of Locke against Lord Eldon,” *The Monthly Repository of Theology and General Literature*, 2:84–87 from “Verax” February 9, 1807.

adopted in South Carolina over the next decades, especially since it was their *fundamental constitution*. Eldon's anonymous critic was one among many voices to challenge the claim, but arguments over it continued fiercely. It is striking that crediting Locke for the passage upholding slavery in the *Fundamental Constitutions* was mostly done by conservatives who sought to reject "democracy" altogether, or by those who sought to justify slavery, whether Lord Chancellor Eldon in Parliament during debates over whether to abolish the slave trade or slaveholders in the West Indies or the American South.⁸⁵ Such claims were widespread by the early nineteenth century, when they became important to disputes over the justice of slavery in Britain's empire amidst the abolition debate, which is when Bentham had to confront such claims from slavery's defenders. Bentham reflected about them in a marginal note in his manuscripts.⁸⁶

Such assertions gained steam in the late nineteenth century, when Noel Sainsbury published an edition of the *Fundamental Constitutions* based on the 1669 manuscript copy in the Shaftesbury Papers (1670D). He mistakenly claimed that the manuscript was entirely in Locke's handwriting.⁸⁷ While Leslie Stephen's *History of English Thought in the Eighteenth Century* acknowledged Sainsbury's attribution of Locke as the possible author of the *Fundamental Constitutions*, Stephen doubted it to be true: "they perhaps do not represent his opinions in all respects," especially that "Freemen should have absolute power and authority over negro slaves." Regardless, increasingly, scholars began to agree that Locke was the author of the *Fundamental Constitutions*. In a crucial footnote to his canonical text of Locke's *Two Treatises*, at least in the editions published after 1988, Peter Laslett implied that Leslie Stephen had merely agreed that Locke was the author of the article that gave freemen absolute power over slaves in the *Fundamental Constitutions*. Given how many students and scholars have since read the *Two Treatises* in Laslett's edition (it had been cited more than 14,500 times as of March 2024), Laslett's influence on this question, has no doubt been profound. Still, his comment was glancing.⁸⁸

These connections were expanded by C.B. Macpherson to argue that Locke's ideas about property were so comprehensive (and wrong) that Locke promoted the ownership

⁸⁵ See Arcenas, *America's Philosopher*, ch. 3; *Reception of Locke's Politics: Wealth Property and Commerce, 1696-1832*, ed. Mark Goldie (London: Pickering and Chatto, 1996), includes an excerpt from George Fitzhugh's *Sociology for the South* (1854) as an example of Locke as a patron of capitalism, and of the evils of free society (Fitzhugh, of course, was justifying slavery).

⁸⁶ Arcenas, *America's Philosopher*, ch. 3.

⁸⁷ Milton, "Fundamental Constitutions."

⁸⁸ Leslie Stephen, *History of English Thought in the Eighteenth Century* (London: Smith, Elder, & co. 1902), 2:139; Locke, *Two Treatises*. This note did not appear in earlier editions. In the 1988 edition, at p. 284 note §24, Laslett wrote: "In gauging Locke's attitude to slavery it is worth bearing in mind that, as Leslie Stephen pointed out (1902, II, 139), the *Fundamental Constitutions of Carolina* proved that every freeman "shall have absolute power and authority over his negro slaves." He adds "The instructions to Governor Nicholson of Virginia, which Locke did so much to draft in 1698, ... regard negro slaves as justifiably enslaved because they were captives taken in a just war." My article, "Slavery, Sovereignty and Inheritable Blood" corrects Laslett's misimpression with regard to the latter, in particular exploring Locke's involvement at various stages of the political process of appointing and instructing Nicholson, and his contest over this question with William Blathwayt.

