

# JESSICA L. ROBERTS

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## EDUCATION

**Yale Law School**, J.D., May 2006.

New Haven, CT

*Yale Journal of Law & Feminism*, Articles Editor, Book Review Editor

Balancing Civil Rights & Civil Liberties Post-9/11, Clinic Member

Yale Incentive Program for Public Interest Employment (YIPPIE), Founding Member

Research Assistant:

Professor Bruce Ackerman, 2004-2006

Professor Reva Siegel, 2005-2006

Professor Richard Brooks, Summer 2006

Professor Vicki Schultz, Summer 2006

**University of Southern California**, B.A., May 2002.

Los Angeles, CA

*Summa cum laude*, in Political Science; minors awarded in Law & Society, Theatre, and French.

Full Academic Scholarship

Political Science Departmental Honors

Renaissance Scholar Prize (Diversity of Academic Program)

Phi Beta Kappa (Junior Inductee)

Carl & Sterling Franklin Award (Phi Kappa Phi Award), Phi Kappa Phi (Junior Inductee)

Human Rights Watch University, Founder and President

## TEACHING & RESEARCH INTERESTS

Primary: Health Law & Bioethics, Employment Discrimination, Torts, Constitutional Law

Secondary: Contracts, Disability Law, Family Law, Feminist Legal Theory, Criminal Law

## PUBLICATIONS & WORKS IN PROGRESS

*Genetic Disorder: Antidiscrimination Principles in the Genetic Information Nondiscrimination Act* (in progress) (job talk).

Advocates of the Genetic Information Nondiscrimination Act (GINA) championed the legislation as the next major civil rights statute. Yet when read as such, GINA takes clear sides on one of the most contested issues in antidiscrimination law: the antidisubordination vs. anticlassification debate. On its face, GINA favors anticlassification, protecting individuals against discrimination on the basis of genetic information. This reliance on anticlassification has caused Congress, as well as the EEOC, to differentiate between genetic information and manifested disorders, thereby undervaluing genetic information's relation to preexisting conditions and disability. Conversely, an antidisubordination reading of the statute would seek to prevent the formation of a genetic underclass, a goal that supports protecting genetic information regardless of whether the associated medical condition has manifested. This paper proposes that incorporating antidisubordination norms into the understanding and interpretation of GINA has the potential to soften the current divisions between genetic information and manifested disorders, thereby providing more consistent, comprehensive protection for this new category.

## **PUBLICATIONS & WORKS IN PROGRESS (CONTINUED)**

*The Future Disabled: Genetic-Information Discrimination & Disability* (in progress).

GINA covers a class of people whom I call the “future disabled.” Previously, antidiscrimination law applied only to people with disabilities once they had developed a disabling impairment. GINA, however, offers protection to people who may develop disabilities in the future before their impairments ever manifest. Given the ubiquitous nature of genetic disadvantage—we all carry five to fifty significant genetic variations—we are all potential members of the future disabled. This observation supports understanding disability as a continuum, a position frequently—though not universally—adopted within disability studies. Understanding disability on a continuum breaks down the traditional dichotomies of normality vs. abnormality, health vs. disease, and, of course, ability vs. disability, thereby eliminating several of the distinctions that have historically allowed the othering of people with disabilities. GINA could, therefore, benefit the disability rights movement by universalizing disability.

*Preempting Discrimination: Lessons from the Genetic Information Nondiscrimination Act*, 63 VAND. L. REV. (forthcoming 2010).

Unlike previous antidiscrimination statutes, which respond to existing discrimination, GINA seeks to prevent a form of discrimination before it takes hold. Traditionally, Congress has passed retrospective antidiscrimination legislation, looking to the past to stop discrimination in the present and future. However, little evidence indicates that genetic-information discrimination is currently taking place on a significant scale. GINA is, therefore, the first preemptive antidiscrimination statute in American history. This Article begins with an overview of GINA and its legislative history and concludes by exploring the potential difficulties with preemptive antidiscrimination legislation.

*To Have & To Uphold: The Common Language of Status-Preserving Countermovements*, NAT’L BLACK L.J. (COLUMBIA) (forthcoming 2009).

Drawing from the work of Bill Eskridge and Reva Siegel, this Article proposes that countermovements progress through a common, three-part rhetorical framework: (1) natural law, (2) medical utilitarian, and (3) social republican. It then applies that framework to the antimiscegenation movement in two historical contexts: Reconstruction Alabama and pre-*Loving* Virginia.

*Accommodating the Female Body: A Disability Paradigm of Sex Discrimination*, 79 U. COLO. L. REV. 1297 (2008) (peer-reviewed by colloquium organizers).

