

## “Why Can’t I Wear This?!” Banning Symbolic Clothing in Schools

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There is great discrepancy in how schools enforce their dress codes and uniform policies. Schools also vary in the rationales they provide for banning certain kinds of clothing. These rationales include protecting students’ health and safety, minimizing social class indicators between students, and creating cohesion and uniformity through a dress policy. As of late, schools have been faced with an increasing amount of controversial cases where schools have banned certain student clothing symbolic of their political, social, or religious identity. I wish to highlight three cases of this kind: a British girl who won the appeal to wear the *jilbab*<sup>1</sup> to school, American students who were banned from wearing political t-shirts to school, and English and American students who were banned for wearing Rastafarian dreadlocks. I have chosen these three cases to elucidate the way in which these symbols represent religious, political, and social forms of identity.

The inconsistent and *ad hoc* approach to addressing this issue is noticeable. Despite the numerous cases where schools have had to distinguish between appropriate and inappropriate school dress, relatively little research addresses this issue. At first glance, one might suggest that a uniform policy would alleviate these concerns of acceptable and unacceptable forms of dress. For instance, a uniform policy on what to wear would minimize a need to make daily decisions about skirts that may be too short, hair that is too long, or make up that is too brash. At least two problems present themselves: first, a uniform policy may inhibit a child’s development to become an autonomous person making decisions and judgments about their appearance and identity<sup>2</sup>; second, a uniform policy still does not alleviate the larger dilemmas surrounding dress especially when the dress may be symbolic of their identity. When dress becomes more than just an expression of one’s individuality, but arguably a constitutive part of their identity,<sup>3</sup> such as the *yarmulke* or *hijab*, arbitrarily enforcing a preset uniform policy seems inadequate.<sup>4</sup>

This essay addresses some of these dilemmas, and in so doing, puts forth some theoretical principles to use as a guide for developing dress code policies. In setting out these principles, I will draw from liberal theory, and specifically, considering the limits of freedom of expression and freedom of religion. I conclude by highlighting the inconsistency of principles used in banning religious, political, and social symbols in schools.

### BANNING SYMBOLIC CLOTHING: THREE CASE STUDIES

In March 2005, a Muslim girl won a case with England’s Appeals Court judges to wear the *jilbab* to a school in Luton, England. Shabina Begum was aged sixteen at the time of the case. Shabina had previously worn the approved school regulation uniform for Muslims of the *shalwar kameez* (trousers and tunic). In September 2002, however, she informed school authorities that she wished to wear the full *jilbab*. In this case, Shabina was not coerced by her parents to wear the *jilbab* — both her

parents were deceased at the time of the case. However, the Luton school felt that, since it had already developed a uniform for Muslims in cooperation with the Islamic community, the request went beyond the acceptable boundaries of dress. The school's ruling to ban the symbolic clothing did not persuade Shabina Begum to adhere to the uniform policy: she turned to the law courts to defend her case. The court agreed with Luton school, and upheld the decision. However, Shabina continued to defend her case and went to the Appeals Court. The Appeals Court felt that it was the duty of the school to show that the school uniform policy should override the right for Shabina to wear her religious dress, which in the eyes of the judges, it could not do. The Appeals Court granted her appeal on the grounds of her right to freedom of religion.

A number of cases in the United States have challenged the right to freedom of expression on the basis of dress worn to school. In Detroit, Bretton Barber chose to wear a t-shirt to school with a picture of President George Bush on the front that read "International Terrorist."<sup>5</sup> The school insisted that Barber either remove the shirt, turn it inside out, or return home for fear of the shirt would cause "disruption" amongst students at school. Similarly, in Michigan, Timothy Gies, a high school student in Bay City, was repeatedly suspended for wearing t-shirts with a peace sign, anarchy symbols, an upside down American flag, and an anti-war quote from Albert Einstein.<sup>6</sup> When the student attempted to defend his right under freedom of expression the administrator said that this right did not apply to students. Only when it was taken to court was the decision reversed.

