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Fighting for a (wide enough) seat at the table: weight stigma in law and policy

Angela Meadows[a], Sigrún Daníelsdóttir[b], Daniel Goldberg[c], and Marquisele Mercedes[d]

[a]Department of Psychology, Western University, London, Ontario, Canada; [b]Division of Public Health, Directorate of Health, Reykjavik, Iceland; [c]Center for Bioethics and Humanities, University of Colorado Anschutz Medical Campus, Aurora, Colorado; [d]Department of Behavioral and Social Sciences, Brown University School of Public Health, Providence, Rhode Island

ABSTRACT

Few jurisdictions provide legal protection against discrimination on the basis of weight despite evidence of pervasive inequalities faced by fat individuals in employment, healthcare, education, and other domains. Yet, in the last two decades, advocacy efforts in several countries aimed to remedy this situation have been largely unsuccessful. We present a cross-national conceptual analysis of three significant anti-discrimination developments regarding weight in the United Kingdom, the United States, and Iceland, respectively, to highlight how the creation, implementation, and enforcement of legal and policy mechanisms that prohibit weight discrimination ironically suffer under the very burden of deeply rooted structural stigmas against fatness and fat bodies that such efforts seek to counter. However, drawing on research around policy change in response to other social movements, we conclude that we may be at a time where broad-ranging policy change could become a reality.

KEYWORDS

Weight stigma; legislation; civil rights; policy change; discrimination

Introduction

Weight stigma is prevalent and well documented in practically every domain of daily life, including employment, education, health care, housing, the legal systems, the media, and in interpersonal relationships (Puhl and King 2013). Although higher-weight individuals, therefore, face pervasive inequality across numerous domains, with consequences for their health and wellbeing and life opportunities, very few jurisdictions provide legal protection against this form of discrimination. Yet, in the last two decades, advocacy efforts in several countries aimed at remedying this situation have been largely unsuccessful. The primary claim of this article is that efforts to make weight a protected category under equality and/or antidiscrimination laws ironically suffer under the very burden of stigma that such efforts seek to counter. The basic idea underlying this claim – that laws and policies channel preexisting stigmas –

CONTACT Angela Meadows drameadows@gmail.com Department of Psychology, Western University, London, Ontario N6A 5C2, Canada

should be unsurprising to any readers familiar with stigma scholarship arising specifically out of work in public health law (e.g., Burris 2002; Silverman and Wiley 2017) and sociolegal studies. There is overwhelming evidence that law is a potent mediator of stigma, all too frequently acting to intensify social stigmas that are, by virtue of the concept of stigma itself, always directed to more marginalized groups in any given society. However, there is at least some reason for optimism in the recognition that law mediates stigma (Burris 2002); where laws can and are used to intensify such stigma, it also follows that their power can be harnessed to ameliorate preexisting stigma. The ethical imperative for doing so should be obvious: stigma is corrosive, is strongly associated with adverse physical, social, and emotional health outcomes, and contravenes basic mandates of social justice (Goldberg 2017).

While the notion that laws and policies mediate stigma is well settled, this powerful mechanism for inscribing "stigma power" (Link and Phelan 2014) has neither been adequately conceptualized and explored in the context of fat stigma nor completed via analysis of specific anti-fat-discrimination laws and policies in the global North. This article aims to begin filling both of these gaps via a cross-national conceptual analysis of three significant anti-discrimination developments regarding weight in the United Kingdom, the United States, and Iceland, respectively. The analysis shows how efforts to make weight a protected category – unquestionably an anti-stigma intervention – can run up against deeply rooted structural stigmas against fatness and fat bodies in each of these societies. On a more optimistic note, the article reviews several legal developments that reflect a more robust commitment to ameliorating weight stigma via law and policy. These developments, of course, do not demonstrate the absence of prevailing weight stigma in any given society – empirically, we know this to be false (e.g., Brewis, SturtzSreetharan, and Wutich 2018; Puhl et al. 2015a) – but rather illustrate the complex relationship between anti-stigma mechanisms in law and policy and the attitudes, practices, and beliefs regarding weight that circulate in the relevant societies. The article concludes by noting that, while laws and policies can be used to alleviate stigma, the structural nature of stigma in general suggests that changes in stigmatizing attitudes, practices, and beliefs are usually more likely to precede legal change rather than to follow it, making interpersonal and community-level stigma interventions equally important in the road to fat liberation.

Before proceeding to the analysis itself, it is important to note the wide scope of what counts as "laws and policies" specifically in fields of public health law and sociolegal studies. Although colloquially "law" is often thought of in the West exclusively in terms of national statutes or constitutions, in fact the laws and policies that shape population health and its distribution go far beyond highly centralized or nationalized constitutions and legislation. In the US, for example, it is widely recognized that administrative law (i.e., regulations) are constitutive of public health law in general and touch people's

lives on an everyday level in ways that statutes and constitutions cannot. Moreover, as the analysis in the article shows, regional and local laws and policies (e.g., state laws or municipal ordinances) can also have a dramatic impact on social programs and interventions intended to improve health outcomes. Finally, even on the hyperlocal level, policies adopted by clinics or provider offices can also shape people's experiences of stigma, both in terms of prevalence and intensity. Therefore, and consistent with norms in public health law and legal epidemiology in particular, this article adopts a wide scope for the legal and policy units of analysis.

It is difficult to contest the argument from history that, at least in most Western contexts, law has been extensively used to reinscribe, perpetuate, and even intensify preexisting stigmas (Goldberg 2017; Schweik 2009). One of the central insights of Link and Phelan's (2001) structural model of stigma is what they refer to as "stigma power." By virtue of the roots of stigma in macrosocial power structures, stigma results in significant social consequences; its power is felt by stigmatized groups across a wide variety of social domains, such as education, labor, health care, etc. Laws and policies are a major variable through which stigma power is enacted on the bodies of stigmatized people. Moreover, the evidence that stigma is an independent social determinant of health – perhaps even a true fundamental cause of disease (Hatzenbuehler, Phelan, and Link 2013) – means that stigma power is embodied in ways that reproduce and intensify unequal exposures, life opportunities, and health outcomes.

