

Surviving as Canadians:  
Tracking New and Continuing Tensions in the Federation

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## Surviving as Canadians: Tracking New and Continuing Tensions in the Federation

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When the election results began rolling in on 23 January 2006, many Canadians breathed a sigh of relief. No, Quebec had not been isolated with that province's national separatist party, the Bloc Québécois, receiving the largest majority in history and over 50% of the popular vote as had been feared. Instead, in a bit of an anticlimax, albeit a welcome one for the majority of Canadians, that party had a disappointing finish relative to expectations, and the federal Conservative party had gained a surprising ten seats in the province. Contrary to expectations at the beginning of the election, Canada would survive but under a Conservative not Liberal minority government. But doomsayers continued to murmur about entering a scenario eerily like the early '90s when national collapse and the separation of Quebec seemed imminent. The scenario was being set for the perfect storm in the words of Roger Gibbins: Tories in Ottawa, the Parti Québécois defeat the Liberals in Quebec, and anger mounts in the west as equality escapes them.<sup>2</sup> Once the pieces were in place then the grievances buried in the past under the constitutional carnage would resurface and the fight for national unity would recommence.

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<sup>2</sup> The scenarios envisaged by Roger Gibbins were slightly different.

The predictions of late 2005 and early 2006 contained an element of realism but obscured a deeper more troubling truth. Key conditions have changed since the early 1990s making this period an even more precarious one, perhaps. Why perhaps? The political landscape is more complex and fraught with underlying tensions than the previous period leading into the 1987-90 and 1990-92 constitutional rounds of negotiations and the 1995 Quebec referendum. Many of the conflicts and wounds of that previous turmoil remain unresolved: Quebec's ambivalence towards Ottawa and the federation; the thirst for institutional reform; the role of citizen organizations in political and constitutional reform; the relationship between Aboriginal peoples and the federal and provincial governments; and growing citizen activism and yet political disillusionment. However, the form of these old problems has changed. But new sources of political instability have surfaced in the intervening years including the creation of Nunavut and its aspirations for provincehood, rising western affluence and the gradual "hollowing out of Ontario, the new interprovincial dynamic borne out of the Council of the Federation (COF), and prevailing global pressures on the economy, society and the military. At present these tensions are mounting but balance one another. However, the quietude may be misleading.

This paper argues that the current penchant to worry about the continuing tensions in the federation masks a deeper threat to the nation's existence. Analysis of the recent election tended to emphasize the impact on Quebec, then Ontario, and the threat to central Canadian values. The release of polls demonstrating the continuing deep ambivalence in Quebec towards Canada triggered fears that the greatest threat to national unity under a Conservative federal government would emanate from that province but only if it hit a tipping point to buoy up sovereignty. These "old" worries mislead. Paradoxically, the focus on Quebec's ambivalence lulls Canadians into complacency by underestimating both the continuing and new contributing factors involved in the sovereignty debate in Quebec as well as the threats to Canada's continuance emerging from the rest of Canada, and yet provokes anxiety by raising the old debate in the language of the early 1990s. If Canadians continue to focus on the continuing sources of tension without appreciating the changed nature of those tensions and the debate, policies and political decisions will continue to reflect those realities and fail to address either the old problems in their new manifestations or the new sources of tension. Pressures can only continue to mount. In a surprising turn of events and contrary to the wisdom of many political sages, Canadians may have made the wisest choice in the election of the Conservative minority government – the only way out of a depressing future debate on the nation's existence. We have won a temporary reprieve.

The paper will proceed in three phases. In the first section, the continuing tensions from the 1990s are outlined. In the second section, the new sources of tension are analyzed culminating in a brief discussion of the underlying political realities of the debate over the fiscal imbalance. The third section concludes by addressing the balance of forces under the minority Conservative government and their precarious perch on top of these forces, and speculates on the on the viability of the nation as the next election looms.

### Old Whines, New Bottles

At the conclusion of the constitutional battles in the early 1990s, a number of issues remained unresolved. Quebec's aspirations for recognition as a distinct society, its quest for more control over social programs and limits on the federal spending power, and its desire for recognition of its expanded jurisdiction over immigration and citizenship were among the most noteworthy of its outstanding issues. Equally dissatisfied were Aboriginal Canadians whose aspirations for recognition of their right to self-government in particular and rights in general went unfulfilled. The old Canadian bugaboos of Senate reform and revamped appointment processes for key institutions remained intact. Citizen organization felt at once empowered by their experiences of 1980 and Charlottetown but emasculated by their obvious exclusion from the Meech Lake constitutional round and the failure of Charlottetown to meet expectations whether by its disregard of their issues or its failure depending on their stance. And the Canadian skepticism towards the political actors and system and political apathy lingered, if anything, with a more bitter taste. These problems have simmered along as attention has shifted away from the constitution and now assume different and perhaps more complex forms. Each merits a short account to understand the current political climate in Canada.

### *Quebec*

More than any other province, Quebec has been buffeted by the winds of constitutional change. The process leading to patriation of the constitution in 1982 left Quebec feeling isolated and its government refusing to sign the deal. The Meech Lake round of constitutional negotiations, initiated as a means of bringing Quebec back into the constitutional fold, ended in bitter tension between Quebec and the rest of Canada. That process spawned the federal separatist party, the Bloc Québécois, under the charismatic leadership of Lucien Bouchard, a federal Cabinet Minister until he resigned over the constitutional negotiations. By comparison, the 1990-92 process was not as divisive. Quebec was not offside from the rest of Canada but voted against the constitutional accord along with many of the other provinces. But the feeling of disquiet with the Canadian federation had settled into the Quebec culture, leading its separatist Parti Québécois government to call a second referendum on Quebec sovereignty.<sup>3</sup> The slim margin (50.6% to 49.4%) voting against the sovereignty option startled Canadians, prompting the federal government to renew its efforts to convince Quebecers of the merits of life within Canada.

Ten years later, Quebec's relationship with Canada remains ambivalent. On the one hand, popular support for sovereignty rose to 54% in spring 2004 when people polled were asked if they would support sovereignty if economic and political relations with Canada were retained—the same question as asked in the 1995 referendum.<sup>4</sup> A

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<sup>3</sup> The first referendum was held by the PQ on May 20, 1980. The result was 59% of voting Quebecers against the sovereignty option as posed in the question.

