

I. INTRODUCTION

In November 1999, the Blackfoot Nation declared its independence from the Government of Canada. The declaration reads as follows:

Let it be known, that We the Blackfoot speaking people of the Blackfoot Nation, do solemnly declare our inherent sovereignty. Therefore, We stand to clarify that our people have always enjoyed, exercised a sovereign existence. Since time Immemorial, which was given to us by our Creator to live in this way. Our sovereignty was fraudulently coerced by the Dominion Government of Canada, at the "so called" signing of Treaty #7 at the Blackfoot Crossing on September 27, 1877; and supplementary Treaty made the 4th of December 1877. As a result, our nation has lived under the ambiguous notion of our forefathers entering into quasi-bilateral treaty with the Crown, of the British Empire. Which in turn, was manipulated by the Canadian Government as a Land surrender.

Today the Blackfoot proclaim our Right of self-determination as a People in accordance with Article 1(2) of the United Nations Charter, and join the World Community of States as an Independent and Sovereign Nation State.

By virtue of our Rights to self-determination the Blackfoot claim the Right to freely determine our political status and freely pursue our economic, social and cultural development in accordance with common Article 1 of the International Covenant on Economic, Social and Cultural Rights.

The Blackfoot claim the Right, for our own ends, to freely dispose of our natural wealth and resources...including our lands and our waters without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit and international law.

We the Blackfoot, claim all the Land, and Natural Wealth, Resources and Minerals, and Waters, which has always resided and will always reside within the Hands of the Blackfoot, to be ours forever, originally under communal land tenure.

Commencing at a point on the International Boundary due south of the Western extremity of the Cypress Hills, thence west along the said boundary to the central range of the Rocky Mountains, or to the boundary of the Province of British Columbia, thence north westerly along the said boundary to a point due west of the source of the main branch of the Red Deer River, thence south westerly and southerly on the boundaries to the tract by the Treaties 6 & 4 to the Place of commencement.

In the Independent and Sovereign Nation of the Blackfoot lives the Blackfoot. We have lived here forever, since time immemorial. We are the original inhabitants and occupants of these Lands. We have always been in possession of our land and are thus entitled to re-establish our Independent and Sovereign Nation State.

The current citizens of the Independent and Sovereign Nation State of Blackfoot consist of all those who are descendants of the Blackfoot prior to the arrival of the first easterners in 1492, and those persons who have lived in Blackfoot territory prior to the illegal Overthrow, invasion and occupation of 1877, in the area which now constitutes the Sovereign Nation State of Blackfoot.

The Independent and Sovereign Nation State of Blackfoot will establish procedures for according citizenship by means of naturalization to all people who are habitual residents of Blackfoot territory as of today's date.

The Blackfoot fully support and subscribe to all of the Rights of the 1948 Universal Declaration of Human Rights for all of the people living in our Independent and Sovereign Nation State of Blackfoot territory.

The Independent and Sovereign Nation State of Blackfoot territory adheres to the generally recognized principles of international law, including the terms of the United Nations Charter. We will apply for Membership in the United Nations Organization in due course. In the meantime, we call upon the Royal Canadian Mounted Police forces in the Independent and Sovereign Nation State of Blackfoot territory, to withdraw from our Sovereign Territory immediately.

Since time immemorial, the Blackfoot, has maintained their close relationship to the land and its natural surroundings, through practice holistically spiritual in nature and in harmony with natural law. The natural belief and practice that the Blackfoot was considered "sacred" for the well-being of the human sustenance of life.

Prior to the first European invasion, of 1754, the Blackfoot were known to have a unique culture and system of government. Through customs and traditional practices, The Blackfoot (Elders), were highly regarded and respected, as the keepers of the wisdom and knowledge, in a highly organized self-sufficient and sustainable social system, based on a communal land tenure system, and were always consulted upon to maintain order and peace, which was enforced by the Brave Dog Society.

The Blackfoot of today, embody within their governmental structure,

traditional customs and culture, the Blackfoot, based on this mutual respect and practice, and family order. Their advice on many decisions, is highly regarded for the basis of all authority and principles as handed down through generations in their teachings. Their natural ability and practice of Natural Law was understood to be commonly known and exercised, by their deep spiritual connection to nature, its use, application and practice of the Law of Nature, then and now. The Blackfoot believe that all things have life, be it animate or inanimate, because everything has been derived and created from one Source, the Creator.

Today the Blackfoot, respectfully continue to seek the guidance of our Elders, be it Spiritually, Mentally and Physically, on authority and decisions that affect our lives, to restore our customs and teachings of our culture, language, and knowledge, from being exploited, desecrated, and on the verge of eventually becoming extinct. For all these reasons, the Blackfoot will serve as the provisional Government of the Independent and Sovereign Nation State of Blackfoot, until such time when the Blackfoot will convene a constitutional convention.

Despite the historical injustices and abuse, that has documented a time and dark chapter of the lives of all Blackfoot people, so unimaginable to the conscience of humanity, and to all human life as a whole, we have come to realize, that in the course of this modern times, we could never depart and separate our undying love and connection, "sacred ties," with the Spirit of this Land, which is the heart and life of all living things, as taught and handed down from the ancient wise ones. For we must protect it from such invasion and exploitation, to liberate it from destructive forces, to preserve our cultural heritage for future generations, from the devastation of extinction.

The Blackfoot, has continued to exercise, practice and occupy our Reserved Lands, despite the continued subjection, domination and exploitation, by the forces of the occupying foreign powers, denying us our inalienable rights to self-determination and Independence, and Statehood. Thus were well recognized principles of international laws violated. Thus were the national identity, land, resources, Right of Sovereignty over our Territory violated, and a peaceful people Overthrown, by the invasion of foreign powers, who continue to occupy, exploit and destroy our way of life.

It is the duty and obligation of every Blackfoot, young and old, to stand ready to restore and defend our natural rights, territorial integrity and independence without prejudice, and reject and resist all unlawful acts, injustice and complicity, violence and terrorism against our political independence, and also reject such use and violence against the territorial

integrity against other peaceful states. We here today have the same commitment.

If not for those of us who have awaited this day; who have considered the facts and evidence of such acts of oppression, subjugation and fear, and the loss of our honour, dignity and pride, must we let such injustices continue.

We the Blackfoot, have historically been the victims of crimes against humanity and genocide as defined by the Nuremberg Charter and the Genocide Convention.

The Independent and Sovereign Nation State of Blackfoot territory, proclaims its commitment to the purposes and principles of the United Nations Charter. The Blackfoot have long been recognized as a peaceful loving Nation, and to live in peaceful co-existence with other peaceful Nation States, based on equality, truth and justice, and for the respect of their undying Spirit, and for the Rights of Humanity.

We proclaim that, despite the continued interference of our rights to self-determination, Rights of Sovereignty, and Right of Independence, by the foreign occupying powers, we stand this day, in all honour, dignity and respect, of this sacred land, to restore our Independent and Sovereign Nation State of Blackfoot territory.

We pledge that our commitment will continue until the illegal occupation ends, and the revival of our Culture of our Independent and Sovereign Nation State has been fortified, with our Spirit totally restored, and the spirit of justice, freedom and liberation, shall once again bring peace on earth for all humanity.

We call upon our great people, and all Nations of the World, to unite and act this day, to declare and proclaim our inalienable Sovereignty of the Nation State of Blackfoot territory, fully restored and functional, and arise in the uniting of freedom and dignity in our homeland, which is the homeland of the free, now and forever.

Therefore, the hereditary chief, in General Council Assembled, by the Authority recognized and vested in the Creator, in the name of the Blackfoot people, to preserve and to forevermore cultivate the Heritage and Culture of the Blackfoot Nation, do solemnly publish, declare and proclaim, that the Independent and Sovereign Nation State of Blackfoot territory, free and absolved from any other political connection from any other Nation State, and whomsoever disregards the principles and Rule of the Law of Nations, Justice, Integrity and Morality of Character and

Humanity, who by force and acts of aggression, illegally occupies our Territory.

We have therefore concluded, that the facts are self-evident. That to continue under any colonial regime would cause the destruction and extinction of our culture and people. Our firm commitment for the protection of our divine heritage. We mutually pledge our Lives, Our Fortunes, our Sacred Honour, in the Spirit of the Creator.¹

This declaration is a response to the human rights violations inflicted on the Blackfoot peoples by the British and Canadian governments. Treaty 7, ostensibly entered into between Her Majesty's Canadian representatives and the Blackfoot and other Nations in September 1877 is neither a legal surrender nor a valid treaty. The imposition of the *Indian Act*² provisions on the Blackfoot peoples seriously threatens their inherent right to govern themselves in a manner deemed most appropriate by the people themselves. Finally, as effective remedies within the Canadian governmental system are unavailable to satisfy the current needs of the Blackfoot Nation, the Nation has elected to exercise its right to self-determination in order to provide these needs for its own people. Recognition of this declaration of independence would repair relations between Canada and the Blackfoot Nation, improve Canada's image in the international human rights arena, and provide a possible frame of reference for the Canadian government to employ in its future dealings with Canada's First Nations.

