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The Analysis of Feminist Theory and Emotional Dimensions in Abortion: A Case Study of the UK's 1967 Abortion Act

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Women's pursuit of basic reproductive rights, including the right to free abortion, has gone through a long and complicated historical process. While this goal has yet to be fully achieved, relevant legislation in many countries provides safeguards for it, though numerous problems remain. This article examines the UK's approach, taking the Abortion Act 1967 as an example. Compared to the strict restrictions of the past, this provision relaxed restrictions and reduced penalties for abortion, hailed as a progressive, "woman-centred" measure and a major victory for British women. However, in the context of modern society and the rapid development of medical ethics, this law has gradually revealed its historical limitations and lags, failing to fully respond to the complex demands of today for reproductive justice and bodily autonomy. The issue of abortion involves multiple legal, ethical, moral, medical, and social dimensions, requiring analysis from a multidisciplinary perspective. Therefore, this article attempts to combine feminist theory with "law and emotion" theory to analyse the Abortion Act 1967, exploring its potential insights and contributions to the development of abortion law, aiming to promote a more scientific, rational, and humane approach to abortion law.

Keywords: the Abortion Act 1967, feminism, law and emotion

Introduction

In recent years, with the growing power of women and the rise of global women's movements, many important topics about women's rights have entered public discussions. These topics include equal pay for equal work, fighting against domestic violence, and opposing violence and hate against women. Among these issues, the right to abortion has always been at the centre, because it is closely related to women's control over their own bodies and reproductive choices.

In 2022, the U.S. Supreme Court overturned the famous "Roe v. Wade" case in the Dobbs decision. This means the court said abortion is not a right protected by the U.S. Constitution. Each state can now make its own rules about abortion.[1] In contrast, in March 2024, France added the right to abortion into its Constitution. This

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[1] 19-1392 Dobbs v. Jackson Women's Health Organization (06/24/2022), Opinion of the Court, slip op., at 5; ibid. Opinion of the Court, slip op., at 6.

gave strong support to the global feminist movement. Today, in many countries, women are still working hard to win the right to abortion. Although the UK's 1967 Abortion Act was progressive at that time, after over 50 years of changes in society and moral values, this law can no longer meet the modern needs of protecting women's reproductive rights. Abortion laws are not only about legal rules. They also show the values and human rights of a society. A good law should have clear rules, but also show respect, care, and understanding for life and social responsibility. So, it is important to look at abortion laws from different points of view. This includes using feminist theory and the idea of "law and emotion" to study them. This can help make the laws more human-friendly and help society reach a better understanding and agreement.

The Background, Breakthroughs, and Controversies of the Abortion Act 1967 in the UK

The Background of the Abortion Act 1967

The enactment of the Abortion Act 1967 has gone through a long period of history. Before the 19th century, common law defined abortion as a crime (Jones, 2023, p. 244). Abortion was later codified in UK statute law through Lord Ellenborough's Malicious Shooting or Stabbing Act of 1803. The Infant Life Preservation Act (ILPA) 1929 defined the crime of "child destruction" as the killing of a viable foetus in utero.

In 1936, Janet Chance, Alice Jenkins, and Stella Browne co-founded the Abortion Law Reform Association (ALRA). Their insight into the unfair class differences in reproductive health—wealthy women could obtain "therapeutic abortions" through private doctors, while working-class women were forced to risk their lives in illegal abortions—began the modern abortion rights movement in the UK and laid the social foundation for subsequent legislative breakthroughs (Klausen, 2024, pp. 94, 95). Then, to solve the problem of back-street abortions, the Abortion Act 1967 emerged, establishing the conditional legalisation of abortion within the framework of British law.

The Breakthroughs of the Abortion Act 1967

First, the Abortion Act 1967 set out the legal conditions for the legalisation of abortion. Under s1(1) to s1(3) of the Abortion Act 1967, two conditions must be met for abortion to be legal. First, abortion must be performed in a place ruled by the Act (e.g., a hospital under the National Health Service (NHS) or a place approved by the Secretary of State for Health). Second, two registered doctors must be "formed in good faith" that the pregnant woman's situation meets one of the following four legal circumstances: (a) The pregnancy is not more than 24 weeks and its continuation will pose a greater risk to the physical or mental health of the pregnant woman or her existing children than termination of the pregnancy; (b) termination of the pregnancy is necessary to prevent the pregnant woman from suffering serious and permanent physical or mental harm; (c) the continuation of the pregnancy will pose a greater risk to the life of the pregnant woman than termination of the pregnancy; or (d) there is a substantial risk that the fetus, if born, will suffer from severe physical or mental defects resulting in severe disability. In essence, it can be seen that the Act no longer allowed abortion solely to save the mother's life; by permitting abortions on all the broader grounds listed in Section 1, it effectively expanded the scope of lawful abortion.