<sup>4</sup> CBC News, "Poll finds sovereignty support rising in Quebec," Wednesday 27 April 2005. Available at <http://www.cbc.ca/story/canada/national/2005/04/27/sovereignty-poll050427.html>

further 49 per cent supported holding another referendum. These results were worrisome but not too surprising given that support for sovereignty had been registering in successive polls at 44 to 49 per cent over the past year. However, the worry was slightly relaxed when it was revealed in the same poll that support would drop if a relationship with Canada was not anticipated and that 37 percent of respondents were influenced by their anger against the federal Liberal party for its actions following the 1995 referendum which were being revealed by the federally appointed Gomery inquiry into the use of public and party funds to fight separatism and build the image of Canada in the province.<sup>5</sup> Many of these funds were poorly used and misused, with key federal Liberal supporters allied with the federalist cause benefiting improperly. Anger as a motivation in the polls meant that support for sovereignty could be inflated and would decline as the scandal passed. Inured by the results in 1995, political observers were lulled into a sense of complacency by the facts that Quebecers valued an alliance with Canada and that the support for sovereignty wasn't higher—although to be fair, the fact that support hadn't continued on a downward trajectory from 1995 gave pause.

Further contributing to the complacency about Quebec is the state of the PQ party and debate over the sovereignty option. Despite the unpopularity of the Liberals in office, the PQ party was in disarray and divided on the issue of sovereignty in the mid-2000s. After the party's electoral defeat in 2003, political scientist Jean-Herman Guay warned the PQ at its Conseil national that the party had run out of steam. Linguistic and class tensions had been eased by successful integration and cultural policies by successive governments, leading to a loss of the rationale for separation. He advised repositioning the party as nationalist rather than independent.<sup>6</sup> His position angered many members including the leader. A year later, Guay maintained that the challenge for the PQ was to reconcile weaker public support for a referendum on sovereignty with solid support for sovereignty.<sup>7</sup> Other moderates like Réjean Pelletier also cautioned the party against pushing the sovereignty too hard without justifying it as a goal in an era of globalization.<sup>8</sup> Even former BQ and PQ leader Lucien Bouchard and former PQ Minister Joseph Facal joined with federalists like André Pratte to release a manifesto for the province's future in October 2005,<sup>9</sup> focusing on the economic health and competitiveness of the province (including such matters as debt reduction, reforming the tax system towards consumptive taxes, privatization and public-private partnerships, raising university tuition and encouraging economic liberty) rather than a

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<sup>5</sup> Ibid.

<sup>6</sup> Graham Fraser, "Whither the PQ," *Policy Options* 26:1 (December 2004-January 2005), 27-8.

<sup>7</sup> Jean-Herman Guay, "le Parti Québécois: Au-Delà du Conflit des Ambitions," *Policy Options* 26:1 (December 2004-January 2005), 19-2. Guay's analysis harkens back to the prediction made by William Coleman at the end of his study of *The Independence Movement in Quebec 1945-1980* (Toronto: University of Toronto Press, 1984).

<sup>8</sup> Réjean Pelletier, "Partenariat, Référendum et Social-Démocratie: Les Conditions Nécessaires," *Policy Options* 26:1 (December 2004-January 2005), 32-35.

<sup>9</sup> Lucien Bouchard, Joseph Facal et al., *For a Clear Eyed Vision of Quebec* (Quebec City, October 2005).

new deal with Canada.<sup>10</sup> This was a blow to the sovereigntist forces within the party given the continuing popularity of its former leader.

Still, support for the sovereignty option and holding another referendum garnered critical support during the party's leadership race. Upon election as leader in November 2005, the relatively youthful and appealing André Boisclair attempted to unite the factions by promising a referendum on sovereignty within two years of a PQ electoral victory. The hardline separatists remained skeptical, viewing him as not unsympathetic to the manifesto view, and the sovereigntist Société St. Jean Baptiste refused to endorse him.<sup>11</sup> And, providing reassurance to the moderates and federalists, the creation of a new, social democratic, sovereigntist party in Quebec, the Québec Solidaire, was eroding support for the PQ by May 2006

Quebec remains divided. Its continuing economic problems, heavy debt, expensive social programs, and need for competitiveness in a globalized economy deflect attention away from sovereignty as an option. The success of the Conservatives in winning 10 Quebec seats in the recent 2006 federal election to the surprise of most commentators, ease worries about the sovereigntist option. However, this quiet is deceiving. Three events could trigger a resurgence of support for the sovereignty option in Quebec in the foreseeable future. A reopening of the constitution on matters like Senate reform or equalization could awaken calls for a new deal for Quebec. The continuing unpopularity of the Liberal government and possible election of the PQ with Boisclair's election victory promise could trigger a referendum fight with the federal government's credibility to speak on the issue weakened (fatally?) in the wake of the sponsorship scandal and under a still largely western-based Conservative party. The fight could become particularly nasty with Boisclair's leadership election night disavowal of the Clarity Act and Supreme Court decision on secession – two key reassurances to Canadians that unilateral secession cannot occur and secession negotiations would be orderly and conducted jointly. Finally, according to Gilles Pacquet, "There's a fatigue in Quebec about sovereignty, and yet an almost constant feeding of annoyance on the part of the federal government that rekindles it even in people who are not bold about this."<sup>12</sup> Pacquet identifies the two main factors causing this annoyance as federal intrusion into provincial areas of jurisdiction and the fiscal imbalance. Although this tension has eased with the election of the Conservatives and the shift from more centralist policies to decentralist policies, the looming fight over the fiscal imbalance remains a powder keg as will be discussed later.

The debate over Quebec and Canada's future has lulled Canadians in two ways. First, as indicated, it has created a misleading and potentially dangerous sense of complacency that the sovereignty debate is a constant irritant but largely spent force surpassed by a view that Quebec may be better off in Canada to enhance its

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<sup>10</sup> Brian Laghi, "The New Quebec Dynamic," *Globe and Mail*, October 22, 2005, A13.