Crucial to note is the uneven burden of weight stigma across social groups. Members of multiple marginalized groups can carry particularly high burdens of stigma in a fatphobic society (Kasten 2018; Rice et al. 2020; van Amsterdam 2013). For example, fat women are stigmatized more severely than men, and at lower weights (Hatzenbuehler, Keyes, and Hasin 2009); thus, not only do women experience certain disadvantages in a patriarchal system, but fat women experience compound forms of injustice not encountered by thin women or fat men (Hicken, Lee, and Hing 2018). Black women's experiences with fat stigma are affected by an overlap of systemic anti-Blackness and misogyny that significantly shapes their lived experiences (Crenshaw 1991; Daufin 2020); living at the intersection of these axes of oppression creates quantitatively and qualitatively different experiences of stigmatization from those of fat men or fat White women (Cox 2020; Hill Collins and Bilge 2016; Williams 2017). Further, higher-weight status tends to be more prevalent among some racial and ethnic groups, as well as among individuals with lower socio-economic status (Ailshire & House, 2011; Ciciurkaite and Perry 2018). Thus, weight stigma may also act as a proxy for racism and classism (Evans, Davies, and Rich 2008; Makowski et al. 2019; Strings 2015, 2019). However, given intersectionality's multiplicative, rather than additive, nature, it can be

difficult to quantify the specifics of how negative outcomes related to weight stigma are impacted by factors like racism or classism (Keith et al. 2017; Reece 2018). It is critical to understand the expression and magnitude of fatphobia as being conditional on the positionalities of who is being stigmatized.

In the following section, we turn to discussion of three specific efforts to harness the mediatory power of public health laws and policies to ameliorate and lessen the devastating power of weight stigma. As the analysis will show, the irony is that the efforts to remedy weight stigma through legal channels are shaped and ultimately impeded by the very stigmas such efforts seek to address. While this finding is not surprising in its own right, it nevertheless has important implications for general efforts to remedy stigma through public health laws, and of course also for specific efforts to redress weight stigma. Note, the first two case studies include examples of blatant fatphobia and may be distressing to some readers.

Three cross-national case studies of law & policy connected to weight stigma

A. Anatomy of an outcry: Response to the Kaltoft case in the UK

In 2014, the European Court of Justice (ECJ) ruled on an unfair dismissal case brought by a Danish childminder, Karsten Kaltoft, against his employer of 15 years, Billund Local Authority, Denmark (*Karsten Kaltoft v Billund Kommune*, 2014; EU: C-354/13). The reason stated for his dismissal was economic cutbacks; however, Mr. Kaltoft was the only childminder to be terminated. In his suit, Mr. Kaltoft claimed that he was dismissed from his position because of his 25-stone (159 kg) size, despite the fact that he was able to fulfil his job role. Under EU law, weight is not a protected category under anti-discrimination legislation. Thus, the ruling hinged on whether or not high-weight status constituted a disability that would be protected under current legislation, namely the Employment Equality Directive (2000/78/EC), which prohibits employment or occupational discrimination on the grounds of age, disability, religion or belief, and sexual orientation.[1] The ECJ ruled that in situations where a worker's size prevents them from "full and effective participation" in their work life "on an equal basis with other workers," then this would be covered under disability laws. The ECJ was quite clear that "obesity"[2] itself is not a disabling condition per se, but only where size became a salient factor in ability to function within the work environment. Ironically, because Mr. Kaltoft's size did not impair his ability to do his job, this situation was not pertinent, and Kaltoft was unsuccessful in his suit, the case ultimately being decided in favor of the local authority. Rulings of the ECJ are binding in all member nations, and, given the moral panic surrounding the so-called "obesity epidemic" (Campos et al. 2006), the decision attracted a lot

of attention in the UK media (at the time of writing, the UK was still a member of the EU).

In the following section, we outline responses to the ruling from two distinct groups who were approached by journalists for statements. We focus on a single piece published on the BBC News website (BBC News 2014). This piece was chosen as it was fairly typical of the coverage at the time. In their analysis, the BBC sought comments from two experts in employment and anti-discrimination legislation, and two spokespeople from "obesity" organizations.[3] Their positions are outlined below, and then dissected more carefully to expose the entrenched stigmatizing attitudes underpinning much of the discourse in response to the ruling.

1.The legal experts:

Audrey Williams is an expert in employment and disability law with a particular interest in discrimination, harassment, bullying, and pay inequality. Speaking to the BBC, she noted that the ECJ ruling would increase awareness among employers of their responsibility toward "obese" employees in the workplace. Employment lawyer Paul Callaghan further made clear that this ruling did not change UK law. Under the existing European Equal Treatment Framework Directive, employers are required to make reasonable adjustments, and workers may not be dismissed because of a disability. Thus, a higher-weight individual who suffers co-morbidities such as depression, diabetes, or joint problems that may be directly linked to their size and that impair their ability to conduct their job in some manner would be protected; however, higher-weight workers who are otherwise in good health and experience no specific impairments are not protected from discrimination on the basis of their weight.

