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North Carolina Colonial Legal Materials

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University of Tennessee College of Law

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OSCOLA 4th ed.

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Chapter 35

North Carolina Colonial Legal Materials

Scott Childs
Melanie J. Dunshee

HISTORICAL BACKGROUND

Until King Charles II of England issued the Charter of 1663, the area now known as North Carolina was part of the Virginia colony. The charter granted several powerful courtiers a patent to the land south of Virginia claimed by England. The courtiers, referred to as the Lords Proprietors, were organized as a joint-stock company, and attempted to institute a proprietary form of government based upon the Charter of 1663 and the Charter of 1665, which expanded the territory grant. In 1665, a more detailed attempt at governing the colony was instituted by the Lords Proprietors in the Concessions and Agreements Between the Lords Proprietors and Major William Yeamans and Others. The 1665 Concessions and Agreements was replaced in 1669 by the Fundamental Constitutions.

In 1729 the Lords Proprietors sold Carolina to the Crown, making it a Crown colony subject to the direct control of the Crown. In May of 1775, North Carolina declared itself an independent state when it issued the Mecklenburg Declaration and the Mecklenburg Resolves. In April 1776 North Carolina authorized its delegates to the Continental Congress to vote for independence in the Halifax Resolves. The independent state of North Carolina ratified a state constitution in 1776, which served well beyond 1789 when North Carolina joined the United States of America. On November 21, 1789, North Carolina became the twelfth state to adopt the U.S. Constitution.

COLONIAL RECORDS PROJECT

Research in North Carolina colonial records is greatly aided by a series of publications that collect, transcribe, and index a large body of colonial records of all types. Since these publications are such an invaluable source

for North Carolina legal and other related materials from the colonial period, they are described separately here. These volumes are most often included under one catalog record for the “Colonial and State Records of North Carolina,” but may also be found under their separate titles.

The largest collection of original documents from the colonial period is now at the North Carolina Division of Archives and History. Guides to their manuscript holdings and a searchable online catalog describing many of the records (Manuscript and Archives Reference System—MARS) are available at: <<http://www.ncarchives.dcr.state.nc.us>>.

Colonial Records of North Carolina. William L. Saunders, ed., Goldsboro, Nash Brothers, 1886-1890. Reprinted Broadfoot Publishing Co., 1993. (Hereinafter Saunders, *Colonial Records*).

Many of the legal materials from the earliest days of North Carolina’s colonial period were not recorded or were ultimately destroyed by fire, war, or poor environmental conditions for storing materials. Fortunately, much of the historical data were contemporaneously sent to England, where they were preserved. Although there was interest in collecting and publishing North Carolina colonial materials in 1827, no action was taken until 1883 when the North Carolina General Assembly provided support for the North Carolina Secretary of State, William Saunders, to collect and copy the relevant documents from England and publish transcriptions of them. From 1886 to 1890, Saunders published the *Colonial Records of North Carolina*, volumes I-X covering the period from the beginnings of colonial settlement in 1662 through 1776. In addition to the documents, each volume includes a historical preface to the specific years covered by the documents.

State Records of North Carolina. Walter Clark, ed., Goldsboro, Nash Brothers, 1895-1907, comprising vols. XI-XXVI of the *Colonial and State Records of North Carolina*. Reprinted Broadfoot Publishing Co., 1993. (Hereinafter Clark, *State Records*).

Continuing the work of Saunders, William Clark, one of the justices of the North Carolina Supreme Court, was appointed editor. Clark’s work resulted in sixteen additional volumes of transcribed documents, each with a historical preface. These begin with a supplement of omitted records 1730-1776 and continue with documents from 1777 through 1790. Clark notes that with the outbreak of hostilities and the end of British rule in 1775, copies of records were, of course, no longer sent to England, nor often collected and preserved. These volumes are based largely on records surviving at the

time in public and private collections in the United States. A more exhaustive search of the British Public Records office for additional records prior to 1776 was conducted resulting in the supplement to Saunder's volumes. Volumes XXIII-XXV contain laws from 1715-1790 with their own index. The last volume, XXVI, contains the Census of 1790.

Index to the Colonial and State Records of North Carolina. Stephen B. Weeks, comp. and ed., Goldsboro, Nash Brothers, 1909-14, comprising vols. XXVII-XXX of the *Colonial and State Records of North Carolina*. Reprinted Broadfoot Publishing Co., 1993.

In 1895 the general assembly also authorized the publication of an index to all the volumes. This was prepared by Stephen B. Weeks and published in four volumes. The index made the documents truly accessible to researchers. Indexing is detailed and includes entries for proper names, proper adjectives, and historical facts. The last volume concludes with a lengthy article by Weeks entitled "Historical Review of the Colonial and State Records of North Carolina," in which he traces the history of the colonial and state records project, including a bibliography of documents, how they were collected and transcribed, and details about sources uncollected at the time.

