

# John Brown's Constitution

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In John Brown's house, and in John Brown's presence, men from widely different parts of the continent met and united into one company, wherein no hateful prejudice dared intrude its ugly self—no ghost of distinction found space to enter.<sup>1</sup>

In the spring before John Brown led his compatriots on the assault on Harper's Ferry that fateful October morning in 1859, he did a curious thing. Brown "called a quiet convention," which commenced the morning of May 8. At the gathering, a draft "constitution was brought forward and, after a solemn parole of honor, was read."<sup>2</sup> The attendees approved the vast majority of the articles without debate. That evening, they elected the officers created by the governing instrument they had just adopted. To no one's surprise, Brown was elected as commander-in-chief. Members of the convention elected two black men—Alfred Ellsworth and Osborne P. Anderson—as congressmen. Once John Brown was captured by the authorities and tried for treason, his defense lawyer introduced the document for the purpose of showing that Brown could not form the requisite mental state to commit the crime. Brown himself put a stop to the insanity defense before it got out of the gate, but the document, and the events surrounding its writing and ratification, remains unexplored for its significance within our constitutional tradition.

Brown's legacy has amounted to dueling caricatures of the man and his project: terrorist or folk hero, each claiming an ardent following, by turns instilling fear of mob action or respect for dedicated activism. The purpose of this essay is to explore Brown's legal and political ideas; to try in

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<sup>1</sup> OSBORNE P. ANDERSON, A VOICE FROM HARPER'S FERRY 23-25 (1861).

<sup>2</sup> W.E.B. DU BOIS, JOHN BROWN 154 (2001).

good faith to root them in American traditions. It does not seek to excuse his resort to violence for revolutionary ends; nor does it argue that even a single bystander should have joined his ill-fated movement. Instead, the essay labors to explain why Brown remains for many Americans a contested but irresistible symbol of foundational change. The actions of the historical John Brown, as well as Brown the modern icon, together comprise what we might call an instance of “fringe constitutionalism.”

Proponents of fringe constitutionalism advocate or practice extra-legal tactics in aid of socially transformative goals. The very way that the law or politics treat such individuals present challenging issues of democratic citizenship. Their morally questionable or flatly illegal strategies provoke a society’s instinct to exclude such individuals, to brand them as threats to the rule of law. Such a discourse thus seeks to strip these persons of the aura of citizenship, and any resulting legal process afforded them endeavors to cause them to feel the sting of this collective judgment. On the other hand, what gives the fringe constitutionalist a claim on democratic legitimacy is a steadfast refusal to renounce his membership entirely. By word and deed, such a person chooses to speak in democratic idioms, appealing to a political community’s dearest values, railing against the missteps or corruption of current caretakers of such ideals, and urging fellow citizens onward to democratic perfection. The fringe constitutionalist acts like a law breaker, but speaks like a rule follower. In this way, the individual assumes a problematic status of quasi-citizen in order to force the entire polity to reexamine its governing principles. He or she precipitates a clash between models of good citizenship (obedience to ordinary criminal laws or existing institutions v.s. fidelity to more enduring values) and conceptions of political time (fidelity to alternative principles here and now v.s. at some future point). In this light, the fringe constitutionalist invites fellow citizens to view extreme and violent tactics as proof of hyperpatriotism. In ardently destroying one corrupting way of life, such a person hopes to create a more lasting democratic existence.

## II.

Even a cursory examination of the document titled “provisional constitution” refutes any suggestion that it was the work of a madman. The writing is crisp and words carefully chosen; in many instances the language is more direct than the U.S. Constitution upon which it is plainly modeled. The preamble laments that the nation’s addiction to slave labor commenced “a most barbarous, unprovoked, and unjustifiable war of one portion of its citizens upon another portion” incompatible with universal ideals expressed in the Declaration of Independence. Accordingly: “we, citizens of the United States, and the oppressed people who, by a recent decision of the Supreme’ Court, are declared to have no rights which the

white man is bound to respect, together with all other people degraded by the laws thereof, do, for the time being, ordain and establish for ourselves the following Provisional Constitution and Ordinances, the better to protect our persons, property, lives, and liberties.” In its use of the inclusive “we,” its cooptation of the rhetoric of the American Constitution, and its reference to recognizable things protected, the drafters speak as a new coalition of insiders and outsiders committed to the public good.

