

The Jurisprudential Basis and Development Direction of Women's Abortion Rights: Based on the Current Legislation of the United States and France

Yunhan Jiao*

School of Law, Shandong University of Finance and Economics, Jinan, China

* Corresponding Author: 1807040209 @stu.hrbust.edu.cn

Abstract. The legislation of a country is determined by various social factors in the country, and the change of national legislation can reflect the change of the social background behind it. The legal basis of abortion rights is rooted in social conditions, and the development direction of abortion rights will continue to be more in line with national and social conditions. In 2022, the United States and France, which are also developed countries, took diametrically opposite approaches to the issue of abortion rights. This makes us wonder: why do the two countries have different attitudes towards the same issue? What happens to abortion rights in the future? In order to uncover the surface and deeply understand its connotation, this paper analyzes the legal basis and reasons behind the right to abortion in the United States and France, and compares the current legislation as well as typical cases of the two countries in this respect, strives to explore the legal basis and future development direction of female abortion rights.

Keywords: Abortion right; jurisprudential basis; current legislation.

1. Introduction

In June 2022, the United States Supreme Court ruled in *Dobbs v. Jackson Women's Health Organization*, overturning the half-century-old *Roe v. Wade* ruling that abortion is a right protected by the U.S. Constitution and leaving the issue to the discretion of state legislatures. On November 24, 2022, the French National Assembly overwhelmingly approved, by 337 votes in favor, 32 against, and 18 abstentions, a bill proposed by the political party *La France insoumise* that would guarantee women's right to abortion into the constitution of the French Fifth Republic. On March 4, 2024, a joint session of the two houses of the French Parliament passed a constitutional amendment to include the right to abortion in the constitution, making France the first country in the world to include a guarantee for women's right to abortion in the constitution.

Abortion has always been a controversial topic, and there has never been a unified conclusion on the legal value orientation behind abortion. How to balance a woman's right to abortion with the fetus' right to life and health? How to choose between women's reproductive autonomy and men's reproductive freedom? These contradictions in values also reflect the conflicts between rights. The two meet at a point and compete with each other, and there is a reverse correlation between them [1]. The value integration of law is to control the conflict between values within the scope allowed by law, and legislation is the initial stage of the value integration of law.

Therefore, this paper discusses the current law on abortion rights in the United States and France, and explores the legal basis behind women's abortion rights and its future development direction.

2. Analysis on the Legal Basis of Female Abortion Right

2.1. Basic Concepts and Definitions

Abortion is defined as "an artificially induced termination of a pregnancy for the purpose of destroying an embryo or fetus [2]." In the dictionary sense, the term "abortion" refers only to the removal of a fetus before it reaches adulthood; therefore, it is synonymous with "miscarriage."



However, in the context of humans, the term has historically been used to distinguish between miscarriages that occur spontaneously or as a result of an accident [3]. The right to abortion refers to a woman's right to decide whether to continue her pregnancy during pregnancy.

The right to abortion is generally considered to fall under the umbrella of reproductive rights. On the issue of abortion, those who support it are called "pro-choice", believing that abortion is a human right and directly related to the life and health of pregnant women. Those who oppose abortion are called "pro-life", and for those who oppose abortion, abortion is tantamount to killing the life of the fetus in the womb and should be banned [4]. The subject of this right is a female natural person who enjoys the right to abortion and bears the responsibility. In the process of choosing whether to terminate pregnancy, the subject of this right has a greater domination of its subjective will, and also has exclusivity to a certain extent.

2.2. Analysis of the jurisprudential basis of abortion rights in United States

In the United States, the Due Process Clause of the 14th Amendment gives women the right to choose to end her pregnancy as a privacy right, which the Supreme Court first acknowledged in the *Roe v. Wade* case [5]. The main factions of the abortion rights debate in the United States can be historically divided into pro-life and pro-choice groups.

pro-choice values the physical and mental health of women from pregnancy to childbirth, emphasizes that women's bodies are in charge of women, opposes the federal government or state legislation to interfere with and restrict female abortion, and advocates strict Judicial review of such abortion regulations [6]. When the birth of a fetus would adversely affect the quality of life, abortion is permissible and justified [7]. Pro-life people believe that the government should ban abortion based on the spirit of classical liberalism and religious humanism, valuing the fetus as a potential life, and protecting the unborn fetus as a "person" with basic rights of citizens, because the right to life is as sacred as the right to liberty and property. "No one should take or harm the life of another person and everything that contributes to the preservation of another person's life, liberty, health, limb, or goods [8]."