of people. He then used this reconstruction of Locke's ideas to critique supposedly liberal arguments about the supremacy of property above human rights.⁸⁹ Macpherson maintained that Locke must have included slaves among his definition of property on the grounds that everyone then would have agreed that slaves were property. But treating people as property was controversial in the 1670s, even after it was supported by the main common law justices appointed by the crown in a crucial 1677 case. In 1695, after the Glorious Revolution, most Whigs—especially new Whig justices in the 1690s, who were Locke's allies—reversed the earlier common law judgement that people—heathens, “negroes”—could be considered legal property.⁹⁰ It is not possible in this short article to evaluate all of Locke's statements about property, but there is much evidence for more radical ways of reading Locke's ideas about property in his *Two Treatises*.⁹¹ Locke writes there, for example: “Absolute Dominion, however placed, is so far from being one kind of Civil Society, that it is as inconsistent with it, as Slavery is with Property.”⁹² For Locke in this sentence, slavery and absolute dominion were despotic powers, incompatible with Civil Society, justified, if ever, only temporarily in a state of war.

If Locke cannot be credited with the passage on the “absolute power & authority over negro slaves” that Armitage, Josiah Tucker, and Lord Eldon credited him with, then that interpretation of Locke, and of liberalism, falls apart. And if Locke was not in fact promoting slavery between 1669 and 1682, and if we follow Mills's logic, then there is, in the end, no contradiction between Locke's emerging theory and his practice.

It appears that over time, Locke became increasingly disturbed by the question of whether hereditary status and privilege, whether of kings or West-Indian planters, could be justified as absolute and divine. His theory sought to narrow such justifications. In his *First Treatise* of government, likely begun in 1681 or 1682, shortly after he purchased a copy of Filmer's treatise, Locke criticized West Indian planters' claims to power when he noted that they had bought people with money without any purported claim deriving from Adam's right. Thus, their claims to ownership could not be justified by a Filmerian logic of hereditary status.⁹³ He ridiculed the idea that the logic of hereditary status and power descended from kings to planters as though by divine right: “Would it not be an admirable

⁸⁹ Crawford Brough Macpherson, *The Political Theory of Possessive Individualism: Hobbes to Locke* (Oxford: Clarendon Press, 1969), 215–220.

⁹⁰ For the late seventeenth century legal disputes over whether people could be considered property, see Brewer, [Creating a Common Law of Slavery](#). High court justices appointed by the crown, acting in the service of the Royal African Company, were doing so, but these assertions were highly contested, and reversed, at least temporarily, by Whig justices (Locke's allies) in the 1690s. This deeper history of the legalities was directly connected to these theoretical debates.

⁹¹ One example is Ashcraft, *Revolutionary Politics*.

⁹² *Second Treatise*, §174, in the section on “paternal, political, and despotical power.” The distinction between civil society and a state of war is crucial to understanding Locke's thinking. This has also been a source of mistaking Locke's criticism of slavery for support. See David Brion Davis, *The Problem of Slavery in the Age of Revolution, 1770–1823* (Oxford: Oxford University Press, 1999), 45.

⁹³ Locke, *First Treatise*, §§ 130–131. I disagree sharply with Armitage's interpretation of this passage. Locke is indeed mocking Filmer. But he is doing so by mocking claims to paternal authority as a form of government altogether, including that of west Indian planters over their supposed slaves. Also see §153.

argument to prove that all power by God's institution descended from Adam, and that the very person and power of this [West-Indian] planter were the ordinance of God?" He here and then again later returns to mock the logic for such a claim of European planters being "little Kings in the West Indies": while Filmer might maintain such rights for a king, and the planter for himself, they have no evidentiary foundation.⁹⁴

Was Locke a racist? One of the main justifications for slavery in this period was a bizarre one to us. It is one that Mills mentioned when he addressed the contemporary racism by which he thought Locke must have been silently influenced, if Armitage's analysis was correct. It was a claim, based on efforts to historicize the Bible, that God gave the world to Noah and his sons. But it elaborated (with great inventiveness) on a particular Biblical story: after his son Ham saw his father naked, and laughed, Noah cursed Ham's son Canaan, thereby condemning Ham's descendants to serve Ham's brothers and their descendants.⁹⁵ Some Biblical scholars then hypothesized that Ham went to Africa and that those who lived there were Ham's descendants. In his *First Treatise*, Locke addressed Biblical claims to authority through Adam and Noah, bringing up obliquely the curse of Ham [Cham] only to ridicule it. Locke quotes Filmer's assertion, for example, that "Noah sail'd round the Mediterranean in Ten Years, and Divided the World into Asia, Africa, and Europe, portions for his Three sons."⁹⁶ Locke points out that Filmer thus seems to undermine the notion of primogeniture that he had championed, providing all younger sons a claim to inheritance. To thus engage with Filmer on this crucial element of the justification of the power of the descendants of Noah's other sons, including over the descendants of the sons of Ham (in Africa), is to ridicule the entire logic

