

Valuing Tradition: Governance, Cultural Match, and the BC Treaty Process

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Abstract

Self-governance negotiations are an integral part of British Columbia's modern day treaty process. At some treaty tables, impasses have resulted from differences on how to include traditional First Nations governance within treaty. Although some First Nations are determined to pursue traditional structures, inflexible negotiation mandates and fundamentally different understandings of good governance have been barriers to achieving this end.

Emphasizing the value of culturally matched governance as integral effective governance and genuine self-determination, this capstone uses a literature review, case studies, and stakeholder interviews to analyse why some First Nations place a priority on traditional governance and what the benefits of these structures are. The capstone analyzes obstacles preventing inclusion of these traditional structures in treaty and identifies opportunities for alleviating the barriers to their adoption. Policy options are identified and evaluated based on a multiple-criteria analysis, and a recommendation is made on next steps for addressing this policy issue.

Keywords: Self-government; traditional governance; traditional leadership; cultural match; BC Treaty Process; treaties.

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Table of Contents

Approval.....	ii
Partial Copyright Licence	iii
Ethics Statement.....	iv
Abstract.....	v
Acknowledgements	vi
Table of Contents.....	vii
List of Tables.....	x
List of Acronyms.....	xi
Glossary	xi
Executive Summary	xii
Quotation.....	xv
1. Foreword and Policy Problem.....	1
2. Traditional Governance, Colonization, and Treaties.....	4
2.1. Traditional Governance and Imposed Governance	4
2.2. The BC Treaty Process.....	5
2.2.1. Status Quo of Traditional Governance in Treaty	7
2.3. Self-Government and the Inherent Right Policy.....	7
2.4. The Common Table Report and Negotiation Mandates.....	8
3. Methodology	10
3.1. Research Goals and Purpose	10
3.2. Research Process.....	10
3.2.1. Information Sources	11
3.2.2. Analysis	12
3.3. Limitations	13
4. Traditional Governance: Why, What, and How	14
4.1. The Why Question	14
4.2. Key Elements of Good Traditional Governance.....	16
4.2.1. Cultural Match	16
4.2.2. Balance and Consensus Decision-Making.....	19
4.2.3. Participation.....	22
4.2.4. Accountability	23
4.3. Revitalizing Traditional Governance under Treaty	27
5. Critical Perspectives on Traditional Governance in Treaty.....	31
5.1. Critiques and Barriers	31

5.2.	Possible Opportunities	36
6.	Case Studies in BC and Yukon	41
6.1.	Huu-ay-aht First Nations (BC).....	41
6.1.1.	Governance Structure and Decision-Making.....	42
6.1.2.	Citizens' Role.....	43
6.1.3.	Accountability and Transparency	44
6.2.	Carcross/Tagish First Nation (Yukon).....	45
6.2.1.	Governance Structure and Decision-Making.....	45
6.2.2.	Citizens' Role.....	47
6.2.3.	Accountability and Transparency	48
6.3.	Gitanyow First Nation (BC)	49
6.3.1.	Governance Structure and Decision-Making.....	49
6.3.2.	Citizens' Role.....	51
6.3.3.	Accountability and Transparency	52
7.	Analysis Criteria	54
7.1.	Decision-making Power	54
7.2.	Balance	54
7.3.	Citizen Participation	55
7.4.	Transparency and Accountability	55
7.5.	Stakeholder Acceptability.....	56
7.6.	Criterion Weighting.....	57
8.	Policy Options	59
8.1.	First Nations' Choice: Governance Foundations.....	60
8.2.	Majority-elected Governance	61
8.2.1.	Description.....	61
8.3.	Equally Elected and Appointed Governance.....	62
8.3.1.	Description.....	62
8.4.	Clan-based Governance	65
8.4.1.	Description.....	65
8.5.	Hereditary Governance	66
8.5.1.	Description.....	66
9.	Analysis of Policy Options	69
9.1.	Majority-elected Governance	69
9.1.1.	Decision-making Power.....	69
9.1.2.	Balance.....	70
9.1.3.	Citizen Participation.....	70
9.1.4.	Accountability & Transparency	70
9.1.5.	Stakeholder Acceptability	71
9.2.	Equally Elected and Appointed Governance.....	72
9.2.1.	Decision-Making Power.....	72

9.2.2. Balance.....	72
9.2.3. Citizen Participation.....	73
9.2.4. Accountability/Transparency	73
9.2.5. Stakeholder Acceptability	74
9.3. Clan-based Governance	74
9.3.1. Decision-Making Power.....	74
9.3.2. Balance.....	75
9.3.3. Citizen Participation.....	75
9.3.4. Accountability/Transparency	76
9.3.5. Stakeholder Acceptability	76
9.4. Hereditary Governance	77
9.4.1. Decision-Making Power.....	77
9.4.2. Balance.....	77
9.4.3. Citizen Participation.....	78
9.4.4. Accountability/Transparency	78
9.4.5. Stakeholder Acceptability	79
9.5. Scoring Summary.....	80
10. Recommendation, Next Steps, and Implications	82
10.1. Recommendation	82
10.2. Next Steps.....	83
10.2.1. Test-Drive Traditional Governance.....	83
10.2.2. Yukon for One, Yukon for All?	84
10.3. Implications of the Recommendation	85
References	88
Appendices	92
Appendix A.....	93
List of Democratic Procedures for Self-Government in BC Treaties.....	93
Governance Structures of the Maa-nulth First Nations (excluding HFN)	94
Government Design Structures of the Case Study First Nations	95
Appendix B.....	98
Interviewees	98

List of Tables

Table 7.1 Multiple Criteria Descriptions and Measurements.....	57
Table 8.1. Defining Features of Majority-elected Governance.....	61
Table 8.2. Features of Equally Elected and Appointed Governance	63
Table 8.3. Defining Features of Clan-based Governance.....	65
Table 8.4. Defining Features of Hereditary Governance.....	67
Table 9.1. Scoring Summary of Option Analysis.....	80

List of Acronyms

AIP	Agreement-in-Principle
AANDC	Aboriginal Affairs and Northern Development Canada
BCTC	British Columbia Treaty Commission
CTFN	Carcross/Tagish First Nation
FA	Final Agreement
HFN	Huu-ay-aht First Nations
IRP	Inherent Right Policy
RCAP	Royal Commission on Aboriginal Peoples

Glossary

Constitutionally entrenched	Refers to the protection that Final Agreements receive under Section 35 of the <i>Constitution Act</i> , 1982 which ensures that treaty rights cannot be unilaterally extinguished or infringed by the federal or provincial government without a valid legislative objective.
Side agreement	An intergovernmental agreement signed between a Treaty First Nation and the federal and provincial/territorial government as a supporting agreement to a Final Agreement; these agreements may be referenced within a Final Agreement but are not similarly constitutionally entrenched.

Executive Summary

Negotiations concerning self-government are an integral part of the BC treaty-making process. These negotiations lay the foundation for how a First Nation will govern post-treaty in regards to basic structure and operation of their governing bodies. Provincial and federal self-government mandates currently emphasize democratic elections and western notions of good governance as the cornerstone for treaty governance. As it stands, First Nations can negotiate a role for their traditional leaders, as long as this remains within the strict confines of government mandates. Although this policy, the status quo, permits the appointment of decision makers through traditional means, inflexible government mandates require that the majority of government officials with law-making powers be elected in accordance with western democratic practices, and that decisions are made through a majority vote process. This federal/provincial position effectively blocks the negotiation of any traditional structure that do not utilize western electoral systems or understandings of democracy. The status quo for including traditional governance within a BC treaty framework has therefore led to the policy problem examined in this study: First Nations negotiating treaties in British Columbia have limited options for adopting a full traditional governance structure under treaty.

This policy issue arises partially from the limited mandates of the provincial and federal governments to negotiate such structures. Although both a tripartite Common Table discussion in 2008 and special reports to relevant ministries have identified the necessity and workability of traditionally based governance in treaty, little policy development has been done to address this interest. Further creating resistance to these systems is the provincial and federal view of democratic elections as the baseline for good governance. This understanding is heavily based in western notions of democracy and good governance, and is not informed by First Nations' worldviews that embrace these concepts, but in a different way.

This lack of effort to understand or accommodate traditional Aboriginal governance practices has its roots in *Indian Act* policies; these displaced traditional structures by imposing an electoral Chief and Council system. For some First Nations *Indian Act* governance has resulted in culturally mismatched political systems with negative impacts on community cohesion and citizen apathy. In the worst cases, the

colonial effort to displace and destroy traditional governance systems led to a loss of knowledge needed to design and operate community-owned decision-making structures, leaving First Nations without the cultural anchors that build trust and legitimacy in institutions of government. Recognizing the value of culturally restorative practices for better outcomes, some First Nations are hoping to revitalize their traditional structures under treaty. Seen both as a means to repair damage done by imposed structures and having more cultural match, adopting a traditional governance structure under treaty is a priority for some First Nations. Cultural match, a brainchild of the *Harvard Project for American Indian Economic Development*, suggests that a good fit between formal governing institutions and the political culture of a society is important in creating legitimacy for governing bodies. In this sense, governance institutions that are imposed on a society and have not undergone a self-driven process of cultural construction are less likely to govern effectively. For First Nations pursuing traditional governance under treaty, traditional structures provide this cultural match. Furthermore, benefits of utilizing these structures include more cohesive and inclusive governance that emphasizes consensus decision-making and strong citizen participation.

In spite of the fact that some First Nations will never accept treaties that do not have a substantive role for their traditional governance structure, BC and Canada are resistant to the idea of freezing traditional governance systems in constitutionally entrenched Final Agreements. This stems primarily from concerns over the accountability and transparency of these systems, specifically in regards to how laws are made, how citizens are involved in leadership selection or removal, and how laws can be challenged or revoked if necessary.

Looking to address the interest of these First Nations and the concerns of BC and Canada, this capstone utilizes case studies and stakeholder interviews to identify four policy options to address the policy problem. These options showcase a menu of traditional governance structures each founded in the concept of cultural match. The existing status quo model serves as the first option, with the second option being a modified status quo containing an equal number of elected and traditional officials. The third option takes the form of a hybridized clan system of governance, similar to that used by some Yukon Treaty First Nations, which blends traditional and contemporary governance practices. The fourth and final option is a hereditary governance structure

which emphasizes the role of hereditary chiefs as the main decision-makers. Acknowledging that the unique traditions of First Nations in the province do not facilitate one option being recommended over others, this exercise is meant to showcase the different features of traditional governance and the strengths and weaknesses of different systems. The analysis that follows reveals that these systems are indeed workable; they are successful in promoting good governance practices, particularly when they align with the assessment criteria that this study has identified.

To this end, this capstone recommends that provincial and federal governments expand their negotiation mandates to accommodate fuller expressions of traditional governance that go beyond the status quo. Next steps should include test-driving a structure within the treaty framework and exploratory policy work on how traditional governance has been negotiated and implemented in the Yukon as a means to inform how this process could be extrapolated to the BC context. Ultimately, this study finds there is a need to reconcile western and First Nations understandings of democracy and good governance in order to move past the firm positioning that has contributed to this policy problem and actively work towards incorporating traditional governance into treaties. By acknowledging that different, yet equally valid, governance values produce different ways of governing, expanding the mandate in this way will promote the type of reconciliation that all parties to the BC Treaty Process have sought to achieve.

We must choose carefully the words we use to describe our system, so the white-men, their governments and the world can see who we are and that we exist.

Sindihi (Robert Good), Gitanyow, November 22, 2006

1. Foreword and Policy Problem

Over the last two decades four treaties have been negotiated under the BC Treaty Process. Although widely recognized as a complex and time-consuming endeavor, provincial and federal governments and First Nations express frustration with the slow progress. For some First Nations, the lack of creative provincial and federal mandates to negotiate traditional governance structures is holding back treaty negotiations. These First Nations place a high priority on including the structures of their traditional governance within their treaties. While one model for incorporating traditional governance does exist, the Maa-nulth model, the requirement that the majority of officials are democratically elected is seen as restrictive and does not meet the interests of all First Nations.

First Nations cite a multitude of reasons for prioritizing traditional governance. Often, traditional governance is regarded as having greater cultural match than offered by western governance structures. Cultural match, or a good “fit” between the formal structures and institutions of governance on the one hand, and Indigenous conceptions of how authority and power should be organized and exercised on the other,¹ is understood to provide more legitimacy to governing bodies. In turn, governments regarded as legitimate by their members are more effective.² First Nations, scholars, and the public sector argue that western electoral structures do not result in cultural match for some First Nations.³ Under the *Indian Act*, these structures were imposed “without any reference to previous tribal systems of government, and [were] implemented with

¹ Smith, “From Gove to Governance,” 25.

² Cornell and Kalt, “Two Approaches,” 25.

³ Barry Stuart, interview by author, November 25 2013; First Nations Stakeholder A, interview by author, January 7 2014; Mark Wedge, interview by author, January 24 2014; First Nations Stakeholder B, interview by author, February 4 2014; as well as the Standing Senate Committee on Aboriginal Peoples, *First Nations Elections*, iv.

little sensitivity to traditional values.”⁴ In many cases, this resulted in an alien and unsuitable governance regime that created destructive divisions within communities, voter apathy, and power blocs. Today, some First Nations are working towards revitalizing their traditional governance structures with the intent to develop better governance through cultural match. Additionally, First Nation participants in this study report that adopting traditional governance is a means of “honouring [the] past and trying to make life better in the future.”⁵ Placing these structures within a constitutionally entrenched treaty provides “final acknowledgement” that traditional governance is both culturally and legally legitimate in the eyes of the First Nations people it represents and the signatory provincial and federal governments.⁶

After tripartite discussions in 2008, the British Columbia Treaty Commission (BCTC) produced a Common Table Report recommending that parties explore opportunities for accommodating culturally appropriate governance within treaty, among other things. However, there has still been little policy work done in this area.⁷ This study attributes this policy gap primarily to two issues: (1) inflexible provincial and federal government mandates, which do not facilitate creative approaches to incorporating traditional governance, and (2) lack of agreement on acceptable manifestations of accountability and transparency.

As such, the policy problem is as follows:

While some First Nations are adamant that traditional governance be a part of their treaty agreement, there are limited avenues for including such structures under the BC Treaty Process.

This problem can be attributed to inflexible government mandates as well as fundamentally different understandings of good governance. This creates an impasse at

⁴ Leroy Little Bear et al., *Pathways to Self-determination*, xii. Taken from: Standing Senate Committee on Aboriginal Peoples, *First Nations Elections*, 4.

⁵ Larry Johnson, interview by author, January 29 2014.

⁶ As described by Tom Happynook, interview by author, December 11 2013 and Provincial/Federal Stakeholder B, interview by author, December 20 2013.

⁷ Some Provincial/Federal stakeholders suggest that there has not been a serious policy effort to explore different ways of incorporating traditional governance, generally because this has not been seen as a priority.

the treaty-table and contributes to a larger issue facing the BC Treaty Process of too few treaties being signed in the province.

This study examines why some First Nations place a priority on traditional governance and the elements of good traditional governance. Challenges and opportunities in addressing this policy problem are explored through an analysis of the literature, interview results, and select case studies. Four traditional governance policy options are identified and evaluated. This study ultimately finds that traditional governance can work under treaty and can fulfill good governance standards, along with providing valuable cultural match and genuine self-determination to Treaty First Nations. Addressing this policy problem will not only increase the likelihood of treaties being signed, but will advance the social agenda of reconciliation.

2. Traditional Governance, Colonization, and Treaties

It is not uncommon to hear that British Columbia has a ‘modern, made-in-BC’ approach to treaty negotiations with First Nations. This descriptor of the treaty-making process elicits questions of *why* a unique process is required and *what* this looks like, specifically in regards to traditional governance. To address this, the chapter begins with a brief overview of traditional governance structures and imposed western structures, following with a description of the emergence of the BC Treaty Process and the foundations of self-government negotiations in the province. The purpose of this chapter is to provide a background to treaty-making in British Columbia and illustrate how past and present policies are shaping the negotiation of traditional governance structures within the treaty context.

2.1. Traditional Governance and Imposed Governance

Traditional Aboriginal governance systems typically integrate spiritual, familial, economic, and political spheres into a single world view.⁸ It is unusual for these spheres to have a central or coercive authority at their apex; rather, “indigenous tradition sees government as the collective power of the individual members of the nation.”⁹ At the time of contact with Europeans, Indigenous peoples “were not sitting around waiting for colonists to provide them with government,”¹⁰ rather they had unique structures of social, political, and economic life that had satisfied their needs since time immemorial.

BC’s entry into Confederation in 1871, and the subsequent transition of First Nations affairs into federal jurisdiction, contributed to a distortion of First Nations’ political

⁸ RCAP, *Restructuring the Relationship Part One Volume Two*, 111.

⁹ Alfred, *Peace, Power, Righteousness*, 49.

¹⁰ Ladner, “Indigenous Governance,” 3-4.

structures and cultures.¹¹ The federal *Indian Act*, in granting jurisdiction over ‘Indians and lands reserved for Indians’ to Canada, created a statutory trusteeship which effectively disregarded Indigenous political diversity and sovereignty. In present times acknowledged as invasive and paternalistic,¹² *Indian Act* provisions legislated that an elected Chief and Council system would replace traditional political structures, which were regarded as inferior to Euro-Canadian governance systems.¹³

2.2. The BC Treaty Process

In spite of a federal policy to establish treaties with First Nations across the country (the Royal Proclamation of 1763),¹⁴ post-Confederation there were no comprehensive efforts by the provincial colonial government to settle the land title question in BC.¹⁵ With BC rejecting any movement to settle land claims an atmosphere of discrimination and negligence coloured the political landscape of the province’s dealings with First Nations. BC would wait for over a century after Confederation to re-engage the First Nations population in treaty-making.¹⁶

Modern treaty negotiations in BC began with the tripartite establishment of the BC Claims Task Force in 1990 by the province, Canada, and the First Nations Summit. In the decades leading up to this change in policy, the political climate involved heightened action by First Nation communities demanding land rights and self-government abilities. Investment in resource development was suffering due to corresponding political instability and the ever growing accumulation of court cases dealing with Indigenous rights. Encouraged by the BC Claims Task Force to set up a modern day treaty process, the BC Treaty Commission was established in 1992 with a mandate to facilitate negotiations between the three parties; a primary intention of the BC Treaty Process is to provide an alternative to litigation in settling land claims.

¹¹ Cornell and Kalt, “Two Approaches,” 1.

¹² Hanson, “The Indian Act.”

¹³ Tobias, “Protection, Civilization, Assimilation,” 46.

¹⁴ *What’s the Deal with Treaties?*, 1.

¹⁵ *What’s the Deal with Treaties?*, 1.

¹⁶ *BC Claims Task Force Report*.

Entry into negotiations is voluntary. As of July 2012, 57 First Nation organizations have entered into negotiations under the BC Treaty Process. These organizations are mandated by their constituents as a legitimate body that represents their members in treaty negotiations.¹⁷ A six stage process guides the negotiations, with the bulk of tripartite discussion taking place in stage four and five: the negotiation of an Agreement-in-Principle (AIP) followed by a Final Agreement (FA). While AIPs are non-binding, tripartite ratification of a FA results in a legally-binding and constitutionally entrenched treaty..¹⁸ Four treaties have been completed under the BC Treaty Process (Tsawwassen, Maa-nulth, Tla'amin, Yale), the former two of which are being implemented.¹⁹

Today it is widely recognized that prior to European settlement Aboriginal peoples were organized as self-sufficient and self-governing Nations.²⁰ Self-government negotiations are a primary component of negotiations under the BC Treaty Process.²¹ The concept of self-government is tied intimately to reconciliation, a buzz word in the province today. Treaties are meant to “reconcile the interests of First Nations, Canada and BC by establishing new relationships based on mutual trust, respect and understanding”²² through a new government-to-government relationship between the three parties. This recognizes First Nations as full and rightful partners on initiatives that directly impact their communities, and as having a right to self-govern and self-determine. As a broad social movement, reconciliation is meant to bring together Aboriginal and non-Aboriginal peoples with diverse histories and cultures, acknowledge the power imbalances and socioeconomic gaps that exist between these groups, and together find a better way forward. In this study, both provincial/federal and First Nations stakeholders spoke to supporting the objective of traditional governance as important for reconciliation.²³

¹⁷ *What's the Deal with Treaties?*, 8.