And, s1(3A) to s1(3D) further supplement and expand the legal abortion places originally stipulated in s1(3), relaxing the restriction of location. The clause allows abortion drugs to be prescribed remotely by a registered doctor at their residence if the doctor "forms an opinion in good faith" that the pregnancy is not more than 10

weeks and the drugs will be used in accordance with their instructions, and allows pregnant women to terminate their pregnancy by self-administering drugs at home after medical consultation. This change broadens the scope of applicable locations in medical practice and provides more flexible and convenient termination methods for women in early pregnancy.

Secondly, the Act helped to "decriminalise" abortion to some extent. Britain's first abortion law, the Ellenborough Act of 1803, made abortion after quickening a capital crime and abortion before quickening a lesser offence (Jones, 2023, p. 244). The Offences Against the Person Act 1861 set life imprisonment as the maximum penalty for self-induced abortion or helping someone else to have one. The Infant Life (Preservation) Act 1929 stated that anyone who destroyed the life of a child capable of being born alive before it was independent of its mother was guilty of "child destruction" and could be sentenced to life imprisonment. But it also allowed abortion to be done honestly to save the mother's life. The Abortion Act 1967 changed this by clearly saying that any abortion carried out under Section 1 of the Act would not be a crime under the 1929 Act. In this way, the Abortion Act 1967 became the main legal basis for lawful abortion in the UK.

Finally, the Abortion Act 1967 provides for some specific issues. One of the more important provisions of the Act is the conscientious objection for medical professionals, explicitly granting them the right to conscientiously refuse to participate in a termination of pregnancy. This protects women's rights while balancing professional ethics and freedom of belief at the legal level. Another example is the development of abortion time limits. Although the Act did not stipulate a time limit for abortion, it was influenced by the Infant Life Preservation Act (ILPA) 1929. In practice, it was generally limited to 28 weeks of pregnancy (Jackson, 2022, p. 773). Later, the Human Fertilisation and Embryology Act 1990 changed the Abortion Act 1967, clearly stipulating the time limit for abortion to 24 weeks. Furthermore, Section 7 of the Act limited the law's application to England, Scotland, and Wales, excluding Northern Ireland. This resulted in Northern Ireland having the strictest abortion laws in the UK for a long time thereafter.

The Controversies of the Abortion Act 1967

It is undeniable that the Abortion Act 1967 has largely promoted the legalisation of abortion in the UK. However, in practice, the application of relevant provisions has caused many controversies. One of the key issues concerning the Abortion Act 1967 is the scope of healthcare professionals' legal right to conscientious objection. Finally, in two cases of Greater Glasgow Health Board v. Doogan & Anor[2] and Greater Glasgow Health Board v. Doogan & Anor[3], the courts interpreted and narrowed the meaning of "participate" as used in Section 4, thereby placing certain limits on how broadly this right can be applied in practice. The current controversy surrounding this provision is whether it is necessary to incorporate conscientious objection based on religious beliefs into the legal framework. The legalisation of abortion means the state has granted the medical profession the power to regulate the procedure. However, conscientious objection is not a completely neutral right. While it empowers medical professionals, it can also exacerbate inequalities in rights between doctors and patients, particularly by hindering patients' right to timely access to legal medical services. How to carefully define the appropriate boundaries between religious freedom and reproductive autonomy in legal practice remains an ongoing challenge.

[2] Janaway, R (on the application of) v. Salford Area Health Authority [1988] UKHL 17 (UKHL (1988)).
[3] Greater Glasgow Health Board v. Doogan & Anor [2014] UKSC 68 (UKSC (2014)).

Another important issue related to the Abortion Act 1967 is the ongoing debate around the decriminalisation of abortion. From the provisions of the Abortion Act 1967, although the Act greatly relaxed the restrictions on abortion and reduced the risk of criminal penalties for abortion, it did not achieve complete decriminalisation. For example, in the recent case of Foster v. R. [2023] EWCA Crim 1196, Carla Foster was charged with intentionally poisoning herself to induce a miscarriage[4], in violation of Section 58 of the Offences against the Person Act 1861. On appeal, the court only reduced her sentence to 14 months' imprisonment, suspended for 18 months. The case sparked an ongoing debate about decriminalizing abortion.

