
Think of the Hippopotamus: Rights Consciousness in the Fat Acceptance Movement

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All the recent attention to the so-called obesity epidemic provides a fascinating context for understanding interactions between civil rights consciousness and the ordinary lives of fat people, who both deploy and resist the ideological formations that make up our most basic presumptions about who deserves rights protections. This study of fat acceptance advocates asks how stigmatized people who are excluded from legal protections muster descriptions of themselves as deserving inclusion in antidiscrimination laws. Analysis of in-depth interviews with fat acceptance advocates from around the United States reveals elaborate techniques for managing social life and enacting legality that coexist with more narrowly framed and contradictory arguments for rights. Culturally dominant logics for reasoning about what persons deserve prefigure what is possible to say in defense of fat people, in many ways even for fat advocates themselves. And yet in their struggles to overcome the limitations of the presumptions they are given, fat advocates reveal deep tensions in our antidiscrimination ethics and hint at a new way to think about difference.

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)

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Why Study Fat Acceptance?

Everyone is talking about fat people.¹ Contemporary American society is experiencing a period of intense media attention and general cultural anxiety over the so-called obesity epidemic. News reporting on Americans' increasing weights spiked dramatically by the late 1990s (from only a few dozen stories early in the decade to thousands) and tend to dramatize, moralize, and individualize body weight, particularly when referring to higher weights among minority populations (Saguy & Almeling 2008).² Being fat is highly stigmatized (Brownell et al. 2005) and, following the tone of mass media coverage, most people attribute it to individual choices and behaviors (Oliver & Lee 2005). Editorials have blamed obesity on "feminist careers" because women prepare fewer home-cooked meals these days (Saguy & Almeling 2008:68), and increasing weights have been used as a metaphor in decrying the "cultural decline from sturdy thrift to flabby self-gratification" as consumer indebtedness drives up bankruptcy rates (Lears 2006:13). Attention to obesity supports narratives about the decline of American society from across the political spectrum. On the right, decrying obesity leads naturally to calls for greater personal responsibility and aids in dramatizing the dangerous expenses of national health care. On the left, critics target Big Food, corn subsidies, and junk food advertising to children for making people fat, linking the trend to corporate greed and overconsumption generally.

Scholars from many disciplines have taken note of the political, historical, legal, moral, and disciplinary components of our national focus on fat (Gard & Wright 2005; LeBesco 2004; Oliver 2006; Saguy & Riley 2005; Sobal 1995; Stearns 1997). Critical social scientists maintain that the public is being systematically misled by news reporting about obesity as well as by misinformation about the safety and efficacy of diets and weight loss pharmaceuticals. In this view, the supposed epidemic is certainly not worth all the frenzy and looks much more like a moral panic (Campos 2004; Gaesser 2002; Saguy & Riley 2005). Rhetorics of individual blame and the blend of moralism and attention to self-care termed "healthism" (Crawford 1980; Greenhalgh & Wessely 2004) work

¹ I use the word *fat* as a descriptor following many of my interviewees, who want the word to become just an ordinary term such as *tall* or *dark-haired*. Medical researchers and the media overwhelmingly use *obese* or *overweight* to indicate a medicalized conception of fatness and its undesirability, respectively. I still use the term *obesity* now and then to match these mainstream contexts.

² Gina Kolata's reporting in *The New York Times* is a notable exception (2002, 2003, 2004a, 2004b, 2007a).

together with media representations to constitute “common sense” about obesity trends, to echo Haltom and McCann’s use of the term (2004:10). Everyone simply knows that Americans are fat and getting fatter and that the trend portends disaster.

Concern over obesity trends (and the trends themselves) are worth our careful study for many reasons, but sociolegal scholars have not yet paid adequate attention to the ways that fat works as a sociolegal problem to naturalize and reinforce particular formulations of rights-claiming. The crisis of fat is a compelling contemporary example of a “macro-contextual factor” shaping mass consciousness (McCann 2006:xxv). Attention to obesity instructs us in proper citizenship, stewardship of our bodies, and in what we can rightfully expect from law and the state (as well as the opposite: what we ought to do for ourselves by willpower, habituation, or good character). Law’s durability and ideological power, I suggest, comes in part from its widely accepted accounts of the deserving person as a properly functioning and responsible individual, free of disease, excess, or disablement. This is the person who can work, who looks after him- or herself so that others do not have to, who is health-conscious, and whose body and movement in the world conform to a normalized standard. Mass cultural production of the unhealthy and morally decrepit fat person undergirds an account of what kind of person is undeserving of rights protections.

Despite all the attention, the voices of fat people themselves are rarely heard. Fat men and women are presumed to be in pursuit of weight loss and literally hoping to disappear as fat people. What if scholars reimagined them as citizens with claims to justice based on their status as fat? How would they make arguments for rights? Is resistance to the “lore” about fatness possible, and if so, in what terms?³ What do the ways fat acceptance advocates defend themselves tell us about our regime of civil rights protections? My aim here is first to understand more about how these 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. To that end, this article analyzes in-depth interviews with fat acceptance group members from across the country and also draws upon participant-observation and the study of primary source documents from the National Association to Advance Fat Acceptance, or NAAFA. Second,

³ I borrow the term *lore* from Haltom and McCann (2004), along with *common sense*, to emphasize the heavily mediated and constructed nature of our mass cultural knowledge about obesity. My perspective is a skeptical one, though for the purposes of this research the reader need only consider that obesity does not just exist out there in the world as a property of bodies, unmediated. It has a history, a story, a causal narrative, and a moral edge in addition to being the site of much scientific knowledge production.

studying fat advocates is a way to ask about the ideological power of the law. How do those who defend fat people confront such a dominating cultural story about fat identity? Does the lore about obesity set the terms for advocates' arguments that they are deserving citizens, and if so, how? Is there a way to move from a context in which, as Vicky puts it, fat people are awkward and ill-fitting, to a world in which they can be graceful and amazing? Are there other terms for advocates' arguments, perhaps mustered from the fat rights movement itself or from comparisons with other antidiscrimination categories? This study combines a recognition of the ways that mass attention to obesity has mattered for legal consciousness with a close study of the terms available for fat citizens to defend themselves against the lore that they are unhealthy, costly, and gluttonous.