¹⁸ *Ibid.*, 9.

¹⁹ The Nisga'a treaty is also being implemented, but was negotiated outside of the BC Treaty Process.

²⁰ *What's the Deal with Treaties?*, 14.

²¹ *Ibid.*, 15.

²² *Ibid.*, 9.

²³ Provincial/Federal Stakeholder C, interview by author, December 20 2013.

2.2.1. Status Quo of Traditional Governance in Treaty

Currently there is one model for including traditional governance structures within treaty. This requires that the majority of government officials are democratically elected and accountable, allowing only a minority of officials to be appointed through traditional means. The Maa-nulth First Nations, who ratified their collective treaty in 2007, have adopted this model, although the design details of their structures are still diverse. Additional stipulations for treaty governance can be found in Appendix A.

2.3. Self-Government and the Inherent Right Policy

In 1995, two years after treaty negotiations commenced, the Government of Canada introduced the *Inherent Right Policy* (IRP) which recognizes First Nations rights to self-government and lays out how these governments will be negotiated. Through it, Canada recognizes that:

Aboriginal peoples of Canada have the right to govern themselves in relation to matters that are internal to their communities, integral to their unique cultures, identities, traditions, languages and institutions with respect to their spiritual relationship to their land and their resources.²⁴

The IRP provides that Aboriginal self-government will operate within the framework of the Canadian Constitution, and that the Charter of Rights and Freedoms and Criminal Code will apply to Aboriginal governments and institutions.²⁵ Recognizing that a one-size-fits-all approach does not appropriately address the varying circumstances and interests of First Nations across the country, “governing structures, internal constitutions, elections, [and] leadership selection processes” are all open to negotiation.²⁶ Comparable accountability mechanisms for similarly sized governments are required along with conflict-of-interest rules for both elected and appointed officials.²⁷

²⁴ *Inherent Right Policy*.

²⁵ Ibid.

²⁶ Ibid.

²⁷ *Inherent Right Policy*.

2.4. The Common Table Report and Negotiation Mandates

Even the most adamant proponents of the BC Treaty Process will not deny that treaty-making is slow-moving and can become even slower when disagreements arise. To address these barriers, Treaty First Nations developed a Unity Protocol in 2006 which called on the federal and provincial governments to streamline the treaty process. In response, a Common Table was launched in 2007 to discuss issues of a mutual concern at the table in efforts to “expedite the conclusion of treaties in the BC treaty process.”²⁸ One of these concerns revolves around including traditional governance in treaty. The Common Table resolved that:

The Parties are prepared to explore options to provide for the negotiation of self-government arrangements that implement culturally appropriate approaches to self-government that accommodate hereditary systems while ensuring transparency and clarity for intergovernmental relations.²⁹

While this has arguably been accomplished with the development of the Maa-nulth governance model (detailed in Chapter 6), some First Nations respond that this model and the existing mandate for negotiating traditional governance cannot be expected to meet all interests for incorporating traditional structures into treaty. In fact, provincial/federal mandates have been attributed with bringing treaty-talks on traditional governance to a grinding halt. Some First Nations argue that current self-government mandates in practice do not allow First Nations to control meaningful features of their governance structures, and therefore, act as a barrier to authentic Aboriginal self-determination. Albert Peeling writes that the utter lack of mandate to have creative discussions around such structures continues to create an impasse at tables.³⁰ Furthermore, five years after the commitments of the Common Table, special representative to the Minister of Aboriginal Affairs and Northern Development Canada (AANDC), James Lornie, writes that “it is difficult to see why the inherent system could not be adapted to treaty [provided that human rights are protected]. The Maa-nulth treaty

²⁸ *Common Table Report*, 3.

²⁹ *Ibid*, 12.

³⁰ Peeling, “Constitution Making among the Gitanyow,” 2.

offers *one* model for doing so.”³¹ Here, Lornie effectively reiterates the policy problem: there are too few avenues for including traditional governance under treaty that adequately address the interests of some First Nations to utilize traditional structures that go beyond the status quo.

³¹ Lornie, *Accelerating Negotiations with Common Table First Nations*, 16.

3. Methodology

3.1. Research Goals and Purpose

The overall goal of this study is to uncover possible avenues for integrating traditional governance structures within treaty, addressing the current lack of policy work in this area, as well as identifying how to overcome governmental resistance to traditional structures that differ from the status quo model. The following research questions arise:

- Why is traditional governance a priority for some First Nations and what are the benefits?
- What are the key elements of good traditional governance?
- What are the key challenges to including traditional governance structures under treaty?
- What are possible options for addressing and mitigating these obstacles?

Ultimately, the purpose of this research is to answer these questions with the expectation that the findings will benefit both First Nations pursuing traditional governance under treaty, and federal and provincial negotiators and policy makers working with these First Nations. This study also aims to contribute to wider understandings of self-determination in governance and how this is important for the overall social objective of reconciliation.

3.2. Research Process

A review of the literature on First Nations governance, and more specifically traditional governance, is used in this study to identify elements of good governance. An environmental scan of completed treaties in BC and Yukon is conducted to reveal the extent to which traditional governance is present in these agreements and if so, under

what circumstances. The decision to draw evidence from Yukon First Nations is deliberate as these First Nations are also involved in a modern treaty process that has similarities with the BC Treaty Process; this provides a wider range of experiences to pull from than would otherwise be available. This scan identifies three key approaches to operationalizing traditional governance within a self-government context and case studies are developed based on the governance models used by the Huu-ay-aht First Nations (HFN), Carcross/Tagish First Nation (CTFN), and Gitanyow Nation. These three cases demonstrate practical examples of utilizing traditional governance structures within a modern self-government context (see Chapter 7).

The bulk of this research process consists of interviewing identified stakeholders on their experiences and opinions with respect to including traditional governance structures within treaty. Thirteen interviews were conducted with the aim of answering the research questions. The aim of the interviews is gather more information on the case studies and on the experiences of stakeholders when dealing with traditional governance in a treaty context. The interview results and literature review are combined to form a narrative on the value and key elements of traditional governance as well as the challenges and opportunities for incorporating such structures within treaty.

3.2.1. Information Sources

The literature review includes a broad examination of traditional governance within treaty and other self-government arrangements, as well as of practices in good governance. Sources are academically based. Information for the case studies is gathered from the analysis of the case studies' respective constitutions, treaties, and government websites. This information is corroborated and expanded upon through the interview process. These case studies are selected deliberately due to the diversity of their governance structures in design and implementation. HFN has completed a constitutionally entrenched treaty under the BC Treaty Process, CTFN has completed a self-government agreement under the Yukon treaty process, and Gitanyow continues to operate under the *Indian Act* while negotiating under the BC Treaty Process. These First Nations also are diverse in terms of location, with HFN on Vancouver Island, CTFN in Yukon, and Gitanyow in the northern interior of BC, although they are all similar in size.

Interviewees were identified through professional contacts in the BC Ministry of Aboriginal Relations and Reconciliation, Aboriginal Affairs and Northern Development Canada, and the School of Public Policy at Simon Fraser University. Interviewees include provincial and federal government employees, such as negotiators and policy analysts; elected and hereditary First Nations Chiefs; employees of First Nations governments working in governance matters; and legal and governance consultants. The semi-structured approach allows dynamic conversations to take place and for information to come to light that otherwise may not have been included had interview questions been rigidly structured. Interviewees were identified as informed stakeholders either broadly, due to their involvement in treaty governance negotiation, policy, or implementation, and/or specifically, for their involvement in one of three case studies. Interviews with provincial/federal stakeholders provide insight into government perspective on negotiating traditional governance structures under treaty, which measures have been taken, and the barriers and opportunities for including such structures.³² Interviews with First Nations stakeholders focus on why the First Nations place a priority on traditional governance in treaty, and their experiences developing and negotiating these structures.

3.2.2. Analysis

Information gathered facilitates the identification of policy and options, and the criteria that are then used to evaluate them through a multi-criteria analysis. Interview responses and examples from the literature are sorted and analyzed through a thematic approach which permitted the identification of “patterns of meaning,” and shared experiences in the data set.³³ Pulling out patterns in the interviews required an examination of the results through interview transcription and codification. From this, themes around traditional governance under treaty emerge and are analyzed. Along with the interview results, the literature review and case studies inform the development of criteria and measures with which to assess the identified policy options. This

³² While these stakeholders are either associated with the provincial or federal government, they are combined for the purpose of this study as the views expressed were largely held in common between these two governments. This also provides further anonymity for these stakeholders.

³³ Braun and Clarke, “Using Thematic Analysis in Psychology,” 78.

assessment is then used to make recommendations for next steps in addressing the policy problem.

3.3. Limitations

The limitations associated with this research are important to note before going forward. This study focuses solely on why some First Nations prioritize traditional governance within their treaties, rather than exploring reasons why other Treaty First Nations have not prioritized its inclusion or have negotiated largely mainstream governance provisions. The limited scope of the project was necessary to respect word length restrictions, and access to relevant interviewees also made it unfeasible to include additional case studies where other forms of traditional governance is used. Every First Nations is different and so too will be its governance needs, and the author would suggest readers look to additional cases to more fully understand the appetite for, and unique design of, traditional governance structures across the province. It is also important to note that because this study is primarily focused on governance structures, traditional principles are not widely integrated into the research, although the significance of these principles in governance is raised by the interviewees.

Descriptions of the case studies are derived from the analysis of treaties, constitutions, and interview responses. Recognizing that life experience and culture inform understanding, it remains possible that subtle nuances have remained inaccessible to the non-Indigenous author of this project. It also bears noting that First Nations citizens of the respective case study First Nations were not surveyed on their impressions of traditional governance under treaty.

4. Traditional Governance: Why, What, and How

Many First Nations are determined to maintain or revitalize their traditional systems within the context of contemporary governance.³⁴ A primary avenue for doing this is through modern day treaties which include self-government powers and remove First Nations from *Indian Act* governance.³⁵ Building workable governance within treaty generally relies on laying a solid foundation that enhances the effectiveness of the governance regime and the well-being of citizens. This foundation should include formal elements of governance, such as policies and procedures, as well as the more abstract features of history, culture, and tradition.³⁶ Graham and Wilson from the Institute on Governance suggest that governance is “a process whereby societies [...] make their important decisions, determine whom they involve in the process and how they render account.”³⁷ Acknowledging the unique qualities of First Nations governance, due to size, locations, and culture, the sections and subsections below incorporate interview responses and academic perspectives from the literature to address three factors: why traditional governance is a priority, key elements of traditional governance structures, and lastly how these structures are being revitalized to fit contemporary needs and circumstances.

4.1. The Why Question

A foremost aim of this study is to understand *why* incorporating traditional governance structures within treaty is a priority for some First Nations. Each First Nation will have different motivations for pursuing traditional governance due to their unique

³⁴ RCAP, *Restructuring the Relationship Part One Volume Two*.

³⁵ This fact separates Aboriginal self-government under treaty from strictly devolved functions that municipalities are delegated as creatures of the provinces.

³⁶ Graham and Wilson, “Aboriginal Governance in the Decade Ahead,” ii.

³⁷ *Ibid.*, 2.

circumstances; however, First Nations stakeholders identify common themes. Broadly speaking, revitalizing traditional governance in a modern context is regarded as both a means for “honouring [the] past and trying to make life better in the future.”³⁸ In essence, traditional governance is valued both for the lessons it offers regarding respect, collaboration, and collectivity, and the possibilities it offers for healing and effective governance in going forward. Some First Nations frame this revitalization as both a duty and a choice. For instance, Michelle Washington writes that the Tla’amin people have a “moral obligation to include [their traditional concepts] in [their] every day lives.”³⁹ Traditional governance is also described as creating certainty, an objective of treaty-making: “certainty *is* the traditional form of governance.”⁴⁰ In this sense, there is no alternative form of governance.⁴¹

Other First Nations stakeholders report that their Nation’s chose to revitalize their traditional governance structures as a conscience effort to address negative cultural impacts resulting from the suppression, assimilation and cultural genocide, and societal destruction that occurred due to imposed governance structures. In this sense, modern use of traditional governance is described as a “remedy” for these negative impacts.⁴² In speaking to this, Barry Stuart, XXX, explains that for CTFN adopting a clan governance system in treaty was a means to “engage the community in a way that it once was [with] the notion of sharing, of working together, and building families up.”⁴³

Embedding hereditary governance within treaty may also be “about recognition and final acknowledgement that [the traditional] structure has validity [and], standing to it.”⁴⁴ This was the case for HFN who, through their treaty, now have “legitimate and legal support”⁴⁵ for their hereditary institutions. For some First Nations, getting their traditional governance structures recognized in treaty, regardless of how the role of traditional

³⁸ Larry Johnson, interview by author, January 29 2014.

³⁹ Washington, “Bringing Traditional Teachings to Leadership,” 583.

⁴⁰ First Nations Stakeholder A, interview by author, January 7 2014.

⁴¹ Ibid.

⁴² First Nations Stakeholder B, interview by author, February 4 2014.

⁴³ Barry Stuart, interview by author, November 25 2013.

⁴⁴ Provincial/Federal Stakeholder B, interview by author, December 20 2013.

⁴⁵ Tom Happynook, interview by author, December 11 2013; echoed by Larry Johnson, interview by author, January 29 2014.

leaders may evolve over time, is crucial. Speaking to this concept, Kim Baird, the former Chief of Tsawwassen First Nation, argues:

We can only take it on when we can take it on [but] we would fight tooth and nail for every bit of jurisdiction we could get ... [in order to] preserve [the] ability to deliver in the future.⁴⁶

Although here Baird is discussing off-territory jurisdiction, her comments apply to *why* some First Nations have prioritized traditional governance in their treaty even without a fully formed picture of how those institutions will eventually take shape. For instance, Angela Wesley notes that the hereditary chief advisory council of HFN was designed “as a box there for our chiefs themselves to fill up” and that, while the council is not yet active, its members have the freedom to design and take on their responsibilities within a time frame of their choosing.⁴⁷ Considering Baird’s comment, this is so First Nations “don’t have to keep fighting the same fight” with provincial/federal governments when it comes to evolving their governance powers.⁴⁸

4.2. Key Elements of Good Traditional Governance

Understanding the key elements of traditionally-based governance sheds light on how it differs from western structures and why these elements are subsequently valued by First Nations. The following subsections pull from the literature and interview results to flesh out four main elements: cultural match, balance and consensus decision-making, participation, and accountability.

4.2.1. Cultural Match

Across the country, the electoral Chief and Council system was “developed without any reference to previous tribal systems of government, and [...] implemented

⁴⁶ Kim Baird as interviewed by Cousins, “Aboriginal Self-Government, Extra-Territorial Powers, and the BC Treaty Process,” 35.

⁴⁷ Angela Wesley, interview by author, December 5 2013.

⁴⁸ Kim Baird as interviewed by Cousins, “Aboriginal Self-Government, Extra-Territorial Powers, and the BC Treaty Process,” 35.

with little sensitivity to traditional values.”⁴⁹ Aiming to “destroy the last vestige of [...] the traditional political system,”⁵⁰ these imposed governance structures led to “serious forms of community divisions.”⁵¹ In many communities, western electoral systems are still attributed to “splintering viewpoints, alienating the community from decision making, and breeding distrust of leaders and officials.”⁵² These systems lack community-born and culturally appropriate mechanisms for diffusing power blocs, such as balancing sectional interests and facilitating consensus-building.

The negative impacts of imposed governance can be understood as a result of cultural mismatch between the imposed structure and First Nations societies. Essentially, cultural mismatch emerges where there is “dependence on institutions that [a society] did not design and that reflect another society’s ideas.”⁵³ Researchers Stephen Cornell and Joseph Kalt, with the influential *Harvard Project on American Indian Economic Development*, therefore identify cultural match as an integral characteristic for successful nation-building, specifically with regards to First Nations governance.⁵⁴ In essence, cultural match is defined as the “‘fit’ between the formal structures and institutions of governance on the one hand, and Indigenous conceptions of how authority and power should be organized and exercised on the other.”⁵⁵ This concept advocates for governance structures which are not “culture-neutral” but rather are designed with cultural and governance traditions in mind.⁵⁶ Placing culturally appropriate governance structures within treaty was also identified by participants of the Simon Fraser University dialogue session, *Brainstorming for Governance: Visions, Values and Structures*, as necessary for treaty governance.⁵⁷ Broadly speaking, a culturally matched government is seen as more legitimate than one with an imposed structure, and is more likely to receive the support and confidence of the citizenry. Furthermore, legitimate institutions

⁴⁹ Standing Senate Committee on Aboriginal Peoples, *First Nations Elections*, 4.

⁵⁰ Tobias, “Protection, Civilization, Assimilation,” 46.

⁵¹ Graham and Wilson, “Aboriginal Governance in the Decade Ahead,” 7 citing Wally McKay in “Instruments of Governance: Restoring First Nations Governments.”

⁵² RCAP, *Restructuring the Relationship Part One Volume Two*, 130.

⁵³ Cornell and Kalt, “Two Approaches,” 24.

⁵⁴ *Ibid.*, 18; three of the five characteristics are discussed in this study.

⁵⁵ Smith, “From Gove to Governance,” 25.

⁵⁶ *Ibid.*, 24.

⁵⁷ Penikett, *Reconciliation*, 192.

are less likely to face public apathy or resistance and therefore can operate in a more effective and efficient manner.⁵⁸

Cornell and Kalt identify “the crucial issue” to be “the degree of match or mismatch between formal governing institutions and *today’s* Indigenous ideas—whether these are survivals from older traditions or products of the nation’s contemporary experience—about the appropriate form and organization of political power.”⁵⁹ In *Reconciliation: First Nations Treaty Making in British Columbia*, Neil Sterritt and Tony Penikett suggest that treaty governments should not be based on idealized traditional structures, but “should aim to produce workable institutions, especially if First Nations want to create modern versions of ancient models.”⁶⁰ In many cases, hybridization is key to creating these workable models particularly because some First Nations, as an effect of assimilationist federal policies, simply do not know the entirety of their traditional governance design or operation. For example, the historical details of clan governance and its organization are generally not highly defined in the present day; structures used in modern treaties are often a hybrid of governance practices from pre-colonial times and the traditional practices a First Nation has re-constructed through contemporary nation-building. After all, cultures are normally-evolving and are not static. However, while these pre-colonial governance structures may not be fully intact or fully known, remnants, values, and practices that have survived have done so for an important reason.⁶¹ And while missing information on the structure of pre-colonial clan governance may prevent a complete return to this system, one stakeholder asserts, “Does that mean that we throw everything away? No.”⁶² Indeed, CTFN “wanted to go back to into the traditional clan system as best as [they] [could],” building a culturally matched system based on their knowledge of clan governance, because adopting tools, such as western elections, “that have proven not to work for [them], doesn’t make sense.”⁶³

⁵⁸ RCAP, *Restructuring the Relationship Part One Volume Two*, 156.

⁵⁹ Cornell and Kalt, “Two Approaches,” 25.

⁶⁰ Penikett, *Reconciliation*, 192.

⁶¹ First Nations Stakeholder B, interview by author, February 4 2014.

⁶² Ibid.

⁶³ Ibid.

A governance structure that is culturally legitimate but that lacks the ability to make binding decisions works against the empowerment found through cultural match. As Cornell and Kalt note, meaningful decision-making power is an important factor for Aboriginal governments pursuing self-determination.⁶⁴ “Practical sovereignty,” or the ability to assert comprehensive decision-making power, is another key component of effective Aboriginal governance.⁶⁵ This is echoed by provincial/federal stakeholders, who note that, ultimately, treaty negotiations are rooted in the understanding that a Treaty First Nation will “be able to take control of their own affairs, not just now, but in the future.”⁶⁶ While meaningful decision-making power does not have to be equivalent to exclusive power, using hereditary or traditional leaders as tokens within a largely non-traditional governance system is generally seen to be unacceptable.⁶⁷

4.2.2. Balance and Consensus Decision-Making

Traditional First Nations governance is often structured in such a way that is fundamentally different from western forms of governance.⁶⁸ One of these differences is in how these systems are composed and how they make their decisions.