Colonial Records of North Carolina, 2d Series. Mattie Erma Edwards Parker, ed., vols. I-II; William S. Price, ed., vols. III-IV; Robert J. Cain, ed., vols. V-X. Raleigh, NC: Carolina Charter Tercentenary Commission, 1963-1994.

In 1963 a new series of colonial records was launched, which has received much scholarly praise. The volumes collect specific types of documents or cover particular themes over specific time periods. The first volume collects charters and constitutional documents; volumes II-VI cover higher-court records; and volumes VII-IX bring together documents from the executive council. The volumes contain extensive general historical introductions, as well as details about the individual documents, and an index by name, place, and subject. Specific bibliographic information is noted in the applicable sections that follow. These volumes are generally cataloged under their individual titles. For more information, see North Carolina Office of Archives and History, Historical Publications Section, available at: <<http://www.ah.dcr.state.nc.us/sections/hp/colonial/>>.

ORGANIC ACTS

Background

A series of charters issued by English sovereigns granted territory and provided the legal basis for the establishment of colonies in the area now including present-day North Carolina. These English charters granting land were contingent on establishing colonies and generally expired or were terminated after a term of years if no colonies had been established. Although only the later grants actually involved colonists in the North Carolina territory, as a group these are important to show colonization policies and historical influences for the later charters.

The most complete source for all the charters, including detailed introductory essays on each, a bibliography, and an index is *North Carolina Charters and Constitutions 1578-1698* (Mattie Erma Edwards Parker, ed., Carolina Tercentenary Commission, 1963) (*Colonial Records of North Carolina*, 2d series, Vol. I).

Parker includes in her collection the Charter to Sir Humphrey Gilbert, 1578 (considered significant because it was the formal beginning of English colonization in America); the Charter to Walter Raleigh, 1584 (first colony in America founded in Virginia under this charter); and charters to the Virginia Company of London, 1606, 1609, and 1612. The democratic element introduced for the control of the company was a model for similar provisions for a popular assembly included in later charters involving North Carolina settlements. The last charter was revoked in 1624.

Charter to Sir Robert Heath, 1629

This grant begins the history more specific to the North Carolina area. The area under this charter was named Carolina for the grantor, King Charles I. It encompassed the area from Albemarle Sound in modern North Carolina to the northern boundary of modern-day Florida, and from the Atlantic to the Pacific. A new feature of this charter, which was also included in the later charters, was the provision known as the Bishop-of-Durham clause. The clause gave the grantees feudal powers that were close to royal powers. No settlements were established under this charter. The charter is printed in Saunders, *Colonial Records*, at Vol. I, 5-13.

Charter to the Lords Proprietors of Carolina, 1663 and 1665

These two charters are nearly identical except that the Charter of 1665 was a clarification of territorial questions related to the termination of the

Heath Charter, and extended the northern boundary of the territory to the vicinity of the present-day Virginia–North Carolina border. The Charter of 1665, known as the “Carolina Charter,” is recognized as the founding document providing the basis for the beginning of the government in North Carolina. Land and the right to govern were granted to eight noblemen who had assisted Charles II in regaining the throne. The charter established the grantees as absolute Lords and Proprietors of the province, but also required that laws made by the Proprietors be enacted with the advice of a representative assembly.

Transcriptions of these documents are found in many statutory collections, and in Saunders, *Colonial Records*, “Charter of 1663” at Vol. I, 20-34 and “Charter of 1665” at Vol. I, 102-114.

Great Deed of Grant, 1668

In an attempt to attract settlers to Carolina and at the urging of the general assembly, the Lords Proprietors issued this proclamation authorizing the governor and executive council to grant land to settlers upon the same terms as those granted in the Virginia settlement north of Carolina. Although both the Lords Proprietors, and eventually the Crown, attempted to revoke the relatively liberal “great deed,” the general assembly persistently clung to the “deed,” arguing that it was irrevocable.¹ The Great Deed of Grant is found in Saunders, *Colonial Records*, at Vol. I, 175-176.

Parliamentary Act of 1729

Government continued under the control of the Lords Proprietors and their descendants from 1663-1729. However, “the lords proprietors were never successful in their attempts to govern Carolina. Confusion and governmental instability were almost constant, and economic progress was slow.”²

In 1729 seven of the remaining proprietors or their descendants sold their interests back to King George II. This act converted the area to a crown colony. The heirs of one proprietor, Lord Glanville, retained their property interests, but surrendered their right to govern. (Those estates were confiscated by the general assembly in 1782.) The structure of government remained largely the same except that the Crown, rather than the proprietors, appointed the officials. The official name of the act is “An Act for Establishing an Agreement with Seven of the Lords Proprietors of Carolina, for the Surrender of their Title and Interest to his Majesty,” 2 Geo. II, c. 24 (1729) (Eng.); it is included in Saunders, *Colonial Records*, at Vol. II, 384.

