

## Think of the Hippopotamus: Fat Women and the Law of the Land

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I do a lot of swimming and I get in the water and I just feel like a total ballerina in the water. I'm very buoyant and graceful and amazing in the water. But then when I'm on land, I feel very clumsy and large and awkward. I feel just the opposite in the water. I absolutely love being in the water. On the Discovery Channel, I always think of the hippopotamuses.

--"Vicky," a 47 year old homemaker from Massachusetts and fat acceptance group member

### Introduction: Why Study Fat Acceptance?

Everyone is talking about fat people.<sup>1</sup> One can barely glance at the news without hearing about the so-called obesity epidemic, the diet fad of the moment, or some potentially revolutionary scientific discovery about what causes weight gain and how to control it. Scholars from many non-medical disciplines have begun asking how we're debating obesity, on what terms, with what conceptual categories, and with what political consequences (Gilman 2004; Oliver 2006; Saguy & Riley 2005; Sobal & Maurer 1999; Sobal & Maurer 1999; Stearns 1997). Law professor Paul Campos wrote one of the first and most widely discussed critical responses to the so-called "obesity epidemic," arguing that it was more about elites finding an acceptable target group for their disgust and moralizing rather than about the nation's health (2004). Fat activists have also published their own fat-positive responses to weight stigmatization (e.g., Solovay 2000; Wann 1999). Theories of the place of fat in contemporary culture have analogized fatness to queerness and to other forms of cultural transgression (Brazier & LeBesco

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<sup>1</sup> I use the word "fat" as a simple descriptor following many of my interviewees. Medical researchers and the media overwhelmingly use "obese" or "overweight" to indicate a medicalized conception of fatness and its undesirability, respectively.

2001; LeBesco 2004). A recent *New York Times* even profiled the emergent area of fat studies in the Style section (Ellin 2006).

The voices of ordinary fat people themselves are often missing from both the national debate and the scholarly literature, however. Fat men and women are presumed to be in pursuit of weight loss and literally hoping to disappear as fat people. What if scholars re-imagined them as citizens with claims to justice based on their status as fat? Would they talk in those terms, or in some other ways not yet well understood? This study does not attempt to intervene in the ongoing debate about why Americans are fat, how fat they are, what causes it, who is to blame, or what to do about it. My perspective is allied with a small but growing number of researchers from many disciplines who have observed that the national obesity epidemic seems to be as much moral panic as genuine crisis, however (Campos et al. 2006). My aim here is to understand more about how stigmatized people—whose status has been the subject of so much intense public attention but who are not included in any major antidiscrimination law, receiving only scattered local protections—explain themselves and what justice looks like to them. I do not presume that law (in the form of antidiscrimination protections) is necessarily what they want, though they are a fairly mobilized, well-informed, educated, and active group of citizens. Rather, I want to understand the boundaries, possibilities, and limits that legal protection is understood to provide. Vicky experiences a different self in the water—a self that is not available in daily life. Is the liberation of the swimming pool a totally personal, affirming space whose comforts are untranslatable in the law? The swimming pool then represents the coming to self-acceptance that I document here: interior, therapeutic, and affirming. Is law part of the hegemonic topography upon which fat people are always assumed to be awkward and unhealthy? As I shall argue, fat women construct elaborate coping and resistance mechanisms to

navigate a hostile world. And yet many of the people I spoke with used a fairly uniform set of law-saturated ways of reasoning and arguing (which I shall term logics) to describe themselves as similar to other already-protected groups in our antidiscrimination pantheon. How do these frameworks for imagining fat rights simultaneously resist and reaffirm ideologies of deserving identities? At this unique historical moment, socio-legal research can capture some thinking of people who have not yet cohered into a social group or a protected class but who are actively trying to change their unequal status.

None of the respondents in this study were parties to a formal lawsuit over fat bias. This is not a study of people who have made or tried to make formal legal claims for fat discrimination, though through their activism most had learned some basics about discrimination law (and one was an attorney and another worked in Human Resources administering antidiscrimination laws). They are not nearly as marginalized and unmobilized as some groups in similar studies of the welfare poor or the homeless (e.g., Cowan 2004; Gilliom 2001); fat acceptance group members are more usefully compared to unionized workers or social justice activists (e.g., Kostiner 2003; McCann 1994; Polletta 2000). Most of the people I interviewed live in jurisdictions where there is no legal protection at all against discrimination on the basis of size or weight, however. The few San Francisco residents enjoy the protections of a relatively new height/weight antidiscrimination ordinance, but the city Human Rights Commission wields weak enforcement powers over misconduct. A few of the interview subjects live in Michigan, the only state with a height and weight clause in its antidiscrimination statute, but none of them had made any formal use of it nor knew of anyone else who had. There have been a few lawsuits nationally in which being very fat counted as a legal disability (Gilman 2004), and Anna Kirkland argues that the Americans with Disabilities Act (ADA) is the most likely law on the

books to be used to combat fat discrimination (2006). These group members exist within a social movement structure, albeit a relatively small and powerless one, and thus are engaged in “purposely, explicitly, and self-reflexively developing forms of legal consciousness” (Silbey 2005:357). How do these activists articulate the grounds for deserving rights they know they do not have? We know that anyone who joins a fat acceptance organization is already inclined against the dominant conception of obesity, so should we understand these people as initiating resistance to hegemony (Ewick & Silbey 2003), and if so, in what ways? Have they formed rhetorics of opposition to healthism, for example, that are capable of unseating the foundational assumption that a fat person is a dysfunctional and costly worker?

### **Logics of Personhood as Structure for Legal Consciousness**

Susan Silbey suggests that perhaps the study of legal consciousness has run its course and drifted too far from its original critical focus on ideologies. She urges scholars to “recapture the critical sociological project of explaining the durability and ideological power of law” (2005:358). She further cautions scholars studying people’s conceptions of law against recording attitudes without illuminating “the structure [that] enable[s] and constrain[s] these perceptions, attitudes, opinions, or, in Bourdieu’s term, dispositions” (2005:357). I take up Silbey’s invitation to account for the ways that ideologies—what I call logics of personhood, particularly what I call functional individualism—form the unquestioned terrain of sense-making for outsiders wanting to work their way into the field of legal protection.<sup>2</sup> Law’s durability and

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<sup>2</sup> The more popular term in the literature is “schemas” (Ewick & Silbey 1998; Kostiner 2003), but I use “logics of personhood” here to specify my argument that these deep ideological structures help us get out of some of the wheel-spinning Silbey describes. Logics of personhood may not explain other kinds of puzzles in legal

ideological power, I will suggest, comes from its widely accepted accounts of the deserving person as a functional individual, free of disease, excess, or disablement. This is the person who can work, who will not take more than her share from a collective enterprise, who can control herself, who is healthy, and whose body and movement in the world conform to normalized standard. Law's construction of this person shares power with and reflects patriarchal notions of the ideal worker, bureaucratization, and medicalization, among others (Ferguson 1984).

As many sociolegal researchers have found, activists speak polyvocally and employ multiple contradictory discourses in the same interview (Engel & Munger 2003; Ewick & Silbey 1998). Here, the interviewees' polyvocalism reflects deep ambiguities in our civil rights regime itself. Rights, I argue, are here negotiated as contradictory arguments that one must make for fat acceptance (being fat is not in the control of the individual, but some people can lose weight for some amount of time); as attainments in a process of self-acceptance (ceasing dieting, beginning to make justice claims as the person one actually is rather than some future thin self); as instruments in advocacy (in the few jurisdictions where protections exist); and as a segue to an argument for a universal ethical imperative of dignity for every person. When law is invoked most explicitly, it is hegemonically overshadowed by the logic of functional individualism (that is, arguments and reasoning styles that proceed by affirming fat people's capabilities and that being fat is neither unhealthy nor the result of deviant behaviors). Calls for accommodations sit uneasily with this logic because they suggest disablement, which many fat acceptance group members reject. Strategies for coping, affirming, and developing universal ethical values were insoluble within these legal logics of personhood, and thrived outside and beyond them.

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consciousness, but I maintain that they help illuminate why we talk about deserving antidiscrimination inclusion as we do.

