Henry Morgentaler (1923-2013) [1]

By: Abdi-Moradi, Sepehr Keywords: Reproductive rights [2] Government [3]

Henry Morgentaler was a physician who performed abortions, acted as a reproductive rights [4] activist, and advocated for legal access to abortions in Canada during the twentieth century. In 1969, he opened his first abortion [5] clinic in Canada and participated in the legal/court case of *R v. Morgentaler* (1988), which led Canada to decriminalize abortion [5]. Morgentaler helped establish legal access to abortions for women in Canada and advocated for the protection of women's reproductive choices under the law.

Henry Morgentaler was born as Henryk Morgentaler on 19 March 1923 in Łódź, Poland, to Golda and Josef Morgentaler, the middle child of three in a Jewish household. His mother worked as a seamstress, and his father worked as a textile worker and union organizer [6]. He had an older sister Ghitel Morgentaler and a younger brother Mumek Morgentaler. In September 1939, when Morgentaler was sixteen years old, Adolf Hitler led Germany to invade Poland, with assistance from Joseph Stalin in the Soviet Union. By October 1939, Hitler's forces occupied Poland. The Gestapo, the German secret police, established a ghetto to confine the Jewish residents, including Morgentaler and his family, in Łódź. Shortly after, the Gestapo executed Josef for attempting to escape, and the Gestapo sentenced Ghitel to the Treblinka concentration camp outside of Treblinka, Poland, where she was later killed. In August 1944, the remaining three members of the Morgentaler family were sent to the Auschwitz concentration camp in Oświęcim, Poland. At Auschwitz, Golda died and her two surviving sons were sent to the Dachau concentration camp in Dachau, Germany, where they remained until the Allied liberation at the end of World War II in 1945.

After freedom from the concentration camps in 1946, Morgentaler enrolled at Marburg-Lahn University in Marburg, Germany as a medical student. In 1947, Morgentaler transferred to Brussels, Belgium, to continue his medical studies. In 1949, Morgentaler married Chava Rosenfarb, a fellow concentration camp survivor, and completed his medical degree. To obtain work as a physician, Morgentaler and his wife immigrated to Montreal, Quèbec, in 1950. There he began additional medical studies at the Universitè de Montrèal in Montreal, Quèbec. A few months after beginning his studies, his wife gave birth to the first child Goldie and Morgentaler completed his medical studies in 1953.

Even though Morgentaler had completed his medical degree, Canadian law forbade him from practicing medicine until he became a citizen. In 1955, Morgentaler became a Canadian citizen, which allowed him to work as a physician in the country. Soon after, Morgentaler opened his first private practice as a general practitioner in East Montreal, Quèbec. In 1956, his second child, Abraham, was born. Morgentaler began to focus on family planning [7] in his medical practice, and supplied couples with birth control [8] pills. He also performed surgical procedures on men, such as vasectomies, which aim to produce sterility.

Throughout the early years of his private practice, women approached Morgentaler to perform abortions, but he refused and abided by the law. The first Canadian criminal code of 1892 had instituted a complete ban on abortion [5] that was still upheld in the 1960s. In 1967, Morgentaler presented a brief before the House of Commons' Health and Welfare Committee, a component of the Canadian Parliament. In the brief, Morgentaler argued that women should have the ability to safely terminate unplanned pregnancies. After that presentation, many women came to his clinic demanding information with regard to abortions. However, Canadian legislation still restricted abortions.

During that same year, Canada's justice minister Pierre Trudeau introduced the Criminal Law Amendment Act, which partially decriminalized abortions under extenuating circumstances, and the Parliament ratified the bill in 1969 by which time Trudeau became prime minister of Canada. The law stated that only public hospital physicians could perform abortions under the stipulation that a three-physician panel determined that the women's life was in peril if she gave birth. Morgentaler said that the law did not grant sufficient rights to women because the committees seldom met and most hospitals still refused to provide abortions.

Morgentaler began to perform abortions covertly, without any approval of the three person committees, and established his own abortion [5] clinic in 1969 in Montreal. At his clinic, Morgentaler charged his patients a meager fee to ensure that the women did not endanger themselves and seek other more affordable illicit abortions. On 1 June 1970, the police raided the clinic and arrested Morgentaler and his staff for charges of performing illegal abortions. Immediately after his arrest, he posted bail and continued performing abortions at his clinic, and continued to promote his clinic publicly. A court later determined that there was improper use of a search warrant and dismissed Morgentaler of the charges. By 1973, Morgentaler reported that he completed approximately 5,000 successful abortions. On 15 Aug 1973, the police returned to his clinic and arrested him once more for

multiple counts of illegal abortions.

