Address in the House of Commons on Bill C-38

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Mr. Speaker, before I turn to my formal remarks I would like to begin with just a brief reply to the Prime Minister.

The Prime Minister spoke at length, as we just heard, about rights in the Charter of Rights. I remind the Prime Minister that in our system of government, the Prime Minister does not decide or define our rights. The Prime Minister does not interpret the Charter of Rights. The Supreme Court of Canada does that. He asked the Supreme Court of Canada to endorse his interpretation and it just refused.

I also want to express today my disappointment in a sense that we are having such a debate. As we all remember, the expectations for the Prime Minister during the leadership race were very high. I will refer to that leadership race in a few moments.

What do we have today? We have no agreement on child care. We have a phantom deal on infrastructure. We have missing policy reviews on defence and foreign affairs. We have none of that famous fixed for a generation in health care. We have holes in federal agencies, the same old democratic deficit in the Senate, unaccountable foundations and, on the first day of a major environmental and economic accord to which the Prime Minister committed this country, we have no plan whatsoever and the Prime Minister does not speak about it. His only speech is on his new-found passion for same sex marriage because it is the only proposal of significance he has been able to lay before the House of Commons.

The greater tragedy is the greater message in his speech, that if we do not accept his particular views on this legislation, then we are not truly Canadian. That is something that this party will never accept.

In the course of the debate I will be very critical of the government for many of its statements and actions in its attempts to abolish the traditional definition of marriage in Canada.

However I want to take this opportunity to thank the government, or maybe, ironically, I should be thanking the Supreme Court of Canada for at least one thing. At long last the question of marriage has been returned to where it should have been from the beginning: in the Parliament of Canada.

Do you remember when the Prime Minister was a leadership candidate and wanted a democratic and respectful debate on this issue. On this side of the House, we hope that he and the members of his party will keep that promise during the course of this debate.

In August 2003, the Prime Minister, then a candidate for the Liberal leadership, who seemed very concerned with democracy and parliamentary reform, said that, “The courts having spoken, I believe that it's very important that Parliament speaks and that Parliament speaks through the voices of its representatives: members of Parliament. And what that essentially means is that this has got to be a debate that is civil, not a debate on

which either side ascribes motivation, questions the motivation or ascribes blame, that in fact that the debate really deal with the fundamental social values of the country. And I think that that is what's going to happen".

"There are going to be people who are going to raise other ways of looking at this. There are going to be people who will deal, for instance, who are going to raise the issue of civil union. And it may well be that they will raise solutions to the impediment that civil unions might provide. And I think that's an essential role of Parliament. And I think it's the kind of thing we should listen to".

The Prime Minister had it right then, back in his democratic deficit fighting days as a leadership candidate. I hope he will remember his words of a year and a half ago and will not resort to the questioning of motives that he, his justice minister and others have increasingly resorted to in recent weeks when we propose the very policy on this issue that the Prime Minister used to win the leadership of the Liberal Party of Canada.

As the Prime Minister invited us to do, I do want to engage in this debate about fundamental social values. I do want to discuss how compromise proposals like civil unions may be able to resolve some of the impediments the Prime Minister noted. I hope the Prime Minister will extend to me and roughly half the members of the House and roughly two-thirds of the country who support the traditional definition of marriage, the courtesy of an open debate without facing spurious charges of bigotry or bad faith from the Prime Minister, his spin doctors or his media allies.

My position on the definition of marriage is well known, because it is quite clear. It is not derived from personal prejudice or political tactics, as some Liberal MPs would have us believe with their usual air of moral superiority. My position, and that of most of the members of my party, is based on a very solid foundation and time tested values.

I also want to point out that the members of my party, including those in our shadow cabinet, are perfectly free to vote according to their conscience without my interference.

It will come as no surprise to anybody to know that I support the traditional definition of marriage as a union of one man and one woman to the exclusion of all others, as expressed in our traditional common law. I believe this definition of marriage has served society well, has stood the test of time and is in fact a foundational institution of society. In my view the onus is on those who want to overturn such a fundamental social institution to prove that it is absolutely necessary, that there is no other compromise that can respect the rights of same sex couples while still preserving one of the cornerstones of our society and its many cultures.