Finally, a number of incidents have arisen from students being banned from wearing Rastafarian hair to school. In England, a student was banned because the hairstyle fell beyond the acceptable attire of the school's dress policy. Similarly, in the American Midwest, some schools have banned Rastafarian hair because they believe that the students with the Rastafarian hairstyles were an identifying symbol of a particular gang. Banning Rastafarian hairstyles adds increasing complexity because of the grey area of what the hairstyle represents. Rastafarianism is a religious movement. However, there is strong social element often correlated with Rastafarians in their dress, music, and liberal policies on marijuana. As such, Rastafarianism sits uncomfortably alongside more mainstream traditional religions. The banning of Rastafarian hair in schools then poses a difficult tension for school administrators. On the one hand, schools that hope to maintain a certain dress code may argue that Rastafarian dreadlocks go beyond acceptable limits. On the other hand, students who wear the dreadlocks have argued the right to freedom of religion. The case of dreadlocks has been inconsistently dealt with from school to school.

In all three cases, students have won the right to wear the various symbols to school in the courtrooms under the right to freedom of expression or freedom of religion. Yet, this does not make the decision any easier in deciding whether students should be allowed to wear religious, political, or social symbols to schools. France, for instance, has taken a very different stance and has put into effect the banning of any "conspicuous" religious symbols in their schools. Do schools have a right to ban certain identifying symbols? Are heads of schools correct in stating that students do

not have a right to freedom of expression when they attend schools as the administrator from Michigan suggested? Do symbols cause disruption to schools? And if that is the case, does that have a detrimental effect on students? Is any symbol acceptable — if not, how do we make a distinction?

#### FREEDOM OF ASSOCIATION AND FREEDOM OF RELIGION

Freedom of expression and freedom of religion play a pivotal role in all three examples. Simply suggesting that they apply to children and to schools does not necessarily solve the dilemma in all cases. As was briefly mentioned, France has taken a position that, to secure children’s equality, we must “shed” our identities at the door in order to be exposed to alternative lifestyles, and to understand the greater civic republican tradition in France.

In all three cases, freedom of expression and freedom of religion were key issues in deciding whether students were allowed to wear the symbolic clothing to school. Yet, a simple enforcement of these two rights may not always be an appropriate response when we take into special consideration children or the role of schools. There may, for instance, be circumstances where it is justified to ban certain symbols. For example, Prince Harry’s brief stunt of wearing a neo-Nazi costume to a party shows us that not all symbols are acceptable in public; one would assume that, if students were to go to school in a neo-Nazi uniform, such students would be swiftly expelled.

There is much scope for what is deemed permissible from a Rawlsian standpoint. Rawls is reluctant for states to ban certain practices within doctrines within the boundaries of reasonable pluralism, “otherwise our account runs the danger of being arbitrary and exclusive.”<sup>7</sup> Despite some practices that some may believe are inappropriate, we must heed caution when considering state intervention. Given Rawls’s position, one might surmise that Rawls would be concerned with the attempts schools have made to ban certain symbols.

Rawls’s generous stance on certain practices may not, at first glance, apply when we consider children and the place of schools. Rawls’s theory is clearly based on adults and not children. It may be the case that children do not have the capacity to make informed judgements about how their actions will affect themselves or others directly or indirectly. For example, a child who does not want to put on a winter jacket despite the fact that it is below freezing, may have the ability to make a judgement about whether to wear the jacket or not, but may not have the full capacity to understand the consequences of going outside and becoming hypothermic. It would be clearly negligent on the adult’s behalf to let the child outdoors knowing that the child is putting herself in danger.

Further, whilst having a very tolerant stance toward dress is appropriate for adults in a pluralist society, one might argue that schools do not need to follow this example. We may feel that schools are a specific environment in which we try to develop certain habits and skills that are appropriate for a civil society, and school need not have an “(almost) anything goes” approach. We may suggest that enforcing a set uniform teaches students about learning to follow rules and regulations, or that

following a tradition held by the school or local community is more important than allowing children to express themselves through their clothing. Or, we might say that schools are the one “safe place” to be able to rid ourselves of our backgrounds, be exposed to alternative lifestyles, and concentrate on larger civic virtues (as in the case of France). I wish to address these potential objections accordingly, and argue that, in both cases, they do not hold. Let me turn to the issue of children’s limited cognitive capacity first.