On June 17, 2025, the UK House of Commons passed a key amendment to the Criminal Justice Bill by 379 votes to 137, intending to establish the principle of "decriminalisation" of abortion and stipulate that women in England and Wales shall not be subject to criminal investigation or prosecution for terminating their own pregnancy.

How Can Feminist Theory Transform Abortion Law?

A Brief Introduction to Feminist Theory

Contemporary feminist theory is a large, diverse, and productive body of knowledge and politics (Ferguson, 2017, p. 270). Feminist theory is not only about women, but also about participating in and transforming the world through intersectional perspectives (e.g., race, class, environmental ecology, etc.). It seeks to develop through interdisciplinary exploration and critical political practice, disrupting conventional thinking, revealing structural inequalities, challenging multi-layered power dynamics, and promoting collective action towards a more just world. Ferguson points out that the goal of feminist theory is not to establish a closed academic subfield, but to challenge power structures, stimulate critical imagination, and work towards a more just social vision. Feminist theory is essentially a change-oriented academic practice, and the challenge to oppression and the pursuit of justice are the core driving forces of its theoretical construction. In this context, the pursuit of reproductive freedom naturally becomes an integral part of women's rights advocacy.

Feminist thought has had a profound and fundamental impact on the legal field, with its core lying in challenging and reshaping the traditional myths of legal "neutrality" and "universality". It profoundly points out that many seemingly gender-neutral legal rules are often designed and interpreted based on male experiences and perspectives, thereby systematically ignoring women's rights, experiences, and needs in essence. This impact is specifically reflected in two aspects: First, legislative changes, which involve promoting the introduction of a series of laws aimed at eliminating gender discrimination and promoting substantive equality in various countries. For instance, significant breakthroughs have been made in areas such as anti-domestic violence, anti-sexual harassment, safeguarding gender equality in the workplace (such as equal pay for equal work and anti-pregnancy discrimination), recognizing marital rape as a crime, and reproductive autonomy (such as abortion rights). Second, the innovation of legal theory and judicial practice. Feminist jurisprudence, by introducing a "gender perspective", criticizes the traditional division between public and private spheres (regarding domestic violence as a "private matter"), reinterprets the connotation of "equality" (shifting from formal equality to pursuing substantive equality of outcome fairness), and advocates for paying attention to women's unique situations and power inequalities in

[4] Foster v. R [2023] EWCA Crim 1196 (EWCA (Crim)).

the judicial process. This prompts judges to apply the law in a more insightful manner, ultimately driving the transformation of law from a tool for maintaining patriarchal structures to a powerful force for promoting gender justice.

Rights Balancing and Decriminalisation in the Development of Abortion Law Under Feminist Theory

The influence of feminist ideology on abortion rules is fundamental and revolutionary, successfully transforming abortion rights from a purely medical or criminal issue to a core social justice issue concerning women's autonomy, equality, and dignity. Its core contribution lies in proposing the resounding slogan "My Body, My Choice" and profoundly demonstrating from a theoretical perspective that reproductive autonomy is the foundation for women to achieve economic independence, social participation, and personal freedom. Feminist jurisprudence criticizes the traditional male dominated legislative bodies' control over women's bodies, pointing out that depriving women of the right to safe and legal abortion essentially treats them as reproductive tools rather than citizens with complete personality rights. Driven by this trend, many regions around the world have achieved the "decriminalization" and "legalization" of abortion, and their legal arguments have gradually shifted from privacy rights (such as the basis of the Roe v. Wade decision in the United States) to a more solid gender equality framework—that is, laws restricting abortion will inevitably hinder women's equal opportunities for education, employment, and full participation in public life, thereby exacerbating gender inequality. Despite ongoing opposition, feminism has successfully placed the right to abortion at the center of public debate and continues to push for legal recognition and protection of women's bodily autonomy. Despite legal setbacks in some parts of the world, the feminist movement remains the most important force in defending this right. Its ultimate goal is not only to amend the law, but also to completely change society's views on childbirth, family, and women's roles.

In the field of reproductive rights related to abortion, reproductive rights theories such as reproductive justice have emerged. Reproductive justice describes its pursuit: the right not to have a child, the right to have a child, and the right to parent children in safe and healthy environments. This concise and powerful appeal is also a microcosm of the goal of reproductive rights. When further limiting the perspective to specific laws, this essay argues that feminist theory has played an important role in promoting reproductive rights freedom, especially the birth and reform of the Abortion Act 1967. Based on the literature reviewed, this essay argues that feminist theories on reproductive rights provide two contributions to the improvement of the Abortion Act 1967 in the future, at least.