Up until a few years ago, even within the modern era of the charter, Canadian law and Canadian society took for granted that marriage was intrinsic, by definition, an opposite sex institution. So obvious was this that until now a formal marriage statute has never been adopted by Parliament. This view was not even restricted to the numerous faces and

cultures that have populated our great country from all corners of the earth, though it has been a universal view among them.

It has been a widespread view beyond religion as well. For example, the renowned McGill medical and legal ethicist, Dr. Margaret Somerville, a secular scholar operating in a public university without confessional or religious orientation, has argued that marriage is inherently an opposite sex institution. She points out that while social institutions can and should change in some of their accidental trappings, there are also inherent features that cannot change. As she writes:

> Institutions have both inherent and collateral features. Inherent features define the institution and cannot be changed without destroying the institution. Collateral features can be changed without such impact. We rightly recognized that women must be treated as equal partners with men within marriage. While that changed the power of husbands over their wives, it simply changed a collateral feature of marriage. Recognizing same-sex marriage would change its inherent nature.

In a similar vein, former Supreme Court Justice Gérard La Forest, speaking on behalf of four judges in the majority in the Egan decision, the last case by the way where the Supreme Court addressed the definition of marriage directly, famously said the following:

> Marriage has from time immemorial been firmly grounded in our legal tradition, one that is itself a reflection of long-standing philosophical and religious traditions. But its ultimate raison d'être transcends all of these and is firmly anchored in the biological and social realities that heterosexual couples have the unique ability to procreate, that most children are the product of these relationships, and that they are generally cared for and nurtured by those who live in that relationship. In this sense, marriage is by nature heterosexual.

I point out again, this is what the Supreme Court of Canada actually said, not, as the Prime Minister emphasizes, mere speculation about what it may say in the future. The statement was also written in 1995, over a decade after adoption of the Charter of Rights and Freedoms, and it remains the only commentary on the fundamental definition of marriage in any Supreme Court decision.

Even years after Justice La Forest's statements, members of the Liberal government still denied any hidden agenda to change the definition of marriage. In fact, the Deputy Minister stood in the House in 1999 and said the following on behalf of the government:

> We on this side agree that the institution of marriage is a central and important institution in the lives of many Canadians. It plays an important part in all societies worldwide, second only to the fundamental importance of family to all of us.
>
> The institution of marriage is of great importance to large numbers of Canadians, and the definition of marriage as found in the hon. member's motion is clear in law.
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> As stated in the motion, the definition of marriage is already clear in law. It is not found in a statute, but then not all law exists in statutes, and the law is no less binding and no less the law because it is found in the common law instead of in a statute.
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> The definition of marriage, which has been consistently applied in Canada, comes from an 1866 British case which holds that marriage is “the union of one man and one woman to the exclusion of all others”. That case and that definition are considered clear law by ordinary Canadians, by academics and

by the courts. The courts have upheld the constitutionality of that definition.

The Ontario Court, General Division, recently upheld in Layland and Beaulne the definition of marriage. In that decision a majority of the court stated the following:

—unions of persons of the same sex are not "marriages", because of the definition of marriage. The applicants are, in effect, seeking to use s. 15 of the Charter to bring about a change in the definition of marriage. I do not think the Charter has that effect.

I am aware, as are other ministers, that recent court decisions and resulting media coverage have raised concern around the issue of same sex partners. It appears that the hon. member believes that the motion is both necessary and effective as a means to keep the Government of Canada from suddenly legislating the legalization of same sex marriages. That kind of misunderstanding of the intention of the government should be corrected.

Let me state again for the record that the government has no intention of changing the definition of marriage or of legislating same sex marriages.

I fundamentally do not believe that it is necessary to change the definition of marriage in order to accommodate the equality issues around same sex partners which now face us as Canadians. The courts have ruled that some recognition must be given to the realities of unmarried cohabitation in terms of both opposite sex and same sex partners. I strongly believe that the message to the government and to all Canadian governments from the Canadian public is a message of tolerance, fairness and respect for others.

Marriage has fundamental value and importance to Canadians and we do not believe on this side of the House that importance and value is in any way threatened or undermined by others seeking to have their long term relationships recognized. I support the motion for maintaining the clear legal definition of marriage in Canada as the union of one man and one woman to the exclusion of all others.

