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Résumé de l'article

En 1988, le Parlement du Canada a dû relever le défi de régler le statut juridique de l'avortement après que la Cour suprême du Canada (CSC) ait annulé les restrictions existantes dans l'affaire *R. c. Morgentaler*. Dans le vide juridique qui en a découlé, le gouvernement fédéral progressiste-conservateur (PC) s'est retrouvé sous pression d'agir.

En étudiant les débats parlementaires et les documents du Cabinet de janvier 1988 à mai 1990, cet article explore comment le gouvernement de l'époque a géré la question de l'avortement, notamment en créant et en défendant un projet de loi comme solution politique. Cet article reconstruit les cadrages qui sous-tendent le discours selon lequel le projet de loi gouvernemental était « équilibré ». Ce document identifie les procédures de politisation et de dépolitisation (c'est-à-dire les projets de lois, les motions) et les cadrages (c'est-à-dire le langage et le discours) qui ont permis au gouvernement *d'agir* sur la question de l'avortement *tout en gardant ses distances* lors de l'élaboration et de la défense de la mesure législative. Ces cadrages fonctionnent en renvoyant la responsabilité à d'autres ordres de gouvernement et à la sphère privée, ainsi qu'en appelant au fatalisme par la mise en évidence de la nature rigide de l'avortement, des contraintes qui limitent l'action gouvernementale et de la nécessité de ne poursuivre que la solution proposée par le gouvernement. Les contradictions et tensions inhérentes aux cadrages indiquent des failles dans le discours selon lequel le projet de loi C-43 était une solution « équilibré » et peuvent aider à expliquer l'échec de la solution politique.

Managing Morality and Building "Balance": Depoliticisation as Management in Canada's Federal Response to R. v. Morgentaler

By Rebecca Vachon[1]

ABSTRACT

In 1988, Canada's federal Parliament faced the challenge of addressing the legal status of abortion after the Supreme Court of Canada, in *R. v. Morgentaler*, struck down existing restrictions. In the resulting legal void, the Progressive Conservative (PC) federal government found itself under pressure to act. Examining parliamentary debates and recently released cabinet documents from the period of January 1988 to May 1990, this paper asks how the federal government managed the abortion issue following *R. v. Morgentaler*, including creating and defending legislation as a policy solution. This paper identifies politicising and depoliticising procedures (i.e., legislation and motions) that framed the issue in a way that that allowed the government to take action on the abortion issue while maintaining distance as it crafted and defended legislation. This paper reconstructs the frames that presented government legislation (Bill C-43) as "balanced" and uses the theoretical concepts of politicisation and depoliticisation to show how the frames alternately pushed and pulled the government towards and away from the abortion issue. These frames worked by deferring responsibility to other levels of government and the private sphere, as well as by invoking fatalism by highlighting the intransigency of abortion, the constraints that limit government action, and the necessity of pursuing only the government's proposed solution. Although the frames serve to justify the frame of a "balanced" solution, their inherent contradictions and tensions point to fractures within the narrative of Bill C-43 as a "balanced" solution and may help explain the legislation's failure.

Key words: *abortion policy, R. v. Morgentaler, Canada, depoliticisation, framing*

RÉSUMÉ

En 1988, le Parlement du Canada a dû relever le défi de régler le statut juridique de l'avortement après que la Cour suprême du Canada (CSC) ait annulé les restrictions existantes dans l'affaire *R. c. Morgentaler*. Dans le vide juridique qui en a découlé, le gouvernement fédéral progressiste-conservateur (PC) s'est retrouvé sous pression d'agir.

En étudiant les débats parlementaires et les documents du Cabinet de janvier 1988 à mai 1990, cet article explore comment le gouvernement de l'époque a géré la question de l'avortement, notamment en créant et en défendant un projet de loi comme solution politique. Cet article reconstruit les cadrages qui sous-tendent le discours selon lequel le projet de loi gouvernemental était «équilibré». Ce document identifie les procédures de politisation et de dépolitisation (c'est-à-dire les projets de lois, les motions) et les cadrages (c'est-à-dire le langage et le discours) qui ont permis au gouvernement *d'agir* sur la question de l'avortement *tout en gardant ses distances* lors de l'élaboration et de la défense de la mesure législative. Ces cadrages fonctionnent en renvoyant la responsabilité à d'autres ordres de gouvernement et à la sphère privée, ainsi qu'en appelant au fatalisme par la mise en évidence de la nature rigide de l'avortement, des contraintes qui limitent l'action gouvernementale et de la nécessité de ne poursuivre que la solution proposée par le gouvernement. Les contradictions et tensions inhérentes aux cadrages indiquent des failles dans le discours selon lequel le projet de loi C-43 était une solution «équilibrée» et peuvent aider à expliquer l'échec de la solution politique.

Mots-clés: *la politique de l'avortement, R. c. Morgentaler, Canada, dépolitisation, le cadrage des politiques*

Introduction

In 1988, Canada's federal Parliament faced the challenge of addressing the legal status of abortion after the Supreme Court of Canada (SCC), in *R. v. Morgentaler* ([1993] 3 S.C.R. 463), struck down existing restrictions. In the resulting legal void, the Progressive Conservative (PC) federal government found itself under pressure to act.[2] As the abortion question divided cabinet, caucus, Parliament, and the electorate, the government looked for a path forward that would not polarize all parties.