<sup>11</sup> Les Perreux, "Hardliners appear cool to new Parti Québécois Leader André Boisclair," *Canadian Press* November 18, 2005. Available at <http://www.canada.com>. Cf. Guy Charron, "Le Parti Québécois chooses André Boisclair as its new leader—a further shift to the right," *World Socialist Website*, December 14, 2005. Available at <http://www.wsws.org/articles/2005/dec2005/queb-d14.shtml>

<sup>12</sup> As quoted in Laghi, "The New Quebec Dynamic," *Globe and Mail*, October 22, 2005, A13.

competitiveness in a global economy. As argued here, the sovereignty option remains a quiescent issue that could be awoken if the right conditions prevail. While some factors remain the same as in the 1980 and 1995 referendum campaigns, the hardening of the sovereignty option, its continuing support and the attendant feeling of complacency with decreased legitimacy of the federal government to speak out in a sovereignty debate after Gomery creates an even deadlier scenario for a third campaign. Second, the concern over Quebec has deflected attention away from other continuing causes of instability in the federation to which we turn now.

### ***Aboriginal Matters***

A second unsettled area of reform arising out of the previous constitutional rounds of negotiations concerns the Aboriginal peoples of Canada. The continuing inability of successive federal governments to find better terms for Aboriginal peoples within Canada is a serious source of consternation with the potential to derail the national project. However, this debate has also shifted not unlike the Quebec debate. Canadians would be wise to be wary of its altered nature.

The three rounds of constitutional negotiations from the 1970s to the 1990s had two important effects on the Aboriginal population. First, the population became mobilized and engaged in the Canadian political and constitutional project to an unprecedented extent.<sup>13</sup> National organizations representing the First Nations (Assembly of First Nations, AFN), Metis and Non-status Indian population (Congress of Aboriginal Peoples, CAP, and the Metis National Council, MNC), Inuit (Inuit Tapirliksat Kanatami, formerly Inuit Tapirisat of Canada, ITC) and Aboriginal women (Native Women's Association of Canada, NWAC) either emerged or were revitalized. These organizations remain vital forces influencing federal policy on Aboriginal affairs as witnessed by the five organizations' consensus statement on Aboriginal policy delivered to the provincial and territorial leaders in 1997 and their involvement in federal-provincial negotiations on key issues.<sup>14</sup> Beyond the organizations, a new leadership emerged in the communities and in the academic and legal worlds with a new focus on Aboriginal nationalism and often posing challenges to the Aboriginal national organizations making the policy field even more complex and fraught with pitfalls.<sup>15</sup>

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<sup>13</sup> See Alan C. Cairns, "Citizens (Outsiders) and Governments (Insiders) in Constitution-Making: The Case of Meech Lake," reprinted in Alan C. Cairns, *Disruptions: Constitutional Struggles, from the Charter to Meech Lake*, edited by Douglas E. Williams, (Toronto: McClelland and Stewart, 1991), 108-138; Kathy L. Brock, "Learning from Failure: Lessons from Charlottetown," *Constitutional Forum* 4:2 (Winter 1993), 29-33.

<sup>14</sup> Frances Abele and Michael Prince, "Aboriginal Governance and Canadian Federalism: A To-Do List for Canada," in François Rocher and Miriam Smith, *New Trends in Canadian Federalism* (Peterborough: Broadview Press, 2003), 143-4. As Prince and Abele note, this involvement takes various forms but consultation is a much more regular occurrence, *ibid.*, 144-6; cf., Kathy Brock, "Executive Federalism: Beggar Thy Neighbour?" in François Rocher and Miriam Smith, *New Trends in Canadian Federalism*, 75, 76.

<sup>15</sup> See for example, Kiera L. Ladner, "Treaty Federalism: An Indigenous Vision of Canadian Federalisms," in François Rocher and Miriam Smith, *New Trends in Canadian Federalism* (Peterborough: Broadview Press, 2003), 167-96, esp. 180-1; cf. Gerald (Taiaiake) Alfred, *Heeding the Voices of Our Ancestors: Kahnawake Mohawk Politics and the Rise of Native Nationalism* (Toronto: Oxford UP, 1995); cf. Alan

And the general Aboriginal population is more aware of its rights and mobilized on issues than previously; witness the episodic but ongoing eruptions of citizen demonstrations emanating from the Aboriginal communities since the early 1990s. As a consequence, the need for consultation and inclusion of Aboriginal peoples in policy making at multiple levels has increased.

Second expectations within the Aboriginal community have risen. Coming out of Charlottetown, Aboriginal self-government was no longer a wish, it was an expected reality of policy. The federal government acceded to this expectation in 1994 with its legislative recognition of the right of Aboriginal self-government—a building block of subsequent policy reforms. The Royal Commission on Aboriginal Peoples, which grew out of the Oka resistance in the summer of discontent following the death of the Meech Lake Accord, set the bar even higher with its call for widespread federal and provincial action on a series of fronts to redress conditions facing Aboriginal peoples, including institutional reform to enable the fuller economic, political and social participation of Aboriginal peoples in Canadian life.<sup>16</sup> The, albeit uneven and inconsistent, expansion of Aboriginal rights through successive court cases on the 1982 constitutional clauses recognizing Aboriginal and treaty rights, and their concomitant pursuit in domestic and international human rights tribunals, has fostered a greater sense of justice and fair entitlement in the First Nations, Metis, Inuit and Non-status and urban Indian communities as well as a re-evaluation of the basis for common citizenship in Canada.<sup>17</sup> Policies must reflect this new and growing rights-based but community-oriented sense of entitlement and autonomy.

At the same time, there are new expectations being imposed on Aboriginal governments, communities and people. As the media spotlights shone on the Aboriginal communities during and after the constitutional rounds and as the right of self-government went into effect in communities, they began to reveal documented examples and personal tales of mismanagement, malfeasance and corruption in both governments and organizations. The result was a new emphasis on accountability and better governance in Aboriginal communities, which was only fueled by similar calls applying to federal and provincial and municipal governments. Tom Flanagan notes that the public embarrassment of the federal government and First Nations caused a shift towards more accountability in the use of public funds with “more publication of information, better auditing, more open meetings, more systematic media coverage, and development of a professional and politically neutral aboriginal public service,” but notes the limits of reforms without internal constraints such as realized through a

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Cairns on the academic and legal community, *Citizens Plus: Aboriginal Peoples and the Canadian State* (Vancouver: UBC Press, 2000), esp. 175-87.

