

New Article: Conflict of Laws and Relational Feminism

Readers of this blog might be interested in Roxana Banu, “A Relational Feminist Approach to Conflict of Laws” (2017) 24 Mich. J. Gender & L. 1. It can be accessed through SSRN at this location.

The specific context is transnational surrogacy arrangements, but much of the article goes beyond that to other areas of the field more generally. The article engages with work by several other scholars who write about theories or philosophies of private international law.

The Abstract is below.

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Feminist writers have long engaged in critiques of private law. Surrogacy contracts or the “reasonable man” standard in torts, for example, have long been the subjects of thorough feminist analysis and critique. When private law issues touch on more than one jurisdiction, Conflict of Laws is the doctrine that determines which jurisdiction can try the case and—as separate questions—which jurisdiction’s law should apply and under what conditions a foreign judgment can be recognized and enforced. Yet, there are virtually no feminist perspectives on Conflict of Laws (also known as Private International Law). This is still more surprising when one considers that feminist approaches to Public International Law have been developing for over a quarter century.

In this Article, I show that there is a fundamental need to rethink the image of the transnational individual in Conflict of Laws theory and methodology. It is here, I argue, that feminism—specifically relational, often known as cultural, feminism—has an important contribution to make to Conflict of Laws. I develop a relational feminist approach to Conflict of Laws and apply it to a pressing contemporary issue, namely transnational surrogacy arrangements.

Overall, this Article shows how relational feminism can illuminate the problems of adopting an atomistic image of the individual in a transnational context, as well as provide an outline for an alternative—a relational theory of the self that redefines

autonomy and the law, creating an important shift in how Conflict of Laws perceives its regulatory dimensions. The Article connects three of relational feminism's core insights—the notion of relational autonomy, the focus on relationships, and relational theories of judging—to Conflict of Laws theory and methodology.