Firstly, they positively respond to the controversy over the rights of persons with disabilities arising from s1(1)(d) of the Abortion Act 1967. Klausen's research points out that before the Abortion Act 1967 was enacted, the early Abortion Law Reform Association (ALRA) strategically allied itself with eugenics discourse to gain broader social and political support in the process of promoting the legalisation of abortion. This strategy also indirectly contributed to the eugenic implications of Section 1(d) in the final text of the Abortion Act, and subsequently sparked ongoing controversy over disability discrimination. Today, in the case of Crowter & Ors, R v. Secretary of State for Health And Social Care [2021] EWHC 2536[5], the possible eugenic element and

[5] Crowter & Ors, R (On the Application of) v. Secretary of State for Health And Social Care [2021] EWHC 2536 (Admin) (EWHC (Admin)).

discrimination against the disabled community contained in the provision were still raised as important points. Tongue argues in the article that the disability exception in Section 1(1)(d) could perpetuate harmful attitudes towards people with disabilities (Tongue, 2022, p. 182). While the implicit survival threshold in the Abortion Act demonstrates a certain recognition of the moral status of the fetus, the fetus is not a "person" to whom the concept of "freedom from discrimination" can be easily applied, but this differential treatment can also perpetuate contemptuous attitudes toward children and adults with disabilities. Tongue also pointed out that "abortion rights" and "disability rights" should not be expressed as conflicting rights, but should be within a framework that supports the reproductive autonomy of pregnant women while recognising and eliminating social discrimination and inequality against disability. Sheldon expressed the same point in her article, that if the modern ethical values of equality, diversity, and inclusion are to be truly reflected in laws and policies, the reproductive rights of pregnant women and the rights of people with disabilities must be seen as complementary and mutually supportive concepts (Sheldon, 2024, p. 107).

Second, feminist theory has played a positive role in promoting the decriminalisation of abortion, especially in responding to the key question of "why abortion should be decriminalised" and has provided theoretical support. In their article "Decriminalising Abortion in the UK: What Would It Mean?", Sheldon and Wellings explore in depth the adverse consequences of criminalising abortion, pointing out that current laws create psychological pressure and shame on women seeking abortions and hinder open communication between doctors and patients (2020, p. 45). In a related study in 2024, Sheldon further pointed out and called for that although abortion is a routine medical service provided by the NHS, it is still based on the punitive and conservative values of the Victorian era and can no longer reflect modern medical practice and ethical values. Therefore, fundamental reforms should be carried out, especially the decriminalisation of abortion (2016, p. 334).

In summary, the development of feminist theory in the field of reproductive rights has provided a powerful impetus for the amendment and progress of the Abortion Act 1967. Relevant theories not only focus on women's reproductive autonomy, but also focus on the importance of protecting the rights of other groups (e.g., people with disabilities), reflecting the consideration and balance of multiple equal values. At the same time, feminist scholars have also conducted in-depth research on the issue of decriminalisation of abortion, provided theoretical analysis and data support, and laid a solid foundation for legal reform in this area.

Exploring the "Law and Emotion" Dimension of Abortion Rights

A Brief Introduction to the Theory of Law and Emotion

"Law-and-emotion" is an emerging field that seeks to explore the relevance of human emotions to legal analysis. The field covers a wide range of legal constructs, including substantive and procedural doctrines, behavioural models underlying legal rules, and the impact of emotions on law-relevant decision making (Maroney, 2006, p. 120). And the theory seems intent on challenging the rationality-centred principle of law, and points out that law not only always takes emotional factors into account but "makes" emotions play a role in many areas of law (e.g., in criminal law, family law, and tort law). Based on Maroney's article, this article temporarily defines the new field (law-and-emotion) as the study of law based on emotion research or emotion theory, where "the core of the relevant literature is that which is fundamentally and centrally grounded in at least one issue of law and one of emotion".

The Developmental Trends of Abortion Rights From the Perspective of the Law and Emotion Theory

Combined with the review of relevant literature on the theory of law-and-emotion, this essay argues that although this field is relatively new, its interdisciplinary nature and new research ideas can provide more perspectives for the development of feminist theory and the fight for abortion rights as well as the promotion Abortion Act 1967. For example, law-and-emotion combined with feminism provides a new perspective. In Abrams' article (2005, p. 325), she not only shows the dynamic changes that "emotion" has undergone in the development of feminism, but also further reveals the similarities and commonalities between it and feminist theory in the "constructivism" stage. Abrams further points out that because both emotion and gender are socially constructed, feminists can more effectively understand and challenge the deep mechanisms of gender oppression by analysing how the law shapes the emotional structure and gender identity of individuals. This provides support for women's rights (e.g., abortion rights).