Examining parliamentary debates and cabinet documents between January 1988 and May 1990, I ask how the federal government managed the abortion issue following *R. v. Morgentaler*, including creating and defending legislation as a policy solution. Using a frame analysis to examine the arguments and themes within these documents, I identify politicising and depoliticising procedures (i.e., legislation and motions) and frames (i.e., language and discourse) that allowed the government to take action on abortion while still maintaining distance, serving as a means of managing the controversial issue. Politicisation and depoliticisation refer to an issue coming into the realm of human action (politics) or being moved away from it (towards fatalism).

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2. In 2003 the PC party merged with the Canadian Alliance party to form the Conservative Party of Canada.

After failed attempts to pass motions intended to solicit Parliament's preferences on abortion policy, the government finally introduced legislation in late 1989. Bill C-43, an Act respecting Abortion, was presented as the "balanced" solution to abortion. This paper reconstructs the frames undergirding C-43 as balanced and uses politicisation and depoliticisation to show how the frames alternately pushed and pulled the government towards or away from the abortion issue. These frames worked by deferring responsibility to other levels of government and the private sphere, as well as by invoking fatalism by highlighting the intransigency of abortion, the constraints that limit government action, and the necessity of pursuing only the government's proposed solution. Although the frames served to support the proposed legislation as the "balanced" solution, they come with conflicting arguments underpinned by opposing views on abortion. These contradictions and tensions may help explain the legislation's failure.

1. The Context of Federal Abortion Policy in Canada: History and Literature

As a former colony, Canada inherited from Britain a general prohibition on abortion. However, amidst pressure from legal and medical professional associations, Prime Minister Pierre Trudeau's Liberal government amended the Criminal Code in 1969 to allow "therapeutic abortions" in hospitals when three doctors considered it necessary for the health of the mother.

Following the 1969 reform, social movements supporting and opposing abortion choice arose, with the pro-choice movement rallying around Dr. Henry Morgentaler, who faced criminal prosecution for providing illegal abortions in Montreal.[3] Despite the controversy that Morgentaler engendered, both the Liberal and PC parties clung to the new status quo and sidestepped abortion as much as possible (Tatalovich, 1997). Morgentaler continued to defy the law, spurring additional court cases that culminated in the 1988 Supreme Court case *R. v. Morgentaler*, where the Criminal Code's restrictions on abortion were struck down as violations of the 1982 Charter of Rights and Freedoms. Yet the SCC decision also acknowledged the state's prerogative to limit abortion to a degree, thus returning the issue to Parliament (Browne & Sullivan, 2005; Flanagan, 1997; Jenson, 1992). Canada now needed to manage the abortion problem and the ball was back in the federal government's court.

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3. Terms referring to those who support or oppose a right to choose abortion are contentious. This article will refer to each side of the issue by the term by which each movement primarily self-identifies: pro-life for those who oppose a right to abortion choice, and pro-choice for those who support it.

This fell to Prime Minister Brian Mulroney's PC government, which, after months of internal deliberations and frequent calls for action in Parliament, presented motions in May and July 1988 to "get a sense of the House" and give the government direction for drafting legislation. The first motion, however, could not even be introduced due to backlash from all sides, while the second failed to receive sufficient votes (Dunsmuir, 1998). Abortion disappeared from the legislative agenda until November 1989 when the re-elected Mulroney government introduced Bill C-43. Considered a "compromise bill" by the cabinet, it restored a general prohibition on abortion to the Criminal Code but allowed abortions with one doctor's approval if it were determined that a pregnancy endangered a woman's physical, emotional, or psychological health (Browne & Sullivan, 2005; Morton, 1992; Saurette & Gordon, 2015).

C-43 narrowly passed 140–131 in the House of Commons on 29 May 1990 but died on a tie vote in the Senate in 1991. Prior to the bill's vote in the House, Mulroney warned that if C-43 failed, the government would not revisit the issue (Flanagan, 1997; Halfmann, 2011). No government since has introduced abortion legislation in the House of Commons and no bills or motions from individual members or opposition parties have ever passed a vote, leaving abortion to be handled by the provinces as a health matter (Johnstone, 2017). As such, this 1988–1990 period is significant as the last time a federal government proposal on abortion was debated in the House of Commons. Studying this period, therefore, allows us to examine how abortion has been managed as part of a legislative agenda and may also point to this period's influence on successive governments' approaches to abortion in the decades that followed.

2. Revisiting Abortion Debates Through Depoliticisation and Framing

Existing literature on federal abortion policy in Canada is primarily rooted in new institutionalism and focuses on the Canadian government's avoidance of the issue of abortion, in contrast to the robust debates ongoing in the United States. Studies have, for instance, pointed to the parliamentary system's ability to insulate itself from social pressures and its capacity to control the political agenda with stricter party discipline, thus enabling it to more tightly control abortion's presence on the political agenda and to avoid it as much as possible (Halfmann, 2011; Studlar & Tatalovich, 1996; Tatalovich, 1997). For example, in Australia's parliamentary system, politicians have "mostly avoided the issue [abortion] and acted to defuse it whenever it threatened to become a divisive problem" (Mylchreest, 2001, p. 242). This has largely also been the case for Canada's federal centrist parties, the Liberals and PCs.

Yet, even with the parliamentary system's tighter control and a preference for avoidance, the federal government still responded to *R. v. Morgentaler* through a series of motions and finally a bill. How, then, should we understand government action on abortion—even when reluctant—in a parliamentary context?