Civil Rights Consciousness: Does Fat Fit?

As I noted, fatness is a highly stigmatized trait that is widely regarded as the product of individual fault (Brownell et al. 2005). The idea that fat people should be protected under antidiscrimination laws is most often met with derision. An editorial by management-side employment lawyers critical of a Massachusetts bill to add height and weight to the state's antidiscrimination law scoffs at the idea of legal protection "based merely on 'weight'—as if weight were immutable and worthy of protected status on par with an individual's race or sex" (Feldman & Ashton 2007:A11). Another critic likens the proposal to opening the door to all kinds of silly and burdensome rules that have lost any connection to real oppression: "We might as well add colorblind, left-handed, allergic-to-cashews, and get it over with" (Maguire 2007:B13). National annual spending on weight loss products and services reached \$46 billion in 2005 and has been growing at about 6 percent per year (Terlep 2005), evidence that many Americans are very keen on getting rid of this trait (and persist in hoping they can) rather than on transforming its social meaning or making life easier or fairer for fat people. Even some of my interviewees had only recently thought of themselves as victims of discrimination. As one woman 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." When defenders of fat people evoke civil rights rhetoric, it is often to bemoan fat's exclusion from the pantheon of protected traits—it's "the last legally acceptable form of discrimination"—showing that even they understand it primarily by its exclusion from the standard list of appropriately protected traits (e.g., Flanagan 1996).

Fat is considered quite unlike the traits usually protected in civil rights laws: race, religion, sex, national origin, age, and disability. Protected traits are classically those that bear a recognized history of oppression and are understood to be outside the realm of personal choice, irrelevant to one's merit and capacities, and in the case of disability, a lamentable affliction to be overcome with gumption and equal opportunity. Fatness, by contrast, is understood as either analogous to smoking (i.e., an unhealthy and deadly condition brought on by behaviors but, once put in place, very difficult to change) or simply as physical evidence of overeating and laziness (primarily an aesthetic problem on this interpretation, but the health critique follows quickly behind). People who see a genetic link to obesity are more likely to think that civil rights protections for fat people would be appropriate (Oliver & Lee 2005:943) because according to that view it is an immutable trait one cannot help. Otherwise, the way to avoid discrimination is to just lose weight.

Antidiscrimination law 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 in employment decisions based on protected traits (under Title VII of the 1964 Civil Rights Act). 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 et al. 2001). This person is what I call the functional individual, whom I have argued elsewhere encapsulates the dominant logic of the person in American antidiscrimination law (Kirkland 2008).⁴ The proper way to evaluate her is to measure her capabilities (that is, her functioning in a job or role) and to keep group-based stereotypes at bay (hence the emphasis on the distinctness of the individual). I purposely use the feminine pronouns throughout because my sample was overwhelmingly female and all the advocates quoted here are women. I devised this follow-up study to chart how ordinary fat people would navigate these dominant legal logics, such as functional individualism, which are also very important for ordinary understandings of justice. As I show, many of my interviewees turned out to be deeply invested in this vision of just treatment in which the body and its abilities are dissociated completely. As one interviewee put it (echoing nearly all the

⁴ Scholars of legal consciousness have more frequently used the term *schemas* to describe the resources ordinary people use to enact legality (Ewick & Silbey 1998; Kostiner 2003). McCann regularly invokes the term *logics* to refer to forms of legal consciousness through which activists make arguments, which is also the sense in which I use it (e.g., McCann 1994).

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.”

The fact that ordinary people—fat acceptance advocates who have given a great deal of thought to why they are deserving citizens—invoke a logic that is dominant in both the formal legal realm and the realm of citizen-to-citizen discussion is not itself surprising. What is fascinating to watch here is how the advocates must struggle with the contradictions inherent in trying to separate one’s body and how it looks from doing a job. The interviewee’s statement is, after all, both exceedingly common and deeply perplexing. Of course one cannot predict intelligence by examining the dimensions of someone’s body or whether she possesses the level and type of training or experience to do a job. Yet the body is how and where we work (and function) in the most fundamental sense. Many skills are dependent on certain operations of the body (strength, reach, dexterity, endurance, and capacities such as typing, walking, speaking, or fitting into a certain space). Some jobs require that a person’s body project an embodied message, such as sensuality, humor, neatness, fitness, perkiness, youth, masculinity, or femininity. Is body size more like eye color, which almost never matters, or more like gender, which is “just the way a person looks” but also so much more? One cannot just be an individual, evaluated as if these social messages were not always constitutive of the person—that is, not if we think that traits such as gender have real meaning attached to them. Employers are almost always permitted to enforce these bodily requirements under Title VII through dress and grooming codes or by arguing that presentation is a necessary part of the job (Kirkland 2006b; Post et al. 2001). That is because we do not really mean that we want to ignore these supposedly irrelevant traits all the time. What we really mean is that we want to transform their social meaning, stripping them of some implications (for moral character, for instance) while retaining others (where we feel there is a legitimate link to an aspect of personhood we want to elevate, such as functional capacity).

Disability law, by contrast, captures discrimination against people whose bodies are different in certain medically defined ways, and thus employment protections based on disability do not begin with the pretense of ignoring a person’s embodied appearance. A disability rights frame acknowledges that the rules about proper functioning are not themselves neutral, ahistorical, or non-political. 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 but

remains a founding insight of disability studies (though as I explain below, it is subject to critique for losing sight of the body in the “social”) (Shakespeare 2006). Could there be a new source of civil rights consciousness for fat identity there? Could fat be a trait that prompts us to think more deeply about what it is to both notice something different about a person and at the same time to assess that person fairly? At the moment, however, fat does not fit in the antidiscrimination pantheon because it cannot be squared with functional individualism if fat is unhealthy and folks just bring it on themselves. Fat does not fit into the Americans with Disabilities Act (ADA) framework if it is not an impairment on its own (and the trend seems to be courts holding that it is not [*Equal Employment Opportunity Commission v. Watkins Motor Lines* 2006], though there is one well-known case saying it can be [*Cook v. State of Rhode Island Department of Mental Health, Retardation, and Hospitals* 1993]). Currently, then, those who try to come up with legal arguments for fat rights must argue that it is irrelevant and without meaningful implications if they want Title VII-type protections, but that it is a medicalized impairment if they want disability accommodation (Solovay 2000). It is a fairly impossible position to be in. Fat advocates know this only too well.