For representatives of CTFN and Gitanyow Nation, a balance of power in decision-making is derived from a consensus model, a common process in traditional governance.⁶⁹ The technique of governing through consensus largely relies on engaging and receiving input from community members to promote the general welfare of the collective.⁷⁰ What it means to reach *consensus* is subjective and different First Nations may use different processes; this study generally refers to consensus decision-making as “a prolonged process of formulation and reformulation, [where] consensus gradually

⁶⁴ Cornell and Kalt, “Two Approaches,” 21.

⁶⁵ Ibid., 21; also noted by RCAP, *Restructuring the Relationship Part One Volume Two*.

⁶⁶ Provincial/Federal Stakeholder A, interview by author, December 19 2013; echoed by Provincial/Federal Stakeholder D, interview by author, November 26 2013.

⁶⁷ Angela Wesely, interview by author, December 5 2013.

⁶⁸ Provincial/Federal Stakeholder D, interview by author, November 26 2013; Mark Wedge, interview by author, January 24 2014.

⁶⁹ First Nations Stakeholder A, interview by author, January 7 2014; Mark Wedge, interview by author, January 24 2014.

⁷⁰ Graham and Wilson, “Aboriginal Governance in the Decade Ahead,” 6.

emerges, representing a blend of individual perspectives.”⁷¹ In this sense, reaching consensus is a deliberative process rather than one of voter aggregation. This does not result in everyone getting exactly what they want, but rather “everyone can live with the decisions” that are reached at the end of the day.⁷² Some First Nations may continue to deliberate until all objections have been addressed or until everything has essentially been said, and some may have a fall back mechanisms, such as a super majority vote or intervention by traditional leaders. Overall, utilizing consensus creates an “ethic of co-operation,”⁷³ building bridges between individual or family interests in pursuit of better outcomes for the community as a whole.

CTFN found that their traditional governance model “created a power balance within the community” by means of the clan structure and the use of consensus decision-making.⁷⁴ The structure of the system eliminates the possibility of railroading and power imbalances, in that the legislature is composed of an equal number of representatives from each clan rather than operating with proportional representation. This approach is regarded as a way to mitigate one family dominating the political scene, something that has been identified as a problematic by-product of elections. Gavin Gardiner, former policy analyst and Executive Director of CTFN, suggests because each clan representative has an equal share of decision-making power and an obligation to achieve consensus-based decisions, “there’s the immediate assumption that you’re not going to get everything you want at the expense of everyone else in the community.”⁷⁵ This prevents power discrepancies and officials from taking advantage of their authority, and facilitates government action that is in the best interest of the nation as a whole. The CTFN system having “six equal components” provides an embedded check and balance; as Gardiner says, “nobody can run away and spend all the money on

⁷¹ RCAP, *Restructuring the Relationship Part One Volume Two*, 129.

⁷² Happynook, “Indigenous Self-determination, Accountability, and Liberal Democracy.”

⁷³ Van der Burg, “The Absence of Democracy,” 30.

⁷⁴ Gavin Gardiner, interview by author, January 19 2014.

⁷⁵ Ibid.

something that benefits them or their portion of the community because [there are] five other representatives and structures that ensure that nothing can happen.”⁷⁶

For Gitanyow, consensus decision-making ensures that all voices are not only heard, but are also addressed:

If somebody disagrees you have to deal with that disagreement for more clarity. [...] You ask, ‘Do we have consensus?’ If people disagreed, then they’ll jump up again and if they don’t you’ll have consensus.⁷⁷

Similarly, Gardiner notes that operating on consensus provides members “a constant ability to provide direction to the government.”⁷⁸ The consensus process results in a “remarkable dialogue,” that “allows for incredible decisions to be made.”⁷⁹ Balance within a governance structure, however, is an important prerequisite for a successful and equitable outcome.

One of the criticisms of consensus-based decision making highlight the longer time frame it takes to make decisions. Gardiner acknowledges that, yes, consensus does take longer and “there’s certainly a different value and emphasis placed on time,” but the process is not inefficient.⁸⁰ In fact, rather than “[holding] back development in governance,” Mark Wedge, former Khà Shâde Hénì and XX at CTFN, purports development is actually enhanced, specifically with regards to relationship-building: “If you can’t get consensus you have to work harder to meet the needs of all people.”⁸¹ This process results in better deals for the people, who are in turn more empowered.⁸²

⁷⁶ Gavin Gardiner, interview by author, January 19 2014; echoed by Mark Wedge, interview by author, January 24 2014: “No one clan has power over the other one.”

⁷⁷ First Nations Stakeholder A, interview by author, January 7 2014.

⁷⁸ Gavin Gardiner, interview by author, January 19 2014.

⁷⁹ Ibid.

⁸⁰ Ibid.

⁸¹ Mark Wedge, interview by author, January 24 2014

⁸² Gavin Gardiner, interview by author, January 19 2014.

4.2.3. Participation

Effective traditional governance also requires meaningful participation by citizens and often takes a different form than participatory mechanisms seen in western governance. Regardless, all good governance systems contain a means for citizens to participate in approving and contesting government laws and policies, communicating effectively with their appointed representatives, and influencing the overall direction of government. First Nations stakeholders interviewed for this project detail many processes for citizen deliberation within their traditional structures. First and foremost, citizens should be directly involved in the “cultural interpretation and construction”⁸³ process when designing culturally matched governance. Identified by interviewees as extending an opportunity for citizens to express their opinions and interests on the structure of traditional governance, one avenue for doing this is through involvement in constitution-building and determining a role for traditional leaders. Larry Johnson of HFN recommends that the place to start this process is by “[getting] input from all of your community members, right, wrong, or indifferent, opposed to, [or] against; get their opinions.”⁸⁴ HFN found that the best way to gather citizens insights was through door-to-door visitation, rather than mail outs or even doing community rounds, as people are most comfortable expressing their opinions in the comfort of their own homes.⁸⁵ Gitanyow members unanimously adopted their Nation’s constitution, including the governance structures detailed within, through consensus; this is a strong show of support on part of the Gitanyow people that they accept and endorse their traditional system of governance.

Gitanyow has a process, similar to HFN, of direct community engagement within their hereditary system, more specifically speaking to governance processes. The feast, central to Gitanyow governance and nationhood, acts as a community assembly where all members can either approve or contest a resolution. All final decisions require the consensus of all members present. Similarly, CTFN’s clan system provides that “any issue can be raised at any time, by any person.”⁸⁶ Citizens in effect have a constant say

⁸³ Smith, “From Gove to Governance,” 24-27.

⁸⁴ Larry Johnson, interview by author, January 29 2014.

⁸⁵ Ibid.

⁸⁶ Gavin Gardiner, interview by author, January 19 2014.

into governance: “the [clans] [are] consistently seeking and receiving direction from [their] membership and that direction is being put into the government [...] constantly.”⁸⁷ The space for this ‘constant say’ emerges from the very design of the clan governance system. Gardiner also professes that avenues for citizen participation are also more accessible in the traditional system, saying “the barriers between [citizens and] the voices of the most powerful are so minimal compared to a western system.”⁸⁸

To this end, traditional governance systems that consistently seek and receive input from membership, for high-level as well as every day matters, are most successful in producing laws and policies that reflect the wishes of the membership. Just like any governance system it may be impossible to make everyone happy, but as Gardiner notes, “just because you don’t get what you want doesn’t mean you don’t have a voice.”⁸⁹

4.2.4. Accountability

The ability, or power, to hold government officials accountable for their conduct and the decisions made in office is a central component of modern democracies. As Andres Schedler notes, accountability contains two concepts: “*Answerability*: the obligation of public officials to inform about and to explain what they are doing; and *enforcement*: the capacity of accounting agencies to impose sanctions on powerholders who have violated their public duties.”⁹⁰ Graham adds that good governance requires mechanisms to prevent or discourage abuse of political power and to see these powers used effectively and efficiently in response to citizen demands on government.⁹¹ To this end, real decision-making power essentially creates accountability, by “[marrying] decisions and their consequences, [and] leading to better decisions.”⁹²

⁸⁷ Gavin Gardiner, interview by author, January 19 2014.

⁸⁸ Ibid.

⁸⁹ Ibid.

⁹⁰ Schedler, “Conceptualizing Accountability,” 13–28. Author’s emphasis.

⁹¹ Graham, “Building Trust,” 1.

⁹² Cornell and Kalt, “Two Approaches,” 21.

The presence of accountability in traditional or hereditary governance is often viewed with scepticism, primarily because these systems generally do not utilize ballot box elections, the western baseline expectation for democratic institutions. Chief Councillor Jeff Cook and Larry Johnson of HFN respectively suggest that external governments “perceive traditional governance as a dictatorship, basically,”⁹³ not understanding “how deep hereditary systems are.”⁹⁴ Jodi Bruhn attributes this skepticism to that fact that commonly perceived principles of good governance may “inadvertently rely on ideas and practices that are in fact Western,” and do not consider other ways of understanding good governance.⁹⁵ The Standing Senate Committee on Aboriginal Peoples (2010) report that “non-Aboriginal visions of governance and democracy” have dominated governance talks “without much of a reciprocal effort [on part of provincial/federal government] to explore or understand in any depth First Nations’ concepts of governance and democracy.”⁹⁶ The Committee goes further, suggesting that in fact “democracy does not mean elections with ballots; it means the voice of the people in the selection of their leaders and in the decision-making of governments.”⁹⁷

Building on this, many accountability mechanisms are embedded within the foundations of Aboriginal governance, although they often take different forms than in western governance. As Jorgensen (et al.) reminds, democratic tools may “sound quintessentially Western [...] but they were widely used, in diverse forms, in Indigenous North America as well.”⁹⁸ For instance, stakeholders explain that in Gitanyow governance the “open process of the feast” contains inherent “safe-guards” against poor governance practices.⁹⁹ The feast process includes transparent explanation of any business that the government has been involved in and facilitates public input into these matters and upcoming activities. All financial transactions are done publically in the feast hall. All members, and often non-Gitanyow and external government officials, are invited to

⁹³ Jeff Cook, interview by author, January 29 2014.

⁹⁴ Larry Johnson, interview by author, January 29 2014.

⁹⁵ Bruhn, “In Search of Common Ground,” 9.

⁹⁶ Standing Senate Committee on Aboriginal Peoples, *First Nations Elections*, 16, citing testimony given by Wendy Cornet.

⁹⁷ *Ibid.*, iv.

⁹⁸ Jorgensen et al., “Development, Governance, Culture,” 43.

⁹⁹ First Nations Stakeholder A, interview by author, January 7 2014.

witness feast business and members may publically contest any action affecting the governance of the nation, including a name being given to a new chief. While these processes have been modernized, the principles that remain are thousands of years old.¹⁰⁰

Like many hereditary chiefs, Nuuchahnulth chiefs are “raised from birth to participate in governance,” and are responsible for their lands and their peoples.¹⁰¹ Johnson describes chiefly accountability as beyond interpersonal relationships, encompassing accountability to the land and mother earth as well.¹⁰² In this sense, hereditary chiefs are held accountable on a different plane altogether than their western counterparts, essentially deriving accountability through their inherent responsibility to do well by their people in all aspects of their existence. Hereditary Chief and elected Councillor Tom Happynook explains that the Huu-ay-aht system of governance is “more democratic than the western democracy that we live under today,” in that the “system allowed each family to have a say and be able to influence the discussion on a daily basis.”¹⁰³ This was done through extensive consultation between the chiefs and the people, highlighting a community responsibility for good governance, rather than responsibility solely placed in the hands of hereditary leaders.¹⁰⁴ This system of checks and balances was “not only about accountability for the people, it was about the people.”¹⁰⁵

Through their roles as leaders, hereditary chiefs are tasked with ensuring that the families they are responsible for have a voice within the government.¹⁰⁶ Happynook explains that “it is the people with all their cultural institutions and familial responsibilities and teachings that give the hereditary chiefs the respect required to implement their authority.” If a family’s wishes are misrepresented or underrepresented their sense of

¹⁰⁰ First Nations Stakeholder A, interview by author, January 7 2014.

¹⁰¹ Tom Happynook, interview by author, December 11 2013.

¹⁰² Larry Johnson, interview by author, January 29 2014.

¹⁰³ Tom Happynook, interview by author, December 11 2013.

¹⁰⁴ Angela Wesley, interview by author, December 5 2013; Tom Happynook, interview by author, December 11 2013.

¹⁰⁵ Angela Wesley, interview by author, December 5 2013.

¹⁰⁶ Happynook, “Indigenous Self-determination, Accountability, and Liberal Democracy.”

belonging and loyalty to their chief will be compromised.¹⁰⁷ This will dilute the trust, respect, and legitimacy of that chief within the community thereby reducing their influence and constraining their power as a chief. Chiefs receive specific teachings on conduct, behavior, and leadership, and violation of their responsibilities to the people can lead to removal.¹⁰⁸ In this sense, as noted by Taiaiake Alfred, accountability in traditional governance is in part determined through leaders' adherence to accountability procedures, "but to an even greater degree[,] by the success leaders have in cultivating and maintaining relationships."¹⁰⁹ Relationship-building and maintenance is an integral exercise for hereditary chiefs, specifically ensuring that decisions are accessible and responsive to the views of the community.¹¹⁰ "Maintaining a [leadership] status in [a] community" with a hereditary system, one provincial/federal stakeholder argues, makes chiefs "much more accountable [than in the Canadian system], because [hereditary chiefs] can't ignore their house, they have to behave in a certain way."¹¹¹

Through modern self-government, First Nations also have a chance to utilize "political systems that are less adversarial"¹¹² therefore removing some of the negative connotations associated with accountability. For instance, Graham associates conventional notions of accountability with "control, blame, punishment, [and] culpability," which he explains are natural outcomes of the antagonistic political party system.¹¹³ Van der Burg argues that Aboriginal governance emphasizes cooperation and active participation, and western governance emphasizes competition and alienates citizens from the day-to-day process of governance.¹¹⁴ Yet while traditional principles, such as consensus and cooperation, are the key to many traditional governance structures, First Nations also recognize the need to meet the interests of

¹⁰⁷ Ibid.

¹⁰⁸ Happynook, "Indigenous Self-determination, Accountability, and Liberal Democracy."

¹⁰⁹ Alfred, *Peace, Power, Righteousness*, 117.

¹¹⁰ RCAP, *Restructuring the Relationship Part One Volume Two*.

¹¹¹ Provincial/Federal Stakeholder B, interview by author, December 20 2013.

¹¹² Graham, "Building Trust," 3.

¹¹³ Ibid., 3.

¹¹⁴ Van der Burg, "The Absence of Democracy," 30.

provincial/federal governments. “[Adapting] some of the western tools” to blend with pre-existing traditional governance standards is the preferred way to address this issue.¹¹⁵

4.3. Revitalizing Traditional Governance under Treaty

Determining how a traditional structure should be revitalized under treaty is a complex process. As one stakeholder explains, “there are mountains that we have to overcome to see the full fruition of this.”¹¹⁶ Recognizing the impacts of colonization and the realities of modern day life, Jorgensen (et al.) declares that “Indigenous governance structures may still be there, but the circumstances that produced them have long since changed.”¹¹⁷ Undergoing a “paradigm shift”¹¹⁸ away from the divisive impacts of imposed *Indian Act* election processes is an important part of revitalization.¹¹⁹ However, this is not easily accomplished after centuries of suppression and colonization, including the destructive impacts of residential schooling.¹²⁰ Improving the health of the chiefly system as a whole is raised by Happynook as an important component of revitalizing traditional governance. This includes both physical, mental, and spiritual health of hereditary chiefs, as well as the wider health of the community. Specifically in systems that rely heavily on cooperation and collective voice, relationship-building becomes an important factor. Stuart notes that problematic relationships “cannot [be carried]” into a process which operates the most effectively when cohesive.¹²¹ For example, returning to a consensus model and achieving unity among clans that prior to treaty “[had] not worked together for a long, long time” created challenges for CTFN.¹²² While the clan system is meant to promote working together to advance the collective interests of the nation, an adversarial process can emerge without the necessary skills. Stuart suggests that successful

¹¹⁵ First Nations Stakeholder A, interview by author, January 7 2014.

¹¹⁶ First Nations Stakeholder B, interview by author, February 4 2014.

¹¹⁷ Jorgensen et. al., “Development, Governance, Culture,” 44.

¹¹⁸ First Nations Stakeholder B, interview by author, February 4 2014.

¹¹⁹ Mark Wedge, interview by author, January 24 2014; First Nations Stakeholder B, interview by author, February 4 2014.

¹²⁰ Tom Happynook, interview by author, December 11 2013; this impact was also discussed by Mark Wedge, interview by author, January 24 2014; Larry Johnson, interview by author, January 29 2014; and First Nations Stakeholder B, interview by author, February 4 2014.

¹²¹ Barry Stuart, interview by author, November 25 2013.

¹²² Ibid.

consensus based decision-making likely requires some “training in consensus processes [and] how to have a difficult conversation in a safe place.”¹²³ Overall, First Nations stakeholders agree that healing families, bodies, and minds is crucial for the efficacy of traditional governance.¹²⁴

For HFN, Johnson explains that after many decades of being forced to go “without potlatching, dancing, singing, [or] speaking our language”¹²⁵ reviving their culture and hereditary governance required community effort and interest. Re-education on their hereditary institutions played a big role in designing the role for the Ha’wiih (hereditary chiefs).¹²⁶ Jeff Cook, the Elected Chief Councillor of HFN, explains that older citizens “were apprehensive about the traditional system, even though they understood it.”¹²⁷ In many cases, this generation had never witnessed hereditary governance in action;¹²⁸ in fact, it was the younger generation who encouraged the community to pursue some inclusion of hereditary governance within the treaty.¹²⁹ Re-educating citizens about their hereditary system included speaking to Elders; researching historical writings and anthropological field tapes; and reviving cultural songs, dances, and conduct at potlatches.¹³⁰ Wesley and Johnson recall the “real pride”¹³¹ that came out of this process of re-education, to the point that including a role for hereditary governance became a priority and “reinstating” traditional practices “in whatever ways we could in a contemporary world” became a norm.¹³²

However, Taiaiake Alfred, a Mohawk educator and activist, purports that “even if such governments resemble traditional indigenous systems on the surface, without

¹²³ Ibid.

¹²⁴ Barry Stuart, interview by author, November 25 2013; Tom Happynook, interview by author, December 11 2013; Gavin Gardiner, interview by author, January 14 2014; First Nations Stakeholder B, interview by author, February 4 2014.

¹²⁵ Larry Johnson, interview by author, January 29 2014.

¹²⁶ Angela Wesley, interview by author, December 5 2013.

¹²⁷ Jeff Cook, interview by author, January 29 2014.

¹²⁸ Angela Wesley, interview by author, December 5 2013; Jeff Cook, interview by author, January 29 2014.

¹²⁹ Jeff Cook, interview by author, January 29 2014.

¹³⁰ Angela Wesley, interview by author, December 5 2013.

¹³¹ Angela Wesley, interview by author, December 5 2013; Larry Johnson, interview by author, January 29 2014.

¹³² Angela Wesley, interview by author, December 5 2013.

strong and healthy leaders committed to traditional values [...], they are going to fail.”¹³³

Wesley recognizes the practical aspects of this, saying that:

We can't just go back to the system and through our hereditary chiefs and say, 'govern'. We need to provide them with resources, [...] with support, education in some cases, as we move forward.¹³⁴

As she notes, not all First Nations who aim to include a form of traditional governance in their treaty are coming to the table with intact systems with leaders who are prepared to govern in the present day.¹³⁵ Preparing for governance and winning “the trust and support of the people” therefore becomes not only a responsibility, but a priority, of traditional leaders.¹³⁶

First Nations stakeholders emphasize traditional principles as integral components of re-establishing or maintaining their government systems.¹³⁷ After all, “they have survived millennia for a reason.”¹³⁸ Often included in constitutions, legislation, or policies, traditional principles, values, or virtues shape how traditional governance is operationalized.¹³⁹ In many cases, citizens and government officials take oaths or other actions to affirm their commitment to these principles.¹⁴⁰ Wesley notes that utilizing these principles is a learning process; Huu-ay-aht people are “constantly reminding [themselves] that those are the laws [they're] supposed to live by.”¹⁴¹ Returning to the concept of cultural match, this ultimately means that each First Nation will have to undergo an intimate process of “cultural interpretation and construction” in determining the objectives and design of their governance structure.¹⁴² As Johnson notes, “What’s

¹³³ Alfred, *Peace, Power, Righteousness*, 11.