The concept of disability has progressed from a problem located within the individual body to the failings of the built environment. When applied to workplaces constructed for male bodies, this principle supports the notion that building sex discrimination into the environment leads to a disparate impact on women under Title VII.

*An Area of Refuge: Due Process Analysis & Emergency Evacuation for People with Disabilities*, 13 VA. J. SOC. POL’Y & L. 127 (2005).

This Article maps the divergence of equal protection and substantive due process rhetoric in disability antidiscrimination law under the Fourteenth Amendment’s Section 1, Section 5, and the Americans with Disabilities Act. As equal protection has significant weaknesses for challenging disability discrimination, the Article advocates shifting ADA claims to the due process model and then applies this theory to the problem of emergency evacuation for people with disabilities.

## **PUBLICATIONS & WORKS IN PROGRESS (CONTINUED)**

*Conclusions from the Body: Coerced Fatherhood & Caregiving as Child Support*, 17 YALE J.L. & FEMINISM 501 (2005).

The predominant structure of child support perpetuates the traditional gender roles of mother as caregiver and father as breadwinner. This Comment proposes a hybrid system in which both parents share caregiving and breadwinning roles.

*Futures Past: Institutionalizing the Re-Examination of Future Dangerousness in Texas Death Penalty Cases*, 11 TEX. J. C.L. & C.R. 101 (2005).

This Note suggests implementing a hearing procedure conducted by the Board of Pardons and Paroles to revisit future dangerousness—a largely speculative, yet integral component of Texas death penalty procedure—to determine whether the jury’s finding that the defendant posed a continuing threat to society remains accurate based on the defendant’s conduct as an inmate on death row.

Chapter 13, “Funding,” in TEXAS DEFENDER SERVICE, MINIMIZING RISK: A BLUEPRINT FOR DEATH PENALTY REFORM IN TEXAS 111 (2005) (unattributed).

The chapter makes recommendations for improving the state funding allocated for capital cases based on the 2000 findings of the Illinois Commission on Capital Punishment.

## **EXPERIENCE**

**Columbia Law School**, 2008-2010. New York, NY  
*Associate-in-Law*. Teach Legal Writing. Invited to be a founding faculty member of the Columbia Center for Excellence in Ethical, Legal, & Social Implications of Genetic Research.

**City University of New York (CUNY)**, Summer 2009. New York, NY  
*Adjunct Assistant Professor*. Taught graduate level course in Disability Law & Policy.

**United States Court of Appeals, Fourth Circuit**, 2007-2008. Richmond, VA  
*Law Clerk to the Honorable Roger L. Gregory*.

**Texas Supreme Court**, 2006-2007. Austin, TX  
*Law Clerk to the Honorable Dale Wainwright*.

**National Organization on Disability**, Spring 2005. Washington, DC  
*Researcher*. Researched federal, state, and local laws governing emergency evacuation for people with disabilities. Drafted sections of legal primer published by the University of Kansas.

**Texas Defender Service**, Summer 2004. Houston, TX  
*Legal Intern*. Researched and wrote motions, legal memoranda, and briefs on criminal procedure and state and federal habeas corpus. Drafted chapter of report on death penalty reform.

## **PRESENTATIONS**

*Genetics, Disability, & Mental Illness: Antidiscrimination Perspectives*, 2010 Columbia Seminar Series on Law, Ethics & Psychiatry, New York, NY (upcoming February 2010).

*Legal vs. Ethical: Dilemmas in Occupational Therapy*, Invited Guest Lecturer, 2009 NYU Occupational Therapy Graduate Seminar in Ethics & Analytical Reasoning, New York, NY.

**PRESENTATIONS (CONTINUED)**

*The Law Without A Past: Protecting the Future of Disability & the Future Disabled*, 2009 Society for Disability Studies Annual Conference, Tucson, AZ.

*Preempting Discrimination: Lessons from the Genetic Information Nondiscrimination Act*, 2009 Law & Society Annual Meeting, Denver, CO.

*Accidents of Birth: Immutability & the Genetic Information Nondiscrimination Act*, 2009 Columbia Law School Associates' Workshop, New York, NY.

*To Have & To Uphold: The Common Language of Status-Preserving Countermovements*, 2008 Columbia Law School Associates' Workshop, New York, NY.

*Accommodating the Female Body: A Disability Paradigm of Sex Discrimination*, 2007 Second Annual Colloquium on Current Scholarship in Labor & Employment Law, Denver, CO.

*In Case of Fire, Use Stairs: Legal Negligence & Emergency Evacuation for People with Disabilities*, 2003 Society for Disability Studies Annual Conference, Bethesda, MD.

*Hear Me Roar: Emotional Deviance & Feminism*, 2003 Pacific Southwest Women's Studies Association Annual Conference, Claremont, CA.