

Draft Constitution of the Blackfoot Nation

[Sovereignty] Draft Blackfoot Constitution

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It is "Indian Days" -- rodeos, fancy-dancing, fry bread, etc. -- in Blackfoot country and activists are approaching literally hundreds of Blackfoot who are reading and signing their agreement with the Constitution. We are dutifully recording all suggestions for additions or changes to be discussed and incorporated in mass meetings. They are all risking a great deal just giving their signatures. We are not having a "Constitutional Convention" to be convened and held by elites to craft a Constitution whose language and structure are designed to institutionalize and perpetuate the rule, power and property of those elites -- like that of the US and most other nation-states' constitutions. Our Constitution and demand for recognition of traditional governments will come from and be ratified by the so-called "governed" themselves. -- Jim Craven, Solicitor General, Sovereign Blackfoot Nation, July 2002

Dark Night relatives is committed to printing documents of self-governance that stand as models of human liberation and a right relationship with the natural world. To the Zapatista Revolutionary Laws of Women (Dark Night field notes 8, 10), the San Andres Accords (DNfn 8/9, 20), and the Akwesasne Good Mind Research Protocol (DNfn 14, 26), we here add highlights from the draft Blackfoot Constitution now undergoing approval and fine-tuning. We present the Preamble in full and those articles that distinguish themselves by contrast with typical colonizer constitutions. Each article is followed by a note from the Pockets of Resistance (POR) editorial board, detailing significant features.

DRAFT CONSTITUTION OF THE BLACKFOOT (PIIKANI) NATION

Preamble

The Blackfoot People of the Blackfoot Nation, in order to secure our physical and cultural survival, in order to provide for our common defense and security, in order to provide for prosperity for all Blackfoot, in order to secure redress for past and present injustices done to Blackfoot People, in order to realize our internationally recognized right to independence and self-determination, in order to form bilateral relations with other nations, in order to respect the legacies and sacrifices of our ancestors and pass them on to our descendants and in order to secure and protect our resources and birthrights, do hereby declare that we constitute/are--and have never relinquished our right to be or be recognized as--a sovereign nation and do, also, hereby create and enact this Constitution. By any test or definition of a nation under international law, we have met and continue to meet all criteria: a) for establishing the fact of our nationhood; b) for requesting recognition of our nationhood; and c) for recognition of our associated rights to independence, sovereignty and self-determination. These criteria are binding on any and all nations, especially those demanding similar recognition for themselves. By virtue of and through this Constitution, the traditional authorities of the Blackfoot Nation, with the consent of the People of the Blackfoot Nation, in the exercise of our internationally-recognized rights to independence, sovereignty and self-determination, do hereby assert and give unto ourselves and

our posterity this Constitution in order to proclaim our existence as a nation to other nations of the world and to preserve, nurture and protect the constituent elements, whole, traditional institutions and authorities, survival and fundamental values and culture of the Blackfoot Nation and its People.

We, the Blackfoot People, as a whole People and Nation, have been brought to a crossroads of history facing almost certain extinction as a People without the assertion and protection of our nationhood, traditional institutions and internationally-recognized rights to independence, self-determination, survival and prosperity. Our Declaration of Independence and Constitution are instruments for the assertion/protection of our traditional ways and institutions and are absolutely essential to the survival, prosperity and independence of the Blackfoot People and Nation..

Constitutional Principles

Article 1: The Blackfoot Nation is comprised of: the traditionally-recognized authorities, leadership and representatives of the Blackfoot; members of the Apatohsippiikani, Kainaiwa, Siksika, Amskaapiikani and related "Bands" of the Blackfoot; all those recognized by traditional authorities as Blackfoot with or without current affiliations/residence with the existing "Bands" of the Blackfoot. Members of the Blackfoot Nation must possess some degree of Blackfoot ancestry and/or be adopted/recognized through traditionally-recognized institutions; no specific "blood-quantum" is required for recognition of Blackfoot citizenship.

POR: The Blackfoot Constitution explicitly rejects blood quantum as a criterion of citizenship, a tool used by colonizing states to legislate indigenous peoples out of existence. It also rejects all outside claims or attempts by other entities to determine who is Blackfoot, claims historically and currently made against them by the US and Canada.

