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The Fundamental Constitutions for the Province of East New Jersey in America, Anno Domini 1683 [\(1\)](#)

Since the right of government, as well as soil, is in the four and twenty Proprietors, and that the same is confirmed to them a new by a late patent from James Duke of York pursuant to patent granted to Him from the King; the Proprietors for the well ordering and governing of the said Province, according to the powers conveyed to them, do grant and declare, that the government thereof shall be as followeth, VIZ.

I. That altho' the four and twenty Proprietors have formerly made choice of Robert Barclay, Esq; for Governor, during his natural life, and to serve by a deputy to be approved of by sixteen of the Proprietors, until he himself be upon the place, which is by these presents ratified and confirmed, to all intents and purposes: Yet after the decease of the said Robert Barclay, or by reason of His malversation, the Proprietors shall find cause to divest him of the government, the four and twenty Proprietors shall choose a Governor; in order to which it shall be in the power of each of them to name one, and sixteen of the four and twenty shall determine it: which Governor shall be obliged to serve and reside upon the place, and shall only continue for three years; and if any shall directly or indirectly propound or advise the continuance for any longer time, or of new to choose him again, or his son, within the three years, it shall be esteemed a Straying of the publick liberty of the Province; and the actors shall be esteemed as publick enemies; and the said Governor that shall be so continued, shall be reputed guilty of the same not. only by reason of his acceptance of that continuation, but also by reason of any kind of solicitation which he may directly or indirectly have endeavoured. If the Governor so do die before the three years be expired, the Proprietors shall choose one to supply his place, for the time the other should held it, and no longer. Provided, that this limitation of three years above mentioned, do not extend to the Deputy Governor of Robert Barclay, for seven years after that passing of those constitutions, who may be for a longer time than three years, if the proprietors see meet.

II. That for the government of the Province, there shall be a great Council, to consist of the four and twenty proprietors, or their proxies in their absence, and one hundred forty-four to be chosen by the freemen of the Province. But forasmuch as there are not at present so many towns built as there may be hereafter, nor the Province divided into such counties as it may be hereafter divided into, and that consequently no certain division can be made how many shall be choser for each town and county; at present four and twenty shall be chosen for the eight towns that are at present in being, and eight and forty for the county, making together seventy-two, and with the four and twenty Proprietors, ninety-six persons, till such times as the great council shall see meet to call the above mentioned number of one hundred forty-four, and then shall be determined by the great council how many shall come out of each town and county; but every year shall choose one-third, and the first chosen shall remain for three years, and they that go out shall not be capable to come in again for two years after, and therefore they shall not be put in the ballot in elections for that year; and in order to this election, they shall in course meet in their several boroughs and counties the six and twentieth day of March, beginning in the year one thousand six hundred eighty-four, and choose their several representatives; whose first day of meeting shall be the twentieth of April afterwards; and they shall sit upon their own adjournments, if they see meet, till the twentieth of July following, and then to be dissolved till the next year, unless the Governor and common council think fit to continue them longer, or call them in the interval; but if any of those days fall on the first day of the week, it shall be deferred until the next day.

III. The persons qualified to be freemen, that are capable to choose and be chosen in the great Council, shall be every planter and inhabitant dwelling and residing within the Province, who hath acquired rights to and is in possession of fifty acres of ground, and hath cultivated ten acres of it; or in boroughs, who have a house and three acres; or have a house and land only hired, if he can prove he have fifty pounds in stock of his own: and all elections must be free and voluntary, but were any bribe or indirect means can be proved to have been used, both the giver and acquirer shall forfeit their priviledge of electing and being elected forever; and for the full preventing of all indirect means, the election shall be after this manner, the names of all the persons qualified in each county, shall be put in equal pieces of parchment, and prepared by the sheriff and his clerk the day before, and at the day of election shall be put in a box, and fifty shall be taken out by a boy under ten years of age; these fifty shall be put into the box again, and the first five and twenty then taken out shall be those who shall be capable to be chosen for that time; the other five and twenty shall by plurality of votes, name (of the aforesaid twenty-five) twelve, if there be three to be chosen, and eight if there be two to stand for it; these nominators first solemnly declaring before the sheriff, that they shall not name any known to them to be guilty for the time, or to have been guilty for a year before, of adultery, whoredom, drunkenness, or any such immorality, or who is insolvent or a fool; and then out of the twelve or eight so nominated, three or two shall be taken by the ballot as above said.