In October 1973, Morgentaler's first trial commenced, and his defense team contended that Morgentaler observed his duty to protect the lives of his patients, and this duty, according to his legal team, carried more significance than the law restricting abortion [5]. On 13 Nov 1973, the jury concurred with the defense team and acquitted Morgentaler of all charges. Yet, on 26 April 1974, the Quèbec Court of Appeal overturned the acquittal and ordered Morgentaler to serve eighteen months in prison starting in March of 1975. That ruling generated a tremendous amount of controversy and outrage in Canada. While serving his sentence, Morgentaler experienced more charges of illegal abortions, although the jury acquitted him once more. During his imprisonment, he experienced a mild heart attack, after which he transferred into a different hospital. Shortly after that incident, the Canadian Parliament introduced an amendment, commonly referred to as the Morgentaler Amendment, which disallowed appeal courts to reverse acquittal decisions from juries. Due to this ratification, Morgentaler was released from confinement eight months early, but the police charged the physician once more for performing illegal abortions in January 1976. Once more, the jury acquitted him all of charges. Shortly after this third acquittal, the Parti Quebecois, a separatist, political party, was elected to office. The rise of this political party reflecting the rapid social, political, and cultural change, referred to as the Quiet Revolution, in a province that had previously been very socially conservative and largely influenced by the Catholic Church. Soon after, all pursuit of legal action against Morgentaler in the province ceased.

After these developments, Morgentaler decided to publicly advocate for his pro-choice position on abortion [5] in other Canadian provinces. In 1976, Morgentaler presented a legal challenge to repeal abortion [5] restrictions in all of Canada in the case, *Morgentaler v. The Queen*, but he lost that appeal in a six to three decision. In 1979, his marriage to Rosenfarb came to an end when the couple filed for divorce due to Morgentaler's self-admitted adultery. In 1979, Morgentaler married Carmen Wernli who shortly after gave birth to their son Yann on 2 June 1980. They divorced in 1983.

Not deterred by the lost court case of 1976, Morgentaler continued his pursuit of expanding abortion [5] rights outside of Quèbec. In 1983, Morgentaler, with the assistance of physicians Leslie Smoling and Robert Scott, established abortion [5] clinics in Toronto, Ontario and Winnipeg, Manitoba. From 1983 to 1985, the police raided the Winnipeg clinic three times, but, much like his experience in Montreal, Morgentaler was never convicted. Meanwhile, in 1983, the Ontario police raided the Toronto clinic, just months after protesters attempted to firebomb it, which led to criminal charges against Morgentaler, Smoling, and Scott. The three appealed the charges, citing the same arguments presented in the Quèbec court, which led to their acquittal. But, the Ontario Court of Appeal, in 1985, reversed the decision and ordered a re-trial. The three doctors challenged the constitutionality of that decision in the Supreme Court of Canada.

In 1982, the Canadian government issued the *Charter of Rights and Freedoms* which granted extensive individual rights to every Canadian citizen, and dictated that any current law which violated those granted rights must be repealed. For *R v. Morgentaler* (1988), Morgentaler focused on section seven of the *Charter of Rights and Freedoms*, which outlined that everyone has the right to life, liberty, and security to person. With regards to the current abortion [5] legislation, Morgentaler contended that the three person committees infringed upon women's security to person as it violates their right to bodily integrity and autonomy. Furthermore, he pointed out that the committees caused extraneous time delays in the abortion [5] process. He also pointed out the biased nature of these committees, which frequently included only men. The Supreme Court accepted his arguments and, on 28 January 1988, decriminalized abortion [5] in Canada in a five to two vote. This court decision left the matter of abortion [5] to be regulated on a provincial basis.

After the 1988 ruling, Morgentaler continued to contend with anti-abortion [5] policies in Canada. Some provincial governments still wanted to propose anti-abortion [5] legislation despite that the federal government had decriminalized abortion [5] in Canada. For instance, Nova Scotia, in 1989, issued a law that disallowed any abortions occurring in a setting not formally designated as a hospital according to the province's selective criteria. In response, Morgentaler opened up a clinic in Nova Scotia in 1989, which subsequently led to his arrest on fourteen charges. However, the Nova Scotia judge acquitted him, but the province appealed the case to the Supreme Court of Canada. In *R v. Morgentaler* (1993), the court unanimously ruled in Morgentaler's favor that Nova Scotia had no right to legislate criminal law. In 1995, New Brunswick attempted a similar ban that forbad abortions outside hospitals, but the legislation met its demise in court as well.

During his career, Morgentaler faced animosity from anti-abortion [5] advocates. For instance, in the 1980s, he received death threats through mail. In 1983, angry protesters firebombed his Toronto clinic, although this resulted in only minimal damage. Assailants once again firebombed the same Toronto clinic in 1992. In spite of these attacks, he continued operating numerous abortion [5] clinics across Canada.

On 9 Feb 1998, Morgentaler married his long-time girlfriend Arlene Leibovitch with whom he had a son, Benny, who was born on 9 Jan 1988. As he aged, Morgentaler's health deteriorated and he retired from practice in 2006 due to an emergency heart surgery. For his achievements, he received several accolades such an honorary Doctor of Law degree from the University of

Western Ontario in London, Ontario, and a 2008 induction [9] into the Order of Canada, Canada's second highest honor of merit. On 29 May 2013, Morgentaler died in his Toronto home from a heart attack.