Adopting the concepts of politicisation and depoliticisation allows us to probe how governments manage thorny issues. Depoliticisation is often used in governance, development, and economic policy literature, looking at governments' extrication from decision-making (e.g., Burnham, 2001; Beveridge, 2012; Flinders & Wood, 2014; Wood, 2016). Bates, Jenkins, and Amery (2014) take a broad definition of depoliticisation in their study on artificial reproductive technologies, where depoliticisation reduces agency, closes off debate, and renders some options or circumstances natural, necessary, and/or inevitable. As Jenkins (2011) points out, politics is the "realm of contingency rather than fate" (p. 160) and thus is about agency and debate, whereas depoliticisation occurs to the degree that such agency and debate are constrained. Politicisation, conversely, represents the expansion of contingency and debate. In this way, depoliticisation can be understood as pushing an issue away from the government's sphere of control, whereas politicisation is about pulling an issue into its sphere of control (see Figure 1). This is, consequently, different than understanding de/politicisation as the removal or entrance of partisanship into an issue.

Figure 1. Illustration of politicisation and depoliticisation.
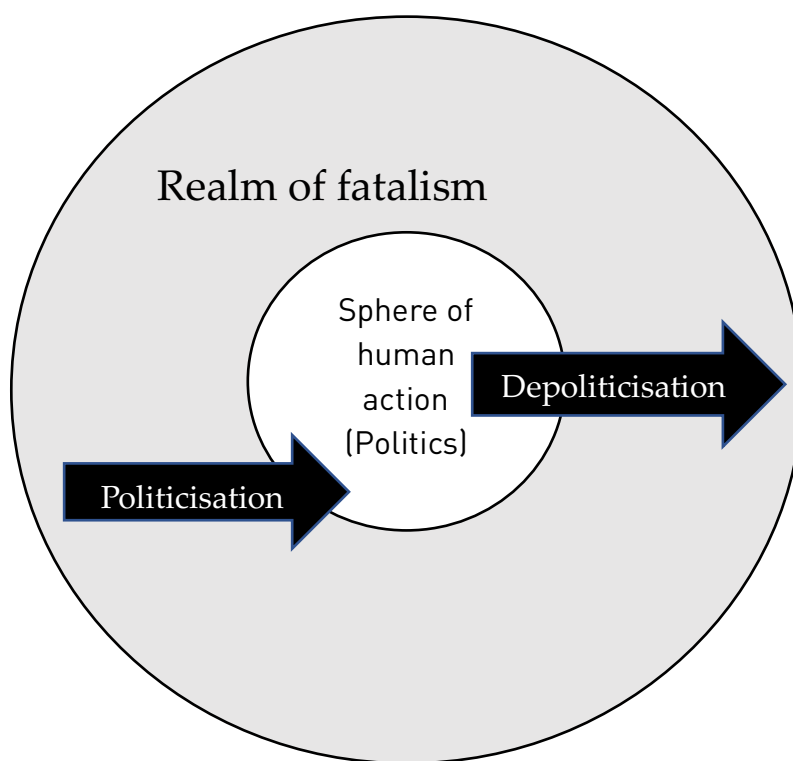
Depoliticisation has been conceptualized as a formal movement of issues—such as delegation of responsibility to a commission, a panel of experts, or a private company—as well as the more informal movement of a debate from the governmental sphere to the public and/or private spheres. Neal (2019) refers to this as "arena-shifting," "whereby issues or policy areas are removed from public contestation in favour of ostensibly apolitical experts or processes" (p. 73). In this case study, we can see instances of procedural depoliticisation, where the government used the tools and procedures of the House of Commons to delegate responsibility and distance government members from the issue in order to minimize controversy.

Wood and Flinders (2014) introduce the concept of discursive depoliticisation, defined as "the 'speech acts' of individuals in the private and public arena that make certain issues appear to be 'normal' or 'natural'" (p. 152). The use of language and framing to normalize and naturalize issues is fatalistic, in that some situations or policy solutions are outside the realm of agency or contingency (Wolf & Van Dooren, 2018; Tilli, 2009). Jenkins (2011) says, "Fatalism limits human capacities to choose to act and change things … [and can] hold us captive by concealing and reducing the inherent contingency of political processes" (p. 159). In other words, when we perceive only one option or feel powerless to change a situation because it appears natural or divine or predestined (i.e., controlled by fate), depoliticisation has taken hold.

Beveridge and Naumann (2014) note that policy itself is not depoliticised in the sense of being apolitical but rendered "easier to manage and less controversial" through various means (p. 53). Depoliticisation, in this way, offers a manner of understanding how governments justify and legitimize their actions and inactions on morality issues. When successful, both procedural and discursive depoliticisation might facilitate the management of contentious issues. Additionally, procedural and discursive depoliticisation are not mutually exclusive; a government can use both concurrently and both can generally reinforce each other.

Framing theory can probe the "construction of meaning" that occurs through policy deliberations and processes, thereby yielding policy outcomes (Erikson, 2012). Framing involves "selecting and highlighting some facets of events or issues, and making connections among them so as to promote a particular interpretation, evaluation, and/or solution" (Entman, 2004, p. 5). For instance, presenting abortion as a woman's rights issue can yield solutions that prioritize women's autonomy and choice as opposed to presenting abortion as a fetal rights issue, which can yield solutions focused on fetal

protections. In other words, framing shapes how issues are understood, leading to which solutions are considered appropriate (Rasmussen, 2011). The subsequent section provides an overview of the frame reconstruction process.