<sup>16</sup> Canada, *Report of the Royal Commission on Aboriginal Peoples* 5 volumes (Ottawa: Canada Communication Group Publishing, 1996); see Alan Cairns, *Citizens Plus: Aboriginal Peoples and the Canadian State*, 116-60, for a thorough review of the RCAP’s vision of Aboriginal relations with Canada.

<sup>17</sup> See Patrick Macklem, *Indigenous Difference and the Constitution of Canada* (Toronto: University of Toronto Press, 2001); cf. John Borrows, *Recovering Canada: The Resurgence of Indigenous Law* (Toronto: University of Toronto Press, 2002).



taxation system in communities.<sup>18</sup> This emphasis on accountability and conflicting views of what accountability should entail bedeviled federal government attempts to revamp the governance structure for First Nations under Prime Minister Paul Martin and Chrétien governments.<sup>19</sup> The AFN continues to explore means of strengthening accountability in communities and released a report on new accountability measures including a First Nations auditor general in the spring of 2006,<sup>20</sup> and the federal government has plans to ensure greater accountability in Aboriginal governments and organizations.<sup>21</sup>

This has created a more complex and potentially explosive field of Aboriginal issues. The Chrétien government's progressive set of reforms for First Nations embracing governance, the resolution of land claims, education, land management, a fiscal and statistical institute for data collection, a tax commission, finance authority, financial management board and economic control fell despite their promise due to an inadequate consultative process and divided views on their effects on communities.<sup>22</sup> Similarly, the implementation of rights successive to Supreme Court decisions has been divisive where Aboriginal and non-Aboriginal entitlements clash as in the case of the Marshall decisions on fishing in Nova Scotia.<sup>23</sup> The Canadian public is supportive of Aboriginal aspirations in general but questions them when they begin to resemble special rights rather than striving for equality just as they do in the case of Quebec.

The complexity of Aboriginal policy is increased by the need to engage multiple levels of government in the aftermath of the constitutional negotiations. Not only do Aboriginal leaders expect to be consulted and their issues included directly or in side agreements in major intergovernmental negotiations such as the Social Union Framework Agreement or Health Accord, they expect greater cooperation among the federal, provincial and territorial governments and among each of their departments in addressing issues on multiple fronts at once. This expectation culminated in the ill-fated Kelowna Accord signed by the Liberal government and provinces and territories under the Paul Martin government on November 25, 2005. The comprehensive \$5 billion Kelowna agreement on education, health, housing, economic opportunities and improving the relationship with First Nations elevated hopes for a tangible commitment to working together in future. On the one hand, it excluded urban and other Aboriginal

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<sup>18</sup> Tom Flanagan, *First Nations? Second Thoughts* (Montreal and Kingston: McGill-Queen's University Press, 2000), 106-7.

<sup>19</sup> Kathy L. Brock, "First Nations, Citizenship and Democratic Reform," in Gerald Kernerman and Philip Resnick (eds.), *Insiders and Outsiders: Alan Cairns and the Reshaping of Canadian Citizenship*, (Vancouver: UBC Press, 2005), 257-272.

<sup>20</sup> Bill Curry, "Natives to vote on independent auditor general," *Globe and Mail*, March 27, 2006. Available at <http://www.theglobeandmail.com>.

<sup>21</sup> "Aboriginal Governance in Limbo," *Globe and Mail*, editorial, May 24, 2006, A18.

<sup>22</sup> See Kathy L. Brock, "Striving for Fairness: First Nations, Current Reforms and Provincial Interests," in Harvey Lazar (ed.), *Canadian Fiscal Arrangements: What Works, What Might Work Better* (Montreal and Kingston: McGill-Queen's UP, 2005), 227-50.

<sup>23</sup> See Ian Stewart, "Communities in Conflict: Nova Scotia after the Marshall Decision," in Hamish Telford and Harvey Lazar, *Canada: The State of the Federation 2001-Canadian Political Culture(s) in Transition* (Montreal and Queen's: McGill-Queen's UP, 2002), 343-66.

peoples, but on the other hand, it held the promise of parallel agreements in future. With the federal government's movement away from the Kelowna accord, a source of fundamental disgruntlement has settled into the First Nations communities that may have serious repercussions for its current leadership and their ability to work with Ottawa.<sup>24</sup> It may be difficult to bring all of the governments back to a future agreement with First Nations but the expectation is solidified after the Charlottetown agreement on Aboriginal rights and now Kelowna. Certainly, the Conservative federal government seems to be backing away from this approach.

In the wake of the constitutional battles, some significant progress has been made on Aboriginal issues then, albeit in fits and starts. As a result, expectations have both been elevated and hardened: within the Aboriginal community for multilevel and multigovernmental cooperation and implementation of their rights and aspirations; within the Canadian community for resolution of Aboriginal issues and for better governance and cooperation in Aboriginal communities. This has come at a time when there are significant shifts occurring within the Aboriginal population: it is larger and growing, more highly educated, urbanized, politically savvy, beset by social and justice problems and divided among moderates and radicals.<sup>25</sup> Frustration is increasing over social issues as well as land rights, as the 2006 Caledonia Ontario stand-off over a small housing development on disputed territory reveals. Anger and alienation continue even as Aboriginal people become an even more needed part of the diminishing Canadian labour force, particularly in western cities.

Like Quebec then, Aboriginal peoples remain in a state of unsettlement. If governments were to engage in broad constitutional reforms, expectations of entrenchment of self-government and other reforms envisaged by Charlottetown would be likely to re-emerge. The difference is that expectations are even higher both within the Aboriginal community and the broader Canadian community for a fair outcome while definitions of "fair" vary greatly, and tempers are even sharper given the intervening events between 1993 and now. The result is a simmering threat to Canadian identity and peace: the first by embarrassment in international forums over the continuing mistreatment of Aboriginal peoples in Canada; the second by direct insurgence or street action.