II. TREATY #7

Treaty 7 is not valid. The Blackfoot and other Nations who negotiated the treaty's terms with Her Majesty's Canadian representatives did not agree to the terms as written. Their alleged consent to those terms was neither knowing nor voluntary. Furthermore, procedural defects in the signing of Treaty 7 render its application invalid.

Therefore, the Blackfoot and other Treaty 7 Nations never surrendered their lands, and the governments and citizens of Canada and Alberta are currently illegally occupying Blackfoot territory. The following factual issues support the Blackfoot Nation's position that independence from the unilaterally imposed authority of the Canadian government is necessary to protect their rights as a people.

The Blackfoot have occupied territory in what is now known as Canada since time immemorial.³ After Europeans began migrating to the so-called New World, indigenous populations throughout the continent were often forced to migrate to new homelands. "It is . . . probable that the Blackfoot occupied the region from the Bow River to the North Saskatchewan for countless generations before they moved south."⁴

Well before the Blackfoot were approached by agents of the Crown regarding treaty negotiations, the Blackfoot occupied an established region, which they consider their traditional territory.

The Blackfoot territory during the historic period after 1750 was vast: it ranged from the North Saskatchewan River to the Missouri River, and from the Rocky Mountains to the present Alberta-Saskatchewan boundary. Near the latter part of the nomadic era, the northern range shrank to the Battle River, as the Blackfoot withdrew in the face of Cree pressures and as the decreasing buffalo herds congregated farther south."⁵

Eventually, contact with Europeans altered the world of the Blackfoot forever. In 1870, it is estimated that Aboriginal peoples living on the Plains of western Canada outnumbered whites by more than two to one. Within a few short years of signing Treaty 7, however, disease and western expansion left the Blackfoot and other First Nations of the Canadian West "heavily outnumbered" by whites.⁶ By 1880, all the buffalo had been wiped out, so the Blackfoot were forced to move to the reserves.⁷

“The Indian Administration, the North West Mounted Police (N.W.M.P.), and the extinction of the bison wiped out the rapidly evolving Plains Indian culture.”⁸ This story is common to all indigenous peoples of the Americas, as illegal encroachments on land by whites, government sanctioned expansionism, destruction of natural resources, the spread of exotic diseases, and outright genocide were common themes resulting from the essentially involuntary contact with Europeans. Within the context of these ordeals the Blackfoot and other First Nations’ leaders reluctantly agreed to negotiate what became known as Treaty 7 with Her Majesty’s Canadian representatives.

The Blackfoot Nations record their history through the oral tradition. For many Native cultures in which the oral tradition is used to record history, communicate spiritual doctrine or simply entertain, the spoken word is considered a *thing* just as much as the written word can be considered tangible by a European.⁹ Canada’s Supreme Court has recognized the validity of oral histories as admissible testimony in court.¹⁰ Considering that “Canadian policy on Aboriginal people has been based on terrible distortions of history,”¹¹ the incorporation of oral testimony into that history could not do any more than adjust its accuracy. Thus, some of the following accounts, which have been passed down orally, of what actually transpired at Blackfoot Crossing in September 1877 should be accorded no less credibility than if these accounts had been transcribed onto paper.

Knowing Consent

“It is questionable whether a ‘mutually understood agreement’ was ever arrived at between a people representing a written culture on the one hand, and a people representing an essentially oral culture on the other.”¹²

“[T]he oral tradition of our nations has preserved many accounts of the

circumstances surrounding the making of Treaty 7 and the subsequent fulfilment of the treaty.”¹³ These accounts evidence the significant problems encountered by the Blackfoot when faced with the mandate to enter into Treaty 7. In 1877 – *otsisti pakssaisstoyiih pi*, or the year when the winter was open and cold – Treaty 7 was negotiated between Her Majesty through Canadian officials and the Blackfoot and other nations. The Blackfoot Nations had no word for “treaty,” and they therefore considered the process *istsist aohkotspi* or *iitsinnaihtsiyo’pi* (the time when we made a sacred alliance).¹⁴ Treaty 7 elders “do not remember ever being told that the Treaty 7 First Nations had agreed to a land surrender.”¹⁵ They thought they were entering a peace treaty. “The elders all agree that there is a fundamental problem with the written treaty because it does not represent the ‘spirit and intent’ of the agreement”¹⁶ For instance, the text of the treaty does not include specific terms the signatory First Nations expressly required before they would agree to the final contract.¹⁷

In 1874, the North West Mounted Police (N.W.M.P.), commanded by James Macleod, arrived and were welcomed in Blackfoot territory. The Blackfoot granted their request to stay one winter in the territory, but “it’s been a long winter.”¹⁸ In the fall of 1875, the First Nations identified among themselves the critical issues; they passed on the substance of these issues to Jean L’Heureux, who then included them in a petition, which was then passed on to Alexander Morris, Canada’s chief negotiator.¹⁹ The issues identified concerned the encroachment onto their lands by Cree and Métis hunters, and the increasing scarcity of buffalo, problems that would not have arisen but for the Blackfoot promise to end warfare with the other nations.²⁰ The N.W.M.P. met with the Bloods, Blackfoot, Peigan and Sarcee because those peoples suspected the

N.W.M.P. was expediting white settlement on the First Nations' lands. Commissioner Macleod promised that these issues would be fully discussed before any land would be taken,²¹ and that he had no intention of taking the First Nations' lands, but he apparently changed his mind.²² Finally, the year 1877 "saw the alliance of peace between [the Treaty 7 Nations] and the Queen's representatives at Blackfoot Crossing. The promises again were to be quickly broken."²³

The expectations of the chiefs at the negotiations seemed simple and unselfish enough: they wanted to ensure that the Canadian authorities would repress encroachments onto Native land, restrain American traders, and protect the buffalo. These problems had resulted in the larger problem of widespread hunger in the aboriginal communities.²⁴ The First Nations believed that an agreement with the Canadians would occasion a peace alliance to control these problems, to "safeguard their territory and to protect their way of life."²⁵ The Treaty 7 First Nations had four specific goals. "[T]hey hoped to establish peaceful relations with the colonial government, to establish a relationship of equality between nations, and to create an atmosphere of respect."²⁶ They certainly wanted to ensure "the physical survival of their people, especially in face of the devastation suffered in the wake of disease and disappearing buffalo herds."²⁷ A related wish was that the cultural and spiritual well being of their people was secured by maintaining their systems of government, languages and traditional ceremonies. Finally, while not anticipating full assimilation into Canadian society, they hoped to integrate some new aspects of that society into their own by *sharing* their land with the newcomers.

The commissioners, on the other hand, expected the negotiated agreement to

achieve the extinguishment of all Indian title to the area, and the relocation of the aboriginals onto reserves, thus opening the way for settlement²⁸ and the construction of the railroad.²⁹ The “overarching goal of realizing the ‘purpose of the Dominion’ as expeditiously as possible” (eschewing “any vision of a future for Aboriginal people”),³⁰ included five particular objectives: acquiring legal title to the land; encouraging non-native settlement; removing Aboriginal title cheaply; terminating American intrusion; and responding to Aboriginals’ purported requests for treaties.³¹ Therefore, it is no surprise that “although each side had voiced its concerns, neither had heard the other.”³²

“[M]isunderstandings, due partly to inadequate interpretation and/or a deliberate attempt to mislead” characterized the treaty-making process, as “there was a tremendous distance between the two perspectives.”³³ Many of the interpreters involved in the treaty negotiations were not fluent in the various languages used in the process.³⁴ More than eighty errors in the translation and spelling of Blackfoot names have been identified in the document.³⁵ These mistakes are not surprising, given the shortcomings of the interpreters: one interpreter, Jerry Potts, was drunk at the negotiations and did not clearly explain the substance and process to the participating chiefs; Jean-Baptiste L’Heureux’s credibility is suspect, as he habitually, falsely claimed to be a priest; and a third interpreter, Father Constantine Scollen, while somewhat familiar with the Cree language, did not understand the Blackfoot languages sufficiently to competently and clearly convey some of the simplest concepts.³⁶ Father Scollen mistakenly informed the Canadian authorities that the Blackfoot desired to make a treaty, when in reality, the leaders merely desired to discuss the problems they faced with respect to encroachments onto their land. They never asked to make a treaty.³⁷

Furthermore, Scollen himself suggested that at least the Bloods were never clearly informed about the precise meaning of the treaty.³⁸

Another major problem at Blackfoot Crossing was the fact that no single person present could speak all of the languages of the people in attendance. . . . Questions arise such as: Could all the First Nations people assembled, who represented four distinct languages, have understood the same thing when words like 'surrender' or 'cede' were used? This would be especially doubtful for words that did not exist in the various Aboriginal languages; the very concept of landownership, for example, was completely foreign to a number of the nations present.³⁹

Thus, the translation process suffered further because there were no words in the native languages for concepts such as "title" or "surrender," two words with definite and powerful implications in the English language.⁴⁰ "It seems that the question of language is much more at issue for Treaty 7 than for any of the other numbered treaties."⁴¹ For example, "[t]he Stoney elders were particularly emphatic about the consequences of their people's not understanding what a square mile was, especially after it was explained to them how little land was being surveyed for them."⁴² The Native people expected "that what the officials were saying about the land they would get would correspond to what they had described as territory they wanted."⁴³ Because they did not understand the measurement concepts, they could not have knowingly agreed to specific treaty terms corresponding to those foreign concepts. Indeed, concepts such as "fee simple" and "rights of occupancy" derive from European law, and one wonders how a number of incompetent interpreters could clearly explain these foreign concepts to the leaders of such divergent cultures over the short time frame in which the agreement was negotiated.

