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CURRENT POSITION

Columbia Law School, New York, NY Aug. 2010-July 2012
Center for Reproductive Rights Fellow
Two-year academic fellowship focused on health and reproductive rights.

EDUCATION

New York University School of Law, New York, NY
LL.M. in International Legal Studies, 2007
G.P.A.: 3.94
Thesis: *The Promise and Pitfalls of Transnational Intelligence Sharing Networks*
Honors: Institute for International Law and Justice Scholar – *full tuition scholarship for academic merit*
Activities: Human Rights First, Intern, Sept. 2006-Feb. 2007

New York University School of Law, New York, NY
J.D., *magna cum laude*, 2006
Honors: *New York University Law Review*, Notes Editor 2005-06, Staff Editor 2004-05
Order of the Coif
Dean's Scholarship – *full tuition scholarship for academic merit*
Activities: Research Assistant, Professor Sylvia Law, 2004-05
Research Assistant, Professor Jonathan Todres, 2005-06
Center for Constitutional Rights/NYU Human Rights Clinic, Fall 2005
Government Civil Litigation Clinic, E.D.N.Y., Spring 2005
New York University Law Review Diversity Committee, 2005-06

Boston University, Boston, MA
B.A. in History, *summa cum laude* with distinction, 2002
Thesis: *'Her Only Treasure Lost': Rape and Reputation in Eighteenth-Century Venice*
Honors: Trustee Scholarship – *full tuition scholarship for academic merit*
Phi Beta Kappa
2002 College Prize for Excellence in History
2002 Alumni Association Award for Writing Excellence in the Social Sciences
2001 Humanities Foundation Robert E. Yellin Prize

CLERKSHIP

The Honorable Marjorie O. Rendell, Third Circuit Court of Appeals Sept. 2007-Sept. 2008

Elizabeth Sepper

TEACHING AND RESEARCH INTERESTS

Primary: Health Law, Contracts, Professional Responsibility

Secondary: Torts, Administrative Law, Bioethics, Human Rights Law, International Law, International Organizations

PUBLICATIONS

Job Talk Paper: *Whose Conscience Counts?*, available at <http://ssrn.com/abstract=1888375> (in progress)

This paper challenges the conventional account of morality in medicine, which limits conscience to the doctor who refuses to deliver controversial treatments, such as withdrawal of life support, abortion, and sterilization. Through engagement with the moral philosophical literature on conscience, it demonstrates that conscience equally may compel a provider to deliver treatment to a patient in need. It presents the novel argument that legislative efforts to protect conscience have created asymmetries in the treatment of conscience, which have been exacerbated by endowing institutions with conscience. It then introduces a legislative framework to resolve the overlooked tension between institutions and individuals.

Future Project: *Unethical Contracts*

This paper will examine the use of medical ethics as a constraint on contracts between physicians and institutional actors (such as employers and managed care organizations). It will argue that courts increasingly consider professional ethical codes an appropriate source of public policy and disapprove of contracts that violate these obligations. The paper will explore the doctrinal framework's potential uses and limitations and suggest ways in which it might enhance trust in the doctor-patient relationship and generate more ethical behavior.

Democracy, Human Rights, and Intelligence Sharing, 46 TEX. INT'L L.J. 151 (2010)

This article argues that a professional ethos among intelligence officials constitutes the primary mechanism of accountability in transnational intelligence sharing. It focuses on the function of professionalism and reputational sanctioning within intelligence networks. It contends that these networks, though regulated by professional norms, lack democratic accountability and risk circumventing domestic and international legal obligations.

Confronting the 'Sacred and Unchangeable': The Obligation to Modify Cultural Patterns Under the Women's Discrimination Convention, 30 U. PA. J. INT'L L. 585 (2008)

This article analyzes of the meaning of article 5(a) of the women's discrimination convention, which requires state parties to "modify the social and cultural patterns of conduct of men and women." A close review of doctrine shows that the article serves interpretive and substantive roles, allowing a pragmatic approach to cultural change.

International Health Law, 41 INT'L LAWYER 629 (2007) (co-authored with Jonathan Todres & Laurel R. Hyle)

This article provides an overview of significant international health law developments.

Note, *The Ties That Bind: How the Constitution Limits the CIA's Actions in the War on Terror*, 81 N.Y.U. L. REV. 1805 (2006)

This note argues that Supreme Court case law regarding the Constitution's extraterritoriality indicates counterterrorism actions violating fundamental rights abroad are unconstitutional.

OTHER LEGAL EXPERIENCE

N.Y.U. Center for Human Rights and Global Justice, New York, NY Aug. 2009-Aug. 2010
Legal Fellow: Managed projects on social and economic rights, humanitarian assistance, and sexual violence in Haiti. Wrote reports and participated in the development of multi-disciplinary surveys, combining human rights and public health methodologies. Supervised clinic students and interns. Drafted op-eds, litigation documents, and briefing papers.