Thus spoke at great length the Deputy Prime Minister of Canada, then justice minister, in this chamber less than six years ago.

Today, for making statements that are identical and for identical reasons, members of the government side resort to terms like bigot, reactionary and human rights violators. The hypocrisy and intellectual dishonesty of the government and some of its members at this point is frankly staggering.

Fundamentally, what has changed since the government, including the Prime Minister, voted for the traditional definition of marriage in 1999?

On this side, we do not believe that merely on the basis of lower court decisions, upheld only because the government refused to appeal, them that a fundamental social institution must be abolished or irretrievably altered. Only a free vote of the Parliament of Canada is an appropriate way to resolve such fundamental social issues.

As I say, I have made it clear that I and most of the members on this side of the House will vote against the bill as it now stands. We will vote to uphold the traditional definition of marriage. Those in this party, even in my shadow cabinet who consciously feel different, who believe that the definition of marriage should change, will have the full rights to express and vote their position on this subject.

My party wanted to adopt a reasonable position respectful of every social group. We also think our position represents the feelings and convictions of the majority of Canadians.

As the official opposition in a minority Parliament, we feel it is insufficient to oppose. We must also put forward a constructive alternative. We have discussed this issue and wrestled with this issue in our own caucus, as have Canadians in living rooms, kitchens, coffee shops and church basements across the country.

I know and we all know and understand that this is difficult. The issue involves all kinds of aspects of life that are very close to personal identity, to sexual identity which for many people has been a difficult path, cultural tradition and ethnic identity and of course personal faith in one's relationship to their God.

However, while there is no perfect answer, and there is no perfect answer that will satisfy everyone, we believe we can and should offer a compromise that would win the support of the vast majority of Canadians who seek some middle ground on the issue.

In our discussion with Canadians we find there are three groups in public opinion.

At the one end there is a significant body of opinion, led today by the Prime Minister, which believes that the equality rights of gays and lesbians trump all other considerations, trumping any rights to religious faith, any religious expression or any multicultural diversity, and that any restriction on the right to same sex marriage is unjustifiable discrimination and a denial of human rights.

At the other end, there is an equally significant body that thinks that marriage is such a fundamental social institution, not only recognized by law but sanctified by faith throughout the world and throughout history, that any compromise in terms of recognizing homosexual relationships is unacceptable.

However, we believe that the vast majority of Canadians believe in some aspects of both and they are somewhere in the middle. They believe that marriage is a fundamental distinct institution, but that same sex couples can have equivalent rights and benefits and should be recognized and protected.

We believe that our proposals speak to the majority of Canadians who stand in this middle ground and frankly, who seek such a middle ground. Our proposal is that the law should continue to recognize the traditional definition of marriage as the union of one man and one woman to the exclusion of all others, but at the same time we would propose that other forms of union, however structured, by appropriate provincial legislation, whether called registered partnerships, domestic partnerships, civil unions or whatever, should be entitled to the same legal rights, privileges and obligations as marriage.

Many of these types of unions are already subject to provincial jurisdiction under their responsibility for civil law. However, there are issues affecting rights and benefits within the federal domain, and our party would ensure that for all federal purposes those Canadians living in other forms of union would be recognized as having equal rights and benefits under federal law as well.

What we put forward, in my judgment, is the real Canadian way. The Canadian way is not the blindly, ideological interpretation of the charter put forward by the Prime Minister. It is not a case where one side utterly vanquishes the other in a difficult debate on social issues. It is a constructive way, and as debate in other jurisdictions has shown, and I draw this to the attention of the House, this debate will not reach a conclusion or social peace until equal rights, multicultural diversity and religious freedom are balanced.

We also oppose the government's bill because it is a clear threat to religious freedom. We are proposing amendments that will prevent any religious discrimination within the sphere of federal authority.

This bill, by failing to find a reasonable compromise, a reasonable middle ground on the central question of marriage, is fundamentally flawed.

There is a second major flaw. The so-called protection that the government has offered for even basic religious freedom is, frankly, laughably inadequate. It is totally dishonest to suggest that it provides real protection.