Sources

1. CBC News. "Abortion rights: Significant Moments in Canadian History" *CBC News*, January 13, 2009. http://www.cbc.ca/news/canada/abortion-rights-significant-moments-in-canadian-history-1.787212 [10] (Accessed October 10, 2014)
2. Hengel, Richard. "An Interview with Dr. Henry Morgentaler." *Canadian Medical Association Journal* 133.5 (1985): 490. http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1346549/pdf/canmedaj00268-0146.pdf [11] (Accessed February 23, 2016).
3. McFadden, Robert. "Henry Morgentaler, 90, Dies; Abortion Defender in Canada." *New York Times*, May 29, 2013. http://www.nytimes.com/2013/05/30/world/americas/henry-morgentaler-abortion-doctor-in-canada-dies-at-90.html [12] (Accessed October 10, 2014).
4. Morgentaler, Henry. "Report on 5641 Outpatient Abortions by Vacuum Suction Curettage." *Canadian Medical Association Journal* 109.12 (1973): 1202–5. http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1947080/ [13] (Accessed February 23, 2016).
5. Seltha, Christina. "The Evolution of the Birth Control Handbook: From Student Peer-Education Manual to Feminist Self-empowerment Text, 1968-1975." *Canadian Bulletin of Medical History* 23.1 (2012): 89–117. http://www.cbmh.ca/index.php/cbmh/article/view/1294 [14] (Accessed October 10,2014)
6. Twiss, Jennifer. "Dr. Henry Morgentaler: The Man Who Fought To Change Abortion Laws In Canada." *History of Medicine Days* (2003): 86–93.

Henry Morgentaler was a physician who performed abortions, acted as a reproductive rights activist, and advocated for legal access to abortions in Canada during the twentieth century. In 1969, he opened his first abortion clinic in Canada and participated in the legal/court case of R v. Morgentaler (1988), which led Canada to decriminalize abortion. Morgentaler helped establish legal access to abortions for women in Canada and advocated for the protection of women's reproductive choices under the law.

Subject
Morgentaler, Henry [15] Morgentaler, Henryk [16] Abortion [17] Obstetrics--Surgery [18] Birth control [19] Reproductive rights [20] Canada [21] Québec (Québec) [22] Ontario [23] Nova Scotia [24] Abortion, Legal [25]

Topic
People [26]

Publisher
Arizona State University. School of Life Sciences. Center for Biology and Society. Embryo Project Encyclopedia.

Rights
Copyright Arizona Board of Regents Licensed as Creative Commons Attribution-NonCommercial-Share Alike 3.0 Unported (CC BY-NC-SA 3.0) http://creativecommons.org/licenses/by-nc-sa/3.0/

Format
Articles [27]

Last Modified
Wednesday, July 4, 2018 - 04:40

DC Date
2017-06-09

DC Date Accessioned
Friday, June 9, 2017 - 13:04

DC Date Available
Friday, June 9, 2017 - 13:04

DC Date Created

2017-06-09

DC Date Created Standard

Friday, June 9, 2017 - 07:00

Source URL: https://embryo.asu.edu/pages/henry-morgentaler-1923-2013

Links

[1] https://embryo.asu.edu/pages/henry-morgentaler-1923-2013
[2] https://embryo.asu.edu/keywords/reproductive-rights
[3] https://embryo.asu.edu/keywords/government
[4] https://embryo.asu.edu/search?text=reproductive%20rights
[5] https://embryo.asu.edu/search?text=abortion
[6] https://embryo.asu.edu/search?text=organizer
[7] https://embryo.asu.edu/search?text=family%20planning
[8] https://embryo.asu.edu/search?text=birth%20control
[9] https://embryo.asu.edu/search?text=induction
[10] http://www.cbc.ca/news/canada/abortion-rights-significant-moments-in-canadian-history-1.787212
[11] http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1346549/pdf/canmedaj00268-0146.pdf
[12] http://www.nytimes.com/2013/05/30/world/americas/henry-morgentaler-abortion-doctor-in-canada-dies-at-90.html
[13] http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1947080/
[14] http://www.cbmh.ca/index.php/cbmh/article/view/1294
[15] https://embryo.asu.edu/library-congress-subject-headings/morgentaler-henry
[16] https://embryo.asu.edu/library-congress-subject-headings/morgentaler-henryk
[17] https://embryo.asu.edu/library-congress-subject-headings/abortion
[18] https://embryo.asu.edu/library-congress-subject-headings/obstetrics-surgery
[19] https://embryo.asu.edu/library-congress-subject-headings/birth-control
[20] https://embryo.asu.edu/library-congress-subject-headings/reproductive-rights
[21] https://embryo.asu.edu/library-congress-subject-headings/canada
[22] https://embryo.asu.edu/library-congress-subject-headings/quebec-quebec
[23] https://embryo.asu.edu/library-congress-subject-headings/ontario
[24] https://embryo.asu.edu/library-congress-subject-headings/nova-scotia
[25] https://embryo.asu.edu/medical-subject-headings/abortion-legal
[26] https://embryo.asu.edu/topics/people
[27] https://embryo.asu.edu/formats/articles