It is difficult to shake the impression of a document managing the problems of an as-yet unwritten future and those of here and now. Despite repeated references to the currently constituted “organization,” many of the provisions appear to express principles of governance applicable should Brown and his followers succeed in their goal of creating a slavery-free society. The document exemplifies a particular liberation theology. At the outset, a society remade according to this document would express itself as a radically egalitarian community, neither separated by race, previous or current condition of servitude, or sex: “All persons of mature age, whether proscribed, oppressed, and enslaved citizens, or of the proscribed and oppressed races of the United States, who shall agree to sustain and enforce the Provisional Constitution and Ordinances of this organization, together with all minor children of such persons, shall be held to be fully entitled to protection under the same.” The only distinction hinted at is between “mature” persons and “minor children.”

Beyond equality, the chief organizing trait is the priority of work—honest labor, shared by all, for the good of all. In exchange for the protections afforded by the state, each person is obligated by the basic law to “labor in some way for the general good” or risk sanction.<sup>3</sup> Brown himself often stated that “all great reforms, like the Christian religion, were based on broad, generous, self-sacrificing principles.” Accordingly, his band of anti-slavery activists and fighters, as well as the provisional form of government, were self-consciously “organized on a less selfish basis” than prevailing forms of civic life.<sup>4</sup> Like other constitutional movements and moments, reformation of civil society demanded a corresponding reformation of the citizen.

Here and there certain optimistic, perhaps fantastical elements can be discerned—such as Article III, which provides that Congress shall consist of at least five but no more than ten members. This is little more than an effort to recapture a limited government more suitable to a pastoral society. Nevertheless, post-slavery America would continue be governed by a tripartite government.

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<sup>3</sup> Article XXXLX. By all accounts, Brown was raised with Puritan values and conducted himself in ways that prompted the descriptions “austere,” “stern,” “unyielding,” and “devoted.” DUBOIS, *supra* note 2, at 20-21.

<sup>4</sup> DUBOIS, *supra* note , at 99.

A few interesting wrinkles stand out. The President and Vice-President are limited to single three-year terms of office, and are to be selected not by an Electoral College, but through election by “the citizens or members of this organization.”<sup>5</sup> Even more interesting, the members of the Supreme Court would be elected by the citizenry rather than appointed, and there is no explicit provision providing for life tenure based on good behavior. Accordingly, it would appear to be an open question how long judges may serve and on what conditions they might be removed. As for jurisdiction, the cumbersome language of Article III of the U.S. Constitution is bypassed in favor of a single statement conferring general jurisdiction except in cases involving “the rules of war.”<sup>6</sup>

As it turns out, the constitution is aspirational but also surprisingly concrete on occasion. In the society imagined by members of the convention, religious and family life would be given priority. The repeated mention of marriage, family, and religion stands in stark contrast to the U.S. Constitution, which makes no general commitment to marriage or family (these being judge-read rights) and highly specific mentions of religion (both a negative command not to establish religion as well as an affirmative protection of religious exercise). Marriage would have to be “respected,” and the Sabbath would be devoted not to ordinary labor but to religious instruction, the education of the less fortunate, or some other form of personal improvement.<sup>7</sup>

A number of rights or protections afforded by the instrument will seem especially enlightened, even to the modern mind. The humane treatment of prisoners is expressly required by the Constitution, and the death penalty is prescribed for sexual crimes committed against a female prisoner. Indeed, Article XXXII is shockingly progressive in how far beyond contemporary protections it goes: “shall afterward be put to death, or be subject to any corporeal punishment, without first having had the benefit of a fair and impartial trial; nor shall any prisoner be treated with any kind of cruelty, disrespect, insult, or needless severity; but it shall be the duty of all persons, male and female, connected herewith, at all times and under all circumstances, to treat all such prisoners with every degree of respect and kindness that the nature of the circumstances will admit of, and to insist on a like course of conduct from all others, as in the fear of Almighty God, to whose care and keeping we commit our cause.”

