Abortion

History, Politics, and Reproductive Justice after Morgentaler

Edited by Shannon Stettner,
Kristin Burnett, and Travis Hay

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Introduction

Shannon Stettner, Kristin Burnett, and Travis Hay

This book arose out of a desire to revisit the study of abortion history and politics, as well as to draw attention to the nascent but growing and dynamic scholarship on reproductive justice in Canada. In undertaking this exploration, we begin with the premise that abortion is about many histories and multiple and diverse voices and experiences occurring simultaneously.[1] Adopting an intersectional approach, this volume seeks to illuminate the complicated histories and politics of abortion in Canada; on that basis, a number of the chapters acknowledge and interrogate the inadequacies of the politics of "choice" and the limitations of concentrating on abortion as a single or one-dimensional issue. Indeed, what has become increasingly clear since the Supreme Court of Canada's decriminalization of abortion in 1988, referred to as the *Morgentaler* decision, is that we need to consider the past, present, and ongoing histories and experiences of abortion in Canada because they continue to shape and determine the reproductive lives of women, their families, and their communities.

The decriminalization of abortion following the *Morgentaler* decision has been referenced by many scholars and activists as a watershed moment for abortion rights in Canada, suggesting that the Supreme Court decision represented a more concrete and secure victory than is actually the case. As several works here address, the *Morgentaler* decision neither guaranteed a woman's right to an abortion nor signalled the end of anti-abortion efforts to recriminalize abortion. In the wake of the 2013 death of Canada's

best-known abortion rights crusader, Dr. Henry Morgentaler, we felt it was an appropriate moment to reflect both on abortion politics in the generation that has passed since the *Morgentaler* decision and on the historical studies that are being undertaken in a post-*Morgentaler* era.

Sacrificed on the Altar of Compromise: The Politics of Abortion in Canada

On June 12, 1990, Torontonian Yvonne Jurewicz bled to death following a self-induced abortion. She was only twenty years old. The coroner estimated that it took Jurewicz twelve hours to die from the abortion that was likely performed with a coat hanger.[2] At the time, pro-choice[3] activists speculated that Jurewicz resorted to self-abortion following the recent efforts in the House of Commons to recriminalize abortion through Bill C-43.[4] On May 29, 1990, Bill C-43 passed in the House of Commons with 140 to 131 votes but ultimately did not gain Senate approval. The bill was Prime Minister Brian Mulroney's response to the 1988 Supreme Court decision that struck down Canada's 1969 abortion law, and it would have made abortion illegal and punishable by up to two years in prison, except when two physicians determined that the pregnant woman's physical, mental, or psychological health was in danger. The failure of the bill, it should be stated, was as much the result of anti-abortion advocates' objections to its perceived leniency as it was pro-choice advocates' opposition to the recriminalization of abortion except under limited circumstances.[5] The timing of Jurewicz's death was significant given that Canada's last officially recognized death from an illegal abortion took place in 1974.[6] However, it is difficult to determine what effect Jurewicz's death had on the legislation's failure. Writing about her death in an op-ed piece at the time, Allan Hutchinson and Lisa Fishbayn argued that Jurewicz had been "sacrificed on the altar of compromise."[7] It is clear that Bill C-43, like most legislation preceding it and subsequent efforts to recriminalize abortion, was concerned with the interests of physicians and ideas about fetal life, and not with the lives, maternal experiences, ambitions, hopes, or desires of women themselves. The following examination of the history of abortion regulations in Canada illustrates this point.

A number of factors have shaped, and continue to shape, access to abortion in Canada; these include (1) the federal–provincial division of powers that places health care under provincial jurisdiction; (2) activism both for and

against the provision of abortion services; and (3) structural inequalities of abortion access that are informed by the social determinants of health, particularly race, class, ethnicity, and region/place of residence. These three areas, which are imbricated and intersecting, can be addressed through the adoption of a reproductive justice framework that expands the scope of reproductive rights beyond the "choice" of whether or not to have an abortion.[8] These areas are important to examine, moreover, because they form the backdrop against which all studies of abortion occur – even when they are not foregrounded.

Federal–Provincial Division of Powers

Until 1988, when Canada distinguished itself (albeit, not by design) as one of the only countries in the world not to have a federal law governing the availability of abortion, the nation's legislative history regarding abortion and access to contraceptives resembled that of other Western countries, especially the United Kingdom and the United States. In the late nineteenth century, the newly formed federal state consolidated laws against abortion and birth control in the new *Criminal Code*, making them offences punishable by imprisonment.[9] This state of affairs remained largely unchanged until May 1969 when Canada's abortion laws were amended under Bill C-150, the omnibus bill modifying Canada's *Criminal Code*. Under the new law, contraception was legalized, as was abortion, but the latter only under very particular circumstances. Specifically, abortion was allowed only when it was performed in an accredited hospital by a licensed physician after being approved by a Therapeutic Abortion Committee (TAC) comprised of at least three doctors who had determined that the pregnancy endangered either the life or the health of the pregnant woman.[10] What is important to note about the 1969 amendments is that much of the impetus behind the changes came from a desire to clarify the laws in relation to physicians. While there were a number of actors, including women themselves, who were invested in legal changes, the amendments did not necessarily improve access for women; rather, they served to clarify those circumstances under which physicians could legally and safely perform abortions, once again decentring the experiences of women in favour of focusing on the legal and bureaucratic aspect of abortion politics.[11] The liberalization of the abortion law did not end public discussion, however; if anything, the law was a turning point that witnessed the deepening polarization of those for and against legal abortion.