## Methodology

The targeted population for sampling was defined as members of fat acceptance organizations, operationalized as anyone who had been a member or leader within the National Association to Advance Fat Acceptance (NAAFA) or a similar group. I did not go to the lengths of Luker (1984) to include all major leaders of the movement, so like Kostiner (2003) I do not make any claims of representativeness or comprehensiveness in the sample of members. Leaders of local NAAFA chapters across the country were identified from chapter web pages and contacted by phone or email with an interview request and with the request to pass on the email to other members. Snowball sampling yielded additional interviews from other fat rights members in affiliated groups, so called fat admirers (FAs) (men, usually not fat themselves, who sexually desire fat women and were often the partners of other interviewees), and plus size beauty pageant contestants. Of course by virtue of joining a fat acceptance organization, these men and women are pre-selected for positive views about being fat. I'm not therefore investigating whether or not they support fat rights. I'm interested in the representations and rhetorical poses they adopt *as* they describe their fat acceptance, and what those framings reveal about what is necessary for rights claiming.

Interviews took place between May 2005 and January 2006. Because of the distances involved, most interviews took place by phone.<sup>3</sup> The final sample contains thirty five interviews of fat acceptance group members from 9 U.S. states (California, Illinois, Michigan, and New

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<sup>3</sup> I am not considered fat, but my research assistant, Carla Pfeffer, identifies as fat and would be perceived as fat. We wondered at the beginning of the study what effect our own appearances might have. Interestingly, over the phone very few interviewees asked about our size at all. When the subjects I interviewed in person met me, they did not react to my size in any observable way. Perhaps Carla's appearance helped her to blend in at the NAAFA conference, but that was not a major subject recruitment opportunity. Like Sturges and Hanrahan (2004), I was not able to determine any differences between the quality of the interviews obtained by phone and those obtained in person.

York were well represented because these states have active NAAFA chapters) and one from Canada.<sup>4</sup> Four are men and thirty one are women. They are overwhelmingly white, educated, middle aged and middle class, though the sample includes one female fat admirer working as a janitor, one African American male fat admirer working as a truck driver, one Latina, and one self-identified lesbian. Most reported themselves to be in the range of 250 to 350 pounds. My interview subjects would be recognized in most contexts as quite fat but for the most part were not housebound, immobile, users of power chairs or scooters, or what NAAFA terms “super size.”

Members were initially told that I was interested in hearing their reflections about being in the fat acceptance group without any mention of law or civil rights.<sup>5</sup> Interviews consisted of first, general questions about how the person came to join the organization; second, questions about the person’s “experiences of unfair treatment;” and third, prompts to discuss the desirability of antidiscrimination laws protecting fat people and to explain why fat people should be included, the grounds for such laws, the effect of such laws on the person’s life, and any experiences with using such laws. The interview questions did not explicitly refer to law or discrimination until about half way through, making it possible for me to watch for the interviewee’s invocation of law (or its absence) and to see what she would first discuss under the category of “unfair treatment” (compare to Kostiner 2003; Nielsen 2000). Interviews lasted about an hour and were digitally recorded and transcribed verbatim. All names are pseudonyms. Because there has been very little research that presents fat people’s musings in their own words,

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<sup>4</sup> I also collected eight interviews from members of Overeaters Anonymous (OA), but they are not analyzed here.

<sup>5</sup> I did not have IRB approval to deceive any subjects about the nature of the study, so when pressed I would try to avoid specific legal language but did mention law. Most people who asked any questions just wanted to know if I was a diet-industry-sponsored obesity researcher, and overwhelmingly people were happy that a professor wanted to hear what they had to say.

I present somewhat lengthy quotes throughout this article. The quotes have been lightly edited for length and clarity.

All the group members I quote here are women. The tendency of fat acceptance groups to contain mostly female members and thinner male fat admirers has been well documented (Millman 1981), including one sociologist's ribald and (on my reading) sexist account of participant observation in a NAAFA group in which the researcher slept with several of the women and fathered a child with one (Goode 2002). It was clear to me that the fat acceptance movement still draws a great deal of its membership from people looking for what interviewees tended to call "the social aspects" of participation.<sup>6</sup> I did not design this study to focus on women exclusively, but the interview questions anticipated that the sample would be mostly women and that gender, race, and sexuality might bear importantly on fat identity. Subjects were asked in the latter half of the interview to talk about the connections between being fat and another identity trait such as gender. I also asked about activism in other areas besides fat acceptance in order to see if fat acceptance tended to develop only after a personal biography of activism in other areas. Interestingly, many women lacked much prior history of activism and spoke of their fatness as the primary way they had always been identified. Others had extensive histories of joining feminist or other left-oriented groups and a few held Christian religious convictions that were very important in their lives. But even for women active in other domains

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<sup>6</sup> Group members who had attended NAAFA conferences in the past were split over the sexual aspects of the event, with those who were shocked and dismayed by it quite willing to say so. An extramarital affair a few years back between an FA and a woman, both in NAAFA leadership, still aroused much consternation and some interviewees described how they broke with the organization because it had become just an outlet for sex. The conflict within the organization between fulfilling members' desires for meeting each other for sex and others' interests in political organizing played out in fascinating and concrete ways at the conventions. Attendees wear a name badge upon which one can affix different colored dots that reveal sexual orientation, whether one is looking to meet people (possibly sexually), or whether one is in a relationship (i.e., not interested in liaisons). The code listed on the back of the program was: purple = activism; blue = seeking friends; green = new; yellow = veteran convention attendee; orange = attached; red = single and/or looking; and rainbow = lesbian/gay. Those who appreciated having a place where they could be found sexually desirable tended to be somewhat shy about discussing it, but it was clear that the chance to buy and wear sexy clothes, attend a pool party in bikini, and meet men who desire fat women was both exciting and new for many fat women.

of their identity, discussions of fatness tended to be dominated by the themes I discuss below without the interviewee bringing up connections between fat acceptance and feminism.<sup>7</sup> I attribute this highly unified focus on fat identity as determinative on its own to first, the women's whiteness, heterosexuality and relatively comfortable class positions, which would tend to lower salience of other intersectional identity traits; second, to the very deeply felt impact of fatness as an identity trait that can mark and set apart an individual over her entire lifespan in a highly visible and stigmatizing ways, which of course was the focus of their activism and the way to get into the sample; and third, to the methodology used here, in which only one of the pointed questions asked for reflection on multiple identities the person might inhabit.

### **The Logic of Functional Individualism: How Does Fat Measure Up?**

Antidiscrimination law broadly defined conceptualizes unfairness as rooted in governmental classifications that single out and burden groups of people without sufficiently good reason (in the case of equal protection) or from employers who make employment decisions based on protected traits. The dominant conception of what is gained is the right to be judged as an individual based on what is really relevant and important to the context, not based on stigmatizing, distracting, or irrelevant traits (Post 2001). Because the employment context is overwhelmingly important in American antidiscrimination law, the ability to perform work is what is important and relevant. The conception of the person is functional individualism: the person is a bundle of capacities to be evaluated without regard to irrelevant and stigmatizing overlays based on sexism, racism, and so on. Many of my interviewees were deeply invested in

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<sup>7</sup> Prominent exceptions were one lesbian attorney's celebration of the fat dyke community in her city. She noted that it was probably a lot easier to be fat in such a community because of the explicit affirmation there. The religious Christians also tended to mention their bodies as God's creations to be loved and cared for.

this vision of just treatment, particularly the conception of the person as a functional individual. As one interviewee put it (echoing nearly all the others), “Body size has nothing to do with competence or value, ability to do a job. So I think it should be illegal to discriminate.”

So there is a commonly imagined setting, a conception of the person, a protective rule, and a set of questions that would immediately leap to mind if say, one asked a classroom of law students whether fatness should be a trait protected from discrimination. The conversation they would have would rely on functional individualism as a logic of personhood, meaning a set of already-imposed parameters, presumptions, styles of reason-giving, and conceptions of a good argument that are intelligible ways to frame the issue of fat rights. It would not itself be detectable, but it would constitute the ideological structure. Can it be shoehorned into the three-tiered equal protection framework by analogy to already-protected traits like race or gender, or is any sorting of fat people justified by the rationality of health policy? Is being fat something employers can legitimately be asked to ignore because it has no bearing on ability to perform a job? These questions frame a policy shift that is currently a wild counterfactual. The point here is not to construct a normative legal argument on behalf of fat people (currently a growing industry for law student notes) but rather to make apparent the discourses that imagining fat rights is always already in, at least in any professionalized and legally cued setting.