Fat citizens’ lack of fit into antidiscrimination laws provides a rich perspective on what is required to fit, or at least, what citizens think is required to fit. For those who are quite publicly excluded from legal rights, the bare fact of legal exclusion requires explicit positioning. Hull shows that gay and lesbian couples enact legality in their relationships through ritual and the use of terminology such as *spouse* despite being excluded, while at the same time being painfully aware of the cultural power of legal recognition they lack (2006:142–9). Legality, as Ewick and Silbey explain, is what people both draw from and contribute to as they “participate—through words and deeds—in the construction of legal meanings, actions, practices, and institutions” (1998:247). Critically, citizens are “constrained by what is available, by legality as it has been previously enacted by others” (Ewick & Silbey 1998:247). Fat acceptance advocates must enact legality bodily, as they move about the public sphere and go to work, and also discursively, as they describe their personhood in terms that help them fit into a pre-given description of a deserving person. Their identities push up against deep ambiguities in our understandings of what civil rights protections ought to be for and for whom.

Fat advocates lack the cultural and discursive resources that come from national legislation, as the men and women with disabilities in Engel and Munger’s study of the interactions of rights and identity had (2003). Despite never filing a lawsuit, the people they interviewed experienced identity transformations as legal change opened up new opportunities and offered new discourses to understand what they deserved out of life and work. So far Washington, D.C.; San Francisco;

Santa Cruz, California; and the state of Michigan have added height and weight or (in D.C.) appearance to their list of legally protected traits (District of Columbia Human Rights Act 2007; Compliance Guidelines to Prohibit Height and Weight Discrimination 2007; Santa Cruz Municipal Code 2007; Elliot-Larsen Civil Rights Act 2007). There are only a few recorded cases invoking the Michigan law, which dates to a 1978 legislative session in which a Democratic coalition put as many new traits into the state law as possible. 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 Title VII of the 1964 Civil Rights Act). There was no thought to fat rights at the time, and very little discussion of the new language. The San Francisco ordinance, by contrast, was passed in May 2000, after fat activists protested a fitness company billboard with an antifat message and secured the crucial support of municipal supervisor Tom Ammiano. As Marilyn Wann, the activist who organized the protests, explained to me, the time was right politically and the elements came together for an explicit act in defense of fat rights. So while the few Bay Area residents in my sample share a sense of mobilization, the Michigan fat activists have only a distant knowledge that a law exists, which none have used formally and only a few have invoked informally.

Fat acceptance group members are emblematic of outsiders looking into the law. They are highly conscious of their exclusion from the formal law nearly everywhere in the United States; they are the subject of high-pitched national media coverage that reinforces the reasons for that exclusion; and they construct their identities using many of the same ideological commitments and meaningful practices that seem to denigrate them, finding little purchase for alternative arguments. They must wrestle with the question of whether being fat is the result of personal choices, and they must contend with the fact that their bodies differ from the norm (without much hope of “passing”). Fat, in other words, interrogates the same issues of choice and bodily difference that we see in disputes over gay rights and disability rights. Fat advocates, as I show, exemplify a highly constrained and defensive enactment of legality, but one that must be enacted publicly and with as much dignity as one can muster, again and again, every day, in and through a body that no one will ignore.

Methodology: What Is the Fat Acceptance Movement and Who Joins It?

The targeted population for sampling was defined as members of fat acceptance organizations, operationalized as anyone who had been a member or leader in NAAFA. Founded in 1969 and bearing

an acronym reminiscent of the NAACP, the organization balances its civil rights orientation with concern for members' social lives. The official account on the NAAFA Web site is capacious: it is a "non-profit human rights organization" working to "eliminate discrimination based on body size" and provide "self-empowerment" (National Association to Advance Fat Acceptance 2008a: n.p.). The preamble to the NAAFA constitution contains explicit civil rights language: "Millions of fat Americans . . . constitute a minority group with many of the attributes of other minority groups: poor self-image, guilt feelings, employment discrimination, exploitation by commercial interests, and being the subject of ridicule" (National Association to Advance Fat Acceptance 2008b: n.p.).

The conference program from the 2005 NAAFA convention illustrates the organization's different aims in interesting detail. The greatest number of workshops offered (17) focused on activism and political change (including a feminist caucus and a workshop on changing the corporate workplace).⁵ The next most popular category was health and fitness, with 11 workshops including water aerobics, dance, and diabetes management. There were eight arts and crafts workshops, six personal care sessions on topics such as travel and "reclaiming our power to love ourselves," and four sessions on sexuality (with titles such as "men who love fat women" and "everything you ever wanted to know about fat sex but were afraid to ask"). Conferences also featured a private pool party, a fashion show, and a dinner dance.⁶ More politically minded leaders such as Wann have been trying to push the organization in a more activist direction in recent years, and the abundance of overtly political workshops shows that they have had considerable success. So while I do not claim that NAAFA members are necessarily devoted to rights-claiming (and in fact they may attend conferences for all the other fun things), I nonetheless stipulate that it is the most important and most prominent organization pushing against the dominant conceptions of fat people. That it does so in multifarious and complex ways should not surprise us.

I do 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 were identified and

⁵ These are my characterizations of the workshops' content, not groupings in the program itself.