A spirit of conservation animates the Constitution, no doubt influenced by the scarcity of food, munitions, and supplies faced by the organization as well as its members’ values in the abstract: “needless waste

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<sup>5</sup> Article IV.

<sup>6</sup> Article V.

<sup>7</sup> Article XLII.

or destruction of any useful property . . . shall not be tolerated at any time or place.” The document further bans the “needless” killing of animals.

The instrument eschews a general commitment to freedom of speech and instead, “[p]ropane swearing, filthy conversation, indecent behavior, or indecent exposure of the person, or . . . quarreling” are all prohibited.<sup>8</sup> An individual’s right to bear arms is expressly protected, irrespective of sex, so long as the person is of “good character and of sound mind and suitable age.” Yet with the exception of certain constitutional office-holders, such arms must be carried openly rather than concealed on the body.

Other features reveal that the drafters envisioned the document would be updated at some later date, though no explicit procedure for amendment is provided. The document’s “provisional” status, concern for the “confiscation” of property, the respectful treatment of “neutrals” and tough treatment of “deserters,” the proper procedure for court martials, the status of individuals who take up arms against the anti-slavery cause after being granted “parole of honor,” all reflect the group’s sense that they found themselves in a state of “war” against slavery. Members of the convention could imagine a new world without human subjugation, but it existed only in embryonic form.

The Provisional Constitution had a precursor, just as the U.S. Constitution was preceded by a general Declaration of Independence and the Articles of Confederation. In the summer of 1856, thirty-five men gathered with Brown in the forests of Kansas and adopted a covenant, pledging themselves and their “sacred honor” to “the maintenance of the rights and liberties of the free state citizens of Kansas.” Bylaws were added, providing for the election of officers, the handling and disposal of booty, trial by jury, and barring profane, uncivil, drunken, or disorderly conduct, as well as theft and waste. It proved to be a simple document, enforced at campfires and in relations between the self-described freedom fighters. But it was an early instance of self-governance, and one that inspired further efforts to codify and elaborate their collective enterprise.

### III.

The Provisional Constitution reflected a maturation of John Brown’s thinking, and the final stage of his evolution from itinerant farmer to guerilla fighter, to would-be nation-builder. Consider an exchange between the abolitionist Frederick Douglass and John Brown that

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<sup>8</sup> Article XL provides: “Profane swearing, filthy conversation, indecent behavior, or indecent exposure of the person, or intoxication or quarreling, shall not be allowed or tolerated, neither unlawful intercourse of the sexes.”

reportedly took place in 1847, as reported by W.E.B. DuBois. According to Douglass:

[Brown's] plan as it then lay in his mind had much to commend it. It did not, as some suppose, contemplate a general rising among the slaves, and a general slaughter of the slave-masters. An insurrection, he thought, would only defeat the object; but his plan did contemplate the creating of an armed force which should act in the very heart of the South. He was not averse to the shedding of blood, and thought the practice of carrying arms would be a good one for the colored people to adopt, as it would give them a sense of their manhood. No people, he said, could have self-respect, or be respected, who would not fight for their freedom.<sup>9</sup>

Brown continued:

The true object to be sought is first of all to destroy the money value of slavery property; and that can only be done by rendering such property insecure. My plan, then, is to take at first about twenty-five picked men, and begin on a small scale; supply them with arms and ammunition and post them in squads of fives on a line of twenty-five miles. The most persuasive and judicious of these shall go down to the fields from time to time, as opportunity offers, and induce the slaves to join them, seeking and selecting the most restless and daring.<sup>10</sup>

The project to destabilize slavery as an industry and to reconstitute American society would commence in stages. Starting with committed anti-slavery activists and branching out to include slaves open to reclaiming their liberty, the group would grow itself gradually, then make off into the nearby mountain and hold their ground “despite of all efforts of Virginia to dislodge them.” This conversation revealed a desire not to instigate a general slave revolt or to frighten slave owners into submission, but rather to destabilize the slave trade on a county-by-county basis and reconstitute a nation elsewhere, an idea that Brown's eventual captors could not fathom. It is a goal that is confirmed in Article XLVI of the Provisional Constitution, titled, “These articles not for the overthrow of government”:

The foregoing articles shall not be construed so as in any way to encourage the overthrow of any State government, or of the general government of the United States, and look to no dissolution of the

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<sup>9</sup> DUBOIS, *supra* note 2, at 58.