In the mainstream ideology of American society, religion occupies a very important position. Roy White, the former head of the National Right to Life Committee, once said, "The only reason we have a pro-life movement in this country is because of Catholics and the Catholic Church [9]." The Roman Catholic Church has traditionally regarded abortion as a grave sin, and its opposition to the practice has not changed since its inception. In the Twelve Apostles, abortion is condemned along with infanticide: it is not permitted at any stage of pregnancy [10]. The Catholic Bishops' Conference of the United States has always followed the teachings of the Roman Catholic Church and held an anti-abortion attitude and concept. In the face of the abortion law reform in the American society in the 1960s, the Bishops' Conference also actively propagated to the faithful in theological life, trying to enhance the voice of the anti-abortion forces. Thus, after *Roe v. Wade* legalized abortion in 1973, the U.S. Conference of Catholic Bishops was among the first organizations to firmly condemn the decision.

In the early period of the North American colonies and the United States of America, due to the undeveloped medical technology and the immature conditions for women to control their own fertility, the vast majority of women passively accepted the maternal responsibilities given by the traditional culture [11]. In the mid-19th century, in addition to unmarried pregnant women in order to get out of trouble, trying to control birth by abortion, more and more married middle-class white women also began to control family size by contraception and abortion [12]. The 1950s and 1960s coincided with the rise of the second feminist movement, and the awakening of women's self-awareness prompted feminists to rethink abortion. The feminist movement emphasizes that women have the inalienable right to control all their bodily functions, and the progressive feminist movement is committed to liberating women so that they can get rid of the shackles brought by the traditional chains and thus be liberated.

The clash between devout religious sentiment and the progressive feminist movement was fierce, and doomed America's controversial path to abortion to be difficult and bumpy.

2.3. Analysis of the Jurisprudential Basis of Abortion Rights in France

Similar to the United States, France is a deeply religious country with a majority of its citizens who are Catholic, and abortion was once considered a serious crime, even punishable by death. The situation did not improve until the second half of the 20th century. At that time, the French people's understanding of the birth rate, the view of religion, have changed a lot. Against the backdrop of this relatively relaxed rhetoric, a series of debates over the legalization of abortion have entered the public domain. More and more abortion supporters are speaking out in newspapers, magazines, and public forums, using statistics and cases to tell the terrible consequences of the criminalization of abortion. One of the most famous of these discussions was a statement published by *Le Nouvel Observateur* on April 5, 1971, known as the "343 Slut Manifesto." The statement was signed by 343 women, including influential figures. In their statement, they "admitted" that they had had abortions. In 1975, former French Health Minister Simone Veil submitted a bill to the National Assembly to legalize female abortion, making France the first major Catholic country to legalize abortion. Compared to the United States and many other countries, protecting a woman's right to abortion is already a general consensus in French society today. According to opinion polls, about 80 percent of French people support a legal guarantee of abortion rights.

On March 4, 2024, a joint session of the two houses of the French Parliament passed a constitutional amendment to include the right to abortion in the constitution, making France the first country in the world to include a guarantee for women's right to abortion in the constitution. French President Emmanuel Macron praised it as "the pride of France" and a "universal message" from France to the world, and the slogan "My Body My Choice" was displayed on the screen of the Paris landmark Eiffel Tower.

To sum up, the United States and France have different legislative and judicial practices on the legal basis of women's abortion rights. While the United States focuses on individual privacy and autonomy, France is more concerned with women's health and social interests. These different legal bases reflect the understanding and balance of different legal systems on women's abortion rights, and also provide useful reference and inspiration for the international community to discuss this issue.

