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‘Dressing up for school: beyond rights and welfare’

Daniel Monk

Taking dress seriously is not new in childhood studies. Indeed one could argue that Aries’ seminal thesis about the invention of childhood based on representations in Western art, relied too extensively on dress. Yet at the same time, dress, particularly when coupled with the ambivalent term “fashion”, can still sometimes be perceived as trivial, especially in the context of ever increasing inequality. Moreover, within mainstream legal studies, a discipline that privileges the text, there exists a marked reluctance to acknowledge the significance of the visual (Moran 2012). This is paradoxical, for the legal profession attaches more importance to costume than most and law itself has played, and continues to play, a critical role in the regulation of dress, from the sumptuary laws of the past to present day disputes based on human rights (Robson 2013). And in contemporary Britain it is conflicts between children and schools that dominate these disputes.

‘20 girls sent home in row over skimpy skirts’ (*Metro*, Thursday 5 January 2017)

‘Schoolboy in skirt protest wins right to wear shorts’ (*Daily Telegraph*, Saturday 26 May 2012)

‘Boy, 12, fights “racist” school ban on his cornrow hair’ (*Daily Telegraph*, 12 May 2011)

‘Teenager isolated over cancer charity haircut’ (BBC News, 3 February 2015)

‘Muslim boys told their beards breach school rules’ (*The Guardian*, 7 November 2013)

‘School sends girl, 14, home for wearing a Sikh bracelet’ (*Daily Mail*, 7 November 2007)

‘More pupils sent home in uniform row’ (BBC News, 7 September 2016)

The above are just a few examples of headlines that appear on a regular basis in the British media. Legislation provides the framework for establishing and enforcing school dress codes; and conflicts in the courts are resolved by judges through the creative arts of statutory interpretation and the application of human rights doctrines. The aim here is not to suggest a correct way of resolving these conflicts. Rather, the key argument is that school dress, located at the point where education policies

intersect with broader cultural and political concerns about religion, sexuality, gender and class, provides a rich site for thinking about childhood in contemporary Britain.

A key premise is that taking school dress seriously requires thinking critically about the existing frameworks within which contemporary debates are located. This chapter begins by highlighting the limitations of thinking about school dress through the framework of the uniform/no uniform binary and suggests reasons for the contemporary move towards uniforms. It then looks at how law frames the issue as a disciplinary matter and examines the implications of this for contemporary debates about gender, bullying and school governance. It concludes by looking at two cases where children – unusually – were successful in challenging a dress code; and in doing so highlights the contingency of contemporary understandings and applications of children's rights.

Framing Dress Codes as School Uniforms

Conversations about school dress codes are often reduced to a debate about school uniforms in which opponents tread a familiar path. On one side are arguments against uniforms premised on autonomy, freedom of expression and a liberal, individualistic understanding of child development. These are arguments that can easily lay claim to being supportive of 'children's rights'. They are countered, on the other side, by claims about the individual and collective benefits of uniforms (such as improved school behaviour, self-respect/discipline, economic savings and social cohesion). These arguments can lay claim to representing the 'best interests' of children and, consequently, advocates of school uniforms can also claim to be supportive of 'children's rights'. Consequently, the debate provides a classic example of how 'rights' – and children's rights in particular – are open to conflicting definitions and applications and function as rhetorical legal tools (Eekelaar 1992).

While opposing school uniforms is often perceived as a more 'progressive' position, the stance too easily elides with a tendency within liberal rights accounts generally (and certainly with children) to juxtapose juridical commands – such as dress codes – against a notion of freedom and the enhancing of individualism. In this formulation repealing a uniform code 'liberates a child' enabling a 'real' authentic child to be made visible. In other words, a school uniform functions discursively, and not just materially, 'as a layer on top of an underlying subject' (Lesnik Oberstein 2011, 4). This restrictive narrative is not unusual, even in accounts that adopt an

explicitly constructivist approach to childhood, despite the fact, as Karin Lesnik Oberstein (2011) has highlighted, that to reach this position constructivism is not necessary and is to a certain extent misunderstood.

Yet while the representation of the un-uniformed child as a more autonomous subject overlooks the complexities of power and governance, it is not that arguments in favour of school uniforms are in any way more compelling. Rather, a more critical reading of the pro-school uniform discourse questions not imply the claimed effects of uniforms, but the underlying aspirations attributed to them. In other words, the opposing desires - to liberate children *from* uniforms and to empower children *by* uniforms - are both investments in the mastery of childhood and rather than questioning the category they both demonstrate the enduring resilience of childhood as a category within adult imagination.

