

The Sexual Contract in law and religion

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A guest post by Russell Sandberg and Sharon Thompson, of Cardiff School of Law and Politics, on the forthcoming conference celebrating the thirtieth anniversary of the publication of *The Sexual Contract*

On the face of it, a conference to mark the thirtieth anniversary of the publication of Carole Pateman's book, *The Sexual Contract*, at Cardiff University in May seems to be of little relevance to Law and Religion scholars. This blog post argues that this assumption is misguided, explains why feminist approaches need to be more central in Law and Religion literature and why you should book your place for the Cardiff conference.

Although there is now a rich body of feminist legal scholarship, the impact of feminist ideas upon legal sub-disciplines has been uneven. Public Law in general and Law and Religion in particular (which has evolved from a focus on Church-State relations) has been generally immune from feminist theory. There are, of course, exceptions, particularly in relation to work on religious dress and religious tribunals.

However, overall, feminism is not central in Law and Religion scholarship. As Failing et al point out, this is odd given how central women tend to be in religious activities: they are 'arguably, essentially DNA from which many rich religious cultures are built': see M A Failing, E R Schlitz and S J Stabile, 'Foreword' in M A Failing, E R Schlitz and S J Stabile (eds) *Feminism, Law, and Religion* (Ashgate, 2013) xiii.

This is one reason why Carole Pateman's book *The Sexual Contract* (Polity Press, 1988) still resonates so much thirty years after its publication. This ground-breaking work highlighted a disconnect between the myth – that all citizens were equal under the social contract – and the reality, that across institutions, women were subordinate to men. Today the gendered dimension of Law and Religion scholarship is still often buried, and so this myth of equality is promulgated. However, Pateman's work highlights the need for a feminist approach and to recognise the sexual contract within religious institutions.

A characteristic of feminist legal studies as a form of the critical legal studies movement is that it highlights, challenges and disrupts understandings and narratives about law. Feminist approaches to law are varied. Feminism is best understood not as a discrete approach characterised by a fixed set of principles. Rather, as Joanne Conaghan has noted, it is a dynamic "process of engagement or interaction – a dynamic movement of ideas": see J Conaghan, 'Reassessing the Feminist Theoretical Project in Law' (2000) 27 (3) *Journal of Law and Society* 351, 356. Whilst such approaches are often labelled as being different types of feminism (for instance, radical, liberal, socialist) *The Sexual Contract* broke the mould in 1988 by rejecting such categories because, Pateman said,

this suggested that “feminism is always secondary, a supplement to other doctrines”. Thus, her book conveys a powerful message for application to Law and Religion scholarship today – a feminist perspective does not need to be aligned with other doctrines. To understand the sexual contract, feminism comes first.

A feminist approach alters the lens in which we see law and the social world by placing a much greater emphasis upon gender. It sheds a light on structural and entrenched disadvantages that are perpetuated. Feminist scholarship focuses on structures and discourses that are often invisible in the conventional stories that are told.

By choosing not be silent on the gendered dimensions, in feminist scholarship issues of power are placed at the core of the discussions rather than on the margins. This questions and debunks conventional and traditional understandings about law and talk of law.

Gender is never absent from a discussion about where fundamental values in law come from, particularly when examining the wider context of social relations in which values are constituted and accepted. A feminist approach to Law and Religion acknowledges that ideas about gender are both affected by and affect legal ideas.

Feminist scholarship is grounded. It dispenses the usual ‘top-down’ analysis to focus instead on actual lived experiences, operating from the ground up. *The Sexual Contract* is an important example of this, as Pateman shows in practical terms how the sexual contract affects actual life and human behaviour. Her work exposed the binary constructions that are often pervasive in masculine-dominated public discourse, such as the artificial boundaries between public and private spheres. In doing so, *The Sexual Contract* began a feminist trend that has been critical of such dichotomies and has highlighted the connectedness and integrated nature of human existence.

Pateman’s feminist approach in *The Sexual Contract* changes our view of Law and Religion scholarship drastically. Applying her approach to this discipline is not an exercise in simply critiquing legal contracts between individuals in religious contexts, because her focus in the book was on social structures, such as the sexual contract embedded in the institutions of marriage and employment. As a result, *The Sexual Contract* requires us to rethink the place of women within Law and Religion, and question pre-existing assumptions about equality within this area of scholarship.

The Sexual Contract is a stunning example of what a feminist approach can achieve. It unpacks and critiques the conventional story (or conjectural history as she put it) of the social contract pointing out that the story of the sexual contract has been repressed. It has been assumed that gender inequalities are no longer relevant and that all adults enjoy the same standing and can exercise their freedom in the same way by entering into marriage and employment contracts. Pateman corrects this by changing the lens, by telling the untold story, by making visible what was previously invisible.

Marriage and employment contracts are frequently discussed by Law and Religion academics but a feminist approach is rarely used. This is a great untapped area for Law and Religion scholarship. Our own work (R Sandberg and S Thompson 'Relational Autonomy and Religious Tribunals' (2017) 6(1) *Oxford Journal of Law and Religion* 137-161) has begun to apply the approach of Feminist Relational Contract Theory, a framework created by Thompson in the context of prenups (S Thompson, *Prenuptial Agreements and the Presumption of Free Choice* (Hart, 2015)) to the debate on religious tribunals, but much remains to be done.

Pateman's ground-breaking work can be a catalyst for this. Recently the founders of the Cardiff University Law and Gender research group (Dan Newman, Lydia Hayes and Sharon Thompson) met with Carole Pateman for a discussion of the themes of the book and its legacy 30 years on. An [open access article](#) reflecting on this has recently been published by Feminist Legal Studies.

Feminist Legal Studies and the Law and Gender group (as part of the Cardiff Centre for Law and Society) are collaborating on a conference to be held in Cardiff on **10-11 May** celebrating the 30th anniversary of *The Sexual Contract*. This is a unique opportunity to celebrate this feminist masterpiece, engage with its author Professor Carole Pateman and hear her keynote address. We are also joined by Professor Joan Tronto and her keynote address on day two will interrogate the relation of care ethics to contract. Plenaries and discussion panels feature exciting new scholarship from US, UK, Australian, EU and Canada inspired by *The Sexual Contract*. Academic presentations will develop new understandings of the contemporary contractual dynamics of employment, marriage, prostitution, surrogacy and other forms of contract.

The Sexual Contract is a book which was written to be read as a whole. Similarly, this conference is organised so as to be experienced as a whole. All attendees can engage with all presentations and the evening meal on 10 May provides an important opportunity for socialising and community-building. The conference fee is £25 (this includes lunch and refreshments on both days and an evening meal on 10th May).

For further information including the programme, see <https://lawandgender.org/the-sexual-contract-30-years-on>. To book, go to: <http://www.eventsforce.net/cbs/386/home>. We look forward to seeing you there.

Russell Sandberg and Sharon Thompson