⁹⁴ Armitage, "Locke & Carolina," 619; Locke, *First Treatise*, § 130.

⁹⁵ Mills, "Locke and Slavery," 496. This mythmaking about the division of all the lands of the world to the sons of Noah, upon slim Biblical evidence, has been explored by many modern scholars. Filmer did so, in the paragraph that Locke was criticizing, at Filmer, *Patriarcha*, §5. A few of the best studies of the power of this Biblical mythology in establishing not only land claims for monarchical dynasties in the old and new world but also to finding Biblical justifications for enslaving the descendants of Ham are Stephen R. Haynes, *Noah's Curse: The Biblical Justification for American Slavery* (New York: Oxford University Press, 2002), which analyzes American slaveholders' reliance on that mythology, but with a discussion of its long roots; María Elena Martínez, *Genealogical Fictions: Limpieza de Sangre, Religion, and Gender in Colonial Mexico* (Stanford University Press, 2008), which discusses how widespread that mythology was in early modern Spain and in its empire, and how it related to ideologies of purity of blood, of racism, and of power. Colin Kidd likewise explores scriptural debates over race in sixteenth-eighteenth centuries, and in doing so makes clear how prominent that Biblical story became to justifying hereditary racial categories and in turn slavery: Colin Kidd, *The Forging of Races: Race and Scripture in the Protestant Atlantic World, 1600–2000* (Cambridge: Cambridge University Press, 2006). Kidd mentions it more than 50 times throughout his book. On Locke and other allegations about race see Holly Brewer, "[Race and Enlightenment: The Story of a Slander](#)" *Liberties Journal*, November 2021.

⁹⁶ Locke, *First Treatise*, esp. §142, but generally §§134–147. Locke is obsessed by this question of whether the Bible says that power can be inherited, and the place of the Biblical stories of Adam and Noah in the rights of countries and peoples around the world. He ridicules this fake historicizing of power as hereditary – of the kind of Biblical historicizing that underlies not only Filmer's supposed history, and the story of the curse of Ham that builds on it, but everything that Filmer was trying to justify, including the hereditary power of kings to make their subjects, and even their brothers, into slaves. Note that today we normally use the name Ham, but like Locke, many scholars referred to him as "Cham" in this era: it was a mere question of translation, but they referred to the same Biblical person.

of this kind of argument. All of Noah's sons inherited something, according to Locke, but not as kings over others. None of the peoples of the world are disinherited, and paternalism supports no claim to governmental authority.

Locke then answered false claims about the hereditary superiority of one race over another on the first page of his *Second Treatise*, in a passage that has been, as far as I can tell, ignored by modern scholars, because we see the world differently today. We do not realize how serious such arguments as Filmer's were in their own time. Locke began by summarizing his argument against Filmer in the first treatise: Kings had no license to rule via Adam's right to power as a father:

That Adam had not either by natural right of Fatherhood, or by positive Donation from God, any such Authority over his Children, or Dominion over the World as is pretended. That if he had, his Heirs, yet, had not Right to it.⁹⁷

He then extended this logic to the races of the world, and to the right of one to rule the other. "That if even that had been determined, yet the knowledge of which is the Eldest Line of Adam's Posterity, being so long since utterly lost, that in the *Races of Mankind* and Families of the World, *there remains not to one above another, the least pretence to be the Eldest House*, and to have the Right of Inheritance."⁹⁸ By inheritance Locke also meant power.