One way to mark the closeness of these investments is to note how the uniform/no uniform binary masks the often very detailed regulation of dress in schools that do *not* have uniforms. While these rules are framed in the negative, unlike uniform policies that dictate what *must* be worn, they too represent dress codes and are legitimised and enforced by the same laws. Moreover, these dress codes are particularly revealing as a site for thinking about contemporary childhood, for they are premised not on what is appropriate for a particular school but assumptions about what is appropriate for children *per se*. At stake here is the relationship between idealised 'pupil-hood' and legitimate 'childhood'.

One could, justifiably, ask: what debate about uniforms? For arguably one of the most notable contemporary aspects about the uniform question is the very absence of it. Those who argue in favour of uniforms have – to put it crudely – won. Silences are revealing here. From the Children's Commission of England there is not a word against uniforms or dress codes. When they are mentioned, it is only in the context of their cost, the appropriate penalties for non-compliance, and their impact on ethnic minorities (OCC 2013, 2012). This is a notable shift and reflects the extent to which moves to relax or do without uniforms in the 1970s have been halted or reversed. Putting aside the validity of the arguments for or against uniforms, which raise complex empirical questions of causality, what is clear is that the aspirations for childhood, which uniforms are currently imbued with, cohere with broader political shifts and ideologies. That this is the case is all the more evident by the very British nature of the concern about school dress. That uniforms and dress codes are extremely

rare in most other European countries, reinforces the conclusion that the importance attached to them in Britain is far more than a concern about child welfare. Comparative perspectives here reveal national and political histories (Dussel 2001), but while schools in Scotland and Wales are markedly less likely to adopt uniforms than in England or Northern Ireland (OFT, 2012), the reasons for this have yet to be explored.

The traditional conservative school uniform – blazers and ties – has a long tradition in the independent school sector and was adopted by most grammar schools (Davidson, ???). Apart from the small number of progressive private schools, relaxation of dress codes and abolition of uniforms was far more common among comprehensive schools. In this way upper and middle class childhood was visibly distinguished: the more traditional and strict the uniform the ‘posher’ the children; the elaborate uniforms of Eton – the grandest of all public schools – exemplifies this visual material hierarchy. But with the increasing ‘privatisation’ of maintained schools, in particular with the introduction of ‘independent’ academies and a steady weakening of the role of local authorities (Harris 2012), the traditional model of uniforms has increasingly been applied to non-selective maintained schools (Mintel, 2010). The resulting rendering of class inequalities less visible has occurred at a time when social mobility, in practice, has significantly reduced (Dorling 2015). Uniforms achieve two ends here; first they serve to mask inequality, reinforcing the myth of classlessness; and secondly, they communicate a subtle solution to inequality, in which ‘private’ is best. In his diary, New Labour’s media advisor Alastair Campbell records the following conversation with Tony Blair in 2000:

“He said the problem with schools was *uniformity* of teaching. I said the problem was the background of poorer kids and he just rolled his eyes at me” (quoted in Wagg 2014, 179, emphasis added).

This exchange indicates how the adoption of uniforms – a very visual way of communicating pedagogical uniformity and the centrality of a focus on ‘standards’ – has all the right connotations in what Stephen Wagg has described as a culture war; an explicit rejection of permissive education policies of the past and a ‘disinclination to see a child’s educational performance as being utilized by social factors’ (2014, 179).

This contemporary symbolic use of uniforms is evident in the image from the Bede Academy School.

[insert image 1: Image: <http://www.bedeacademy.org.uk>]

Established in 2009 by the Emmanuel Foundation, the traditional uniform, which is typical, indeed almost *de rigueur*, for academies, albeit unremarked on, asserts its commitment to a nostalgic image of childhood and at the same time aspirations informed by the traditions of the private sector. Strict traditional uniforms visibly communicate their distinctiveness and superiority. Whether or not the uniforms achieve their stated aims is a complex empirical question. The point here is the extent to which concerns about contemporary childhood draw on the uniform as a signifier.

It is well documented that the structural changes to state education since 1979 have recast parents as consumers; albeit that the reality of parental choice and power is questionable and, without any doubt, deeply classed (Ball 2008; Harris 2007). In an increasingly market-based education system the image of the pupils from the Bede Academy is targeted at parents who, less than children, are largely in favour of them (Mintel, 2010). In this way, emphasising tradition and discipline, they mirror broader political shifts in education where the emphasis is on playing ‘to the aspirations (and fears) of a particular demographic – the upwardly mobile and/or lower-middle class voter’ (Wagg 2014, 180).

The market for uniforms and clothes that conform to dress codes is highly competitive, with supermarkets such as Tesco and Aldi challenging the monopoly of traditional school outfitters by providing ‘uniforms’ at significantly lower prices. Yet despite the lower prices the increase in secondary schools adopting uniforms has meant that the schoolwear market - worth £450M per annum - is still forecast to increase (Mintel 2010). The availability of cheaper uniforms to a certain extent rebuts arguments against uniforms based on expense (Hawkes 2009), and while individual schools have discretion about uniforms, the government, eager to support uniforms, has issued specific guidance about cost to facilitate them (DfE 2015).