Article 2: The Blackfoot Nation ascribes to multi-citizenship but reserves the right to demand relinquishment of either Blackfoot citizenship or the citizenship of another nation in the event that the rights, responsibilities or allegiance of citizenship associated with another nation conflict with the rights, responsibilities or allegiance associated with Blackfoot citizenship. All rights of Blackfoot citizens, elaborated and protected in this Constitution, shall never be invoked or affirmed as instruments to deny or abridge the same individual rights of others or to compromise the survival and prosperity of the Blackfoot Nation.

POR: Made citizens of the US or Canada without their consent, the Blackfoot Constitution gives Blackfoot interests priority while letting individual Blackfoot citizens retain what advantage can be gained from their involuntary partnership with the colonizing states.

Article 3: In accordance with international law and internationally recognized rights to independence, self-determination and survival of nations, the Blackfoot Nation does not recognize and is not in any way under the authority of any laws, policies, procedures, agencies, "officials", agreements or structures imposed or recognized by any (past or present) colonizing powers or foreign nations or any "authorities" not selected or recognized by and through traditional Blackfoot authorities, institutions and Ways exclusively.

POR: The Blackfoot Constitution rejects the claims of any other state to determine its statehood.

Article 4: Unless otherwise provided in this Constitution, any agreements between the Blackfoot Nation and any other sovereign entities or Peoples, including other First Nations, shall have the form and substance of an international treaty. Treaties shall become an integral part of the "Supreme Law of the Nation" to which all Blackfoot authorities and persons shall be bound, anything in Blackfoot law or traditions to the contrary notwithstanding.

POR: The Blackfoot Constitution establishes parity of the Blackfoot Nation with other nations.

Article 5(1) The Blackfoot Nation has never ceased to exist as its existence and right to exist does not depend upon recognition or non-recognition by any other sovereign entity or force. The Blackfoot Nation continues to exist despite many attempts by colonizing powers at "non-recognition", "termination", extermination or imposition of colonial, genocidal and non-Blackfoot laws, institutions, "Tribal officials" and "trustee relationships". The central purpose of the Blackfoot Nation is to guarantee and protect the survival, prosperity, identity, rights and culture of the Blackfoot People collectively and individually.

POR: The Blackfoot Constitution explicitly names the governmental, economic and legal means that have been used to erase their nation, to forestall their presentation in the future as legitimate instruments for use against the Blackfoot .

Article 5(2): All members of the Blackfoot Nation are endowed by the Creator and/or their Humanity, as sanctioned/recognized by law, to certain fundamental and internationally recognized human and civil rights and freedoms to include (and not to be limited to) the following: Freedom of Speech and Assembly; Freedom of/from Religion; Freedom of Association; Freedom of the Press; Freedom From Unreasonable and Illegal Search and Seizure of Property; Freedom to Lawfully Own, Sell and Bequeath Personal Property; Right of Due Process, Right to Appeal of Judicial Verdicts and Freedom From Double Jeopardy; Freedom From Any Discrimination Based on Gender, Age, Disability, Color, Blood-quantum, Sexual Orientation, Social Class, Religion, Political Affiliations or Family/Clan/Band Affiliations; Freedom to Keep and Bear Arms (for hunting, personal protection and militia responsibilities); Freedom to Petition for Redress of Grievances; Right to Privacy; Right to Confront and Answer Accusers and Accusations...

POR: This article adroitly addresses several issues that most "mainstream" constitutions avoid or ignore. The first is the role of religious language in a document. The mere presence of religious language implies acknowledgment of a role for the spiritual in the governance of the people. The US constitution for instance refers to a creator also, but elsewhere calls for separation of church and state. The presence of this religious language in its Constitution is readily cited by US citizens who would impose their religious values on other citizens in public venues. Notably, the Blackfoot themselves had their territory carved up for forcible proselytizing by various Christian denominations. The wording of the Blackfoot Constitution acknowledges the views of both spiritual and non-spiritual citizens, while strongly implying that the rights it upholds inhere in merely being human; it succeeds in being both respectful and non-exclusive, while avoiding internal contradictions. Second, the Blackfoot Constitution explicitly recognizes and seeks to

disarm several factors that can and do militate against equal rights for all citizens: racist and family connections, sexual orientation and social class. Of the three, social class is the great unmentioned and unmentionable in the US and Canadian constitutions. Third, the Blackfoot Constitution attempts to avoid US Constitution difficulties with the Right to Bear Arms by being more specific about the allowable purposes.