IV. It shall be the priviledge of every member of the great Council, to propose any bill in order to a law, which being admitted to be debated, shall be determined by the vote, wherein two parts of three shall only conclude; but of this, twelve of the Proprietors, or their proxies, must be assenting; which shall also be requisite after the number of freemen are double: Nor shall any law be made or enacted to have force in the Province, which any ways touches upon the goods or liberties of any in it, but what thus passeth in the great Council; and whoever shall levy, collect or pay any money or goods without a law thus passed, shall be held a publick enemy to the Province, and a betrayer of the publick liberty thereof: also the quorum of this great Council shall be half of the Proprietors, or their proxies, and half of the freemen at least; and in determination, the proportionable assent of both Proprietors and freemen must agree, viz. two parts of whatever number of freemen, and one half of whatever number of Proprietors are present.

V. For the constant government of the Province there shall be with the Governor a common Council, consisting of the four and twenty Proprietors, of their proxies, and twelve of the freemen. which shall be chosen by the ballot out of the freemen of the great Council, and shall successively go off each year as they do; which common Council will thus consist of six and thirty, whereof they shall be three committees; twelve for the public policy, and to look to manners, education and arts; twelve for trade and management of the publick Treasury; and twelve for plantations and regulating of all things, as well as deciding all controversies relating to them: in each committee eight shall be of the Proprietors, or their proxies, and four of the freemen; each of these committees shall meet at least once a week, and all the thirty six once in two months, and oftener, in such places and at such times as they shall find most convenient. -And if it happen the number of freemen in the great Council to be doubled, there shall be twelve more of them be added to the common Council; in this common Council and those several committees the one half shall be a quorum, as in the former article.

VI. All laws shall be published and run in the name of the Governor, Proprietors and representatives of the freemen of the Province, and shall be signed by two of the Proprietors, two of the freemen, the Secretary and the Governor for the time being, who shall preside in all meetings, and have two votes, but shall no ways pretend to any negative vote: but if he or they refuse to do his or their duty, or be accused of malversation, he shall be liable to the censure of the Proprietors, and if turned out, there shall be another chosen to fulfill his time as is abovesaid.

VII. Forasmuch as by the Concessions and agreements of the former Proprietors, (to wit) the Lord Berkeley and Sir George Carteret, to and with all and every the adventurers and all such as shall settle and plant in the Province in Anno 1664, it is consented and agreed by the six and seven articles, that the great Assembly should have power, by act confirmed as there expressed, to erect, raise and build within the said Province, or any part thereof, such and so many forts, castles, cities and other places of defence, and the same, or any of them, to fortify and furnish with such provisions and proportions of ordnance, powder, shot, armour and all other weapons, ammunition and abilmets of war, both offensive and defensive, as shall be thought necessary and convenient for the safety and welfare of the said Province; as also to constitute train bands and companies, with the number of the soldiers, for the safety, strength and defence of the aforesaid Province; to suppress all mutinies and rebellions; to make war offensive and defensive, against all and every one that shall infest the said Province, not only to keep the enemy out of their limits, but also, in case of necessity, the enemy by sea and land to pursue out of the limits and jurisdiction of the said Province. And that amongst the present Proprietors there are several that declare, that they have no freedom to defend themselves with arms, and others who judge it their duty to defend themselves, wives and children, with arms; it is therefore agreed and consented to, and they the said Proprietors do by these presents agree and consent, that they will not in this case force each other against their respective judgments and consciences; in order whereunto it is Resolved, that on the one side, no man that declares he cannot for conscience sake bear arms, whether