### *Institutional reforms*

By comparison with Aboriginal and Quebec issues, the leftover institutional issues from the mid-1990s are much easier to digest. The federal stranglehold over appointments to major institutions like the Supreme Court has been partially addressed by the revisions to the judicial appointments process but could emerge as an Achilles heel if a future separatist Quebec government challenged its past and any future rulings on the right to secession on the basis that the judges were federal government selections and thus biased. The concerns over the federal spending power, used to intervene in provincial jurisdiction, may have been alleviated by the SUFA and Health Accords and by the

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<sup>24</sup> See for example, National Chief Phil Fontaine, "Letter to Mr. Stephen Harper, Leader, Conservative Party of Canada," January 19, 2006. Available at <http://www.AFN.ca>

<sup>25</sup> -- *Globe and Mail*, May 1, 2006.

willingness of the current Conservative federal government to respect provincial jurisdiction and to decentralize responsibility. How long the entente will last is guesswork. Reforms affecting jurisdiction and control over policy areas like immigration, labour market policy, forestry and fisheries are gradually being settled through intergovernmental agreements and legislative arrangements. No, the one outstanding teaser is Senate Reform.

Senate reform pitted the west against the rest of the country as it called for a shift in seats and powers to reflect the changing demographic and economic reality of Canada. The West wanted in with a Triple E Senate (3E): elected not appointed members, effective powers to block unpopular legislation passed by the centrally-dominated House of Commons, and equal numbers for each province instead of the more or less regionally representative body at present. While the idea of the 3E Senate receded during the Charlottetown round of negotiations, some desire for reform to make this body a more powerful voice for the regions like the west lingered. Alberta elected Senators as potential federal appointees, but with one exception they are still in waiting (appointed as a show of good faith by Prime Minister Mulroney, he has since died). Current Conservative Prime Minister Harper has indicated that he would like a process to elect Senators in place by the next election. However, the staunch resistance by the Premiers, particularly Ontario and Quebec, to wholesale Senate reform means it is likely to be realized through legislative, not constitutional, means.<sup>26</sup>

Still, a new method of Senate selection could have three effects. It could reawaken Quebec's demand for its National Assembly to choose that province's Senators, as has been speculated given that it was a promise made by Brian Mulroney.<sup>27</sup> It might reinvigorate the call of the RCAP for special seats for Aboriginal peoples among that mobilized constituency. And finally, the election of Senators has the potential to threaten the current balance of powers between the two houses of parliament by giving the Senate more legitimacy to use its current powers, thus spurring calls for constitutional reform of the body. And a new can of worms is opened but with a mobilized Aboriginal community and an even more economically powerful far west. Stephen Harper may be wise to tread carefully.

### *Citizen Participation and Activism*

The constitutional wars had an important lesson for our leaders of government regarding the process of intergovernmental negotiations and public engagement. First, the 1982 round presaged the end of elite accommodation by incorporating public hearings into the constitutional process. The entrenchment of rights gave Canadians motive and mens rea to watch vigilantly for any negotiated arrangements that might affect their perceived rights and ensuing entitlements adversely.<sup>28</sup> The Meech Lake round reinforced this message by excluding citizen organizations to the ultimate peril of

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<sup>26</sup> Paul Vieira, "Premiers not in favour of more powerful Senate," *National Post*, March 16, 2006, A1, A8.

<sup>27</sup> Ibid.

<sup>28</sup> Alan C. Cairns, "Citizens (Outsiders) and Governments (Insiders) in Constitution-Making: The Case of Meech Lake," reprinted in Alan C. Cairns, *Disruptions: Constitutional Struggles, from the Charter to Meech Lake*, 109.

the Accord. Exclusion aroused suspicion, thus tainting the entire document.<sup>29</sup> The Charlottetown round reconfirmed the impression created in 1982 by extensive use of public consultations, despite their mishandling.<sup>30</sup> However, the failure of the widely vetted Charlottetown reforms in the 1993 referendum raised the spectre that public engagement might not be necessary or desirable in future.

To once again overlook the precedent of public participation in future constitutional matters would be myopic. The constitutional battles set a new threshold for public participation in great matters. Public hearings, consultations and possibly even a referendum are ingredients for macro-constitutional reform as Peter Russell has warned.<sup>31</sup> Even on smaller matters of constitutional reform, at minimum public hearings may be the expectation. Certainly this was a concern of Senators reviewing the more recent constitutional amendments affecting education in Newfoundland.<sup>32</sup> And as public consultations have become a more regular feature of the policy process in general, citizens have formed expectations that they would be consulted and informed of significant constitutional changes, particularly on symbolic or “hot” issues. This attitude is only buttressed by the prevailing winds around transparency, democratization of the policy process and public accountability. While the need for public involvement should not be overestimated since more regular intergovernmental meetings at the officials level or by First Ministers on regular business may not arouse public interest or media attention, if issues are significant, contentious or symbolic, a new expectation exists.

There has been a further change affecting public participation and citizen activism regarding federal-provincial relations. New technologies will affect the public attitude towards intergovernmental negotiations as the experiences with the international trade negotiations have revealed in recent years.<sup>33</sup> Citizens are able to obtain more accurate information more readily and mobilize more quickly and effectively in response than ever before.<sup>34</sup> They will be watching and informed. In contrast, though, as a quick perusal of the federal government’s experiences with public engagement in reforms in Foreign Affairs, Health (the Romanow Commission) and First Nations Governance as well as provincial experiences with democratic renewal reveal, the use of new technologies to engage citizens and secure meaningful participation

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<sup>29</sup> Andrew Cohen, *A Deal Undone: The Making and Breaking of the Meech Lake Accord* (Vancouver: Douglas and McIntyre, 1990), 271-2; Peter H. Russell, *Constitutional Odyssey: Can Canadians Become a Sovereign People?* 2<sup>nd</sup> ed., Toronto: University of Toronto Press, 1993), 127-53.

<sup>30</sup> See Kathy L. Brock, “Learning from Failure: Lessons from Charlottetown,” 30-1, 32.

<sup>31</sup> Peter H. Russell, *Constitutional Odyssey*, 231-35.

<sup>32</sup> Based on the author’s personal observations when she testified on the “Amendment to the Constitution of Canada Regarding Term 17 of the Newfoundland Act” before the Senate of Canada, Legal and Constitutional Affairs Committee, June 18, 1996.