In Canada, the creation of TACs in 1969 compelled numerous women's organizations to condemn the new law as inadequate in addressing women's reproductive needs, with the most famous protest being the Abortion Caravan.[12] Following complaints about the difficulties women faced in gaining access to abortion services, the Committee on the Operation of the Abortion Law was established in 1975 to review the abortion law's implementation. The committee, known as the Badgley Committee (named after its chair, Robin Badgley), reported in January 1977 that the 1969 changes to the abortion law had not resulted in equitable treatment across the country. Rather, there were significant disparities in access, continued travel outside of Canada, delays in obtaining abortions inside the country, and discrepancies in how health was interpreted by TACs.[13] Women in rural parts of the country and the North were particularly impacted by these inequities.[14] Consequently, in addition to fighting for further decriminalization, abortion rights activists increasingly turned their attention to issues of access.

Several legislative developments have affected abortion access since 1969. In 1977, the same year that the Badgley Committee released its report, the *Federal-Provincial Fiscal Arrangements and Established Programs Financing Act* (EPFA) was created to help fund the provincially run health care programs through transfer payments, in the form of tax credits and cash grants, from the federal government to provincial governments on a per capita basis. In order to receive payments, provinces were expected to meet specific terms and conditions, although initially there was no mechanism whereby the federal government could withhold funds should any province fail to provide specific services. The funding arrangement initially established by the EPFA has evolved over the last four decades; both the program name and the funding formula have changed many times. What remains, however, is a relationship whereby the provinces provide health services toward which the federal government contributes funds under the assumption that the principles of the Canada Health Act (discussed below) are honoured and the federal government maintains the right, at least in theory, to challenge the provinces when they fail to provide adequate services.[15]

The *Canada Health Act* (CHA), which was passed in 1984, outlines five specific criteria that must be met by provincial health plans in order for them to be eligible for funding: public administration, comprehensiveness, universality, portability, and accessibility.[16] According to the CHA,

every Canadian is to have "*timely* access to all medically necessary health services *regardless* of his or her ability to pay for those services."[17] Abortion rights advocates, as well as some politicians, argued (and still do argue) that abortion was (and is) a medically necessary procedure and that those provinces that fail to provide abortion services to women can and should be penalized by the federal government for this failure.[18] If one considers that "in 1984, abortions could legally be performed only in a hospital, after a Therapeutic Abortion Committee had certified that the procedure was necessary to preserve the life or health of the mother, [then] any legal abortion would, by definition, be medically necessary."[19] As yet, however, the federal government has failed to impose meaningful sanctions on those provinces withholding abortion services.[20]

In 1982, the passage of the *Canadian Charter of Rights and Freedoms* offered another avenue for abortion rights advocates to challenge existing legislation governing abortions. In 1983, Dr. Morgentaler, Dr. Robert Scott, and Dr. Leslie Frank Smoling opened a Toronto abortion clinic with the intention of challenging the abortion law in Ontario. Soon after the clinic opened, the Toronto police raided the clinic and charged the doctors with illegally providing abortions. In 1984, a jury acquitted the doctors, but the Ontario government appealed that decision. When the Ontario Court of Appeal overturned the 1984 acquittal and ordered a retrial, Morgentaler appealed that decision to the Supreme Court of Canada. Here, in 1988, some six years after its introduction, the *Charter of Rights and Freedoms* supported Morgentaler's challenge. According to section 7 of the Charter, "Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice."[21] In January 1988, in *R v Morgentaler*, the Supreme Court of Canada declared that section 251 of the *Criminal Code* violated section 7 of the Charter, arguing that the law infringed upon a woman's right to security of the person and that the procedures whereby women were deprived of this right did not accord with fundamental justice.[22] The court further argued that the infringement of this right could not be justified under section 1 of the Charter, which guarantees that the rights laid out in the Charter will be "subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society."[23] Thus, abortion was no longer a criminal offence in Canada and, as legal scholar Joanna Erdman argues, "abortion services c[ould] legally be integrated into the health system and governed by the laws, regulations,

and medical standards that apply to all health services."[24] The *Morgentaler* decision did not, however, guarantee any standard for how abortion would be integrated into existing health systems, and each province interpreted its responsibilities very differently.

The Supreme Court's decision created both a legislative vacuum and an opening for the introduction of new abortion regulations. The introduction of competing regulations and attempts to control access to abortion played out at both the federal and provincial levels. As discussed in the previous section, the first attempt to legislate on abortion following the 1988 Supreme Court decision, Bill C-43, resulted in one desperate young woman's attempted self-abortion and subsequent death. Since then, as several chapters in this book note, multiple attempts have been made to recriminalize abortion, primarily through bills originating with motions from individual backbenchers. Efforts to recriminalize abortion persist, in part, both because of the absence of a federal law and, as Johnstone argues in her chapter in this volume, because the Supreme Court decision stopped short of recognizing that women have a right to access abortion.[25] These two factors, combined with the unique interplay of federal and provincial powers, keeps the issue of abortion close to the surface of Canadian politics.

In the immediate aftermath of the 1988 decision, multiple provinces rushed to impose regulations on abortion.[26] The freedom of individual provinces to determine access has resulted in wide variations in services between provinces, as well as within provinces themselves.[27] Some provinces and territories only cover abortion up to twelve weeks, while others cover it up to twenty-four weeks after conception. Some allow clinic abortions, while others only fund hospital abortions. Until 2014, in New Brunswick, a woman required the referral of two physicians before she could obtain a fully-funded hospital abortion. In Prince Edward Island, clinical abortion services had never been available, although women could apply to be reimbursed for services obtained in Halifax, Nova Scotia, *if* they were able to secure a doctor's referral.[28] In 2016, PEI's provincial government conceded that it could no longer justify its stance and announced that abortion services would be made available on the island by the end of that year.[29]