<sup>10</sup> *Id.* at 59.

Union, but simply to amendment and repeal. And our flag shall be the same that our fathers fought under in the Revolution.

This is a surprising disclaimer, one that struck some as a crafty effort at avoiding criminal liability should the assault on Harper's Ferry fail. Still, there are enough reasons to take the statement at face value. Through the creation of a successful, slave-free society in the mountains, perhaps other citizens tainted by participation in an evil system would see reason to join the new community and thereby become absolved of the sins of slavery. Organized according to American ideals and a familiar political iconography, a nation within a nation would serve as an inspiration to others.

When Douglass urged that they might "convert the slaveholders," Brown became animated, convinced through his experiences that masters had to be "induced" to give up their way of life. Brown had come to believe that the rhetoric of national leaders had become beautiful but useless, and that only concerted local action could cause a material change in the status of the oppressed. Though in the end Douglass decided not to join Brown's plan, the abolitionist came away moved by the words of the fringe constitutionalist. Douglass found John Brown's "zeal," his "display of rigid virtue," to be as "real as iron or granite." He came away "less hopeful of [slavery's] peaceful abolition." And yet, despite the fact Douglass kept to the traditional modes of persuasion as Brown struck his symbolic blow for freedom, Douglass found his writings and speeches "more and more tinged by the color of this man's strong impressions."<sup>11</sup>

## Appendix

Provisional Constitution and Ordinances for the people of the United States.  
PREAMBLE.

Whereas slavery, throughout its entire existence in the United States, is none other than a most barbarous, unprovoked, and unjustifiable war of one portion of its citizens upon another portion—the only conditions 'of which are perpetual imprisonment and hopeless servitude or absolute extermination—in utter disregard and violation of those eternal and self-evident truths set forth in our Declaration of Independence:

Therefore, we, citizens of the United States, and the oppressed people who, by a recent decision of the Supreme' Court, are declared to have no rights which the white man is bound to respect, together with all other people degraded by the laws thereof, do, for the time being, ordain and establish for ourselves the following Provisional Constitution and Ordinances, the better to protect our persons, property, lives, and liberties, and to govern our actions

ARTICLE I

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<sup>11</sup> *Id.* at 60.

#### Qualifications for membership

All persons of mature age, whether proscribed, oppressed, and enslaved citizens, or of the proscribed and oppressed races of the United States, who shall agree to sustain and enforce the Provisional Constitution and Ordinances of this organization, together with all minor children of such persons, shall be held to be fully entitled to protection under the same.

#### ARTICLE II.

##### Branches of government.

The provisional government of this organization shall consist of three branches, viz: legislative, executive, and judicial.

#### ARTICLE III.

##### Legislative.

The legislative branch shall be a Congress or House of Representative, composed of not less than five nor more than ten members, who shall be elected by all citizens of mature age and of sound mind connected with this organization, and who shall remain in office for three years, unless sooner removed for misconduct, inability, or by death. A majority of such members shall constitute a quorum.

#### ARTICLE IV.

##### Executive.

The executive branch of this organization shall consist of a President and Vice-President, who shall be chosen by the citizens or members of this organization, and each of whom shall hold his office for three years unless sooner removed by death or for inability or misconduct.

#### ARTICLE V.

##### Judicial.

The judicial branch of this organization shall consist of one Chief Justice of the Supreme Court and of four associate judges of said court, each constituting a circuit court. They shall each be chosen in the same manner as the President, and shall continue in office until their places have been filled in the same manner by election of the citizens. Said court shall have jurisdiction in all civil or criminal causes arising under this constitution, except breaches of the rules of war.

#### ARTICLE VI.

##### Validity of enactments.

All enactments of the legislative branch shall, to become valid during the first three years, have the approbation of the President and of the Commander-in-chief of the army.