3. Methodology

In order to study the policy solution process within this time period, I examined parliamentary documents to uncover the processes and language used by the federal government. The largest amount of data comes from transcripts of parliamentary debates known as *The House of Commons Debates* (more commonly known as Hansard).[4] The analysis focused on speeches made between January 1988 and May 1990 by those representing the government, specifically fourteen ministers and seventeen parliamentary secretaries.

The fifteen volumes of Hansard transcripts were manually coded using NVivo 12, a qualitative research application, in order to capture relevant data and reconstruct and analyze the frames used by different government actors. Codes included MPs' descriptions of abortion (i.e., abortion as sensitive or complex, or descriptions of the procedure itself), their diagnosis of the causes of abortion, their personal experiences and feelings on the issue, their understanding of their role as legislators, and proposed responses and solutions to *R. v. Morgentaler*.

There were five rounds of review and analysis, the first being an examination of the arguments and themes in the codes of each time period. After identifying numerous examples of depoliticisation, the second round organized codes into categories of policy solutions and depoliticisation. At this point, there were over 700 codes in the policy solution category and over 1300 in the depoliticisation category. Working with these two categories, the third review organized codes into subthemes based on observed similarities as well as patterns identified through the first round of review. Each subtheme was then examined and compared according to time periods. This showed how policy solutions and depoliticisation strategies appeared over time in the House of Commons. The last review re-examined the full references for these codes (i.e., the parts of the transcripts to which the codes refer) in order to add detail and context for how policy solutions and depoliticisation strategies occurred. From this, I identified and organized the frames into categories of depoliticisation that deferred responsibility and those that invoked fatalism in order to explore how depoliticisation contributed to the

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4. These comprised Volumes 10–14 of the 2nd Session of the 33rd Parliament, and Volume 1 of the 1st Session and Volumes 1–9 of the 2nd Session of the 34th Parliament. Historical Hansard records are available from the Canadian Parliamentary Historical Resource at parl.canadiana.ca

management of abortion and development of policy solutions. Politicisation frames were not coded for initially, but politicising effects were identified later in the analysis; subsequently, results were reviewed again to identify politicisation frames.

I compared a collection of cabinet documents from the same time period with the coding results.[5] Cabinet Conclusions, also called "minutes," are not transcripts but summaries, providing a sense of the arguments and themes of discussions, thus opening a window into government officials' reactions to *R. v. Morgentaler* and behind-the-scenes policy development. As part of cabinet confidences, such documents are kept secret for a period of twenty years and so have only recently been made available to researchers.

4. Managing Abortion and Building a Policy Response: Results and Discussion

From January 1988 until the passing of Bill C-43 in the House of Commons in May 1990, the Mulroney government attempted to manage the divisive issue. This section describes this period chronologically, drawing on internal cabinet deliberations and external statements in Parliament. Within this, a discussion of depoliticising and politicising procedures (procedural de/politicisation) and frames (discursive de/politicisation) conceptualize the government's management of abortion and construction of a policy solution. As will be presented, politicising effects interacted with depoliticisation, creating unique boomerang and backlash effects. And although without a much wider analysis it is impossible to say exactly why C-43 failed to pass into law, this analysis nevertheless points to cracks in the narrative that may have contributed to its failure.

4.1 January 1988 to May 1988 – Delay and Deflect: Responding to the *R. v. Morgentaler* Decision

Procedurally, free votes were one of the first indications the government gave as to how it would handle the abortion issue. Ministers indicated this in Parliament almost immediately, and cabinet minutes for its 2 February meeting state, "The Prime Minister concluded the discussion by indicating that a free vote would ultimately be required on the issue. He was personally impressed with the sanctity of life arguments but would not attempt to impose his views on other Members" (Tromp, 2013, p. 3). The

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5. These particular documents were released through an access to information request made by journalist Stanley Tromp (2013). The particular documents that I used were those reformatted by Tromp due to the easier access and viewing that the reformatting offered. This particular set of documents contains records of cabinet meetings, the Cabinet Committee on Planning and Priorities (chaired by the prime minister), and the Ad Hoc Committee on Abortion, and includes discussion papers, presentations, and draft resolutions and legislation.

use of free votes can be understood as a form of procedural depoliticisation, whereby institutional features like the tools and procedures of the House of Commons are used to remove the government from the issue. Free votes refer to the relaxation of party discipline, allowing members to vote according to their conscience rather than party position (Warhurst, 2008). As such, there is a movement of control from the government to delegates (MPs), insulating the government from the outcome of the decision and diluting blame, as the vote results would represent the will of MPs rather than that of the government (Halfmann, 2011). Free votes seek to preclude party division where some might leave caucus or publicly defy leadership if not granted freedom to respect their personal beliefs (Ross, Dodds, & Ankeny, 2009).

A free vote in this case also served a discursive purpose by signalling that the government was treating abortion as a "conscience issue" rather than one of party discipline. The appeal to conscience also invoked a higher authority, deferring responsibility to moral forces. In their study of artificial reproductive technology in the UK, Bates, Jenkins, and Amery (2014) describe how moral language served to depoliticise because it "attempted to define issues as either inside or outside day-to-day political debate" (p. 250). Likewise, in the motion debated in the summer of 1988, ministers regularly reaffirmed that a free vote was needed on a "sensitive, moral issue such as abortion" (Canada, 33rd Parliament, 1988, Volume 12, p. 15701), maintaining a distinction between abortion and "normal" politics.