3. Comparison of Current Legislation between the United States and France

3.1. Current legislation in the United States

In modern American society, a woman's right to abortion is still controversial. The 1973 Supreme Court decision *Roe v. Wade* is considered to have established the legal basis for a woman's right to abortion. The decision held that the U.S. Constitution guarantees a woman's right to privacy, including the right to make decisions about her own body. Although not explicitly listed in the Constitution, it is assumed that the right to abortion should be included within the scope of the right to privacy. The Supreme Court proposed the famous three trimester, whereby during the first trimester of pregnancy (weeks 1-12), if the doctor and the pregnant woman could agree on the viability of an abortion on the basis that the fetus would not be "viable outside the mother" and that it would be less dangerous to perform an abortion than a normal birth, the pregnant woman would be better off. Pregnant women can choose whether or not to have an abortion; During the second trimester (after 12 weeks), the risk of abortion increases. At this stage, the government can restrict abortion. It should be noted, however, that such restrictions are only necessary to protect the health of pregnant women; At the end of pregnancy (after 24 to 28 weeks), the fetus becomes increasingly likely to survive outside the mother, and the public good of safeguarding the potential life of the fetus necessitates government measures, including the prohibition of abortion, unless the abortion is performed to save the life of the mother or the health of the woman is in danger [13]. In this way, the Supreme Court recognized the legality of terminating a pregnancy during the first two stages of pregnancy.

In 2022, the Supreme Court's decision in *Roe* was overturned by *Dobbs*. At the heart of the *Dobbs* dispute is Mississippi's 2018 Gestational Age Act, which bans nearly all abortions after 15 weeks of pregnancy, including in exceptional cases such as rape, incest, pregnancy of a minor, and possible fetal abnormalities. The *Dobbs* case addresses the constitutionality of this law [4]. The *Dobbs* decision held that it could not be inferred from *Roe* that the U.S. Constitution protects the so-called right to abortion. The rights listed in the U.S. Constitution and its amendments are: freedom of religion, freedom of speech, and freedom to bear arms; According to originalist theory, any right that was not expressly mentioned by legislators or recognized by society at the time of the adoption of the Constitution and the amendments is not protected by the Constitution. Regarding the uncertainty, the Court preferred to leave it to the states to decide rather than "overreach their powers to decide a question of profound moral and social importance expressly left to the people by the Constitution [4]." The decision also gave states more freedom to choose which abortion rights to choose. For example, California and New York still allow abortion, and Texas, under the Texas Heartbeat Act, prohibits abortion when heartbeat activity is detected in an embryo or fetus, which in practice occurs around the sixth week of pregnancy. This means that from the moment a woman finds out she is pregnant, she has lost the right to choose an abortion. Oklahoma, for example, passed the most stringent abortion ban in the United States in June 2022 - completely banning abortion from the stage of a woman's conception, and not allowing abortion to be requested on the grounds of rape or incest [4].

3.2. Current legislation in France

The *Roe* decision had a very wide global impact, and the so-called "transnational linkage of abortion constitutionalization" subsequently appeared in Europe and the United States. In 1975, the Constitutional Council of France, the Constitutional Court of Italy, the Constitutional Court of Germany, and the Supreme Court of Canada made constitutional decisions on abortion in the same year [14].

The *Loi Veil* (the Termination of Pregnancy Act), passed in 1975, has had a significant impact on France's abortion legal system. According to French law, a woman can have an abortion in the first 12 weeks of pregnancy, and in order to protect the health and safety of the woman, the abortion needs to be carried out in a specific medical institution, and needs to comply with a series of regulations and procedures. In the French legal system, abortion is considered a medical act and is protected by law. European countries (with the exception of Poland) generally believe that if the pregnancy is due to factors other than the will, the pregnancy process is often unpleasant and even painful; Therefore, pregnant women should be allowed to access safe abortion services as soon as possible; Laws in European countries are much more lenient than those in the United States, and the use of penalties is rare, in contrast to laws in states such as Texas.