2.The "obesity" organizations

Unlike the comments from the legal experts, those from the "obesity" organizations did not state fact or clarify points of law. Rather they conveyed opinions, and, as such, cannot necessarily be generalized to the position of the industry as a whole. However, again, these comments were fairly typical of non-legal commentary at the time. Jane DeVille Almond, chair of the British Obesity Society (BOS), had this to say to the BBC: "If employers suddenly have to start ensuring that they've got wider seats, larger tables, more parking spaces for people who are obese, I think then we're just making the situation worse." She continued, "[The ruling is] implying that people have no control over the condition, rather than something that can be greatly improved by changing behaviour." The BOS is a charitable organization, whose stated mission is to "change attitudes towards obesity, how its [sic] managed, how we can prevent it, and how society responds." They are committed to making "a difference to people whose lives are plagued by obesity" (although not apparently by ensuring they can sit down at work).

Tam Fry, spokesperson for the National Obesity Forum, at the time another charitable organization, told the BBC that the ruling had "opened a can of

worms for UK employers." He added, "They will be required to make adjustments to their furniture and doors and whatever is needed for very large people. I believe it will also cause friction in the workplace between obese people and other workers." The NOF now calls itself an independent professional organization that campaigns for a more interventional approach to "obesity," representing a "group of health professionals and specialists who are sickened by the appalling obesity epidemics in the country . . . " In addition to partnerships with a number of health organizations, they list several diet product companies (LigherLife UK Limited, Slim Fast Foods Ltd, Canderel), pharmaceutical companies (Sanofi-Aventis Ltd, Roche Products Ltd, and GlaxoSmithKline UK Ltd), and manufactures of diagnostic and surgical equipment (Abbott Laboratories, Mantis Surgical Equipment Ltd, Tanita UK Ltd) among their partners.

3. Analysis

The outcry in the media and on social media surrounding this ruling centered on the idea of "obesity" being considered a disability. Historically, "disability" has been understood through the medical model, which positions it as some form of defect that rendered a body "abnormal" or deviant. However, political activism by disability rights campaigners since the 1960s has resulted in an evolution of how "disability" is defined and understood (Barnes 2012). Disability advocates reject the binary of normal and deviant bodies, but rather recognize that human diversity exists on a spectrum, and "disability" arises when physical or social barriers serve to arbitrarily draw a line at some point (or rather, multiple points) along this spectrum, beyond which individuals do not have the same access to systems and opportunities that are available to people on the other side of that line (Kaplan 2000).

Since the 1970s, national, international, and supranational organizations have increasingly enshrined a social model of disability into their policies and legislation (for a history, see Barnes 2012). Under this model, a fat individual would not be inherently "disabled," but, for example, if an employer provided office chairs that were rated up to, say, 200 pounds of weight, a 250-lb worker would be prevented from safely engaging in work activities that were within their capabilities and that would be feasible if a chair rated up to 300 pounds were available. Thus, "disability" is a limitation arising from an interaction between human diversity and a (socially) constructed environment that does not take into account that diversity, and, as such, could reasonably be applied to fat bodies (Herndon 2002; Mollow 2015).

Much current legislation on the topic of disability protections is underpinned by the social model of disability. The ruling of the ECJ in *Kaltoft* and the comments by legal experts were based on this understanding of disability as socially constructed. In contrast, public responses reflected outdated, patronizing, and stigmatizing representations of "the disabled" as hapless but blameless victims of circumstance, beyond their control, to be pitied and

granted assistance from their benevolent "betters" – the *deserving* disadvantaged.[4] The comments of the spokespeople for "obesity" organizations in the BBC news article were typical in this regard, rejecting the idea that a fat person could be granted the rights given to "disabled" individuals because of their lack of deservingness, as well as the notion that fat people can be disabled at all.

The concept of deservingness is underpinned by two key constructs – culpability and mutability: whose fault is it and could it be fixed? Both factor strongly in weight stigmatizing attitudes. Individuals who score highly on measures of prejudice and fatphobia also tend to score highly on beliefs that weight is under individual control and is simply a matter of personal choice and effort (Crandall 1994). While the scientific literature belies both the idea that fat people can reliably become and remain thin people through their behaviors, or that weight-focused approaches to health are actually salutogenic (for a review, see Calogero et al. 2019), the fact remains that the controllability of body weight is irrelevant from a legal standpoint, at least in the UK and the EU.

On the question of blame, both EU and UK law are clear – the origin of a disability or impairment is immaterial.[5] People are fat for numerous complex reasons, but even if a person were fat through sheer gluttony – a commonly accepted stereotype – any disability or impairment resulting (or structurally produced) from their body size would be covered. As Advocate General Kokott (2012) stated in her opinion in *HK Danmark* (EU C-335/11 and EU C-337/11),

> To define the scope of the directive by reference to the cause of the disability would be arbitrary and would thus be contrary to the very aim of the directive of giving effect to the principle of equal treatment. (point 32)

For individuals struggling with this notion, consider a different example. Imagine two wheelchair users. One lost mobility due to injuries sustained during military service, the other due to a car accident caused by themselves while driving under the influence of alcohol. Do they both get to use the ramp? Or does the person whose injuries were a result of their drunk driving have to pull themselves up the steps with their hands? Although there may be some who would go to this extreme, for most people, the latter suggestion would seem ridiculous. Both have impaired mobility, and both are protected equally against discrimination under the law. Any contention that this is simply not the same as the case with "obesity," is fatphobia at play, rather than a legal distinction.