Article 7: The Blackfoot Nation shall adhere to and preserve and protect Blackfoot survival, prosperity, heritage, values, customs and world view in all expressions of terms and obligations of treaties which it may undertake with other nations and/or in relation to relationships and interactions with any foreign States surrounding or influencing Blackfoot territories...

POR: Cultural survival and continuance is an overt objective of the Blackfoot Constitution. By implication, so is cultural diversity among all nations. By contrast, Zapatista documents, defending the rights of a multiplicity of indigenous nations in Mexico, frequently refer to the right of each nation to retain its own cultural ways. Although the Blackfoot and Zapatista emphases differ, both support the underlying principle that cultural survival is at stake, is a critical value, and that the loss of any culture diminishes all other cultures.

Article 10: Nothing in this Constitution shall authorize or be interpreted as consent to the termination of any trust, or of any claim of fulfillment of historic promises, or of any claim for receipt of any and all restitution for historic and present-day human rights violations, or of any other responsibilities of the United States and Canadian Governments or their internal State/Provincial Governments to the Blackfoot Nation and People.

POR: The Blackfoot Constitution does not erase history or inaugurate an amnesiac new era. This article denies the legitimacy of any attempts by the nations that have hitherto denied Blackfoot sovereignty to wash their hands of the past, present and the future. Freeing yourself from colonizers does not mean that colonizers should be let off the hook.

Territory and Jurisdiction: Article 11(1): This Constitution recognizes that the Blackfoot Nation and People are primarily but not exclusively domiciled in areas of Canada and the United States on lands including but not limited to, the present-day "Reserves"/"Reservations" of the Siksika, Kainaiwa, Apatohsippiikani and Amskaapiikani Blackfoot/Blackfeet Peoples.(2) This Constitution also recognizes that there is a Blackfoot Diaspora that is dispersed throughout the United States, Canada and elsewhere, and that such individuals have the right to participate in the rights, duties and obligations of the Blackfoot Nation, having requested and met the requirements for Blackfoot Citizenship...

POR: This article recognizes the results of many genocidal attempts to dissolve the Blackfoot. Specifically, it rejects continued occupancy of particular territories as determining Blackfoot identity, a criteria the US government has used as a double-edged sword against many tribes in denying them recognition as tribes even though it was US- instigated dispersals of their populations that made it impossible to prove.

Article 14: The Blackfoot Nation shall devote itself to just, equitable and sustainable environmental, economic, land-use, water, natural resource and other policies and practices in

accordance with Blackfoot traditions and values. The Blackfoot Nation, in accordance with Blackfoot values and traditions, shall be guided by the needs of future generations, preservation of the Blackfoot Nation and sustainability in formulating and implementing all environmental, economic, land-use, water, natural resource and other policies and practices...

POR: The Blackfoot Constitution holds the Blackfoot Nation responsible to future generations and to the world in which it lives. It includes the environment in its economy from both ends, not just the use-end as a notionally inexhaustible resource or as a luxury for the well-to-do. Zapatista documents also explicitly mention human responsibility to other life and beings in the environment.

Citizenship and Rights/Responsibilities of Citizens: Article 28: In accordance with Blackfoot traditions, any Blackfoot citizen convicted in accordance with judicial processes that are conducted in accordance with the Blackfoot Constitution, of treason or other designated high crimes against the Blackfoot Nation, may be stripped of Blackfoot citizenship and suffer banishment from all Blackfoot lands, resources and communities.

POR: This article gives loss of citizenship and banishment rather than capital punishment as the penalty for crimes against the nation, unlike the ferocious US provisions.

Article 29: All Blackfoot citizens shall have the right to respect for his or her privacy, without prejudice to restrictions laid down by or pursuant to acts by competent authorities of the Blackfoot Nation. Rules to protect privacy shall be laid down by competent authorities in connection with the recording and dissemination of personal data as well in connection with the rights of Blackfoot citizens to be informed of data recorded concerning them, uses made of such data and to have such data corrected.