Interpretive deficiencies in the negotiation process and present understanding

involve additional cultural elements. “Perhaps most importantly, the two sides had different cultural traditions for remembering their history. In the Euro-Canadian cultures, history was written down, whereas in the First Nations cultures, history was transmitted orally in stories passed on by the elders.”⁴⁴ These cultural differences may account for interpretive inaccuracies: “Consider how much greater . . . differences in interpretation must be when it comes to perspectives rooted in radically different cultural traditions.”⁴⁵ Furthermore, the “fundamental assumptions underlying European and Aboriginal languages are so radically different that simple translation is impossible.”⁴⁶ Again, the mere fact that Blackfoot accounts of the treaty negotiations are preserved primarily in oral form does not render them any less legitimate, credible or reliable than if they had been reduced to writing. The methodology is simply different, not necessarily better or worse. “It is questionable whether a ‘mutually understood agreement’ was ever arrived at between a people representing a written culture on the one hand, and a people representing an essentially oral culture on the other.”⁴⁷

The deficiencies in the translators’ abilities, together with the discordant language conceptualizations and the disparate expectations of the parties to the agreement were not the only reasons the First Nations understood the process differently than did the Canadians. These First Nations were not unfamiliar with the process of entering agreements, as they had been parties to such agreements with other First Nations prior to their contact with Europeans.⁴⁸ “The leaders who accepted Treaty 7 believed that it was first and foremost a peace treaty.”⁴⁹ Additionally, because warring among the First Nations and between the First Nations and the Canadians was not uncommon, the Treaty 7 First Nations were led to believe that by signing the treaty,

they were merely agreeing not to fight any longer, and that “peace would be preserved between the First Nations and the Canadian authorities.”⁵⁰ Nevertheless, the wishes of the First Nations’ leaders were ignored by the condescending and paternalistic government agents, who decided for themselves what the best interests of the First Nations really were.⁵¹ The Canadians’ lack of respect for the expectations of the Aboriginal leaders resulted in a significant disadvantage for the First Nations, “who came to negotiate Treaty 7 in good faith.”⁵²

“The point to be understood here is that the translation process failed at Blackfoot Crossing. . . . [T]he official records of the narrative indicate that the chiefs were only given *one-sixth of the presentation of the commissioners*.”⁵³ Although Canada’s *Indian Act*⁵⁴ had been passed the year before Treaty 7 was completed, the commissioners did not inform the Treaty 7 nations of its purposes and provisions. Thus, the First Nations were given the impression that the treaty, rather than a general codification of Canada’s Aboriginal policy, would govern their future relations with Canadian individuals and government. The Aboriginal leaders who negotiated Treaty 7 explicitly expressed their specific aspirations regarding the treaty, and they therefore expected those aspirations to be fulfilled by the very officials who promised to recognize and fulfill them. Commissioner Laird “was evasive in not explaining to Treaty 7 First Nations that the government intended to restrict and control Aboriginal people through the provisions of the *Indian Act*.”⁵⁵ Nevertheless, the *Indian Act* provisions, which were contrary to the wishes the Treaty 7 Nations had articulated, eclipsed even the terms of the treaty itself.⁵⁶

In addition to being unfamiliar with European terms and concepts, which were

poorly explained in translation as well, the relational arrangements were not clearly laid out to the leaders who signed Treaty 7. “Evidence that the Treaty 7 nations thought that they would share – not surrender – the land can be seen in their testimony about how the land was to be used.”⁵⁷ The nations indicated that they would only share the top two feet of soil with the newcomers.⁵⁸ The terms dictated by the First Nations were never written down, however, and considering that those who agreed to the terms in the treaty’s text could not read English, they had no way to confirm that their expectations had been omitted from the document. “The leaders of the treaty believed Jerry Potts’s interpretation of the Crown’s promises and everything else he told them, even though he spoke very poor Blackfoot”⁵⁹ The Treaty 7 leaders had no other choice, however. They had to believe what the interpreters told them about the treaty’s terms because there was no other way to obtain this information. Furthermore, the commissioners employed certain tactics to impress upon the Treaty 7 leaders the absolute necessity of entering the agreement. While many of the First Nations’ leaders harbored some suspicions about the process and some of the officials involved in that process, they were assured that their requests would be honored. They were also the victims of artful maneuvering.

Voluntary Consent

In spite of the high-toned rhetoric about tribes and First Nations freely signing treaties, the land acquisition policy was only occasionally accomplished by fair, arms-length transactions. Most of the time the government acquired lands by a combination of coercion, fraud, threat of force, or actual military force. . . . It is absurd to argue that Aboriginal tribes knowingly and voluntarily gave up their claims to these lands.⁶⁰

Evidence of bad faith negotiating on the part of the Canadian officials is present.

Questionable tactics were used to “persuade” the First Nations to agree to the treaty. The Mounties intimidated many of the Blackfoot people by assuming a military function during the Treaty 7 negotiations, “as in their dress and discourse they played the part of a military colour guard for the government officials present.”⁶¹ For instance, the Mounties had aimed cannons right at the camps where the people stayed.⁶² Other accounts support the claim that the N.W.M.P. used intimidation tactics to coerce the already suspicious people to enter the treaty: “They were parading and marching around and shooting their cannons.”⁶³

The Treaty 7 leaders felt there was no alternative to signing the agreement.⁶⁴ They were threatened by the N.W.M.P.’s show of force. It was indicated to the First Nations that unless they signed the treaty, war would erupt.⁶⁵ “The power relationship between the Aboriginal government and the Canadian government was not equal, and leaders such as Crowfoot and Red Crow were aware that military force was being used to slaughter indigenous people in the United States.”⁶⁶ Threat of force was not the only stratagem employed to coerce the Treaty 7 leaders into signing the treaty. Duplicity played a major role as well.

The Canadian representatives did not inform the First Nations that the peace alliance had any nexus to a land surrender.⁶⁷ Each First Nation party to the treaty may have understood the treaty differently, owing to different languages and dialects, but the consensus was that the treaty was a peace alliance and an agreement to *share* the land and resources in return for treaty rights.⁶⁸ Although the Canadian officials undoubtedly desired peace as part of the agreement, the underlying motives are undeniable. “[T]he nations were asked to give the Whites access to the land for settlement but . . . there was virtually no discussion of surrendering the land.”⁶⁹

By accommodating the newcomers, the Aboriginal people hoped to work out an arrangement to share the land so that both sides could benefit from living side by side. They could not have known that the newcomers expected more than a commitment to share the land, that in fact they wanted to take what they could, even if it meant disregarding the treaties. The Aboriginal leadership did not know about the cultural attitudes that had long been evolving in Europe, which privileged the culture of one class above that of all others. . . . There never was a reconciliation between what was actually discussed at Blackfoot Crossing in September 1877 and what was included in the written legal text of the Treaty 7 document. The territorial imperative of the Crown is still imposed today upon the First Nations of Treaty 7.⁷⁰

Furthermore, it appears that all First Nations understood the promises to mean they would receive from the Canadian government money, unrestricted hunting rights, education and medical aid.⁷¹ “The five nations were to give peace and access to land in exchange for the government’s many ‘sweet promises.’ . . . That they would be taken care of was the theme reoccurring throughout the elders’ testimony.”⁷² As one elder explained, “[t]he police told us that if we agreed not to fight anymore, the government would give us money, food, and gifts.”⁷³ The treaty commissioners did not stop at promising future gifts, however; they also emphasized past acts of kindness on the part

of the government, in combination with veiled threats. For instance, after reminding the Treaty 7 leaders of all the benevolent acts the Canadian government had performed to benefit the Blackfoot,⁷⁴ Commissioner Laird cunningly prophesied the extinction of the buffalo and admonished the tribes to begin thinking of new ways to find food.⁷⁵ The significance of these artful suggestions was underscored by the Blackfoots' awareness of how tribes in the United States had fared under similar circumstances. Furthermore, evidence of deception in the treaty making process on the part of Her Majesty's agents was available to the Treaty 7 leaders through their connections with other First Nations who had entered into similar agreements with the Crown.⁷⁶

It did not take long for the Treaty 7 leaders to have such an experience themselves. After Treaty 7 was entered, James Macleod articulated "the impossibility of enforcing two of the major points that the Blackfoot, Tsuu T'ina, and Stoneys thought they had secured from the treaty commissioners: that the Cree and Métis would be kept off their lands and that the buffalo would be preserved."⁷⁷ The commissioners, rather than intending to fulfill their promises, wished to "tranquilize" the First Nations because the "urgency of getting a treaty signed meant that it was important to agree to some requests so that other more controversial parts . . . could be downplayed or perhaps not even mentioned."⁷⁸ The list of schemes concocted to persuade the First Nations that Treaty 7 was necessary and unavoidable, a good idea, in the best interests of the Treaty 7 Nations and sympathetic merely illustrates the pressing need to indulge the First Nations to the point where they could not object to what eventually was reduced to writing.