The annual ‘back to school’ campaigns by supermarkets to advertise their schoolwear present representations similar to that of the Bede Academy. The children are imbued with nostalgia for a past, where childhood is perceived to have been safer and more innocent. Yet, at the same time, the images are not traditional in the sense of the children being ‘seen but not heard’; rather they are portrayed as laughing, smiling and relaxed and, perhaps most importantly, seemingly happy. The dominant contemporary construction of childhood requires children to be good studious hard

working pupils, but, now, also happy. The relative *unhappiness* of children in contemporary Britain has been widely reported, albeit that the basis of these claims has been effectively critiqued (Morrow and Mayell 2009). The images skillfully reconcile the contemporary injunction for children, as well as everyone else, to be happy, with the critique of the progressiveness of permissive education policies.

The images of happy children in traditional uniforms also bare a remarkable resemblance to the preeminent fictional contemporary child: Harry Potter. David Rudd (2014) has commented on the tendency to critique contemporary children's literature as either 'infantalsing' or 'adultifying' children. And one can read the images here through the same lens. The uniforms draw on adult-like suits and imbue the children with the ideal adult-like qualities of hard work and self-discipline. But at the same time the evident nostalgia locates them in a space free from adult-like concerns and dangers and contemporary uncertainties. For Rudd the 'entrenched notions of "essence" of either child or adult' persisted precisely because these categories were no longer so secure: there was a slippage' (ibid., 124). Heightened concern with school dress demonstrates both the commitment to childhood as a category and its fragility.

Framing dress codes as 'school discipline'

Within education law and policy dress codes are categorised as a discipline issue. The current government guidance to schools, under the heading 'Discipline', states that:

'The head teacher can discipline your child for not wearing the school uniform. Your child can be suspended or excluded if they repeatedly ignore the uniform rules' (GOV.UK 2016; see also DfE 2013).

The statutory basis for this is in Chapter 1, 'School Discipline', of the Education and Inspections Act 2006, which places the responsibility for discipline and behaviour on Governors (Section 88) and Head Teachers (Section 89). Framing the issue of dress as a discipline issue is not a 'neutral' categorisation. Law does not simply stipulate rules and procedures but legitimises particular narratives. Critically in this context it frames challenges and resistance to dress codes as a behavioural problem of individual pupils and restricts the formal debate to questions about the appropriate methods of enforcement. A key concern has been the use of exclusions. In 1999 the New Labour government, as part of a broader attempt to reduce school exclusions, issued Guidance that advised that breaches of dress codes would be an inappropriate ground

for exclusion (DfEE 1999). But under pressure from Head teachers and teachers' unions this was revised to enable more flexibility (DfEE 2000). And, contrary to the recommendations of the Children's Commissioner (2012), there is now no question that breaches of dress codes can give rise to exclusion (DfE 2013).

The centrality of law in the regulation of school dress is not inevitable. This 'juridification' is marked across many areas of society and especially education. Indeed in many countries the category or practice of Education Law is looked on with astonishment. 'But what has law got to do with special educational needs, admissions or school discipline?' is a question English lawyers are asked by continental colleagues. Noting the contingency of law is critical to reading law as narrative rather than as doctrine or simply as rules, as it enables law to be understood as 'artefacts that reveal a culture, not just policies that shape that culture' (Gewirtz 1996, 3).

Gender and Bullying

One consequence resulting from the framing of dress-as-discipline is the extent to which dress is absent from mainstream concerns about bullying. For example, empirical research about homophobic bullying has repeatedly found that it is non-conformity with gender stereotypes, rather than sexual identity *per se*, that is a critical causal factor of bullying behaviour (Monk 2011). Framed as a discipline issue, the problematic behaviour is the physical and verbal behaviour of other pupils. The role of dress codes in policing gender performance is not the object of concern. Pupils that fail to comply with gendered dress codes are not perceived as victims of bullying but are themselves often legitimately 'disciplined'. The individualisation of the bullying discourse consequently silences the institutional policing of gender roles. Campaigns against homophobic bullying are sometimes complicit with this and demonstrate the contingency of mainstream concerns. An example of this is a poster produced by a national campaign in Ireland in 2006, which was praised as 'Good Practice' in 2009 by a Committee of the Council of Europe.