Human Rights Watch, New York, NY Sept. 2008-Aug. 2009
Legal Fellow: Designed and led advocacy campaigns at the United Nations on human rights issues, including health, sexual violence, and access to humanitarian aid. Lobbied diplomats at the U.N. Security Council and General Assembly. Ran press campaigns and wrote op-eds.

Cooley, Godward & Kronish, New York, NY Summer 2007
Summer Associate: Participated in preparation for murder trial. Researched and drafted memoranda on complex evidentiary issues. Received offer of permanent employment.

Cleary, Gottlieb, Steen & Hamilton, Rome, Italy and New York, NY Summer 2005
Summer Associate: Drafted SEC filings and licensing agreements for foreign corporations. Researched bankruptcy and tax issues for litigation. Received offer of permanent employment.

International Women's Rights Action Watch, Kuala Lumpur, Malaysia Summer 2004
Legal Intern: Drafted handbook on the effect of trade agreements on women's right to health. Participated in the UNIFEM Convention on the Elimination of All Forms of Discrimination against Women mission to Vietnam, meeting with government agencies and NGOs.

SELECTED PRESENTATIONS

- *Whose Conscience Counts?: Institutions, Individuals, and the Conflict Over Morality in Medicine*, Law and Society Association Annual Meeting, Panel on Institutional and Organizational Dimensions of Health, June 3, 2011.
- *Conscientious Objection in Comparative Perspective*, Reproductive Rights Comparative Law Seminar, Fordham Law School, April 28, 2011 (invited speaker).
- *Whose Conscience Counts?*, Columbia Law School Associates' and Fellows' Workshop, April 13, 2011.
- *Conveying Conscience*, Columbia Law School Associates' and Fellows' Workshop, Nov. 3, 2010.

ADDITIONAL INFORMATION

My hometown is Dallas, Texas, but I also have lived in Wisconsin, Florida, California, New York, Massachusetts, Pennsylvania, France, Austria, and Italy. I speak fluent Italian, proficient French, and basic Spanish.

Elizabeth Sepper

REFERENCES

Carol Sanger, Barbara Aronstein Black Professor of Law, Columbia Law School,
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Sylvia Law, Elizabeth K. Dollard Professor of Law, Medicine and Psychiatry, New York
University School of Law, phone: (212) 998-6265, email: *SylviaLaw@aol.com*

Philip Alston, John Norton Pomeroy Professor of Law, New York University School of Law,
phone: (212) 998-6173, email: *philip.alston@nyu.edu*

Margaret Satterthwaite, Associate Professor of Clinical Law, New York University School of
Law, phone: (212) 998-6657, email: *margaret.satterthwaite@nyu.edu*

The Honorable Marjorie O. Rendell, U.S. Court of Appeals for the Third Circuit,
phone: (215) 597-3015, email: *chambers_of_judge_marjorie_rendell@ca3.uscourts.gov*

Jonathan Todres, Associate Professor of Law, Georgia State University's College of Law,
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RESEARCH AGENDA

My primary scholarly interests are health law, professional ethics, and human rights. Broadly, I seek to address two questions: (1) how do legal obligations interact with ethical norms? (2) how do rights develop in the face of assertions of tradition or culture? These questions are especially salient in health and human rights law, both of which rely heavily on extra-legal norms for compliance with legal obligations. Health law, in particular, presents interesting challenges regarding the relationship of ethical standards to other relevant doctrinal areas including contracts, torts, and administrative law.

This agenda stems from my previous research and practice experience at Human Rights Watch and the Center for Human Rights and Global Justice at New York University School of Law. In a recent article, *Democracy, Human Rights, and Intelligence Sharing*, 46 TEX. INT'L L.J. 151 (2010), I examined the role of a professional ethos in regulating intelligence-sharing, an area largely devoid of accountability mechanisms, and the risk of such ethos running counter to domestic and international legal obligations. In *Confronting the 'Sacred and Unchangeable': The Obligation to Modify Cultural Patterns Under the Women's Discrimination Convention*, 30 U. PA. J. INT'L L. 585 (2008), I analyzed the doctrinal development of a provision of the women's discrimination convention, which requires state parties to "modify the social and cultural patterns of conduct of men and women" and its importance for addressing practices with negative effects on gender equality. Both of these pieces draw on insights gained through human rights work, and I anticipate that my experience with fact-finding, advocacy, and litigation on issues of health and sexual violence will continue to inform my research.