Availability is affected not only by provincial regulations but also by the number and location of practitioners in each province or territory. For example, as of 2015, there were more abortion clinics in Quebec (thirty-six) than in all of the other provinces and territories combined (twenty-three).[30] The situation in Quebec is unique and the political terrain in the province

has afforded women greater protection and support in guaranteeing access to abortion. In 2010, the Quebec National Assembly passed a unanimous motion that "reaffirms the right of women to free choice and to free and accessible abortion services," and called on the federal government, then under Stephen Harper's Conservative leadership, to do the same.[31] The motion was introduced in response to the Harper government's decision to preclude abortion funding from its G8 maternal health initiative. Parti Québécois member Carole Poirier went so far as to warn then Prime Minister Harper, "Don't try to reopen the debate. We're keeping an eye on you ... In Quebec, if you touch the right to abortion, it's explosive."[32] The relatively secure position of abortion access in Quebec in comparison to the rest of the country, argues Jill McCalla Vickers, stems directly from the nationalist movement and the "political dynamics of Canadian federalism," which require the federal and provincial governments to vie for the support of Quebec feminists, who are thus able to exercise greater influence within Quebec's provincial political system.[33] In contrast to Quebec, Ontario, the province with the second highest number of clinics, has only eleven clinics, and all but one are in the Greater Toronto Area or Ottawa. Meanwhile, there are twelve clinics spread throughout the remainder of the country. As we can see, abortion remains uneven and, outside of select locations, inaccessible or difficult to access for a great many Canadian women and these conditions continue to shape abortion politics, experiences, and activism.

Activism

Dr. Henry Morgentaler's court challenges had a significant impact on Canada's abortion laws. However, these court challenges formed only a part of a half-century long struggle against unjust laws; the court cases operated in tandem with national and provincial pro-choice organizations and individuals across Canada. While pro-choice organizations politically and financially worked to support Morgentaler's legal challenges, they also labored to galvanize public support for abortion access and to shift dominant attitudes regarding reproductive rights for women.

Morgentaler became visibly connected to abortion in 1967 when he testified in support of women's access to abortion services at the House of Commons Standing Committee on Health and Welfare on behalf of the Humanist Association of Canada. Following his return to Montreal, Morgentaler was inundated with requests from women seeking abortions.

Two years later, he quit his general practice to become a full-time abortion provider. By 1973, Morgentaler claimed to have provided five thousand abortions outside of a hospital setting, thus proving that a hospital setting was unnecessary for the provision of safe abortions. Because of his defiance, Morgentaler was tried three times for violating section 251 of the *Criminal Code* between 1973 and 1975, though he was acquitted each time.

Although Morgentaler's efforts often occupied centre stage in the media, it is important to remember that abortion rights groups formed across Canada to fight to have abortion fully legalized, often alongside Morgentaler. In 1974, the Canadian Association for the Repeal of the Abortion Law (CARAL) was established to protest Morgentaler's incarceration. Later, in 1980, CARAL changed its name to the Canadian Abortion Rights Action League/Association Canadienne pour le Droit d'Avortement, with a mandate to overturn the abortion law and provide political and financial support for Morgentaler's efforts. Provincial and local chapters of CARAL soon formed across the country. In 1982, CARAL's educational and research arm became a separate, non-political (and therefore eligible for charitable status) organization known as the Childbirth by Choice Trust. Other pro-choice groups were also organized; in Toronto, for example, the Ontario Coalition for Abortion Clinics (OCAC) was created in 1982 for the purpose of helping Morgentaler fight for legal abortion in the province.[34] Although a Toronto-based group, OCAC has often worked in concert with both national and other regionally based groups. As Beth Palmer outlines in this volume, OCAC organized a number of "abortion tribunals" throughout the 1970s and 1980s to highlight the law's unresponsiveness to women's needs.[35] Over time, groups like these have been supplemented (and sometimes replaced) by additional organizations. In 2004, CARAL officially disbanded but was replaced in 2005 by a new national organization titled the Abortion Rights Coalition of Canada.[36] While legal and political challenges to the law remained the primary agent of change, pro-choice organizations have played a significant role in advocating for the retention and expansion of women's reproductive rights.

Illustrative of the partial victory of the *Morgentaler* decision, since 1988 there have been at least "43 private members' bills introduced in the House of Commons containing anti-abortion implications."[37] Fortunately, none of these bills have passed. Nonetheless, and despite perceptions to the contrary, abortion remains highly regulated across Canada through

the provincial colleges of physicians and surgeons, as well as on a provincial basis.[38]

Scholars, pundits, and activists are not alone in assessing the impact of Morgentaler and the *Morgentaler* decision. A poll conducted by Ipsos-Reid in 2004 found that 73 percent of young women between the ages of eighteen and twenty-four could not identify Dr. Morgentaler.[39] Some view this lack of recognition as an indication that women's right to access abortion services is seen as axiomatic by that generation; others fear that this ignorance puts women's hard-won reproductive rights at risk. In July 2014, just over a year after Morgentaler's death, the Morgentaler Clinic in Fredericton, New Brunswick was forced to close because the clinic could not continue to operate without Morgentaler's financial support.[40] Morgentaler's death and the subsequent clinic closure demonstrated the fragility of relying too much on one individual. In the aftermath, however, activists mounted a tremendous response to the vacuum created in New Brunswick. They quickly raised more than $100,000 towards reopening the clinic and rallied to make abortion access a deciding issue in the provincial election of September 2014. Clinic 554 opened at the old Morgentaler clinic location in January 2015. So, while Morgentaler was central to the movement(s) for bodily autonomy and leaves an important legacy, the New Brunswick response demonstrates that the movements for reproductive autonomy in the country are multi-faceted and dynamic, and that pro-choice sentiments remain strong.