¹³⁴ Angela Wesley, interview by author, December 5 2013.

¹³⁵ Ibid.

¹³⁶ Ibid.

¹³⁷ Angela Wesley, interview by author, December 5 2013; Tom Happynook, interview by author, December 11 2013; First Nations Stakeholder A, interview by author, January 7 2014.

¹³⁸ First Nations Stakeholder B, interview by author, February 4 2014.

¹³⁹ For Gitanyow, fundamental institutions are present in their traditional laws and constitution. For CTFN, a document entitled Book One lays out extensive oral histories and legends, and which virtues are taught within. For Huu-ay-aht, traditional principles are included in their constitution.

¹⁴⁰ Tom Happynook, interview by author, December 11 2013; First Nations Stakeholder A, interview by author, January 7 2014.

¹⁴¹ Angela Wesley, interview by author, December 5 2013.

¹⁴² Smith, “From Gove to Governance,” 25.

good for the Nisga'a is good for the Nisga'a," meaning one model cannot be the panacea for others.¹⁴³

In summary, there are many reasons why some First Nations prioritize traditional governance in their self-government arrangements. Seen as a means to move past imposed western governance structures and towards a renewed sense of cultural pride, for many First Nations revitalizing traditional governance is integral to authentic self-determination. Interviewees speak of common experiences with citizen-driven governance design and finding cultural match. Consensus decisions-making and power equal representation of houses or clans are crucial to ensuring there is a power balance in governance and that decisions reflect the wishes of the citizens. Accountability in traditional systems is entrenched in traditional law and principles, and codes of conduct for hereditary chiefs. In many forms of traditional governance it holds true that "the ultimate decision maker is [...] the people," with citizens frequently participating in all levels of governance.¹⁴⁴

¹⁴³ Larry Johnson, interview by author, January 29 2014; the context of this comment emerges from how provincial/federal governments initially wanted all treaties to adopt the Nisga'a model.

¹⁴⁴ First Nations Stakeholder B, interview by author, February 4 2014.

5. Critical Perspectives on Traditional Governance in Treaty

5.1. Critiques and Barriers

In spite of the positive observations in the previous chapter, actually negotiating a treaty with traditional governance structures is described as an arduous process by each of the First Nations stakeholders interviewed in this study. Wesley recalls that BC and Canada initially would not agree to put traditional governance in the AIP at all and that “[this] was totally a non-starter for [HFN].”¹⁴⁵ Happynook corroborates Wesley’s comment, saying that traditional governance “wasn’t well received at all. [...] It took a lot of negotiations and a lot of head-to-head battles to make sure that *our* hereditary institution was recognized in *our* treaty and constitution.”¹⁴⁶ This experience was shared by CTFN and Gitanyow, the latter of which remains in negotiations. In all cases, reaching agreement was or is contingent on the inclusion of a role for traditional governance.¹⁴⁷

At the core of government resistance to including traditional governance within a treaty is the perceived absence of basic democratic standards with these traditional systems. In response to the failed community vote on the Nuu-chah-nulth AIP in the early 2000s, due primarily from the absence of a hereditary governance role, the provincial/federal government “took a couple steps backward [to determine] what’s really important, what’s essential [...] in establishing these Aboriginal governments.”¹⁴⁸ This

¹⁴⁵ Angela Wesley, interview by author, December 5 2013.

¹⁴⁶ Tom Happynook, interview by author, December 11 2013.

¹⁴⁷ Barry Stuart, interview by author, November 25 2013; Angela Wesley, interview by author, December 5 2013; Tom Happynook, interview by author, December 11 2013; Provincial/Federal Stakeholder A, interview by author, December 19 2013; Provincial/Federal Stakeholder B, interview by author, December 20 2013; First Nations Stakeholder A, interview by author, January 7 2014; Mark Wedge, interview by author, January 24 2014.

¹⁴⁸ Provincial/Federal Stakeholder A, interview by author, December 19 2013.

resulted in a “one page checklist” of basic standards.¹⁴⁹ These standards are reflected in the negotiating policies of the provincial and federal governments: First Nations self-government must include democratic elections and accountability, with a majority of officials being elected on a term basis. This is at odds with many traditional systems which either select their leaders by custom (i.e. not a democratic vote) or through inheritance of a traditional name. This fundamental difference between First Nations and Canadian governance systems is spoken about candidly by provincial/federal stakeholders:

There are some First Nations who have a very strong traditional hereditary or clan governance structure [...] and they wish to carry on that practice into treaty. That’s where the First Nation’s interest rubs against the provincial and federal interest. It becomes a debate on a number of levels: philosophical, legal, practical, economic.¹⁵⁰

Essentially, the provincial/federal government does not view traditional governance as sufficiently responsive to accountability and transparency standards. This effectively comes down to western notions of democracy and good governance, which in most cases do not manifest in traditional governance regimes. What democracy actually means is another contested component in negotiating traditional structures. First Nations stakeholders do not disagree with the larger concept of democracy; however, some argue that the western understanding does not go far enough.¹⁵¹ This is also reiterated by one provincial/federal stakeholder, who suggests that the definition may need to be expanded.¹⁵² This aligns with the Standing Senate Committee’s observation that democracy does not hinge on the inclusion of an electoral process, rather, at its core, democracy speaks to citizen input into leadership selection and decision-making.¹⁵³ Regardless, provincial/federal stakeholders largely interpret democracy through a western lens, defining it as containing one-person-one-vote elections and accountability accordingly derived from this process. In this view, having a majority of elected officials

¹⁴⁹ First Nations Stakeholder A, interview by author, January 7 2014.

¹⁵⁰ Provincial/Federal Stakeholder D, interview by author, November 26 2013.

¹⁵¹ Mark Wedge, interview by author, January 24 2014.

¹⁵² Provincial/Federal Stakeholder C, interview by author, December 20 2013.

¹⁵³ Standing Senate Committee on Aboriginal Peoples, *First Nations Elections*, iv.

creates a “balance of control;”¹⁵⁴ First Nations stakeholders respond to this notion differently. HFN explains that they are accepting of the majority-elected provision; most of HFN’s membership knows the electoral system better than their traditional governance system¹⁵⁵ and this structure creates a “balance in [their] community.”¹⁵⁶ In contrast, Gitanyow has struggled to blend certain traditional practices with western practices. For Gitanyow, translating their Nation’s constitution into a mainstream form took nearly a decade: they “really experienced a lot of problem[s] trying to fit the traditional system [...] into the western concept [of a] constitution,” explains one stakeholder.¹⁵⁷ And unlike HFN, Gitanyow does not foresee a place for elected positions at the legislative level, concluding that the “quick answer [is] no” to such a set up,¹⁵⁸ a large alteration to their hereditary system would “just degrade it.”¹⁵⁹

Broadly speaking, proposing a treaty regime without these democratic processes, specifically ones with “secret processes”¹⁶⁰ and a lack of elections, would see immediate governmental opposition.¹⁶¹ Provincial/federal stakeholders question how, without democratic elections or a complete description of all governance processes,¹⁶² they can “satisfy [themselves] that there are rules; that they are fair; that they don’t exclude?”¹⁶³ From this perspective, traditional governance would need to contain “clear, written rules”¹⁶⁴ to be considered under treaty, such as for an appeals process to challenge laws and regulations, and a process for removal of government officials. Provincial/federal stakeholders speak to the need for procedural “oversight:” “if we put in place that [the First Nation] has to have an election, and [they] don’t, then everybody

¹⁵⁴ Provincial/Federal Stakeholder D, interview by author, November 26 2013.

¹⁵⁵ Larry Johnson, interview by author, January 29 2014; Jeff Cook, interview by author, January 29 2014.

¹⁵⁶ Angela Wesley, interview by author, December 5 2013; also echoed by Tom Happyhook, interview by author, December 11 2013.

¹⁵⁷ First Nations Stakeholder A, interview by author, January 7 2014.

¹⁵⁸ Ibid.

¹⁵⁹ Provincial/Federal Stakeholder B, interview by author, December 20 2013.

¹⁶⁰ Provincial/Federal Stakeholder C, interview by author, December 20 2013.

¹⁶¹ Provincial/Federal Stakeholder A, interview by author, December 19 2013.

¹⁶² Provincial/Federal Stakeholder A, interview by author, December 19 2013; Provincial/Federal Stakeholder C, interview by author, December 20 2013.

¹⁶³ Provincial/Federal Stakeholder C, interview by author, December 20 2013.

¹⁶⁴ Ibid.

[has to have] the right to challenge the process.”¹⁶⁵ This speaks to a greater need for transparent methods of determining who holds law-making power and how law-makers will be held accountable, specifically how leadership is determined, how these methods are reviewed, and who has the power to verify if these people are fulfilling the requirements of the law.¹⁶⁶

Procedures for financial accountability are also an area of significant concern.¹⁶⁷ The presence of “secret processes in agreements that are establishing intergovernmental relationships” creates concern over how financial accountability can be sufficiently exercised;¹⁶⁸ after all, treaties include large transfers of capital and “the crown is more comfortable having those monies in the hands of a democratic government.”¹⁶⁹ This discomfort is partially linked to the status of non-members and their ability to participate in a traditional governance process. Can hereditary or clan institutions lead to non-member disenfranchisement? One stakeholder asks, “What about the rest of the constituents? [...] If you’re going to tax your citizens, these citizens should not only have the right to vote on their elected officials, [and] hold them accountable, but [also] be able to run for office.”¹⁷⁰ Interestingly, the Tsawwassen FA stipulates that non-members may participate in decision-making processes that “directly and significantly” affect them, although they may not run for a leadership position.¹⁷¹ Furthermore, provincial and federal governments direct treaty funding to First Nations organizations that are founded around traditional or hereditary structures all the time, including the Office of the Gitanyow Hereditary Chiefs. The Gitanyow Hereditary Chiefs are recognized by the BCTC as the representative body for treaty negotiations; therefore, the federal and provincial governments are obligated to flow any treaty-related funding to them. The provincial government also has reconciliation agreements with the Gitanyow Hereditary Chiefs regarding land and resource management. This raises the

¹⁶⁵ Provincial/Federal Stakeholder C, interview by author, December 20 2013.

¹⁶⁶ Ibid.

¹⁶⁷ Provincial/Federal Stakeholder D, interview by author, November 26 2013; Provincial/Federal Stakeholder C, interview by author, December 20 2013.

¹⁶⁸ Provincial/Federal Stakeholder C, interview by author, December 20 2013.

¹⁶⁹ Provincial/Federal Stakeholder D, interview by author, November 26 2013.

¹⁷⁰ Ibid.

¹⁷¹ *Tsawwassen Final Agreement*, 138.

question of why provincial/federal government recognizes these traditionally-based organizations as credible in these capacities but would not recognize them as credible treaty governments. While acknowledging that this recognition is not centered around law-making power, both First Nations and provincial/federal stakeholders see this as setting a sort of precedence for recognizing hereditarily-based organizations as valid and accountable.¹⁷²

While acknowledging that it *may* be possible for a hereditary or clan system to contain “great checks and balances and provide for far greater accountability [than the Canadian system],”¹⁷³ provincial/federal stakeholders uphold that the crucial missing component is the ballot box piece.¹⁷⁴ Simply put, federal and provincial governments want to see a clear process for democratic leadership selection. From a provincial/government perspective, customary leadership selection does not include an avenue for every citizen to participate. Hereditary governance is associated with family governance, which is “not a recipe for good governance” in that families with more hereditary authority and “without effective accountability” could influence government in an unfair manner.¹⁷⁵ Gardiner reflects that when first encountering CTFN clan governance, his knee-jerk reaction was to label it undemocratic in the absence of elections but he has since “gone 180 degrees.”¹⁷⁶ This drastic change in opinion came about after witnessing the consensus decision-making process and the representative voice that results. In turn, provincial/federal fear over the lack of conventional democracy is “legitimate but really unfounded,”¹⁷⁷ according to one provincial/federal stakeholder. From this point of view, the issue is that provincial/federal government does not actually understand how the hereditary structure works in regards to consensus decision-making and accountability:

¹⁷² Provincial/Federal Stakeholder B, interview by author, December 20 2013; First Nations Stakeholder A, interview by author, January 7 2014.

¹⁷³ Provincial/Federal Stakeholder C, interview by author, December 20 2013.

¹⁷⁴ Provincial/Federal Stakeholder B, interview by author, December 20 2013; Provincial/Federal Stakeholder D, interview by author, November 26 2013.

¹⁷⁵ Provincial/Federal Stakeholder D, interview by author, November 26 2013.

¹⁷⁶ Gavin Gardiner, interview by author, January 19 2014.

¹⁷⁷ Provincial/Federal Stakeholder B, interview by author, December 20 2013.

What we don't see is the consensus building model [...] We don't see the nature of the politics in the potlatch because we're not there [...] Gitanyow has argued that perhaps it's *more* democratic because everyone has a say. The 'say' is different; it's not necessarily marking an X, it's [citizens] saying to the hereditary chiefs 'don't do that' or 'yes, you can do that; you have my authority.'¹⁷⁸

In CTFN's experience, though the federal and territorial governments initially were not open to a clan governance structure, they eventually "recognized that who were they to go to a First Nation and say democracy is the only flavour you can buy at the store."¹⁷⁹

5.2. Possible Opportunities

Putting aside current negotiation policies, provincial/federal stakeholders provide insight into possible avenues for integrating traditional governance under treaty. Recognizing the importance of exploring new opportunities for inclusion, one provincial/federal stakeholder expresses:

These structures have been around for a long time [...] the communities that are still using them are using them because they are important to those communities [and] it's important that that is taken into account in the course of the negotiation process.¹⁸⁰

Interestingly, these possible opportunities mostly encompass a highly contested aspect that is often missing in hereditary or clan systems: leadership selection through elections. Although the IRP refers to elections, "there is no clear [federal] policy on what 'election' means; there's a certain flexibility to how you would meet that standard."¹⁸¹ This is a revelation in itself and implies that, in theory, elections could be understood to mean something other than a one-person-one-vote exercise. In practice, provincial provincial/federal stakeholders generally reject this notion but in spite of this, some

¹⁷⁸ Provincial/Federal Stakeholder B, interview by author, December 20 2013.

¹⁷⁹ Barry Stuart, interview by author, November 25 2013.

¹⁸⁰ Provincial/Federal Stakeholder A, interview by author, December 19 2013.

¹⁸¹ Provincial/Federal Stakeholder C, interview by author, December 20 2013.

stakeholders suggest that “you could envision some form of government that provided enough direct input by members in how it operated that maybe elections are something you don’t have to have for the majority of office holders.”¹⁸² In this case, there would have to be a “very clear and transparent method of leadership selection” with clear accountability provisions.¹⁸³ Any provision would also have to ensure that “everybody that should be represented is represented.” And while provincial/federal stakeholders acknowledge that traditional governments may be legitimate in the eyes of their citizens, they do express a need to go “a step further and ask if that form is actually legitimate in [Canada’s] constitutional framework”¹⁸⁴ in regards to who makes laws and how they are made.

To that end, a major hold-up for government is providing law-making power to a treaty government that does not adhere to their understanding of democratic rule. Even though First Nations such as Gitanyow are represented by their hereditary chiefs in other agreements with external governments for which there are consultation and management stipulations, “the leap to law-making is huge for us,”¹⁸⁵ admits one government participant. In speaking to the Yukon clan system, provincial/federal interviewees suggest that a similar system may work in the BC Treaty Process under the right conditions. The “purposeful ambiguity” in the language of the IRP certainly provides for “latitude for greater reflection of customs in leadership selection.”¹⁸⁶ What is really needed is a chance to “test-drive” a traditional governance model under treaty.¹⁸⁷ Such an opportunity was nearly realized in 2003, when Gitanyow, Canada, and BC signed-off on a governance model that laid out a governance design for Gitanyow’s AIP. Within this structure there were two law-making bodies: one with hereditary chiefs and one with elected officials. Each body had jurisdiction over different areas of law; the hereditary chiefs would focus on lands and resources, while the elected body would focus on programs and services. Because “[they] knew [they] wouldn’t get a straight mandate [for

¹⁸² Provincial/Federal Stakeholder A, interview by author, December 19 2013.

¹⁸³ Provincial/Federal Stakeholder C, interview by author, December 20 2013; this stakeholder recognizes the court as a means for a Treaty First Nation’s citizen to protest an elective process.

¹⁸⁴ Provincial/Federal Stakeholder C, interview by author, December 20 2013.

¹⁸⁵ Provincial/Federal Stakeholder B, interview by author, December 20 2013.

¹⁸⁶ Provincial/Federal Stakeholder C, interview by author, December 20 2013.

¹⁸⁷ Provincial/Federal Stakeholder B, interview by author, December 20 2013.

hereditary law-making],”¹⁸⁸ the governance structure included oversight mechanisms with each body reviewing and commenting on the other’s laws before they could be passed. Although this was “the first time in treaty negotiations that [government] had ever taken such a leap of faith, a step forward, on incorporating traditional governance at that level,” a major point of contention eventually led to Gitanyow rejecting the model: the elected body had to sign off on the laws drafted by the hereditary chiefs prior to passing them, but the hereditary chiefs had no such power over the elected branch. While stakeholders predict this model would have been accepted by Cabinet, this is no guarantee that it would have been approved for FA negotiations. Regardless, provincial/federal stakeholders argue that “strategically, it would have given [Gitanyow] a lot more credibility [...] [it] would have changed the dynamic dramatically.”¹⁸⁹

The nature of Canadian politics today makes it unlikely to receive authority for such a model again; advisory, rather than law-making, powers for hereditary governance are more likely to get approval. This leads to another question: “Is [traditional governance] something that Canadian values are going to accept?”¹⁹⁰ Some research participants offer hope that sufficiently transparent models would find support, while others argue that constitutionally entrenching a structure that is not viewed as democratic “is just something that the general public won’t understand and won’t accept.”¹⁹¹ Provincial/federal stakeholders recognize that asking a First Nation to provide a visual, transparent description of their traditional governance “is alone a fairly offensive thing to get into in intercultural negotiations.”¹⁹² However, the fact that there is no definition of ‘election’ within the IRP may create space in which to massage the intended meaning (one-person-one-vote).¹⁹³ If a non-electoral system is adopted, and subsequently challenged by a citizen, presumably the courts would then interpret what ‘election’ means in a treaty context and if the governance structure was in violation of the

¹⁸⁸ Provincial/Federal Stakeholder B, interview by author, December 20 2013.

¹⁸⁹ Provincial/Federal Stakeholder C, interview by author, December 20 2013.

¹⁹⁰ Ibid.

¹⁹¹ Provincial/Federal Stakeholder B, interview by author, December 20 2013.

¹⁹² Provincial/Federal Stakeholder C, interview by author, December 20 2013.