Discursively, the government pushed responsibility to the provinces by emphasizing the need for provincial collaboration. For instance, Minister of Justice Ray Hnatyshyn stated that "we would want to work with the provinces as soon as we can to determine the issues which have to be faced in this matter in order to have a thorough understanding that there will be a consistent approach across the country" (33rd Parliament, 1988, Volume 10, p. 12428). This deferral of responsibility diminished the role of the federal government and further delayed decisions because of the time required for collaboration. Emphasizing jurisdiction also indicated that any future federal legislation would be constrained by the provinces' constitutional responsibility for healthcare.

Abortion was also described as a difficult, sensitive, complex, serious, and divisive issue, upon which there was no Canadian consensus to build, which set up the government's task as challenging. Following the *Morgentaler* decision, Minister of Health Jake Epp said, "People on both sides of this issue generally recognize both its complexity and its difficulty not only for Governments but for Canadian society as well" (33rd Parliament, 1988, Volume 11, p. 13510). The nature of abortion as divisive was positioned as a limiting factor, helping to lower expectations for any policy solution, thereby mitigating blame.

Similarly, the relatively recent Charter of Rights and Freedoms was portrayed as tying the government's hands. Immediately after the SCC decision, the government emphasized how the case pointed to "the new realities under the Charter of Rights and Freedoms of our country and the role of the Supreme Court of Canada in defining the limitations and the abilities of legislature at all levels of government to deal with important issues" (33rd Parliament, 1988, Volume 10, p. 12383).

4.2 January to May 1988 – Politicising, Depoliticising, Repoliticising: Considering Solutions after R. v. Morgentaler

Paradoxically, parallel with this deferral of responsibility were politicising statements stressing the importance of taking leadership on this "urgent" and "serious" issue, both in Parliament and within cabinet. Prime Minister Mulroney, at a cabinet committee meeting on 23 February 1988, committed to passing a bill, calling abortion a "difficult but important issue on which legislation should be introduced prior to an election" (Tromp, 2013, p. 5). Throughout the cabinet documents, Mulroney described the issue as "not merely one of abortion but one of leadership," and that action was needed to address the "legislative vacuum" by providing "an appropriate legislative framework for resolving the issue" (Tromp, 2013, p. 38). An intention to avoid or defer the issue is not apparent.

The cabinet documents provide a wider view of the options that were considered to address the abortion issue, the processes by which the executive dealt with the issue, and how the preferred policy solution shifted numerous times. Options discussed ranged from more active engagement like legislation and even using the override provision of the Charter of Rights and Freedoms, to those deferring decisions to a Royal Commission or parliamentary committee (Tromp, 2013, pp. 2–3). Both the notwithstanding clause and the Royal Commission options were quickly dismissed, with their rejection subsequently affirmed in the House of Commons. At the same time, on 2 February 1988, a sub-cabinet group, the Ad Hoc Committee on Abortion, was established to work on possible solutions. It later reported back with recommendation of legislation and a free vote (Tromp, 2013, p. 4). A legislative approach was affirmed in Parliament on 9 February, only two weeks after the *Morgentaler* decision was announced. This commitment to legislation is interesting given that conventional wisdom assumes that the government would rely more on strategies of avoidance like deferring the decision to other bodies, yet it dismissed these options in favour of legislation. The cabinet minutes indicate that Senator Lowell Murray, Minister of State and committee chair, reported that the committee "was committed to finding a real and lasting solution; it had rejected a process approach which would have put off the difficult questions to a later date" (Tromp, 2013, p. 6).

In March, models of legislation, as well the forms and procedures to be used in the House, were discussed within cabinet. The Ad Hoc Committee recommended a "middle ground approach, involving regulating abortion with some time limits" (Tromp, 2013, p. 6). This gestational approach would allow abortion quite freely up to a certain stage in pregnancy. The cabinet largely agreed, considering it "the only realistic alternative to the status quo [of abortion on demand]" (Tromp, 2013, p. 16). Minister of National Health and Welfare Jake Epp dissented, speaking extensively against this gestational approach from his pro-life perspective, a concern that was shared by others in caucus. The cabinet minutes record that Epp "concluded that he as a Cabinet Minister could not support the proposed [gestational] legislation" (Tromp, 2013, p. 41). Perhaps interested in appeasing its fractured caucus, as well as garnering broader support in Parliament, the cabinet opted to use a motion to direct the drafting of legislation. This passed off the decision by allowing the House to guide the content of the legislation.

4.3 May to July 1988 – Bungles and Boomerangs: The Failed Motions

The government also distanced itself from the issue via the use of two motions in May and July of 1988. Minister of State (Treasury Board) Doug Lewis described them as "a reasonable way to get a sense of the House which could guide the Government in drafting the legislation, in the general framework for it" (33rd Parliament, 1988, Volume 13, p. 16598). These motions represented a form of procedural depoliticisation as "consulting" and allowing the House's preference to "guide" legislation would make the bill the preferred approach of Parliament as a whole, rather than the government specifically, again diluting blame. This can be seen in Minister Doug Lewis's presentation of the motion, which highlighted the agency being given to individual MPs, as the intention was for MPs to "put their views on the record, for themselves, for their constituents, and as part of the input to provide it to the Cabinet and to the legislative drafters" (33rd Parliament, 1988, Volume 14, p. 17965).