Activism on the anti-abortion side was and remains opposed to any liberalization of abortion access in Canada. Numerous anti-abortion organizations have come into existence over the last five decades. The largest anti-abortion organizations in Canada include the Alliance for Life Canada (ALC), founded in 1968; Coalition for Life (CL), which is the political branch of ALC, formed in 1973; Toronto Right to Life Association (TRL), founded in 1971; Campaign Life Coalition (CLC), a splinter group from ALC/CL formed in 1978; Realistic, Equal, Active, for Life (REAL) Women of Canada, founded in 1983; and, more recently, the Canadian Centre for Bio-Ethical Reform, founded in 2001, which is discussed by Gordon and Saurette in this volume. Between 1973 and 1975, more than one million signatures were collected in protest of the 1969 reforms. Sociologist Michael Cuneo described the rather blasé reception of these petitions as "a watershed in the movement's history," which ultimately served to foment more "disillusionment, the growth of extremism, and heightened

organizational panic" among activists and in the ranks of anti-abortion organizations.[41] In the following decade, Canadian anti-abortion activists successfully incorporated themselves into a broader, evangelical Christian "pro-family" movement, which emerged in tandem with a hostility towards and critique of feminist political agitation, sexual liberation and education, and LGBTQ rights.[42] To date, both sides remain entrenched in their perspectives and continue to advocate for state and public support.

Although it is necessary, as several of the essays in this volume demonstrate, to develop a fuller academic understanding of those opposed to abortion, it is equally important to appreciate how the popular media covers anti-abortion perspectives, groups, and organizations. The popular media insists on giving both sides of the abortion issue equal time, even though the majority of Canadians have historically (since the late 1960s) supported liberalized access to abortion. This disproportionate coverage contributes to the ongoing harassment of abortion advocates (health care providers and activists) as well as those women seeking abortion services. As academics continue to consider the resilience of anti-abortion advocates, even in the face of declining support, we must also hold the media accountable and interrogate the role they play in contributing to the nature of the ongoing debate.

The Social Determinants of Health and Reproductive Injustice in Canada

While women continue to feel the effects of anti-abortion activism through challenges to access and the continued shame and social stigma associated with the procedure, their reproductive health experiences continue to be shaped primarily by their living conditions, or social determinants of health.[43] These determinants affect reproductive experiences to varying degrees and include, but are not limited to, disability, early life experiences, education, employment and working conditions, food insecurity, health services, Indian status and/or Indigenous identity, gender, gender identity and/or expression, housing, income and income distribution, race, social exclusion, social safety net, and unemployment or job security. Women's abortion experiences are often mediated by more than one social determinant of health. For instance, the quality, type, and availability of health services differ dramatically both between provinces, and within them; income affects a woman's ability to travel to access services if they are not located nearby, while education can influence her ability to access and

comprehend reproductive alternatives when abortion services are unavailable or undesirable.

It is important to acknowledge that women have experienced reproductive injustices throughout modern Canadian history. Prior to partial legalization in 1969, it was often only women who could afford to travel who could access safe abortions.[44] Even after decriminalization, the ability to travel remained important. In 1977, the Badgley Report indicated that more than fifty thousand Canadian women still travelled to the United States to access abortion services. These women reported travelling because they had either been denied an abortion by a therapeutic abortion committee or because they had chosen "not to submit to the humiliation and red tape" of such committees.[45] Geographic isolation could also have devastating consequences. In *An Act of Genocide* (2015), Karen Stote examines sterilization and abortion abuses against Indigenous women in northern Canada. Significantly, Stote recounts an investigation in the early 1990s that revealed that over one hundred Indigenous women in the North had reported receiving inadequate anesthesia while undergoing abortions. Shockingly, the Stanton Yellowknife Hospital, servicing primarily Inuit patients, was the only known hospital in Canada to use aspirin as the sole source of pain management during abortions.[46] While these examples represent some of the more extreme instances of reproductive injustices faced by women seeking abortions, it is clear that the 1988 Supreme Court decision did not end the violence or barriers to abortion access experienced by many women.

Social location, racialization, and class politics all function as social determinants of health in the context of reproductive justice. Multiple studies have recorded similar barriers that prohibit women's access to abortion services across the country. In 2012 and 2013, for example, Marion Doull and Christabelle Sethna mapped out the challenges that women living in the North, the Maritimes, and outside major urban centres faced when seeking access to abortion services.[47] Their work notes that 25 percent of the women studied reported paying more than $300 out of pocket for abortion procedures that were not covered by their home province – a fee that would make abortion inaccessible to women without the necessary financial means.[48] Other barriers included factors such as age: for example, women under thirty were more likely to have travelled over one hundred kilometres to access abortion services.[49] In 2014, Colleen MacQuarrie and her research team exposed the repercussions that the lack of local abortion services had had on

women in PEI.[50] Women in PEI were regularly forced to leave the province (and sometimes country) to access abortion, a development that has reportedly contributed to attempts to self-abort as well as to unwanted pregnancies being carried to term.[51] Angel M. Foster and colleagues found in 2017 that even after abortion access was theoretically liberalized in New Brunswick, women continued to face barriers, including the cost of travel, physicians' resistance to the procedure, and extremely long wait times that threatened to interfere with their ability to have an abortion.[52] These studies underscore that reproductive injustices continue to occur even when there are no federal or provincial laws that expressly prohibit abortion.