#### ARTICLE VII.

##### Commander-in-chief.

A Commander-in-chief of the army shall be chosen by the President, Vice-President, a majority of the Provisional Congress, and of the Supreme Court, and he shall receive his commission from



the President, signed by the Vice-President, the Chief Justice of the Supreme Court, and the Secretary of War, and he shall hold his office for three years, unless removed by death or on proof of incapacity or misbehavior. He shall, unless under arrest, (and until his place is actually filled as provided for by this constitution,) direct all movements of the army and advise with any allies. He shall, however, be tried, removed, or punished, on complaint of the President, by at least three general officers, or a majority of the House of Representatives, or of the Supreme Court; which House of Representatives, (the President presiding,) the Vice-President, and the members of the Supreme Court, shall constitute a court-martial for his trial; with power to remove or punish, as the case may require, and to fill his place, as above provided.

#### ARTICLE VIII.

Officers.

A Treasurer, Secretary of State, Secretary of War, and Secretary of the Treasury, shall each be chosen, for the first three years, in the same way and manner as the Commander-in-chief, subject to trial or removal on complaint of the President, Vice-President, or Commander in-chief, to the Chief Justice of the Supreme Court, or on complaint of the majority of the members of said court or the Provisional Congress. The Supreme Court shall have power to try or punish either of those officers, and their places shall be filled as before.

#### ARTICLE IX.

Secretary of War.

The Secretary of War shall be under the immediate direction of the Commander-in-chief, who may temporarily fill his place in case of arrest or of any inability to serve.

#### ARTICLE X.

Congress or House of Representatives.

The House of Representatives shall make ordinances providing for the appointment (by the President or otherwise) of all civil officers, excepting those already named; and shall have power to make all laws and ordinances for the general good, not inconsistent with this Constitution and these ordinances.

#### ARTICLE XI.

Appropriation of money, &c.

The Provisional Congress shall have power to appropriate money or other property actually in the hands of the treasurer, to any object calculated to promote the general good, so far as may be consistent with the provisions of this constitution; and may, in certain cases, appropriate for a moderate compensation of agents, or persons not members of this organization, for any important service they are known to have rendered.

#### ARTICLE XII.

Special duties.

It shall be the duty of Congress to provide for the instant removal of any civil officer or policeman, who becomes habitually intoxicated, or who is addicted to other immoral conduct, or to any neglect or unfaithfulness in the discharge of his official duties. Congress shall also be a Standing Committee of Safety, for the purpose of obtaining important information; and shall be in constant communication with the Commander-in-chief; the members of which shall each, as also the President, Vice-President, members of the Supreme Court, and Secretary of State, have full

power to issue warrants, returnable as Congress shall ordain (naming witnesses, &c.,) upon their own information, without the formality of a complaint. Complaint shall be immediately made after arrest, and before trial; the party arrested to be served with a copy at once.

#### ARTICLE XIII.

##### Trial of President and other Officers

The President and Vice-President may either of them be tried, removed, or punished, on complaint made to the Chief Justice of the Supreme Court, by a majority of the House of Representatives; which house together with the Associate Judges of the Supreme Court, the whole to be presided over by the Chief Justice in case of the trial of the Vice-President, shall have full power to try such officers, to remove or punish as the case may require, and to fill any vacancy so occurring, the same as in the case of the Commander-in-chief.

#### ARTICLE XIV.

##### Trial of members of Congress.

The members of the House of Representatives may, any and all of them, be tried, and, on conviction, removed or punished, on complaint before the Chief Justice of the Supreme Court, made by any number of the members of said house exceeding one-third; which house, with the Vice-President and Associate Judges of the Supreme Court, shall constitute the proper tribunal with power to fill such vacancies.

#### ARTICLE XV.

##### Impeachment of Judges.

Any member of the Supreme Court may also be impeached, tried, convicted, or punished by removal or otherwise, on complaint to the President, who shall in such case, preside; the Vice-President, House of Representatives, and other members of the Supreme Court, constituting the proper tribunal, (with power to fill vacancies,) on complaint of a majority of said House of Representatives, or of the Supreme Court; a majority of the whole having power to decide.