Evidence from the reports of Commissioner Laird suggest that he "agreed to

demands that he never had any intention of seeing enforced. He certainly did not include the demands in writing.”⁷⁹ Considering the language barriers, of which the commissioners were fully aware, along with the cultural differences, intimidation tactics and insistence that the Treaty 7 Nations somehow owed the government for past favors, this betrayal illustrates the lengths to which the government agents would travel to secure what they knew was an unlawful land surrender. “Recurrent in the memories of the leaders was the fact that what the First Nations had said in the treaty negotiations was left unrecorded and that what emerged afterwards was far different in emphasis from what the First Nations remembered.”⁸⁰ Indeed, without some of these duplicitous tactics, the treaty making process likely would not have succeeded.⁸¹

Procedural Infirmary

Additional controversy surrounds the procedural validity of the treaty. The First Nation signatories did not actually sign the document. Because the leaders who are purported to have agreed to the treaty’s terms could not speak English, much less sign their English names, government officials marked an “X” for each person whose name appears on the treaty document. After having his X marked for him, each leader was to “touch the pen” with which the X was written, symbolizing his assent to the terms of the treaty. At least one manifestation of this symbolic process was not completed, however: “Crowfoot never touched the pen with which he was to sign the treaty and . . . therefore, technically the treaty remains unsigned by the First Nations of Treaty 7.”⁸² Especially when considered in light of the interpretive inaccuracies, conceptual inconsistencies, duplicity and intimidation tactics, this procedural dereliction calls into

serious question the legal validity of Treaty 7.

Perhaps the most opprobrious and incriminating deficiency connected with Treaty 7 was admitted by Prime Minister MacDonald, in a letter he wrote to Lieutenant-Governor Edgar Dewdney in 1883. The correspondence reads as follows:

My Dear Dewdney,

Vankoughnet has sent you back your Blackfoot Treaties in order to get them verified under the Act. The provision is not a new one as Mr. Laird supposes.

It is to be found in the Act of 1876. The original treaties of surrender with the Indians are with the Nations & can therefore be dealt with by the Chiefs.

But when a specific Indian Reserve has been established, each member of the band has a legal interest in the Reserve, a title in fact, of which he cannot be deprived without assent.

You had better take Mc[.]eod with you. He can administer the affidavits as Stipendiary Magistrate – tho' he was a comm[.]r. The assent of the majority present is only required, and if they were aware of the Terms of the Treaty, & did not dissent, it may be held & properly held to be, a unanimous decision.⁸³

The admission by the Prime Minister of Canada that no single member could be deprived of his land without consent, but that only a majority needed to assent since silence indicated agreement, illustrates the use of fraud in procuring Blackfoot cooperation in making the treaty. It is clear that the Blackfoot were *not* "aware of the Terms of the Treaty," as it is also clear that they did not dissent because they were misinformed, cajoled and intimidated. Thus, Treaty 7 is invalid, and the taking and subsequent occupation of the Blackfoot land referred to in the treaty have no legal basis.

Notwithstanding the controversies surrounding the making of the treaty and its text, the Canadian government has not dealt seriously with these issues. "[A]reas of

the treaty that are clearly problematic have been glossed over and the discourse of those who hold power has allowed authors to ignore difficult issues.”⁸⁴ This policy appears contrary to the fiduciary obligation owed to First Nations. “The Crown was left with legally enforceable fiduciary duties: ‘[f]ailure of the Crown to perform the obligations would cause the jurisdictional interests over the land to revert to the First Nations.’”⁸⁵

Canons of Treaty Construction

Even if one could argue successfully that Treaty 7 is not invalid, Canadian law itself imposes on the Canadian government an obligation to construe such treaties as the First Nations understood them.⁸⁶ It is no longer acceptable to rely on the plain meaning of the terms used in the treaty document for controlling interpretation.⁸⁷ Therefore, the terms of Treaty 7 do not control current interpretations. What the Blackfoot and other Treaty 7 leaders understood as the treaty’s terms controls how the document is to be interpreted. Because the Blackfoot construed Treaty 7 as a peace agreement, whereby they were to receive certain compensations in exchange for *sharing* their land with the newcomers, that is all to which they agreed, and that is all to which the Canadian government is lawfully entitled to receive. The Canadian government, however, has appropriated vast tracts of Blackfoot land, and has usurped the inherent sovereign right of Blackfoot to govern themselves. The Blackfoot never knowingly, voluntarily or lawfully relinquished these lands or their self-governing prerogatives. The Canadian courts and administration violate Canada’s own rules of treaty construction when Treaty 7 is interpreted in a contrary manner. Relations between the Blackfoot Nation and the Canadian government are based on the terms of

Treaty 7 as interpreted in violation of Canada's canons of treaty construction, and governed by imposition of the *Indian Act*.

The Indian Act

*"[G]overnmental action taken 'for the good of the Indians,' effectively abolished Indian religion, culture and lifestyle."*⁸⁸

The Chief Justice of Canada's Supreme Court has acknowledged the real threat to Aboriginal interests by governmental intrusion into their affairs:

Our history has shown, unfortunately all too well, that Canada's aboriginal peoples are justified in worrying about government objectives that may be superficially neutral but which constitute *de facto* threats to the existence of the aboriginal rights and interests.⁸⁹

The terms of the *Indian Act* infringe on the Blackfoot Nation's right to determine its internal affairs and thus its right to self-determination. The paternalistic provisions strip the power to govern from the Nation and place that power in the hands of the Crown or the Minister of Indian Affairs.⁹⁰ Without some of its provisions, however, all Native peoples under its jurisdiction would suffer. It typifies the proverbial double-edged sword. The *Indian Act* is a symbolic manifestation of the conflicting objectives of Aboriginal policy. The act and the policy it codifies recognize the distinctiveness and inherent rights of Aboriginal peoples vis à vis the colonizing government on the one hand, but oppress them by imposing foreign law on the other. The policy that purports to "protect" Aboriginal peoples while at the same time creating a source of power from which they need protection imposes unjustifiable restrictions on the peoples' rights to self-determination recognized by both Canadian and international law.

While some of the *Indian Act* provisions,⁹¹ the

existence of the act itself interferes with the exercise of self-determination. Section 18(1) of the *Indian Act* provides as follows:

Subject to this Act, reserves are held by Her Majesty for the use and benefit of the respective bands for which they were set apart, and subject to this Act and to the terms of any treaty or surrender, the Governor in Council may determine whether any purpose for which land in a reserve are used or are to be used is for the use and benefit of the band.⁹²

This provision may provide protection with one hand, but with the other it takes away the inherent right of the Blackfoot to make their own determinations regarding how their own land and internal relations will be governed.

A Nation cannot exercise self-determination when an ostensibly higher power enjoys the discretion to repudiate that Nation's law. The act also provides for the manner in which First Nations will select their band councils.⁹³ When a First Nation chooses to employ customary governance structures, the Minister still may step in and impose his or her will on the Nation. If, for instance, any by-law passed by the band council, whether elected under *Indian Act* provisions or by "custom," is inconsistent with the Minister's views, he may disallow the by-law under s. 82(2). This system is wholly inadequate for the Blackfoot to manage its internal affairs, and it is disruptive to the Reserve community.

The abuses suffered by the Blackfoot Nation at the hands of the Band Council exemplify the practical realities stemming from application of these provisions. Evidence is available suggesting the current members of the Band Council engage in bribery and fraud to procure their political positions, and once in office, there is evidence of misappropriation of Blackfoot funds. There is also evidence that the Band Council and the Royal Canadian Mounted Police act in concert to maintain the

Council's current personnel. It has been discovered that members of the Council gave "gifts" to their friends and relatives in order to receive favorable votes in upcoming elections.⁹⁴ When others attempted to compete against the incumbent councillors, the ballots were not kept secret, and several ballots supporting the new opposition were designated "spoiled," while the R.C.M.P. watched over the process.⁹⁵ A member of the Blackfoot Nation has indicated that since 1921, the Blackfoot people have received zero dollars from land and resource leasing by the Council to outside corporations. When individual members of the Nation are to receive one-half, they receive none. At the same time, however, the Council seems to have access to unlimited funds for expenses to attend "meetings," where no business is accomplished.⁹⁶ If the Minister has the paternalistic power to oversee and preempt the internal governmental matters of the First Nations, why has this power not been effectuated to remedy these abuses?