<sup>33</sup> Elizabeth Smythe and Peter J. Smith, “NGOs, Technology and the Changing Face of Trade Politics,” in Kathy L. Brock (ed.), *Delicate Dances: Public Policy and the Nonprofit Sector* (Montreal and Kingston: McGill-Queen’s University Press for the School of Policy Studies, Queen’s, 2003), 297-340.

<sup>34</sup> Kathy L. Brock, “Democracy Is Coming: The New Interest in NGOs, Civil Society and the Third Sector.” *Philanthropist*, 16:4 (Winter 2002). Compare Donald Lenihan, “Federalism in the Information Age: From the Division of Powers to Citizen-Centred Government,” *Policy Options* 25:10 (November 2004), 43-7.

remain woefully inadequate and unimaginative. These two contrary trends could be a headache for government leaders in future discussions on Canada's nationhood.

Finally, the citizen disillusionment with our political leadership awakened during the constitutional battles persists. Trust in political officials remains low, suspicion remains high. The US Clinton affair, the controversy over the British and US in Iraq and Afghanistan, and the Canadian Gomery inquiry have only heightened these feelings of cynicism. With a more attentive, connected, and sophisticated population than 12 years ago, governments will need to inform and consult with their populations and be prepared to justify any changes in terms of the public good or run the risk of further disillusionment and consequent political apathy—never good for national health.

### New Wines, More Bottles

Yes, the old tensions continue although in new and more potentially perilous forms but added to this mix are new tensions that are not to be overlooked. While forces in themselves, if combined with the continuing but changed tensions, spontaneous combustion on the national front could occur.

#### *Nunavut*

One of the most significant changes in the federation in the past ten years is often overlooked. A new territory has emerged with the creation of Nunavut in 1999. The old Northwest Territories was divided into two new territories. Although a public not ethnic form of government was adopted, Nunavut is a working example of Aboriginal self-government in practice since 85% of the 28,000 residents are Inuit. In contrast, the new Northwest Territories is approximately 50% Aboriginal and the Yukon territory's population is approximately 21% Aboriginal. Nunavut has been struggling with many of the same problems as southern Aboriginal communities including inadequate housing, lack of education, a poorly trained workforce and other social ills.<sup>35</sup> In addition, the new government has faced serious legislative and financial challenges although progress is being made with its recent and concerted efforts to improve financial management.<sup>36</sup> However, among its most serious challenges is energizing the economy by prudently exploiting the natural resource wealth. For this, Nunavut requires a federally funded and supported port for exportation purposes. Negotiations with the federal government continue.

Nunavut changes the federal-provincial dynamic in two important ways. First, it is a natural ally with First Nations and other Aboriginal peoples on key social and economic issues. Aboriginal peoples have a voice directly at the table and one that should call for the door to be opened wider should serious constitutional or national unity discussions erupt. With the sympathy of the Northwest Territories and some western provinces where Aboriginal peoples influence political outcomes, Aboriginal

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<sup>35</sup> Nunavut Premier Paul Okalik, Address to the Queen's law school, October 2005.

<sup>36</sup> Nunavut, "Government of Nunavut Strengthens Financial Management" News Release, May 1, 2006. Available at <http://www.gov.nu.ca/Nunavut/English/news/2006/may/>

people have gained significance influence. A new dynamic has entered the Premiers meetings including the Western Premiers Conference and the Council of the Federation as well as the First Ministers' Conferences.

Second, should Quebec press for a new relationship with Canada, Nunavut is likely to do the same. Senior officials in the Nunavut government have spoken about their aspirations for provincehood and application of the equalization formula to Nunavut. Provincehood would entail more control over its destiny without direct federal interference. Inclusion in the equalization formula would provide Nunavut with additional resources to redress its social concerns. At present 82% of Nunavut's revenues flow from the federal government through Territorial Formula financing and the federal government's imposition of an "arbitrary fixed limit of 3.5 per cent growth" has hampered its efforts at financial management.<sup>37</sup> This type of unilateralism rankles Nunavut as much as it does Quebec. In the last resort, Nunavut would ally with sympathetic Premiers from the western provinces and the Aboriginal organizations to ensure that its demands for its fair share in the federation were met. A new powerful alliance has emerged. How quickly the intergovernmental game is learned. The demonstration effect of the previous constitutional rounds is that a Premier can gain leverage to press his (her) own demands when Quebec is threatening national unity and other alliances can be forged to resist Quebec's demands--Ottawa tends to listen better.

***Rising Western Affluence, Hollowing Out of Ontario, COF and Fiscal Imbalances***

The dynamic is shifting among the provinces. The economic and demographic growth in the western provinces of BC and Alberta, and to a lesser extent Saskatchewan, stands in stark contrast to the economic weakening of Ontario and Quebec. These new economic realities would realign the power balance in future federal-provincial negotiations on national unity.

In past constitutional negotiations, BC and Alberta aspired to provincial equality represented by their demands for Senate reform, opposition to special provincial vetoes in the amending formula, rejection of the distinct society clause in recognition of Quebec, and an expanded provincial role in appointments to national institutions. Senate reform remains a dream, Quebec regained its veto in the Federal government's 1995 Regional Veto Act supplanting the Alberta sponsored amending formula acquired in 1982, appointments remain federal and distinct society has been accepted as a fact underlying provincial arrangements.

Despite their growing populations and economic power, Alberta and BC's political power in the federation has remained unchanged. As Ted Morton observes: "At the end of World War II, the combined population of the two westernmost provinces was only half that of Quebec. Today they are virtually equal. Economically, the change has been even more dramatic. As recently as 1961, the combined provincial GDPs of Alberta and BC were only half that of Quebec's. Today it is 13 per cent greater."<sup>38</sup>

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<sup>37</sup> Government of Nunavut, *Budget Address 2006-7* delivered by the Hon. David Simailak, Minister of Finance, February 22, 2006. Available at <http://www.gov.nu.ca/>

<sup>38</sup> F.L. Morton, "Equality or Asymmetry? Alberta at the Crossroads," *Asymmetry Series 2005 (5)* (Kingston: IIGR, School of Policy Studies, Queen's University, 2005), 2. Available at <http://www.iigr.ca/>