[insert image 2: from BeLonG campaign in partnership with the Equality Authority, at: <http://www.belongto.org/pro/page.aspx?subsectionid=4663>]

Posing under the headlines, 'He's Gay and we're cool with that' and 'She's gay and we're cool with that', uniformed school pupils send out the message that gay and

lesbian pupils are just the same as everybody else; an important, and hard won, achievement. But in equating ‘equal treatment’ with ‘sameness’ the image fails to address the evidence that it is pupils who present and behave in ways that are not the same who are most likely to be victims of bullying. In doing so the image coheres with concerns by numerous commentators about the conditionality of inclusion (Brown 1995). Moreover in this context the compliance with the gendered uniforms – the boys in trousers and the girls in skirts – inscribes uniforms as a form of protection from harm. In other words, it suggests that uniforms, by rendering sexuality invisible, can aid cohesion and a sense of belonging, an argument that is used more generally as a defence for school uniforms in relation to socio-economic distinctions between pupils.

Decisions about the gendered aspects of school dress codes have wider significance. Recently, albeit exceptionally, some head teachers, exercising their discretion, have relaxed rules and demonstrated an awareness of the existence of trans children (Griffiths 2016). ‘Progressiveness’ can work in other directions too. For example, promoting equality between men and women has been upheld as a legitimate basis for banning the jilbab (Carney and Sinclair 2006). Cases about Islamic clothing have been highly politicised by the legal challenges. Law is complicit with this emphasis by providing no possibility of redress for gendered dress codes. Discrimination law – while emerging in both the UK and USA – is of limited use in this context (Wintemute 1997; Murray 2013). An example of this is the case of *McMillen (Chairman of the Board of Governors of Ballyclare High School), Re Judicial Review* [2008] NIQB 21, where a pupil attempted to challenge rules about the hair length of boys. The decision made clear that it was a discipline issue and not a school management issue and that while questions about procedural fairness can legitimately be challenged, the rules themselves cannot. In upholding the sanctions against the boy, the court held that ‘its legality is the issue rather than its wisdom’ (at para [45]).

Further gendered dimensions of dress codes are evident in the policy of Fortismere School, a co-educational comprehensive in north London. Proudly distinguishing itself from the growing trend of schools to adopt uniforms, the school’s dress code policy opens with the following statement:

‘Clothing can be a powerful means of expression. We are proud of our students and respect their individuality’.

However it then the following various prohibitions:

‘However, some clothing is inappropriate for school. So absolutely no . . . see-through clothing or strapless tops . . . inappropriately ripped or torn garments . . . sheer leggings . . . T shirts or other clothing with offensive slogans or images . . . drug or alcohol logos’ (Fortismere, 2017).

Cartoon images of the prohibited items are included and drawn in a playful humorous fashion. While the clothing illustrated is deemed inappropriate there is at the same time a ‘knowingness’, a Carry On film/seaside postcard humour about them, which acknowledges that children will be able to understand the humour. The vehicle of the cartoon itself provides a licence that is perhaps not available for photographic images. The form in this way conveys an ambivalent message: pupils may ‘know’ about drugs and sex – but cannot dress in a way that *performs* their knowingness. This approach to dress codes coheres closely with the development of policies about Sex and Relation Education introduced by the New Labour government. In marked contrast to the approach of the previous Conservative administrations, statutory reform supported by new guidance to schools demonstrated a willingness to more openly acknowledge the reality of sexual activity amongst young people. But it did so explicitly in order to reduce teenage pregnancy and to advocate the benefits of delaying sexual activity (Monk 2001).

Jane Pilcher has noted how the contemporary focus on sexualised clothing marks a shift of concern away from ‘teenagers’ towards fashions of children more generally, and that while the explicit focus is gender neutral the concern is primarily about girls (2014). Rebecca Raby similarly notes that, ‘boys’ (hetero)sexuality was only relevant’ to the extent that boys might be ‘distracted by girls’ provocative clothing, a position holding girls responsible for boys’ sexual desires’ (2010, 350). In research with girls about how they experience these rules, what is clear is that they sometimes desired the problematised clothing but ‘gave meaning to these terms in ways that are different from adults’ (Pilcher 2014, 264) and negotiate them in complex and often contradictory ways (Raby 2010; Bragg 2012). For example, Raby quotes girls in a focus group commenting on the rules in the following way:

Catherine: That’s like, the spaghetti strap rule is like kind of unfortunate because it’s like, for boys it’s not a problem, and it’s just like, “Sorry I’m a female like and it’s hot and I would like to wear a spaghetti strap tank top”,

but it's like "No, no you must not expose skin", which is kind of ridiculous 'cause

Janice: You are not even showing anything, just your arm [laughs]

Catherine: Yeah, you're really not; it's just your body; it's like "Oh no the human body!" (2010, 340)

The wide scale application of these largely unquestioned and un-researched dress codes reflects deep-seated fears about child sexuality. Childhood innocence is one of the most consistent constructions of modern and contemporary childhood, and its dominance is clear from the title of the DfE's policy paper, which addresses some of these concerns: 'Letting Children be Children' (2011). The school is a particularly critical space for upholding the norm of the, ideally, non-sexual child. Practical advice for children who are sexually active is now more readily available, but it is more frequently located outside of the school in health settings; advocating 'good health' for children is more palatable than 'good sex' (Monk 2001). Taking the long view, Christine Piper notes that, 'there is a sense in which the benefits of welfarism have always gone hand in hand with desexualising children' (2000, 40).