Secondary Sources

John Spencer Bassett, *The Constitutional Beginnings of North Carolina (1663-1729)*. Herbert B. Adams, ed., Johns Hopkins University *Studies of Historical and Political Science*, 12th ser., 3. The Johns Hopkins Press, 1894.

William Stevens Powell, *The Carolina Charter of 1663, How it Came to North Carolina and its Place in History, with Biographical Sketches of the Proprietors*. State Dept. of Archives and History, 1954.

CONSTITUTIONS***Constitutions Under the Proprietors******Declaration and Proposals to All That Will Plant in Carolina, 1663***

This was the first plan for government in Carolina under the charter to the proprietors, but was never put into effect since it was applicable only to new colonies, none of which were established. The Lords Proprietors authorized the governor of Virginia to appoint a governor for this area; a legislative assembly was also convened. The government operated under the proprietors' temporary instructions until the adoption of the first formal plan of government under the *Concessions and Agreements*. The Declaration is found in Saunders, *Colonial Records*, at Vol. I, 75.

Concessions and Agreements Between the Lords Proprietors and Major William Yeamans and Others, January 7, 1665

Intended to attract settlers to Carolina, the *Concessions* applied to the only existing Carolina settlement, located in Albemarle. Under this document the Lords Proprietors granted certain "concessions" to all who would come and settle upon their plantations, including rather extensive powers allowed to the popular assembly. This document is in Saunders, *Colonial Records*, at Vol. I, 79-92.

Fundamental Constitutions, 1669-1698

Version of July 21, 1669 and Revisions to Version of July 21, 1669
Version of March 1, 1670

Version of January 12, 1682

Version of August 17, 1682

Version of April 11, 1698

Also called the “Grand Model,” the *Fundamental Constitutions* generally refers to the first 1669 document (the plural form is used, but still refers to one document). This document is often attributed to John Locke, but others believe this is erroneous. The *Fundamental Constitutions* was “intended primarily to promote the interests of the proprietors and provide a governmental structure, which would enable the proprietors to exercise feudal powers granted in charters.”³ In addition, the rights of the people, as understood under English law and custom of the day, were to be respected and safeguarded. The form of government outlined was only partially implemented by design. Its structure and complexity did not suit the largely rural and sparsely populated region. In Albemarle County, the only significant area of settlement, it meant imposing a new system of land tenure and government. The proprietors initially directed the governor to “make effective only those features which were considered practicable under existing conditions.”⁴

Under the *Fundamental Constitutions* the assembly lost most of its power, particularly the power to initiate legislation. The plan to invalidate the existing system was not received favorably. Subsequently, several versions and revisions of the *Fundamental Constitutions* were adopted, adding to a degree of uncertainty and instability in the operation of the government during this period. Frequent social unrest and rebellions occurred and the *Fundamental Constitutions* was officially suspended in 1693. A much revised version was adopted in 1698, but was also never fully implemented. The 1669 *Fundamental Constitutions* is found in many collections. All versions are found in Vol. I of the *Colonial Records*, 2d series⁵ and in Saunders, *Colonial Records*, Vol. I, 187-206, Version of 1698 Vol. II, 852.

Documents relating to the Independence Constitution of 1776

Mecklenburg Declaration and Mecklenburg Resolves

Although there have been many testimonials about the existence of this meeting and the resulting “Resolves,” the authenticity of the Mecklenburg Declaration of May 20, 1775 declaring Mecklenburg County’s independence from Britain is frequently debated. The text was recalled from memory some twenty years later, but the original records are thought to have burned in the year 1800. There is also doubt cast on their existence by members of

the Continental Congress who said they never heard of them.⁶ Nevertheless, this date is included in the state flag and is considered its first declaration of independence. There is no doubt, however, of the existence of the Mecklenburg Resolves of May 31, 1775, which suspended all laws and commissions issued by the Crown and proposed measures to establish a government for the province. Saunders, *Colonial Records*, contains the Mecklenburg Declaration, in Vol. IX at 1263-65, and Mecklenburg Resolves, in Vol. IX at 1282-85.

Halifax Resolves of 1776

On April 12, 1776, delegates to the Fourth Provincial Congress in Halifax indicted the royalist government and authorized delegates to the Continental Congress to declare and vote for independence from Britain. The document is found in Saunders, *Colonial Records*, Vol. X, 239-242.

Independence Constitution of 1776

This first constitution for the state of North Carolina begins with a separate, accompanying Declaration of Rights. The document was drafted and adopted by the Fifth Provincial Congress in Halifax. It continued to serve as the state constitution after North Carolina joined the United States in 1789.

Additional Sources for Documents

Saunders, *Colonial Records*.

Volumes IX and X of this set contain proceedings of the Provincial Congresses and related correspondence and other documents concerning the writing, debate, and adoption of these documents.

Clark, *State Records*.