#### ARTICLE XVI.

##### Duties of President and Secretary of State.

The President, with the Secretary of State; shall, immediately upon entering on the duties of their office, give special attention to secure from amongst their own people, men of integrity, intelligence, and good business habits and capacity, and, above all, of first-rate moral and religious character and influence, to act as civil officers of every description and grade, as well as teachers, chaplains, physicians, surgeons, mechanics, agents of every description, clerks, and messengers. They shall make special efforts to induce, at the earliest possible period, persons and families of that description to locate themselves within the limits secured by this organization; and shall, moreover, from time to time, supply the names and residence of such persons to the Congress, for their special notice and information, as among the most important of their duties; and the President is hereby authorized and empowered to afford special aid to such individuals, from such moderate appropriations as the Congress shall be able and may deem advisable to make for that object. The President and Secretary of State, and in all cases of disagreement the Vice-President, shall appoint all civil officers, but shall not have power to remove any officer. All removals shall be the result of a fair trial, whether civil or military.

#### ARTICLE XVII.

Further duties.

It shall be the duty of the President and Secretary of State to find out (as soon as possible) the real friends as well as enemies of this organization in every part of the country; to secure among them inn-keepers, private postmasters, private mail contractors, messengers, and agents, through whom may be obtained correct and regular information constantly; recruits for the service, places of deposit and sale, together with all needed supplies; and it shall be matter of special regard to secure such facilities through the northern States.

#### ARTICLE XVII.

Duty of the President.

It shall be the duty of the President, as well as the House of Representatives, at all times, to inform the Commander-in-chief of any matter that may require his attention, or that may affect the public safety.

#### ARTICLE XIX.

Duty of President, continued.

It shall be the duty of the President to see that the provisional ordinances of this organization, and those made by the Congress, are promptly and faithfully executed; and he may, in cases of great urgency, call on the Commander-in-chief of the army or other officers for aid; it being, however, intended that a sufficient civil police shall always be in readiness to secure implicit obedience to law.

#### ARTICLE XX.

The Vice-President.

The Vice-President shall be the presiding officer of the Provisional Congress, and in cases of tie shall give the casting vote.

#### ARTICLE XXI.

Vacancies.

In case of the death, removal, or inability of the President, the Vice President, and, next to him, the Chief Justice of the Supreme Court shall be the President during the remainder of the term; and the place of the Chief Justice, thus made vacant, shall be filled by Congress from some of the members of said court; and the places of the Vice-President and Associate Justice, thus made vacant, filled by an election by the united action of the Provisional Congress and members of the Supreme Court. All other vacancies, not heretofore specially provided for, shall, during the first three years, be filled by the united action of the President, Vice-President, Supreme Court, and Commander-in-chief of the army.

#### ARTICLE XXII.

Punishment of crimes.

The punishment of crimes not capital, except in case of insubordinate convicts or other prisoners, shall be (so far as may be) by hard labor on the public works, roads, &c.

ARTICLE XXIII.

Army appointments.

It shall be the duty of all commissioned officers of the army to name candidates of merit, for office or elevation, to the Commander-in-chief, who, with the Secretary of War, and, in cases of disagreement, the President, shall be the appointing power of the army; and all commissions of military officers shall bear the signatures of the Commander-in-chief and the Secretary of War. And it shall be the special duty of the Secretary of War to keep for constant reference of the Commander-in-chief a full list of names of persons nominated for office or elevation by the officers of the army, with the name and rank of the officer nominating, stating distinctly, but briefly, the grounds for such notice or nomination. The Commander-in-chief shall not have power to remove or punish any officer or soldier, but he may order their arrest and trial at any time by court-martial.

ARTICLE XXIV.

Courts-martial.

Courts-martial for companies, regiments, brigades, &c., shall be called by the chief officer of each command, on complaint to him by any officer, or any five privates in such command, and shall consist of not less than five nor more than nine officers, non-commissioned officers and privates, one half of whom shall not be lower in rank than the person on trial, to be chosen by the three highest officers in the command, which officers shall not be a part of such court. The chief officer of any command shall, of course, be tried by a court-martial of the command above his own. All decisions affecting the lives of persons, or office of persons holding commission, must, before taking full effect, have the signature of the Commander-in-chief, who may also, on the recommendation of at least one third of the members of the court-martial finding any sentence, grant a reprieve or commutation of the same.

ARTICLE XXV.

Salaries.