Proprietor or planter, shall be at any time put upon so doing in his own person, nor yet upon sending any to serve in his stead. And on the other side, those who do judge it their duty to bear arms for the publick defence, shall have their liberty to do in a legal way. In pursuance whereof, there shall be a fourth committee erected, consisting of six proprietors, or their proxies, and three of the freemen, that are to set in the other three committees, which shall be such as to understand it their duty to use arms for the publick defence; which committee shall provide for the publick defence without and peace within, against all enemies whatsoever; and shall therefore be stiled the committee for the preservation of the publick peace: And that all things may proceed in good order, the said committee shall propound to the great Council what they judge convenient and necessary for the keeping the peace within the said Province, and for publick defence without, by the said great Council to be approved and corrected, as they, according to exigence of affairs, shall judge fit; the execution of which resolutions of the great Council shall be committed to the care of the said committee. But because through the scruples of such of the Proprietors, or their proxies, as have no freedom to use arms, the resolutions of the great Council may be in this point obstructed, it is resolved and agreed, and it is by these presents resolved and agreed, that in things of this nature, the votes of these Proprietors shall only be of weight at such time or times as one of these two points are under deliberation, which shall not be concluded where twelve of the Proprietors and two thirds of the whole Council, as in other cases, are not consenting, (that is to say) first, whether, to speak after the manner of men, (and abstractly from a man's persuasion in matters of religion) it be convenient and suitable to the present condition or capacity of the inhabitants, to build any forts, castles or any other places of defence? If yea; where and in what places (to speak as men) they ought to be erected. Secondly, whether there be any present or future foreseen danger, that may, (to speak as men without respect to one's particular perswasion in matters of religion) require the putting the Province into a posture of defence, or to make use of those means which we at present have, or which, from time to time as occasion may require, according to the capacity of the inhabitants, we may have; which ability and conveniency of those means of defence, and (to speak as men without respect to any man's judgment in matters of religion) the necessity of the actual use thereof, being once resolved upon; all further deliberations about it, as the raising of men, giving of commissions both by sea and land, making Governors of forts, and providing money necessary for maintaining the same, shall belong only to those members of the great Council who judge themselves in duty bound to make use of arms for the defence of them and theirs. Provided, that they shall not conclude any thing but by the consent of at least five parts out of six of their number; and that none of the Proprietors and other inhabitants may be forced to contribute any money for the use of arms, to which for conscience sake they have not freedom, that which is necessary for the publick defence, shall be borne by such as judge themselves in duty bound to use arms. Provided, that the other, that for conscience sake do oppose the bearing of arms, shall on the other hand bear so much in other charges, as may make up that portion in the general charge of the Province. And as the refusing to subscribe such acts concerning the use and exercise of arms abovesaid, in the Governor and Secretary, if scrupulous in conscience so to do, shall not be esteemed in them an omission or neglect of duty, so the wanting thereof shall not make such acts invalid, they being in lieu thereof, subscribed by the major part of the six Proprietors of the committees for the preservation of the publick peace.

VIII. The choosing the great and publick officers, as Secretary, Register, Treasurer, Surveyor General, Marshal, and after death of turning out of those now first to be nominated, shall be in the Governor and Common Council; as also of all sheriffs, judges and justices of the peace. But upon any malversation or accusation, they shall be liable to the examination and censure of the great Council, and if condemn'd by them, the Governor and Common Council must name others in their places.

IX. Provided, That all boroughs shall choose their own magistrates, and the hundreds in the county, their constables or under officers, in such manner as shall be agreed to by the great Council.

X. Forasmuch as by the Patent, the power of pardoning in capital offences, is vested in the four and twenty Proprietors; it is hereby declared, that the said power of pardoning shall never be made use of but by the consent of eighteen of the Proprietors, or their proxies: Nevertheless, it shall be in the power of the Governor, in conjunction with four Proprietors, who for the time are judges of the Court of Appeals, to reprieve any person after the day of execution appointed, for some time, not exceeding a month.

XI. The four and twenty Proprietors, in their absence, may vote in the great and common Council by their proxies; one Proprietor may be proxy for another, yet so as not but for one, so that none can have above two votes: The proxies of the Proprietors must be such as has shares in properties not under a twentieth part.

XII. That whoever has any place of publick trust in another Province, tho' a Proprietor, shall not sit in the great or common Council, but by their proxies, unless thereunto particularly called by the one or other Council.

XIII. Whatever Proprietor doth not retain at least one fourth part of his propriety, viz: one ninety sixth part of the country, shall lose the right of government, and it shall pass to him who has the greatest share of that propriety, exceeding the above mentioned proportion: But if two or three has each one ninety sixth part, they shall have it successively year about, like as when a propriety is in two hands, he who is upon the place, if the other be absent, sick or under age, shall still have it; but if both there, then by turns as abovesaid; and if in a provided propriety all be absent, the proxies must be constituted by both; if but two or the greater number if there be more. And if any who sells a part of his propriety, and retains one ninety sixth part and the title of the government portion be absent, whoever has shares for him, not under one ninety sixth part, being present, shall set for him, whether having a proxy or not; and if there be more than one, it shall go by turns as above. But because after sometime by division among children, it may happen that some one twenty fourth part may be so divided, that not any one may have one fourth part of a propriety, or one ninety sixth part of the whole, in that case the Proprietors shall elect one having not under one ninety sixth part, to bear the character of the government for that propriety: But if the county shall fall to be so divided, that there shall not be found four and twenty persons who have one ninety sixth part each; then whoever has five thousand acres, shall be capable to be chosen to be one of the four and twenty, and that by the rest of the Proprietors, by the ballot, each having priviledge to lift one; but this not to take place till forty years after the settlement of these constitutions: And if twenty years after the expiration of the forty years above mentioned, it shall fall out that four and twenty persons cannot be found who have each five thousand acres, it shall be then in the power of the great Council to make a less number of acres sufficient to carry the character of the government, provided they bring it not under three thousand acres (the Proprietors being always electors as abovesaid) no Proprietor under one and twenty years shall be admitted to vote, but during nonage there shall be a proxy appointed by the tutor, and failing that, by the other Proprietors.