The question of when it is appropriate to allow children to make decisions about various aspects of their own lives has always been a matter of philosophical debate. It is easy to suggest that it is appropriate to give little or no autonomy to children of toddler age, but the question becomes increasingly difficult as we consider children at the primary level, and even more so, at the secondary level. Even if this question cannot currently be answered with any precision drawing upon purely philosophical considerations, a distinction may help in at least reducing some of this ambiguity. It seems entirely appropriate for teachers (and schools) to intervene in children’s decisions when the decision will affect their well-being. Welfare rights (the rights that protect the child’s well-being) take priority over agency rights (the decisions children make about how to lead their life).<sup>8</sup> If there is no real, present danger to the child’s well-being, it is more difficult to limit their clothing based on the reason of just limiting their agency rights as a reason in and of itself.

The consideration of agency rights coupled with conflicting educational aims may prove more difficult to balance in deciding whether a school is justified in banning certain symbols, as is pointed out in the latter example. Whilst schools (and states) have arbitrarily banned certain forms of dress, even when those forms of dress may form a constitutive part of a person’s identity, this may not be the correct stance. So, how do we make distinctions between acceptable and unacceptable forms of dress? I wish to consider three different categories that may help to draw some distinctions: (1) forms of dress that contributes to a child’s freedom of expression, but may not be a constitutive part of his/her identity; (2) forms of dress that are part of a child’s expression, but may grossly offend other people; and (3) forms of dress that are a constitutive part of that child’s identity.

The first case represents students who wish to express their individuality through the symbolic clothing that they wear to school. The dress does not form a particular political or religious identity, although it may conform to certain social norms and behaviours. For instance, students who wish to identify with the school sports team may wear certain track suits or sports jackets are expressing their preferences and tastes through the types of clothing that they wear to school. A basic assumption is that schools that do not have a uniform policy will automatically have a great leniency in what students can and cannot wear. By not setting out a uniform policy, the school *de facto* lays out an assumption that students are relatively free to express themselves through the clothing and symbols that they wear. Mandates of the schools without a uniform policy are based on valuing freedom of expression.

The question of what is “reasonable” is at stake here. A general consensus seems to exist that limiting freedom of expression is appropriate when it *physically* harms

other individuals. However, Joel Feinberg suggests that this may set the threshold too high, and instead argues that limits can be placed on freedom of expression when it is *offensive* to other people.<sup>9</sup> How that is determined may include a number of factors such as, “the extent, duration and social value of the speech, the ease with which it can be avoided, the motives of the speaker, the number of people offended, the intensity of the offense, and the general interest of the community at large.”<sup>10</sup> Applying Feinberg’s offense principle might include wearing symbolic clothing that is offensive to others.

The offense principle provides some guidance in deciding the kinds of circumstances in which it would be appropriate to limit freedom of expression. Yet, a grey area still exists of where exactly that line is drawn. To complicate the issue further, the parameters may change depending on the norms and behaviors of a particular community. For instance, in an Amish community, the girls’ skirts might be well below the knee adhering to the modesty of the faith community. In another community, the girls’ hemline might be more in line with the current fashion of at the knee, or just above the knee. And, in many cases, girls may not be required to wear a skirt to school. The values of the community, and the extent and numbers of people to which that particular behavior offends others, may be determining factors in appropriate dress attire.

If we apply the offense principle to Bretton Barber’s and Timothy Gies’s cases, it would be hard for a school to argue that the t-shirts caused such offense as to warrant their ban. Neither school had a uniform policy. The boys wore the t-shirts to school only on an infrequent and irregular basis. The t-shirts did not cause a major disruption to the education in the school. The t-shirts did not appear to be morally offensive to a *large* number of people. Finally, the intensity of the offense was questionable. Wearing a t-shirt that provides a general political message such as “anarchy” or “peace” does not seem *de facto* offensive. Similarly, whilst the t-shirt against George W. Bush may have been morally offensive to some, I am not sure whether the intensity of the offense is on the same level as other symbols that are generally agreed upon in society to be morally offensive (such as the swastika or the white hooded Ku Klux Klan gown).