This research suggests that mobilized fat rights activists rely on the same logics that our putative class of law students would use in making their arguments. Abigail Saguy has documented the battle lines between obesity researchers and fat rights activists, showing that at the moment they disagree about fat and its implications for health (Saguy & Riley 2005). For the purposes of rights-based arguments, the “fat is unhealthy” argument must be defeated for activists to be seen as functional individuals and therefore deserving of antidiscrimination

protections. Fat rights group members are very unrepresentative of the public generally, which regards body size as the result of personal choices (Oliver & Lee 2005). If being fat is considered evidence of poor self-management then it will continue to be stigmatized and employers will defend their right to rely on these judgments to select their employees. Employers' concerns for health care costs are also a primary reason for noting employees' body sizes and for making weight the subject of weigh-ins and incentive plans at work (Egan 2006).

There are logical sticking points with fat activists' use of functional individualism, however. What about the basic fact that fat bodies are different bodies from the norm, and often do not fit into spaces designed for smaller people? Fatness on this view would not fit well into the functional individualist frame since sometimes capacities cannot be discerned fairly without first making changes to the physical or social environment in which the person must perform. Can body size just be ignored or must accommodations sometimes be made because a fat worker's body does not fit easily into the workspace? A disability rights frame (an accommodationist logic, in other words) is quite different from the logic of functional individualism because it acknowledges that the rules about proper functioning are not themselves neutral, ahistorical, or non-political. The fact that a job applicant uses a wheelchair cannot simply be ignored on a "blindness" model (and indeed, the "blindness" metaphor itself becomes ridiculous as it confronts the question of fairness for disabled workers). Moreover, a disability is then not something that is just wrong with a person, but rather it is a site of difference that exposes hegemony and injustice in the normal workings of the world. The problem is the stairs, not the legs of the person who uses a wheelchair to get around. This view, termed the social model of disability by scholars in the field, has not filtered into the general public consciousness and therefore there are tensions as fat people mull over whether to call themselves legally

disabled as a way of claiming rights. If my interviewees still think of disability as conceding that there is something wrong with them, then they will resist the label even as it is clear that the scholarly and activist programs interconnect quite deeply.

There is one final conceptual difficulty in thinking about fat rights claims in the American antidiscrimination pantheon. We normally think of classic antidiscrimination protections as benefiting social groups. There is of course a significant and abiding ambiguity here: is antidiscrimination law supposed to be about functional individuals (each of us without regard to race, for instance) or is it meant to relieve patterns of injustice leveled against particular groups (African Americans)?<sup>8</sup> Given this tension, I expected to find both expressions of functional individualism as well as group solidarity in this study. I guessed that most of these complications would be considered through deployments of analogies to other groups, since drawing an analogy is both a legal mode of reasoning but also a very common way of making an argument in ordinary speech.

### **Coping Strategies for Everyday Life**

Because research on the daily lives of fat citizens is scattered across disciplines and undocumented in law and society research, this section describes in detail how the people I spoke with manage their spoiled identity (Goffman 1986). Interviewees were asked (before any

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<sup>8</sup> The battle over so-called “civil rights” ballot initiatives of the type just passed in Michigan exemplifies this tension. Supporters of affirmative action argued that the initiative’s wording (and its name, the Michigan Civil Rights Initiative) was deceptive because the public would think that civil rights meant “good for minorities” in the sense of assistance via affirmative action. Proponents of the initiative insisted that they were indeed carrying the banner of civil rights because civil rights means being considered as an individual without regard to race or gender. I tended to doubt the oft-repeated explanation by those on the losing (pro-affirmative action) side that “people just didn’t know what they were voting for” after the election. It’s not simply that people are ignorant about ballot measures (though perhaps they are), but rather that the tensions reflect a deep, divisive and abiding disagreement about rights and racial justice in our society.

mention of law) how they'd handled difficult situations and how they would handle them differently today. I was interested in whether interviewees would use rights language to describe their responses, and what kinds of differences would emerge between what they had actually done versus what they wish now they had done. No one described having threatened to sue or file a union grievance over a weight-related issue, though frequently respondents spoke of wishing they had done something to complain more formally. Rather than using rights language, the members talked in terms of their own psychological states, which ranged from passive and humiliated to boldly assertive. Importantly, respondents were talking about experiences that took place many years in the past, suggesting to me that these stories of coping and resistance should be understood as narratives about the past and the future and as tools for shaping and re-shaping a self-image over the life span.

Rights language only emerged as something to be used in the future or in counter-factual terms, suggesting that it serves to orient the person in a tale about her journey towards fat acceptance rather than as a constitutive part of the experience. (Later sections discuss exactly how this rights language was used and the role logics of personhood played.) Of course, actual legal protections against fat discrimination do not exist in most of the country, so there would not have been a practicable way to invoke rights anyway. Nonetheless, imagining or wishing for rights even counterfactually was very rare. Invoking rights, on the rare occasions it was mentioned without prompting, was almost always framed counterfactually or prospectively. Five common coping strategies—all of them ordinary, informal and non-legal—emerged: (1) payback; (2) positivity; (3) avoidance; (4) standing up; or (5) ignoring the mistreatment.

## 1. *Payback*

Payback is when a person relishes delivering a come-uppance to someone who has discriminated against her or otherwise rebuked her in the past. Respondents mostly described paybacks as moments of moral instruction to others when they show a former adversary that he had misjudged a fat person. It is distinguished from simply standing up for oneself by this didactic quality as well as by the opportunity to return rejection that the fat person enjoys during the payback moment. The context can be personal, as it was with “Ashley,” a 52-year old white woman who directs an educational program in a small Michigan town, who discusses what happened during a period of weight fluctuation:

One year I’m the 100 lb. person. Another year I’m the 250 lb. person. I remember a boy coming up to me after I had lost weight, I was being one of my small people. And he said, “Oh my gosh, I remember you last year. Boy do you ever look good. I’d take you out this year. Let’s go out.” And I remember feeling very good to be able to say, “I need to tell you, I really am the same person. That’s a really horrible thing that you just did. You can’t do that to people.” And he was genuinely like, “Why is that bad? I told you I’d take you out. I was saying you look nice.” And really, truly I think, not getting what a cruddy thing that was. This may make me sound like a mean person, I don’t know, when I would get smaller and then people would be nicer to me and I could turn them down. “Okay, you weren’t nice to me when I was big.”

A more common context for payback enjoyment was after rejection in employment, as with “Jacqueline,” a white woman in her fifties from Georgia who is a plus size beauty pageant winner and works as an office manager:

Three weeks later, they called me and asked me if I was still interested [in the job]. I was mad at first. “They had the audacity to call me back?” But I did take the job. And then as I showed what I could do and everything, the president said, “You know, you’re the best person that I hired.” And I said, “Then why didn’t you take me in the beginning? Was it because of my weight and how tall I was?” And he looked at me and he said, “Yes.” And I said, “You don’t judge a book by its cover.” And he said, “I learned my lesson.” And then he didn’t hire other people just because they were beautiful or skinny or whatever. He hired them on their capability of handling the job.

“Kristin,” a 43 year old sales consultant from the Chicago area, also uses the payback strategy when she thinks back on a job where the boss invited her back to his apartment for drinks and when she refused, later fired her saying she was too fat:

They asked me to work for them again in a few years and I turned them down. So I guess maybe that was my way, you know, turning down going back to work for them. You know, I guess I should have [reported him for the harassment]. I probably should have done something about that. But I was too young in my acceptance of myself at that point to probably really do something. Today I would have. Today I would probably call a lawyer. I don't like to be sue-happy or anything like that, but I think I would have called a lawyer just to bring it out into the open.

Kristin counterposes using law as a weapon to the strategy of her younger, less confident self: passivity and relishing payback. She attributes not having called a lawyer to insufficient self-acceptance and is quick to distance herself from those who are “sue-happy.” Her imagining of rights is entirely prospective (“Today I would probably call a lawyer”) and somewhat regretful (“I probably should have done something about that”). Other interviewees also used similar language suggesting that they knew using the law was the proper thing even though they had not tried.