The motions offered multiple amendments, and this, combined with the free vote structure that released members from party discipline, resulted in a fractured debate with ministers and parliamentary secretaries supporting different aspects of the motion, supporting amendments while opposing the main motion itself, and even criticizing the government for not introducing legislation. Additionally, as already noted, the motion put forward in May failed to even make it to debate as the opposition parties would not consent to its introduction; they declared that limitations placed on the debate were "undemocratic." The second motion of July 1988 accordingly relaxed debate restrictions and allowed amendments from the floor. Additionally, the motion itself provided multiple options for members to vote on, including a pro-life position and several pro-choice options offering varying levels of restrictions on abortion.

These procedural forms of depoliticisation point to a paradox. These measures diminished government responsibility and served as a pressure relief valve for caucus, yet also created debate and opportunities for parliamentarians' agency. This ties into other depoliticisation research that highlights the curious relationship between politicisation and depoliticisation, whereby the concepts "should not be viewed solely and simply as opposing forces but also as parallel and simultaneous sociopolitical trends" (Bates et al., 2014, p. 257; see also Diamond, 2015).

These motions also show how attempts to limit debate and agency (depoliticisation) can backfire and generate more conflict (politicisation). When the government tried to procedurally limit debate of the first motion, it created a backlash and expanded the conflict. Wolf and Van Dooren (2018) call this a "boomerang effect," where "efforts to close off public debate through depoliticization [*sic*] may be counterproductive in the long run. Depoliticization [*sic*] can increase conflict in a way that fosters its negative aspects" (p. 298). In other words, depoliticising procedures and frames can have unintended politicising effects. In the first motion, the efforts to constrain conflict only generated a new debate over the form and procedures of the motion, resulting in the government having to publicly back down and draft a new motion. Even with the more conciliatory approach of the second motion in July, a politicising effect emerged because the motion, accompanied with a free vote, removed party discipline and allowed even the government's own cabinet ministers and parliamentary secretaries to voice opinions, all of which ultimately helped defeat the motion.

Discursively, the most prominent frame found among government speakers in the July motion debate was a need for a "balanced solution" that addressed both the rights (or "competing interests") of the woman and the fetus. Yet although most ministers seemed to agree with this objective of balance, some critiqued the motion as failing to achieve that balance because it did not adequately protect fetal life. As Minister of National Health and Welfare Jake Epp stated, "[T]he Supreme Court has invited Parliament to balance the competing interests of the unborn child and the pregnancy woman. I believe the motion before us fails to do that. … It is not a balance; it is a decision not to extend protection of life to the unborn child" (33rd Parliament, 1988, Volume 14, p. 18097). The pro-life option provided by the government was generally unpopular among pro-lifers, including Minister Epp, because it was gestational, graduating protection of the fetus according to the stage of pregnancy. Pro-lifers considered this to be "arbitrary" and thus untenable. For instance, Parliamentary Secretary Benno Friesen opposed the motion, arguing, "[H]ow could we make a law that says that a child is safe [from abortion] during the seventeenth week of pregnancy but not in the sixteenth? What could be more arbitrary than that?" (33rd Parliament, 1988, Volume 14, p. 17999). Parliamentary Secretary Lise Bourgault countered this logic, arguing that both the

pro-life and pro-choice movements' demands for a law were unrealistic, and that she favoured "a solution that would go halfway; setting a legal limit of 18 weeks on abortion" (33rd Parliament, 1988, Volume 14, p. 17988).

Appeals to provincial jurisdiction remained a prominent argument during this period. This appeal also served as a defence mechanism against attacks from opposition parties, such as demands that the Canada Health Act be used to force provinces to provide certain levels of abortion services. The government argued that this was impossible—even unconstitutional—because the Act was only a funding statute and provinces had jurisdiction over healthcare. Parliamentary Secretary Pierre H. Vincent said, for instance, that "[t]he provinces are responsible for the provision of health care services, and it is not within the powers of the federal Government to dictate to provinces what those health services must be, or how they should be delivered" (33rd Parliament, 1988, Vol. 11, p. 13882).

This motion demonstrates both procedural and discursive depoliticisation as it attempted to move responsibility away from the government because it gave Parliament the opportunity to vote on what it wanted future legislation to look like. The resulting legislation could not, as such, be blamed solely on the government. Yet considering the fractures within cabinet itself, it is no wonder that neither the motion nor its amendments passed, leaving the government without the "sense of the House" that it wanted.

4.4 1989 – The Needed "Balance" and the "Best We Can Do": Developing and Debating C-43

Abortion disappeared from cabinet records shortly after the failure of the July motion and only re-emerged in March 1989, months after the November 1988 election that re-elected the Mulroney PC government. Through the summer of 1989, the Ad Hoc Committee deliberated on options, revisiting the possibility of a referendum, Royal Commission, or Supreme Court reference, but rejecting all these options. At a 25 July 1989 cabinet meeting, the committee recommended not legislating because of a lack of consensus and likelihood of failure. Yet the prime minister insisted on a need for leadership in creating a middle-ground legislative solution such as those employed in other countries (Tromp, 2013, p. 39). These minutes thus show ongoing tensions between delaying or deferring the issue of abortion and accepting responsibility and leadership for the matter.