⁶ 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 convention. Because of the multiple purposes of the meetings, attendees wore a name badge upon which one could affix different-colored dots that revealed sexual orientation, whether one was looking to meet people (possibly sexually), or whether one was in a relationship (i.e., not interested in liaisons).

contacted through chapter Web sites. This recruitment method was probably more likely to capture more politically minded leaders in NAAFA chapters than more casual “social” members. Snowball sampling yielded additional interviews from members of similar groups. Of course, by virtue of joining a fat acceptance organization, these men and women are preselected for positive views about being fat. I do not therefore investigate whether or not they support fat rights. I am interested in the logics they use *as* they describe their fat acceptance, and what those logics 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.⁷ The final sample contains 35 interviews of fat acceptance group members from nine U.S. states (California, Illinois, Michigan, and New York were well represented because these states have active NAAFA chapters), and one from Canada. 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 (FA, a person who desires a fat partner) working as a janitor, one African American male FA working as a truck driver, one Latina, and one self-identified white lesbian. It is unlikely that a larger sample would have been much more diverse, as the tendency of fat acceptance groups to contain mostly white fat female members and thinner white male FAs (all assumed to be heterosexual) has been well documented (Gimlin 2001; Goode 2002; Millman 1981).⁸ Fat acceptance group members are not the classic powerless subjects of rights featured in work on the welfare poor or the homeless (Cowan 2004; Gilliom 2001; Sarat 1990); they are more usefully compared to unionized workers or social justice activists (Kostiner 2003; McCann 1994; Polletta 2000). Because, as Ewick and Silbey point out, “social marginality is related to counterhegemonic consciousness” and my interviewees are not socially marginal (aside from their fatness, which many experienced as very marginalizing), to select this group to articulate the views of fat people is likely to preselect for more mainstream views (1998:234). Their integration into mainstream American culture makes their struggles with rights claims all the more compelling, however. They are dedicated

⁷ I am not considered fat, but my research assistant, Carla Pfeffer, who conducted half the interviews and attended the NAAFA conference, identifies as fat and would be perceived as fat. Very few interviewees ever inquired about our own body sizes. Like Sturges and Hanrahan (2004), I was not able to determine any differences between the quality of the interviews obtained by phone and the few we each obtained in person, nor could we tell any difference between the quality of interview obtained by either one of us.

⁸ The few men interviewed here tended to be FAs rather than fat-identified themselves. Since my aim here is to understand fat citizens’ conceptions of rights, I focus on the women.

to the same sets of norms that are so dominant in antidiscrimination consciousness, yet cannot help but expose the rickety features and contradictions that sustain it.

The absence of racial diversity in particular is important, given evidence that nonwhite men and women experience both body size norms (Kemper et al. 1994) and relationships to the law (Nielsen 2000) differently than middle-class whites do. Scholarship detailing the exact kinds of differences that come with minority racial identities is not consistent on either axis, however (Cachelin et al. 2002; Engel & Munger 2003; Fleury-Steiner 2004), so I cannot presume to know how my results might differ if the sample were more racially and ethnically diverse. This group of interviewees also cannot throw much light on the dynamics of fat identity in a non-heterosexual context, though it seems likely that sexual minority communities might have different views (and different from each other, particularly between gay men and lesbians). The lack of solidarity my subjects exhibited with disabled people is also likely related to the study design. Most people interviewed here reported themselves to be in the range of 250 to 400 pounds. My interview subjects would be recognized in most contexts as quite fat but for the most part were not housebound or users of scooters. Other research on NAAFA members with a wider range of sizes and abilities has found greater willingness to invoke disability as an analogy (Saguy & Riley 2005).

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. 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"⁹ 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 halfway through, making it possible for me to watch for the interviewee's invocation of law (or its absence) and to see what he or she would first discuss under the category of "unfair treatment" (Kostiner 2003; Nielsen 2000). Interviews lasted about an hour and were digitally recorded and transcribed verbatim. All names are pseudonyms (many selected by the

⁹ Ill treatment in health care settings was a major topic that arose when I asked about "unfair treatment." I analyze those responses in a subsequent article (Anna Kirkland, "Revisiting What Rights Do: Fat, Health, and Antidiscrimination," *Studies in Law, Politics and Society* (forthcoming 2008)).

interviewees, some unusual). Quotes have been lightly edited for length and clarity.

Managing Fat Identity in Everyday Life

This section describes in detail how the people I spoke with manage their spoiled identity (Goffman 1986). No one had ever filed a formal complaint over a weight discrimination issue (and of course, very few of them could). Yet the fat acceptance group members described a regular set of distinct techniques they used to constitute an identity that was consonant with being a good worker and an individual rather than a health statistic. They described a richly detailed construction of a public self through which they anticipated, managed, and settled eruptions of discrimination and harassment. The techniques described here are consistent with previous research about this group (Maurer & Sobal 1995; Sobal & Maurer 1999), though my aim here is to explain their connection to rights consciousness. The work on the self and the development of culturally shared techniques for being a fat person in public are interdependent, showing how a person who understands herself as deserving yet excluded can still muster a form of legal personhood. This legal personhood is constituted by its exclusion but simultaneously by its commitments to the basic ideological underpinnings central to our antidiscrimination regime. It is a public identity for fatness that is suffused with legality but also guided by, as LeBesco puts it, “pursuit of an inhabitable subject position for fat people” (2004:124). I call their techniques (1) moral instruction, (2) redirecting shame, (3) scanning, (4) positive self-presentation, and (5) ignoring the mistreatment.¹⁰

Moral Instruction

Moral instruction is when a fat person delivers a didactic comeuppance to someone who has discriminated against her or otherwise rebuked her in the past. Respondents mostly described moral instruction as moments when they showed a former adversary that he or she had misjudged a fat person. Moments for moral instruction function in much the same way as civil rights protections do: that is, instructing citizens that treating people badly or differently because of a trait they bear is wrong. A common context for moral instruction 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:

¹⁰ I thank Carla Pfeffer for suggesting some of these names for the techniques.

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.

Jacqueline's invocation of moral instruction ("You don't judge a book by its cover") explicitly echoes antidiscrimination requirements: hire capable people without prejudice based on irrelevant traits. Other instances of moral instruction took place in situations also recognizable as employment discrimination but were handled much more indirectly. Kristin, a 43-year-old sales consultant from the Chicago area, also used moral instruction, but in a very attenuated way reminiscent of Bumiller's profile of victims of job discrimination who could not square the demands to level complaints with their own psychological resources (1988). Here she thought 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. 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 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.

This is fairly blatant illegal sexual harassment, but Kristin did not do anything formal about it. She attributed not having called a lawyer to insufficient self-acceptance and was quick to distance herself from those who are "sue-happy." Her imagining of rights was entirely prospective ("Today I would probably call a lawyer") and somewhat regretful ("I probably should have done something about that"). Her refusal to go back to work there was one of the most subtle accounts of moral instruction my interviewees described. She was aware that invoking discrimination law would have been the formal option (to "bring it out into the open"), but she decided instead to disdain contact with the discriminators.