Although they receive far less media attention and public outrage, the obstacles to abortion services that women in northern Canada face are every bit as alarming as those confronting women in the Maritimes. In particular, the regimes of reproductive surveillance to which Indigenous women have been subjected add another layer to the already intersectional issue of reproductive health and abortion in Canada and demonstrate that public health data collection is experienced differently by different communities.[53] The lack of medical facilities in many Indigenous communities in Canada, combined with a lack of mobility and financial resources, poses a serious impediment to accessing reproductive justice. Sethna and Doull found that women who self-identified as First Nations or Métis were three times more likely than white women to report that they had to travel more than one hundred kilometres to obtain abortion services.[54] Jennifer K. Cano and Angel M. Foster similarly found in 2016 that women in the Yukon experienced difficulty accessing abortion services since there was only one facility in the territory providing abortions (and only twice per month, at particular times). Limited availability, which resulted in long wait times and travel outside of the territory for services, was compounded by financial costs such as transportation (e.g., public transportation, hotel, and gas), IUDs, and medication as well as personal costs (such as maintaining privacy and navigating anti-abortion physicians who were reluctant to refer patients to abortion providers).[55]

If we consider class politics as well as the racial stratification of mobility in the context of Canadian reproductive justice, we can begin to appreciate the extent to which racialization, location or geography (particularly on or off reserve), access to funds for travel, and the socio-legal ability to leave the country have all functioned in fundamental ways to restrict reproductive justice. The history of abortion, access, and reproductive injustice in

Canada, then, needs to be understood as an ongoing narrative of struggle marked by small successes and a constant vigilance against efforts to roll back the hard-won gains that have been made with respect to women's reproductive rights.

Moving Forward: The Promise of Reproductive Justice

In both Canada and the United States, hard-won victories of reproductive health advocates – whether at the federal, state, or provincial levels – have constantly been met with growing opposition and the unrelenting mobilization of anti-abortion forces. Indeed, women's right to abortion access rests on the continued tenure of sympathetic elected representatives, judicial appointments, and physicians. This is a major problem, since the rights of women to control their reproductive lives cannot be subject to the whims of politics and religion if reproductive justice is to become a sustainable and attainable social goal. Marlene Gerber Fried, in her closing address at the Abortion: The Unfinished Revolution conference held in Charlottetown, PEI, in August 2014, keenly observed that the pro-choice movement has allowed the 1974 *Roe v Wade* decision (the American counterpart to the 1988 *Morgentaler* decision) to set the standard of access that the pro-choice movement struggles endlessly to secure, defend, and maintain. In part, this is a function of the constant attacks and the shape-shifting tactics employed by anti-abortion movements; however, it also reflects the shortcomings of pro-choice movements to fully adopt a reproductive justice framework that is suited to the Canadian context. As such, real access – that is, access that is guaranteed, unrestricted, and immune to the vagaries of politicians in power – can only be achieved through an epistemological revolution that fundamentally transforms how society perceives the subjectivity of women and the ownership of their reproductive lives and choices. When people secure control over their own rights "to have children, not to have children, and to parent the children [they] have in safe and healthy environments," they are able to exercise the "human right to make personal decisions about [their lives]."[56] A movement pursuing such an approach has grown and evolved in the United States and is increasingly gaining supporters across Canada.

SisterSong, a grassroots organization started by women of colour, adopted the term "reproductive justice" over "choice" because its members believed this term captured the structural and social changes that are

required in order to bring about the transformation of society that would truly put women in control of their reproductive lives. Loretta Ross, one of the founders and a long-time national coordinator of SisterSong, defines "reproductive justice" as the

> complete physical, mental, spiritual, political, social and economic well-being of women and girls, based on the full achievement and protection of women's human rights. It offers a new perspective on reproductive issue advocacy, pointing out that for Indigenous women and women of color it is important to fight equally for (1) the right to have a child; (2) the right not to have a child; and (3) the right to parent the children we have, as well as to control our birthing options, such as midwifery. We also fight for the necessary enabling conditions to realize these rights. This is in contrast to the singular focus on abortion by the pro-choice movement.[57]

Reproductive justice advocates believe that, by focusing solely on abortion, pro-choice organizations are constantly in a crisis management situation that limits the range of their responses and the breadth of their choices, especially for racialized and marginalized women. Conversely, advocating for reproductive justice obligates the state and the broader society to ensure that the social, political, economic, and cultural conditions that are necessary for implementing and living one's choices exist for everyone. The reproductive health issues that women experience across their life span cannot be understood in isolation from larger social and economic contexts. Reproductive justice and choice requires the "transform[ation of] power inequalities and [the] creat[ion of] long-term systemic change ... and recognizes that all individuals are part of families and communities and that our strategies must lift up entire communities in order to support individuals."[58] Without this acknowledgment, how can we ensure that women, regardless of their identity and location, have the right to control their lives, which includes but is not limited to the right to access a safe legal abortion within their own communities? These kinds of epistemological and conceptual questions – and their histories – need to be explored further.

Contextualizing the Collection

How historians have approached abortion can be categorized into several distinct phases. Early works that examine women's reproductive lives focus

on the criminalization of abortion in the nineteenth century as part of physicians' efforts to professionalize. Such studies draw attention to the efforts of individual physicians who provided abortions in spite of the law and larger efforts to capture abortionists through women's "dying declarations."[59] Another phase of abortion historiography investigates the decade of reform that led up to the 1969 omnibus bill.[60] A third phase, which emerged during and in the aftermath of the 1988 Supreme Court decision, looks at the heated exchanges that occurred between pro-choice and anti-abortion factions during those decades.[61] Constituting a new phase is a growing and dynamic field of scholarship that has turned its focus upon women's abortion experiences in the mid- to late twentieth century, led in large part by the work of historian Christabelle Sethna.[62]