## *2. Positivity*

Positivity is a coping strategy most clearly articulated by the fat beauty pageant contestants in the sample, but it is connected to the NAAFA teaching that self-acceptance is the first step towards empowerment. Positivity is a state of nurtured self-confidence in the face of fat prejudice in which the focus is on the inner self rather than on changing society. It is thoroughly personal, interior, and individualized, and generally discussed in therapeutic terms. Respondents who spoke of positivity considered it a safeguard against comments from strangers or discrimination. Jacqueline articulated this theme again and again in her interview to explain how she keeps weight discrimination from happening to her. “I think my positiveness, the way I

carry myself, the way I act and my professionalism really got me to where I am today. I didn't think of myself as a plus-size person. I thought of myself as a human being.” For Jacqueline, positivity prevents discrimination: “To me, I don't care if you're 10 feet tall or if you're 2 feet tall or if you're 5000 pounds or 100 pounds, it's how you carry yourself and how you come across that has a lot to do with it. And if you have low self-esteem and you're negative about yourself, it's gonna show—whether you're black, white, purple, or green, it's gonna show.”

The intermixing of actual traits (100 pounds) with imaginary ones (being purple or green, 10 feet tall, or weighing 5000 pounds) emphasizes Jacqueline's commitment to individualism over any social meanings of traits in the world, which she tries to empty of meaning and render fanciful. She characterized those who complain about their ill treatment as using a “crutch:” “You don't have to use [weight] as a crutch because if you're positive then you can do anything you want to do. As long as you stay positive, then you can do the job.” “Alicia,” a 32 year old woman from Ontario working at a technical call center, describes self-love as a personal choice: “I've always been a pretty strong, independent person. I think that just the fact that I wanted to love myself no matter what that made me just stay strong in that department. I think [self acceptance] is really a choice of the person.” “Anna,” a 43 year old sales consultant and pageant competitor from the Chicago area, also draws on positivity mixed with a bit of payback to explain why she has not experienced much job discrimination. The context for Anna's use of positivity as an internalized state of power and self-acceptance was talking about her family, interestingly, suggesting that self-acceptance may be more a response to assaults on self-esteem that occur over the lifespan and have formed very hurtful childhood memories.

My dad was cruel. My dad said to me as a young teenager that I was so fat I'd never have anybody marry me or have sex with me. Very embarrassingly, he referred to me as a brick shithouse. My brothers and sister tended to be smaller. I was kind of isolated in terms of the family. I think that if there was job discrimination I think it was mostly in my own head. And I

say that because where I am now with it is that I'm bright, I have the talent, I'll show you that I have the talent and I'm bright. And if you don't want to hire me, well I don't want to be there. Which is pretty empowered. As a child and as a young woman and a teenager, I felt that I deserved that [the taunts and insults]. I go back to the [I] equal fat equals bad equals ugly. I cried every day after high school and when I'd go home. I handled it by eating, trying to comfort myself. The thing that was a saving grace is my mom was a large person, although not super large, and she was a physician; only in terms of seeing that women could become doctors, but I think my mom had a bad self image herself. She gave me diet pills.

### *3. Avoidance*

Avoidance is the use of planning to avoid potentially humiliating situations or simply staying away from those situations altogether. The situation to be avoided can be anything from sitting in a chair to taking an airplane to taking a new job. "Alice," a 54 year old teacher from the greater Chicago area, explains how it works:

When I walk in a room, I automatically scan it without even thinking, it's an automatic reaction. I automatically scan the room for difficult areas, areas where size would be uncomfortable in that space, chairs that look sturdy, chairs that don't look sturdy, chairs that look ample to fit in, chairs that look like they might be a squeeze, any possible physical parameters in the room that might cause me embarrassment or anything else. It's just a split second automatic scan. And I do it without even thinking. And thin people don't do that, okay?

"Renee," a 36 year old Human Resources manager from Ohio, had a particularly well-honed plan of avoidance. She described avoiding joining a health club and any other social setting in which she might "stick out or feel uncomfortable" because of her size:

If I ever had a concern about would a seat be wide enough or would I be able to fit, I learned to call. And I would call a place and say, "Um, I have some concerns about your seating. Can you measure how wide it is?" And so whether or not a particular venue or organization could accommodate me was something that I kind of just said, you know what? I'm not going to be uncomfortable. I'm going to find out in advance. And then if they can't accommodate me, then I'm not going to go there.

"Janice," a 42 year old Latina working for Los Angeles County government, describes being convinced to try something new and putting aside avoidance:

I like to go out and do things. For a long time, I used to not go and do things and go places because I was afraid that I wouldn't fit in their equipment or seats. My boyfriend had to talk me into going laser tag for the first time that I went because I was not convinced I would fit in a laser tag vest. And to find that I could put it on and it would actually accommodate me was a shock. I had no expectations of that.

Avoidance in the employment context can mean not applying for a new job or having to switch jobs to avoid an unpleasant person. "Bianca," a 45 year old project manager from Illinois who is trained as an engineer, explains how avoidance has caused her to self-limit her career options: "I can't decide if I'm maybe passed over or looked at differently because I'm female or because I'm fat. Career-wise it's made a difference. It makes it more difficult to change jobs because there's definitely an initial impression that you have to overcome. So I've probably stayed with the company I'm at maybe longer than I would have." For Vicky, the homemaker from Massachusetts who loves to swim, an incident twenty years ago made her quit her job altogether:

There were six or seven teenage boys who picked on me. I was absolutely humiliated. There were all these people around me and nobody did anything or said anything. I was absolutely horrified. Very soon after that, I left my job. Because I just couldn't bear riding the [public transit] anymore. I do not, anymore ride [public transportation]. Today, I'm a lot stronger. Today, I would probably stand up for myself. And I don't know if speaking out or saying something would make any difference, but I definitely could stand up for myself better. Definitely.

#### *4. Standing Up*

Standing up is what I call verbal responses to ill treatment. These descriptions constituted highly salient memories marking a transition from ignoring to confronting. "Carol," 53 year old applications analyst from Indiana, has been both active and passive in humiliating situations (once having had a woman take food out of her grocery cart as she wordlessly looked on). She describes one of the first times she dealt with humiliation differently: "I pulled out in front of a guy and he got out of the car, berating me calling me a fat pig and whatever else. And

it was one of the first times I stood up for myself. I told him I'd rather be the fattest person in the world than be an asshole like him." Janice, the woman who overcame avoidance to play laser tag, uses standing up as a coping technique by refusing to be ashamed about her body:

A woman tried to cut in line in front of me at a McDonalds and I said, "I'm sorry, I was here first." She just let out a barrage of fat insults at me, "You have such a fat ass." And I said, "Yeah, I do have a fat ass, don't I?" And what I found was that I was fine with it, the gentleman behind the counter was smiling ear-to-ear and she just got more and more frustrated because she couldn't shame me for being fat. It's incredibly empowering to understand that being fat is not shameful. And when that happens, people can't use it against me.

"Lillian," 47 year old fitness trainer from New York, also relished support from onlookers in a confrontation on the subway:

Some kids in the morning, they stand in the subway, and they don't want to let you out of the door. I saw a kid make a comment about me. I didn't exactly hear what he said, was clearly a comment about my weight. And he wasn't going to turn and let me out the door, like joking, let's see if she can pass through this. And I slammed on his foot. And I said, "I guess I'm too fat to get through." And I got applause behind me, because who the hell wants these kids? Nobody wants that.

Alice stood up for herself in a much more intimate setting, with her mother who had always criticized her weight:

Once I became more sure of myself in NAAFA, I sat down with mom one time. And I said, "Mom, I love you. But I don't want any more comments on my weight. I don't want any more suggestions for diets. And I think the best course of action would be just not to discuss it. We'll make it a taboo subject because we are not going to see eye-to-eye and I don't want to have an argument with you. I think it would be best if it was just left alone. I have my views, you have your views and I'm old enough to live life the way I see best."

### *5. Ignoring Mistreatment*

Some respondents simply tried to ignore ill treatment. When she could tell things were going badly in a job interview because of her weight, "Foxglove," a woman in her 60s from Michigan who had spent her career as a civil servant, reported handling the experience "with

disappointment, but I still kept a smile on my face. I still kept trying.” “Frannie,” a 62 year old fundraising purchaser from the Bay Area, recalls ignoring discrimination at job interviews before the San Francisco ordinance was enacted (which now governs her workplace):

And I will tell you that every time I’ve experienced discrimination, I have had to ignore it because either I’ve wanted another job in the place, wanted to continue my job, or there wasn’t a way I could fight it. And, frankly, at the time these interviews happened, I didn’t have the regulation in San Francisco. I had something behind me to back me up, if I’d had that regulation behind me, I think I would have confronted. But I had nothing behind me.