III. LEGAL ISSUES

In 1996, the Royal Commission on Aboriginal Peoples issued a report containing the following statement: "*Canadians need to understand that Aboriginal peoples are nations . . . To this day, Aboriginal people's sense of confidence and well-being as individuals remains tied to the strength of their nations. Only as members of restored nations can they reach their potential in the twenty-first century.*"⁹⁷ Given that this report was commissioned by the Canadian government, it seems curious that the government refuses to heed its observations. Instead, the "government has insisted on dominating governance and land rights of First Nations, severely limiting First Nations'

rights and abilities to self-government.”⁹⁸ The honor of the Canadian government and the Crown itself could be at stake if recognition of these principles does not occur.

Although the Canadian government would argue that a right to self-determination does not directly translate into an unlimited right to sovereignty for the Blackfoot Nation, legal authority supports the exercise of sovereignty by the Blackfoot.

Where the sentiment of nationality exists in any force, there is a prima facie case for uniting all the members of the nationality under the same government, and a government to themselves apart. *This is merely saying that the question of government ought to be decided by the governed. One hardly knows what any division of the human race should be free to do, if not to determine with which of the various collective bodies of human beings they choose to associate themselves.*⁹⁹

The Blackfoot Nation is not required to ask permission from the Canadian government to declare its independence, because their right to self-determination as a people, under the provisions of the United Nations Charter, allows them to exercise that right notwithstanding the views of the colonizing nation. Because the Blackfoot territory is illegally occupied by the Royal Canadian Mounted Police, however, it is incumbent upon the Canadian government to recognize the right to proclaim independence and remove the illegal occupiers presently.

Characteristics of a State

The inherent powers of Indian self-government include, among others, the power to determine the Nation’s form of government, the power to define conditions for membership, and the power to regulate domestic relations between members, but the *Indian Act* denies these claims.¹⁰⁰ “[T]he Crown officers utilized the traditional government only for land surrenders and treaties, and otherwise deprived that

traditional government of any powers of management or control.”¹⁰¹

Although Canada is not a State Party to the Convention on the Rights and Duties of States adopted by the Seventh International Conference of American States,¹⁰² the guidelines provided therein illustrate that the Blackfoot Nation exhibits the four characteristics of a “state as a person under international law . . . : (a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with other states.”¹⁰³ As mentioned above, the Blackfoot peoples have existed since time immemorial. They have not allowed themselves to be assimilated into the larger Canadian society, even though the assimilationist agenda of the Canadian government has been imposed upon them from the beginning of relations between the two peoples.

The Reserves themselves are testimony to the existence of a defined territory. Additional lands illegally acquired by the Canadian government are included in this territory. Blackfoot government is illustrated by the organization of “chiefs” who entered into treaty negotiations with the treaty commissioners. Historical forms of self-governance continue, through recognition of and participating in traditional societies, such as the Brave Dog Society. Furthermore, although the *Indian Act* places restrictions on the exercise by First Nations of many self-governing powers, a declaration of independence would not issue without some form of organized governance. Finally, the capacity to enter into relations is illustrated by the many treaties the Blackfoot formed before Treaty 7.

Reference Re Secession of Quebec

In *Reference Re Secession of Quebec*¹⁰⁴ the Supreme Court of Canada interpreted international law in a manner entirely consistent with the Blackfoot Nation's declaration of independence and right to sovereignty. One of the central questions answered by the Supreme Court involved whether the National Assembly, legislature or government of Quebec had the right, under international law, to secede unilaterally from Canada. Although the Court answered in the negative, the facts presented in *Reference re Secession of Quebec* are distinguishable from the facts involved in the Blackfoot Nation's decision to declare its independence from Canada, and the legal analyses support that declaration.

Although the Court found that “[i]t is clear that international law does not specifically grant component parts of sovereign states the legal right to secede unilaterally from their ‘parent’ state,”¹⁰⁵ the Court stated that the legal right would be conferred on peoples in certain circumstances not present in that case. The Court analyzed alternative propositions offered in support of Quebec's right to secede: absence of a specific prohibition on unilateral secession implied permission; and the duty of states to recognize secession as part of the exercise of the right of peoples to self-determination.¹⁰⁶ In reference to the first proposition, the Court observed that international law neither expressly grants nor denies a right to unilateral secession, but that “international law places great importance on the territorial integrity of nation states and, by and large, leaves the creation of a new state to be determined by the domestic law of the existing state of which the seceding entity presently forms a part.”¹⁰⁷

Because the Blackfoot at no time consented to become part of the Canadian state, and because the Blackfoot inhabited the territory that was eventually, illegally subsumed within that state, their sovereign rights are both pre- and extra-constitutional.

Furthermore, the Court added that the second proposition involving the right of peoples to self-determination would not necessarily implicate the Constitution and other domestic laws of Canada.

“While international law generally regulates the conduct of nation states, it does, in some specific circumstances, also recognize the ‘rights’ of entities other than nation states -- such as the right of a people to self-determination.”¹⁰⁸ The Court cited several international documents that specifically recognize the right of peoples to self-determination. “The existence of the right of a people to self-determination is now so widely recognized in international conventions that the principle has acquired a status beyond ‘convention’ and is considered a general principle of international law.”¹⁰⁹ The documents codifying the recognition of this right primarily include the Charter of the United Nations,¹¹⁰ the United Nations International Covenant on Civil and Political Rights (ICCPR),¹¹¹ and the International Covenant on Economic, Social and Cultural Rights (ICESCR).¹¹²

Article 1 of the Charter of the United Nations, Can. T.S. 1945 No. 7, states in part that one of the purposes of the United Nations (U.N.) is:

Article 1

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2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace[.]

Article 55 of the U.N. Charter further states that the U.N. shall promote goals such as higher standards of living, full employment and human

rights "[w]ith a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples".¹¹³

Article 1 of both the ICCPR and the ICESCR provide that "[a]ll peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."¹¹⁴ The Court also cited the United Nations General Assembly's Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations, which states,

By virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter.¹¹⁵

Thus, under these international law provisions, the Blackfoot peoples possess the right to determine their political status without interference from the Canadian government. They have determined their political status as an independent, sovereign nation, and every nation, including Canada, has an obligation to honor this exercise of the Blackfoot Nation's internationally recognized right. The Canadian Supreme Court cited additional international legal authority that would support the sovereign right of the Blackfoot peoples to declare their independence from their colonizers. Under the General Assembly's Declaration on the Occasion of the Fiftieth Anniversary of the United Nations, "the U.N.'s member states will . . . reaffirm the right of self-determination of all peoples, taking into account the particular situation of peoples under *colonial or other forms of alien domination* or foreign occupation, and recognize

the right of peoples to take legitimate action . . . to realize their inalienable right of self-determination.”¹¹⁶ Under the circumstances created by the Canadian government through its illegal occupation of Blackfoot territory and imposition of the *Indian Act*, the only action available to the Blackfoot Nation for realization of their right to self-determination is that which has been executed, a declaration of independence.

Although this provision ensures that the territorial integrity of independently sovereign states will not be disturbed by application of its terms, that reservation only applies when the state complies “with the principle of equal rights and self-determination of peoples and thus possessed of a Government representing the whole people belonging to the territory without distinction of any kind. . . .”¹¹⁷ In the case of the Blackfoot, Canada has not complied with the principles of equal rights and self-determination, and the Canadian government does not represent the Blackfoot people in any meaningful way. The illegal occupation of Blackfoot territory, improperly justified by the invalid terms of Treaty 7, and imposition of the *Indian Act* evidence noncompliance with the principles of equality and self-determination. Employment opportunities are scarce for Blackfoot individuals, on and off the Reserve, even in a business conducted on Blackfoot land, administered by employees of the Alberta government.¹¹⁸ Furthermore, how many Blackfoot individuals are members of Parliament? What is the proportion of Blackfoot individuals to non-Aboriginal (i.e., white) individuals employed by the Department of Indian Affairs and Northern Development?

These circumstances do not provide the sole or even primary basis for the Blackfoot Nation’s assertion of sovereignty vis à vis the Canadian government,

however. The territorial integrity of a state becomes virtually irrelevant under certain circumstances. As quoted above, special consideration is given in cases of colonization, alien domination and foreign occupation. The Supreme Court of Canada explicitly recognized a people's international legal right to secede under these exceptional circumstances, when it is not possible for the people's right to self-determination to be exercised "within the framework of existing sovereign states and consistently with the maintenance of the territorial integrity of those states."¹¹⁹ Thus, under international law as interpreted by the Supreme Court of Canada itself, the Blackfoot possess a right to secede from the Canadian state, which they have exercised through the declaration of their independence.