¹⁹³ In general however, the provision calling for democratically elected government is thought to be free of misinterpretation; the current treaty language uses compulsorily language to ensure that the treaty is binding on the list of guiding principles, including that governments must have majority of their officials democratically elected and accountable.

treaty. Some stakeholders suggest that because policy is unlikely to change, First Nations not keen on western-styled elections should 'work the system' by agreeing to a partial elective system and then running their hereditary chiefs in the election (knowing that the community supports hereditary leadership).¹⁹⁴ To this end however, most interviewed stakeholders recognize that the process of negotiating and receiving tripartite agreement on a traditional governance structure essentially signals "final acknowledgement that [the] structure has validity [and] standing" in the eyes of the provincial/federal government.¹⁹⁵ This acknowledgement would be a poignant outcome after many years of First Nations being told they have a right to self-government and self-determination, just as long as it fits with western notions of how governance should manifest. Nevertheless, government approval aside First Nations citizens themselves may have no interest in adapting their traditional governance to suit external government interests. Stakeholders describe the reaction to some of the western tools that Gitanyow has contemplated incorporating into their governance system: "If you deviate from that [hereditary system], they say: What's wrong with you? Are you trying to be a white man?"¹⁹⁶

Both provincial/federal and First Nations stakeholders question how a country "steadfast on democracy"¹⁹⁷ can fairly critique traditional governance in face of the recent scandals regarding the accountability of the Canadian Senate as well as the longer term issue of low voter turnout during elections. After all, it is hard to argue that undemocratic appointments by the Prime Minister to the Senate, a key part of Canada's governance regime with substantial powers, align with the provincial and federal governments own negotiation position on democratic leadership selection.¹⁹⁸ Numerous stakeholders also argue that Canada's ballot box system does not genuinely reflect the wishes of the population; the current federal government received a majority government with only 40% of the popular vote.¹⁹⁹ In light of Senate appointments and underwhelming

¹⁹⁴ Provincial/Federal Stakeholder B, interview by author, December 20 2013.

¹⁹⁵ Ibid.

¹⁹⁶ First Nations Stakeholder A, interview by author, January 7 2014.

¹⁹⁷ Angela Wesley, interview by author, December 5 2013.

¹⁹⁸ Provincial/Federal Stakeholder A, interview by author, December 19 2013; First Nations Stakeholder A, interview by author, January 7 2014.

¹⁹⁹ "Electoral Results by Party."

voter participation, it is hypocritical for Canada to claim democratic superiority over citizen supported and designed traditional governance systems.

6. Case Studies in BC and Yukon

This chapter briefly describes the traditional governance structures of the three First Nations identified in the research methodology: Huu-ay-aht First Nations (HFN), Carcross/Tagish First Nations (CTFN), and Gitanyow Nation. The governance structures described below are considered to be culturally matched due to the control their respective First Nations have in their design, although each case illustrates a different design as well as a different implementation context. The following sections therefore focus on the defining features of each traditional governance model with an emphasis on formal governance procedures and structure. The case studies contribute to an understanding of how traditional governance is utilized today and the development of policy options in Chapter 8 of this study.

6.1. Huu-ay-aht First Nations (BC)

The Huu-ay-aht First Nations (HFN) are one of the five Maa-nulth First Nations on the west coast of Vancouver Island, the others being Ka:'yu:k't'h/Che:k:tl'es7e't'h', Uchucklesaht, Ucluelet, and Toquaht. Their collective Final Agreement was signed in 2007 and is currently being implemented; it is the second modern treaty to be completed under the BC Treaty Process and became constitutionally entrenched upon tripartite ratification. Although the five Nations share one treaty they all govern independently of one another, have different governance structures, and pass separate legislation. The provision for hereditary chiefs within the Maa-nulth treaty makes it the first treaty under the BC Treaty Process to specifically include traditional governance; this model is the status quo for including such structures in treaty. Although each of the Maa-nulth First

Nations include different roles for their hereditary institutions, this case study highlights the governance structure of HFN.²⁰⁰

6.1.1. Governance Structure and Decision-Making

The governance structure of HFN includes a legislature, an executive, a Ha'wiih Council (council of hereditary chiefs), and a People's Assembly. Brief descriptions of each of these bodies can be found in Table A.1 of Appendix A.

The defining design feature of the Huu-ay-aht government is the stipulation that the majority of governance officials be elected by a citizen-wide vote; this stipulation is included within the treaty text, while descriptions of internal government composition and operation are within the HFN Constitution. This governance model is essentially “hybrid” in nature: it contains both elected and appointed representatives.²⁰¹ The HFN Constitution provides that one hereditary chief may be appointed to the legislative body. This representative is generally the Tyee Ha'wilth, the head hereditary chief, and is formally appointed by the Ha'wiih (hereditary chief) Council.²⁰² Asked about the relationship between the elected and appointed legislative members, Happynook responds: “We never had a tug-o-war between our elected government and our hereditary government,” even noting that “for many years [prior to treaty] it was our Tyee who was our elected Chief Councillor.”²⁰³ Study participants regard the appointed legislative Ha'wilth as a “full participant” in governance.²⁰⁴

Although the legislature has exclusive authority to pass a law, the Ha'wiih Council must be given an opportunity to review and comment on any draft legislation. Currently, the Ha'wiih Council is not fully active; interviewees attribute this to the already strong presence of hereditary chiefs in the legislature (as elected officials) and the need for many Ha'wiih to relearn the hereditary governance system before fully taking on their governance roles. Accordingly, the Ha'wiih Council was created as “a box there for our

²⁰⁰ An overview of the other Maa-nulth First Nations' governance structures is found in Appendix A.

²⁰¹ Tom Happynook, interview by author, December 11 2013.

²⁰² Note that Ha'wiih is the plural of Ha'wilth.

²⁰³ Tom Happynook, interview by author, December 11 2013.

²⁰⁴ Ibid.

chiefs themselves to fill up”²⁰⁵ with the impetus on the Ha’wiih themselves to exercise their authorities set out in the constitution, when they are ready. Interviewees speculate that in time this structure will become more active as the next generation of Ha’wiih are given the hereditary chief teachings.²⁰⁶

6.1.2. Citizens’ Role

HFN has a total registered population of 708,²⁰⁷ with citizenship granted to all individuals who belong to a Huu-ay-aht Maht Mah (House Group) or who can demonstrate significant attachment.²⁰⁸ All citizens may participate in political activities, elections, and government, and have the right to be consulted regarding HFN affairs. While all citizens may run for office to fill the Chief Councillor and Councillor positions, only hereditary chiefs can be appointed as the Ha’wiih Council representative to the legislature.

The primary avenues for citizens to participate in governance are through leadership elections, which occur every four years, and through the People’s Assembly. The People’s Assembly is an annual venue for all citizens to voice their opinions and participate in making recommendations to government. Here, the legislative body provides financial information and lays out governance objectives for the upcoming year. Citizens make recommendations to the legislature by a majority vote or by consensus if it can be reached. These recommendations must be considered and voted upon by the legislature and executive. Details of the Assembly held on November 30, 2013 offer some insight into the current status of citizen participation.²⁰⁹ Of those that completed an evaluation, 77% were very satisfied or satisfied with their overall experience, only 52% felt this way regarding how citizen’s concerns and questions were met. Other questions

²⁰⁵ Angela Wesley, interview by author, December 5 2013.

²⁰⁶ Angela Wesley, interview by author, December 5 2013; Tom Happynook, interview by author, December 11 2013.

²⁰⁷ Information available at AANDC “First Nations Profiles” by searching for Huu-ay-aht First Nations (population numbers as of March 2014)

²⁰⁸ Significant attachment includes participation or intent to participate in the Huu-ay-aht community and knowledge about Huu-ay-aht history, ancestry, and cultural institutions. The Tyee Hawilth must consider if the applicant possesses these attributes, and then will make a decision if they should be given citizenship.

²⁰⁹ “People’s Assembly Highlights: November 30, 2013.”

elicited opinions on meeting procedure, transportation options to the gathering, and if motions/decisions were easy to understand; the first two questions received over 50% affirmation but the latter received less than 50%.

6.1.3. Accountability and Transparency

HFN utilizes various pieces of legislation to govern accountability. Mechanisms to challenge, appeal, or review the validity of a law or administrative decision are dealt with under the *Tribunal Act* of 2011,²¹⁰ while financial matters are held accountable through the *Financial Administration Act* which establishes standards for effective and transparent use of financial resources. This Act “is based on standards comparable to those generally accepted for governments in Canada.”²¹¹ The HFN Council prepares a yearly budget and audit presentation for review by the People’s Assembly.

All elected and appointed government representatives, along with other employees of the Huu-ay-aht government, are subject to the Code of Conduct and Conflict of Interest Act. The purpose of this Act is to legislate the ethical, transparent, lawful, and interest-free behaviour that is expected of HFN government officials. These officials are required to take the Huu-ay-aht Oath and follow a procedure for meetings and general conduct. This Oath references traditional customs: officials must honour the sacred principles of Uu-a-thluck (taking care of future generations) and Hish-uk-tsawak (everything is one), be a positive role model, and follow the principle of ii-saak (conducting oneself honestly and respectfully). Representatives who are absent from four meetings within 12 months, without excuse, are disqualified from holding their position; members may also be disqualified if a medical practitioner deems them to be unable to perform their duties. In order to proceed with a disqualification, either the Chief Councillor, a member of the Executive Council, at least 10 eligible voters, a public officer, or the Speaker must apply in writing to the Tribunal and set out the situation. Within 5 days of receiving an application, the Tribunal must decide if prima facie evidence exists for removal after which their determination is final. Government officials may be disciplined in a variety of manners, from being disqualified from their position,

²¹⁰ *Huu-ay-aht First Nations Tribunal Act 2011*, 6.

²¹¹ *Huu-ay-aht First Nations Financial Administration Act 2011*, 9.

being suspended, or having to pay damages for their action. Committing acts of fraud, improper use of money, or being charged with a prescribed criminal offence may also lead to removal.

Each of these procedures lay the foundation for a government that is accountable to its citizens financially and ethically through conventional tools, as well as through the traditional values and principles of the HFN. The Maa-nulth treaty and the HFN Constitution conform to accountability standards shared by other governments in Canada.

6.2. Carcross/Tagish First Nation (Yukon)

The Carcross/Tagish First Nation (CTFN) is one of eleven self-governing nations based in the Yukon. CTFN signed their FA with the territorial and federal governments in 2003 and their Self-Government Agreement in 2006. Unlike the treaties being ratified in BC, the Yukon agreements separate land and management powers from self-governance powers into two distinct agreements, the latter of which is not constitutionally entrenched.

6.2.1. Governance Structure and Decision-Making

The CTFN governs based on a clan system, set out in their internal constitution. Originally ratified in 1997, the constitution states that the clan system is “the expression of [the] traditional system of government and principles for fair treatment of [the] citizens.”²¹² As one of the constitutional objectives is to strengthen and revitalize the traditional clan system of the CTFN,²¹³ CTFN’s governance structure is heavily based around their six clans: Deisheetaan, Daklaweidi, Ishkaahittan, Kookhittaan, Gaanaxteidi, and Yan Yedi. Stakeholders acknowledge that it is not possible to return to the traditional clan system in its entirety, but this should not be a deterrent from taking the traditional practices that are known and adopting them within a modern context;²¹⁴ for CTFN, this

²¹² *Constitution of the Carcross/Tagish First Nation 2011*, 1.

²¹³ *Ibid.*, 2.

²¹⁴ First Nations Stakeholder B, interview by author, February 4 2014.

has resulted in a blended traditional and contemporary governance structure. The government is broken up in into four separate governing bodies, detailed in Table A.2 of Appendix A.

CTFN clans are considered to be distinct political and decision-making units of their own; stakeholders draw an important distinction between the clans and the CTFN government in that the clans, rather than the formal structure of government, are seen to be the true authority.²¹⁵ In the words of one interviewee, “the ultimate decision maker is we, the people [...] our government cannot tell our clans what to do; our clans tell our government what to do.”²¹⁶ Each clan undergoes an internal process to appoint their governance representatives to the legislature and executive. These internal processes are not uniform across the clans; such procedures may be straight votes, a nomination and election process, or appointment through “conversation-style” clan discussion. Certain clans hold internal clan elections while other clans look to traditional or other criteria to select their representatives. These criteria may be based on qualities or virtues useful for governance. While governance responsibilities are generally not passed through hereditary lineage, this varies between clans. One interviewee explains that her clan, at the current point in the evolution of their clan governance, are still selecting their governance representatives through secret ballot, but says: “When we evolve into our traditional practices we will not have to do that, we’ll be able to resolve it with the spoken word.”²¹⁷ While leaving leadership selection protocols open to clan interpretation does not necessarily create consistency it does allow for clan independence.

CTFN strives to make decisions via consensus within each of their governing bodies, but is able to fall back on a super-majority vote of 75% if necessary. Furthermore, because there are large discrepancies between the sizes of the six clans CTFN does not govern from proportional representation but has an equal number of representatives from each clan on all governing bodies.

²¹⁵ First Nations Stakeholder B, interview by author, February 4 2014.

²¹⁶ Ibid.

²¹⁷ Ibid.

6.2.2. Citizens' Role

CTFN's clan system of governance is designed for strong participation of all 642 members,²¹⁸ realized through consensus decision-making and direct community engagement into all government affairs. While other traditional systems of governance may be based on hereditary leadership, the CTFN constitution provides that all members of CTFN are able to eligible to become officials in the legislature or executive, or the Khà Shâde Héni (Chief). All members must have CTFN ancestry and thus may be appointed (by their clan) to a CTFN governing body, while non-members without CTFN ancestry cannot seek a position within a governing body. However, non-members receive certain privileges, benefits and rights, and can petition the government for redress if they feel their constitutional rights have been infringed.

One of the “most powerful participatory processes,” as witnessed by an interviewee, were the events surrounding the constitutional amendment in 2011 which transformed the selection process of the Khà Shâde Héni, making this position elected rather than appointed by traditional leaders (Clan House Masters) as done previously.²¹⁹ This amendment was in response to protests regarding the structure of the clan system, in particular how the Khà Shâde Héni was appointed by traditional leaders, rather than being selected through a one-person-one-vote election process. While protesters expressed anger for not being directly involved in selecting their Chief,²²⁰ the Khà Shâde Héni at the time, Mark Wedge, responded: “Under the band election system [...] the majority of the people weren't heard. When the clan system became involved, we had more involvement from the community. Many people came to me and said they feel that they are now more represented because they have a clan system. So this is a perspective ... sometimes democracy isn't about going with what I want. It's about what the whole wants.”²²¹

While the amendment went ahead, some interviewees reported that by removing this power from the Clan House Masters and replacing it with an election, a power

²¹⁸ Information available at AANDC “First Nations Profiles” by searching for Carcross/Tagish First Nation (population numbers as of March 2014)

²¹⁹ Gavin Gardiner, interview by author, January 19 2014.

²²⁰ Unrau, “I'm tired of living in a dictatorship.”

²²¹ Ibid.

imbalance is created because clan-endorsed Clan House Masters are no longer working together to appoint a nation-wide leader.²²² The transition to an elected Khà Shâde Héni was not preferred by all clans, but the outliers “agreed that for the peace and unity” of the First Nation as a whole they would support it.²²³ Interestingly, some members of the CTFN community are interested in returning to the traditional process of selecting the Khà Shâde Héni.²²⁴

6.2.3. Accountability and Transparency

The CTFN Constitution provides provisions for financial accountability and removal of office holders, and a Code of Conduct and Ethics to which representatives of the governing bodies are subject to. A Justice Council is tasked with all matters of administering justice within CTFN and for handling petitions of redress made by citizens.

Fiscal accountability and responsibility are identified as key objectives for the CTFN government. Providing an “effective financial management reporting system” is actioned through procedures that require an annual budget approved by the Assembly, monitoring budget expenditures, receipt and recording of funds received by CTFN, and account maintenance, among other policies.²²⁵ A fiscal year-end report is published annually with statements of assets and liabilities, and revenues and expenditures of operation costs for that fiscal year, and there are annual external audits of CTFN accounts. CTFN’s constitution sets out detailed processes for legislation review and any member may challenge a CTFN law or regulation.

The Code of Conduct and Ethics for government officials in all branches acts as a guide to ensure all government matters are conducted in a transparent manner free of any conflict of interest. Officials are tasked with ensuring any financial or personal interests do not impact the considerations of their governing body or any votes that may take place, and declaring conflicts-of-interest when they arise. Representatives of the legislature or executive can be removed by their clan if they fail to attend three

²²² First Nations Stakeholder B, interview by author, February 4 2014.

²²³ Ibid.

²²⁴ Ibid.

²²⁵ *Book One: Traditional Beliefs and Practices*, 190.

consecutive meetings without approval, conduct themselves in opposition the Code of Conduct and Ethics, misrepresent their clan's interests or act against their instruction, or conduct themselves in another way that the clan believes is warrant for removal. To action a removal a resolution must be passed by the Clan House Master and at least five members of the clan.²²⁶

6.3. Gitanyow First Nation (BC)

The Gitanyow First Nation is located in northwestern BC with a population of 825.²²⁷ Represented by the Gitanyow Hereditary Chiefs in treaty negotiations, this First Nation regards traditional governance “the highest of the high”²²⁸ in terms of its treaty priorities. Gitanyow's governance structure is set out within its internal constitution, ratified in 2009. Gitanyow has not yet signed a self-government agreement or treaty; they are currently at stage four in the BC Treaty process (AIP negotiations) and therefore are still governed by the *Indian Act*. This case study details Gitanyow's internal constitution and the system of hereditary governance described within.

6.3.1. Governance Structure and Decision-Making

The Gitanyow houses (Huwilp) consist of eight historic house territories, four under Lax Gibuu Huwilp (Gwass Hlaam, Wii'litsxw, Malii, Haizimsque) and four under Lax Ganeda Huwilp (Gamlaxyeltxw, Gwinuu, Watakhayestsxw, and Luuxhon). Individually known as a Wilp, each house is an autonomous social, political, and governing unit and holds primary decision-making authority for its Lax'yip (territory) in accordance with the traditional governance system.²²⁹ Table A.3 in Appendix A provides design details of this structure.

²²⁶ *Constitution of the Carcross/Tagish First Nation 2011*, 8.

²²⁷ Information available at AANDC “First Nations Profiles” by searching for Gitanyow (population numbers as of March 2014)

²²⁸ Provincial/Federal Stakeholder B, interview with author, December 20 2013.

²²⁹ *Gitanyow Nation Constitution 2009*; Peeling, “Constitution Making among the Gitanyow,” 4.

The Gitanyow structure is heavily based around traditional Gitanyow customs and law (Ayookxw) to govern its members and lands. According to the constitution, the hereditary chiefs—the Simoyget (chiefs) and the sub-Chiefs—are the primary decision-makers. These chiefs can be men or women. Leadership responsibilities are inherited through names and traditional law and there are usually a number of hereditary chiefs within a Wilp.²³⁰ Although chief names are inherited, the chief with the highest name does not have to be the Wilp representative in government; the members may decide that another chief is better suited to sit on the legislature,²³¹ although selection is generally guided by traditional law.²³² Additionally, while there is one representative from each Wilp on the legislative body, other chiefs may be assigned to portfolios they have knowledge in and the legislative chief may consult with these chiefs on governance matters.²³³ Executive representatives do not need to hold a hereditary name and are also selected by the Wilp. An appointed President acts as spokesperson for the Simgigyet'm (hereditary chiefs and legislature) in matters of external government and private sector relations, while individual Wilp spokespeople, appointed by their House Groups, deliver messages and decisions of their Wilp to the chiefs or external governments.²³⁴ If an external matter impacts more than one Wilp, but not all eight, those Wilps will decide through consensus which one will interface with the external organization or government. Gitanyow's governance structure does not contain majority voting but operates on consensus-based decision-making. This is an extensive deliberative process which will go to dispute resolution if there are difficulties arriving at consensus. Individual Wilps also utilize consensus decision making for matters relating to internal affairs.

Because Gitanyow is governed by the *Indian Act*, it does not have legislative powers that are granted to First Nations with treaties or self-government agreements. In practice however, the Gitanyow hereditary institution exercises many of the decision-making responsibilities set out in its constitution. Although Gitanyow is pursuing treaty

²³⁰ Provincial/Federal Stakeholder B, interview with author, December 20 2013.

²³¹ Ibid.

²³² *Gitanyow Nation Constitution 2009*, 8.

²³³ Provincial/Federal Stakeholder B, interview with author, December 20 2013.

²³⁴ *Gitanyow Nation Constitution 2009*, 12.

for eventual self-government capabilities, traditional laws have never stopped applying to Gitanyow territory and peoples. As one interviewee states:

[We] already have laws, traditional laws, and our people are saying 'We already have traditional law, why do we need this [formal concept of] legislative authority or a legislative process?'