Vol. XXII contains the *Journals of the Constitutional Conventions* of 1788 and 1789.

North Carolina Charters and Constitutions 1578-1698. Mattie Erma Edwards Parker, ed., Carolina Tercentenary Commission, 1963. Vol. 1 of *Colonial Records of North Carolina*, 2d series.

The documents up to 1698 are collected here, including all versions of the *Fundamental Constitutions*, and detailed introductory essays on each, a bibliography, and an index.

“North Carolina’s Beginnings,” in *North Carolina Manual*, ch. 2. North Carolina Department of the Secretary of State, 1999-2000 (biennial).

This general reference source for North Carolina government contains a good introductory overview that includes the texts of the Mecklenburg Declaration, Mecklenburg Resolves, and Halifax Resolves.

Collections of colonial materials that are widely owned by libraries include many of the North Carolina documents. A few sets are noted as follows:

“North Carolina,” in 2 *The Federal and State Constitutions, Colonial Charters, and Other Organic Laws of the United States, 1379-1414*. Benjamin Perley Poore, comp., Government Printing Office, 1877.

Texts of the Charter to Raleigh, Carolina Charters of 1663 and 1665, *Fundamental Constitutions* of 1669 and the Constitution of 1776 are found here.

“North Carolina,” in 7 *Sources and Documents of U.S. Constitutions*, 345-458. William F. Swindler, ed., Oceana, 1978.

The North Carolina chapter in this collection, like those for other states, focuses on poststatehood materials, but does provide a short background note, including prestatehood information and the text of the Charters of 1663 and 1665, Declaration of 1663, *Fundamental Constitutions* of 1669, the Parliamentary Act of 1729, and the Constitution of 1776.

“North Carolina,” in 5 *The Federal and State Constitutions Colonial Charters, and Other Organic Laws of the States, Territories, and Colonies*, 2743-2794. Francis Newton Thorpe, ed., Government Printing Office, 1909. Reprinted William S. Hein, 1993.

This collection of materials contains the Charter of 1663, Declaration of 1663, Concessions and Agreements 1665, *Fundamental Constitutions* of 1669, Mecklenburg Resolves, and the Constitution of 1776.

Secondary Sources

John Spencer Bassett, *The Constitutional Beginnings of North Carolina (1663-1729)*. The Johns Hopkins Press, 1894. Herbert B. Adams, ed., Johns Hopkins University *Studies of Historical and Political Science*, 12th series, III.

Earle H. Ketcham, "The Sources of the North Carolina Constitution of 1776," 6 *North Carolina Historical Review*, 215-36 (July 1929).

The author traces the origins and influences of these documents, discussing each article separately.

John V. Orth, "North Carolina Constitutional History," 70 *North Carolina Law Review*, 1797 (1992), reprinted in part in *The North Carolina State Constitution: A Reference Guide*, 2-12. Greenwood Press, 1993.

Although the greater part of this article discusses later state constitutional history, it begins with the history and provisions of the Independence Constitution of 1776. An appendix in chart form showing the origins from other colonies and British documents for each provision of the Declaration of Rights is included.

LEGISLATIVE BRANCH

Description and Authority of the Legislative Branch

The "Declaration and Proposals to All that Will Plant in Carolina" served as the Lords Proprietors initial governing instructions to the Colony in 1663 and included authorization for a legislative assembly. Concessions and Agreements Between the Lords Proprietors and Major William Yeamans and Others of 1665 provided for the election of representatives to the general assembly. The *Fundamental Constitutions* of 1669 also provided for a general assembly that met biennially, although the governor could convene, prorogue, or dissolve sessions at will. Early records of the assembly, especially prior to 1715, are sparse. As the government changed and developed over the next 100 years, the general assembly structurally grew more representative of the people. The last general assembly called by the Crown's governor met in 1774.

Overlapping with this last colonial general assembly in 1774 was the Carolina Provincial Congress that met at various times until the ratification of the state's first constitution in December 1776. Section 1 of the Constitution of 1776 provided for a legislature comprising a senate and a house of commons. The statehood assembly first met on April 8, 1777.⁷ The types of relevant legislative documents might include legislative journals, session laws, and revisals of acts of the assembly.

Legislative Journals

Although there is evidence of legislative assemblies as early as 1665, very few legislative journals of colonial assemblies in North Carolina are available. The best source for those journals is Saunders, *Colonial Records*. Occasional documents from those assemblies can be found, although generally not in journal form. There was some improvement in record keeping when Carolina became a crown colony in 1729. An example of legislative journal materials in journal form from the colonial period can be found in Saunders, *Colonial Records*, Vol. III, 257, for the *Legislative Journal* for 1731.

Although the proceedings of both the North Carolina Senate and House of Commons have been printed since the first session of the first statehood assembly in 1777, there are few copies available prior to the 1784 session. Statehood senate journals and house of commons journals are more commonly found published as the following titles:

The Journal of the House of Commons. Newbern: Hodge and Wills, Printers to the State, 1784-.