Locke thereby challenged any historicized Biblical claim that one race had a right to rule over another. No race or family is chosen by God to rule others. Only if one is engaged in the debates as they were unfolding then does Locke's argument make sense. Locke spent many pages of his *Two Treatises of Government* systematically undermining the logic that upheld the Biblical justification for slavery that rested on the claim of the curse of Ham.

On one crucial point I agree with Armitage: Locke's work did indeed emerge within a colonial context, amidst larger debates over rights of dominion and over slavery and lordship. Locke witnessed the emergence of slavery in England's empire and played a role, as a secretary, in aiding those who sought to develop it. But the knowledge that he gained from what he witnessed, read, and reported in letters back and forth was what led him, by the early 1680s, to create systematic arguments to oppose it.

Locke was hardly the sole author of the *Fundamental Constitutions*, most of which should be credited to others. It emerged as part of a mindset that also upheld the divine and hereditary rights of kings and lords, and the obligations of vassals and slaves. Locke did not acknowledge it as part of his oeuvre when he left copies of his own books to the Bodleian after his death. He had, by far, a greater impact on revising Virginia's constitution in 1698, in a document that he left rolled up in his desk. But there, too, all suggestions had to be approved by others, namely members of the Board of Trade and the crown.⁹⁹ Locke's ideal constitution was never made real in the form of a charter or

⁹⁷ Locke, *Second Treatise*, §1.

⁹⁸ Locke, *Second Treatise*, §4.

⁹⁹ The acquisition of Locke's manuscripts after WWII is recounted in P. Long, *A Summary Catalogue of the Lovelace Collection of the Papers of John Locke in the Bodleian Library* (Oxford: Oxford University Press, 1959). This manuscript (MS Locke e. 9) is described on p. 40. It is bound now, in a modern binding.

Fundamental Constitution. It was only ever make-believe, a theory of government, published in his *Second Treatise: An Essay Concerning the True Original, Extent, and end of Civil Government*.

We can and should quibble over whether Lockean ideas about government based on consent should guide democracies today. But these ideas are far from ridiculous. If we are to ridicule someone, perhaps we should instead make Josiah Tucker the object of our mockery. His predictions that governments based on such principles as Mr. Locke's would quickly collapse, that Britain's northern colonies, once they became separate states, would soon beg to return to the British fold, and that those states could never create a naval power to threaten Britain's, would be a surprise to the world today. More seriously, although Lockean ideas can be subverted and twisted to justify hierarchies, imperial and racial hierarchies were not part of Locke's theory. The bones of this theory of government, based on the consent of the governed, human rights, and equality, were radical.¹⁰⁰

Locke's ideas helped to create a foundation for the spread of democracy, independence movements, and de-colonialism in the post-World War II world. There is a possibility that, in discrediting Locke's ideas, de-colonial and post-colonial theories have removed a basis for establishing human rights and democracy without replacing it with another solid construct or even a solid method for establishing truth. In this respect, post-colonial theory, instead of attacking the actual set of principles that underlaid colonialism, ideas about divinely ordained, hereditary status for kings as well as for slaves, has been attacking the philosophical foundations of emancipation.

Armitage argued at the end of his article: "The complicity of Lockean liberalism with English colonialism was thus not first exposed by liberal self-scrutiny nor was it originally unearthed by an effort of postcolonial critique."¹⁰¹ Indeed. Charges of Locke's supposed "complicity" grew out of conservative attacks on these ideas altogether, or out of attempts to rationalize slavery and colonialism within them, by making it racialized. But the effort to search so hard within this theory derives in part from too little attention to what Locke was arguing against, theories popular with the Stuart kings in the seventeenth century, that helped to frame many English colonial settlements, including in Carolina, and that would remain popular in the American South even after the Revolution. Slavery and colonialism were justified through the ideas about absolutism and dominion endorsed by Filmer, Henry Spelman, and many other royalist thinkers.¹⁰² Locke began his first treatise of government with these words about Filmer's arguments in *Patriarcha*:

It was not bound when it was acquired but rolled into a cubbyhole in Locke's desk. These are small pages, easily rolled. For more see Brewer, "Slavery, Sovereignty, and 'Inheritable Blood.'"