Redirecting Shame

Redirecting shame is what I call verbal responses to ill treatment. The technique is similar to moral instruction in that it is situational and interactive, but it is less “legal” in the sense of being less about teaching an antagonist the proper way to evaluate another person and more about showing off a new-found confidence in what NAAFA members called “snappy comebacks.” (Members reported talking quite a bit about how to handle these situations, and developing shared responses was an important goal for group meetings.) This technique involves moving shame and social disapproval back onto the person who initiated the situation and may bring in onlookers on the fat person’s side. Carol, a 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 described 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, a 42-year-old Latina working for the Los Angeles County government, redirected shame at a fast food restaurant:

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.

Lillian, a 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.

Redirecting shame shows that there are resources for resisting the stigma of being fat in the most ordinary public situations. At best, the smiling McDonald’s employee and the applauding subway riders show that they do not agree that fat is shameful, that fat people should not eat fast food, or that fat people should not take public

transportation, and at least they come down against bullying fat people. Maybe some of them were fat themselves, or had fat friends or family members. After all, when 65 percent of us are overweight or obese according to government standards and when well over 90 percent of diets fail to keep weight off (Kolata 2007b), it is not so surprising when survey evidence shows a greater willingness in recent years to find overweight people attractive (Balzer 2005). These moments of solidarity find little reflection in mass media representations of fat. Nonetheless, they are clearly one component of interaction that, like the cultural and discursive shifts that created new possibilities for employees with disabilities (Engel & Munger 2003), may assist fat advocates in constructing a more habitable identity.

Scanning

Scanning is a technique for assessing, surveilling, and planning one's movements through the world to avoid discomfort and humiliation. I mean to use the term *scan* both in its literal sense, to cast a glance over a situation or a place quickly, but also more broadly to mean the kind of assessments and observations that one learns to make about how one will be received in new situations that then constitute expectations and behaviors in the ongoing present. The situation being scanned can be anything from a room with chairs to a new job opportunity. Alice, a 54-year-old teacher from the greater Chicago area, explained how it works:

When I walk in a room, I automatically scan it for difficult areas, 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, OK?

Renee, a 36-year-old human resources manager from Ohio, had a particularly well-honed plan for scanning. 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 say, "Um, I have some concerns about your seating. Can you measure how wide it is?" 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.

Scanning in the employment context can mean not applying for a new job or having to switch jobs to avoid an unpleasant person.

Scanning is then about assessing how hard it will be to overcome bad first impressions. Bianca, a 45-year-old project manager from Illinois who is trained as an engineer, explained how scanning had 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 [being fat has] 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.” Sometimes the lessons incorporated into a lifelong practice of scanning are extremely limiting and come from just one or two isolated experiences of humiliation. For Vicky, the homemaker from Massachusetts who loves to swim, an incident 20 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.

For Vicky, scanning has eliminated one entire context of social life—public transportation—where she expects continued humiliation. This implementation of the technique has become a form of bare self-preservation.

Positive Self-Presentation

Positive self-presentation is a technique 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 toward empowerment. Positive self-presentation is a state of nurtured self-confidence in the face of fat prejudice. It was often discussed in therapeutic terms, though its performance was social and interactive. Its purpose is to present a self to the world that will provoke nondiscriminatory treatment from others. 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, positive self-presentation prevents discrimination: “To me, I don’t care if you’re 10 feet tall or if you’re two feet tall or if you’re 5,000 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 or 10 feet tall, or weighing 5,000 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 from Ontario working at a technical call center, described self-love as a personal choice: "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, explained how she was able to construct positive self-presentation even after being badly treated in her family:

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.

Ignoring Mistreatment

Some respondents simply try 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 sixties 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, recalled 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 nonconfrontational, the San Francisco ordinance is something she imagined 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 imagined that its presence would have transformed their sense of entitlement and self-worth. The San Francisco ordinance is the only formal law that was enacted with sufficient publicity to provoke the kind of cultural and discursive changes for fat identity that Engel and Munger (2003) describe happening after the enactment of the ADA; it will be worth keeping an eye on.

These techniques present ways to both enact legality and evade mistreatment and shift tactics in recognition of the absence of a formal law as a means of protection. Nearly every interviewee described using at least one of these techniques, and most used them in combination on a daily basis. Moral instruction is a way to secure a just outcome that feels like retribution or compensation and may even involve penitence from the discriminator. Positive self-presentation and scanning are compliance rules for avoiding confrontation before it begins. Redirecting shame is a dispute resolution response that leaves the fat person feeling that she has won and, in the best of circumstances, harnesses some localized solidarity to make the perpetrator into the deviant one rather than the fat person. Ignoring the mistreatment settles the dispute through capitulation (and may also be used to avoid confrontation), and it also reflects awareness that one is outside even the shadow of the law. Moral instruction most clearly enacts the ethical norms of antidiscrimination law but ultimately depends on the discriminator making some move to woo back the rejected fat person (hardly a scenario to be counted on). Positive self-presentation keeps the burden on fat people to deflect discrimination against them. Scanning limits fat people's lives in ways that are both invisible and difficult to quantify. Redirecting shame 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 (Bumiller 1988).

Because antidiscrimination protections are so sparse for this group, formal use of the law is not much of a possibility. But Ashley, a 52-year-old white woman, lives in Michigan and has referred to

her state's height and weight antidiscrimination provision to convince people to provide accommodations such as armless chairs. She described 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. I've 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. [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 the only interviewee to describe encounters in which she called upon an available law. Interestingly, the Michigan law prohibits only animus and stereotyping of fat employees who can otherwise do their jobs, and it does not require any accommodations (and, as I noted, fat people were not the primary target of protections when it passed). 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.

So while it would be wrong to say there is no use of or longing for the formal law among fat acceptance advocates, in the absence of legal protections, they have evolved these techniques for getting by in a hostile world. These techniques work as conduits for reimagining the self—not a self-hating fat person, but a confident woman whom 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 also 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. They must act on their own to punish, teach, and organize against discrimination.

Mustering Legality: Using the Master's Tools Defensively

Is Being Fat the Result of Personal Choices?