The government has only proposed one meagre clause to protect religious freedom, a clause which states that religious officials will not be forced to solemnize marriages, but the Supreme Court of Canada has already ruled that this clause is ultra vires. It falls within the provincial responsibility for the solemnization of marriage. Frankly, this section of the bill illustrates the depth of the government's hypocrisy and intellectual dishonesty in this legislation.

On the one hand, the government and its allies claim that any attempt to retain the traditional definition of marriage is unconstitutional on the basis of a decision the Supreme Court has not made and has refused to make. On the other hand, it is happy to insert into its bill a clause which the Supreme Court has already ruled is unconstitutional and outside of federal jurisdiction.

The government's constitutionally useless clause purports to protect churches and religious officials from being forced to solemnize same sex marriages against their beliefs, but this threat has always been only one of many possibilities. We note the Prime Minister did not choose to address a single other possibility. What churches, temples, synagogues and mosques fear today is not immediately the future threat of forced solemnization, but dozens of other threats to religious freedom, some of which have already begun to arrive and some of which will arrive more quickly in the wake of this bill.

As Catholic priest and writer, Father Raymond de Souza wrote last year in the prestigious religious journal *First Things*:

> That is the worst-case scenario of state expansion. But state expansion will likely pass other milestones on its way there, eroding religious liberty on questions related to marriage. First it will be churches forced to rent out their halls and basements for a same-sex couple’s wedding reception. Then it will be religious charities forced to recognize employees in same-sex relationships as legally married.

> Then it will be religious schools not being allowed to fire a teacher in a same-sex marriage. Then it will be a hierarchical or synodal church not being allowed to discipline an errant priest or minister who performs a civilly legal but canonically illicit same-sex marriage. All of this can happen short of the worst-case scenario specifically exempted in the federal government's proposed law.

We have already seen some of these things come to pass since this article was written in human rights tribunals and lower courts across the country. We have already seen a Catholic Knights of Columbus hall challenged before the B.C. Human Rights Commission for refusing to grant permission for a same sex wedding reception on church owned property.

We have seen civil marriage commissioners in British Columbia, Saskatchewan and Manitoba, who have religious or philosophical objections to same sex marriage, removed or threatened to be removed from positions by their government. We have heard the federal Minister responsible for Democratic Reform saying such employees should be punished or fired.

We have seen the former Minister of International Trade saying that churches, including the Catholic Church in Quebec, have no right to be involved in any such debate. These may only be the beginning of a chilling effect on religious freedom for those groups and individuals who continue not to believe in same sex marriage.

Indeed, given the ferocity of the Prime Minister's new position, given the refusal to compromise, given the belief that any opposition to same sex marriage is akin to racial discrimination, the attack on religious freedom will inevitably continue on any aspect of religion that interfaces in any way with public life.

There are things, of course, that are within the federal sphere that can protect religious freedom. Parliament can ensure that no religious body will have its charitable status challenged because of its beliefs or practices regarding them. Parliament could ensure that beliefs and practices regarding marriage will not affect the eligibility of a church, synagogue, temple or religious organization to receive federal funds, for example, federal funds for seniors' housing or for immigration projects run by a church.

Parliament could ensure that the Canadian Human Rights Act or the Broadcasting Act are not interpreted in a way that would prevent the expression of religious beliefs regarding marriage.

Should the bill survive second reading, we will propose amendments in areas like these to ensure that in all areas subject to federal jurisdiction nobody will be discriminated against on the basis of their religious beliefs or practices regarding marriage.

The Prime Minister and several of his ministers have dishonestly claimed that the use of the notwithstanding clause was inevitable in order to preserve the traditional definition of marriage. That is not true, and such arguments are unworthy of a conscientious parliamentarian, especially someone who is a lawyer.

In fact, this Parliament can protect the institution of traditional marriage very well and respect the rights and privileges of those who chose another form of union, without departing from the Charter of Rights and Freedoms in our Constitution.

Some people have suggested that we cannot do what we propose to do; that is, preserve marriage as the union of one man and one woman while extending equal rights and other forms of union without invoking the notwithstanding clause of the Constitution.