Through the summer and early fall, cabinet examined models for legislation, starting with a three-stage gestational approach: no conditions on a woman's access to abortion in the first stage; some conditions in the second; and limited conditions in the third. This then became a two-stage model, with loose health requirements from conception

until 20 weeks of gestation, after which strict restrictions were imposed. Finally, at a 10 October 1989 cabinet committee meeting, a non-gestational approach was proposed, which prohibited abortion in principle but allowed it for broad health reasons. This model appeared to be unexpected, with the cabinet minutes stating, "The Prime Minister indicated that this was the first time he had heard of this" (Tromp, 2013, pp. 54-55).

These changes to what became C-43—some of which occurred within only a few days—point to pressures within caucus and cabinet, particularly with pro-life members ardently opposed to the use of any "arbitrary" gestational or stages model. The model kept shifting as the cabinet managed its fractured caucus, groping for a solution that both pro-lifers and pro-choicers could (theoretically) support.

The introduction of Bill C-43 in the House was accompanied by the argument that it represented the "reasonable" and "compromise" solution to the abortion question, achieving a needed "balance" between the rights of women and the fetus. In introducing the bill, Minister of Justice Doug Lewis stated, "In approaching this sensitive and difficult issue the government took into account all the views of the Canadian people and balanced those views in a reasonable and workable way" (34th Parliament, 1989, Volume 4, p. 5644). Other ministers lined up behind this language, including Minister of National Health and Welfare Perrin Beatty, who called the bill "a moderate and balanced compromise to an ethical conundrum" (34th Parliament, 1989, Volume 4, p. 5678). The compromise frame was used to bridge the polarized views within Parliament, with Beatty saying, "We do not seek to disguise the fact that the bill is a compromise. It is a proposal which accepts the validity of opposing points of view" (34th Parliament, 1989, Volume 4, p. 5675).

This need for balance was rationalized by emphasizing that Canada was divided on the issue. For instance, Prime Minister Mulroney described Canada as having "vastly different ethnic and religious backgrounds, and disparate regional and local views" (34th Parliament, 1989, Volume 5, p. 6340). Consequently, consensus was near impossible in a pluralistic society, and required a solution that could bridge the divide.

The government also emphasized the limits of what it could do on the issue by referencing provincial healthcare responsibilities to highlight how Bill C-43 went as far as federal jurisdiction allowed. To do more, Minister of National Health and Welfare Perrin Beatty said, "would be an invasion of the provinces' role in Confederation" (34th Parliament, 1989, Volume 4, p. 5676), a sentiment that numerous other government speakers echoed. For this reason, a federal bill could not ensure access to abortion, said Minister of Employment and Immigration and Status of Women Barbara

McDougall, defending the bill while identifying herself as pro-choice (34th Parliament, 1989, Volume 4, p. 5725). Conversely, Prime Minister Mulroney, speaking to pro-lifers who wished a more restrictive law, stated, "We have gone as far in this direction as constitutional constraints permit" (34th Parliament, 1989, Volume 5, p. 6351).

Ministers' support, which was required, unlike the free vote granted to other PC MPs, appeared resigned. Language calling the bill the "best we can do" was found frequently, including in Minister of Justice Lewis' introduction of the bill (34th Parliament, 1989, Volume 4, p. 5594), Minister of State Kim Campbell's affirmation of her pro-choice view alongside support of the bill (34th Parliament, 1989, Volume 5, p. 5966), and Prime Minister Mulroney's defence of the bill at second reading (34th Parliament, 1989, Volume 5, p. 6339).

Bill C-43 allowed abortion for broad health reasons, thereby confirming doctors as gatekeepers to abortion. By structuring C-43 according to this medical framework, procedural depoliticisation deferred responsibility to the private sector and to the expertise of the medical professional, something affirmed discursively by positioning doctors as experts in the matter. When introducing the bill, Minister Lewis said that in cases of health, "doctors must make that determination. No one else could" (34th Parliament, 1989, Volume 4, p. 5643). This not only deferred abortion to doctors, but further argued that only doctors were equipped to make these decisions. As Minister of Energy, Mines and Resources Jake Epp stated, "I do not shy away from placing that responsibility on those who are trained, those who are professional and those who must make life and death decisions in the course of their work every day" (Canada, 34th Parliament, 1989, Volume 5, p. 5957).

4.5 May 1990 – Balancing Off the Edge of a Cliff: Conclusion of C-43 Debates

In its last stages of debate, the government focused on defending C-43 against amendments, with new Minister of Justice Kim Campbell arguing that the law in its current form maintained a necessary "delicate balance" (34th Parliament, 1990, Volume 9, p. 11666). Accepting any of the proposed amendments would, as such, upset the balance. The significance of having a law and national policy was stressed, with the alternative being a haphazard, patchwork regime set by provinces that would neither protect the fetus nor provide safe access for women. Minister Campbell noted, "However imperfect it may be, the legislative process is still the best way to achieve a consensus" (34th Parliament, 1990, Volume 9, p. 11769). She further argued that C-43 represented an "honourable accommodation" on the divisive issue (34th Parliament, 1990, Volume 9, p. 11773).