¹⁰⁰ Daniel Immerwahr, *How to Hide an Empire: A History of the Greater United States* (New York: Farrar, Straus and Giroux, 2019).

¹⁰¹ Armitage, "Locke and Carolina," p. 620.

¹⁰² Pocock, *The Ancient Constitution and the Feudal Law* identifies the group of royalist thinkers. Pocock did not connect them with slavery, exactly, but with feudalism. For Locke, Filmer's ideas are clearly connected with slavery. Consider merely the first words of the first treatise, wherein Locke began his criticism of Filmer: "Slavery is so vile and miserable an Estate of Man, and so directly opposite to the Generous Temper and Courage of our Nation, that 'tis hardly to be conceived that an *Englishman*, much less a *Gentleman*, should plead for't." Locke, *First Treatise*, §1.

Slavery is so vile and miserable an estate of man . . . that 'tis hardly to be believed, that an Englishman, much less a gentleman, should plead for it. And truly, I should hardly have taken Sir Robert Filmer's *Patriarcha* which would persuade all men, that they are slaves, and ought to be so, for an exercise of wit...had not the applause which followed it required me to believe that the author and the publisher were both in earnest."

Filmer sought "to provide chains for all mankind."¹⁰³

By tying post-colonialism to conservative arguments, and by doing so in such an explosive and problematic manner, Armitage was, intentionally or not, attacking the foundations of larger efforts on behalf of human rights and democracy. He was also encouraging a conservative reading of Locke's work that emphasizes that Locke supported property above all things, including human rights.¹⁰⁴

The impact of such claims is not simple. Liberalism, especially a more radical version that emphasizes human rights, well-being, and care, is struggling. We live in a world of rising authoritarianism, unable to fully answer why that might be a problem because the foundations are gone. Most modern theories of rights are branches on a tree that connect back to his theory. Locke would hate that destruction, especially because little has been done to replace what was broken. As one of Locke's friends recalled after his death: "Mr. Locke also disliked those Authors that labour only to destroy, without establishing anything themselves. 'A Building,' said he, 'displeases them. They find great faults in it: let them demolish it and welcome, provided they endeavour to raise another in its place.'"¹⁰⁵

On some level post-colonial scholars such as Mills understood that problem and sought to rebuild, as evidenced by his effort to find a new basis for liberal theories of human rights in later thinkers who drew on Locke's ideas but did not carry such supposed baggage.¹⁰⁶ Another brilliant attempt comes from Amartya Sen, in his *Idea of Justice* (2006). But while Sen sought to engage the principle of "do unto others" in many cultures, to establish a new cross-cultural theory of justice, he was also doing it in conversation with John Rawls, his mentor, and through Rawls with a more radical reading of Locke.

¹⁰³ Locke, *Two Treatises*, ch. 1, §1 (p. 141).

¹⁰⁴ Armitage did the same thing in 2002 when he cited Jacques Derrida's blistering dismissal of human rights in the Declaration of Independence approvingly Jacques Derrida, *Otobiographies: L'enseignement de Nietzsche et la nom propre* (Paris: Galilée 1984), 13-32. (Eng. trans., Derrida, "Declaring Independence," *New Political Science* 15, quoted in Armitage, "The Declaration of Independence and International Law," *The William and Mary Quarterly* 59, no. 1 (2002): 39-64, at 58, note 82. <https://doi.org/10.2307/3491637>. The point of Armitage's article was to argue that the statement of principles at the beginning of the Declaration was relatively meaningless and that we should instead focus on the question of independence, which only became real in 1783. The most prominent scholar to innovate on Locke's theories to lean into this kind of neoliberal reading was Robert Nozick, *Anarchy, State, and Utopia* (1974).

¹⁰⁵ Pierre Coste, "Character of Mr. Locke" originally published in French in *Nouvelles de la Republique des Lettres*, February 1705, translated and printed by Des Maizeaux in an introductory preface, 1720, xviii. Coste wrote it in December 1704, shortly after Locke's death on October 28.