Mutability, while related to beliefs about blame in the case of weight, is a separate and, perhaps, thornier issue (see Clarke 2015 for an extensive discussion in the context of US equality and anti-discrimination law). Should a person be protected against discrimination based on a trait that

could be changed if they so desired? Even assuming that long-term weight-loss was achievable, or even desirable (see e.g., Calogero et al. 2019; Rothblum 2018, for evidence to the contrary), this argument is not applicable to withholding legal protections against weight discrimination in the UK or EU. As noted above, under EU legislation, discrimination on the basis of race or ethnic origin, sex, age, disability, religion, or belief, and sexual orientation are prohibited in employment contexts, and beyond for race, ethnicity, and sex. In the UK, the Equality Act (2010) prohibits direct and indirect discrimination on the basis of nine protected categories: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation. This list contains some protected categories resulting from personal choices and/or that could be changed if desired, yet the law does not require the individual to change. Further, UK legislators have made clear that immutability is also not a consideration in decisions about equal treatment based on disability. Specifically, if an individual has an impairment that would be potentially "treatable" or "fixable" by medical or surgical intervention, use of a prosthesis, or even a special diet, the impairment is evaluated on its severity in the absence of intervention (Equality Act 2010, c. 15 § 6, sched. 1, point 5). Indeed, the necessity of an intervention, broadly defined, to allow an individual to function fully in their daily activities, including normal work activities, is taken as indicative of the adverse effect the impairment is having on their life (Ibid). Thus, again, presenting fatness as a special case in which higher-weight individuals are required to change their bodies to "deserve" equal treatment is no more than fatphobia at work.

Thus, in the UK, a fat person would be protected against discriminatory treatment on the basis of their weight to the extent that their working environment was constructed in a way that their weight became an impediment to their ability to function fully in their role to the same extent as a thinner person.[6] As noted by the legal experts cited in the BBC article, the ruling in *Kaltoft* in no way changed a UK employer's existing duty of care to their employees under both UK and EU law. The comments of both Ms. DeVille Almond and Mr. Fry, suggesting that employers' accommodation of their fat employees should not be encouraged, were, in fact, contrary to employers' actual legal obligations. However, in the absence of any form of impairment, employees are not protected against weight-based discrimination. In the case of Mr. Kaltoft, his employer would have been perfectly entitled to state overtly that the reason he was the sole childminder being fired as a result of supposed economic cutbacks was that they did not like the look of him. They did not say this, but they could have, with impunity.

B. Weight as a protected category: Michigan antidiscrimination law

Weight discrimination *qua* weight discrimination is not illegal in the U.S. (Pomeranz 2008). Some courts, along with the U.S. Equal Employment Commission (2012), have indicated that to the extent fatness may be

construed as a "disability," civil rights protections related to disability may shield a fat person from discrimination. However, as in the UK and EU, this shield flows from disability law and does not make weight itself a category protected from discrimination under federal law.

While there are a variety of potential law and policy approaches to countering stigma, specific antidiscrimination provisions are unquestionably an important approach. The significance of such provisions is not bound to the actual substance or enforcement of any given legal structure; the expressive function of law creates signaling effects that reverberate in a given polity. Thus, for example, even while enforcement of the privacy provisions of the U.S. Health Insurance Portability and Accountability Act ("HIPAA") has been uneven, the existence of the federal framework itself prompted significant changes in social and cultural norms within health-care organizations regarding protections for patient privacy (Wilkes 2014).[7]

There is a single exception to the general lack of protections in state and federal US antidiscrimination law for fat people: the state of Michigan. In 1976, the state implemented the Elliott-Larsen Civil Rights Act ("ELCRA"), which prohibits an employer from refusing to hire or otherwise taking adverse employment action against an individual on the basis of "religion, race, color, national origin, age, sex, height, weight, or marital status" (1976, (1)(a)-(b)). In 2002, Kristen observed that "height and weight" were added to the statute because of the ways in which these features tended to be linked to race/ethnicity and to gender (p. 101). The exact number of weight discrimination cases filed with the state Civil Rights Commission pursuant to the statute is unknown, but there are relatively few published Michigan cases explicitly addressing the weight discrimination provision of ELCRA. While published cases are not equivalent to claims, the paucity of the former gives rise to a reasonable inference that the total number of claims brought based explicitly on the weight discrimination provision is not large (likely in the low hundreds at most).

Moreover, as is common in US antidiscrimination litigation, courts have significant leeway in interpreting and applying statutory language. In *Harris v. Hutcheson (2018*, at *9), an intermediate court of appeals reasoned that the defendant employer's recommendation to the plaintiff that she "get healthy and stay healthy" did not pertain specifically to weight and therefore did not constitute direct evidence of weight discrimination under ELCRA. In *Webb v. Swartz Creek Community Schils. (2001)*, the court ruled that the plaintiff had presented no triable issue of fact regarding the defendant school district's discontinuation of plaintiff's service as a bus driver due to the physical difficulty of accessing the steering wheel. According to the court, the plaintiff, who was "morbidly obese," was removed from her position only because her weight "prevented [her] from driving the school bus safely. There is no evidence that … any … District employee made derogatory remarks about

Webb's weight" (at p. 14). And in the per curiam opinion of *Farino v. Renaissance Club (1999)*the court found that the defendant's noted concern about plaintiff's weight in performance reviews "were not hostile or derogatory and … are not evidence of a weight-based animus" (p. 7). The court was also unmoved by the evidence that the defendant stated that the plaintiff was "fat and stunk," and concluded that no reasonable finder of fact could have concluded that the defendant acted with discriminatory animus in terminating the plaintiff (p. 8–9). The court, therefore, reversed the holding of the trial court and vacated a jury award of nearly US 276,000. USD

This flexibility of enforcement reinforces the primary claim of our article – that even where formal legal and policy mechanisms exist for countering weight stigma at the structural level, prevailing attitudes, practices, and beliefs regarding fat people may hinder efforts to utilize those mechanisms as either the sword or the shield. Admittedly, the existence of cases in which Michigan courts have ruled against plaintiffs asserting weight discrimination claims under ECLRA does not ipso facto establish that prevailing weight stigmas animated the court's reasoning. Nevertheless, the argument that structural stigma influences judicial decisionmaking is neither novel nor unprecedented; legal scholars have argued, for example, that the judicial emasculation of the Americans with Disabilities Act reflects stigma against disabled people (e.g., Soifer 2003). Similarly, U.S. courts have – very obviously – hardly been immune from the pernicious influence of racial stigma in their decision-making (e.g., *Dred Scott, 1857*; *Korematsu v. United States, 323 U.S. 214 1944*; etc.).[8] When we consider the flexibility of ECLRA enforcement through an intersectional lens, fat people who belong to minoritized groups are, once again, particularly vulnerable against weight discrimination that formal legal protections are supposed to help safeguard against.