6.3.2. Citizens' Role

The Gitanyow governance system has its foundations in consensus decision-making and “extensive dialogue” within and between Wilps.²³⁵ Albert Peeling describes the feast system through a variety of examples to demonstrate its participatory elements. The Gitanyow, like many northwest coast peoples, engage in feasting as part of their governance structure. The feast, or the Li'ligit, is a “highly democratic and open” process:²³⁶ all members in attendance confirm or contest government business as witnesses and monitors of the process. As this body also operates on consensus, a Consent Record is kept in order to document the process of arriving at consensus. Opportunities through the feast for all members to participate in decision-making lead to few disagreements.²³⁷

In terms of leadership selection, representatives on the legislative body are appointed according to Gitanyow law, the Ayookxw. Chiefs and chief matriarchs inherit their positions; this is in opposition to current provincial/federal mandates which requires an electoral process of selection. According to one provincial/federal stakeholder, “those who are not born into that hereditary structure do not have a lot of ability to move up into it and become leaders.” However, while “people in some [other] communities feel disenfranchised [...] in Gitanyow, [he has] never heard of a lot of people being disenfranchised, it hasn't been a really big issue.” Non-members, those who live on Gitanyow territory but have not been adopted into a Wilp, are accommodated within the constitution as in accordance with the Ayookxw. As only members of a Wilp can participate in selecting a Wilp legislative or executive representative, it is assumed that a non-member would not be involved in this process. Again, it is important to note the two

²³⁵ First Nations Stakeholder A, interview with author, January 7 2014.

²³⁶ Peeling, “Constitution Making among the Gitanyow,” 7.

²³⁷ Ibid., 8.

areas for which external governments generally want to see opportunities for non-First Nations to participate are law-making and taxation, both of which are not currently being exercised by Gitanyow Nation (as they would be under treaty).

6.3.3. Accountability and Transparency

Although Gitanyow Wilp leadership is passed down through inheritance, the hereditary system has embedded mechanisms for accountability. A Simogyet or sub-Chief requires the support of their Wilp to maintain their leadership position, and these leaders may be removed by their Wilp for not attending or participating in a feast or for being involved in acts that bring shame to the Wilp.²³⁸ A notification for removal must be made within the Wilp (or within two or more Wilps in the same clan), with the final decision resting with the Wilp directly affected. Formal notification of a removal is given at a Li'ligit after which the hereditary name and responsibilities are given to the newly selected Wilp Simogyet or sub-Chief. Gitanyow members then have the chance to validate or contest the new leader in accordance with the Ayookxw. Peeling is careful to note that inheriting a chiefly name through the feast does not give the new leader dictatorship powers as the other chiefs will hold the newcomer to an agreed-upon set of standards: attendance at feasts and meetings, community participation, and public behaviour.²³⁹ Similar to the CTFN clan system, each Wilp is not only accountable to its own membership but also to the wider Gitanyow Nation; although autonomous in internal matters, the Huwilp come together for collective concerns. Integral to this system is community and Wilp acceptance, and as demonstrated, a chief can be removed from his position if he violates these standards.²⁴⁰

One important component missing from the constitution is a written procedure for legislative review. This may be partially due to the fact that few official law-making authorities currently exist, but is likely attributable to the extensive involvement of Wilp members in decision-making. All members may participate in decision-making within their respective Wilp, of which all final decisions are made by consensus and recorded in

²³⁸ *Gitanyow Nation Constitution 2009*, 8.

²³⁹ Peeling, "Constitution Making among the Gitanyow," 8.

²⁴⁰ *Ibid.*

the Consent Record. Processes such as these imply that while a legislative review process appears to be missing, final decisions affecting an individual Wilp cannot be made without consensus. One study participant states that hereditary chiefs will hold off on a decision until consensus with the people is reached.²⁴¹ Interviewees also describe a substantive accountability system which suggests that while a review of decisions may not occur via a conventional western method, it does occur through direct citizen feedback with tangible consequences if a Wilp chief loses the confidence of their Wilp.

These case studies describe three different methods of utilizing traditionally based governance within a contemporary context. The cases each blend western or contemporary governance practices and traditional governance practices differently, some with greater use of traditional governance institutions and some with more reliance on mainstream mechanisms. Regardless, because the respective First Nations design these structures through a process of self-determination, each case study is judged to contain cultural match. This serves as a reminder that traditional governance should not be approached from a standardized process; constructing culturally matched governance requires consideration of unique traditions and circumstances, and the ability of First Nations to design structures that are in alignment with these areas. Furthermore, the latter cases reveal that there are other forms of traditional governance that First Nations have either implemented under treaty, in the case of CTFN, or are interested in implementing within the treaty framework.

²⁴¹ Provincial/Federal Stakeholder B, interview with author, December 20 2013.

7. Analysis Criteria

This chapter identifies multiple criteria against which to assess options for including traditional governance in treaty. They emerge from the literature, and stakeholder-identified elements of good traditional governance. Reflecting the optimal manner for addressing the needs of First Nations pursuing traditional governance under treaty the criteria are: decision-making power, balance, citizen participation, accountability and transparency, and stakeholder acceptability. Each criterion is defined and described in the subsections below.

7.1. Decision-making Power

Practical sovereignty, or the ability to assert comprehensive decision-making power, determines how effective a government is.²⁴² This criterion is concerned with how much decision-making power is afforded to the traditional governance structure. Providing a sufficient amount of power to a traditional structure will avoid making this structure a mere ‘token’ with little to no binding influence; ‘tokenism’ is generally seen as unacceptable.²⁴³ Options that provide more comprehensive authority to the traditional structure therefore rate higher than those that provide a lesser or advisory power.

7.2. Balance

This criterion describes the policy option’s ability to ensure power balances within a governing body. Stakeholders identify two sides of this coin: provincial/federal stakeholders express concern over hereditary governance being essentially dominated by interests of families rather than individual members, while the literature and some

²⁴² RCAP, *Restructuring the Relationship Part One Volume Two*; Cornell and Kalt, “Two Approaches,” 21.

²⁴³ Angela Wesley, interview by author, December 5 2013.

First Nations stakeholders argue that electoral systems can create serious community divisions and power imbalances. Drawing from both of these views, this criterion is concerned with avoiding concentrated blocs of power and creating sufficient power distribution amongst officials and house groups/clans if relevant. As discussed by some interviewees, balance between clans/houses/families or between elected and traditional officials creates better governance practices in that it provides for oversight and ‘checks’ within government operations, preventing power blocs. Policies that provide for a power balance within government operations are assessed with a higher rating than policies that do not promote equal power distributions.

7.3. Citizen Participation

Because most traditional governance structures lack western-styled elections, stakeholders identify a need to demonstrate significant participatory opportunities for citizens to provide input; this input strengthens the legitimacy of selected leaders and the general operation of the government. This criterion assesses the extent to which each policy option promotes extensive and varied participation for citizens, particularly in leadership selection, clan/house meetings, and public assemblies. The ability for non-members to participate in influencing government is also considered. Policies that facilitate greater citizen participation rank higher than those that provide lesser participatory opportunities.

7.4. Transparency and Accountability

Transparency and accountability are recognized as integral criteria for any modern governance regime. For the purpose of the following analysis, these two concepts are combined into one criterion due to their close relation. This criterion emerges from the stipulations of the IRP as well as literature on good governance and stakeholder interviews. Accountability is understood to contain two concepts: “*Answerability*: the obligation of public officials to inform about and to explain what they are doing; and *enforcement*: the capacity of accounting agencies to impose sanctions on

powerholders who have violated their public duties.”²⁴⁴ To this end, there must be mechanisms within government structures that prevent or discourage abuse of political power through consequences for poor actions. As answerability aims to create transparent governance structures that provide clear and open processes of law-making,²⁴⁵ leadership removal, financial reporting, and means for legislative review and appeal, the inclusion of these within an option will result in a higher score.²⁴⁶ It is important to note that this criterion may be realized through a variety of different methods.

7.5. Stakeholder Acceptability

As observed by study participants, achieving tripartite approval of a traditional governance model under treaty is difficult and contentious. To that end, negotiating the inclusion of a traditional governance structure that meets the interests of all parties is an important evaluative criterion. As revealed in the interview process, provincial/federal stakeholders and First Nations stakeholders generally hold different perspectives on the place of traditional governance in treaty and to what extent it should manifest. For this reason, policy options are assessed against two different measurements according to how acceptable they are to provincial/federal governments and First Nations. According to the literature and the interview results, provincial/federal government is generally more accepting of the status-quo and options that have processes for elections and democratic accountability, while First Nations generally place more support behind options which provide for wider expressions of traditional governance and self-determination. For the purpose of this criterion, First Nations acceptance is based specifically on those First Nations that the policy problem refers to: those who are pursuing traditional governance under treaty that goes beyond the status quo. It is also important to note that First Nations acceptability in general will vary according to unique governance interests and experiences.

²⁴⁴ Schedler, *Conceptualizing Accountability*, 14. Author's emphasis in italics.

²⁴⁵ Ibid.

²⁴⁶ Note that leadership selection is included in the Citizen Participation criterion.

7.6. Criterion Weighting

The criteria defined above are assessed on a 3-point scale and each criterion is given the same weight; no criterion trumps another in importance. The criteria are evaluated on a single measurement basis. The table below summarizes the policy objectives and corresponding measurement index. Due to the different approaches of western and traditional governance principles to achieve the same result, measures for the criteria are diverse and thus not explicitly stated.

Table 7.1 Multiple Criteria Descriptions and Measurements

CRITERIA	POLICY OBJECTIVE	MEASUREMENT DESCRIPTION AND QUALITATIVE MEANING
Decision-making Power	Policy provides meaningful decision-making power to the traditional structure.	<p>High=3 (policy provides comprehensive decision-making power to traditional structures)</p> <p>Moderate=2 (policy provides some but not comprehensive decision-making power to traditional structures)</p> <p>Low=1 (policy provides for minority or advisory decision-making power to traditional structures)</p>
Balance	Policy facilitates a balance of power within government.	<p>High=3 (policy achieves the highest level of balance within the governance structure)</p> <p>Moderate=2 (policy achieves a medium level of balance within the governance structure)</p> <p>Low=1 (policy achieves minimal balance/no balance within the governance structure)</p>
Citizen Participation	Policy facilitates citizen input into leadership selection, clan/house meetings, and public assemblies.	<p>High=3 (policy provides for extensive citizen participation through many mechanisms)</p> <p>Moderate=2 (policy provides for some citizen participation through a few mechanisms)</p> <p>Low=1 (policy provides zero or minimal opportunity for citizen participation)</p>
Accountability/ Transparency	Policy provides mechanisms for accountability and transparency regarding leadership removal, financial accountability, and means for legislative review, appeal, challenge, and revocation.	<p>High=3 (policy provides detailed accountability/transparency mechanisms)</p> <p>Moderate=2 (policy provides more general accountability/transparency mechanisms)</p> <p>Low=1 (policy does not have detailed or sufficient accountability/transparency mechanisms)</p>

CRITERIA	POLICY OBJECTIVE	MEASUREMENT DESCRIPTION AND QUALITATIVE MEANING
Stakeholder Acceptability	Policy is acceptable to FNs who are pursuing traditional governance under treaty.	<p>Highly acceptable=3 (policy gives the First Nation complete control over how traditional governance is designed)</p> <p>Somewhat acceptable=2 (policy gives the First Nation some control over how traditional governance is designed)</p> <p>Not acceptable=1 (policy does not give the First Nation any control over how traditional governance is designed)</p>
	Policy is acceptable to BC/CA.	<p>Highly acceptable=3 (policy meets BC/CA's list of democratic standards and has a majority of elected officials)</p> <p>Somewhat acceptable=2 (policy meets most of BC/CA's standards although not all)</p> <p>Not acceptable=1 (policy does not meet any of BC/CA's standards or meets a minimal amount)</p>

8. Policy Options

Returning to the Common Table report cited earlier, this chapter outlines policy options that provide avenues for integrating traditional governance within treaty. These options are heavily based on the aforementioned case studies, with insights from the literature and interview participants also contributing to their design. However, the following governance options are not meant to be associated with the unique circumstances or experiences within the case studies; rather, they reflect the high level features of these structures, and individual First Nations would have to extrapolate these features for the purpose of designing or adapting their own traditional governing practices to meet the interests of their communities.

Unlike a traditional policy analysis with the eventual aim being to recommend one option, this study is interested in providing a menu of options that could be used and modified on a case-by-case basis. The diversity of First Nations' traditional governance within the province does not lend itself to a one-size-fits-all approach. Therefore, the goal of this section is not to discredit existing treaty governance structures or forms of traditional governance that are not explored, but to consider possible ways to think about how to better incorporate traditional systems under treaty. To this end, the options presented below are structured around their most defining governance features and they describe general objectives and design factors.

Before proceeding to the policy options, however, the concept of cultural match as well as other 'must-haves' will be briefly expanded upon in the first sub-section of this chapter. While the following options do not purport to remove the barriers created by inflexible mandates, the analysis in Chapter 9 intends to offer some insight on where mandates could be broadened to accommodate First Nation interests in traditional governance.

8.1. First Nations' Choice: Governance Foundations

While traditional governance varies widely in how traditional practices are incorporated, there are foundational concepts that contribute to the successful implementation of any model. As discussed in the literature and by interviewees, a governance structure needs to be a legitimate representation of the people that it is purporting to represent. This legitimacy generally stems from successful 'cultural match' where the governance structure reflects important cultural customs of the First Nation. Cultural match does not necessarily mean a return to pre-colonial political systems but rather finding the best match "between formal governing institutions and *today's* Indigenous ideas—whether these are survivals from older traditions or products of the nation's contemporary experience."²⁴⁷ As one interviewed notes: "Are we able to fully go back into the traditional clan governance? No. Does that mean that we throw everything away? No."²⁴⁸ The following options can all be considered to have fulfilled the cultural match criterion for the specific Nations that created them. Therefore, this aspect is not included in the option descriptions or assessments.

While implementation through a self-government side agreement, as with CTFN, could also be an option, for ease of comparison the assumption is that each option would be implemented within a constitutionally entrenched treaty under the BC Treaty Process. An additional consideration that is not the focus of the option descriptions is the issue of non-member representation. In areas with a growing non-Aboriginal population, this issue may be more significant and may require some negotiation on how these individuals can be included in governance. Tsawwassen First Nation's inclusion of non-members may provide one possibility or another body could be established to represent non-member interests exclusively. This possibility should be considered as non-member numbers warrant.

²⁴⁷ Cornell and Kalt, "Two Approaches," 25.

²⁴⁸ First Nations Stakeholder B, interview by author, February 4 2014.

8.2. Majority-elected Governance

8.2.1. Description

This policy alternative is the status-quo option for including hereditary governance under the BC Treaty Process. It proposes that treaty governance structures conform to certain democratic standards, such as the inclusion of blind ballot elections.²⁴⁹ These standards must be reflected in the First Nation’s constitution via the operation and design of the First Nation’s government. Language contained within this option states that a Treaty First Nation may appoint traditional/hereditary chiefs into their governing structure and must specify the processes for appointment and the duties of that position, with the key proviso that “it will provide in its First Nation Constitution that the majority of Office Holders within its First Nation Government are elected.”²⁵⁰ Heavily based on what was negotiated for the Maa-nulth Final Agreement, the defining features of this model are described in the table below; more detail on the how these features are operationalized and the corresponding implications are found in the Chapter 4 and 6.

Table 8.1. Defining Features of Majority-elected Governance

Majority-elected Governance (Maa-nulth Model)		
Governance Structure	Legislature, Executive, Hereditary/Traditional Council, Public Assembly	
Leadership Selection	Elected officials in majority to appointed traditional officials	
Decision-Making	Majority vote	
Features	<ul style="list-style-type: none"> • Democratic elections and composition • Democratically and financially accountable • 4 year terms for all officials • Meetings with established quorum 	<ul style="list-style-type: none"> • Conflict of interest rules • Processes for review/appeal/challenge/revocation of laws and administrative decisions • Discipline and removal of office holders • Incorporation of traditional principles into governance

²⁴⁹ Further stipulations can be found in Appendix A.

²⁵⁰ As seen in *Maa-nulth Final Agreement*, paragraph 13.3.3.

As described by provincial/federal stakeholders, this option includes the “fundamental principles” of good governance while enabling a Treaty First Nation to include a measure of governing power for their traditional leaders. The First Nation’s constitution also could provide for a separate advisory body of hereditary/traditional leaders, such as the Ha’wiih Council of HFN.

Within this policy option, decision-making of the governing bodies is conducted through majority vote. In this sense, citizens participate in governance through voting in elections, as well as through the direction they provide to governance officials during the Public Assembly. This option may also incorporate traditional principles and customs throughout legislation, policies, or strategic plans. As it stands, the only qualifier of this policy option is its adherence to the list of democratic standards and the provision that a majority of government officials are elected on a term-basis.

8.3. Equally Elected and Appointed Governance

8.3.1. *Description*

This policy alternative draws inspiration from the Maa-nulth governance model and the CTFN clan system. The defining feature is a balanced number of elected and appointed officials which govern via a consensus process (or a super majority vote of 75%), rather than the status quo of majority-elected government operating solely on majority vote.

Table 8.2. Features of Equally Elected and Appointed Governance

Equally Elected and Appointed Governance		
Governance Structure	Legislature, Executive, Hereditary/Traditional Council, Public Assembly	
Leadership Selection	Equal number of elected and appointed officials Appointed officials could be selected by the Hereditary Council/on a house group basis	
Decision-Making	Consensus process, or 75% vote	
Features	<ul style="list-style-type: none"> • Partially democratic elections and composition, partially traditionally appointed • Partially democratically accountable, partially accountable through traditional means • Financially accountable • Term-based for all officials • Meetings with established quorum 	<ul style="list-style-type: none"> • Conflict of interest rules • Processes for review/appeal/challenge/strike down of laws and administrative decisions • Discipline and removal of office holders • Incorporation of traditional principles and customs into governance

The changes to the status quo are meant to facilitate a higher level of involvement for hereditary leaders while ensuring a balance between elected and appointed representatives. Operating via consensus, this option creates power equilibrium within government operations and facilitates an “ethic of co-operation,” in an effort to help bring the collective best interest to the forefront of governance decisions.²⁵¹

This option provides a First Nation with the freedom to design its own electoral map. There are two possible sub-options for elections: house groups/clans/other²⁵² would each elect their representatives (with numbers depending on population size) so that each house group/clan has their interests represented by an elected official. Alternatively, representatives could be elected through a general citizen-wide vote where representatives are not tied to a respective house group/clan. The former electoral process would be most useful to First Nations that are aiming to balance house groups/clans irrespective of the population distribution amongst those units, while the

²⁵¹ Van der Burg, “The Absence of Democracy,” 30.

²⁵² ‘Other’ could be an electoral district or another such organization as decided by the First Nation.

latter structure might be used where house group/clan balance is not an issue of major concern.

The appointment of traditional leadership to the legislature would contain clear procedures. Possible procedures include:

- A Hereditary/Traditional Council could select hereditary chiefs to appoint to the legislature, at their own discretion and based on customary criteria;
- A Hereditary/Traditional Council could select hereditary chiefs for the legislature, as described above, but ensuring that there was one chief from each house group/clan;
- House groups/clans could appoint their traditional representatives through their own internal procedures, similar to how CTFN clans select their representatives;
- Legislative chiefs could be appointed via the consensus of the entire population at a public assembly or feast.

As seen from the menu of options above, there are alternatives for traditional leadership selection however any one of these options should be clearly disclosed with the procedures for selection publically available. To this end, citizens participate in governance through electing officials, participating in public assemblies, and potentially through their involvement in selecting their traditional representatives. If the Treaty First Nation decides to appoint legislative officials through individual house appointments, a factor to consider is how many houses there are and how large the entire membership of the Nation is; these characteristics may dictate what is practical (a small Nation with many house groups may struggle to represent each house group in the legislature if the overall population is small and requires a smaller legislature). Although familial leadership was critiqued in the interviews, this option provides for power distribution amongst segments of the population that will ease, rather than heighten, this concern.