The use of the offense principle does have its own problems. What is considered offensive is often difficult to ascertain, without appropriate consideration of what it means to offend or to take offense. Barrow contends that offense is used too freely, and instead argues that a number of distinctions are required before one can determine whether a behavior or action ought to be considered offensive. A particular smell or taste of blue cheese may be considered offensive — that which is displeasing to our particular bodily senses.<sup>11</sup> This, however, is much different than taking offensive action either: (1) meaning to offend; (2) actually given offence, and (3) being in a manner that is likely to cause offence (or, of course, any combination of these).<sup>12</sup> For Barrow, the pendulum has swung far too much in condemning behaviors or actions that *may* offend. Unlike developing underpinning values of respect within the larger principle of toleration, taking offense “involves a refusal to show tolerance, to allow freedom, or to play fair.”<sup>13</sup> The complexity of using the

offense principle is far from clear, in setting the parameters for appropriate and inappropriate behaviors and actions.<sup>14</sup> Despite the problematic nature of offense, it has been generally been applied to consider appropriate and inappropriate symbolic clothing, particularly those of a political or social nature.

It is the third category, that of religious symbols — which are arguably constitutive of a person's identity — that does not follow the same patterns as political or social symbols. Generally, schools may ban religious symbols for three reasons: (1) schools may ban all forms of identity as a way to protect children's future autonomy; (2) schools may ban religious symbols when they strongly believe that the child's autonomy is compromised by the particular faith; and therefore that they have a duty to intervene (as "guardians" of the state); and (3) schools have consulted various religions, and believe that the dress policy has accommodated the various religious needs. In all three cases (at least officially), schools do not ban religious symbols because they are morally offensive. The rationale for banning all conspicuous religious symbols in France was not about their being morally offensive to those of the Christian, Islamic, or Jewish faiths. And similarly, schools that have banned Rastafarian hairstyles have not said that they find the religion morally offensive. Even if there are undercurrents behind a school's motivation for banning a symbol, no school policy would ever (nor practically could ever) state that this was a primary factor in the ban.

So, let us consider whether the reasons given by the schools can hold when banning religious symbols for the three reasons stated. A few problems exist with the justification for banning symbols under the first instance of protecting a child's future autonomy. The first problem is one of pragmatics. Can one ever rid oneself of one's cultural identity when one enters a school? And, further, would it be beneficial for students to suppress their beliefs in the hopes of learning about alternative lifestyles? The belief that, by ridding one's symbolic dress, you "shed" your conceptions at the door, seems ludicrously naive. Whilst it is undeniable that many an individual's conception is tied to the dress that they wear, it would be unrealistic to suggest that banning the symbolic attire would temporarily suppress their belief structure whilst in school.

If the stated rationale is that, by banning conspicuous religious symbols in schools, we provide a safe space to learn about alternative lifestyles, there is a strong argument that schools need to expose children to alternative lifestyles, not to shelter children from them. Schools are a unique public institution in that it is compulsory for children to spend a significant proportion of their life in the company of other children. If one of the aims is to expose children to alternative ways of life, then one would think that allowing children to see alternative ways of life through the experiences of other children is one effective strategy to reach that goal.<sup>15</sup> The formal and informal learning that occurs in schools provides children with a multitude of experiences that would expose them to various lifestyles. Suppressing religious symbols is counter-intuitive in light of this consideration.

Should schools ban a religious symbol for fear that the symbol may be suppressing the child's present and future autonomy, then it is the school's burden

to prove that that is the case. It is not sufficient for schools to have a perception that the particular symbol *may* be oppressive. For instance, one of the reasons cited in the debates in France for banning the *hijab* was to protect girls’ autonomy from dominant practices either in the Muslim family or Islamic tradition.<sup>16</sup> For some, the *hijab* is considered a sign of oppression. Yet, clearly the increasing number of adolescent girls wearing the *hijab* would indicate that there has not been an increase of oppression by Islamic communities in France.<sup>17</sup> It is with great reluctance that states should intervene in limiting certain practices in protecting persons’ conception of the good. Having a suspicion or perception that a religious symbol may be oppressive is not strong enough to intervene. One must demonstrate that the symbol *is* oppressive.