Overwhelmingly, the literature on abortion in Canada remains dominated by articles and essays, both scholarly and popular. While there are several good monographs on the issue, they are not abundant.[63] To date, the two foundational works on Canadian abortion history and politics are *The Bedroom and the State: The Changing Practices and Politics of Contraception and Abortion in Canada, 1880–1997* (1986, 1997) by Angus McLaren and Arlene Tigar McLaren, and *The Politics of Abortion* (1992) by Janine Brodie, Shelley A.M. Gavigan, and Jane Jenson. The former studies abortion alongside contraception, recognizing that historically and experientially the two practices were intimately connected; the latter analyzes the legal and political developments in Canada from the mid- to late twentieth century, dissecting the dominant discourses and value systems that advocate on both sides of the issue.[64] To date, most of the literature on abortion in Canada has focused on the experiences of white and frequently middle-class women. Studies that have looked at the experiences of racialized and marginalized women tend to concentrate on how these women's reproductive lives are subject to disproportionate scrutiny and regulation. Such works typically do not focus solely on abortion history but instead address abortion in the context of looking at how medical and political regulatory histories gave rise to eugenics. State eugenics policies had disparate impacts on Indigenous, immigrant, and disabled women in Alberta, British Columbia, and northern Canada.[65] Closely tied to works examining the regulation of Indigenous and racialized women's reproductive lives are those that seek to understand the ways in which Indigenous and racialized women are disproportionately affected by environmental contaminants. Few studies try to illuminate how Indigenous people have controlled their reproductive lives for generations.

Perhaps this oversight is a function of the overwhelming focus on ill health within Indigenous communities in Canada, where people are struggling not just to have children but also to keep the children they do have from being forcibly removed through the residential school system and so-called child welfare policies.[66] Several works within this collection seek to provide more nuanced accounts of the regulation of Indigenous and racialized women's reproductive lives – not to suggest that such regulation did or does not exist or constitute a powerful force within communities but rather to propose that these histories are far more complicated than they are often represented to be.

The methodologies employed by the authors within this collection are eclectic and varied, and strategically so. Focusing on federal policies, provincial particularities, legal frameworks, and medical regimes is essential to understanding the power relations operating within the Canadian context; however, these strategies of understanding top-down reproductive politics have the tendency to erase, elide, or displace the lived experiences of women within medical, legal, and statist structures. Thus, while important to understanding the broader picture, such approaches do not access, communicate, or deal with the fact that abortion is not an abstract concept, but always a lived experience constituted by social relations. Nevertheless, although centring the experiences of women is important, it is also essential to understand the human element of power relations involved in the provision of and access to abortion. We must also acknowledge the many ways in which knowledge produced about the histories of reproductive justice and oppression differs fundamentally from other areas of inquiry that are less politicized and personal.

This volume was organized in a collaborative and interdisciplinary fashion: it brings together scholars of history, women's studies, Indigenous studies, sociology, environmental studies, law and society, ethnography, cultural theory, and others. By approaching reproductive justice in this way, the editors strive to produce a collection that minimizes blind spots, centres ethical concerns, and resists the reproduction of problematic power relations related to gender, race, class, ability, sexuality, and other categories of identity that have been wielded as weapons by regimes of reproductive oppression. It is impossible to put together a collection free from any and all problems. We did not, for instance, address the issues that transgender and non-binary people face in regard to reproductive health and justice. These are extremely important and pressing issues and need to be

addressed properly and not as an aside. We hope that the organization of the volume will centre many other issues of inequality for the reader's consideration rather than manage these problems in a way that ignores concerns central to determining whose choice matters, whose voices are heard, and whose experiences shape our understanding of abortion. To that end, we have grouped the essays into four themes: History, Experience, Politics, and Discourse and Reproductive Justice.

History

The chapters in the section on history identify different threads of the abortion experience in the geographical area that came to be known as Canada prior to the 1988 *Morgentaler* decision. Accordingly, the contributions in this section focus on colonialism, Christianity, Crown authority, regional particularities, and women's struggles against the state and society to speak to personal reproductive concerns with an authoritative voice. The first chapter, "Different Histories: Reproduction, Colonialism, and Treaty 7 Communities in Southern Alberta, 1880–1940" by Kristin Burnett, helps situate this collection in its proper settler colonial context. By reviewing the histories and struggles associated with the reproductive practices of the Niitsítapi Nation, this chapter offers an important historical foundation to the essays that follow by foregrounding colonialism and racism as key constitutive factors in Canadian iterations of reproductive oppression. Burnett's chapter helps to dislodge common understandings of reproductive freedom and choice as merely the decision to terminate a pregnancy or not. In expanding this model to include the ability to have and raise children in a physically and culturally safe environment, Burnett helps readers think about reproductive justice in a more multidimensional way.

Rebecca Beausaert's "Not Guilty but Guilty? Race, Rumour, and Respectability in the 1882 Abortion Trial of Letitia Munson" investigates Victorian sensibilities towards abortion through the intersections of race, gender, and justice. Importantly, this chapter provides an analysis of the social feelings, orthodoxies, and normative conceptions of abortion in the late nineteenth century and offers a striking example of why racial power relations must always be understood as co-constituted with gendered orders of reproductive oppression. In doing so, it centres racial politics in Victorian regimes of reproductive control – a category of inquiry that has rarely occupied a prominent position in discussions of nineteenth-century

histories of abortion. Instead, such conversations have typically focused on nursing, midwifery, and the professionalization of medical regimes.

Jumping ahead a century, Erika Dyck's "Abortion and Birth Control on the Canadian Prairies: Feminists, Catholics, and Family Values in the 1970s" challenges what we think we know about the relationship between feminism, the Catholic Church, birth control, and notions of family in the 1970s by examining discourses surrounding the idea of the modern family in a Saskatchewan-based Catholic newspaper called *The Prairie Messenger*. Dyck argues that Catholic women who wanted to limit the size of their families drew strong connections between reducing fertility, familial responsibility, and well-being. She suggests that any examination of reproductive history needs to move beyond simplistic categories of for or against and instead look to the day-to-day choices made by families and women. By doing so, Dyck's contribution stresses the in-between spaces and grey areas in public dialogue on birth control and abortion that allow us to see the nuances and complexities of the reproductive choices women make.