The Journal of the Senate of North Carolina. Newbern: Hodge and Wills, Printers to the State, 1784-.

Session Laws and Revisals

No statutory codifications arranged by subject matter were created for colonial North Carolina. There are, however, both session laws from occasional specific assemblies, and also, revisals of session laws in which consecutively arranged session laws for a number of years were bound together. The contents of the revisals vary significantly. Some revisals only include session laws then in effect; other revisals include public but not private acts; and some revisals, while arranged chronologically, include a subject index at the end of the volume.

Annual volumes of session laws were not published before 1752, although legislative assemblies began meeting in North Carolina in 1665. The best source for any Acts of the Assembly from 1665 to 1715 is Saunder's *Colonial Records*. In 1714, the assembly authorized what is believed to be the first revisal of all acts of the assembly in Carolina in effect at the time. This manuscript document was not printed, but at least twelve hand copies were produced in 1715. The assembly again ordered a revisal of "Acts of the Assembly" in 1749, which was published in 1751. Although copies of an-

nual publications of session laws between 1752 and 1777 are rather rare, several revisals after 1751 include the session laws from those years. Early examples of revisals or collections of legislative acts include the following:

A Collection of All the Public Acts of Assembly, of the Province of North Carolina: Now in Force and Use, by Samuel Swann. Newbern: James Davis, 1751.

Contains the Second Charter granted by King Charles II to the proprietors and the *Great Deed of Grant of 1668*, the session laws in effect from 1715 to 1750, and a table of the titles of the acts arranged by year and chapter number. This is reportedly the first book of any kind to be published in the province.

Complete Revisal of All the Acts of Assembly of the Province of North Carolina Now in Force and Use. Newbern: Printed by James Davis, Printer to the House of Assembly, 1773.

Contains the Second Charter granted by King Charles II to the proprietors and the *Great Deed of Grant of 1668*, the session laws in effect from 1715 to 1773, and, most importantly, a table indexing the laws by subject.

Laws of the State of North Carolina Published According to Act of Assembly, by James Iredell, Now One of the Associate Justices of the Supreme Court of the United States, 1791.

Also referred to as the “Iredell Collection of Laws,” the contents include the Second Charter granted by King Charles II to the proprietors and the *Great Deed of Grant of 1668*, the session laws in effect from 1715 to 1790, and a table indexing the laws by subject.

A Collection of the Statutes of the Parliament of England in Force in the State of North Carolina, Published According to a Resolve of the General Assembly by Francois-Xavier Martin, Esq., Counselor at Law. Newbern: From the Editor’s Press, 1792.

Also referred to as “Martin’s Collection Statutes,” this is a collection of British laws, beginning with the Magna Carta, that were deemed to be in effect in North Carolina until the assembly addressed the issues specifically by their own legislation. The volume begins with a table of chapters organized by regnal years and ends with a subject index. This particular collection has been criticized as including some acts that were never in force and excluding other acts that were in force.⁸

A Collection of the Private Acts of the General Assembly of the State of North Carolina, from the Year 1715 to 1790, Inclusive, Now in Force and In Use. Newbern: Francois-Xavier Martin, 1794.

Private acts were not included in the Iredell Collection of Laws, published in 1791. The assembly appointed a committee to find an editor/publisher of the acts. They selected Francois-Xavier Martin, who agreed to provide 100 copies of the publication for three pounds apiece. These private acts relate to districts, counties, towns, and individuals.

The Public Acts of the General Assembly of North Carolina Containing the Acts from 1715 to 1790 Revised and Published Under the Authority of the Legislature by James Iredell [in 1791] and Now Revised by Francois-Xavier Martin. Newbern: Martin and Ogden, 1804.

This revised edition of the Iredell Collection of Laws incorporates the changes in the law from 1791 to 1803. A listing of the private acts from each session of the assembly is also included. The volume ends with an index to the laws.

Laws of the State of North Carolina, Revised, under the Authority of the General Assembly, by Hen. Potter, J.L. Taylor & Bart. Yancey, Esq. Raleigh: Gales, 1821.

This revision is also referred to as "Potter, Taylor and Yancy." In addition to the acts of the general assembly collected in session law arrangement by year from 1715 to 1820, this publication also includes a list of the statutes and parts of statutes of Great Britain still in force in North Carolina as of 1817. This publication is indexed and includes a copy of the state constitution and the Declaration of Rights from 1776.