Concerns about sexualisation are linked to more recent concerns about the commercialisation of childhood. The Labour Party manifesto in 2010 stated that it would provide support for parents who wished to challenge 'aggressive or sexualized commercial marketing' and would 'ask Consumer Focus to develop a website for parents to register their concerns about sexualized products aimed at children' (2010, para 6.3). Pilcher discusses the varied ways in which this focus has continued to dominate government agendas, with the British Retail Consortium encouraging 'responsible retailing guidelines to preserve the innocence of our children' (2014, 262). This is the wider context to the adoption of restrictive dress codes and the perception of them as seemingly uncontroversial common-sense, even by avowedly progressive schools that reject uniforms. It can best be explained by a curious concatenation of contemporary discourses: traditional and welfarist desires to 'protect childhood/treasure innocence'; feminist concerns about the sexual objectification of young women's bodies; and, a progressive/left critique of the tentacles of neo-liberalism.

Reconstructing head teachers and parents

While ideals of childhood are explicit in school dress codes, contemporary conflicts about dress also highlight the shifting roles of head teachers and parents, which similarly reflect broader social and educational developments.

The power of head teachers, in matters of school discipline in particular, has become a highly politicised issue with political parties competing to emphasise their support for enhancing their powers (Monk 2005). The attempts by New Labour to limit school exclusions, noted above, were met with fierce and effective resistance. School Exclusion Panels no longer have the power to order a reinstatement and persistent breaches of dress codes are a lawful basis for temporary and permanent exclusions (Revell 2001). One of the underlying rationales for exclusions being perceived as a proportionate response to breaches of dress codes is that it is disobedience *per se*, and in particular a refusal to acknowledge the authority of the head teacher that justified the ultimate punishment, and not the consequences of the unacceptable article of clothing or hairstyle.

Head teachers now have more power than ever before. This reconstruction of the head teacher has been represented as a return to the past, where head teachers are imbued with a common sense natural authority – not dissimilar to the image of matrons in hospitals. Like uniforms, this nostalgic vision of head teachers owes much to the valourisation of the traditions of public schools. Alongside this is a more recent managerialism discourse (Ball 1994). Ken Jones has argued that the emphasis on leadership and ‘superheads’ demonstrates how schools are defined more strongly than at any time since 1944 ‘as places where management authority, rather than collegial culture, establishes the ethos and culture of the school’ (2003, 161). A heightened emphasis on uniforms and stricter dress codes supports the nostalgic discourse and heightened resistance to any challenges to the breaches of them supports the new model of managerial authority.

The authority of the head teacher has implications not only for pupils but also for parents. For legal scholars the shifting meanings of parental responsibility is a key contemporary issue. Debates about whether the concept emphasises parental authority and enhances privacy rights, or whether it defines appropriate parenting and legitimises increased surveillance of parents, have long been debated, and the shift to the latter identified and variously praised or critiqued (Eekelaar 1991; Reece 2009). Compliance with dress codes is one contemporary indicator of ‘responsible’ parenting, alongside others such as obesity and school homework and attendance

more generally. The shifting regulation of dress codes in this way is part of a broader move towards heightened surveillance of parents. Legitimised through concerns premised on child welfare, the legal framework emphasises the overarching individualistic focus. Law consequently plays a role in formally masking the extent to which the increasing emphasis on the ‘responsibilisation’ of parents has marked classed and race effects (Parton 2014; Gillies and Edwards 2011). Middle class parenting is offered as the solution to cycles of poverty for working class parents and childhoods; as Val Gillies notes, ‘the concept of “the personal is political” is increasingly articulated as “the personal is the only political”’ (2011, 207).

Children’s Rights

For some it might appear paradoxical that the contemporary presence of dress codes has been sustained, indeed re-energised, in an age when children’s rights have become increasingly embedded in law and more widely accepted. That this is the case can most easily be explained by the fact that ‘children’s rights’, like all rights, are open to conflicting interpretations, and in this context welfare-based concerns have simply trumped claims based on autonomy. Where pupils do attempt to challenge dress codes through the courts they are invariably unsuccessful, as the judges have demonstrated a marked reluctance to interfere with the discretion of schools and head teachers. The rare cases where the courts uphold a pupil’s challenge are often hailed as ‘children’s rights’ victories; the accuracy of these claims is questionable and two of these cases are explored below. But whether successful or not, the cases as a whole, which often receive wide coverage in the media, reflect not just individual challenges but texts about moments of rupture and tension in contemporary childhood.