No person connected with this organization shall be entitled to any salary, pay, or emolument, other than a competent support of himself and family, unless it be from an equal dividend made of public property, on the establishment of peace, or of special provision by treaty; which provision shall be made for all persons who may have been in any active civil or military service at any time previous to any hostile action for liberty and equality.

ARTICLE XXVI.

Treaties of peace.

Before any treaty of peace shall take full effect it shall be signed by the President and Vice-President, the Commander-in-chief, a majority of the House of Representatives, a majority of the Supreme Court, and a majority of all the general officers of the army.

ARTICLE XXVII.

Duty of the military.

It shall be the duty of the Commander-in-chief and all officers and soldiers of the army to afford special protection, when needed, to Congress or any member thereof, to the Supreme Court or any member thereof, to the President, Vice-President, Treasurer, Secretary of State, Secretary of the Treasury, and Secretary of War; and to afford general protection to all civil officers or other persons having right to the same.

#### ARTICLE XXVIII.

Property.

All captured or confiscated property and all property the product of the labor of those belonging to this organization and of their families, shall be held as the property of the whole, equally, without distinction, and may be used for the common benefit, or disposed of for the same object; and any person, officer, or otherwise, who shall improperly retain, secrete, use, or needlessly destroy such property, or property found, captured, or confiscated, belonging to the enemy, or shall willfully neglect to render a full and fair statement of such property by him so taken or held, shall be deemed guilty of a misdemeanor, and, on conviction, shall be punished accordingly.

#### ARTICLE XXIX.

Safety or intelligence fund.

All money, plate, watches, or jewelry captured by honorable warfare, found, taken, or confiscated, belonging to the enemy, shall be held sacred to constitute a liberal safety or intelligence fund; and any person who shall improperly retain, dispose of, hide, use, or destroy such money or other article above named, contrary to the provisions and spirit of this article, shall be deemed guilty of theft, and, on conviction thereof, shall be punished accordingly. The treasurer shall furnish the Commander-in-chief at all times with a full statement of the condition of such fund, and its nature.

#### ARTICLE XXX.

The Commander-in-chief and the treasury.

The Commander-in-chief shall have power to draw from the treasury the money and other property of the fund provided for in article twenty-ninth; but his orders shall be signed also by the Secretary of War, who shall keep strict account of the same subject to examination by any member of Congress or general officer.

#### ARTICLE XXXI.

Surplus of the safety or intelligence fund.

It shall be the duty of the Commander-in-chief to advise the President of any surplus of the safety and intelligence fund, who shall have power to draw such surplus (his order being also signed by the Secretary of State) to enable him to carry out the provisions of article seventeenth.

#### ARTICLE XXXII.

Prisoners.

No person, after having surrendered himself or herself a prisoner, and who shall properly demean himself or herself as such, to any officer or private connected with this organization, shall afterward be put to death, or be subject to any corporeal punishment, without first having had the

benefit of a fair and impartial trial; nor shall any prisoner be treated with any kind of cruelty, disrespect, insult, or needless severity; but it shall be the duty of all persons, male and female, connected herewith, at all times and under all circumstances, to treat all such prisoners with every degree of respect and kindness that the nature of the circumstances will admit of, and to insist on a like course of conduct from all others, as in the fear of Almighty God, to whose care and keeping we commit our cause.

#### ARTICLE XXXIII.

Voluntaries.

All persons who may come forward, and shall voluntarily deliver up their slaves, and have their names registered on the books of the organization, shall, so long as they continue at peace, be entitled to the fullest protection of person and property, though not connected with this organization, and shall be treated as friends and not merely as persons neutral.

#### ARTICLE XXXIV.

Neutrals.

The persons and property of all non-slaveholders, who shall remain absolutely neutral, shall be respected so far as the circumstances can allow of it, but they shall not be entitled to any active protection.

#### ARTICLE XXXV.

No needless waste.

The needless waste or destruction of any useful property or article by fire, throwing open of fences, fields, buildings, or needless killing of animals, or injury of either, shall not be tolerated at any time or place, but shall be promptly and properly punished.

#### ARTICLE XXXVI.

Property confiscated.

The entire personal and real property of all persons known to be acting either directly or indirectly with or for the enemy, or Found in arms with them, or found willfully holding slaves, shall be confiscated and taken whenever and wherever it may be found in either free or slave States.