XIV. In all civil and ordinary actions, the Proprietors shall be Judged after the same manner, and lyable to the same censure with any other; but in all cases that are capital, or may infer for forfeiture of their trust or Proprietorship, they shall be adjudged by a jury of twelve of the Proprietors, or their proxies, or such as has share in a propriety not under one twentieth part; the bill being first found relievant against them by a grand jury of twelve Proprietors and twelve free men to be chosen by the ballot, as in article nineteen

XV. For preserving a right balance, no Proprietor shall at any time require or purchase more than his one four and twentieth Dart of the county; but if by any accident, more fall into the hands of the Proprietors, he may be allowed to dispose of it to his children, tho' under age, yet not so as to acquire to himself more than one vote besides his own; but if such an acquirer have no children he shall be obliged to sell it within one year after he has acquired it, nor shall he evade this by putting in another's name in trust for him; but shall upon his assignment solemnly declare himself to be really and effectually divested of it for the proper use of him it is assign'd to: And if within three years he find not a merchant, he shall be obliged to dispose of it at the current rate to the rest of the Proprietors, to be holden in common by them, who shall appoint one to bear that character in the government, untill such a share of it fall in one hand, by a former article may render him capable, by the consent of two parts of the other Proprietors, to have the power devolved in him; and if by this or any other accident one or more votes be wanting in the interem, the Proprietors shall name others qualified as above to supply their places.

XVI. All persons living in the Province who confess and acknowledge the one Almighty and Eternal God, and holds themselves obliged in conscience to live peaceably and quietly in a civil society, shall in no way be molested or prejudged for their religious perswasions and exercise in matters of faith and worship; nor shall they be compelled to frequent and maintain any religious worship, place or ministry whatsoever: Yet it is also hereby provided, that no man shall be admitted a member of the great or common Council, or any other place of publick trust, who shall not profaith in Christ Jesus, and solemnly declare that he doth no ways hold himself obliged in conscience to endeavour alteration in the government, or seeks the turning out of any in it or their ruin or prejudice, either in person or estate, because they are in his opinion hereticks, or differ in their judgment from him: Nor by this article is it intended, that any under the notion of this liberty shall allow themselves to avow atheism, irreligiouness, or to practice cursing, swearing, drunkenness, prophaness, whoring, adultery, murdering or any kind of violence, or indulging themselves in stage plays, masks, revells or such like abuses; for restraining such and preserving of the people in deligence and in good order, the great Council is to make more particular laws, which are punctually to be put in execution.

XVII. To the end that all officers chosen to serve within the Province, may with the more care and deligence answer the trust reposed in them; it is agreed, that no such person shall enjoy more than one public-office at one time: But least at first before the country be well planted, there might be in this some inconvenience, it is declared, that this shall not necessarily take place till after the year 1686.

XVIII. All chart, rights, grants and conveyances of land (except leases for three years and under) and all bonds, wills, and letters of administration and specialties above fifty pounds, and not under six months, shall be registered in a public register in each county, else be void in law; also there is to be a register in each county for births, marriages, burials and servants, where their names, times, wages and days of payment shall be registered, but the method and order of settling those registers is recommended to the great Council; as also the fees which are to be moderate and certain, that the taking of more in any office, directly or indirectly by himself or any other, shall forfeit his office.

XIX. That no person or persons within the said Province shall be taken and imprisoned, or be deprived of his freehold, free custom or liberty, or be outlawed or exiled, or any other way destroyed; nor shall they be condemn'd or judgment pass'd upon them, but by lawful judgment of their peers: neither shall justice nor right be bought or sold, deferred or delayed, to any person whatsoever: in order to which by the laws of the land, all trials shall be by twelve men, and as near as it may be, peers and equals, and of the neighborhood, and men without just exception. In cases of life there shall be at first twenty-four returned by the sheriff for a grand inquest, of whom twelve at least shall be to find the complaint to be true; and then the twelve men or peers to be likewise returned, shall have the final judgment; but reasonable challenges shall be always admitted against the twelve men, or any of them: but the manner of returning juries shall be thus, the names of all the freemen above five and twenty years of age, within the district or boroughs out of which the jury is to be returned' shall be written on equal peices of parchment and put into a box, and then the number of the jury shall be drawn out by a child under ten years of age. And in all courts persons of all perswasions may freely appear in their own way, and according to their own manner, and there personally plead their own causes themselves, or if unable, by their friends, no person being allowed to take money for pleading or advice in such cases: and the first process shall be the exhibition of the complaint in court fourteen days before the tryal, and the party complain'd against may be fitted for the same, he or she shall be summoned ten days before, and a copy of the complaint delivered at their dwelling house: But before the complaint of any person be received, he shall solemnly declare in court, that he believes in his conscience his cause is just. Moreover, every man shall be first cited before the court for the place where he dwells nor shall the cause be brought before any other court but by way of appeal from sentence of the first court, for receiving of which appeals, there shall be a court consisting of eight persons, and the Governor (protempore) president thereof, (to wit) four Proprietors and four freemen, to be chosen out of the great Council in the following manner, viz, the names of sixteen of the Proprietors shall be written on small peices of parchment and put into a box, out of which by a lad under ten years of age, shall be drawn eight of them, the eight remaining in the box shall choose four; and in like manner shall be done for the choosing of four of the freemen.