The next phase of the interviews probed explicitly for advocates' reasons for thinking that fat people should not be

discriminated against. Most immediately took up the “fat is unhealthy” argument. Fat had to be transformed from evidence of bad habits into a protectable trait. As Frannie put it: “We have to address the issue of health, because so often people will say to you, ‘Well, I can agree with you about discrimination against fat people is wrong when they’re denying jobs.’ But what about your health? And I really want to say, ‘Well, what about it?’ That’s usually a way to discriminate against us.” This process is a fundamentally defensive one, in which fat advocates must use the “master’s tools” to construct their own plausible inclusion. Are people fat by choice, or is it more like something you are born to be? Can a fat person just lose weight and thereby avoid discrimination? Janice made the argument that in fact many fat people pursue the same ideal lifestyle supposedly reserved for the thin and the upper-class:

“A lot of fat people are not suffering from any illness. They’re able to get up and live life actively and healthfully. They go out and do things, they eat decent, healthy foods, vegetarian lifestyles that are accepted among thin people as a healthy lifestyles. Simply because they’re fat, they’re considered unhealthy.”

Nearly all respondents conceded that fatness was linked to voluntary behaviors such as eating but also insisted that most people are predetermined 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). 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.” Many interviewees used analogies to other traits, explaining 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.) Vicky’s argument was 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, echoed 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. They wanted to be seen as functional individuals first and foremost, but after first invoking an account of their personhood in those terms, they often picked up other more capacious language that more deeply challenged dominant notions.

Vicky’s turn against the very concept of non-choice as the *sine qua non* of antidiscrimination (“It doesn’t matter whether it’s a choice or not”) 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

nondiscrimination that did not really turn on the absence of choice. My interviewees were certainly in a difficult rhetorical position. How can rights protections rest on an identity that is highly variable on a scale, not an “either/or” (as we often understand race and sex to be), which is both changeable in some sense yet often stable, which is related to both voluntary behaviors and to genetics, and which is constructed and defined within different and sometimes competing communities and in different dimensions (pharmaceutical advertising and media presentations, but also in ethnic and racial enclaves)? Is fat an unusually ill-fitting category for antidiscrimination law, or does it simply illuminate the ways that other identity categories must be understood as stable, binary, or imbued with a singular meaning when actually they are not, either?

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 often 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). Interviewees were reluctant to speak of fat people as a coherent group that should be the subject of rights. Their facility with the web of theories, analogies, and assumptions that make up our society’s dominant ideology about antidiscrimination was quite impressive. The way they talked—hesitations, arguments, quick comparisons, more pained comparisons, negotiations—showed how difficult it is to describe an identity that has not been adequately “made up” for antidiscrimination coverage. Their descriptions of themselves were channeled into a defensive posture in which they had to rely on formulations that did not wholly capture what they meant but needed to be invoked anyway. As I explain next, that defensive posture forecloses much engagement with disability, which, depending on how it is understood, could be the most interesting possibility for alliance.

Functional Individualism and the Tension With Disability Rights

The predominant way of justifying nondiscrimination against fat people was to use the logic of functional individualism. As I have described, functional individualism 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 is a foundational idea in our antidiscrimination laws and larger culture, so I was not surprised to see its emergence in these interviews. 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 nondiscrimination exemplifies the way functional individualism works in a job context: “A person should be judged on their abilities and if they are able to do the job that is set before them. 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?”

Functional individualism is incompatible with disability rights, since if a person cannot do a job because he or she cannot physically fit in the work space, for example, then there is no reason within functional individualism itself to make any changes (Kirkland 2003). As I noted earlier, the social model of disability would turn this individualism upside down, asking why the constructed world makes it possible for some to function and not others. In this view, disability is politically and socially created and is not some feature of abnormal bodies. Without this inversion, disability will be regarded through the lens of healthism or functional individualism, and “abnormal” or costly differences will not deserve to be ignored.

Yet fat advocates and disability studies scholars are both deeply engaged with the actual movements, pangs, pains, and what Siebers calls “blunt, crude realities” of bodies that are different (2006:178). The fat people I spoke with cannot ignore their bodies, and as the previous sections described, they actually devote a great deal of agency toward techniques for living in them. What about those people we call disabled (fat or not) who have a lot of pain, who will die young, or who seek medical intervention or rehabilitation? What if a fat person wants to use a scooter for greater mobility, needs to adapt her home for greater comfort and safety in

bathing, or has joint pain?¹¹ Disability studies scholars have sharply criticized the social model for moving disability too hastily to the social and the political realms. “In practice,” Shakespeare points out, “it is the interaction of individual bodies and social environments which produces disability” (2006:201). We should understand disability in a more complex and varied way, he argues, as both environmental and individual, embodied and social. Again, like the women’s multifaceted reflections on whether being fat is a choice, their articulations about disablement and bodily difference straddle this fault line: how can people talk about themselves as deserving both the dignities of functional individualism, which recommends ignoring their appearance, as well as accommodations for bodily difference, which confront it? And can they permit variable accounts of being fat—sometimes one’s fault, sometimes not, sometimes unhealthy, sometimes not, sometimes disabling, sometimes not? Given the tendency of discourses of disability to lapse into endless individualization, such a move might dissolve their collective political critique. But it would more accurately capture the full range of feelings my interviewees expressed, as well as draw them back from endorsing health and ability as the taken-for-granted starting point for deserving rights.

I was interested in how my interview subjects would consider the tension between removing attention to the “abnormal” body or giving it needed attention, so I asked then about whether they agreed that fat people should receive accommodations at work such as armless chairs.¹² 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.” 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. This inconsistency may look like a simple dodge or like bias against disabled people (eschewing the label but wanting the benefits), but I argue that we should consider why it was so difficult to expand the concept of disability rather than to push it away. 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:

¹¹ Incidentally, these kinds of personal care and mobility accommodations would not be required under the ADA because they are not job-related, and social welfare provisions for people with disabilities can be fairly stingy when it comes to assistive devices such as power chairs or scooters (Bagenstos 2004).

¹² In general, obesity does not count as a disability on its own, but there are some interesting cases and trends suggesting otherwise (Kirkland 2006a).