EXECUTIVE BRANCH

Description of the Colonial Executive Branch

During the colonial period, the executive branch of the government in the province of Carolina included a governor and an executive council. The political relationship between the governor and council changed often as the Lords Proprietors, and later the Crown, struggled to find the best combination of authority and representation. At times, the council was solely a creature of the governor. Later, the council became a slightly more representative body. Generally, the governor was ultimately responsible for the condition of the government. In addition, governors also had some specific

duties. The council played various roles as well, with duties extending beyond the executive branch. It served with the governor in a judicial capacity by hearing disputes and later appointing justices to the bench. It served in a legislative function when meeting with the governor and the general assembly to form a unicameral legislature. Finally, the council served in executive functions by assisting the governor in administering the government, such as in appointing civil officers and in appointing land grants.

Authority for the Executive Branch

After the Charter of 1663 was issued to the Lords Proprietors, they issued a commission to Sir William Berkeley (also one of the proprietors of Carolina and the governor of Virginia), authorizing him to name a governor and a six-member executive council to carry out the executive functions for Carolina.⁹ The Lords Proprietors' commission to Sir William Berkeley was relatively vague, providing that the governor and council should be granted "such power and authority as we by his Majest[ie's] Charter have power to grant[e], for the well, good & peaceable government, of that Col[on]y"¹⁰ Under the 1665 Concessions and Agreements, the governor continued to serve at the pleasure of the Lords Proprietors, and was allowed to select any even number for his council between six and twelve members.

The 1669 *Fundamental Constitutions* also directed that the governor be selected by the Lords Proprietors. The composition of the council was changed to include some deputy councillors. Rules concerning the composition of the council changed often throughout the next thirty years as the *Fundamental Constitutions* was amended numerous times and finally abandoned altogether. For further information about these changes, see "Introduction" (volume VII, p. XII et seq) *The Colonial Records of North Carolina*, 2d series, Robert J. Cain, ed., N.C. Division of Archives and History, 1984; individually titled as "Records of the Executive Council."

Title to the colony reverted back to the Crown in 1729. The Crown was ultimately responsible for appointing the governor. The composition of the council and the politics by which they were chosen and exercised their power again fluctuated until 1775. The 1775 Mecklenburg Declaration and the Mecklenburg Resolves signaled the independence of the state of North Carolina. The last Royal Governor, Josiah Martin, left the state in 1775. Representatives of the people of North Carolina ratified the first constitution of the independent state of North Carolina in 1776. The governors of North Carolina have been chosen by the people, or representatives of the people, since that date.¹¹

Governors

The governors, whether appointed by the Lords Proprietors or later the Crown, generally did not have an easy time ruling the colony. Not all of Carolina's appointed governors were well received. At least one never arrived from England, and some were forced to leave the colony due to rebellion or their own scurrilous behavior. The chronology of North Carolina's colonial governors is uneven, with overlaps and apparent repeated terms, due in part to these difficulties.

The communications to and from the governors of the colony are most easily found recorded in Saunders, *Colonial Records*. To find documents relating to a specific governor or a specific period of time, search for the relevant governor's name in the index. See the following lists^{12,13,14} of governors and the dates of their rule.

Governors of Carolina under the Lords Proprietors

William Drummond	1664-1667
Samuel Stephens	1667-1669
Peter Carteret	1670-1672
John Jenkins	1672-1675
Thomas Eastchurch	1675-1676
John Jenkins	1676-1677
Thomas Miller	1677
John Harvey	1679
Henry Wilkinson	1680
John Jenkins	1680-1681
Seth Sothel	1682-1689
John Archdale	1683-1686
John Gibbs	1689-1690
Thomas Jarvis	1690-1694
Philip Ludwell	1690-1691, 1692-1693, 1693-1695
Thomas Harvey	1694-1699
John Archdale	1695-1696
Henderson Walker	1699-1703
Robert Daniel	1703-1705
Thomas Cary	1705-1711
William Glover	1706-1710
Edward Hyde	1711-1712
Thomas Pollock	1712-1714
Charles Eden	1714-1722

Thomas Pollock	1722
William Reed	1722-1724
George Burrington	1724-1725 (later royal gov.)
Richard Everard	1725-1731

Governors During the Royal Colonial Period

George Burrington	1731-1734 (previously gov. under the Lords Proprietors)
Nathaniel Rice	1734
Gabriel Johnston	1734-1752
Nathaniel Rice	1752-1753
Matthew Rowan	1753-1754
Arthur Dobbs	1753-1763
William Tryon	1765-1771
James Hasell	1771
Josiah Martin	1771-1775

Executive Council

Despite the constant changes to the duties, composition, and method of selection of the council during the colonial period, the council clearly played an important role in the daily operation of the colonial government. There are fewer than six sets of recorded Minutes of the Executive Council prior to 1711. Documentation improved significantly with the institution of the Royal government in 1731. The Papers of the Executive Council, however, are more widely available, especially from the years during the proprietary government. There are a number of Papers of the Executive Council from the 1660s and 1670s. All of these documents, minutes, and papers, are best found in *Colonial Records of North Carolina*, 2d series, volumes VII-IX, usually individually titled as *Records of the Executive Council*, Robert J. Cain, ed. (Raleigh, NC: Division of Archives and History, 1984). *Records of the Executive Council* are arranged chronologically in the last three volumes of the second series in the following manner: volume VII 1664-1734; volume VIII 1735-1754; and volume IX 1755-1775.