Still, despite some U.S. courts' apparent hostility to antidiscrimination litigation, and to ECLRA in particular, there do exist cases in which Michigan courts have upheld or affirmed a plaintiff's claims of weight discrimination (e.g., *Lamoria v. Health Care & Retirement Corp., 1998*; *Ross v. Beaumont Hosp., 1988*). Kristen (2002) concluded that

> [c]ourts interpreting Michigan weight antidiscrimination law have thus developed a jurisprudence that closely tracks [U.S. federal] antidiscrimination law … Plaintiffs have not always prevailed under the Michigan law but some have been successful. It is likely that similar laws in other states would significantly add legal protection for fat workers (p. 104–105).

Moreover, despite the probable low number of total cases, Adamitis (2000) notes that the weight discrimination provisions of ECLRA have in fact produced both settlements and, perhaps more importantly for policy purposes, "the consequent revision of discriminatory employment policies and standards" (p. 210–211).

C. Weight as a protected category: The Body Respect Movement in Iceland

Iceland is a 103,000 km^2 (64,000 sq mi) island in the North Atlantic Ocean with a population of approximately 350,000 (Statistics Iceland 2019). As with most other countries, Iceland has seen great advancement in human rights and social justice in the past decades. In terms of body respect and equality, however, Iceland is a typical western nation with high levels of media consumption, unrealistic appearance ideals, body image concerns and dieting among youth, and high levels of anti-fat bias (Asgeirsdottir, Ingolfsdottir, and Sigfusdottir 2012; Ingolfsdottir et al. 2014; Puhl et al. 2015a). A cross-national study in 2015 found levels of anti-fat bias in Iceland to be comparable to those reported in the United States, Canada, and Australia, with the same underlying beliefs attributing fatness to lack of willpower and personal responsibility (Puhl et al. 2015b).

Since 2006, "body respect" activists have undertaken numerous public awareness campaigns, blogs, events, and community participation activities in order to counter such views and related social injustice. The first action taken by the Icelandic Association for Body Respect (IABR) on its inception in 2012, was to lobby for the inclusion of weight as a protected category in a new national constitution that was in preparation at the time. This spawned a public debate where views were divided between those supporting the proposal, those regarding it unnecessary, and those regarding it preposterous and irresponsible. Indeed, a nationally representative survey of approximately 1,000 Icelanders found a lack of support for legal reform to counter weight discrimination, despite respondents reporting widespread experiences of unfair treatment and discrimination of themselves and of friends and family members (Danielsdottir and Jonsson 2015). Surprisingly, while the majority of respondents agreed that weight discrimination *should be* illegal, only 37% said they would support the passing of legislation making it illegal, and only 20% supported the inclusion of weight in the national constitution as a protected category (Danielsdottir and Jonsson 2015). At the time of this writing, the success of the effort remains unknown as the constitution is still being revised by parliament with the provision on nondiscrimination not set to be addressed until the 2021–2025 electoral term.

Yet, a very different example of attempts to address weight-related social injustice can be found in inclusion of weight as a protected category in the Reykjavik Human Rights Policy issued in 2016 (City of Reykjavik 2016). This initiative arose as a result of the 3rd Annual International Weight Stigma Conference being held in Reykjavik, the capital city of Iceland, in 2015.[9] As part of its year-long program to celebrate the 100-year anniversary of Icelandic women's suffrage, the City of Reykjavik was a major sponsor of the event and representatives from the city's human rights committee were invited to address the

conference. The theme of the conference was "Institutionalized Weightism: How to Challenge Oppressive Systems?" and it was, therefore, natural to examine how the city's institutions addressed weight-related justice. At the time, weight-related oppression was not recognized as a discrimination issue; however, when the absence of "weight" from the city's human rights policy was brought to the attention of the human rights council, the reaction was overwhelmingly supportive. A new human rights policy was already in preparation, and immediately following the conference, the Icelandic host and long-time activist was invited to participate in the drafting of a section addressing weight discrimination. A year later, Reykjavik City became the first Icelandic authority to officially address body size as a social justice issue in one of its charters (Daníelsdóttir 2020).

The Reykjavik Human Rights Policy is broad ranging in its approach. The policy likely provides city employees with greater protection against weight discrimination than can be found in any other workplace in Iceland, as it states that employees may not be dismissed or refused work, career advancement, wage increases or rewards due to their body size or appearance. In addition to banning outright discrimination based on weight, size, or appearance, the policy centers weight in discussions about inclusivity. It asserts the city's responsibilities to create a constructive atmosphere in its workplaces that are free of stereotypes, prejudice and discrimination related to body weight, size, or appearance. It also proclaims workplace health promotion programs should not focus on employees' body build or size but on creating better opportunities for health-promoting behaviors and encouraging social inclusion. Further, the city, in its role as a public authority, employer, and service provider, is required to consider weight diversity when making policy decisions and in the provision of its various services, such that higher-weight people are not unintentionally disadvantaged by structural or systemic inequalities built into everyday life, and that the city and its employees do not inadvertently promote negative attitudes or stereotypes about higher-weight people. It also explicitly states that NGOs concerned with body respect should be consulted when their input might be relevant.