Article 30: All Blackfoot citizens shall have the right of inviolability of his or her person without prejudice to restrictions laid down by or pursuant to acts of the competent authorities of the Blackfoot Nation.

POR: Articles 29 and 30 and honor protections of privacy that were not provided by the US Constitution or that are currently being whittled away.

Article 31: All Blackfoot citizens who are capable of doing so shall have the duty to cooperate in defending and maintaining the territories, sovereignty, independence, self-determination and national security of the Blackfoot Nation. This duty may be imposed on residents not Blackfoot citizens.

POR: This article is interesting for its expression of what is expected of non-Blackfoot living on Blackfoot territory. Much US citizen resistance to indigenous sovereignty and land restoration claims stems from abject fear at what would happen to non-indigenous living on indigenous parts of a re-drawn map. It might achieve a better balance to include more in the Constitution on how the Blackfoot Nation sees its relationship with its resident aliens, beyond this one constraint on their behavior. Ward Churchill addresses this issue under the name of the Big Fear in "I Am an Indigenist," in his *Struggle for the Land*.

Article 32: Entries into homes and other premises of Blackfoot citizens, searches and seizures shall be permitted only in cases laid down by or pursuant to acts by competent authorities of the Blackfoot Nation. Prior identification and notice of purpose shall be required to enter a home or other premises subject to exceptions prescribed by competent authorities and a written report of entry shall be issued to the occupant.

Article 33: Privacy of correspondence, telephone, telegraph or any other media shall not be violated without prejudice to acts laid down by or pursuant to acts by competent authorities or with the authorization of those designated by acts by competent authorities.

POR: Like Articles 29 and 30, Articles 32 and 34 address privacy issues that are being eroded in the US in spite of its Constitution.

Article 34: Other than in cases laid down by or pursuant to acts of the competent authorities, no Blackfoot citizen may be deprived of his or her liberty. Any Blackfoot citizen deprived of liberty other than by a court order may request a court to order his or her release and in such case, may be heard by a court within a period of time to be laid down by competent authorities. The court will order his or her release if it considers the deprivation of liberty to be unconstitutional/unlawful. Trials of citizens shall take place within reasonable periods of time and any citizen who has been lawfully deprived of liberty may be restricted in the exercise of fundamental rights only to the extent to which the exercise of such rights is not compatible with the deprivation of liberty.

POR: The Blackfoot Constitution upholds the principle of habeas corpus in contrast to current US erosions of its own constitutional promise.

Article 37: No citizen shall suffer being tried more than once for the same alleged crime. All citizens shall have the right to legal representation in all legal and administrative proceedings and are entitled to legal aid if needed.

Article 38: It shall be the concern of the authorities to promote the provision of sufficient employment for all capable citizens consistent with the resource and other constraints faced by the Blackfoot Nation. Rules governing the legal status and protections of working persons shall be laid down by acts by the competent authorities. All persons shall enjoy freedom of choice of work consistent with their own qualifications and necessary qualifications for particular work. No persons shall suffer any form of discrimination in application for work or at work nor shall any person suffer denial of work due to nepotism, cronyism or any form of unconscionable favoritism.

Article 39: It shall be the concern of the competent authorities to secure the means of subsistence of the population and to achieve the distributions of wealth consistent with Blackfoot traditions and the survival and prosperity of the Blackfoot Nation. Rules concerning social security and access to all life-sustaining resources and needs for all Blackfoot citizens unable to provide for themselves shall be laid down by competent authorities.

Article 40: It shall be the concern of the competent authorities and all Blackfoot citizens to protect and improve the environment and not to waste or abuse any and all creations of the Creator consistent with Blackfoot culture and traditions.

Article 41: It shall be the concern of the competent authorities and all Blackfoot citizens to promote the general health of the population, to provide for equitable distributions of means of subsistence, to protect children and all those unable to care for themselves and to promote social and economic development for all citizens.

