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Opting-out is a constitutional right, too

It would be nice to think that the remarkable outburst of democracy we've witnessed this month in Ontario is here to stay. We'll see.

Over half of Ontario's vast Liberal caucus may vote against their own leader's homosexual marriage bill if it comes before Parliament--so many that with help from Alliance and Tory MPs (except of course the honourable member for Calgary Centre, Joe Clark), the bill could be killed.

Ontario hasn't seen such an uproar since the free trade debate in 1988.

Whatever you may think about gay rights, the question being decided is whether Parliament or the judiciary will run the country.

Liberal Ontarians opposed to the bill are berating their MPs on the street, at the car wash and in restaurants. Priests and pastors are telling their congregations to fight hard against it. (Believe it or not, never until now have they actually said such things from the pulpit.) MPs' phone lines, fax lines and e-mail boxes are jammed.

When the ruckus began, all the usual liberal spin doctors said all the usual things. For instance, *Environics'* Derek Leebosh dismissed opponents as "right-wing cranks." They are the kind of uneducated, under-employed 60-year-old males, he sneered, who phone open-line radio shows. In poll after poll, Leebosh insisted, a "modest but solid majority" of citizens supports gay marriage.

Solid majority my foot. When pollsters phone people at home during supper or hockey games, public support for "same-sex" marriages does register slightly above 50-50. But if they are asked more bluntly if they support "homosexual" marriages, response is about 70% hostile. If Leebosh doesn't know this, he's incompetent. And if he does, he's a propagandist.

But suppose the Liberal back bench does defeat this bill. Even then, gay marriage will continue to be imposed by the courts.

In B.C. and Ontario, provincial governments are already issuing marriage licences under court order.

There is only one way for parliamentarians to stop the homosexual marriage steamroller, if indeed they really want to. They can pass a bill exempting the federal Marriage Act from judicial interference under the Charter of Rights. It means invoking section 33 of the Charter by an act of Parliament, and repeating the process every five years.

Only that will stop gay marriage. Anything less amounts to posturing.

And that act alone will decide whether Canadian laws will be written by elected representatives or by the nine lawyers appointed to the bench of the Supreme Court.

Law-making is by definition a political exercise. It always was and ever will be. The question is which politicians will engage in it, the electees or the appointees?

There is among the Liberal bench a peculiar dogma that when it comes

to the Charter, judges must always have the final say. "Parliament mustn't opt out of the Charter of Rights," they gravely intone. "Minority rights can't be subjected to majority prejudice."

Who are they trying to kid? Minority rights have ALWAYS been subject to majority definition. More to the point, section 33 is IN the Charter of Rights. To say it's unconstitutional to use the constitution is like saying it would be criminal to invoke the Criminal Code.

The real democratic test of the Liberal caucus will not be whether they oppose their leader in a free vote. It will be whether they invoke the opting-out provision of the Canadian constitution.

It would be strategically sound at this point for the Alliance Party to introduce a motion this fall calling for Parliament to invoke section 33 on gay marriage, on the grounds that courts have misunderstood the Charter. Then see what the Liberals do.

Once the question has been removed from the courts, Parliament should probably seek guidance by means of a national referendum. For it is the Canadian people to whom the constitution ultimately belongs, and they who should decide what it means.

- Link Byfield

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