Many of the high profile cases about school dress codes frequently concern religion. And without any doubt the issue that has received the most attention is ‘the veil’, the wearing of either the hijab or jilbab by Moslem girls. The key case in the UK is *R (on the application of Begum) v Headteacher and Governors of Denbigh High School* [2006] UKHL 15, which upheld a school’s ban on the wearing of the jilbab. A huge amount has been written about this case and the issue more widely, both in the UK and in other jurisdictions. Indeed ‘the veil’ has become one of the flashpoint issues in western societies, a symbol that brings to fore tensions and contradictions within liberal democracy and feminism (see, for example, Marshall 2008; Goldrick 2006; Smith 2007; Lyon and Spini 2004). Moreover, to the extent that

these issues are informed by and intersect with debates about global politics - ‘the war against terror’ and ‘islamophobia’ - in relation to concerns about children it can be connected to the recent and highly controversial government ‘Prevent’ agenda and concerns about ‘radicalisation’ (McDonald 2011; Coppock and McGovern 2014; Stanley and Guru 2015). The degree to which ‘the veil’ is a focus point for concerns is also demonstrated by the relatively little attention that school dress codes more generally attract. Its very exceptionality - its otherness - is reinforced by the attention. Other issues, uniforms more generally and hair length, shoulder straps, visible underwear, attract very little attention. But the seeming mundanity of these issues, the ‘common sense’ acceptance of them, and the relatively small scholarly attention to they receive, are significant in understanding contemporary childhood. Law is critical here, for ‘religion’ as a protected category is to a certain extent privileged in challenges; these are not always successful – as the *Begum* case attests – but what is accepted is that religion creates the space for the most legitimate exception to school dress codes. The uniform policy of Hampstead School, a large London co-educational comprehensive, highlights these distinctions in practice. Exercising its lawful discretion in this area, and demonstrating a commitment to diversity and inclusion, the policy permits the wearing of the Jilbab – the full body covering that led to the exclusion of Begum - but at the same time does *not* permit: ‘Hair dye which is not a natural colour’ or ‘Patterns shaved or cut into hair’ (Hampstead School 2016).

Such a policy is without any doubt lawful; and the aim here is not to question its wisdom. But it highlights a particular form of public – albeit local - negotiation around children’s bodies, in particular the contingent symbolism of hair (Lesnik-Oberstein 2006). While the policy may appear to be contradictory from a children’s rights perspective that emphasises autonomy, the analysis of the following successful challenges indicates the underlying rationality of such a contradiction.

In *R v (on the application of Watkins-Singh) v Aberdare Girls School Governors* [2008] EWHC 1865 (Admin), Sarika Angel Watkins-Singh, a 14-year-old Sikh girl, challenged her school’s refusal to allow her to wear the Kara - a religious steel bangle. The wearing of the Kara contravened the school’s policy relating to jewellery, which permitted only one pair of plain stud earrings and a wristwatch. In *G v St Gregory’s Catholic Science College* [2011] EWHC 1452 an 11-year-old boy challenged his school’s refusal to allow him to wear his hair in cornrows, a form of braiding. This hairstyle contravened the policy of the school, which stated that:

‘Hair must be clean, neat and of a moderate style (boys must not wear braids). Peculiar and bizarre styles are quite unacceptable. These styles include, for example, hair that falls below the collar (for boy’s), wearing of hair extensions, bleached, dyed, tinted or highlighted hair, closely cropped or shaved hair, and patterns and lines cut into the hair. Furthermore pupils must be clean-shaven at all times and the shaving of eyebrows is not acceptable. Pupils whose hairstyles are unacceptable will not be admitted to school and risk disciplinary action.’ (para 19).

In both cases it was accepted that the rules *per se* were lawful. As the court stated in the *Gregory* case, the school was ‘entitled to adopt a uniform policy, including what haircuts are permissible, which is or may seem to be very restrictive or conservative’ (para 8). The legal question in both cases was whether or not the pupils could legitimately be exempt from the rules. In other words, from the outset the cases rest on ‘exceptionality’, requiring the pupils to establish that they were outside of the norm. The challenges in both cases succeeded by establishing that the school policies were a form of indirect discrimination under the Race Relations Act 1976 and the Equality Act 2010, in the first case against Sikhs and in the second against boys from an African-Caribbean background. But what in this context is interesting is noting how the courts distinguish these claims from the far more prevalent unsuccessful claims. In particular, why the wearing of a Sikh kara was acceptable but not the jilbab or a Christian ‘purity’ ring. And why cornrow braided hair was acceptable for boys from one background but not for others. The different doctrinal rules relied on provide a formal means of distinguishing the cases; in particular the differences between Human Rights claims based on religious freedom of expression and indirect discrimination claims based on equality legislation (Howard 2011). Another distinction often drawn refers to practical or ‘health and safety’ issues relating to particular articles of clothing or long hair. But underlying these arguments, reading between the lines of the judgments - or in the words of the critical legal theorist Alan Norrie, ‘not taking law’s word for it’ (2005, 8) - it is possible to explain the exceptionality of these claims as judicial and social constructions of contemporary ‘good’ childhood.