This option provides democratic accountability through its elected officials and an additional dimension of accountability through the traditional obligations of hereditary leaders to their people. Each group of officials is subject to transparency in its procedures and processes.

8.4. Clan-based Governance

8.4.1. Description

Modelled off of the clan governance system adopted by CTFN, this policy alternative proposes a hybrid governance structure between traditional and contemporary interpretations of clan governance. Organized around traditional groups (such as houses or clans) that are political, decision-making units, this option blends traditional clan elements with contemporary governance practices.

Table 8.3. Defining Features of Clan-based Governance

Clan-based Governance (CTFN Model)		
Governance Structure	Legislature, Executive, Traditional Council, Public Assembly	
Leadership Selection	Legislative and executive officials appointed by Clan Chief selection at discretion of First Nation	
Decision-Making	Consensus process, or 75% vote	
Features	<ul style="list-style-type: none"> • Clans as political and decision-making units • Traditional principles and virtues embedded within legislature and policies • Financially accountable • Term-based for all officials 	<ul style="list-style-type: none"> • Meetings with established quorum • Conflict of interest rules • Processes for review/appeal/challenge/strike down of laws and administrative decisions • Discipline and removal of office holders

Consensus decision-making and the absence of mandatory elections are key elements that set this policy option apart from the status quo. Clan units serve as individual decision-making bodies who internally select representatives for the legislative and executive bodies. These representatives then work on a consensus basis to conduct governance affairs, falling back to a 75% voting process if consensus cannot be reached. Utilizing consensus serves to unify governance representatives and the respective interests they bring to their positions. This option is flexible in how officials are appointed; there may be wide variation in how clans appoints their representatives, and although this appointment process may include a blind vote, clans have the ultimate power to decide on a leadership selection protocol. In many cases, clans have adopted

traditional or other criteria to guide the leadership appointment process. The selection method for the Executive Chief position is also at the discretion of the First Nation, although the selection procedure is included in an internal constitution and subject to relevant amendment procedures. Each clan appoints an equal number of representatives regardless of membership numbers. Citizens participate through this process as well as through public assemblies.

In terms of design, this policy alternative provides mechanisms for the review, appeal, challenge, and revocation of laws and administrative decisions, leadership selection and removal, and financial accountability. Merging traditional principles and a modern system of administration, this policy option is touted as a 'best practice' in the cultural alignment of institutions by the National Centre of First Nations Governance.²⁵³

8.5. Hereditary Governance

8.5.1. Description

This policy alternative is modelled loosely on Gitanyow Nation's internal constitution and corresponding governance structure. While the Gitanyow are still under *Indian Act* governance provisions and have not yet negotiated self-government, this option describes a system of hereditary governance proposed by a negotiating First Nation and merits inclusion. This policy alternative describes some broad structural elements; it is not meant to reflect all forms of hereditary governance among BC First Nations.

²⁵³ National Centre of First Nations Governance, "Governance Toolkit Best Practices," specifically referring to Teslin Tlingit Council's governance system but more broadly the clan system of governance in general.

Table 8.4. Defining Features of Hereditary Governance

Hereditary Governance (Gitanyow Model)	
Governance Structure	Hereditary Chiefs and advisors (legislature), Executive, Public Assembly/Feast
Leadership Selection	Hereditary Chiefs and sub-Chiefs inherit traditional governance names House Groups appoint executive representatives (member or non-member)
Decision-Making	Consensus process, or dispute resolution mechanism
Features	<ul style="list-style-type: none"> • House Groups as political and decision-making units • Heavily centered around traditional law, principles, names, territories, house groups • Public gatherings occur in the form of the feast • Financial management and accountability rules • Conflict of interest rules • Processes for review/appeal/challenge/strike down of laws and administrative decisions • Discipline and removal of office holders

Modelled after the Gitanyow system, this option contains a primary governance structure that strongly emphasizes traditional law and hereditary leadership. Traditional law and its associated principles are very important to maintaining the integrity of the hereditary system, and therefore play a primary role in how governance is structured and operationalized. House groups are independent decision-making bodies that utilize hereditary chiefs as their representatives for collective governance affairs; each house group has an equal number of representatives in the legislative and executive branches. Head chiefs and sub-Chiefs hold hereditary names and through those names inherit governance responsibilities and decision-making authorities; while other individuals (such as the Chief Matriarchs of Gitanyow) may be involved in the law-making process through advisory roles, these chiefs are the primary decision-makers. A Head Chief holds the executive chief position while other executive representatives do not need to hold traditional names.

This option utilizes consensus decision-making to facilitate citizen input and government accountability. Consensus must be reached before any final legislative decisions can be made. Public assemblies/feasts act as a venue for citizens and government officials to engage in dialogue over government affairs and for citizens to monitor, witness, and confirm or contest government business or resolutions being

discussed.²⁵⁴ A Consensus Record is maintained at the feast which includes details on decisions made, options and actions discussed, and which members were present. If consensus cannot be reached, a dispute resolution process is triggered; this option does not include a blind vote mechanism. Governance officials are held accountable through the responsibilities of their hereditary names, by their fellow officials, and through the feast mechanism. There are financial accountability procedures to ensure that financial resources are managed properly and reports are released publically for the consideration of citizens.

²⁵⁴ *Gitanyow Nation Constitution 2009*, 6.

9. Analysis of Policy Options

Using information gathered through interviews with First Nations and provincial/federal stakeholders as well through the literature that relates to traditional governance and best practices, this chapter assesses each policy alternative against the five criteria laid out in Chapter 7. The following assessment is based on the author's interpretation of the general design structure and components of the options but is not intended as an evaluation of the governance structures of the specific case study First Nations which inspired some of the options. Furthermore, while the option assessments will not lead to one option being recommended over the others, they will provide insight into the strengths and weaknesses of each policy alternative and will shed light on how workable these options are under treaty.

9.1. Majority-elected Governance

9.1.1. *Decision-making Power*

This policy alternative, defined by its majority-elected provision, allocates primary decision-making power to elected officials. As appointed hereditary representatives must be in minority to elected officials, this governance structure provides less direct decision-making power to the appointed representatives that characterize most forms of traditional governance. In addition, this option operates via majority vote which grants the legislative hereditary chiefs less ability to affect decision-making if their elected counterparts hold divergent opinions. While a Hereditary/Traditional Council reviews and comments on all laws being passed by the legislature, this body is solely advisory and does not have binding decision-making abilities. It should be noted that the restriction on number of appointed officials does not prevent hereditary chiefs from running for elected office; in theory then, hereditary chiefs could, if elected, make up the majority of

government officials.²⁵⁵ While this is a possibility, it is not part of the institutional structure. This option therefore scores lower on the decision-making spectrum for traditional governance representatives as elected officials hold most of the decision-making power.

9.1.2. Balance

Designed specifically to ensure that appointed hereditary chiefs are in minority to elected officials, this policy option does not aim to create a power balance between these parties. Although the hereditary officials are considered full participants in decision-making,²⁵⁶ power is not distributed evenly amongst the elected and appointed representatives. Recognizing that provincial/federal stakeholders see this option as providing the best balance of control, this policy alternative is nevertheless assessed with a lower rating for balance due to a significant skewing in how power is distributed within the governance structure.

9.1.3. Citizen Participation

This option contains conventional democratic mechanisms for citizen participation in governance. Through voting in term-based elections and participating in public assemblies, citizens are able to provide input to the direction and composition of their government. Opportunities for direct input into strategic planning are realized through annual public assemblies. It is unclear if this option includes an opportunity for 'constant say,' such as the reporting back provision for governance representatives after meetings that exists in models where the governance structure is based around clans/houses. For these reasons, this option is given a moderate score for participation.

9.1.4. Accountability & Transparency

This option provides the most conventional methods for ensuring accountable and transparent government conduct. Bound by the treaty to provide democratic

²⁵⁵ Although not a majority, at the time of writing three out of seven of the legislative HUU-ay-aht officials are hereditary chiefs, with two of them elected.

²⁵⁶ Tom Happynook, interview by author, December 11 2013.

requirements for government composition and membership, this option clearly lays out processes for law-making, financial accountability, the review/appeal/challenge of legislative and administrative decisions, conflict of interest rules, and leadership removal. Removing officials is done easily as office terms are set at four years for both elected and appointed representatives; citizens may follow procedure to remove elected officials during their term or by voting against this official in the next election. Appointed officials can also be removed during their term through the same process. Recognizing that there are different understandings of how best to meet this criterion, this policy option is scored highly due to its inclusion of conventionally approved elements of accountability and transparency.

9.1.5. Stakeholder Acceptability

This policy option is currently the status quo for incorporating traditional governance structures into treaty. Provincial/federal stakeholders interviewed for this project express broad support for this option as it includes agreed-upon democratic standards as well as the provision that the majority of officials are elected. These stakeholders see this structure as providing the best recipe for good governance. For these reasons, federal and provincial acceptability of this option is measured to be highly acceptable. The fact that this option has been embraced by the five Maa-nulth First Nations suggests that, at least to some First Nations, this structure is acceptable. Stakeholders from HFN acknowledge that a majority-elected system was preferred by their members as they had more experience with elected governance and wanted to maintain a balance of contemporary and traditional leadership. However, because this research is aimed at providing additional avenues to express traditional governance under treaty and because First Nations who are pursuing a more complete inclusion of traditional governance have rejected this model, this option is given a low score for First Nation acceptability.

9.2. Equally Elected and Appointed Governance

9.2.1. *Decision-Making Power*

This policy option contains a large amount of decision-making power for traditional legislative representatives. Composed of an equal number of elected and traditional officials, the power to make binding decisions is shared by these two groups. Although this division may be technical rather than tangible (without a distinctive ‘tug-of-war’ between the two groups) providing the appointed officials with an equal amount of say in government decisions would create substantial power for the traditional representatives while simultaneously illustrating the validity of this traditional governance approach. However, the traditional structure does not contain comprehensive decision-making power. For these reasons, this policy option receives a moderate score for this criterion.

9.2.2. *Balance*

In a departure from the status quo, this option’s defining feature is an equal number of elected and appointed representatives. This option not only provides a distribution of power within its composition but it also operates on a consensus process, or a high threshold fall-back vote, which aims to ensure decision-making is not dominated by one interest group. Yet, a wholly balanced system hinges on how representative selection is carried out: do these procedures ensure that appointed officials come from different house groups/clans/interest groups or can these officials theoretically be selected from a singular interest group? The description of this policy option articulates possible procedures for ensuring balance and different procedures may have slightly different assessments. Thus, while the range may differ based on actual selection methods, this option facilitates a balanced approach, in particular as a result of consensus and decision-making power distributed amongst each official. For this reason, this policy option receives a high score for balance.

9.2.3. Citizen Participation

The key avenues for citizen participation in this option are elections and public assemblies. Citizen input into hereditary appointments to the legislature would also provide another opportunity to participate in governance decisions. If citizens do not participate in the appointment process at any level, this option would provide lesser citizen participation than if house groups/clans/interest groups were able to participate in the process. Annual public assemblies offer a venue for citizens to contribute to strategic vision and to vote on resolutions to be enacted by the executive branch, although the constant input from systems based in house groups/clans is not included in this option. This option therefore receives a moderate score for citizen participation. Concerns with this option could be mitigated with details on how citizens will participate in selecting their traditional representatives and with more provisions for frequent input into governance decisions.

9.2.4. Accountability/Transparency

This option, like the first option, includes conventional democratic methods for ensuring accountable and transparent government conduct as well as traditional mechanisms for ensuring traditional leaders operate in an accountable and transparent manner. It includes provisions for law-making, financial accountability, the review, appeal, challenge, and revocation of legislative and administrative decisions, conflict of interest rules, and leadership removal. These provisions provide transparent detail for both appointed and elected responsibilities and rules for adherence, where both parties are expected to uphold the same standards of accountable and transparent conduct; any violations have consequences. Appointed officials are also expected to maintain their responsibilities and obligations that emerge from their roles as traditional, or hereditary, leaders. Removing an elected or appointed official during their term mirrors those procedures described in the first option, with both groups subject to the same procedures. Depending on how traditional representatives are appointed (options of which were detailed in Section 8.3.1), citizens could seek the removal or non-reappointment of an official through a number of methods, for example by lobbying the Hereditary/Traditional Council who appoints traditional leaders to the legislature, or if the appointment is at the discretion of the clan/house group or wider population, by simply

not opting to re-appoint that official. Acknowledging the discrepancies in conceptualizing accountability and transparency, this option is assessed at a high score for this criterion due to the mechanisms it contains to ensure good governance conduct within both the elected and appointed realms.

9.2.5. Stakeholder Acceptability

This option has not been previously implemented and the reaction of government or First Nations stakeholders to this structure is unknown. As a result, the acceptability of this option is assessed based solely on comments made by interviewed stakeholders. Any option other than the status quo automatically receives government resistance. In considering this structure, provincial/federal stakeholders expressed concern over the balance of control and how balance in particular can be maintained if there is “family government” involved, particularly in regards to how traditional leaders are held accountable. Without the majority-elected provision, this policy option receives a low score for provincial/federal acceptability. First Nations stakeholders are anticipated to champion the equal inclusion of hereditary chiefs and traditional leaders, but for those who are pursuing full traditional governance this option would not meet all of their expectations. As witnessed in the research findings, for some First Nations any inclusion of elections would be rejected by the community. However, because this option does go above and beyond the status quo to provide a more substantial governing role for traditional leaders, this option is anticipated to receive a moderate score for First Nations acceptability.

9.3. Clan-based Governance

9.3.1. Decision-Making Power

This policy option contains clans as the main decision-making units of the governance structure, whose members then appoint representatives to the executive and the legislature. This option includes full decision-making power for these representatives, regardless of if they are appointed through a customary selection process or through elections. Utilizing a traditional clan governance structure as the

primary system through which decisions are made awards this option a high score for decision-making power.

9.3.2. Balance

Eliminating power blocs is an intrinsic feature of the clan-governance structure of this option. Because each clan appoints an equal number of legislative/executive representatives regardless of the membership size of each clan, this option provides equal distribution of power amongst these otherwise independent bodies. This option achieves balance through non-proportional representation and through the check and balance that clan governance officials are subjected to by their clans and the officials of other clans, thereby ensuring the collective best interest is upheld. In this sense, clan representatives “have to constantly appease not only [their] own clan but other clans to make the system work.”²⁵⁷ To this end, this option is scored highly for balance.

9.3.3. Citizen Participation

Clan-based governance is regarded as putting extremely high levels of decision-making power into the hands of the people. This option includes citizen participation in many levels of governance. Clans function as individual decision-making units, whose members collectively appoint representatives to the legislature and executive. These appointment procedures are defined by the clan but include a means for each member to express their opinions on leadership and how clan interests should inform government. Public assemblies also provide clan members an opportunity to provide input to officials through consensus decision-making. While a ‘supermajority’ vote offers recourse if consensus cannot be achieved, consensus governing and regular deliberation provide citizens with “a constant ability to provide direction to the government.”²⁵⁸ Where this option reduces citizen participation is through the uncertainty around how non-members can participate in governance. However, considering that generally “the barriers between [citizens and] the voices of the most powerful are so

²⁵⁷ Gavin Gardiner, interview by author, January 19 2014.

²⁵⁸ Ibid.

minimal compared to a western system,²⁵⁹ this option receives a high score for this criterion.

9.3.4. *Accountability/Transparency*

Clan governance does not contain a mandatory electoral process for leadership selection and therefore does not align with external government understandings of accountability and transparency. In spite of this, this option employs modern methods of accountability in its financial management and conflict of interest rules. Interviewees spoke of this option as having accountability measures beyond those that exist in electoral models; clan representatives must act not only in the best interest of their clan but are also compelled to act in the best interest of the collective by their fellow officials. This creates a system of important checks and balances. Procedures for selecting a representative remain at the discretion of the clan, as well as removing these representatives. Clans may remove an official by reaching a quorum on a resolution for the removal and by passing this resolution with a minimum number of votes; this process is transparent and clearly laid out, creating ease of removal. Additionally, the simple fact that this governance model was accepted by federal and territorial governments suggests that its internal accountability and transparency mechanisms are sufficient for contemporary governance. This option therefore fulfills this criterion and receives a high score.

9.3.5. *Stakeholder Acceptability*

Assessing how acceptable this option is to provincial/federal stakeholders requires a step back from the BC Treaty Process and a look at the context in which Yukon First Nations negotiated this form of traditional governance. Clearly this option was acceptable to the federal and territorial governments at the time; after all, CTFN's self-government agreement, on which this option is based, is currently being implemented. This implies that the federal government would find this option acceptable in BC; however, while federal stakeholders appear to be more open to considering clan

²⁵⁹ Gavin Gardiner, interview by author, January 19 2014.

governance than provincial stakeholders, both parties make it clear that the Yukon model is not favoured within a BC context. Implementing this option through a side agreement rather than within a constitutionally entrenched Final Agreement does not increase acceptability, although provincial/federal stakeholders suggest that this increased territorial/federal acceptability during Yukon negotiations. Furthermore, while this option was obviously acceptance in the Yukon treaty process and does provide space for elections (although leadership selection methods are at the discretion of the individual clans), governmental acceptability is still considered to be low. Regardless of the different design features that individual First Nations would undoubtedly adopt, this option leaves key elements, such as leadership selection and who holds law-making power, completely at the discretion of the First Nation. Therefore, due to the substantial power that the signatory First Nation would have over structuring their traditional governance model, First Nations acceptability of this option is anticipated to be high.

9.4. Hereditary Governance

9.4.1. *Decision-Making Power*

Allocating ultimate decision-making power to the hereditary chiefs and sub-chiefs, this option is the most proficient in addressing this criterion and the element of practical sovereignty as defined by Harvard Project scholars such as Cornell and Kalt. Therefore, this option receives a high score for decision-making power.

9.4.2. *Balance*

This policy alternative includes house groups as independent decision-makers who hold authority over particular land bases and resources. While the organization of hereditary chiefs will vary between First Nations, this option is based on leadership responsibilities of those with hereditary names as set out in traditional law. Each house group may have multiple hereditary chiefs, although one chief acts as the house group's representative within the larger governance structure of the Nation. Together, these representatives form the legislative branch; each house group is equally represented, creating balance. Like the second and third policy options, this option operates on a

consensus process which further creates balance between governance officials; there is a conscience effort to “exchange perspectives [and] seek direction from one another.”²⁶⁰ Although there is a Head Chief, who belongs to one of the house groups, consensus decision-making essentially eliminates any power blocs and creates an inherent check and balance. Consensus-based governing is a defining feature of this option and was identified as an important mechanism in maintaining balance. This option is hence given a high score for this criterion.

9.4.3. Citizen Participation

As decision-making units for their respective lands and resources, members of house groups have ample opportunity to participate in governance decisions affecting themselves as well as participation opportunities in the overall governance of the Nation. These opportunities are generally exercised during public gatherings, or the feast, where citizens monitor, witness, and publically confirm or contest governance matters. Resolutions or decisions at the feast are made through consensus of all attendees. Although chief names are hereditary, the house group selects their representative in accordance with traditional law; the exact details of this selection process are unknown.²⁶¹ Additionally, like the clan-based governance option the ability for non-members to participate isn't quite clear although participation for these individuals is generally referenced in traditional law. While this option is strong in its ability for citizens to provide regular input to their leaders, more information is needed on the details of some of these processes, such as how citizens are involved in selecting governance representatives. While this analysis anticipates that this option does include extensive participation mechanisms, for these reasons this option receives a moderate score for this criterion.

9.4.4. Accountability/Transparency

In this option, accountability of officials to the people has its foundation in the obligations set out by traditional law. This means that hereditary chiefs have an inherent

²⁶⁰ *Gitanyow Nation Constitution 2009*, 11.