Article 42: It shall be the concern of the competent authorities and all Blackfoot citizens to provide comprehensive and ongoing education for all citizens consistent with the resource and other constraints of the Blackfoot Nation. Educational curricula shall provide knowledge and skills requisite for survival and prosperity of the Blackfoot Nation including those necessary for relations and trade with other nations; curricula shall also provide knowledge and skills requisite for the knowledge, appreciation and survival of Blackfoot culture, traditions and the Blackfoot Nation itself.

Article 43: It shall be the concern of the competent authorities to allocate resources to ensure adequate housing, medical care and all other necessary means of subsistence for all Blackfoot citizens consistent with resource limitations and other constraints faced by the Blackfoot Nation. All Blackfoot citizens capable of work are expected to contribute to the resources, survival and prosperity of the Blackfoot Nation as a condition of access to the resources and means of subsistence of the Blackfoot Nation. Article 44: It shall be the concern of the competent authorities to redress any inequalities of wealth, incomes, security, access to services, access to information, access to legal assistance, access to government or access to means of subsistence that threaten the social cohesion, traditions, survival or prosperity of the Blackfoot Nation subject to resource and other constraints and imperatives faced by the Blackfoot Nation.

POR: Articles 37 through 44 honor the government's responsibility to Blackfoot citizens across a wide range of social benefits: work, food, housing, education, health care, and a healthy environment. The language regarding the environment rather indicates that the nation has a responsibility to the environment rather than that the environment is to be manipulated for the peoples' benefit, a significant emphasis, with the understanding that respectful treatment of the environment is to the peoples' benefit.

Government: Article 45: The Government of the Blackfoot Nation recognizes, operates and rests on the principle that government is only legitimate when it governs with the recognition and consent of the majority of the governed...

POR: This language, historically more honored in the breach than in the performance, can be usefully compared with the Zapatista principle of "governing by obeying."

Article 60: All deliberations of the Representatives shall be open to scrutiny by the public of the Blackfoot Nation unless the Principal Chief and Advisors deem that they be held in camera for cause consistent with the Blackfoot Constitution. All votes shall be recorded with roll call if requested by one member. Votes in camera may occur only with the authorization of the

Principal Chief and Advisors for cause consistent with the Constitution. All decisions or proposals for laws and acts will be decided on the basis of a good-faith attempt at consensus failing which a two-thirds majority of all Representatives is required to pass laws for consideration by the Principal Chief and Advisors...

POR: The Blackfoot Constitution accords priority to sunshine rather than concealment, and consensus over majority rule.

Law and Judiciary: Article 65: In accordance with Blackfoot Law and traditions, the supposed "duality" or differentiation between criminal and tort or civil law is rejected as dangerous to the survival and prosperity of the Blackfoot Nation. All crimes necessarily generate torts and many torts are crimes when seen in their totality of humanity and real causes and effects.

POR: The Blackfoot Constitution gives expression to an indigenist and more holistic conception of justice and law than the European model.

Article 66: The fundamental mandates guiding all law and judicial processes shall be: Truth; Justice; Healing; Reconciliation; Prevention of Future Abuses; Survival and Prosperity of the Blackfoot Nation. All rights, policies, judicial procedures, protocols and regulations governing individuals, judicial processes and government are without prejudice to and subordinate to these survival imperatives and mandates...

Article 70: All Judicial proceedings, procedures, findings and sentences must consider the totality of effects not only on the accused and convicted but also on the families of the victims and accused or convicted as well as on the survival and prosperity of the Blackfoot Nation and People. Family relations and other associates of an accused or convicted person, if not complicit with that person, shall suffer no penalties, discrimination, revenge or negative effects from association with the accused or convicted person. In the event that family relations suffer economic hardship as a result of conviction and punishment of a convicted person, those persons may draw material support from the Blackfoot Nation as a whole...

POR: Articles 66 and 70 reflect that the Blackfoot consider it a legitimate function of the Blackfoot justice system to promote wider social goals such as healing, reconciliation and prevention of crime rather than treating crime as a two-party quarrel between two citizens or a citizen and the state without regard for, say the affects on society as a whole or as individuals. Its aim is essentially restorative rather than retributive.

CONNECT: The full text of the draft Blackfoot Constitution and other documents are posted at the Center for Holocaust and Genocide Studies at the University of Minnesota at <http://www.chgs.umn.edu> under "Histories, Documents and Narratives"