I am going to take a little time on this. It is red herring argument, but we might as well spell it out. The attack is dishonest on several levels. First of all, and this is important when we start talking about the notwithstanding clause, the Liberal Party and this Prime Minister have no leg to stand on when it comes to preaching about protecting human rights and the notwithstanding clause. It was none other than Prime Minister Pierre Trudeau, the author of the charter, who accepted the notwithstanding clause. Far from believing it to be a necessary evil to win support for the charter, he promised to use it. Specifically, he promised the late Cardinal Gerald Emmett Carter that he would use the notwithstanding clause to uphold Canada's legislation on abortion if it were struck down by a future Supreme Court.

In the more recent debate over same sex marriage, in an earlier phase of it, this Prime Minister promised that he would use the notwithstanding clause should a court ever infringe on religious freedom, although of course no one takes his commitments to religion seriously any more.

In fact, this Prime Minister was a member of Parliament from Quebec in 1989 when the provincial government in his province used the notwithstanding clause to ban English on commercial signs. He had next to nothing to say about it then and in the subsequent Liberal leadership race in less than a year he supported the notwithstanding clause.

I have said I would not use section 33 to preserve the traditional definition of marriage because quite simply it is not necessary in this case. The Supreme Court of Canada has not ruled on the constitutionality of the traditional definition of marriage. The court pointedly declined to do so in the recent same sex reference case, despite a clear request from the Prime Minister that it do so. In fact, the court openly speculated on the possibility that it could uphold the traditional definition. Therefore, there is simply no reason to use or discuss the notwithstanding clause in the absence of a Supreme Court decision, especially when it involves precedent based only on common law judgments.

Many legal experts, many of them coincidentally people who have been activists involved in these cases or who are close to the Liberal government, have said that the courts are likely to rule that the traditional definition of marriage is unconstitutional, but these same legal experts said that the Supreme Court would find the traditional definition of marriage unconstitutional in the reference case and they were wrong.

We have no reason to believe that the crystal balls in the justice department or in the law faculties are operating any better after the reference case than they did before it.

Furthermore, up until now the courts have largely been interpreting a common law definition of marriage; in other words, previous court judgments not statutes reflecting the democratic will of Parliament. The courts have indicated clearly that statute law requires greater deference than common law.

In the case of R. v. Swain in 1991 then Chief Justice Lamer wrote in the majority the following:

> Parliament, because of judicial deference, need not always choose the absolutely least intrusive means to attain its objectives but must come within a range of means which impair Charter rights as little as is reasonably possible. There is no room for judicial deference, however, where a common law, judge-made rule is challenged under the Charter.

There are several precedents of Parliament passing statutes without using the notwithstanding clause to reverse decisions made by the courts including the Supreme Court under common law and the courts have accepted these exercises of parliamentary sovereignty.

For instance, in 1995 Parliament passed Bill C-72 reversing the Supreme Court's decision in Daviault, a decision which allowed extreme intoxication as a criminal defence.

In 1996 Parliament passed Bill C-46 reversing the Supreme Court's decision in O'Connor, which allowed the accused to access medical records of the victims in sexual assault cases. When this new law was challenged in the subsequent Mills case, the Supreme Court ruled in a decision by Justices McLachlin and Iacobucci:

> It does not follow from the fact that a law passed by Parliament differs from a regime envisaged by the Court in the absence of a statutory scheme, that Parliament's law is unconstitutional. Parliament may build on the Court's decision, and develop a different scheme as long as it remains constitutional. Just as Parliament must respect the Court's rulings, so the Court must respect Parliament's determination that the judicial scheme be improved. To insist on slavish conformity would belie the mutual respect that underpins the relationship between the courts and legislature that is so essential to our constitutional democracy.

We have every reason to believe that the Supreme Court, if it were eventually asked to rule on a new statutory definition of marriage combined with full and equal recognition of legal rights and benefits for same sex couples might well choose to act in a much more deferential manner toward the Canadian Parliament than lower courts showed toward ancient, British made, common law definitions.

I should point out that I am far from alone in saying this. Law Professor Alan Brudner at the University of Toronto wrote in the *Globe and Mail*:

> --the judicially declared unconstitutionality of the common law definition of marriage does not entail the unconstitutionality of parliamentary legislation affirming the same definition.