CURRENT AND FUTURE PROJECTS

1. Institutions, Individuals, and the Conflict Over Morality in Medicine

Currently, I am looking at the relationship between morality, professional ethics, and law in medicine as part of a larger project culminating in a pair of papers. The first, **my job talk paper, *Whose Conscience Counts?***, challenges the conventional account of morality in medicine, which limits conscience to those who refuse to deliver controversial treatments (conscientious objectors). The paper makes two inter-related claims. First, existing legislation has overlooked and undermined conscience for doctors and nurses who want to provide contested procedures. Legislative efforts and scholarly accounts have treated the archetypal doctor who refuses to participate in contested treatments—most commonly end-of-life care, abortion, sterilization, and contraception—as the touchstone of conscience. Doctors, nurses, and institutions dedicated to providing care, however, have been virtually absent from these discussions. Second, endowing healthcare institutions with conscience via legislation is theoretically and practically problematic. In the name of institutional conscience, healthcare

facilities have been permitted to assert moral or religious objections to care and impose them on employees, staff, and affiliates of all beliefs and backgrounds. By privileging the institutions' rights to refuse to provide certain treatments, legislation for the protection of conscience impinges on the rights of these individual doctors and nurses to deliver care they feel obligated by conscience to provide.

Through engagement with moral philosophical literature, the paper demonstrates that conscience may also compel a provider to deliver treatment to a patient in need. It argues that legislative efforts have created asymmetries in the treatment of conscience, which have been exacerbated by endowing institutions with conscience protection. The paper concludes that if legislation is to protect conscience, it must negotiate equally between competing claims of health providers and the facilities in which they work—whether they refuse or are willing to provide controversial care. Because small, cohesive facilities are more likely to reflect the value in moral associations that institutional conscience seems meant to protect, the paper proposes using the size or category of institution—to determine whether institutional interests or individual conscience are privileged, irrespective of the nature of the particular claim of conscience.

In the second part of this project, *The Migration of Conscience Clauses from Medicine to Marriage*, I will examine the spread of invocations of conscience beyond medicine—most controversially in new legislation that enables business owners to discriminate against same-sex marriage. Like doctors, the argument goes, businesses should be exempted from legal obligations—in this case, anti-discrimination norms—to which they object as a matter of traditional religious or moral beliefs. But does the idea of conscience, familiar from medical regulation, transplant so easily? Do the theoretical bases for medical conscience clauses have a counterpart in the debate over same sex marriage? I hope to analyze the appropriateness of medical conscience clauses as precedent for exemptions to non-discrimination norms. Using the bioethical and philosophical literature and exploring the genealogy of medical clauses, I will probe key conceptual differences, including the anchoring function of professional ethics. I will further assess the potentially widespread consequences of this legislation both for the effective enforcement of new and emerging rights and for medical conscience clauses, which until recently were thought to be unique.

2. The Relationship between Contract Law and Physicians' Professional Ethics

I have also begun to research the interplay between professional ethics and private law in a project on *Unethical Contracts*. The doctor-patient relationship has long been characterized as primarily contractual. Yet, physicians may agree to limit services, withhold information, or accept potential conflicts of interest—with no opportunity for patient bargaining at all—through contracts with employers, joint operations with medical institutions, and agreements with insurance companies. This private ordering of medical practice brings into question contemporary conceptions of the physician-patient relationship.

I plan to argue that courts increasingly employ ethics to police professionals' contracts through the doctrine of unenforceability for violating public policy. With regard to attorney and physician contracts, the consideration of ethics leads courts both to reject professionals' attempts to enforce contracts with patients (or clients) that violate ethics and to protect professionals from employer demands that conflict with ethical norms. From this case law, I hope to develop a rubric for analysis of healthcare contracts and examine its potential uses and limitations when applied to a variety of contractual models in medicine.

More broadly, this project will illuminate the wider repercussions of taking medical ethics seriously for both medical ethics and contract law. I will draw on the rich empirical literature on trust in medicine which provides normative support for the doctrinal development. This literature suggests that contractual obligations that diverge from ethical commitments to patients may have adverse effects on the trust in physicians that is essential to patient care and, ultimately, public health.

3. An Emerging Human Right to Prenatal Testing

Finally, I plan to investigate the elaboration of reproductive rights in the international system, the resistance to these rights based on appeals to traditional cultural values, and the strengths and weaknesses of the theories of these rights. In particular, the European Court of Human Rights has recently recognized a human right to prenatal testing. The Court has characterized this right, alternately, as simply a right to health information, as a specific right to terminate a pregnancy, and even as a right to personal autonomy—but does the characterization make a difference? I suspect that it may have significant effects on the development of a right to prenatal testing and implications for other areas of human rights law. Indeed, these cases raise particularly challenging questions for the European human rights system where determinations of when life begins and which medical services must be provided are within the margin of appreciation, or deference to domestic law, allowed to each state. A right to prenatal testing, on the other hand, seems to presume the right to terminate a pregnancy. I want to consider whether this case law suggests an evolution of the margin of appreciation and a firmer doctrinal foundation for a right to abortion under European human rights law. I further plan to assess the implications of a human right to prenatal testing for disability rights, medical ethics, and access to genetic information.

FURTHER PROJECTS AND TEACHING INTERESTS

I anticipate that the experience of teaching substantive classes related to health law, such as contracts, torts, or administrative law, will inspire me to extend my research further to these areas. I am especially interested in identifying and researching synergies between issues of ethics in medicine and those in law through teaching professional responsibility.