#### ARTICLE XXXVII.

Desertion.

Persons convicted on impartial trial of desertion to the enemy, after becoming members, acting as spies, or of treacherous surrender of property, ammuniton, provisions, or supplies of any kind, roads, bridges, persons, or fortifications shall be put to death, and their entire property confiscated.

#### ARTICLE XXXVIII.

Violation of parole of honor.

Persons proven to be guilty of taking up arms after having been set at liberty on parole of honor, or, after the same, to have taken any active part with or for the enemy, direct or indirect, shall be put to death, and their entire property confiscated.

ARTICLE XXXIX.

All must labor.

All persons connected in any way with this organization, and who may be entitled to full protection under it, shall be held as under obligation to labor in some way for the general good; and persons refusing or neglecting so to do, shall, on conviction, receive a suitable and appropriate punishment.

ARTICLE XL.

Irregularities.

Profane swearing, filthy conversation, indecent behavior, or indecent exposure of the person, or intoxication or quarreling, shall not be allowed or tolerated, neither unlawful intercourse of the sexes.

ARTICLE XLI.

Crimes.

Persons convicted of the forcible violation of any female prisoner shall be put to death.

ARTICLE XLII.

The marriage relation, schools, the Sabbath.

The marriage relation shall be at all times respected, and families kept together, as far as possible; and broken families encouraged to reunite, and intelligence offices established for that purpose. Schools and churches established, as soon as may be, for the purpose of religious and other instructions; for the first day of the week, regarded as a day of rest, and appropriated to moral and religious instruction and improvement, relief of the suffering, instruction of the young and ignorant, and the encouragement of personal cleanliness; nor shall any persons be required on that day to perform ordinary manual labor, unless in extremely urgent cases.

ARTICLE XLIII.

Carry arms openly.

All persons known to be of good character and of sound mind and suitable age, who are connected with this organization, whether male or female, shall be encouraged to carry arms openly.

ARTICLE XLIV.

No person to carry concealed weapons.

No person within the limits of the conquered territory, except regularly appointed policemen, express officers of the army, mail carriers, or other fully accredited messengers of the Congress, President, Vice President, members of the Supreme Court, or commissioned officers of the army- and those only under peculiar circumstances- shall be allowed at any time to carry concealed weapons; and any person not specially authorized so to do, who shall be found so doing, shall be

deemed a suspicious person, and may at once be arrested by any officer, soldier, or citizen, without the formality of a complaint or warrant, and may at once be subjected to thorough search, and shall have his or her case thoroughly investigated, and be dealt with as circumstances on proof shall require.

#### ARTICLE XLV.

Persons to be seized.

Persons within the limits of the territory holden by this organization, not connected with this organization, having arms at all, concealed or otherwise, shall be seized at once, or, be taken in charge of some vigilant officer, and their case thoroughly investigated; and it shall be the duty of all citizens and soldiers, as well as officers, to arrest such parties as are named in this and the preceding section or article, without the formality of complaint or warrant; and they shall be placed in charge of some proper officer for examination or for safe-keeping.

#### ARTICLE XLVI.

These articles not for the overthrow of government.

The foregoing articles shall not be construed so as in any way to encourage the overthrow of any State government, or of the general government of the United States, and look to no dissolution of the Union, but simply to amendment and repeal. And our flag shall be the same that our fathers fought under in the Revolution.

#### ARTICLE XLVII.

No plurality of offices.

No two of the offices specially provided for by this instrument shall be filled by the same person at the same time.

#### ARTICLE XLVIII.

Oath.

Every officer, civil or military, connected with this organization shall, before entering upon the duties of his office, make solemn oath or affirmation to abide by and support this provisional constitution and these ordinances; also every citizen and soldier, before being fully recognized as such, shall do the same.

Schedule.

The president of this convention shall convene, immediately on the adoption of this instrument, a convention of all such persons as shall have given their adherence by signature to the constitution, who shall proceed to fill, by election, all offices specially named in said constitution, the president of this convention presiding, and issuing commissions to such officers elect; all such officers being thereafter elected in the manner provided in the body of this instrument.