He cited R. v. Swain and wrote, “For all we know, therefore, courts may uphold opposite sex marriage as a reasonable limit on the right against discrimination when the restriction comes from a democratic body”.

To those in government, in academia and the media who have argued that a pre-emptive use of the notwithstanding clause is the only way to uphold the traditional definition of marriage, he said the following:

> These arguments misconceive the role of a notwithstanding clause in a constitutional democracy. Certainly, that role cannot be to protect laws suspected of being unconstitutional against judicial scrutiny....Rather, the legitimate role of a notwithstanding clause in a constitutional state is to provide a democratic veto over a judicial declaration of invalidity, where the court's reasoning discloses a failure to defer to the parliamentary body on a question of political discretion....But if that is true, then the notwithstanding clause should be invoked by Parliament only after the Supreme Court has ruled on the constitutionality of a law. And neither it, nor any provincial court outside Quebec has yet ruled on whether democratic legislation restricting marriage to heterosexual couples is valid.

I would add, and this is important, that Professor Brudner is neither a supporter of my party nor even a supporter of my position on the marriage issue. He was not even an adviser to my leadership campaign, unlike the principal organizer of a recent letter from a group of law professors backing the minister's decision.

In short, we have every reason to believe if the House moved to bring in a reasonable, democratic, compromise solution, one which defined in statute that marriage remains the union of one man and one woman to the exclusion of all others, which extended equal rights and benefits to couples living in other forms of unions, and which fully protected freedom of religion to the extent possible under federal law, that the Supreme Court of Canada would honour such a decision by Parliament.

The courts refused to answer the Prime Minister's question on the constitutional validity of the common law opposite sex definition of marriage because they did not want to pre-empt the work of Parliament. That suggests to me that they would be even more likely to defer to the judgment of Parliament when faced with a recently passed statute.

The members of the House, starting with the Minister of Justice, should actually read the same sex reference decision. I ask, if the Supreme Court actually believed that the traditional definition of marriage was a fundamental violation of human rights as, say, restricting aboriginal Canadians or non-Caucasian immigrants from voting, do we really think the Supreme Court would have engaged in an analysis of the possibility that it could uphold such a law even hypothetically? The answer is, of course not.

The government has also claimed and is still claiming that marriage between persons of the same sex is a fundamental right. That is another erroneous opinion and a totally specious argument the government wants to spread. Government spokespersons bring disgrace on themselves, however, when they wrongly try to invoke the Charter of Rights and Freedoms to cover up their threadbare arguments.

I want to address an even more fundamental question. That is the question of the issue of human rights as it pertains to same sex marriage and the use and the abuse of the term “human rights” in this debate which has been almost without precedent.

Fundamental human rights are not a magician's hat from which new rabbits can constantly be pulled out. The basic human rights we hold dear: freedom of speech, freedom of religion, freedom of association, and equality before the law, the kind of rights that are routinely violated by the Prime Minister's good friends in states such as Libya and China, are well understood and recognized around the world. These rights do not depend on Liberal bromides or media spinners for their defence.

The Prime Minister cannot through grand rhetoric turn his political decision to change the definition of marriage into a basic human right because it is not. It is simply a political judgment. It is a valid political option if one wants to argue for it; it is a mistaken one in my view, but it is only a political judgment. Same sex marriage is not a human right. This is not my personal opinion. It is not the opinion of some legal adviser. This reality has already been recognized by such international bodies as the United Nations Commission on Human Rights.

Mr. Speaker, I refer you to New Zealand's Quilter case. In 1997 the New Zealand court of appeal was asked to rule on the validity of the common law definition of marriage in light of the New Zealand bill of rights which, unlike our charter, explicitly prohibits discrimination based on sexual orientation. New Zealand's court ruled that the opposite sex requirement of marriage was not discriminatory. So the plaintiffs in this case made a complaint to the United Nations Commission on Human Rights that the New Zealand court violated the international covenant for the protection of rights to which New Zealand, like Canada, is a signator. But the UNCHR rejected this complaint in 2002, in effect upholding that same sex marriage is not a basic universal human right.