As Iceland's capital city and largest municipality, Reykjavik is home to over a third of the country's population (Statistics Iceland 2019). While not a law, the Reykjavik Human Rights Policy details the city's commitments and responsibilities to social justice as a public authority, employer, and service provider, and influences a wide variety of sectors and services that affect the daily lives of citizens of all ages, including preschool, primary and lower secondary education, social services, housing, child protection, cultural and recreation activities and more. Thus, the reach of the policy is substantial.

Discussion

There are reasons for optimism and pessimism in each of the case studies examined herein. In each, legal and policy efforts to address weight stigma encountered successes and obstacles; there is little doubt that existing structures of weight stigma play a substantial role in the scope of the impediments to addressing weight stigma through laws and policies.

In the UK, the ECJ ruling (and the UK Equality Act 2010) provides scope for other fat individuals to obtain recourse in situations where their work situation is engineered in such a way that they are disadvantaged due to their size. It is likely that many fat people would refrain from taking advantage of such legislation even where it would be applicable to their situation. Rampant cultural fatphobia has resulted in widespread internalization of society's negative attitudes toward fatness, whereby fat individuals blame and shame themselves for their body size (Bombak and Monaghan 2016). As such they may themselves also feel undeserving of protection from discrimination. Further, many fat individuals may be wont to reject the label of "disabled" specifically because of their fatness (Cooper 1997).[10] This reticence to take on the label is a manifestation of ableism, as well as an example of how identity, internalized stigma, and personal beliefs about culpability and mutability function under the constraints of the "deserving disadvantaged" archetype (Kai-Cheong Chan & Gillick, 2009). Indeed, an increase in case law relating to "non-traditional" claimants, properly applied, might serve to broaden understanding of the social model of disability and reduce marginalization and improve treatment across the board. However, as noted above, discrimination on the basis of "disability" can only be invoked when an impairment of some sort is present. Overt discrimination based on animus toward higher-weight individuals is not covered by existing anti-discrimination laws, and, as such, weight needs to receive protected characteristic status in its own right (Wang 2008).

In Michigan, weight has been a protected category under state law since 1976. While this legal shelter has undoubtedly facilitated claims of weight discrimination as well as likely encouraged changed behavior among some employers toward fat people, numerous cases also reflect the well-studied general judicial retrenchment against US antidiscrimination law. That existing stigmas, including weight stigma, contribute to the latter is at least plausible, if difficult to prove. Moreover, difficulty in showing a particular animus is itself a feature of stigma, as the increasing literature on stigma and epistemic injustice document (Buchman, Ho, and Goldberg 2017). Furthermore, the relatively small number of cases brought under ELCRA and in other jurisdictions in the US that provide protection against weight discrimination may, to some extent, reflect the potential social and psychological costs to the plaintiff of exposing themselves to the legal interrogation of their bodies, behaviors,

and morals, a discomfiting aspect of exposure that may not be as relevant in discrimination cases against other stigmatized identities (Tirosh 2013).[11]

As noted above, the height and weight protection provided under the ELCRA was originally intended to prevent discrimination on the basis of gender and race and it is likely that many fat residents of Michigan may not even know of the law's existence or its applicability to their situation (Kirkland 2008). As the fat liberation movement gains in strength, and fat rights activists campaign for new laws that protect fat individuals as a class, success of such laws may foster the development of a more politicized fat identity and rising awareness that fat people deserve to be treated on an equal footing to thin people. Importantly, many fat individuals do not identify strongly with fat others and there is a lack of theshared group identity experienced by many other marginalized groups (Crandall 1994). Kirkland (2008) noted that the successful public advocacy campaign to obtain protection against weight-based discrimination in San Francisco in 2000 meant that the fat activists she interviewed from that area had experienced a sense of empowerment and mobilization that would likely be otherwise absent. In interviews with 60 men and women with disabilities, Engel and Munger (2003; as cited in Kirkland 2008) also found that the passing of the Americans with Disabilities Act (ADA) in 1990 produced a sense of empowerment and identity and altered perceptions both from inside and outside the disability community, changing the very way that they interacted with society and their expectations of what life could and should offer. It will be of interest to explore any similar developments among higher-weight individuals in the several jurisdictions where such civil rights battles are currently being fought.

However, many recent attempts to have weight enshrined in law as a distinct protected category have been unsuccessful[12]. Such attempts will need to combat deeply entrenched weight stigma in society, as demonstrated in the UK response to the Kaltoft case. Rulings in jurisdictions where weight is already a protected category further prove that legislators are not immune to these prejudicial ways of thinking about high-weight status. Yet, the relative ease with which weight was included in the 2016 Reykjavik Human Rights Policy demonstrates the importance of Kingdon's (2011) influential concept of "policy windows," which occur when three policy "streams" converge: the problem stream, the politics stream, and the policy stream. As to the *problem* stream, activists, scholars, and City of Reykjavik officials converged on the problem of weight stigma. The centennial marking women's suffrage in Iceland drove a *political* opportunity to focus on problems marginalized groups frequently encounter and the importance of a human rights policy – which was already under preparation in the City – as a locus for developing antidiscrimination protections. Finally, the fact that Reykjavik hosted an important international conference on weight stigma that city officials attended opened up space for discussion on *policy* mechanisms to remedy

weight stigma. These three streams converged to create a policy window for explicit protections against weight discrimination in the Reykjavik Human Rights Policy, the proponents of which encountered virtually no resistance in their efforts. In contrast, attempts to enshrine similar protections in the Icelandic constitution have not fared nearly as well, and there again seems little doubt that structural stigma against fat people has at least something to do with the divergence of the policy streams needed to create a policy window on the national, constitutional level.