Morton concludes: “the weaker Quebec has become economically, the more powerful it has become politically”; while “Alberta has watched over \$200 billion dollars leave the province over the past four decades in official and unofficial federal transfer programs...Alberta’s fate appears to be the opposite of Quebec’s: the more it contributes financially, the less it receives politically.”<sup>39</sup> This view is echoed by Gordon Gibson in his analysis of BC’s connection to Canada, where he resurrects W.A.C. Bennett’s depiction of the federal government’s image of BC as “a goblet to be drained.” Like Morton, he argues that central government “Programs and expenditures are designed for areas that are either more needy (as seen from the centre) or of greater political consequence.”<sup>40</sup>

The 2006 election of the largely western-based Conservative party offsets some of the querulousness over the west’s exclusion from the corridors of federal power. However, in western coffee shops the minority status of the Conservatives in the face of the Gomery revelations about the Liberals, translates into continuing Eastern distrust of Western political figures. Further, the Conservatives face the challenge of rising expectations in the west as “their own” assume office. Whether they can meet this challenge with their pledges of no special deals and decentralization of powers is open to question. But one thing is certain as Morton concludes: “The growing disequilibrium between Canada’s political system and economic system cannot be sustained forever. The economic and demographic growth of Alberta and British Columbia cannot continue to be ignored in our political system.”<sup>41</sup>

In contrast, Ontario is in a much more precarious position economically and fiscally and its legitimacy to speak out on national issues has diminished since the constitutional fray. Guillemette and Robson, express dismay over the recent economic performance in both Ontario and Quebec:

They lag the country as a whole in growth of output and employment. Their tax systems discourage work and – particularly in Ontario’s case – investment, more than those in most other provinces and nearly any other country...And recent trends in capital investment by businesses –a critical force behind rising living standards –bode ill for future: workers in Ontario get only about 65 cents of new plant and equipment each year for every dollar received by their US counterparts and those in Quebec get less than 50 cents.<sup>42</sup>

And the economic boom continues to shift to the west. Even more worrisome in light of these economic trends and the growing provincial debt is the inability of Ontario, unlike Quebec, to engage in fiscal discipline: over the past nine years, Ontario has exceeded its budget forecasts by spending an additional \$.76 for every dollar pledged to programs, and in the past two years the overrun was \$2.9 billion or equal to the provincial deficit.<sup>43</sup>

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<sup>39</sup> Ibid.

<sup>40</sup> Gordon Gibson, “British Columbia: Affordable Resentment, Growing Options, Diverging Interests,” in Hamish Telford and Harvey Lazar (eds.), *Canadian Political Culture(s) in Transition*, 248.

<sup>41</sup> Morton, “Equality or Asymmetry?” 4.

<sup>42</sup> Yvan Guillemette and William Robson, “A Tale of Two Provinces: spending Overruns in Ontario and Quebec Spell Fiscal Trouble,” *C. D. Howe E-Brief* (Toronto: C.D.Howe Institute, May 10, 2006). Available at <http://www.cdhowe.org>.

<sup>43</sup> Ibid.

As manufacturers close, shift south or west or teeter on collapse (GM), Ontario's economic and fiscal position looks even more vulnerable. Western disdain increases.

Ontario's voice on the national stage has lost force. Being one of the three remaining provinces to get its fiscal house in order, diminishes its credibility on fiscal issues. Even in the current debate on the fiscal imbalance, Ontario's claims that it is losing \$23 billion per year raises eyebrows and prompts counterestimates ranging from \$5 billion (the equalization sum) to a more realistic \$18 billion. To many, Ontario appears to be engaging in a "money grab" to cover its inability to engage in fiscal restraint. And it is off-side with the other provinces. While Ontario's calls under Premier Bob Rae in the early 1990s for "fair share" federalism garnered support among the other provinces and fit with the evolution towards the Calgary declaration and notions of provincial equality,<sup>44</sup> Premier McGuinty's recent trips to garner support among the provinces for righting the fiscal imbalance and restoring Ontario's fair share is gaining little momentum. Moreover, the shift from Ontario's traditional stance as a spokesperson for national unity and consensus to the Rae rhetoric on "fair share federalism" which translated to "beggar thy neighbour" federalism as the growing discord between "have" and "have-less" provinces became increasingly apparent in the late 1990s, further tarnished Ontario's reputation as a leader among the provinces and national broker or spokesperson.

A weakened Ontario, a stronger west, and growing resentments in both, not to mention the eastern provinces or neglected mid-west, bode ill for future discussions on national unity. The sense of federal comity, the essential bond for a nation's survival, seems to be ebbing away. This dynamic is captured in the operating premise of the Council of the Federation (COF) a body created by the provinces in 2003 to present a unified front to Ottawa on provincial matters beginning with the fiscal imbalance:<sup>45</sup> unity among the Premiers unless one can cut a better deal for his or her province with Ottawa.<sup>46</sup> However, the era of asymmetrical federalism may be over with the Conservative government in Ottawa thus causing COF to re-evaluate its positioning in federal-provincial negotiations.

### *Prevailing Global Winds*

Overlying these domestic trends, are global pressures on the Canadian economy, society and foreign and defence policy. Transfers of powers from the federal government upwards to global institutions for trade and economic matters have weakened federal authority over economic matters and contribute to increasing provincial calls for more room in negotiations especially from Quebec on trade and BC on softwood lumber. Transfers downwards from Ottawa to the provinces and municipal governments in the areas of social powers have led to the escalation in municipal demands for new monies,

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<sup>44</sup> Hugh Segal, "The Evolution of Quebec's Federal Stance in the Nineties: Ideology or Continuity?" in Hamish Telford and Harvey Lazar (eds.), *Canadian Political Culture(s) in Transition*, 203-4.

<sup>45</sup> Canadian Intergovernmental Conference Secretariat, "Premiers Create the Council of the Federation," *News Release*, December 5, 2003. Available at <http://www.scics.gc.ca/>

<sup>46</sup> This view was confirmed by two COF insiders to the author in private conversations at separate events in the past year.



sources of revenue and political influence.<sup>47</sup> Provincial governments become both allies and rivals in negotiations with their subunits—a strange new reality.<sup>48</sup> Global pressures for Canada to participate in military engagements have highlighted the growing disparity between public opinion in Quebec and the rest of Canada as tracked in the popular press, as has the dwindling federal commitment to aid.<sup>49</sup> As the federal government strains to adapt to the new competitive global environment, new fissures in domestic intergovernmental relations have opened up.<sup>50</sup>

### Conclusion: A Way Forward and the Potential Landmines

Is the storm about to break? Will it unleash a tsunami on Canada? Is a majority Conservative government the answer to keeping the storm at abeyance? Or are the critics right to fear a resurgence of national instability?