Experience

Over the last decade, several new scholars of women's reproductive health have contributed to our understandings of women's abortion experiences and uncovered new voices in discussions of abortion. Drawing on this rich field of scholarly literature, the essays in this section investigate reproductive health as a lived struggle and social experience within Canadian history. In "He Is Still Unwanted: Women's Assertions of Authority over Abortion in Letters to the Royal Commission on the Status of Women in Canada," Shannon Stettner shows how Canadian women in the 1960s sought to actively shape the terrain of their reproductive lives by investigating the ways in which they contested the authoritative basis of twentieth-century legal discourses on abortion. Drawing on the submissions of women to the Royal Commission on the Status of Women, Stettner elucidates that, contrary to previously held assumptions, women were very willing to speak publicly about abortion and contraception, and regularly refused to occupy the position of the passive and silent woman. Her work speaks to the broader contestation of voice, authority, and representation in the spaces of abortion law reform. The letters she examines are rich sources that suggest women from a broad range of religious and socio-economic backgrounds used their authority to speak about their lives, the importance of access to abortion on request, and how "kitchen table feminism" was an important part of the push for abortion law reform in the 1960s.

Continuing with a focus on experience as a site of struggle in Canadian histories of abortion activism is Beth Palmer's "Abortion on Trial: Abortion Tribunals in the 1970s and 1980s." Palmer analyzes the role that mock tribunals played in late twentieth-century abortion activism in Canada. This essay underscores how the use of feminist organization, public performance, and social spectacle entered into and shaped the terrain on which battles for abortion access were fought. Importantly, Palmer helps us to think more dynamically about how factors come to constitute the politics of reproductive choice in Canada.

In the next chapter, Katrina Ackerman employs a methodology that helps readers engage historically with experiences of abortion in the Maritimes in the 1970s and 1980s. Titled "The Dark, Well-Kept Secret: Abortion Experiences in the Maritime Provinces," the chapter draws on oral histories and government documents to trace the history of a particular regime of reproductive oppression that emerged in the Maritimes following the 1969 amendments. Complementing previous chapters, this contribution illuminates how cultural coercion and social networks of meaning negotiated the backlash that rendered the "*a*-word" unspeakable in Canada's eastern provinces. Ackerman's chapter dovetails both geographically and historically with Stettner's and Palmer's discussions on abortion activism and social organizing for abortion access in the 1960s, '70s, and '80s.

By focusing on process instead of historical inquiry, the next chapter opens up a critical space to discuss the politics of abortion research. "When Research Is Personal and Political: Researchers Reflect on the Study of Abortion" by Marion Doull, Christabelle Sethna, Evelyne Morrissette, and Caitlin Scott reflects on the consequences of studying abortion and the ethnographic pitfalls associated with the pursuit of testimony. The authors suggest that more attention needs to be paid to the experiences of researchers who opt to tackle sensitive topics and that observing the need for self-care should always be incorporated into the research design. Typically, concern over potential research harms focuses on those being studied, but this chapter instead scrutinizes the personal and professional detriments that studying abortion can have on the lives of female academics.

Politics

The third section in this collection focuses on the implications of the *Morgentaler* decision and its impact on abortion access and a generation of women in Canada. At the time, the 1988 Supreme Court decision was heralded as a huge victory for women and reproductive choice; however,

this "victory" is much more complicated than it initially seemed and its implications are still being weighed and studied as women's "right to choose" is simultaneously eroded, operationalized, challenged, and celebrated as a sign of social progress. In Frances E. Chapman and Tracy Penny Light's "Functionally Inaccessible: Historical Conflicts in Legal and Medical Access to Abortion," the authors review the ways in which anti-abortion movements in Canada have been successful in recruiting the rhetoric of medicalization to limit women's access to abortion. Chapman and Penny Light explore how medicalized discourses of abortion encourage the conception of reproductive choice as having nothing to do with other forms of social, legal, and economic justice. The authors underscore that addressing the structural impediments to abortion is not as simple as providing medical access and legalization, as histories of backlash disclose the uncomfortable truth that such state-centred "victories" are provisional and vulnerable to reactionary violence. By unpacking medicalization as a discursive strategy of reproductive oppression, the authors lay the groundwork for a deeper analysis of the legal and medical right to abortion explored in subsequent chapters.

In her chapter, "*Morgentaler* and the Technological Production of Embodiment," Jen Rinaldi critically examines the politics of grounding women's right to access abortion in section 7 of the *Charter of Rights and Freedoms* (the right to the security of the person). Although this was a strategic and necessary move at a particular period in Canadian history, Rinaldi argues that the positioning of women's access to abortion as a health care issue that is between a woman and her doctor tends to produce an imbalance of power between health care providers and women seeking abortion. Rinaldi adds to this collection's discussion on the politics of reproductive justice by demonstrating, like the other chapters in this section, that sites of victory or liberal progress can just as quickly become sites of oppression and surveillance.

Rachael Johnstone, in "Between a Woman and Her Doctor? The Medicalization of Abortion Politics in Canada," examines how, in the decades following *Morgentaler,* an increasing reliance on medical narratives has depoliticized health in general and women's access to abortion in particular. Significantly, Johnstone demonstrates that discourses of medicalization and health care have been employed by both anti-abortion and pro-choice advocates in a fashion that disassociates women and the reproductive choices they make from the social, economic, and political contexts in

which they must make reproductive decisions. In exploring these tensions, Johnstone affirms that abortion access is most appropriately viewed through a lens of reproductive justice and social equity rather than through the categories of health care and access to medical intervention.