Ultimately, the analysis herein does not suggest that existing structures of weight stigma in the countries examined render it impossible or even unlikely to use public health law and policy as a tool to counter weight stigma. Quite the contrary; majorities in the US, Canada, Australia, and Iceland support the enactment of specific laws prohibiting weight discrimination (Puhl et al. 2015b). The fact that significant numbers of people in many Western societies seem more ready to adopt such mechanisms does underscore the point that laws and policies tend to *follow* changing social norms than precipitate changes in them. Analysis of attitudes and civil unrest in the United States prior and subsequent to the passing of the Civil Rights Act of 1964 provides further evidence that legislative action requires both a notable proportion of the population in favor of change and a trend of increasing support (Burstein 1979). While support for equal rights continued to increase following the introduction of the Act, it is difficult to conclusively attribute changing public opinion to the legislation per se, rather than to the continuance of the existing trajectory of negative societal attitudes to social injustice. Nevertheless, introduction of the Act provided people of color with protection against overt discrimination and did not hinder further gains in social justice attitudes and beliefs.

While existing legislation prohibiting discrimination based on, for example, race or sex has not eliminated either racism or sexism, such legislation nevertheless proscribes discriminatory behavior and provides recourse where it occurs. Although claims made under this legislation may be difficult to prove, may exact a toll of the plaintiff that could influence the decision to instigate a claim, and are not always successful, some cases nevertheless do succeed, and the development of case law in this area further strengthens the position of marginalized groups.

Perhaps where institutional change may most strongly act as a driver of societal change is in the demonstration of what is considered acceptable behavior – the so-called expressive function of law. Several recent U.S. studies have taken advantage of the changing legislative environment regarding same-sex marriage to explore this phenomenon. In a longitudinal study measuring personal attitudes and perceived social norms toward same-sex marriage at five time points prior to and following the 2015 U.S. Supreme Court ruling that legalized same-sex marriages, participants' perceptions of

wider social support for same-sex marriage increased following the ruling, even while individual attitudes were unchanged (Tankard and Paluck 2017). This matters because perceived social norms influence individual behavior, even when they conflict with personal attitudes (Cialdini and Goldstein 2004; Miller and Prentice 2016). Furthermore, perceptions of norms may also motivate changes in attitudes (Stangor, Sechrist, and Jost 2001). Experimental data collected prior to the Supreme Court ruling indicated that both perceived norms and personal attitudes in favor of same-sex marriage were influenced by the likelihood of this legislation passing (Tankard and Paluck 2017).

Support for changes in anti-discrimination legislation that introduces protections for weight status does not nullify concerns that the very stigma made the target of law and policy approaches may create significant friction to the creation, implementation, and enforcement of legal mechanisms. However, work conducted in the US in 2012 and 2013, at a time when a number of states legalized same-sex marriage, suggests that rather than polarizing opinion or prompting a backlash effect, attitude change tended to support both the idea that legislation reflects a changing consensus among a local populace, and that it served to legitimate the issue of same-sex marriage and attitudes toward lesbian, gay, and bisexual individuals, compared with states in which same-sex marriage either remained illegal over this time period, or was already legal and remained so (Flores and Barclay 2016; see also Bishin et al. 2016). The most significant positive changes were among individuals who had previously opposed such legislation, with only a small minority of those previously ambivalent becoming more negative (Flores and Barclay 2016). In terms of changes in legislation conferring protection against discrimination based on weight, the change in the Reykjavik Human Rights policy provides an opportunity to assess changing attitudes. Current efforts to introduce protection based on weight into law in the US state of Massachusetts and the Canadian provinces of Ontario and Manitoba also provide opportunities to empirically assess the impact of such policies.

Some commentators, including the "obesity" organization representatives quoted above, believe that the addition of weight as a protected category would create what is known as a moral hazard, rewarding "bad" behavior and "poor choices." The suggestion is that if we accommodate the needs of fat people, they will not be motivated to try and become thin people. The idea that high-weight status *should* be stigmatized is, unfortunately, not an uncommon belief, even in medical and public health circles, despite evidence that stigmatizing campaigns tend to have the opposite effect to that intended (Vartanian and Smyth 2013). Shaming and discrimination against fat people is endemic throughout Western society, and increasingly everywhere else (Brewis, SturtzSreetharan, and Wutich 2018). In the UK, every single media outlet accompanied their online coverage of the Kaltoft story with what Cooper

(2007) called a "headless fatty" photo – the dehumanized, decapitated, bulging, straining torso, that almost inevitably accompanies any news story involving weight, and demonstrated to increase anti-fat sentiments in readers (Brochu et al. 2013). Fat shaming is light evening entertainment (Ata and Thompson 2010). Yet, the impact of decades of weight stigma, with increasing rates of prejudice and discrimination in the last 10 to 20 years in particular (Brewis, SturtzSreetharan, and Wutich 2018), has been accompanied by increasing rises in BMI worldwide. Further, history has shown that using public health laws in a punitive manner generally serves to broaden existing disparities and injustices, with a concomitant negative impact on health outcomes (Pomeranz 2008). However, the fact that stigma does not "work" is a moot point. In a civil society, the underlying principles of equality and the driving purpose of anti-discrimination legislation is to address systemic forms of bias in society. Legal protections are not intended to provide special treatment for a particular group; rather, they are intended to eliminate existing disadvantage. In this context, a strong case can be made for the addition of weight as a protected category under equality and anti-discrimination laws (Blake and Hatzenbuehler 2019). Systemic anti-fat biases have resulted in barriers to equal opportunity for higher-weight individuals that start in early childhood and are compounded throughout the life course (Daníelsdóttir 2020; Puhl and King 2013). Thus, weight stigma is a fundamental cause of inequality, resulting in economic and health disparities between higher-weight individuals and those whose body weight is considered normative (Goldberg 2017; Hatzenbuehler, Phelan, and Link 2013).