A threshold question in determining whether a group may exercise its right to self-determination in this way and under these circumstances is whether the group purporting to exercise the right constitutes "a people." The Court, while noting that the "precise meaning of the term 'people' remains somewhat uncertain,"¹²⁰ indicated that this threshold question could be answered by determining whether the population shares certain characteristics, such as a common language and culture. While the Treaty 7 Nations did use varied dialects, the Blackfoot language is part of the Algonkian language group.¹²¹ Their cultural histories are undeniably common, as discussed above in reference to the making of Treaty 7. Furthermore, they have maintained aspects of their cultural traditions, such as their special relationship with the land and natural resources,¹²² and internal governance structures, such as the functioning of the Brave Dog society, despite attempts by the Canadian government to destroy their culture and assimilate their people into the dominant colonizing society. They continue

to live in relatively self-contained social arrangements on the reserves. It is doubtful that any person or tribunal would deny that the Blackfoot constitute a people in the international legal sense of the term.

The next step in the Court's analysis described the scope of the right to self-determination. Internal and external versions of self-determination were delineated. The usual route to realizing self-determination is through internal functions, which involve political, economic, social and cultural pursuits within the existing state's governmental infrastructure.¹²³ The *Indian Act* represents a most flagrant interference with internal self-determination. When, as here, internal self-determination is inadequate because the meaningful exercise of the right is blocked, a right to external self-determination materializes. This right to external self-determination would include unilateral secession.¹²⁴ The position of Quebec in this regard is distinguishable from that of the Blackfoot because, as the Court observed, the Quebec people have not suffered attacks on their physical existence, and they have enjoyed and continue to enjoy considerable representation in the Canadian government.¹²⁵ "The population of Quebec is equitably represented in legislative, executive and judicial institutions."¹²⁶ The population of the Blackfoot is not.

Again, recognition of this right is not intended to facilitate the destruction of a state's territorial integrity, political independence or domestic unity, but these entitlements are conditional.¹²⁷ In the case of the Blackfoot, Canada has never enjoyed a valid claim to the Blackfoot's territory, because the Blackfoot never surrendered the land; exercise of sovereignty by the Blackfoot Nation is irrelevant to Canada's political independence; and Blackfoot secession would not affect the unity of the Canadian

state. Lack of Blackfoot participation in Canadian governance, and the relative detachment of the Blackfoot from the whole of Canadian society suggest that the unified Dominion is uninterested in whether the Blackfoot are unified with the rest of Canadians or not. Furthermore, the “maintenance of the territorial integrity of existing states, including Canada” is incompatible with “the right of [the Blackfoot] to achieve a full measure of self-determination.”¹²⁸ Again, the illegal occupation of Blackfoot land occasioned by the invalid Treaty 7, imposition of the *Indian Act* and the lack of meaningful representation of the Blackfoot in Canadian governance cause this incompatibility.

Additionally, the Supreme Court’s analysis of colonial and oppressed peoples presents an authoritative legal framework in which the Blackfoot declaration of independence should be recognized.

[T]here are certain defined contexts within which the right to the self-determination of peoples does allow that right to be exercised "externally", which, in the context of this Reference, would potentially mean secession:

“...the right to external self-determination, which entails the possibility of choosing (or restoring) independence, has only been bestowed upon two classes of peoples (those under colonial rule or foreign occupation), based upon the assumption that both classes make up entities that are inherently distinct from the colonialist Power and the occupant Power and that their "territorial integrity", all but destroyed by the colonialist or occupying Power, should be fully restored[.]”¹²⁹

Thus, according to the Supreme Court of Canada, the “right of colonial peoples to exercise their right to self-determination by breaking away from the ‘imperial’ power is *now undisputed*.”¹³⁰ In situations of former colonies, the right to external self-determination includes the right of a people to declare its independence from the colonial power.¹³¹ Canada is but one former colony in North America, and the Blackfoot

were and continue to be “inherently distinct” from the European-derived colonial powers. Their territory was “all but destroyed” by that colonial power, and it thus should be “fully restored.”

Additional Sources of International Legal Authority

Violations of international human rights law have been and continue to be committed against the Blackfoot Nation by the Government of Canada. It is within the context of these violations that the Blackfoot Nation has declared its independence. By the terms of the International Covenant on Economic, Social and Cultural Rights,¹³² the International Covenant on Civil and Political Rights,¹³³ and the Resolution on Permanent Sovereignty over Natural Resources,¹³⁴ the actions of the Governments of Canada and Alberta have violated the rights of the Blackfoot Nation as recognized under the Universal Declaration of Human Rights,¹³⁵ to which Canada is a party.

The Universal Declaration of Human Rights provides, *inter alia*:

Article 15. (1) Everyone has the right to a nationality. (2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality. . . .

Article 17. (1) Everyone has the right to own property alone as well as in association with others. (2) No one shall be arbitrarily deprived of his property. . . .

Article 23. (1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment. . . .

Article 25. (1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family. . . .

The current state of affairs existing between the Blackfoot and the Canadian government is contrary to these principles. First, the Blackfoot are effectively denied their nationality by their forced integration into the Canadian governmental structure. They have not indicated a desire or consent to becoming part of the Canadian polity. Second, the Blackfoot have been deprived of their property by operation of Treaty 7, which is invalid and unenforceable. Thus, their territory is being occupied illegally. Third, protection against unemployment is virtually nonexistent for the Blackfoot: “[w]elfare and a lack of employment on the reserves also continue as major difficulties.”¹³⁶ Similarly, the standard of living for most Blackfoot people is so low, one Blackfoot member indicated he could not afford to purchase a shovel to straighten up his yard. The same Blackfoot member indicated he is physically able to work, but because employment opportunities on his Reserve are not available to him, he is forced to live off welfare checks of \$229.00 per month. His wife currently receives a disability pension, but she would lose her entitlement if he ever did secure employment and receive adequate compensation. He has tried to make a living on his own, but certification is needed for the jobs for which he is qualified. Certification requires the expenditure of money he does not have.¹³⁷

These problems implicate additional sources of international legal authority. The International Covenant on Economic, Social and Cultural Rights¹³⁸ declares that states party to the Covenant, including Canada, recognize the right to work. Concomitant to this recognition is the state’s duty to take steps to safeguard this right, including “technical and vocational guidance.”¹³⁹ The Covenant further provides that all people have a right to an adequate standard of living.¹⁴⁰ The inability to afford a simple tool

like a shovel does not indicate an adequate standard of living.

This right to an adequate standard of living includes rights to adequate housing and “the continuous improvement of living conditions.” The man who could not afford a shovel encountered similar problems when he needed to repair his tin roof. Two pieces of tin were blown off the roof, but he did not have the tools necessary to make the repairs himself. He contacted the Housing Department in Brocket to ask for assistance. A man visited his house, took a picture of the damaged roof and left. Six months passed, but the Housing Department had done nothing to repair the roof, supply tools or even contact the homeowner. After the homeowner contacted the Housing Department again, the employee returned and took more photographs of the roof. Three months later, four men arrived with a scaffold to repair damage that had never required more than one man and a ladder, which still cost more than the homeowner could afford. Because these four men spent most of their time sitting and smoking cigarettes, eight days passed before two pieces of tin were replaced on the roof.

The International Covenant on Civil and Political Rights (ICCPR)¹⁴¹ binds the States Parties, including the Governments of Canada and Alberta, to certain duties.

Article 9. (1) Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. . . . (2) Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

Article 17. (1) No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. (2) Everyone has the right to the protection of the law against such interference or attacks.

There is evidence that the Royal Canadian Mounted Police have detained persons in violation of these provisions. For instance, an elderly Blackfoot man was

arrested and requested the services of an attorney. He had not retained one, nor did he regularly employ the services of an attorney. Because he did not “have” a lawyer, the police told him he had waived his right to an attorney. The man, whose formal, western education was limited, did not understand the concept of waiver. Nevertheless, the concept was not explained to him. He was told to sign a paper regarding this waiver, so he signed it. Although he did not understand what had transpired, partly because the process was inaccurately explained to him, if explained at all, he never received the assistance of an attorney.¹⁴² Recently, a young man was stabbed to death on the Reserve. The police arrested a suspect in connection with the murder, this time a young citizen of the Blackfoot Nation, but neither informed him of the charges against him nor explained his rights.¹⁴³

As discussed above, the practices of the Blackfoot Band Council have been corrupted by imposition of the *Indian Act*, which paternalistically regulates council elections and structure at the same time it implicitly sanctions, by the Minister’s inaction, behavior that is inconsistent with the self-defined interests of the Blackfoot Nation.

These circumstances violate the following provision of the ICCPR.

Article 25. Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives; (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors; (c) To have access, on general terms of equality, to public service in his country.

International Law and the Canadian Land Claims Process

The International Covenant on Civil and Political Rights¹⁴⁴ and the International Covenant on Economic, Social and Cultural Rights¹⁴⁵ both recognize, *inter alia*, the following principles.

“*Article 1.* (1) All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development. . . .

(3) The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

Implementation of these rights is addressed in each Covenant’s article 2. Thus, the Government of Canada is obligated under the terms of these Covenants, to which it is a State Party, to establish national systems and procedures that protect these rights and provide effective remedies. No system exists, however, that adequately implements these rights. These rights involve far more than the simple land claims available to some First Nations occupying territory within the external boundaries of the Canadian state. The comprehensive land claims process implemented by the federal government, for instance, does not cover land claims by First Nations who entered treaties with the government.¹⁴⁶ Even if the invalidity of Treaty 7 is presumed, this process in no way attempts to restore the right to self-government possessed by the Blackfoot. Similarly, the specific land claims policy, while purporting to resolve issues relating to the illegal occupation of reserve lands,¹⁴⁷ would not address the right of the colonized people to external self-determination described by the Supreme Court of Canada in the *Reference Re Secession of Quebec* case.