The first key point emphasised in both cases is that the decisions to wear the Kara and adopt the cornrow style, while individual choices are expressions of collective religious and ethnic identity, respectively; in other words, they are

explicitly *not* expressions of individuality. The wearing of the Kara here was contrasted with the wearing of a purity ring in an earlier case of *R (on the application of Lydia Playfoot (A Child) v Millais School Governing Body* [2007] EWHC 1698 (Admin). The girl in that case failed in her challenge largely because it was held that she was not ‘obliged’ by her religion to wear the ring, as it was not considered to be ‘intimately linked’ to her Christian beliefs. Similarly a factor that went against Begum, was the suggestion that large numbers of Muslim girls at the school, supported by religious authorities, complied with Islamic religious requirements by wearing the hijab as opposed to the full jilbab. In the context of these religious symbol cases a binary is constructed between individual choice and obligation to a higher authority individual choice, the former, while recognised, is at the same time problematised. As Bruno Latour writes in the context of iconoclasm, there is ‘an impossible double bind’:

‘If you say it is man-made you nullify the transcendence of the divinities . . .
The more the human hand can be seen as having worked on an image, the weaker is the image’s claim to offer truth’ (2002, 18).

A similar ambivalence about ‘choice’ is evident in distinguishing the cases about hairstyles. In the *Gregory* case it is because the boy obviously had no choice over his ethnicity that legitimised his claim. As the judge made clear: ‘more than choice is needed to constitute a particular disadvantage’ (para 38). It was, consequently, essential for the cornrows to be distinguished from ‘fashion’. As the judge noted: ‘choice or a desire to adopt a particular fashion is no good reason to be permitted not to abide by the policy’ (para 8). There is an acknowledgment here that for some the cornrow hairstyle is ‘merely’ a question of ‘fashion’. Indeed the boy himself is quoted in the case as saying:

‘Every race has differences, in religion and culture, the plaiting is ours, and I would like to keep it, it's the one thing I really like, and the best part was when I saw my idol, David Beckham, cornrow his hair, it showed me that he appreciated African hair styling, and that we are all the same underneath it all’ (para 33).

While the boy in this statement appears to read Beckham’s hairstyle as a form of cultural appreciation, the clear implication of the ruling, however, is that white boys in the school are forbidden from adopting the cornrow hairstyle. For them to do so would be a pure choice, whether informed by a desire to be ‘fashionable’ or to

express, implicitly or otherwise, an expression of solidarity or celebration of multiculturalism. Legal discourse's requirement of 'exceptionality', while informed by respect for difference and inclusion, ironically, fosters ethnic demarcation. The law here also implicitly coheres with an emerging contemporary trend that would crudely judge Beckham's adoption of the cornrow style to be a problematic form of 'cultural appropriation' (Patterson 2015).

Both cases indicate that forbidding expressions of anything that might be termed 'political' – broadly defined - is one of the justifications for the dress codes and a means to demarcate *legitimate* religious or cultural 'choices'. In the *Gregory* case the school's banning of skinheads was justified on the basis of its association with far right political groups; arguments made to suggest that it is a style 'common in some eastern European cultures' (para 47), and in this way akin to cornrows, were firmly rejected. As the judge made clear:

'There is . . . not a shred of evidence to suggest that anything but choice could lead to a skin head cut' (para 48).

That *pure* choices, those not required by religion or motivated by belonging to an ethnic group, can be perceived as 'political' and the claimants as potential or real troublemakers is clear from earlier cases. In the *Begum* case the claimants behaviour was described as 'unnecessarily confrontational' (Lord Scott at para [80]). And concerns were raised that she was under the influence of her brother; that she was effectively, in contemporary political parlance, 'at risk of radicalisation' (Coppock and McGovern 2014). Conversely in the *Gregory* case, it was emphasised that the boy 'was not coached in any way' (para 34). He had also moved to another school where he was able to keep his cornrow hairstyle. Whereas Begum was criticised for not making such attempts, allegedly, because she was 'intent upon enforcing her "rights"' (Lord Hoffmann, para 52). In the *Playfoot* case the pupil was described as having adopted a 'moral stance' (para 8) and the ring was described as 'ostentatious'. Whereas in *Watkins-Singh*, the judge explicitly rejected the, 'possibility that she is insisting on wearing the Kara in order to be rebellious or just to defy authority' (para 62). The legal discourse is avowedly secular, but one can read these distinctions as expressing a particular and traditional liberal Anglican suspicion of fundamentalism; a commitment to religious and ethnic diversity, alongside a rejection of any form of proselytising.