¹⁰⁶ See Charles W. Mills, "Racial liberalism," *PMLA* 123, no. 5 (2008): 1380-1397.

Like it or not, much about modern norms of justice in the United States and even in England, as well as in the United Nations, which are embedded not merely in theory but in laws, are indebted to Locke's *Two Treatises*.

In fact, this consciousness of what is at stake, about multicultural input and debates over privilege, and power, and race, were there all along. Locke mocked Filmer by pointing out that most people around the world would not give a damn about his arguments: "I fear the Chineses, a very great and civil people, as well as several other people of the East, West, North and South, trouble not themselves much about this matter."¹⁰⁷ This consciousness of difference, and of rights despite that difference, is within Locke's own texts, and in his debates with others. It is in his wide reading about other cultures and political systems around the world, and in the many debates surrounding him, debates that expanded over the next several centuries to include other countries and peoples.

Thank you for examining these scholarly minutiae and for traveling with me on this process of discovery. Whatever your scholarly background, the material here is not baggage, but part of the structure of it all, built into the origins of a theory of democracy and human rights that cannot be understood without it. The origins of democratic theory emerged in reaction to and largely contemporaneously with a different set of ideas about absolute power and slavery. Locke's theories should be systematically evaluated, but in doing so, it is crucial to begin with the earlier power structure, the earlier theories of absolute power, whether of kings or masters, expressed by thinkers such as Filmer and others upon whom Filmer drew, including James I.¹⁰⁸ Paying attention to the details enables us also to view the larger patterns. Fundamental claims about human rights emerged in reaction to, not in defense of, the emerging system of slavery.

The attempt to scour Locke's writings for the origins of slavery no doubt emerges out of the sense of liberalism's predominance in the late 20th century. There is a presupposition therefore that liberalism must somehow explain all inequalities around the world within itself, a supposition projected backwards into a more distant past, where we cannot pretend it predominated. But by ignoring other ideologies of power, here the absolutist and authoritarian and patriarchal and hereditary racial ideas articulated by Filmer and his contemporaries, we cannot understand the present. These never went away. Questions about racial inheritance (and legal status and power, and inclusion and exclusion) are still very much with us. Elements of Filmer's absolutism lay behind the U.S. Supreme Court's immunity decision in *Trump v. U.S.* in the summer of 2024.¹⁰⁹ Indeed, the logical parallel between the two is shocking. They lay behind the authoritarian turn of the American MAGA movement. The Biblical passages in Filmer that justified absolutism in the seventeenth century, particularly of passages such as Romans 13, spill from the

¹⁰⁷ Locke, *First Treatise*, §141.

¹⁰⁸ Filmer cites James I's *Trew Law of Free Monarchies* (1598) in *Patriarcha*, at section 15, p. 57, for example.

¹⁰⁹ Filmer, *Patriarcha*, at 8, p. 44: "The prerogative of a king is to be above all laws." Compare to the presumption of immunity for all official acts in the decision in *Trump v. United States*, 603 U.S. ____ (2024). Also see ["Brief of Amicus Curiae of Scholars of the Founding Era,"](#) for the same case, which references and discusses Locke's position in terms of the Constitutional Convention with regards to presidential immunity. (He was not in favor of monarchical immunity). Note that I was the lead author on that brief.

mouths of leaders of protestant denominations such as the New Apostolic Reformation (closely aligned with MAGA) today. The British, on the other hand, still have lords and kings, and swore loyalty to Charles III when his mother died using an oath from the seventeenth century. The ideas about dominium (of power and jurisdiction over those who live upon the land) still exist on varying levels legally across Britain (not to mention the profoundly unequal land ownership in both Britain and the United States, which owes its origins partly to long-ago grants of privileges). Post-liberal theorists such as Adrian Vermeule and Patrick Deneen are arguably drawing much of their inspiration from pre-liberal theories with which Filmer also engaged. The point is that the effort to blame Locke for slavery and absolutism is born from the erasure of these other ideas, and a failure to take them seriously. That is a mistake, for both the past and the present.

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