Finally, by the terms of the Resolution on Permanent Sovereignty over natural resources,¹⁴⁸ the General Assembly declared that “[t]he right of peoples . . . to permanent sovereignty over their natural wealth and resources must be exercised in the interest of their national development and of the well-being of the people of the State concerned.”¹⁴⁹ The Resolution further provides that “[t]he free and beneficial exercise of the sovereignty of peoples and nations over their natural resources must be furthered by the mutual respect of States based on their sovereign equality.” It is “contrary to the spirit and principles of the Charter of the United Nations” when violations of these rights of peoples occur.¹⁵⁰ These provisions apply with particular relevance to the Blackfoot people. As explained in their declaration of independence, the Blackfoot people relate to the land and natural resources in a manner distinct from European notions of property.

At the root of many disputes about land is a fundamental difference about the meaning of land. Many First Nations . . . referred to the land as Mother Earth. They did not view land as something which could be owned or sold. Most Europeans, on the other hand, viewed land as property which could be bought and traded like any other commodity.¹⁵¹

Viewed in concert with the misconceptions apparent at the making of Treaty 7 and this resolution, these divergent conceptualizations of land indicate that no land claims policy, comprehensive, specific or otherwise, will effectuate the exercise of the Blackfoot people’s fundamental right to self-determination. In other words, a successfully negotiated land claim, if it were even possible, would only recognize European-derived notions of land tenure. It would express a one-sided solution to a multifaceted problem. The Blackfoot people, or any people, can not be viewed as exercising the right to self-determination if their fundamental philosophies are ignored in

this manner.

Canada's Reputation as a Human Rights Vanguard

*"In international circles, Canada is regarded as a world leader in the promotion of human rights. Canadian leaders and ambassadors have consistently pressed for protection of high standards on the human rights issues of marginalized and vulnerable populations."*¹⁵²

Notwithstanding Canada's reputation in the international human rights community as a leader in protecting human rights, its reputation for protecting the human rights of First Nations within its borders leaves much to be desired.¹⁵³ For instance, in its 1999 review of Canada's compliance with the International Covenant on Civil and Political Rights, the United Nations Human Rights Committee "repeatedly criticized Canada on its handling of First Peoples' issues."¹⁵⁴ The mechanisms needed to respond to and correct these criticisms are nonexistent in Canada, however. Considering the support given First Nations in the United Nations, it would behoove the Canadian government to consider these issues more seriously.

Furthermore, if the Canadian government follows its current path by disregarding the Blackfoots' decision to assert their sovereign rights, the reputation of Canada in the international human rights community will be threatened further. If a human rights vanguard is viewed by other nations as slipping from its commitment to human rights principles, those other nations may follow suit. "Some nations even take refuge in Canada's shortcomings, saying the continued poor treatment of First Peoples across Canada invalidates Canadian moral authority to speak about human rights abuses internationally."¹⁵⁵ If Canada loses its persuasive supremacy internationally, it is alarming to consider what abuses other, less humane nations will consider within the

bounds of morals and the law. If Canada truly has an interest in the promotion of human rights on an international scale, it would do well to promote human rights in its own territory.

On the national front, Canada would benefit from recognizing the Blackfoot Nation's declaration of independence. The stability stemming from resolving such a claim would make it clear to other First Nations living within Canada's borders, although they are Nations without the same claims to sovereignty as the Blackfoot, that Canada is committed to recognizing their grievances in a meaningful way. Different peoples employ different methods for resolving various political, social and legal claims. The fact that the Blackfoot Nation has declared its independence should not concern Canada with respect to other First Nations following the lead. The Blackfoot have specific claims that other Aboriginal peoples would find irrelevant or inappropriate to their needs. Therefore, recognition of Blackfoot sovereignty would not threaten to introduce a "slippery slope" to Canada's Aboriginal affairs, because if other First Nations had desired to follow the same path, they would be expected to have done so already. Recognition of Blackfoot sovereignty would only strengthen Canada's relations with other First Nations and restore Canada's reputation in the international human rights community as an advocate of human rights.

IV. CONCLUSION

The Blackfoot Nation has declared its independence from Canada because the Blackfoot people possess a fundamental right, recognized at international law, to self-determination. The Supreme Court of Canada has recognized that this right includes a right of unilateral secession from a colonizing power. It has been impossible for the Blackfoot Nation to exercise any meaningful form of internal self-determination because their lands have been illegally appropriated and occupied by the Canadian government, and Canadian law has been imposed on them without their consent. The illegal occupation of Blackfoot lands results from the invalid Treaty 7, entered into between Her Majesty the Queen by Her commissioners and the Blackfoot and other Nations in 1877. The treaty commissioners employed duplicitous tactics to coerce the First Nations' leaders to agree to the terms of a written document they did not fully appreciate. Their lack of complete understanding of these terms resulted from inaccurate interpretations, promises that were never intended to be fulfilled, and fundamental differences in the conceptualization of land use and ownership, and the purpose of a treaty.

In signing Treaty 7, there is no evidence to support a contention that the Blackfoot and other First Nations' leaders ever consented to surrender their lands or submit to colonial rule. Nevertheless, the *Indian Act* has been imposed on these peoples, and operates to strip the Blackfoot of any meaningful control over their lands, their governance and their daily lives. They have the right to control these aspects of

their existence, and Canada has an obligation, under international and domestic law and the most basic principles constituting moral integrity, to recognize this right by accepting the Proclamation Restoring the Independence of the Sovereign Nation State of Blackfoot.

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1. Blackfoot Nation, Declaration of Independence (November 29, 1999) (on file with Blackfoot Nation).
 2. R.S.C., ch. I-5, ss.1-122 (1985) (Can.).
 3. C. Roderick Wilson, *The Plains – A Regional Overview*, in NATIVE PEOPLES: THE CANADIAN EXPERIENCE 353, 355 (R. Bruce Morrison & C. Roderick Wilson, eds., 1986); *see also* OLIVE PATRICIA DICKASON, CANADA'S FIRST NATIONS: A HISTORY OF FOUNDING PEOPLES FROM EARLIEST TIMES 44-45, 194-95 (1992).
 4. Hugh A. Dempsey, *The Blackfoot Indians*, in NATIVE PEOPLES: THE CANADIAN EXPERIENCE 404, 427 (R. Bruce Morrison & C. Roderick Wilson, eds., 1986).
 5. Dempsey, *supra* note 4, at 404.
 6. Dickason, *supra* note 3, at 297.
 7. Dempsey, *supra* note 4, at 430.
 8. A.D. Fisher, *Great Plains Ethnography*, in NATIVE PEOPLES: THE CANADIAN EXPERIENCE 358, 359 (R. Bruce Morrison & C. Roderick Wilson, eds., 1986).
 9. Although Europeans and other western peoples may regard this system of documentation as a manifestation of unreliable hearsay, when considered within the larger context of Aboriginal cultures, this characterization misinterprets the essence of its use. Because oral documentation is communicated to other individuals from the same cultural tradition, the speaker and the listener will understand what is being communicated from the same point of reference. Additionally, the spoken word is as powerful and meaningful to the listener as it is to the speaker.
 - JAMES AXTELL, AFTER COLUMBUS: ESSAYS IN THE ETHNOHISTORY OF COLONIAL NORTH AMERICA 92-93 (1988).
 10. *Delgamuukw v. British Columbia*, [1997] 3 S.C.R. 1010, 1075-76.
 11. SHIN IMAI, ABORIGINAL LAW HANDBOOK 13 (2d ed., 1999), *quoting R v. Sparrow*, [1990] 3 C.N.L.R. 160 (S.C.C.) at P81.
 12. WALTER HILDEBRANDT ET AL., TREATY 7 ELDERS AND TRIBAL COUNCIL, THE TRUE SPIRIT AND ORIGINAL INTENT OF TREATY 7 195 (1996).
 13. *Id.* at viii.
 14. *Id.* at 4.

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15. *Id.* at viii.
 16. *Id.*
 17. *Id.* at 230.
 18. *Id.* at 9.
 19. *Id.* at 240.
 20. *Id.* at 240-41.
 21. *Id.* at 240.
 22. *Id.* at 9.
 23. *Id.* at 10.
 24. *Id.* at 25, 75.
 25. *Id.* at 25.
 26. *Id.* at 210.
 27. *Id.* at 210.
 28. *Id.* at 25, 304.
 29. Dickason, *supra* note 3, at 282.
 30. Hildebrandt, *supra* note 12, at 211.
 31. *Id.* at 211-212.
 32. *Id.* at 25.
 33. *Id.* at 15.
 34. *Id.* at 20-23.
 35. *Id.* at 230-31.
 36. *Id.* at 20-22.
 37. *Id.* at 22.