If same sex marriage were a fundamental human right, we have to think about the implications. If same sex marriage were a fundamental right, then countries as diverse as the United Kingdom, France, Denmark and Sweden are human rights violators. These countries, largely under left wing governments, have upheld the traditional definition of marriage while bringing in equal rights and benefits regimes for same sex couples, precisely the policy that I and the majority of the Conservative caucus propose.

Even those few countries that have brought in same sex marriage at the national level, currently only the Netherlands and Belgium, did not do so because their own courts or international bodies had defined this as a matter of human rights. They did so simply as the honest public policy choice of their legislatures. In fact, both the Netherlands and Belgium legislated some differences in same sex marriage as opposed to opposite sex marriage in many areas but particularly in areas like adoption.

In other words, no national or international court, or human rights tribunal at the national or international level, has ever ruled that same sex marriage is a human right.

The Minister of Justice, when he was an academic and not a politician, would have appreciated the distinction between a legal right conferred by positive law and a fundamental human right which all people should enjoy throughout the world. Today he is trying to conflate these two together, comparing a newly invented Liberal policy to the basic and inalienable rights and freedoms of humanity.

I have to say the government appears incapable of making these distinctions. On the one hand the Liberals are friends of dictatorships that routinely violate human rights to whom they look for photo ops or corporate profits. On the other hand they condemn those who disagree with their political decisions as deniers of human rights, even though they held the same positions themselves a few years, or even a few months ago.

Quite frankly the Liberal Party, which drapes itself in the charter like it drapes itself in the flag, is in a poor position to boast about its human rights record. Let us not forget it was the Liberal Party that said none is too many when it came to Jews fleeing from Hitler. It was the Liberal Party that interned Japanese Canadians in camps on Canada's west coast, an act which Pierre Trudeau refused to apologize or make restitution for, leaving it to Brian Mulroney to see justice done. Just as it was Mr. Mulroney and Mr. Diefenbaker who took the great initiatives against apartheid, Mr. Diefenbaker with his Bill of Rights, and I did not see a notwithstanding clause in that. It was the Liberal Party that imposed the War Measures Act.

Today it is the Liberal Party that often puts its business interests ahead of the cause of democracy and human rights in places like China. Recently in China it was the member for Calgary Southeast who had to act on human rights while the Prime Minister went through the diplomatic moves.

The Liberal Party has spent years repressing free speech rights of independent political organizations from Greenpeace to the Canadian Taxpayers Federation that might want to speak out at election time. It has consistently violated property rights and has put the rights of criminals ahead of those of law abiding gun owners. The Liberal government has ignored the equality rights of members of minority religious groups in education in the province of Ontario even after international tribunals have demanded action.

I am not here to say that this party's or this country's record on human rights is perfect. It is far from perfect; we can read about it in any number of places. However, the Liberal Party of Canada is simply in no position, either past or present, to lecture anyone about charter rights or human rights.

In this debate the government has resorted at times to demagoguery, attacking our position with equal intellectual dishonesty. The government has demonstrated its fundamental disregard for the opinions of a majority of Canadian men and women of good will.

In particular, it has been unforgiveably insensitive with regard to all cultural communities in this country for which marriage is a most deeply rooted value.

Nowhere have the Liberals been more vociferous in their attempts to link same sex marriage to minority rights than among Canada's ethnic and cultural minority communities. Yet at the same time, they have clearly wanted these communities excluded from this debate. Why? Because, to their embarrassment, the vast majority of Canada's cultural communities, setting aside those groups dependent on Liberal funding, see through the Liberals' attempt to link basic human rights to the government's opposition to their traditional practices of marriage.

Many new Canadians chose this country, fleeing regimes that did and do persecute religious, ethnic and political minorities. They know what real human rights abuses are. They know that recognizing traditional marriage in law while granting equal benefits to same sex couples is not a human rights abuse akin to what they may have seen in Rwanda or China or Iran.

What these new Canadians also understand, and what this government does not, is that there are some things more fundamental than the state and its latest fad. New Canadians know that marriage and family are not the creature of the state but pre-exist the state and that the state has some responsibility to uphold and defend these institutions.

New Canadians know that their deeply held cultural traditions and religious belief in the sanctity of marriage as a union of one man and one woman will be jeopardized by a law which declares them unconstitutional and brands their supporters as human rights violators.