Although Frannie described herself as non-confrontational, the San Francisco ordinance is something she imagines stiffening her spine. Many other interviewees spoke of law as something “backing [them] up,” as a support “behind” them. It is a distant and instrumental conception of law, but they imagine that its presence would have transformed their sense of entitlement and self-worth. Enactment of protective legislation has not actually changed Frannie’s interactions in the workplace, however, because she describes her employer as a progressive organization that had already accepted both her activism and her body size. Frannie knew that she was experiencing discrimination that could be the subject of a law, but others place the treatment they had to ignore solidly outside the realm of law. As “Monique,” a 35 year old woman from Missouri working as a director of a program for people with intellectual disabilities and also as a landlord and bulldog breeder, put it, “I didn’t think of myself as being discriminated against when I was being made fun of. It was just being made fun of.”

These coping strategies are ordinary, day-to-day ways of dealing with other people’s distaste for fatness. Nearly every interviewee described using at least one of these techniques, and most used them in combination on a daily basis. It was common to tell a linear narrative of first not responding to mistreatment and then becoming more bold after finding a fat acceptance group. Like many of the experiences with street harassment that Laura Beth Nielsen analyzes,

these encounters are understood as non-legal (2000) and their responses in many ways stand in for law where law is not available. Payback is a way to secure a just outcome that feels like retribution or compensation and may even involve penitence from the discriminator; positivity and avoidance are compliance rules for avoiding confrontation before it begins; standing up is a dispute resolution response that leaves the fat person feeling like she has won; ignoring the mistreatment settles the dispute through capitulation (and may also be used to avoid confrontation). Payback feels good but remains private and ultimately depends on the discriminator making some move to woo back the rejected fat person (hardly a scenario to be counted on). Positivity keeps the burden on fat people to deflect discrimination against them. Avoidance limits fat people's lives in ways that are both invisible and difficult to quantify. Standing up for oneself signifies the attainment of a fierce pride that is a precondition to feeling entitled to rights, but it is psychologically costly to shyer fat people and unlikely to provoke widespread acceptance or understanding of fat troubles in those who would harass fat people. Simply ignoring mistreatment is a time-honored response to injustice that sociolegal research discovers over and over again; it is no more empowering here than it has ever been.

Despite their private, limited, and apolitical features, the significance of these interpersonal events should not be dismissed. These strategies also work as conduits for re-imagining the self—not a self-hating fat person, but a confident woman that no one even considers discriminating against. Perhaps these outsiders are showing us another side of the psychological self: not just the new person of late modern liberal governmentality (e.g., Rose 1990), but a site of small resistances. Again, it is critical that the focus of my analysis is a highly visible and much-stigmatized group that is presently the focus of an international moral panic. In the absence of legal protections, fat people have evolved these strategies for getting by in a

hostile world. Their interiority, therapeutic focus, joy in small moments of solidarity, and weariness of the fight must be understood in that context.

### **What Do They Really Want?: Dignity in Health Care**

No interview question specifically alluded to doctors or health care at all, but humiliation in the doctor's office was the most common experience the members brought up when asked about "unfair treatment." Some interviewees explicitly said that discriminatory treatment in health care settings was much worse than discriminatory treatment in employment. Renee, the HR manager from Ohio with the well-honed avoidance plan, was particularly well-informed about employment discrimination law through her job. She had experienced a glass ceiling for fat women at a previous job after her supervisor, also a fat woman, had been told she could not advance because of her weight. Renee then left that job knowing the same ceiling would hold her back. Despite her professional perspective and personal experience with the classic employment context for discrimination, she asked early in the interview when there would be a chance to talk about problems in getting health care because she felt those issues were much more problematic than employment discrimination. She elaborated:

I wonder if legislation addressing equality in healthcare, whether it's through the ADA or through other type of means wouldn't be something that, not to minimize discrimination based on size in employment, but if people of size in general would not benefit more from trying to advocate in the healthcare system.

The primary complaint was that physicians regard fat patients as first and foremost fat, and thus castigate them about their weight regardless of the presenting condition, assume that any medical problem is caused by the fat, and treat fat patients as non-compliant, lazy, and

contemptible. Research on health care workers' attitudes about fat people confirms that doctors and nurses report finding fat patients repulsive and would rather not touch them, that they attribute fatness to lack of self-control and emotional problems, and that they describe fat patients as worthless, awkward, ugly, and non-compliant (Brownell et al. 2005). My subjects' stories reflect these research conclusions but also suggest some particular techniques some doctors use in dealing with fat patients: withholding information and use of silence as well as verbal castigation. Kristin tells a story that I heard over and over of a doctor intent on discussing weight no matter what the presenting condition was:

What does fat have to do with a sinus infection? I had a doctor do that one time. I went to her for a sinus infection. I have terrible sinuses. You know, I live where the weather's crazy. Everybody has bad sinuses around here. The doctor said, "Well, what's your downfall?" And I said, "Well, what do you mean, what's my downfall?" I thought she meant I had to get rid of my cat. And she said, "Well, because of your weight. Look at you." And I was a size 22 at the time and I said, "What does that have to do with it?" Now that I did something about. I went to my benefits administrator where I was working at the time and I reported her. And [the benefits administrator] reported her to [the insurance company]. So I fought back on that one and I never went back to her again either.

"Martin," a 50 year old woman from Indiana trained as a special education teacher but unable to find work, had a negative experience with the birth of her son:

The OB/GYN that I had was just horrible. My blood pressure must've been going up each time I went into his office. It was really bad because I would go into him and say, "My feet are swollen." And he would say, "You need to quit eating salt." At the time, I happened to be a secretary for the American Medical Association. [My boss] had given me the whole list on what foods were high in sodium. So I said, "No, I'm not," and I pulled my list and started to go through it. All of a sudden, he shut up and wouldn't talk to me anymore. I ended up having my son by C-section. I had been in labor for almost 12 hours. I had been in labor all night. I had two student doctors that were wonderful. Thank God they were with me. My OB/GYN came in the morning around six o'clock to examine me and these were his words: "You're too fat, that's why you're going to have a C-section." He didn't mention toxemia. The student doctors who were working with me told me I had toxemia. He never ever told me that I had that. That would have explained what all was going on with me. I knew that my blood pressure was up and my legs were swelling and stuff like that. But he never explained why. He just gave me a hard time about being fat, which didn't make any sense at all. [She had gained 26 pounds over the course of that pregnancy from a pre-pregnancy weight of a little under 200 pounds].

Martin's attempts to contest her doctor's knowledge of her eating habits led to a power struggle. She felt that the doctor wanted to punish her for being fat. Martin's experience of trusting some doctors (here, the medical students) but feeling betrayed by others was shared by other interviewees, many of whom were quick to point out that not all doctors are awful. Foxglove says she "found a doctor that's a little bit chunky herself" and happily reports that "she has never mentioned my weight." Finding a good doctor who is not prejudiced against fat patients is a very popular topic on fat acceptance listservs and in other activist settings.

There is no law requiring physicians to ignore a patient's weight, of course. There is very little fit between interviewees' articulated needs in health care and the classic antidiscrimination model. We simply do not think of health care as a setting for antidiscrimination norms, unlike housing, public transportation, or the workplace.<sup>9</sup> Addressing the concerns I heard about would involve much more than the current menu of non-discrimination in the workplace and in government classifications; indeed, it has more to do with discrete behaviors and interactions than with lawsuits or legal rules. The main mechanisms for regulating physicians are the tort law system, appeals to state licensing boards, and the American Medical Association's (AMA) own internal regulatory processes. One interviewee was suing a doctor over the death of her mother after complications from surgery, and she felt that the doctor's lack of knowledge about the risks of operating on a fat person had directly caused her mother's death. In all other cases, however, interviewees described the kind of conduct that would be very hard to place within formal tort law claims. Likewise, the kind of treatment the members described would not seem to be grounds for taking away a doctor's license. The AMA's guidelines say patients have the right to

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<sup>9</sup> Paul Campos speculated recently on the Fat Studies Yahoo! listserv that one of the primary uses of the panic over obesity will be to quell calls for a national health care system. We are not even having that debate as a society, but it is easy to see how representations of fat people as numerous, costly, selfish, and out of control will tinge the debate (post of December 8, 2006 to Fat Studies list).