On the one hand, the election of a Conservative minority government would appear to be a reflection of the wisdom of the electorate as a whole. The Tories have knitted together a winning coalition that appeals to most of the key forces in Canada in some way. In Quebec, detailed analysis of the election results show that the Conservatives made headway into the previously Liberal federalist base—voters who were angry about the Gomery inquiry revelations about corruption in the Liberal party.<sup>51</sup> In making these gains, the Conservatives have reinvigorated the federalist support and continue to build on that basis by buttressing the federalist Quebec Liberal government under Jean Charest. The Conservatives have made three significant moves to rebuild confidence in federalism in Quebec: they have made concessions over Quebec's expanded role in international affairs, decided to respect Quebec's mixed public/private health care model, and promised to respond to Quebec's calls for a reexamination of the fiscal imbalance. And, the federalist forces are counting on Quebec's recent fiscal prudence and stability as it confronts some of its economic woes.

Other members of the coalition have also received some gains. The promise of fiscal reform appeals to Ontario, even if the Prime Minister doesn't meet with the Premier on his terms. And the reduction of the GST helps small and medium businesses and citizens in Ontario or gives the province tax room instead. The promise of Senate elections appeals to westerners. Reduction of waiting times in the medical system appeal to all provincial governments who feel the weight of escalating health costs and public criticisms of health care delivery. The crime control pledge appeals to large cities in each

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<sup>47</sup> Although Andrew Sancton questions the link between the demand for more powers and the contribution of municipalities to economic competitiveness in a global economy in "Municipalities, Cities and Globalization: Implications for Canadian Federalism," in Herman Bakvis and Grace Skogstad (eds.), *Canadian Federalism: Performance, Effectiveness, and Legitimacy* (Toronto: Oxford UP, 2002), 261-77.

<sup>48</sup> Christopher Dunn, "Urban Asymmetry: The New Reality in Intergovernmental Relations," *Policy Options* 25:10 (November 2004), 38-42.

<sup>49</sup> Alain Noel, Jean-Phillipe Thérien and Sébastien Dallaire, "Divided over Internationalism: The Canadian Public and Development Assistance," *Canadian Public Policy* 30 :1 (January 2004), 29-46.

<sup>50</sup> Although in fairness, Quebec's demands for a greater role internationally may be traced to Prime Minister Joe Clark's overtures regarding the francophonie nations in 1979.

<sup>51</sup> Patrick Fournier, André Blais, Elizabeth Gidengil, Joanna Everitt and Neil Nevitte, "Harper Can Thank Federalist Voters," *Globe and Mail* February 8, 2006, A19.

province, and especially Toronto with its recent gun shootings and gang-related incidents. The relaxation of the gun registry eases provincial costs despite apprehension in urban areas and central Canada over guns. Still, the provinces lose on childcare. And the Tories have rebuilt the old alliance of Quebec nationalists and western populists with their promises of decentralization and respect for provincial jurisdiction.

However, it is not just the strategy of the Conservatives but also the fact of the minority situation that keeps the tensions in the nation in check. The moderate social democratic touch in Parliament represented by the BQ and the NDP ensure that fiscal and economic reforms do not shift too far right and that social programs are respected. In the case of child care, this meant that the Conservatives agreed to respect their predecessor's agreement for one year, giving provinces time to adjust. New arrangements are in the works. The disarray of the Liberals and the current search for a leader, have hampered their effectiveness in opposition and in regaining the support that shifted to the Conservatives in Quebec, while the Quebec sovereigntist support has divided between two parties.

On the other hand, the Conservative minority government has two prominent Achilles heels. Quebec is a wild card. Whether the Conservative treatment of Quebec and buttressing of the Charest Liberal government are enough to offset the gains made by the PQ against the Liberals in the province remain to be seen. The popular André Boisclair may prove otherwise regaining sovereigntist support and then it is a waiting game to see if and when the next referendum on sovereignty will be called. The situation with Aboriginal peoples is also dangerous. The initial overtures to Aboriginal peoples represent a shift in support from the First Nations communities favoured by the Kelowna Accord to the urban, non-status off-reserve status population. While the Conservative logic is evident if demographic trends are followed, this strategy leaves Canada vulnerable to criticism in international human rights forums over conditions in First Nations' communities and could trigger a power shift among First Nations from a more moderate leadership to a more radical one. While civil disobedience can be contained, if the Quebec question does arise a more militant and mobilized First Nations community could ally with Nunavut and others to intensify the debate unless their issues are met—Meech Lake but worse given the changes outlined above in that community.

The Conservatives may be wading into dangerous waters in two other ways in the new, more treacherous environment of the late 2000s. As mentioned earlier, raising the specter of changing the method of selection of Senators could unintentionally force broader Senate reform onto the constitutional agenda and unleash the forces of national instability. Further, their "courageous" decision to convene a First Ministers' Conference on Fiscal Matters flies in the face of all past Liberal wisdom. It could open a Pandora's box. Already the rhetoric is escalating as Ontario and Alberta position themselves publicly in preparedness for divvying up the spoils of the federation. The federal government could trigger a fight with those provinces with adverse consequences in Quebec as it questions whether its concerns over the imbalance are being taken sufficiently into account or the federal government could concede to Ontario and

Alberta and trigger a situation in which the concerns of have-less provinces and Quebec are downplayed. Either scenario feeds the separatist forces in Quebec. The firm fatherly hand of the Prime Minister may not be sufficient in calming the unruly child provinces of the federation.

Times have changed. Tensions abound in Confederation but remain in check at the moment. However, as has been shown here, this quietude may be misleading. If a national debate over Canada's future is triggered by the election of a PQ government in Quebec, we could witness a far nastier scenario than in the past. Interesting times lie ahead for the Conservatives as they navigate these dangerous waters.