On 24 November 2022, the National Assembly adopted a constitutional amendment proposing the addition of article 66-2 of the Constitution: "The law guarantees the validity and equal availability of the right to voluntary termination of pregnancy", making it a right expressly protected by the Constitution. French President Emmanuel Macron stressed that "abortion is a fundamental right for all women." He tweeted: "Women's abortion must be protected. Macron expresses solidarity with abortion rights supporters." On March 4, 2024, a joint session of both houses of the French Parliament passed a constitutional amendment that formally enshrined the right to abortion in the constitution,

3.3. Comparative Analysis

There are some clear differences in abortion legislation between the United States and France.

First of all, the abortion laws of the states in the United States vary greatly, the legal system is more dispersed, and the attitude toward whether the Constitution recognizes the right to abortion is repeated. While France has unified the abortion provisions through central legislation, and guaranteed the abortion right through the constitution, making the legal implementation more unified and standardized.

Secondly, the modern abortion law in the United States is highly controversial and is often affected by political, religious and other factors, resulting in uneven implementation of the law, while the modern abortion law in France is more based on medical and public health considerations, and pays more attention to the protection of women's health and rights and interests.

4. The Development Direction of Female Abortion Rights Law

There are some differences between the United States and France in the development of the legal basis of female abortion rights, but the value of law lies in satisfying the purpose and pursuit that people want to achieve through law, and it has meaning because of the existence of the value subject [15]. Every right has its corresponding source of value, and so does the right to abortion. That is, the legislative idea of abortion right also originates from the value source of abortion right. First of all, the right to abortion should fully protect the rights and interests of women as the direct subject of abortion rights, women's self-interest is a factor that must be considered. If the subject of the right does not have sufficient understanding of the harmfulness of the abortion act, it is also difficult to avoid the abortion act that will bring unnecessary harm to the subject of the right without comprehensive consideration.

According to the Lancet, in countries where abortion has been legalized, the abortion rate fell by 43% between 2015 and 2019; In countries with strict restrictions on abortion, the rate rose by 12 percent. In countries where abortion is permitted, 90% of abortions are safe; By contrast, in countries where abortion is banned, only 25% of the procedures are safe. According to the World Health Organization, the maternal mortality rate for unsafe abortions is between 5% and 13%. If the law is banned without thinking, it will not only have a bad impact on the future life of the woman and the growth and education of the fetus after birth, but also have a negative impact on the development of society.

Secondly, the balance between rights is also an aspect that we should pay attention to [16]. If the right to abortion is not restricted, it can also become a vehicle for profligacy. Although the right to life of the fetus is not absolute, as the subject of human rights, its right to dignity is absolute. Even when abortion is performed, due respect should be maintained for the fetus, which is also the basic requirement of bioethics [17].

In the future, with the development of society and the change of values, the legislation of the two countries on women's abortion rights will be adjusted and improved. At the same time, the international community is gradually paying more attention to women's right to abortion. Countries can learn from each other and communicate with each other to jointly promote the protection of women's right to abortion, eliminate and regulate the factors that cause damage to the health of the right subjects as far as possible, and balance the legal relations related to other rights caused by the right to abortion while protecting the life safety of the right subjects as much as possible. Through legal norms, the subject of rights can freely, safely and rationally control the right to abortion, so that the right to abortion is truly protected by law, which is also its fundamental purpose.

5. Conclusion

Women's right to abortion has always been a controversial topic, and different countries have always had different attitudes towards it at the legal level. In the United States, due to religious feelings, feminist thoughts, differences in constitutional interpretation and other factors, there are repeated attitudes and regional differences in judicial practice. However, in France, the protection of abortion right has deep popular support, which also makes the right to abortion in France directly included in the scope of protection of the constitution. It is impossible to say which approach is best, but both countries are struggling to find the right balance between protecting and restricting abortion rights. And only on the basis of rational consideration of national conditions on the basis of learning from the advanced ideas of other countries, can the abortion right play its supposed value.

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