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38. *Id.* at 58.
39. *Id.* at 124; *see also* Dickason, *supra* note 3, at 194.
40. Hildebrandt, *supra* note 12, at 24.
41. *Id.* at 124-25.
42. *Id.* at 143.
43. *Id.* at 143.
44. *Id.* at 124.
45. RCAP at vol. 1, s. 2(1).
46. Hildebrandt, *supra* note 12, at 200.
47. *Id.* at 195.
48. *Id.* at 108.
49. *Id.* at 67, 111.
50. *Id.* at 111.
51. *Id.* at 197.
52. *Id.* at 197.
53. *Id.* at 23 (emphasis added). Blackfoot elders describe the process with the phrase, “*Anahka aipoihka iipitsinnim aniistoohipi*,” which roughly translates to “The person speaking has choked considerably that which is spoken.” *Id.* at 23.
54. R.S.C., ch. I-5, ss.1-122 (1985) (Can.).
55. Hildebrandt, *supra* note 12, at 218.
56. *Id.* at 219.
57. *Id.* at 144.
58. “Two feet were given up – one for ploughing and two for post holes.” Additional accounts of the negotiations support the assertion that the government officials agreed to this detail. *Id.* at 143-45.

59. *Id.* at 69.

60. Ralph W. Johnson, *Fragile Gains: Two Centuries of Canadian and United States Policy Toward Indians*, 66 WASH. L. REV. 643, 649 (1991).

61. Hildebrandt, *supra* note 12, at 134-35.

62. *Id.* at 136.

63. *Id.* at 137.

64. Dickason, *supra* note 3, at 282.

65. Hildebrandt, *supra* note 12, at 73.

66. *Id.* at 198.

67. *Id.* at 112.

68. *Id.* at 113.

69. *Id.* at 120.

70. *Id.* at 198.

71. *Id.* at 120.

72. *Id.* at 120.

73. *Id.* at 27.

74. In one instance, Commissioner Laird said “that the Blackfoot should pay the government for driving out the whiskey traders rather than that the police should pay for timber they had used.” *Id.* at 244.

75. *Id.* at 242.

76. *Id.* at 13.

77. *Id.* at 247-48.

78. *Id.* at 250-51.

79. *Id.* at 253-54, 287.

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80. *Id.* at 120.
81. *Id.* at 253.
82. *Id.* at 142.
83. Letter from Prime Minister John A. MacDonald to Edgar Dewdney, 18 September 1883, in *Edgar Dewdney Papers* 481, microfilmed on Glenbow Group, Section III, part 4: Correspondence (John A. MacDonald) (Microfilm M-2815, Ottawa) (second alteration in original).
84. Hildebrandt, *supra* note 12, at 199.
85. *Id.* at 206, citing Sakej Youngblood-Henderson, *Land in British Legal Thought*, unpublished manuscript prepared for the Royal Commission on Aboriginal Affairs at 203 (1994).
86. Johnson, *supra* note 60, at 670-71 (citing *R. v. Simon*, [1985] 2 S.C.R. 387, 402).
87. Johnson, *supra* note 60, at 670.
88. *Id.* at 649.
89. SHIN IMAI, ABORIGINAL LAW HANDBOOK 13 (2d ed., 1999), quoting *R v. Sparrow*, [1990] 3 C.N.L.R. 160 (S.C.C.) at P81.
90. *See, e.g.*, R.S.C., ch. I-5, ss. 18(1), 74, 79, 81- 83, 88, 90(2) (1985) (Can.).
91. Imai, *supra* note 89, at 166.
92. R.S.C. ch I-5 (1985).
93. *Id.* s. 74.
94. Telephone interview with Sikapii-Whitehorse, member of the Sovereign Nation of Blackfoot (April 3, 2000).
95. Telephone interview with Sikapii-Whitehorse (April 3, 2000).
96. Telephone interview with Sikapii-Whitehorse (February 1, 2000).
97. ROYAL COMMISSION ON ABORIGINAL PEOPLES, PEOPLE TO PEOPLE, NATION TO NATION x-xi (1996), quoted in Imai, *supra* note 89, at 28.
98. Johnson, *supra* note 60, at 669.

99. Diane F. Orentlicher, *Separatism and the Democratic Entitlement*, 92 AM. SOC'Y INT'L L. PROC. 131, 132 (1998), *quoting* JOHN STUART MILL, CONSIDERATIONS ON REPRESENTATIVE GOVERNMENT (1861), *quoted in* UTILITARIANISM, ON LIBERTY, CONSIDERATIONS ON REPRESENTATIVE GOVERNMENT 392 (1993) (emphasis added).

100. RICHARD H. BARTLETT, THE INDIAN ACT OF CANADA 13 (1980).

101. *Id.* at 14.

102. The Convention on the Rights and Duties of States adopted by the Seventh International Conference of American States, Dec. 26, 1933, 165 L.N.T.S. 19.

103. *Id.* at art. 1.

104. [1998] 2 S.C.R. 217, 161 D.L.R. (4th) 385.

105. 161 D.L.R. at 433-34.

106. *Id.*

107. *Id.* at 434 (citations omitted).

108. *Id.*

109. *Id.* at 434-35 (citations omitted).

110. U.N. CHARTER art. 1, para 2, art. 55.

111. 993 U.N.T.S. 171 (1966), art. 1, para (1), (3).

112. 993 U.N.T.S. 3 (1966), art. 1, para (1), (3).

113. 161 D.L.R. at 435.

114. *Id.*, *quoting* 993 U.N.T.S. 171, art. 1, 993 U.N.T.S. 3, art. 1.

115. G.A. Res. 2625 (XXV), U.N. GAOR, 25th Sess., Supp. No. 28, at121, U.N. Doc. A/8028 (24 October 1970).

116. 161 D.L.R. at 436, *quoting* U.N. General Assembly's Declaration on the Occasion of the Fiftieth Anniversary of the United Nations, G.A. Res. 50/6, 9 November 1995, art. 1 (emphasis added).

117. 161 D.L.R. at 436.

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118. Telephone interview with Sikapii-Whitehorse, member of the Sovereign Nation of Blackfoot (February 1, 2000).
119. 161 D.L.R. at 436.
120. *Id.* at 437.
121. Dickason, *supra* note 3, at 124.
122. Imai, *supra* note 89, at 65.
123. 161 D.L.R. at 437-38.
124. *Id.* at 437-38, 440-441.
125. *Id.* at 441.
126. *Id.* at 441-42..
127. *Id.* at 438-39.
128. *Id.* at 439.
129. *Id.* at 440, *citing* A. Cassese, *Self-determination of peoples: A legal reappraisal* (1995), at pp. 171-72.
130. 161 D.L.R. at 440 (emphasis added).
131. *Id.* at 442.
132. 993 U.N.T.S. 3 (1966).
133. 993 U.N.T.S. 171 (1966).
134. G.A. Res. 1803 (XVII), 17 U.N. GAOR Supp. No. 17 at 15, U.N. Doc. A/5217 (1962).
135. U.N. GAOR, 3rd Sess., Pt. I, Resolutions, at 71, U.N. Doc. A/810 (1948).
136. Dempsey, *supra* note 4, at 432.
137. Telephone interview with Sikapii-Whitehorse, member of the Sovereign Nation of Blackfoot (February 1, 2000).
138. 993 U.N.T.S. 3 (1966).

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139. *Id.* art. 6(2).
140. *Id.* art. 11(1).
141. 993 U.N.T.S. 171 (1966).
142. Telephone interview with Sikapii-Whitehorse, member of the Sovereign Nation of Blackfoot (April 3, 2000).
143. *Id.*
144. 993 U.N.T.S. 171 (1966).
145. 993 U.N.T.S. 3 (1966).
146. Imai, *supra* note 89, at 71-72.
147. *Id.* at 74.
148. G.A. Res. 1803 (XVII), 17 U.N. GAOR Supp. No. 17 at 15, U.N. Doc. A/5217 (1962).
149. *Id.*, ¶ 1.
150. *Id.*, ¶ 7.
151. Imai, *supra* note 89, at 65.
152. ANN POHL, CITIZENS FOR PUBLIC JUSTICE, BUILDING INTERNATIONAL AWARENESS ON ABORIGINAL ISSUES 7 (March 2000) <<http://www.cpj.ca/native/00/strategy.html>>.
153. *Id.* at 7.
154. *Id.* at 17.
155. The following account portends an unsettling future:

The 1998 APEC meeting provides an example. Prime Minister Jean Chrétien spoke at a public social event about international human rights concerns vis-à-vis Malaysia, which at that time included child labour exploitation and the violations of rights of opposition politicians. Reporter John Stackhouse captured Malaysian Prime Minister Mahathir Mohammad shrugging off this criticism with the following remarks: “I’m concerned with human rights world-wide, including Canada . . . I’m concerned with the red Indians, I don’t see them at APEC.”

Id. at 7, *citing* THE GLOBE AND MAIL, November 16, 1998.