Reading the successful challenges alongside the others reveals a policing of the adult/child boundary and once again concerns about the sexualisation of young girls. On the surface the wearing of the jilbab and the purity ring appear distinct from concerns about sexualisation, as both express commitments to traditional sexual morality and a desexualising of the school space. But the refusal to allow them arguably coheres with the codes that refuse to allow girls to reveal too much of their bodies, as the jilbab in *Begum* was perceived by some as unnecessary for girls and as a form of adult women's clothing, and the chastity ring in *Playfoot* made visible the reality that school-girls do indeed make sexual choices.

Gender was also critical in the cases about boys' hairstyles. For in both the *Gregory* case and the *Ballyclare* case the pupils argued that the school dress codes amounted to unlawful sex discrimination: neither prevented long hair for girls and African Caribbean girls were permitted to wear cornrows. Drawing on earlier cases in the employment field, the judge in *Gregory* stated that 'Rules concerning appearances will not be discriminatory because their content is different for men and women if they enforce a common principle of smartness or conventionality' (para 54). And applying that rule held that:

'A rigid appearance policy at a school is clearly entirely reasonable provided it complies with equality law. Permitting long hair for girls and not for boys may be regarded as discriminatory since boys nowadays not unusually wear their hair longer. But I have no doubt that 'not unusual' does not equate to conventional and an appearance policy such as the one operated by the defendants is not discriminatory albeit it applies different rules to girls than for boys' (para 60).

Putting aside the circularity of this argument – the judge overlooks the impact of dress codes on what is considered conventional – what is clear here is the extent to which enforcing conventionality in effect becomes an additional legitimate aim of dress codes.

Children's rights – as an autonomy right – is almost totally absent from the cases. But in the *Ballyclare* case the fact that the school council had been consulted was held to be significant (para 4, 8, 9, 27). And the judge referred to both the requirements in Article 12 of the United Nations Convention on the Rights of the Child, which emphasises listening to children, and the importance of school councils as vehicles or mechanisms whereby a policy can be changed:

‘it is necessary to establish that there is capacity for review of the [dress] code and there is capacity for the voice of the child to be heard . . . (para 30)’.

But despite noting the Children’s Commissioner’s criticisms of the procedures in that school it had no effect on the decision (para 31). While a particular case, it reflects an increasing tendency whereby formal acceptance of the rhetoric about the importance of listening to children is translated into law in a way that becomes procedural and formalistic and easily marginalised (Fortin 2009). In the specific context of schools this demonstrates a tension between the potential accountability provided by School Councils and their functioning as a form of soft governance whereby they become a vehicle for legitimizing ‘conventionality’ (Gillies 2011). Injunctions to hear children and empower them through participatory processes and, at the same time, to effectively restrict their choices, can be seen as contradictory. But to do so overlooks the inclusion of contemporary childhood in the shift towards self-governance. Through this lens it is possible to make sense of the fact that girls can access contraception under the age of 16 while at the same time be prevented from adopting a particular hairstyle. For while starkly contradictory in terms of respecting bodily autonomy, to the extent that contraception precludes the presence of a pregnant girl in the classroom and coheres with government aims to reduce teenage pregnancy, accessing contraception and adhering to school ‘hairstyle’ codes both represent ‘responsible’ decisions (Monk 2002). Children in contemporary Britain, consequently, have an active role to play in ensuring that childhood remains in place.

Conclusion

‘Children’s rights’ may have come of age in contemporary Britain, and there may be much to celebrate as a result, but it is important to recognise its inherent contradictions. These come to the fore in the context of contests about school dress, for what is evident are deep-seated tensions between autonomy rights, emphasising individual freedom, and welfare rights, premised on perceived benefits and risks of codes and certain clothing. There is a degree of triviality; it, perhaps, does not actually matter too much what children wear in school. But the aim here has been to demonstrate why and how it matters if one is interested in understanding contemporary British childhood. For underlying the welfare and autonomy based arguments about what real children should wear and what rules about clothing can achieve are a complex array of deeper assumptions and calculations. In education the

contestation is a window into and visual representation of political debates about the perceived benefits of privatized education and a pedagogic shift from perceived permissiveness to uniformed standards. More widely the trends and contests highlight the shifts in long established and the emergence of new concerns and fears, such as sexualisation, radicalisation and ‘irresponsible’ parenting. Taking school dress seriously does not so much reveal contemporary childhood, but is a method that can unmask some of the conditions of possibility of the terms of its contestation, and its persistence and resilience as a site of political imaginations.

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