JUDICIAL BRANCH

Since records for the earliest dates of settlement are sparse, the nature of the operation of the earliest courts is uncertain. The Charter of 1665 included broad and general authority to the proprietors to establish a judicial

system and courts as necessary. The *Fundamental Constitutions* laid out a detailed structure for courts, but as with most of its provisions, it was only partially implemented. Given the nature of the population there was not a need for a complex system. The jurisdiction, powers, and structure of the courts changed often; and the operation of the courts was not consistent in the colonial period. The laws governing their operation were generally of limited duration.

In general, the governor and council functioned first as the only court, along with exercising other executive functions. Lower courts were gradually established; first called the precinct courts, and later designated county courts. The governor and council sat as a higher court operating under various names and with varying powers, most often referred to as the general court. Justices were later appointed to serve on the general court, and the first mention of a chief justice is the appointment of Christopher Gale in 1712. The governor and council also functioned as a court of specialized jurisdiction, such as chancery court.

Court Records

The most important court records are minutes for the court sessions. The best collection of these and other court records are transcribed in volumes II-VI of the *Colonial Records of North Carolina*, 2d series:

North Carolina Higher Court Records, 1670-1696. Mattie Erma Edwards Parker, ed., State Dept. of Archives and History, 1968.

North Carolina Higher Court Records, 1697-1701. Mattie Erma Edwards Parker, ed., State Dept. of Archives and History, 1971.

North Carolina Higher Court Records, 1702-1708. William S. Price Jr., ed., State Dept. of Archives and History, 1974.

North Carolina Higher Court Minutes, 1709-1723. William S. Price Jr., ed., State Dept. of Archives and History, 1977.

North Carolina Higher Court Minutes, 1724-1730. William S. Price Jr., ed., State Dept. of Archives and History, 1981.

Each volume of this series includes an extensive essay on the historical setting, and the structure and operation of the colonial courts for the period covered, as well as a bibliography of primary and secondary sources. The indexing is detailed and includes entries by cases, proper names, and sub-

jects. As the titles indicate, records are not included for the precinct or district courts. Although a few records beginning in 1670 are included, 1694 is the first term for which records have survived in any quantity.

Many court records and legislation concerning the courts are included in Saunders, *Colonial Records*, and Clark, *State Records*. There are several approaches to using the index volumes to locate these, such as general terms, e.g., “courts,” “county courts,” “criminal cases;” or more specific terms, e.g., “chancery court;” or the name of a specific county and then the subheading “courts,” or the name of a chief justice or litigant.

In addition, many county court records have been abstracted to assist genealogical research and published locally. A complete list is beyond the scope of this publication, but these can be located in catalogs under the subject heading, North Carolina—court records—name of county.

Selected Statutes Relating to the Courts

Many statutes have been collected dealing with the establishment and operation of the courts, including the system of jurors, during the colonial period. The selections that follow are noted in the literature as major reorganizations or milestones.

“An Act for settling the Precinct Courts and Courthouses,” Acts of 1722, ch. VIII Clark, *State Records*, at Vol. XXIII, 100.

This statute begins with a “whereas” clause indicating that precinct courts had, up to this time, been held in private homes subject to arbitrary removal, and continues with provisions for raising funds for purchase of land and establishment of permanent courthouses.

“An Act for appointment of Sheriffs in the Room of Marshalls of this Province . . . ; and for altering the Names of the Precincts into Counties,” Acts of 1738, ch. III Clark, *State Records*, at Vol. XXIII, 122.

This act is a major reorganization of the court system and extension of authority and administrative powers of county courts.

“An Act to fix a Place for the Seat of Government, and also for establishing the Courts of Justice and regulating the Proceedings therein,” Acts of 1746, ch. II Clark, *State Records*, at Vol. XXIII, 252.

Comprehensive law replacing previous legislation on court procedure.

“An Act for establishing the Supreme Courts of Justice, Oyer and Terminer and General Goal Delivery of North Carolina,” Acts of 1754, ch. I.

“An Act for establishing County Courts, for enlarging their Jurisdiction and settling the proceedings therein,” Acts of 1754, ch. II.

“An Act for Establishing Courts of law, and for regulating the proceedings therein,” Acts of November 1777, ch. II Clark, *State Records*, at Vol. XXIV, 48.

Legislation for court operations following the adoption of the Constitution of 1776.

Secondary Sources

James Davis, *The Office and Authority of a Justice of the Peace*. New Bern: 1774.

Handbook for JPs with comments on North Carolina practice.

“Minutes of the General Court of Albemarle, 1684,” 19 *North Carolina Historical Review* 48 (1942).