“courtesy, respect, dignity, responsiveness, and timely attention to his or her needs” within an established doctor-patient relationship, but the only punishment available is expulsion from AMA membership.<sup>10</sup> A doctor could ethically refuse to establish a doctor-patient relationship with anyone over a certain weight. States have enacted protective legislation to prevent insurance companies and health care providers from discriminating against patients based on variable list of things like results of genetic testing and past domestic violence complaints, but no state law mentions weight in this context. Perhaps most importantly, insurance companies can refuse to insure a fat person because of her weight. Marilyn Wann (who wanted her real name to be used) explained how she had secured health insurance through a writer’s guild, but after that arrangement ended she has found it extremely difficult to find any affordable health insurance at all. (She is self-employed as a writer, speaker and fat activist in the San Francisco Bay area.) How can people claim to be so concerned about fat people’s health, she asks, when some of the main problems faced by fat people are in access to health care in the first place?

No one mentioned wanting to sue a physician for rude treatment. Law entirely failed to emerge as a solution or a desired aspect of social change. Instead, acceptance group members wanted doctors to shift paradigms about obesity and to treat them as a thin person would be treated. The fat acceptance movement has its own alternative approach to health and weight, which was endorsed by nearly everyone I spoke with. “Tina,” a 60 year old nurse and public health advocate from the Bay Area, articulates the view of health and physical activity associated with this Health at Every Size (HAES) movement:

Everybody needs more social support, more involvement in their community, not being ostracized, not being the target of discrimination. I think that will help health for everybody. The whole idea of making regular routine, enjoyable physical activity accessible to everybody. And, you know, my work had been devoted to that. I trained instructors to do that. We helped the National Institutes of Health develop and publish a booklet to help all really fat people have

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<sup>10</sup> American Medical Association, <http://www.ama-assn.org/ama/pub/category/8313.html>.

access to physical activities. A little bit of movement goes a long way towards functional capacity, our health, let alone managing insulin resistance, diabetes and hypertension, the three things that are most often related to, you know, higher weight.

Tina had quit smoking and trained to run the Bay to Breakers race in San Francisco, transforming herself from a 200 pound out-of-shape smoker to a 190 pound fit non-smoker. She exemplifies the HAES conviction that hassling fat people about weight loss only demoralizes them and drives them from care and that improved health is a reasonable goal for anyone even without weight loss (Aphramor 2005; Bacon et al. 2005; Ernsberger & Koletsky 1999). Only a few interviewees agreed that being fat was a medical problem in and of itself. Monique compares it to having incurable cancer.

If [being fat] is not curable, then your best bet is to accept it, to make peace with it just like you would a cancer. It's a curse. It doesn't make you a bad person. However, it is a medical problem just like psoriasis or cancer. And I'm not saying aesthetically, it is a debilitating illness, you know? I'm not saying I would be proud to be fat any more than I would say I'm proud to have cancer or have psoriasis. However, I don't think we need to be ashamed of it either because it isn't a weakness of character.

Monique lost 100 pounds as a teenager but has struggled since that time with bulimia, extreme dieting and anorexia. She still considers herself a size acceptance activist despite no longer being fat because of the misery of her own battles with weight and eating. Even in her endorsement of a disease model of obesity, she still insists that being fat is not a character problem, but more like an unfortunate affliction that should provoke medicalized empathy, not discrimination. Even in her acceptance of medicalized obesity, Monique's perspective would still mean significant changes in the ways doctors regard fat patients. It seems, though, that the thing fat acceptance group members want the most is the thing that law is least able to grant.

## Meanings of Law: Accounts of Fat Personhood

The coping strategies for a hostile world beyond the reach of law came up in the portion of the interview before I had explicitly brought up the possibility of legal protections. As I noted above, most people consider body fat to be a consequence of personal choices about diet and exercise (Oliver & Lee 2005), and thus not the kind of trait that properly fits into antidiscrimination law. National annual spending on weight loss products and services has reached \$46 billion dollars in 2005 and has kept growing at about six percent per year (Terlep 2005), evidence that many Americans are very keen on getting rid of this trait rather than transforming its social meaning or making life easier or fairer for fat people. Fat acceptance group members are united against weight-based discrimination, in marked contrast to popular sentiment. My interest was not the state of public opinion within my sample, however, but rather in the *kinds of reasons* group members would give. Specifically, I wondered what descriptions of their personhood would they call upon?

### *Is Being Fat the Result of Personal Choices?*

Echoing the “like race” strategy for adding new groups to antidiscrimination laws (Skrentny 2002), many interviewees talked about how fatness was or was not like being black or being gay. (“Black” and “gay” were invoked most commonly by far; other identity traits received almost no mention.) Acceptance group members grappled through analogies with what most understood to be the foundational justice question: are people fat by choice? Is it more like being black or more like smoking? Can a fat person just lose weight and thereby avoid

discrimination? People I spoke with realized that in a hostile world, response to this question was a necessary first move. Nearly all respondents conceded that fatness was linked to voluntary behaviors like eating but also insisted that most people are pre-determined to fall within a certain range of weight that cannot be changed without Herculean effort. Many people readily acknowledged that losing weight is certainly possible. They had done it themselves many times. But they always gained the weight back eventually. Most women used the phrase “dieted myself up to <present weight>” to capture personal experience with the well-documented effects of weight cycling (also called yo-yo dieting) (Ernsberger & Koletsky 1995; Ernsberger et al. 1996). Most then reported that when they found self-acceptance, stopped dieting and simply tried to be healthy, their weight stabilized. “Macskat,” a 41 year old self-employed massage therapist from Michigan went beyond the “set point” theory of useless dieting and simply said that the loss of relationships and the effort required to lose weight just was not worth it:

I used to think people could lose weight. One time, I lost 90 pounds and another time I lost 55 pounds. And both times, when I got where I was, I was like, “This is not worth it.” I mean it was life-consuming both times. That was a year of not going out with my daughter. You know, we used to have dates and we'd go to the movies and dinner. I wouldn't eat out because I didn't want to eat anything off my little program. I mean it was sick. It was a whole year of not being social, of not having friends, of not, you know, doing anything other than exercising. I had my tennis buddies, but I didn't really do any socializing that involved, you know, sharing meals with anybody.

Others drew explicit civil rights parallels that did not turn on proving the futility of dieting. As Monique put it, “I think that being made to purchase two seats for an airline is comparable to not allowing someone to sit at the front of the bus.” Vicky’s argument is typical, first acknowledging the public perception of fat people as fat by choice, then drawing a race and sexual orientation comparison:

I think that because people think that people are fat because they're lazy and because they have a choice, that it's different than any of the other reasons that people are discriminated against. In

other words, you don't choose to be black. To me, [being fat] is not a choice. Just like I believe that being gay or lesbian is not a choice. And it doesn't matter whether it's a choice or not. People still need to be treated with respect and dignity and to have their rights.

“Michelle,” a 63 year old nurse who works in a cardiac rehab center, echoes the Protestant work ethic and the imperative of self-improvement in a comparison of fatness to poverty: “So if you think it's a choice, you could think that fat people could be thin if they would just try. I guess the poor, you could say the same thing, you know? If they just worked harder, they'd be rich.”

Foxglove was unusual in her quick reference to disability as a point of comparison: “It's just as illegal to discriminate against fat people as it is against people with a broken arm, or a disease. HIV, you cannot discriminate against people for that.” As I discuss below, Foxglove's experience with being listed as disabled and experiencing employment benefits she attributed to affirmative action for disabled people probably explains her unique perspective. Disability was not considered an applicable analogy among most of my respondents. Most were keen on pushing that label away from fat people because it complicated their arguments that fat people are fully functional and healthy.