Lori Brown, J. Shoshanna Ehrlich, and Colleen MacQuarrie's chapter, "Subverting the Constitution: Anti-abortion Policies and Activism in the United States and Canada," looks at how jurisdictional boundaries and politics between national and subnational actors have served to erode women's access to abortion. Using a comparative framework, the authors look at Mississippi and PEI, comparing the destabilization of women's reproductive rights through the "well-coordinated and funded attacks by anti-choice groups" at the provincial and state levels. The United States and Canada have similar histories regarding the recognition of women's right to privacy and safety of person in the Supreme Court (*Roe v Wade* in 1973 and *Morgentaler* in 1988, respectively). Indeed, comparing the two locales reveals that, despite what Canadians may think, there are remarkable similarities between Mississippi and PEI and political actors in both milieus have vowed to make their state or province an "abortion-free zone." This chapter reminds us of the benefits of conceiving of abortion politics using a transnational lens to complicate our understandings of anti-abortion activism.

Discourse and Reproductive Justice

The final section of this collection moves debates about, and studies of, abortion in new and important directions, illuminating the opportunities posed by the adoption of a reproductive justice framework. Kelly Gordon and Paul Saurette, in "The Future of Pro-choice Discourse in Canada," focus on the changing nature of anti-abortion activism as a means of exploring the discursive and rhetorical arenas used to challenge abortion access in Canada. Of particular significance is the authors' exploration of how the anti-abortion movement has appropriated feminist ideals and pro-woman language so that it can construct itself as sensible, secular, progressive, and liberal. This was a key discursive shift for the anti-choice movement, the authors insist, as the legal landscape had evolved as a site of struggle for abortion access largely because of feminist organizing; accordingly, anti-choice movements appropriated feminist rhetoric in a backlash effort to roll back these feminist victories and recast the terrain on which struggles for abortion access are fought.

In "Reproductive Justice in Canada: Exploring Immigrant Women's Experiences," Laura Salamanca examines the stories of women who were, and are, underserved by the Morgentaler paradigm of abortion access in Canada (characterized by the 1988 Supreme Court decision, which held that restricting access to abortion was a violation of women's Charter rights). Looking specifically at racialized, impoverished, and/or immigrant women, Salamanca's ethnographic project shows that it is difficult to construct a clean and ordered narrative of feminist progress in the context of Canadian abortion services. Centring more marginalized social positions in her analysis, Salamanca articulates how the intersecting politics of citizenship, race, gender, and class have barred access to abortion in extralegal ways since 1988.

Finally, in "Toxic Matters: Vital and Material Struggles for Environmental Reproductive Justice," Sarah Wiebe investigates the poisoning of the Aamjiwnaang First Nation through industrial pollution in the region known as Canada's Chemical Valley. This chapter brings together different threads of reproductive justice and oppression: colonialism, racism, and the need to acknowledge how reproductive oppression is not a practice that is limited to the boundaries of women's biological bodies. Environmental contamination acts in concert with the Canadian state to fundamentally attack the very reproductive capacities of Indigenous communities. Her work promotes the necessity of theorizing reproductive justice in an expansive fashion that resists ignoring those marginalized by multiple constituted regimes of reproductive oppression. Wiebe creates conceptual linkages with issues raised by Burnett in the first essay of this collection by centring the politics of settler colonialism as formative in the ways in which reproductive justice is understood in a Canadian context. Significantly, Wiebe points out that limitations to women's reproductive autonomy are imposed not only through anti-abortion legislation but also through less obvious and visible factors that work to undermine women's choices and reproductive freedoms in enormously problematic and violent ways.

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Although several of the chapters in this volume include Quebec in their analyses, no chapter focuses solely on Quebec or the question of access to abortion for French-speaking women in Canada. While this omission may elicit criticism of the collection that is certainly warranted, we believe the

absence reflects the comparative ease with which women in the province can access abortion, which serves as a testament both to the effectiveness of feminist organizing and the responsiveness of successive provincial governments. Consider the previously mentioned avowals of public support made by mainstream political figures in Quebec in response to Harper's 2010 decision to curtail funding to international aid organizations that offered abortion as part of their spectrum of reproductive health services. It is also noteworthy that when a call for papers for this collection was issued, we did not receive a single submission that focused entirely on French-speaking women in Canada or on Quebec. However, we received an overwhelming number of non-Canadian submissions which we used to put together a second edited collection on transnational abortion history.[67]

The essays in this volume that focus on particular regions or spaces do so in order to centre those women and areas that face the greatest challenges to women's reproductive freedoms. Questions of coloniality, race, and federalism figure prominently in the scholarship included here. As readers can see in chapters like Sarah Wiebe's, the ongoing settler colonial project continues to subject particular racialized and marginalized bodies and communities to reproductive violence and oppression in ways that demand urgent critiques and more expansive analyses of the many factors that structure reproductive choices. What is more, as readers will see in Katrina Ackerman's contribution, the regional and provincial politics of abortion in Canada are such that PEI "proudly" remained an "abortion-free province" until 2016. Such a state of affairs necessitates clarification and greater scholarly consideration than other provinces. For these reasons, our collection reflects the regional and topical urgencies associated with reproductive oppressions in the Canadian context.

Read holistically, the chapters affirm the need to think about abortion in a reproductive justice framework that resists totalizing narratives, the privileging of certain women's experiences of abortion over others, and the construction of abortion access through a legal or medical lens that removes other socio-economic and historical factors. This collection serves as a call to encourage dialogue and intellectual and political engagement with reproduction as a multiply constituted and inherently relational category of social life that has embodied in its history the problematics of colonialism, race, gender, and class that are central to the development of social justice frameworks in Canada. To this end, the arrangement of the chapters in this collection is meant to foreground the importance and necessity of reproductive