Well, I don't know 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 it from 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 the 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 wheelchairs, 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 [*sic*], I made a claim, and the union backed me up and within two weeks, they came and unscrewed the light bulbs [laughs]."

Disability studies scholar Rosemarie Garland-Thomson points out how well fat and disability can fit together. "The fat body is disabled," she observes, "because it is discriminated against in two ways: first, fat bodies are subordinated by a built environment that excludes them; second, fat bodies are seen as unfortunate and contemptible" (2005:1582). Even though fat rights attorney Sondra Solovay argues that disability law fits fat people too (2000:

145–9), a real alliance is quite far off.¹³ The scholarly critique of disability as stigmatized abnormality has not filtered out to the ordinary sensibilities of most fat acceptance activists. But Michelle is clearly advocating what's known as universal design—"why not make things that fit everybody?" She blends parents pushing strollers, users of wheelchairs, and people with large bodies together as simple variations on human needs, not as a medically demarcated class of impaired people who need help living in the world of "normals." Macskat, by contrast, sees attention to different bodies ("We just have a bigger butt") as normal and regulated by "common sense and common courtesy," while those with well-recognized impairments are properly set apart as the truly disabled. Foxglove seems to understand herself as masquerading a bit; she received a promotion because she is not "malformed" and still "functional," though she has gotten the advantage of being on the "handicapper list." Are disability rights for potentially everyone, or are they for a certain class of impaired people? If it is the latter, do they depend on a medicalized view of personhood, bringing with it notions of ill health and dysfunction, to demarcate that class? Even as their defensive posture means they must overwhelmingly reject being labeled "disabled," fat advocates hone in on the undecided questions of disability rights in contemporary American law and society.

Nondiscrimination as a Universal Ethical Imperative

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

¹³ The ADA permits lawsuits based on being "regarded as" disabled even if one really is not, which has been a way for some fat citizens to win employment discrimination cases without having to claim that obesity is a disability. I explore these cases much more fully elsewhere (Kirkland 2008). Many ordinary people do not know about this prong of the ADA, however, which might help explain why the people I interviewed for the most part assumed that disability protection meant agreeing that there is something wrong with them.

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, noncategorical, 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.”

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. They transformed antidiscrimination law from functional individualism, with its delimited boundaries and usages, into an exhortation that they could 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. They found fitting into antidiscrimination norms exasperating and useless. Their frequent invocation of sexual orientation discrimination as an analogy is significant. A gay or lesbian person could go on a strict “diet” and refrain from same-sex contact, of course; it is just miserable, confining, and not worthy of a full and dignified life to have to do so. It is possible to measure a person’s job skills on an individual level without knowing her sexual orientation as well. But many gay and lesbian employees find that remaining closeted at work is an onerous burden, especially since heterosexual coworkers talk freely about their relationships. Deliberate fat activist strategies such as resistance to dieting or referring to oneself as “fat” in a straightforward and uncritical manner are refusals to “cover” fat identity (Yoshino 2006). Vicky’s and Macskat’s reflections show that refusals to cover can be deeply antagonistic to the core of our antidiscrimination tradition and may require developing new vocabularies that are currently very difficult to come up with.

This universal ethical imperative is wholly inassimilable into the ways we currently reason about law. That is because antidiscrimination categories as traits one should ignore misses the whole point, as Macskat and Vicky would see it. The point is that one should be able to be fully oneself, in the body one has, eating, drinking, sitting in comfortably sized chairs, going out to dinners and movies with one’s daughter, and *still* be treated as a respected citizen. This is the world Vicky imagines herself in as a hippopotamus in the water: she’s still fat, but “graceful and amazing” because of the changed environment. It is not getting

accommodations to adapt to the other world; it is a shift in the terms of what is all around. Michelle's view of disability similarly dodges the issue of parsing exactly who is and is not disabled in favor of just accommodating everyone. Here we see how the dominant logics in our antidiscrimination consciousness—reasoning through the narrow list of analogous traits that should be ignored while true merit is measured instead—demarcate and sustain a very narrow range of imaginable injustices. Only harms that come to an otherwise normal, striving person can be fit in easily. That person is just like the other deserving people but for this one little irrelevant thing. While this criticism of antidiscrimination law has been articulated from many perspectives (Freeman 1995; MacKinnon 1991), we can see here some of the discrete discursive formations that sustain it in ordinary speech, and how even articulate and thoughtful advocates have great difficulty finding words to get around it.

Conclusion: Deterring and Channeling Arguments for Rights

The national focus on obesity has provided a unique opportunity to study the invocation and deployment of legal consciousness in a very specific but crucial dimension: a moment of great attention (and extremely negative attention, at that) on a highly visible group of citizens who must then struggle to muster an account of themselves as deserving of rights, despite their near-total exclusion from legal protection now. Undocumented immigrants, terror detainees, and gay and lesbian couples seeking to marry are related groups in this sense who must also draw upon settled logics of dedication to work, civil liberties or religious freedom, or monogamous commitment, respectively. In these cases as well, reference to already-dominant logics may be politically expedient, but they submerge more difficult questions about how to deal with difference. Hardworking and eagerly assimilated immigrants may be well regarded, but what about those who really do transform the American national identity rather than embrace it? One may easily agree that terror detainees need access to lawyers, but the question of whether terrorism is better conceived of as criminal activity, as wartime aggression, as resistance, or as something else still remains. Heartwarming photos of couples lined up outside San Francisco City Hall to marry set aside the question of why marriage remains such a legally privileged status in the first place. This group of fat acceptance advocates has embraced a rights discourse that resonates strongly with the pre-existing antidiscrimination ethic. They sit uneasily within it, though, and their formulations

often set aside pressing dilemmas within our antidiscrimination tradition. Moreover, simply proliferating identity politics means replicating a strategy that has in the past produced bitterly limited demands for other groups while failing to achieve much politically (Brown 1995). Perhaps time spent so far outside of inclusion in antidiscrimination laws will mean that fat acceptance politics will develop more varied and creative avenues for protecting and celebrating fat people (like some being developed at the conferences). Only time will tell if fat advocates are presciently ahead of public opinion despite their exclusion from most formal legal protections, in which case, as Gould's work on campus hate speech codes shows (2005), they might obtain concessions and protections at work, as consumers, and in public spaces without any formal legal account of their identity.