Vicky's turn against the very concept of non-choice as the *sine qua non* of antidiscrimination was a common polyvocalism among many interviews. So while many interviewees made these analogies to identity traits understood to be beyond choice (“You don't choose to be black”), most also moved beyond the choice issue to stress the misery and disutility of dieting and then to describe a vision of non-discrimination that did not really turn on the absence of choice. My interviewees were certainly in a difficult rhetorical position. As Abigail Saguy has documented, much of the battle is between public health researchers and activists who contest the ill health framework for obesity (Saguy & Riley 2005), but here it is clear that there is not much room within the classic antidiscrimination paradigm to talk about legal protections for

traits that are in some sense mutable, though not in a realistic or straightforward way. The women struggled to describe their bodies as simultaneously mutable and stable, as deserving of protection from discrimination despite the awkwardness of the “like race” comparison. An overwhelmingly white and middle class group, they were tentative with “like race” comparisons and usually explicitly differentiated fat hatred from racial hatred even as they mentioned the analogy. Nor was there much consensus that fat people are an identity group. Most people pointed out that while fat people may share common experiences, there are gradations of fatness and moreover, most fat people want to get out of the group rather than celebrate it as a site of culture and knowledge (as disability rights advocates describe disability, by contrast). While some people mentioned the fact that most fat people share a set of experiences (humiliations and coping mechanisms), they were still reluctant to speak of fat people as a coherent group that should be the subject of rights, and only mused about it in response to a direct question about whether fat people are “a group in society.”<sup>11</sup>

### *Functional Individualism and the Tension with Disability Rights*

The predominant way of justifying non-discrimination against fat people was to use the logic of functional individualism. Functional individualism, as I’ve described, is a way of reasoning about who deserves rights that defines the deserving person as a font of capacities and talents who should be evaluated on those alone, not on any feature of appearance. It sidesteps

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<sup>11</sup> This question—“Do you think fat people are a group in society?”—was consistently the most confusing and vague question for people to answer, and I tried various ways of posing it. The easiest way would have been to add an analogy, “like an ethnic group,” but I wanted to avoid that to see which groups the interviewee would mention on her own (though I did have to add something like that on occasion to make the question clear). The fact that the question seemed to be strange in people’s ears indicates that there is not much push within the fat acceptance movement for cultural separatism or fat identity per se. I attribute this to the high levels of awareness of differences among fat people that the interviewees expressed and to the high levels of stigmatization fatness gets.

the issue of weight loss and insists that body size does not matter anyway. Functional individualism is deeply rooted in our legal and popular culture's embrace of antidiscrimination principles like "color blindness." Jacqueline, the plus size beauty pageant winner with the positive attitude, typifies the general ethical impulse behind functional individualism:

I don't think you should evaluate or determine a person by their size or their weight or their height or anything. I think you should take the person for what they are and think of them as a person—even if you are African-American or Indian or French or Chinese. To me, everyone's a human being and you treat 'em as that person—as as a person—not as, "Oh, you're black or you're Chinese or you're fat or you're tall or you're small or you're short." You know, I don't look at it. And I feel that everyone else should look at the person as a person—not as a size.

Alice's view of employment non-discrimination exemplifies the way functional individualism works in a job context:

If I could rewrite things, I would simply say that a person should be judged on their abilities and what they are able to do and if they are able to do the job that is set before them, then they should have an equal shot at that job. And those are the only considerations that should be brought into play: what are their abilities, what is their training, what is their background, what can they do? If they can do what I'm asking them to do, then they should have an equal shot at that job or at that house or at whatever.

Functional individualism is incompatible with disability rights, since if a person cannot do a job because she cannot fit in the work space, for example, then there is no reason within functional individualism itself to make any changes(2003). I was interested in how my interview subjects would consider this tension, so I asked them about whether they agreed that fat people should get accommodations for being disabled.<sup>12</sup> Reactions varied, but most interviewees were either sharply negative about being considered disabled (even if it would secure more rights) or highly pragmatic about using the label "disabled." As Marilyn Wann put it, "In the dark times, you use whatever you have." The claim that fat bodies are just another variation on human

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<sup>12</sup> Generally obesity does not count as a disability on its own, but there are some interesting cases and trends suggesting otherwise (Kirkland 2006).

embodiment and are not defective resonates exactly with arguments made in disability rights scholarship, as I suggested above (Linton 1998). The scholarly critique of disability as stigmatized abnormality has not filtered out to the ordinary sensibilities of most fat acceptance activists, however. There was little consideration that disability means anything other than abnormality or having something wrong with oneself and no suggestions of solidarity with people with disabilities. Monique, who works with disabled people professionally, pointed out that if fat people and other disabled people would team up, they could be a formidable majority to demand better accommodations, but also noted the tendency of a slightly fat person to disdain contact with an even fatter person.

While resistance to the disability label prevailed, there was wide agreement that businesses should provide armless seating and other provisions that would constitute disability accommodations. Michelle, the cardiac rehab nurse, articulated a common sense view of disability rights in which they are a matter of fairness to everyone that should be provided without regard to the medical status of obesity:

Well, I hesitate because I don't know the legality in terms of wondering, should it legally be a disability or not. I know a lot of people feel strongly one way or the other about that. But I think accommodations should be made. I think we should have CAT scan machines big enough to deal with large people, we should have chairs in waiting rooms wide enough. So I think just as we have curbs where a stroller and a wheelchair can roll up them, why not have things that fit everybody?

Macskat had no patience with the disability label and, in a typical move, referred to what real disability is to distinguish just being fat. "I'm not disabled. And a lot of fat people I know aren't disabled. We just have a bigger butt. We need a bigger chair. That's just common sense and common courtesy. Not like my mother, who is a thin disabled woman who gets around in a wheelchair. That's disabled." Foxglove was unique in experiencing disability as a practical tool

in her employment history, and also in her view that it would be “wonderful” to see fat people making ADA claims. (She worked in various civil servant positions in Michigan state government including social services and education.)

A few times, I felt discriminated against because, when I would go to interview people would laugh at me when I walked in, or you know, make some disparaging remarks. But ironically, I was not able to advance until I actually got my name on the handicapper list for the State of Michigan. So at that point, I was put into interview with other handicappers that were in wheel chairs, and you know, crutches and malformed. And then I got a promotion [laughs] because I was the most functional of all of them that was interviewed. And so, it worked for me in a sense.

She explained that she had gotten on the “handicapper’s list” not for being fat but for a back problem. She had also successfully made a disability claim herself, initiated not in court but with a union grievance. “I had migraines. Heat and light would bring them on. I had hot, really strong fluorescent lights over [my work station]. I asked for them to be turned off because of the pain in my eye. They refused to do it. So through the American Disabilities Act, I made a claim, and the union backed me up and within two weeks, they came and unscrewed the light bulbs [laughs].”

### *Non-Discrimination as a Universal Ethical Imperative*

As I described above, the classic understanding of antidiscrimination parses categories of traits that are presumptively off limits for reasonable judgments about a person. Scholarly conversations about antidiscrimination are nearly always focused on groups, then, considered as individuals marked by a stigmatizing trait. Decisions about the trait precede the application of the antidiscrimination norm. That’s why we do not think of it as discrimination that only people convicted of crimes have to go to jail, for example: being convicted does not even register as a

trait that would be intelligible in the antidiscrimination framework because it is thought to map so clearly onto the scale of desert and blame. Fat acceptance group members frequently departed from this trait-first-then-protection model, however. The second most common formulation of deservingness after functional individualism was to say that of course nobody should be discriminated against. Speaking in terms of “nobody” or “anybody” rejects categorizing people into traits entirely, shifting antidiscrimination from its status as a gate-keeping mechanism for arranging concern for only certain operations of stigma to status as a universal ethical imperative. My exchange with Macskat was typical:

[Do you think it ought to be illegal to discriminate against fat people?] Oh, absolutely. It ought to be illegal to discriminate against anybody. I would love it on the books if it were, “You cannot discriminate against a person, regardless of their sexual orientation, and they should be able to enjoy any privilege that any human being enjoys, including the privilege of marriage.” And I would like that to be like, you can't discriminate against somebody, period. I would like simple laws like that. You can't discriminate [laughs].

Vicky’s formulation is similarly universal, non-categorical, and presented as an ethical imperative: “I think all human beings have the right to be treated with dignity and respect. No matter what. And I don't think it's right that anybody should be treated that way either publicly or privately for any reason. And that's it.”