New Canadians know that their cultural values are likely to come under attack if this law is passed. They know that we are likely to see disputes in the future over charitable status for religious or cultural organizations that oppose same sex marriage, or over school curriculum and hiring standards in both public and private religious and cultural minority schools.

New Canadians, many of whom have chosen Canada as a place where they can practise their religion and raise their family in accordance with their beliefs and without interference from the state, know that these legal fights will limit and restrict their freedom to honour their faith and their cultural practices.

Of course, in all of these cases, courts and human rights commissions will attempt to balance the basic human rights of freedom of religion and expression with the newly created legal right to same sex marriage, but as our justice critic has remarked, we have a pattern: wherever courts and tribunals are faced with a clash between equality rights and religious rights, equality rights seem to trump.

The Liberals may blather about protecting cultural minorities, but the fact is that undermining the traditional definition of marriage is an assault on multiculturalism and the practices in those communities.

All religious faiths traditionally have upheld the belief that marriage is a child-centred union of a man and a woman, whether Catholic, Protestant, Jewish, Hindu, Sikh or Muslim. All of these cultural communities, rooted in those faiths, will find their position in society marginalized.

I believe the Liberal vision of multiculturalism is really just a folkloristic one. The Liberals invite Canadians from cultural communities to perform folk dances and wear colourful costumes, but they are not interested in the values, beliefs and traditions of new Canadians unless they conform to the latest fashions of Liberalism. All races, colours and creeds are welcome in Liberal Canada as long as they check their faith and conscience at the door.

That may be the Liberal vision for Canada in the 21st century, but it is not ours. In our Canada, vibrant cultural communities will be allowed to share not only their food and their dress but their beliefs and aspirations for themselves and their families.

The conscience of all members of this House is involved in the decision we must reach. I urge all the men and women sitting here today to set aside all partisan considerations and all personal ambitions, in this extraordinary situation, and to listen to the voice of their conscience and the voice of their duty, as representatives of the people of Canada. Yes, this decision may have repercussions in a day or in a month, but we must make it while thinking of past and future generations.

The decision that we are being asked to make on this bill is a difficult one. For many, the decision we make on the bill will be one of the most difficult decisions they will be called upon to make as members of Parliament, but before we all do so, let us remember one thing clearly, because this is where I object most strongly to what the Prime Minister said.

Regardless of what the Prime Minister says, we all do have a choice in the position we take here. We all know that the House is closely divided. I think we all know that if it were a truly free vote, if the ministers like the Minister of Citizenship and Immigration, the government House leader, the Minister of Natural Resources, the associate Minister of National Defence, the Minister of State for Northern Ontario, and many others, were free to vote their consciences, we know this bill would fail.

This bill is too important to be decided on the basis of a whipped vote, whether the formal whip that is being applied to a minister, or the informal carrots and sticks that are being applied to other members. I appeal to the consciences of those on the government side.

I know that many of the government members in their hearts believe in the traditional definition of marriage and know that we are talking about this today only because the Prime Minister has literally no other legislation for Parliament.

I ask them to join with us to defeat the bill and urge the adoption of another which reflects the practice in other advanced democracies and which reflects our own honourable traditions of compromise.

There are fundamental questions here. Will this society be one which respects the longstanding basic social institution of marriage or will it be one that believes even our most basic structures can be reinvented overnight for the sake of political correctness?

Will this society be one which respects and honours the religious and cultural minorities or one which gradually whittles away their freedoms and their ability to practise their beliefs?

Will this be a country in which Parliament will rule on behalf of the people or one where a self-selected group of lawyers or experts will define the parameters of right and wrong?

All of these questions are in our hands to answer. It is up to all of our consciences. It is not what the Prime Minister and the PMO advisers tell us is most expedient; it should be based on our consciences and what our constituents tell us to do.

Mr. Speaker, before I leave the floor, I would like to move an amendment. I move:

> That the motion be amended by deleting all the words after the word "that" and substituting the following:
>
> This House declines to give second reading to Bill C-38, an act respecting certain aspects of legal capacity for marriage for civil purposes, since the principle of the bill fails to define marriage as the union of one man and one woman to the exclusion of all others and fails to recognize and extend to other civil unions established under the laws of a province, the same rights, benefits and obligations as married persons.