For now, fat people's liminal position outside civil rights protections has let us see the possibilities and limits for fat citizens to articulate why they should be let in. Studying legal subjects at the margins so often turns out to be a way to better understand the center. Antidiscrimination consciousness, as I have argued, is sustained at the center by a set of ideological commitments to a certain kind of deserving person. The description of this deserving person slides off the tongue quite easily, as does its accompanying logic of "just treat a person as a person, not a size." One might think the biggest challenge is changing public opinion about whether fat people can reasonably lose weight, and then legal protections will soon follow. But I suggest in these concluding observations that fat advocates have shown us a greater challenge: how to push beyond the tensions that assail the center of antidiscrimination consciousness as we realize just how fragilely imaginary the truly deserving person is. Real questions of justice loom for fat persons, who are both like and unlike those imagined deserving ones. In fact, sometimes they are hard to tell from everyone else.

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). I have suggested here that the durability and ideological power of law is built out of the terms even oppositional activists must use to confront the status quo—critically, out of the terms they do *not* use, the arguments that cannot be coherently formulated. Haltom and McCann argue that "legal lore contributes to hegemony to the extent that it sustains a pervasive taken-for-granted, commonsense knowledge on which the prevailing order rests" (2004:304). The common sense of antidiscrimination law is that it protects deserving people who can function just as well as anyone else from being unfairly judged based on an irrelevant

but historically stigmatized trait. “The common sense about law does not preclude or determine contests over legal meaning,” Haltom and McCann continue, “but it works to deter some conflicts while channeling others into safe, manageable trajectories and venues” (2004:304–5). Legal lore is an expression of liberal ideology that “defines both causes and evidence of failure in individualistic terms that efface attention to larger patterns of harm, systemic analysis of power relations that structure interaction, and collective responses to shared loss, gain, and aspiration” (2004:304–5). So how have contests over the legal meaning of fat identity been either deterred or channeled? How do fat acceptance advocates’ own arguments share in and react to those deterrents and dislocations? What have we lost in this channeling-off of fat rights claims? What can we see more clearly about civil rights consciousness generally?

First, deterrence comes from mass culture as elites simply make the inclusion of height and weight clauses sound ridiculous. Lumping in weight-based discrimination claims with the “allergic-to-cashews” folks (per Maguire 2007) reduces those claims to simple whines by overly sensitive people who do not really deserve rights. Of course, critics are quick to offer, we oppose discrimination against race and sex, but come on—fat people? The effect is to shore up and reify acceptance of “true discrimination” (though, as Herman [1996] points out, conservatives eager to parse those deserving of rights from those who are asking too much often fail to support measures devoted to the supposedly urgent problems of the truly deserving, as in the case of race discrimination, for example). Pointing out how undeserving fat people are holds up the ideal of the citizen who takes care of her own health through the cultivation of virtuous personal habits. A “collective response to shared loss,” as Haltom and McCann put it (2004:304–5; think of national health insurance), slips away in favor of the fantasy that we can each control our own bodies if we just try hard enough.

Second, we have seen here how fat citizens channel energy into practices of self-management. These techniques—moral instruction, redirecting shame, scanning, positive self-presentation, and ignoring the mistreatment—are sometimes empowering but often are not. They attempt to replicate but cannot replace what formal legal protections might provide. The few thousand NAAFA members in the country, led by a small cadre of activists, mobilize in more traditional ways, but for the most part these enactments are scattered, localized, and interpersonal. They are not yet a match for the relentless messages of mass culture. Perhaps advancements in fat acceptance will not come through anything like rights or social movements but through market forces (adapting to our changing bodies) and as more and more people come to see themselves as fat.

The techniques my interviewees described will be shared by enough people that it will be much more common to ask, after scanning a room, “Why aren’t there chairs here that will fit us all?”

The third way that contests over the meaning of fat in antidiscrimination consciousness are channeled and deterred is through advocates’ self-descriptions using the terms set by healthism and functional individualism. Again, because of the weakness and diffusion of the advocates’ message in the context of an overwhelmingly negative cultural message about fat, their first responses must be defensive. Defensive use of the master’s tools means that more radical conceptions of what our society could be do not have a chance to be well articulated. “But isn’t it unhealthy? It’s not like being black, right? Shouldn’t you just try harder next time to lose the weight? Shouldn’t businesses be able to protect themselves from the costs of fat employees?” In this first line of defense, advocates are up against an edifice of professional knowledge and must cite opposing studies. The next formulation is to make analogies to already protected groups. These analogies are highly constrained because advocates know perfectly well the comparisons are not exactly on point and because the one that ties in most closely—disability, because it actually confronts bodily difference—is highly medicalized and defanged, drawing them right back to the health issue.

The last move is the one I want to draw attention to here. It is to object to those grounds for debate in the first place, invoking dignity or the misery of dieting. Because of the need to talk about health and abilities of fat people first, the opportunity to let the gravity of the second critique sink in is lost. After talking for a while, Vicky, Macskat, and many others proposed that the real harm of fat discrimination is the punishment of variation and deviance from the norm. They suggested that instead of ushering fat people into the category of the potentially healthy (depending on the individual), we should simply stop caring so much about the fact that fewer and fewer of us fit into the “normal” Body Mass Index (BMI) range of 18–24.9. Perhaps it is a deeply unsettling idea that the goal of the war on fat is a world in which everyone’s body fits into this normalized range. Perhaps we could also be more relaxed about other “others” such as immigrants, wearers of the *hijab*, people who need help going to the bathroom, conservative talk show listeners, and pit bull owners. A fully realized sense of calm pluralism could slide into a shallow relativism, to be sure. (Vicky and Macskat cannot really mean we should respect absolutely everyone, after all—people who love to torture puppies?) They mean much more, but also a bit less than they were able to explain. Their approach works better as an account of what the world could be like, coaxing the interlocutor along, than as a logical progression in legalistic terms (“Is it a choice? If not, then is there

evidence of group-based discrimination? Can people with this trait still do the job? Then maybe they should be included.”) But we have scarcely given it a chance. As difficult as it will be, we might try talking less about fat people’s health and more about our own attitudes toward difference.

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