This universal ethical imperative is wholly inassimilable into the ways we reason about antidiscrimination law, particularly the logic of functional individualism. It is an informal argument for non-discrimination that stands outside the law. The first step in learning equal protection jurisprudence, after all, is to take note of the fact that surely some forms of unequal treatment have to be acceptable since that is one of the primary functions of law: distributing benefits and burdens in society. So what shall we make of this common response? I argue that it cannot simply be dismissed as wishful thinking or knee-jerk sentimentality. Though I cannot

determine where the sentiment comes from in these interviews, the idea of fairness as universal ethical imperative has many roots in Western culture, from Biblical prescriptions to Kantian ethics. This idea confronts the problems of parsing fat identity into the classic antidiscrimination model for reasoning about who fits: only in certain sites, only for certain traits that one cannot help, and only if the person is still functional in recognizable ways. Both Vicky and Macskat expressed impatience with the idea that fatness must be shown to be entirely outside of one's control. Vicky said she did not really care if getting fat was a choice or not, and Macskat rebelled by saying that losing weight was possible, but too unpleasant to be worth it. So when they turned to law as universal ethical imperative, it was because they found fitting into antidiscrimination norms exasperating and useless. They transform antidiscrimination law from functional individualism with its delimited boundaries and usages into an exhortation that they can use to describe a positive vision of a better world on a much grander scale than remaining within pre-given questions ("Is being fat a choice that makes you unhealthy?") would permit.

### *Instrumentalism in Advocacy*

Invocations of law also occurred in much narrower and instrumental ways for the women I spoke with who live in one of the rare jurisdictions that have height and weight antidiscrimination protections. Ashley lives in Michigan, and has referred to her state's provision informally to convince people to provide accommodations like armless chairs. Interestingly, the Michigan law prohibits only animus and stereotyping of fat employees who can otherwise do their jobs, and does not require any accommodations. Despite her skepticism about whether laws

can change people's behavior, Ashley has found ways to make the Michigan law even more powerful than it actually is:

I think it's like all things that we say are illegal when we discriminate. But people can still do it even if it's illegal and they would cover it up. To me, that's a given that we still discriminate against races, religions. People say we don't, but we do. But I think if it is a policy or a law, it at least brings it to mind of people. And, at best, there may be some people who wouldn't do it as much and it could give somebody more, I guess you could say authority, or something to do about it. For me, personally, the law wouldn't be something I would use to run to court with. It would be something I could say, "Look, it's not just my opinion. It's not just [me], the weirdo that thinks these things. It's a whole law. It's like a given. It's like an important thing."

She describes how she has used the Michigan law instrumentally in advocacy, even looking it up to see if it could really be true:

Some time after I was working in Michigan I looked to see, you know, is it really in the statement? There it is, how cool! I brought it up, for instance, with the [armless] chair issue. In one place I worked they seemed to think about it as important and at one place they didn't. I've told like every once in awhile I've helped at, done workshops at youth programs about size acceptance kinds of things and I'll bring it up there. I don't know that I've ever met anybody who knew it. To me, it's not something where everybody knows it. [So you've used the Michigan law for leverage in some of your own advocacy for armless chairs?] Yeah. But not in a way I wouldn't wanna say, "Hey, there's a law." It's more in it's that legitimacy and not, "That's [Ashley] the advocate. Always bringing up weird stuff." You know? It's like, "No, it's not me. Look at, there's a whole law that addresses it."

For Ashley, the existence of the law on the books is a way to move from the illegitimate ("weird stuff") to the legitimate ("there's a whole law that addresses it"). She was very unique in her level of knowledge about the Michigan law, however, and was the only interviewee to describe encounters in which she called upon it. Everyone else who had heard of the law told of hearing about it either through NAAFA materials or from attending a NAAFA meeting in Michigan some years ago, in which a state official made a presentation about it to the group. There are only a few recorded cases using the law, which dates to a 1978 legislative session in which a Democratic coalition put as many new traits into the state law as they could. At that time, the

concern was for *minimum* height and weight restrictions that kept women out of male-dominated jobs (later taken care of nationally through disparate impact lawsuits under the Title VII of the 1964 Civil Rights Act). So without realizing it, Ashley is being doubly inventive: using a law that no one thought would apply to fat people to gain accommodations that the law does not even require.

Although most people I spoke with expressed significant skepticism that law would really change people's minds, a few thought of law as efficacious. Some respondents gave much more credit to law than it deserves, optimistically imagining that a new antidiscrimination measure would bring many exciting changes. As Carol surmises in response to a question about what a new law would mean for her personally:

Well, [if height and weight were in every discrimination law] I could get life insurance without having to jump through 10,000 hoops. I could get health insurance without having to pay enormous premiums. Southwest Airlines couldn't charge me double for a ticket. An employer couldn't overtly discriminate against me. I'm not sure that laws prevent it altogether, but they certainly diminish the incidence of it. Someone couldn't legally fire me because of my size. They can now. I couldn't be turned down for housing and I couldn't be turned down for an adoption based on my size. Those are all positives. Those are all opportunities to do things with my life.

“Wendy,” a 22-year old Indiana college student, wished law could change the fashion industry:

I would also tack onto that law that it would be illegal for companies simply to make clothes for size 10 and under that clothing designers should have to make clothes for everyone and not just the small, ridiculous sizes that the majority of people can't fit into and, therefore, cause a lot of people to have eating problems and all kinds of problems because they feel that that's the size they should be because of the clothes.

Wendy also felt that the media and publicity had more power to address fat discrimination than changes to the law.

Others were much more pessimistic about the potential for law to do much good, an impression solidified by negative experiences with law in other areas of life. Michelle's view of

law was formed by her involvement in a lawsuit against the Boy Scouts for excluding children who do not swear to belief in one God. (Her family is not religious.) “What I learned about the legal system was that the wholesome Boy Scouts of America hired very expensive, powerful lawyers to maintain the right to exclude children. And I saw the high powered lawyers win. So my personal one experience with the legal system didn't make me think we can count on that system to do what's right.” Macskat began her explanation of why she does not trust law with a fully framed historical and ideological view, but concludes with a frustrating experience in her school district that cements the view that law does not really help ordinary people.

I don't like the way our legal system works. Our laws are based on arcane old laws. I mean we don't ever make up new laws that make sense for what's going on now. You always have to tie it to the history, precedent. And a lot of the precedents in American law are hurtful and racist and you know, homophobic and prejudiced. I feel like our legal system protects criminals, and it doesn't protect normal people, innocent people. I mean it's just like right now, everybody in my community has to register their child and jump through hoops for school. Because a few people were faking a lease and pretending to live in the community and they don't [laughs]. There's always the normal people who are just going about their lives and doing the best they can. Always have to pay the price for the people who are trying to cheat.

Not surprisingly, attitudes towards law varied by race (Nielsen 2000). The one black male in the sample expressed the most skeptical view of law, but learned in his on-the-job experiences with regulations rather than through race-tinged legal experiences. “Doughnut,” a 33-year old truck driver from Michigan who identifies as a fat admirer, thinks that it's all about money:

Lawyers are all crooks. [So have you had bad experiences with courts or lawyers?] See, I'm a truck driver. And we gotta deal with just a lot of laws and stuff tons of stuff we have to deal with because of greedy lawyers. We've got tons and tons of laws. There's so much stuff that we've got to do and so many things like if we break 'em, just for doing our job, we can go to prison for it, you know? And it's just messed up. Nobody can do anything anymore really. The systems and the laws end up really, they're only enforced on people who can't afford to fight back, you know? So these laws, they don't really mean anything.

## Conclusion

I have argued that there are ways of reasoning about whether a person deserves antidiscrimination protections in our society that are ideologically hegemonic. These ways of reasoning are logics of personhood, and in the context of antidiscrimination law and fat rights, the idea that a deserving person is a functional individual is the gathering site for concerns about health, capacities, responsibility, self-control, and desert. Using this logic did not make sense in the navigation of daily life for many of the people studied here. They formed coping strategies that combine avoidance of humiliation with some forms of confrontation and an abiding sense of their own self-worth. These fat acceptance group members employ accounts of their personhood that under gird rights claims, but they must also deal with the rhetorical problems and contradictions that come up with that usage.

Fat acceptance advocates tell painfully detailed stories about how they navigate the spaces of their lives. The rich detail of the first part of the interviews receded as I probed for reasons why fat discrimination ought to be illegal in the second half of the interview. The need to present oneself in terms of functional individualism seemed overwhelming. This logic would then need to be dropped, qualified, or contradicted in order to argue for accommodations, to insist on basic dignity, to turn the problem into health care inequality, or to invoke universal ethical norms. Fat acceptance group members are not alone in being bound to this legal ideology, of course. (Defending blunter forms of affirmative action has also gotten harder and harder as individualistic accounts of merit gain strength in resignification as “diversity.”) But in their struggles to talk about themselves as dignified and deserving in a way that is intelligible in the law, we see a dry landscape where we all live.

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