²⁶¹ *Ibid.*, 8.

responsibility to properly represent the wishes of the people and to meaningfully deliberate with them to best meet their interests; there are consequences for not carrying out these duties. Hereditary leaders are subject to rules of conduct (attendance at feasts and meetings, community participation, and public behaviour) and violation can lead to discipline or removal.²⁶² House groups may remove their governance representative through an internal procedure laid out in traditional law with formal notification of the removal made publically at a feast, however the specific details of removal are unknown. Furthermore, by operating on consensus, this option provides accountability exercised through means other than democratic accountability. In this case, government officials are undergo frequent deliberation with citizens, giving them ample opportunity to approve or contest government actions, generally through the feast or house group meetings with representatives. However, while this option contains both western and traditional accountability and transparency mechanisms, the nature of hereditary governance creates concern over how easy it is to remove a chief who has lost the confidence of the citizens. This therefore requires detailed and transparent procedures for leadership removal, and because this option does not provide this information in detail, it receives a moderate score for this criterion. Clear provisions for removing hereditary chiefs could mitigate this concern.

9.4.5. Stakeholder Acceptability

Under the BC Treaty Process, hereditary governance has only been accepted by the federal and provincial governments in a minority role to elected governance. The strong resistance to negotiating a primary, or even equal, role for hereditary leaders is a negative indicator of how this option would be received by government. Like the previous option, implementing this structure through a side agreement does not appear to increase provincial/federal acceptability. With a general perception that hereditary governance contains a democratic deficit in how transparent and accountable governance is generated, specifically in leadership selection and removal, this option receives a low score for government acceptability. First Nations who are pursuing a complete hereditary structure are anticipated to approve of this option considering the

²⁶² Peeling, "Constitution-Making among the Gitanyow," 8.

high degree of control for hereditary leaders and the validation of those structures it would provide under treaty. However, not all First Nations with hereditary governance traditions are seeking to implement a purely hereditary system. Some stakeholders identify issues within these governance systems, broadly regarding legitimacy and community divisions on who holds governing authority and specifically regarding how the structures facilitate citizen input into leadership selection and removal.²⁶³ Recognizing that not all First Nations with hereditary governance traditions would wish to adopt this option, because this policy alternative is primarily geared towards First Nations who are adamantly pursuing a pure hereditary system under treaty, and who have determined that this type of structure is culturally matched and acceptable to citizens, it is given a high score for First Nations acceptability.

9.5. Scoring Summary

As stated previously, these scores are meant to provide insight into how the policy options meet the identified criteria rather than to identify one option as a one-size-fits-all recommendation. This would not meet the underlying principle of cultural match.

Table 9.1. Scoring Summary of Option Analysis

	Decision-Making	Balance	Citizen Participation	Accountability Transparency	Acceptability		Total Score
					BC/CA	FN	
Majority	1	1	2	3	3	1	11
Equal	2	3	2	3	1	2	13
Clan	3	3	3	3	1	3	16
Hereditary	3	3	2	2	1	3	14

The main finding of this analysis is that majority-elected governance, the status quo for including traditional governance in treaty, is the lowest scoring option when evaluated against the criteria. While the multiple-criteria analysis reveals that this option is strong in accountability and participation, it lacks the framework to support a

²⁶³ Both Provincial/Federal Stakeholder B and Provincial/Federal Stakeholder C, interview by author, December 20 2013; and Provincial/Federal Stakeholder D, interview by author, November 26 2013 reference this concern. Also, see *Spookw v. Gitksan Treaty Society 2011*.

substantive role for traditional governance. Furthermore, this option is simply not acceptable to most First Nations who are pursuing a traditional structure. Although clan and hereditary systems achieve the highest scores, with the modified status-quo option close behind, the author anticipates that the equally elected and appointed option and the clan governance option in fact would be the most likely to gain external acceptance, considering the hybridization of traditional and contemporary practices that each structure contains.

Different First Nations will prioritize different criteria and design features, or may have a traditional structure that has not been assessed in this chapter. While this analysis intends to shed light on the strengths and weaknesses of different alternatives, it is important to reiterate that these options do not reflect individual First Nation's specific structures and should be viewed as broad structural designs or templates for traditional governance in a general sense.

10. Recommendation, Next Steps, and Implications

10.1. Recommendation

The analysis of the policy options reveals that full traditional governance structures can work and traditional governance can also be good governance if those structures are designed to effectively address the criteria identified within this study. By using these criteria, the interests of all parties can be balanced equally regardless of the misaligned understandings of governance that currently hold back negotiations. Learning to accept and embrace different cultural understandings is after all an underlying principle of reconciliation.

Thus, this study ultimately recommends that federal and provincial governments expand their governance mandates to accommodate fuller expressions of traditional governance.

An expansion of the current mandate must include flexibility for a First Nation to design a culturally matched governance structure, and would create a space for dialogue on different ways of operationalizing good governance. In turn, these structures must also include transparent procedures for law-making, challenging, and revoking laws or administrative decisions; leadership selection and removal; and financial management and accountability. This recommendation would primarily benefit those First Nations looking to negotiate traditional governance structures under treaty, but would also advance the broader objective of genuine self-determination and self-governance, and it would promote reconciliation of different conceptions about how best to govern.

10.2. Next Steps

Going forward with the recommendation would require exploratory policy work beyond that done in this study. The following subsections describe two avenues that merit consideration.

10.2.1. *Test-Drive Traditional Governance*

Taking inspiration from the Gitanyow governance model from 2003, a next step could be to test-drive a traditional governance structure in a non-binding fashion under treaty. A temporary pilot structure would enable both provincial/federal government and a First Nation to (1) get a better idea of how the structure works on the ground, and (2) identify and address any arising issues. Put forth within the 2003 context as actionable post-AIP community vote, this study suggests test-driving a structure prior to AIP completion. For treaty tables moving quickly from AIP to FA negotiations, implementing this trial as an interim measure prior to AIP signing would provide enough time to determine if the traditional structure had promise, and to get a sense of the long term effects of a proposed form of traditional governance before it is locked in treaty.

Apart from government willingness to test-drive such a model, this opportunity does include a few challenges. Negotiating such a structure could increase negotiation time significantly as parties, already at odds on how traditional governance should be included, would now be forced to essentially break new ground in this policy area and design the framework of a structure that would be included in the treaty text. Additionally, some provincial/federal stakeholders pointed out that some First Nations face community division on the place of traditional leadership in government. To address this, provincial/federal governments and First Nations themselves may want to see a high threshold 'yes' vote regarding community support for test driving a traditional structure. This study suggests enacting a 60% threshold for a positive vote by members. While essentially the more time the better to assess the success of the trial, negotiating parties may want to put a time limit on how long to test-drive the structure. A time limit would reduce the likelihood of resources being put towards a structure unlikely to ever advance to FA by providing a tripartite incentive to address the workability of the model.

At its foundation, treaty governance, like all governance, should follow a ‘governance by the people, for the people’ approach. Agreeing on a strategic vision for the role of traditional governance and measuring this vision “against an informed decision making process” is essential for developing successful, legitimate, and sustainable traditional governance structures.²⁶⁴ Deciding as a community on the design of a governance structure is an immense task and it will take time to achieve community approval as well as to address provincial/federal interests. Traditional governance structures should be presented in a transparent fashion for all citizens to review in order to facilitate an informed decision on the design of their treaty governance.

Furthermore, test-driving a traditional governance model must include performance indicators or measures of success agreed upon by all parties, as well as agreement on how a final decision regarding the placement of the structure in treaty will be made. Coming to agreement on this provision and the performance measures may be time-consuming. There is also a risk that regardless of mutually defined evaluation measures parties could disagree on the outcome of the trial. If parties did draw opposing conclusions, their relationship may suffer, particularly if parties do not agree on whether to go forward with the model in a more binding fashion.

10.2.2. *Yukon for One, Yukon for All?*

The question remains *why* Yukon First Nations were able to negotiate traditional clan governance, without mandatory elections, while BC First Nations cannot. Some provincial/federal stakeholders interviewed for this study propose this is due to two factors: (1) Yukon self-governance is implemented under a side agreement and is not constitutionally entrenched, making it easier to amend, and (2) the context of Yukon negotiations differs from BC because of the sparse population density of the territory, the smaller number of negotiating First Nations, and the higher Aboriginal population per capita. Some interviewees also argue that Yukon treaty negotiations were essentially a bilateral process for all intents and purposes due to the administrative relationship between the territory and the federal government; however, others argue that it was in

²⁶⁴ Barry Stuart, interview by author, November 25 2013.

fact the Yukon government which had a greater sympathy and understanding of traditional governance and this influenced federal acceptance of the model.

Regardless of the differences, the presence of traditional governance in Yukon self-government agreements sets a precedent for having traditional structures within a treaty framework. Revisiting these models and exploring a way to adapt them to the BC Treaty Process would open up a range of possibilities, and experiences to draw from, for interested First Nations.

10.3. Implications of the Recommendation

In a province where reconciliation of different world views is purported to be integral to building a new relationship, Mark Wedge suggests that there is a great opportunity for the treaty-making process to shed new light on better ways of governing. Wedge notes that “the world can learn from Canada if what Canada is doing is right.”²⁶⁵ A primary discovery of this study is the fundamental disagreement over what constitutes good governance between provincial/federal government and First Nations that are pursuing traditional governance under treaty.

Some stakeholders and public officials suggest expanding how good governance, specifically democracy, is conceptualized as a way to open the floor to traditional governance.²⁶⁶ In 2010, the Standing Senate Committee on Aboriginal Peoples heard that “non-Aboriginal visions of governance and democracy” have dominated governance talks “without much of a reciprocal effort [on part of provincial/federal government] to explore or understand in any depth First Nations’ concepts of governance and democracy.”²⁶⁷ The key findings of this study are encapsulated in this statement as it emphasizes the view that treaty negotiations should facilitate greater avenues for First Nations to design a culturally matched governance structure that embodies *their* cultural understandings of good governance. To this end,

²⁶⁵ Mark Wedge, interview by author, January 24 2014.

²⁶⁶ Provincial/Federal Stakeholder B, interview by author, December 20 2013.

²⁶⁷ Standing Senate Committee on Aboriginal Peoples, *First Nations Elections*, 16, citing testimony given by Wendy Cornet.

the Standing Senate Committee noted above asserts that “democracy does not mean elections with ballots; it means the voice of the people in the selection of their leaders and in the decision-making of governments.”²⁶⁸ External government perception of traditional or hereditary systems as undemocratic stems from the uncertainty on how non-democratic elections facilitate member control over selecting and removing leaders. The policy option analysis reveals that traditional governance does include these features, often in an in depth manner, although in some cases their placement within traditional law is not as accessible to outside review. Nevertheless, redefining and broadening the definition of democracy to be, at its core, about strong citizen input into the selection of leaders and decision-making, would better encompass the multiple measures that can be used to achieve the same objective. In this sense, democracy could be conceptualized to include elections as well as thorough consensus decision-making or deliberation procedures with citizens. This new definition of democracy would create epistemological space for both western and traditional First Nations understandings of good governance once again furthering the pursuit of reconciliation in the broadest possible sense of the word.

Creating meaningful dialogue around this fundamentally different way of understanding governance is nearly impossible with the positional approach to treaty negotiations. Robert Morales, Chief Negotiator for the Hul’qumi’num and Chair of the First Nations Summit Chief Negotiator, says: “The courts have ordered the governments to negotiate based on reconciliation but instead they come to the table with a long list of bottom-line positions [...] These are called treaty negotiations but inflexible government mandates leave no room to negotiate in most areas.”²⁶⁹ Approaching negotiations through an interest-based or value-creation approach, rather than a positional approach, would better facilitate active problem solving where differences are concerned. Outcomes of negotiation would become more mutually beneficial, rather than the ‘you win some, you lose some’ resignation that currently colours treaty talks. Overall, a new approach would facilitate a positive reform in the relationships between parties.

²⁶⁸ Standing Senate Committee on Aboriginal Peoples, *First Nations Elections*, iv.

²⁶⁹ “First Nations Unity Protocol Release” (Dec 1 2006); this point has been heavily reiterated by other First Nations and government representatives throughout this study.

The arguments for modifying negotiation processes, mandates, and concepts of good governance require critical assessment beyond the scope of this study. However, this research does highlight that parties are working within a closed process that is not easily accepting of unfamiliar ideas. Addressing this will require not a step, but a leap forward. Nevertheless, in a province, and a country, that has evolved and continues to advance its understanding of First Nations rights, title, and place within society, the old adage 'never say never' offers a cautiously optimistic perspective on the future of traditional governance in treaty.

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Appendices

Appendix A

List of Democratic Procedures for Self-Government in BC Treaties

As required by BC and Canada

- Democratic, including in its duties, composition, and membership;
- Democratically accountable to its citizens with elections at least every 5 years;
- A process for removal of office holders;
- Financially accountable to its citizens with standards for financial administration comparable those accepted for governments in Canada;
- Conflict of interest rules comparable those accepted for governments in Canada
- A process for the enactment of laws;
- A process for challenging the validity of laws;
- A process to deem a law to have no force or effect if there is inconsistency with the constitution;
- Processes for appeal or review of administrative decisions.

Governance Structures of the Maa-nulth First Nations (excluding HFN)

As per their internal constitutions

Ka:'yu:'k't'h/Che:k:tl̓es7et'h' First Nations	
Legislature	1 elected Legislative Chief 4 elected Members 4 Legislative Ha'wiih chosen by the Ha'wiih Advisory Council
Executive	Legislative Chief Portfolio holders
Ha'wiih Advisory Council	Representation determined by customary practices HAC code of practices will prescribe how HAC members on the Legislature are selected
People's Assembly	All citizens can attend and vote if eligible
Uchucklesaht Tribe	
Legislature	1 elected at-large Chief Councillor 5 members elected individually on family basis 1 member elected by citizens w/o family association up to 4 Ha'wiih chosen by custom
Executive	Chief Councillor Secretary Treasurer Portfolio holders
People's Assembly	All citizens can attend and vote if eligible
Ucluelet First Nation	
Legislature	1 elected Chief Councillor 6 elected Councillors 1 Ha'wiih chosen by custom
Executive	Chief Councillor Portfolio holders
Ha'wiih Advisory Council	Representation determined by customary practices
Hittatsoo Assembly	All citizens can attend and vote if eligible
Toquaht Nation	
Legislature	Tyee Ha'wiih (First Chief) Chaa-maa-taa (Second Chief) 3 elected Councillors
Executive	Council Chairperson Portfolio holders
People's Assembly	All citizens can attend and vote if eligible

Government Design Structures of the Case Study First Nations

A.1 Structure of the Huu-ay-aht First Nations Government, as per their constitution

	Huu-ay-aht First Nations Council (Legislative)	Huu-ay-aht Executive	Ha'wiih Council	People's Assembly
Responsibilities	Passing laws and publish internal procedures	Enforcement of HUU-ay-aht laws, management of affairs, financial administration, and the operations of the government	Advise legislature on various matters Must be consulted and be given an opportunity to provide advice before any laws are passed	Acts as a “check and balance on HUU-ay-aht Government’s obligation to act lawfully and in the best interests of present and future generations of HUU-ay-aht citizens.”
Composition	1 Chief Councillor 5 Councillors 1 Ha'wiih	Chief Councillor Councillors with executive portfolios	Hereditary chiefs	All HUU-ay-aht citizens and the Executive Council
Representative selection	Chief Councillor & Councillors are elected Ha'wiih rep appointed by Ha'wiih Council	Chief Councillor appoints & dissolves executive portfolios	Determined through custom	N/A
Selection criteria	Ha'wiih rep is generally the Tyee, but can be another Ha'wiih	Based on qualifications to hold a portfolio	Determined through custom	N/A
Decision-making	Majority vote	Unknown	Determined through custom	Resolutions passed by majority vote or consensus
Meetings	Unknown	Unknown	Unknown	Annual
Quorum	Unknown	Unknown	Unknown	95 citizens
Term	4 years	5 years	N/A	N/A

A.2 Structure of the Carcross/Tagish First Nation Government, as per their constitution

	Assembly (Legislative)	Executive Council	Elders Council
Responsibilities	Enacts laws and regulations Approves policy Directs Executive Council	Legislation drafting, policy development and long-term strategic planning, establishing fiscal priorities	Provide advice and guidance “on any law, policy, or procedure directed to enhancing, maintaining, or revitalizing the clan system.”
Composition	18 representatives total 2 reps from each clan 1 clan Elder	6 clan reps 1 Khà Shâde Héni (Chief) 2 Elders	Any citizen considered an Elder
Representative selection	Clan reps appointed by custom through their clan Elder rep appointed by the Elders Council	Clan reps appointed by custom through their clan Elder reps appointed by the Elders Council Khà Shâde Héni is elected	Determined through custom by the Elders Council
Selection criteria	Clan and Elder reps determined internally	Clan and Elder reps determined internally Khà Shâde Héni must be over 21, nominated by over 50 citizens	Determined internally
Decision-making	Consensus, or 75% of the vote	Consensus, or 75% of the vote	By custom
Meetings	At least once a year	At least twice a month	Unknown
Quorum	14	5	Unknown
Term	4 year terms for clan reps Elders- unknown	4 years	Indefinite

A.3 Structure of the Gitanyow Nation Government, as per their constitution

	Simgigyet'm/Hereditary Chiefs (Legislative)	Gitanyow Administrative Board (Executive)	Assembly of the 8 Wilp
Responsibilities	Law-making, determining strategic policy and procedures for the government, establishing a process by which to publish laws and ensuring a Bi-annual Assembly of the Huwilp occurs Establish Admin Board and provide instruction	Enacting programs and policies in response to the objectives laid out by the Simgigyet'm and Assembly of the Huwilp; ensuring each Wilp has capacity for effective management of its Lax'yip; and developing and maintaining the Wilp land, resources, and membership registries.	Advise and give direction to the Simgigyet'm Gitanyow on priorities, mandates, and activities for the upcoming year, as well as to conduct a review of the previous year.
Composition	Head Simogyet/Chief of each Wilp Sigimhanak/Chief Matriarchs (advisors to Simogyet and sub-Chiefs) Sub-chiefs Legislative Council President	Chairperson Executive Director 8 Wilp representatives	Simgiihet, Sigidimhanak, sub-Chiefs, Elders, and all members of the eight Wilp Non-Gitanyow if invited
Representative selection	Based on the Ayookxw Legislative Council- unknown	Internal Wilp appointment processes Chairperson appointed by Simgigyet'm	N/A
Selection criteria	Inherited traditional names	May be through traditional names, but not required Wilps may appoint non-Gitanyow as a representative Wilps appoint rep through consensus	N/A
Decision-making	Consensus, or dispute resolution mechanism	Unknown	Consensus- detailed in Consent Record
Meetings	Unknown	Monthly, or as required	Annual
Quorum	Unknown	5	Unknown
Term	As long as an official holds their name, or until they step down or are removed from office	5 years	N/A

Appendix B

Interviewees

The following professional titles of the interviewees are by no means a comprehensive list of their experiences with treaty, but rather are some of the roles they have held or are currently holding that relate to the subject matter of this study.

Interviewee Stakeholders	
Provincial/Federal Stakeholder A	Confidential Informant
Provincial/Federal Stakeholder B	Confidential Informant
Provincial/Federal Stakeholder C	Confidential Informant
Provincial/Federal Stakeholder D	Confidential Informant
First Nations Stakeholder A	Confidential Informant
First Nations Stakeholder B	Confidential Informant
Jeff Cook	Elected Chief Councillor; Hereditary Chief; Huu-ay-aht First Nations
Gavin Gardiner	Former Executive Officer; Policy Analyst, Carcross/Tagish First Nation
Tom Happynook	Elected Councillor; Hereditary Chief; Chief Negotiator for HFN, Huu-ay-aht First Nations
Larry Johnson	Former Elected Official prior to treaty; member of treaty negotiating team; Huu-ay-aht First Nations
Barry Stuart	Chief Negotiator for Yukon government; worked with CTFN in designing concepts of the CTFN governance system
Mark Wedge	Chief Negotiator for CTFN; Former Khà Shâde Héni, Carcross/Tagish First Nation
Angela Wesley	Chair of Constitution Committee; Member of Treaty/Governance/Lands/Resources committees during negotiation; Maa-nulth representative on tripartite Implementation Committee, Huu-ay-aht First Nations