Immediately following *R. v. Morgentaler*, language that emphasized a need for action and legislation politicised abortion as it pushed it into the realm of debate. However, as this language became tied to Bill C-43 as a specific policy solution, it became depoliticising because it positioned C-43 as the only reasonable solution to the dire situation of the legal vacuum. Chaos and anarchy resulting from this vacuum was invoked in the second reading debate for C-43, as Ministers Shirley Martin and Douglas Lewis and Parliamentary Secretaries Benno Friesen and Lise Bourgault pointed to the "circus" of the "events of this past summer [that] illustrated a clear need for a national position on the issue of entitlement to abortion and led many Canadians to realize that a balanced approach … was required" (34th Parliament, 1989, Volume 4, p. 5639). These events were the sensationalized court cases of Chantal Daigle and Barbara Dodd, whose former partners had sought injunctions to prevent them from procuring abortions. These events served rhetorically as justification for a compromise that would prevent such cases from occurring again (34th Parliament, 1989, Volume 5, p. 6133 at Bourgault).

Bill C-43 narrowly passed the House of Commons, but lost on a tie vote in the Senate, where free votes were also allowed. The government subsequently refused to revisit the issue, which has remained the stance for both centrist parties.

Conclusion

This paper has used politicisation/depoliticisation to conceptualize both government actions and language in managing matters of morality, including the construction of a policy solution. As indicated in Figure 2, frames emphasizing the divisive nature of abortion and a polarized society set the stage for a middle-ground solution. Furthermore, by framing the government as limited—thanks to the divisive nature of the issue, the polarized nature of society, the constraints of jurisdiction and the federal system itself, and the Morgentaler decision—the government positioned itself as caught between a rock and a hard place, and so sought to limit blame and lower expectations for the resulting policy. These frames continued with and reinforced C-43, where the bill was framed as the best that could be done to find a solution that both sides could live with, even if it made no one entirely happy. Accompanying this and backed up by discourse were procedural forms of depoliticisation, putting forward the motions and using a free vote to further move responsibility for the resulting legislation towards Parliament.

Figure 2. Frames underpinning presentation of C-43 as the "balanced" solution to abortion.
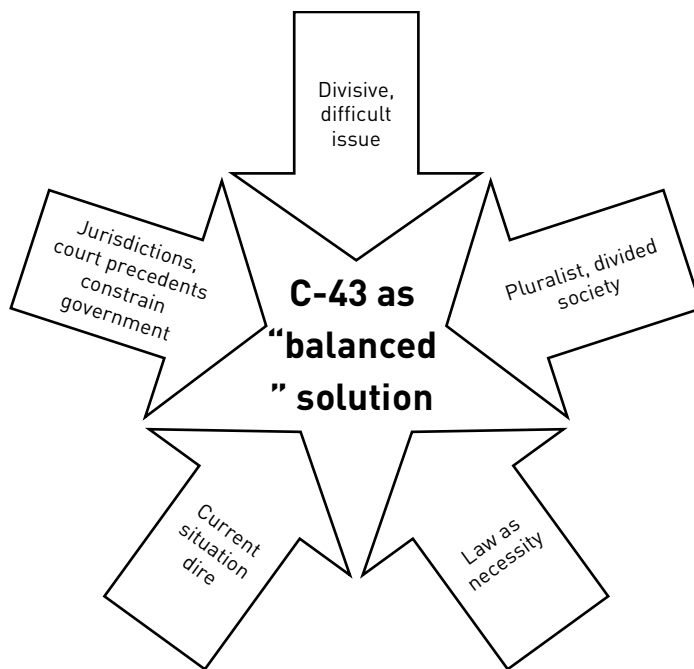
Source: Author

Although these frames and procedures were used to help construct and defend C-43 as the best possible solution, they also appear to have contained the seeds of their own demise. For instance, this central argument of balance was itself a difficult balancing act for the government. Speakers, including parliamentary secretaries and other PC MPs, used a "balance" and "compromise" frame to argue against the government's proposals nearly as often as they used them to defend it, arguing that the government's proposal did not achieve the required balance. Additionally, both pro-life and pro-choice supporters in the government often used the same frames but backed them up with contrasting motivations and concerns. Pro-life supporters were concerned with providing some degree of fetal protection and saw C-43 as the best they could offer at this time because the legislation would still consider abortion as a criminal act except in health circumstances. The pro-choice side justified C-43 as a way to ensure safe, legal abortion access to women within a stable federal framework. This uncomfortable alignment of frames, underpinned with opposing motivations, presented significant contradictions in terms of support for the bill. It was difficult for legislation to simultaneously provide adequate protection for the fetus and guarantee adequate access to abortion for women.

Overall, this study highlights the challenges that governments face when addressing moral issues that not only fracture the electorate but also their own caucuses. In identifying depoliticisation and politicisation, we are better able to conceptualize how the Canadian federal government both took action on abortion and tried to minimize its responsibility on this matter of morality and controversy.

One of the advantages this paper has is the benefit of cabinet documents not available during earlier studies of this period. These documents, as described earlier, highlight the challenging deliberations within cabinet, the lines of fracture, and the back-and-forth between options that would have further removed abortion from the federal government (e.g., a Royal Commission, SCC reference, or a national referendum) and the more active approach of legislation.

Interestingly, although the cabinet minutes are not transcripts, they contain similar language to that in Hansard, including the frames of abortion as divisive, society lacking consensus, opposition to gestational legislation, and a need for balanced, middle ground approaches. This suggests that public language used to address policy problems and propose and defend policy solutions was not necessarily an entirely strategic, rhetorical tool. Instead, there were deep links between internal and external discussions, and such discussions did not exist entirely separate from each other. Further research on the connections between internal and external discourse would prove helpful in our understanding of discourse in the policy process.

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