In addition to women, the application of the "law and emotion" theory in the abortion issue can also be extended to medical professionals as a key subject. For example, Duffy et al. combine the cultural theory of emotion and mood to investigate medical staff in Ireland, aiming to reveal how their behaviour is affected by emotion and future imaginations related to the law, to respond to the question of why abortion services are provided or refused (2018, p. 12). The study ultimately revealed the complex emotions of medical staff, including: "fears of personal futures" (e.g., concerns about career prospects, concerns about behavior being misinterpreted, etc.) and "fears of abortion seekers' future" (e.g., concerns about the psychological state of abortion seekers, concerns about whether abortion seekers can obtain effective and safe abortion services in time, etc.).

The expansion of this perspective is of great significance: It not only enriches the empirical dimension of the "law and emotion" theory in specific medical situations, reveals the implicit regulation of the law on the behavior of medical personnel through emotional mechanisms, but also makes people aware of the complexity of the emotions of medical personnel, promotes the design and implementation of more humanistic medical policies, and ultimately ensures that abortion patients can obtain safe and timely medical services while preventing medical personnel from being "stigmatized".

In addition, the introduction of the "law and emotion" theory provides a key perspective for analysing the driving mechanism of emotions in legal change and social movements. O'Shaughnessy explores the moral and emotional construction of abortion during the 2018 "Yes" campaign through in-depth semi-structured interviews with 27 Irish abortion activists (2022, p. 3). At the same time, these specific moral concepts and emotional expressions are compared with the activists' own feelings or experiences about abortion, exploring the similarities and differences between them, to gain a deeper understanding of the achievements of the 2018 movement (e.g., what was done right during this movement), as well as further understanding of what needs to be done next (e.g., calling for further destigmatization of abortion). O'Shaughnessy also introduces the theory of "law-and-emotion" and adopts a chronological approach to analyze the emotional and bodily experiences in the Irish abortion rights movement, including activists' experiences growing up under the 8th Amendment, their emotional involvement in the fight for abortion rights, and their changes in reproduction, body, and intimacy after the amendment was repealed in 2018. This study highlights that emotion can not only be a mobilising force, but also an indispensable internal dimension in the transformation of legal order.

Of course, as a theory still in its development stage, law-and-emotion theory still faces some challenges. For example, although there is a basic definition, the boundary between it and other theoretical fields is still vague, and the classification of some studies is controversial. In addition, research literature related to abortion is relatively scattered and lacks systematic organisation and integration, which brings certain obstacles to academic retrieval and research. Especially when the author does not mark the theoretical framework adopted, researchers often need to judge on their own whether it falls into the category of law-and-emotion, which increases the difficulty and uncertainty of understanding and analysis. However, precisely because of its openness and highly interdisciplinary nature, "Law and Emotion" theory is not a closed research system, but rather a growing field full of tension and hope. In the future, we can expect to see the cross-fertilisation of more theoretical perspectives, enriching the explanatory power of legal activities such as the generation and revision of legal norms, and opening up new analytical paths for understanding the complex interaction between law and society.

Conclusion

The struggle for reproductive justice has been ongoing for years and has achieved some success, but the debate over pro-choice and anti-abortion remains a hot topic in legal and social movements. Under the Abortion Act 1967, women seeking abortions faced the potential threat of criminalisation. The decriminalisation of abortion in the UK will end the criminal threat that hung over women's heads for nearly 150 years. Ed Frew, Vice President of the British Medical Association, called this a "belated but crucial step".[6] However, we must also be aware that the establishment of the principle of decriminalisation of abortion does not mean a complete solution to the problem. There is still a long way to go to truly achieve the decriminalisation and destigmatization of abortion. The in-depth application of feminist theory can analyse women's rights, social status, and the various dilemmas they face regarding abortion, laying a foundation for legal reform. Simultaneously, the application of "law and emotion" theory can examine the emotional factors underlying legal texts and how they influence public perception, judicial practice, and individual behaviour, reflecting on how the law should proactively and impartially respond to and guide social emotions. Furthermore, a critical interpretation of the ethical dilemmas and other issues inherent in current abortion policy will provide indispensable theoretical support and reform paths for promoting the modernisation, humanisation, and justice of the UK's abortion legal system.

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