Conclusion

As we have discussed, existing societal weight stigma means that there exists extreme antagonism toward the introduction of protections for higher-weight individuals. Such protections are intended to provide the full access to participation in society that has always been afforded to thin people. The emphasis is not simply on "treating people equally," but on leveraging antidiscrimination and civil rights law to remedy the structural disadvantage fat people so commonly experience in the West (Blake and Hatzenbuehler 2019). For the sake of simplicity, we may return to the reliably contentious chair issue: equity, or true equality, does not dictate that everybody should be made to sit in the same chairs, but that everybody should be able to sit down at work.

When law is used in its expressive function, to change social norms and stipulate new standards of appropriate behavior, the very need for the norm to change means that there will be at least some controversy around such an intervention (McAdams 1997). However, evidence from the US suggests that a critical mass of active and vocal civil rights movements, whose attitudes and goals are, by definition, not aligned with the existing mainstream ethos, can

create an impetus for rapid legislative change, which then has a reciprocal relationship on social norms (Burstein 1979; Costain and Majstorovic 1994). The lesson learned from Reykjavik, in particular, is that policy change can happen relatively quickly and uncontroversially when the right information is provided to the right people at the right time. Efforts by the first author to achieve this in the UK via the Government Equalities Office have been hampered predominantly by gatekeeping and lack of awareness of the evidence of widespread systemic inequalities faced by higher-weight people, rather than by anti-fat stigma per se.

Despite widespread anti-fat bias in the Western world, some evidence of cultural shifts against shaming and discrimination, and toward a more just and equal society, suggest that the time may be right to pursue political and social change. While we continue to advocate for policy change at the macro level, we must also continue to challenge fatphobia when it occurs in our daily lives and interactions. Rejecting even apparently minor instances of stigma can serve to signal, and alter, what is considered acceptable behavior (Czopp, Monteith, and Mark 2006; Mallett and Wagner 2011). At the meso level, progress can be made locally, for instance by targeting school anti-bullying policies or local ordinances on employment discrimination – interventions for which there already exists considerable public support (Puhl et al. 2015b). As awareness of the inherent injustice and harmful nature of weight stigma reaches critical mass, the perceived political costs and obstacles may amend themselves toward legal reform.

The role of fat activism in the development of the wide-reaching Reykjavik Human Rights Policy makes it clear that activists and affiliated organizations will continue to be crucial agents in the push against weight stigma. However, such forces, where they even exist, are frequently hampered by lack of funds needed to support concerted policy advocacy and often fail to represent the diversity of individuals affected by anti-fat bias and discrimination (Williams 2017). The burgeoning area of intersectional fat studies scholarship – especially in its overlaps with the areas of critical race/ism, disability, gender, and media studies – signals encouraging movement toward a more widely accessible body liberation space for groups that have long been excluded by hegemonic narratives and perspectives that center fat White people. However, these gains in scholarship must also be accompanied by an equal embrace of the grassroots efforts of fat Black, Indigenous, and other people of color whose humanity and inherent worth must be at the center of our current progress toward fat liberation. As the Black feminist thought-leaders of the Combahee River Collective (1977/2014) made clear decades ago, none of us will be free until all of us are free.

Notes

1. Other legislation addresses discrimination on the basis of sex and race or ethnicity.
2. The word "obesity" is placed in inverted commas to indicate contestation of the medicalization of body weight and the social construction of a disease narrative.
3. Absent from this coverage were the voices of fat rights organizations. It is worth noting that there is no such body in the UK, unlike NAAFA in the US and the Body Respect Association in Iceland (see below), both of whom are often approached for commentary. However, it is at least likely that the BBC did not expect "obesity charities" who claim to cater to the needs of fat people to speak out against the ECJ ruling.
4. Mr. Fry's statement that if employers were to make adjustments to workplace set up to accommodate "very large people," it would "cause friction . . . between obese people and other workers" also typifies a common misunderstanding of equality protections as something that gives a disadvantaged group preferential treatment – that they are getting something more than their benighted "normal" colleagues, rather than access to equal opportunities.
5. See for example, the opinions of the Advocate Generals in ECJ rulings on *HK Danmark* (Cases C-335/11 and C-337/11; point 32) and *Kaltoft* (Case C-354/13; point 32) and HM Government Office for Disability Issues (2011) Guidance on the Equality Act (2010), paragraph A3.
6. As such, the situation remains the same after the UK left the European Union in 2020. The Equality Act (2010) covers this same ground, even in the absence of EU statutory requirements.
7. Wilkes criticizes the formation of what she terms HIPAA culture, but herein we take no position on the merits of the critique. Our point is rather the ways in which changes in law can have downstream effects independent of the specific ways the laws are and are not enforced. On HIPAA privacy in general, see the body of work from legal scholar Stacey Tovino (2017).
8. Confidence in the extent to which structural stigma is influencing judicial decision-making can only follow (1) the development of a valid and reliable construct for identifying when such stigma exists and/or is animating particular judicial reasoning; and (2) an ensuing legal surveillance or mapping study that will document the prevalence of such stigma in the common law. Neither step has been achieved, though Goldberg is working on a construct for tracing stigma in statutory and regulatory language.
9. https://stigmaconference.com/previous-conferences/reykjavik-2015/
10. It should be noted that many higher-weight individuals may also reject a fat identity, considering themselves as atypical of "other" fat people and being, in truth, a thin person in a temporarily fat body (Kyrölä and Harjunen 2017).
11. orality and value judgments frequently play a role in the negative experiences of women and Black and Indigenous people of color in the legal system. For a thorough examination of how multiple systems of oppression impact minoritized groups, see Gonzalez Van Cleve (2016) and Matsuda (1991).
12. For example, in the US states of Utah, Massachusetts, and New York, the city of Las Vegas, and in the Canadian provinces of Manitoba and Ontario.

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ORCID

Angela Meadows http://orcid.org/0000-0002-6273-7564

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