Paul M. McCain, *The County Court in North Carolina Before 1750*. Duke University Press, 1954. *Historical Papers of the Trinity College*, series XXXI, no. 21.

Traces the development, operation, and powers of the courts from their beginnings, focusing on the period 1730-1750, for which the most records exist. A list of manuscript sources for various courts and counties is also included. Chapters focus on the type of jurisdiction or power of the court.

S. A. Stewart, “Court System of North Carolina Before the Revolution,” in *An Annual Publication of Historical Papers*, Series IV 12-20, Historical Society of Trinity College, 1900. This article is divided into discussions of the different types of courts in the proprietary era and the courts in the royal era.

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County Government in Colonial North Carolina. North Carolina Historical Society, 1911. *James Sprunt Historical Publications*, Vol. 11, No. 1.

Cushing, John D., ed. *The Earliest Printed Laws of North Carolina, 1669-1751*. Wilmington, DE: Michael Glazier, 1977.

Volume 1 contains a facsimile of public acts collected and printed by Davis. Volume 2 contains pre-1738 legislation taken from vols. 23 and 25 of Clark, *State Records*.

Federal and State Constitutions, Colonial Charters, and other Organic Laws of the States, Territories and Colonies Now or Heretofore Forming the United States of America, Francis Newton Thorpe, ed., under the Act of Congress June 30, 1906. Washington: GPO, 1909. v. I-VII. Same title available in microform. South Hackensack, NJ: Rothman, 1975.

Volume 5 contains copies of the following documents relating to North Carolina: The Charter of 1663; A Declaration and Proposals of the Lords Proprietors of Carolina, August 25-September 4, 1663; Concessions and Agreements of the Lords Proprietors of the Province of Carolina—1665; The Charter of Carolina, 1665; the *Fundamental Constitutions* of Carolina—1669; The Mecklenburg Resolutions—1775; Constitution of North Carolina—1776.

Hawks, Francis L. *History of North Carolina: With Maps and Illustrations*. Spartanburg, SC: Reprint Co., 1961. Originally published: Fayetteville: E.J. Hale, 1857-1858.

Volume II deals with the Proprietary era, 1663-1729.

“Historical Highlights of North Carolina,” in *North Carolina Encyclopedia*. North Carolina State Library; available at: <<http://statelibrary.dcr.state.nc.us/NC/HISTORY/HISTORY.HTM>>.

This site contains an introduction to the colonial era and excerpts from the texts of some of the charters and the Halifax Resolves.

North Carolina Division of Archives and History, Web site, available at <<http://www.ah.dcr.state.nc.us/>>. Phone: (919) 733-3952.

In addition to the Colonial Records Project, the division has many other resources for researching colonial records including guides to their manuscript holdings and publications on various topics. The *North Carolina Historical Review* has been published since 1924. More information about materials published by the Historical Publications Center is available online at <<http://www.ncpublications.com/>>. MARS (Manuscript and Archives Reference System) is a searchable online catalog containing descriptions of

some of the records in the custody of the state archives, available at <http://www.ah.dcr.state.nc.us/archives.htm>.

Official Publications of the Colony and State of North Carolina 1749-1939: A Bibliography. Mary Lindsay Thornton, comp. University of North Carolina Press, 1954.

NOTES

1. R.D.W. Connor, *North Carolina: Rebuilding an Ancient Commonwealth*, 94-95, Chicago: American Historical Society, 1929. [Hereinafter Connor, *North Carolina*.]

2. *North Carolina Charters and Constitutions 1578-1698*, 90, Mattie Erma Edwards Parker, ed., Carolina Tercentenary Commission, 1963. [Hereinafter Parker, *Charters and Constitutions*].

3. *Ibid.* at 128-9.

4. "Instructions to the Governor and Council of Albemarle 1669," in Saunders, I *Colonial Records*, 181-3.

5. Parker, *Charters and Constitutions*.

6. Samuel A'Court Ashe, I *History of North Carolina (1584 to 1783)*, Ch. 26, 437-471, Charles Van Noppen, Publisher, 1908.

7. Igor Kavass and Bruce Christensen, *Guide to North Carolina Legal Research*, 22-3, Hein and Co., Inc., 1973.

8. Michael Chiorazzi, "Fracios-Xavier Martin: Printer, Lawyer, Jurist," 80 *Law Library Journal* 63, 71, 1988.

9. See Saunders, *Colonial Records*, at 48.

10. *Ibid.* at 50.

11. Connor, *North Carolina*, at 77.

12. Lindley S. Butler, "The Governors of Albemarle County 1663-1689," 46 *North Carolina Historical Review* 281, 1969.

13. "Chronology of North Carolina Governors," *North Carolina Encyclopedia*, North Carolina State Library, <http://statelibrary.dcr.state.nc.us/nc/stgovt/governor.htm>.

14. *Ibid.*