XX. That all marriages not forbidden in the law of God, shall be esteemed lawful, where the parents or guardians being first acquainted, the marriage is publicly intimated in such places and manner as is agreeable to mens different perswasions in religion, being afterwards still solemnized before creditable witnesses, by taking one another as husband and wife, and a certificate of the whole, under the parties and witnesses hands, being brought to the proper register for that end, under a penalty neglected.

XXI. That all witnesses coming or called to testify their knowledge in or to any matter or thing in any court or before any lawful authority within the Province, shall there give and deliver in their evidence by solemnly promising to speak the truth, the whole truth and nothing but the truth to the matter in question. And in case any person so doing shall be afterwards convict of willful falsehood, both such persons as also those who have proved to have suborn, shall undergo the damage and punishment both in criminal and in civil; the person against whom they did or should have incurred, which if it reach not his life, he shall be publicly exposed as a false witness, never afterwards to be credited before any court; the like punishment in cases of forgery, and both criminals to be stigmatized.

XXII. Fourteen years quiet possession shall give an unquestionable right, except in cases of infants, lunatics or married women, or persons beyond sea or in prison. And whoever forfeits his estate to the government by committing treason against the Crown of England, or in this Province, or by any other capital crime, the nearest of kin may redeem it within two months after the criminals death, by paying to the public treasury not above one hundred pounds, and not under five pounds sterling, which proportion the common Council shall determine, according to the value of the criminals estate, and to the nature of the offence; reparation to any who have suffered by him, and payment of all just debts being always allowed.

XXIII. For avoiding innumerable multitude of statutes, no act to be made by the great Council shall be in force above fifty years after it is enacted; but as it is then de novo confirmed, allways excepting these four and twenty fundamental articles, which, as the primitive charter, is forever to remain in force, not to be repealed at any time by the great Council, tho' two parts of the Council should agree to it, unless two and twenty of the four and twenty Proprietors do expressly also agree, and sixty six of seventy two freemen; and when they are one hundred forty four, one hundred thirty two of them; and also this assent of the Proprietors must be either by their being present in their own persons, or giving actually their votes under their hands and seals (if elsewhere) and not by proxies; which solemn and express assent must also be had in the opening of mines of gold and silver; and if such be opened, one third part of the profit is to go to the publick Treasury; one third to be divided among the four and twenty Proprietors, and one third to Proprietor or planter in whose ground it is; the charges by each proportionately borne.

XXIV. It is finally agreed, that both the Governor and the members of the great and common Council, the great officers, judges, sheriffs and justices of the peace, and all other persons of public trust, shall before they enter actually upon the exercise of any of the employs of the Province, solemnly promise and subscribe to be true and faithful to the king of England, his heirs and successors, and to the Proprietors, and he shall well and faithfully discharge his office in all things according to his commission, as by these fundamental constitutions is confirmed, the true right of liberty and property, as well as the just ballance both of the Proprietors among themselves, and betwixt them and the people: it's therefore understood, that here is included whatever is necessary to be retained in the first Concessions, so that henceforward there is nothing further to be proceeded upon from them, that which relates to the securing of every manes land taken up upon them, being always excepted. And provided also' that all Judicial and legal proceedings heretofore done according to them, be held, approved and confirmed.

Drummond. Robert Burnet. Bar. Gibson. Robert Gordon. Gawn Lawry. Perth. William Gibson. William Dockwra. Thos. Dart. Thomas Barker and as proxy for Ambrose Riggs. Clement Plumstead, proxy for Barclay. Ar. Sonmans. Robert Turner and Thomas Cooper.

(1) Verified by " Grants and Concessions of New Jersey." Leaming & Spicer. 2d Ed. pp. 153-156. [Back](#)

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