The third reason cited by schools for banning certain religious symbols is more difficult. On the one hand, schools may consult various religions to develop an accepted uniform policy, as in the case of Shabina Begum in Luton, England. Whilst the aims of the Luton school were altruistic in attempts to accommodate and have an inclusive uniform policy, Shabina Begum’s request to wear the *jilbab* went beyond the accepted Islamic uniform policy. In this case, schools need to consider the following: (1) whether the symbolic attire constrains the individual’s health or others well-being in school, and; (2) whether the attire physically hinders the educational aims of school. If the school cannot demonstrate that the attire may pose a personal risk to the individual or others, and if the attire does not compromise the learning objectives of the school, then it would be difficult to ban the symbol.

#### DISCREPANCIES IN BANNING SYMBOLIC CLOTHING

In examining the reasons that schools ban religious, political, and social symbols, we find they fall under two distinct categories: freedom of expression and freedom of religion. Freedom of expression provides a set of guidelines for acceptable and unacceptable forms of dress: it is unacceptable when it causes harm to oneself or others, or when it grossly offends others. The harm or offense principle does not apply when considering religious symbols. Rather, the reasons for banning religious symbols often revolve around issues of children’s present and future autonomy. Given that the reasons for banning religious symbols do not fall under the harm or offense principle, we must exercise caution before allowing schools to ban symbols lest schools become arbitrary and heavy-handed in their policies.

The different criteria used — that of the offense principle and autonomy — raise some difficult dilemmas. One difficulty is that, by using different criteria to determine appropriate and inappropriate symbolic clothing, we may inadvertently set greater importance to one category of symbols than to the other. This dilemma arises in numerous and quite common ways. It is not uncommon for schools in England to have a strict uniform policy that allows children to wear inconspicuous religious symbols on a necklace, yet no other jewelry is permitted. Are children of atheist parents unduly penalized should their child wish to advocate the values of their household by wearing an inconspicuous peace symbol, or ribbon (symbolizing a particular charity or cause)? Such instances may show schools’ attempt to be

accommodating and attentive to a multi-faith society, but in the process may unfairly advantage one particular group over another.

The second difficulty lies in the problematic features that lie within both sets of criteria. Does the offense principle provide clear criteria for what is permissible and impermissible? Not only do ambiguities exist in defining what is deemed offensive, the widespread use of what is considered offensive may create an overzealousness of banning symbolic clothing under the guise of it being offensive. Similarly, limiting religious symbols due to protecting a child's future autonomy has its many thorny issues.<sup>18</sup> In neither case do we necessarily have a straight-forward way of proceeding.

#### CONCLUSION

The inconsistencies in current cases of discerning appropriate and inappropriate symbolic clothing are evident. Two forms of criteria have been employed, depending on whether the symbols fall under freedom of expression or freedom of religion: the offense principle for the former; autonomy for the latter. In setting up these two categories, we potentially create an unequal implementation of policies to students who wear political, social, or religious symbolic clothing.

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1. A *jilbab* is full-length gown that only bares her hands and face.
  2. See Jon Swain, "The Right Stuff: Fashioning an Identity Through Clothing in a Junior School," *Gender and Education* 14, no. 1 (2002): 53–69.
  3. Whether one believes in the position that individuals can have a constitutive identity is irrelevant in this discussion (either in debates between liberals and communitarians, or within postmodern thought between the notion of having one self or multiple selves). What is of relevance here is whether that particular individual *believes* that the symbol is essential to their identity and therefore cannot be removed.
  4. For instance, France's stance on banning conspicuous religious symbols in schools is unjustified. For a developed argument of this case, see Dianne Gereluk, "Should Muslim Headscarves be Banned in French Schools?" *Theory and Research in Education* 3, no. 3 (2005): 259–271.
  5. American Civil Liberties Union, "Judge Rules in Favor of Michigan Student's Right to Wear Anti-War T-Shirt to School," *Free Speech*, October 3, 2003, <http://www.aclu.org/FreeSpeech/FreeSpeech.cfm?ID=13913&c=87>.
  6. American Civil Liberties Union, "Michigan School Reverses Decision to Suspend Student from Wearing 'Anarchy' Shirt," *Free Speech*, May 10, 2004, <http://www.aclu.org/StudentsRights/StudentsRights.cfm?ID=15672&c=159>.
  7. John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), 59.
  8. Harry Brighouse, "What Rights (If Any) Do Children Have?" in *The Moral and Political Status of Children*, eds. David Archard and Colin Macleod (Oxford: Oxford University Press, 2002), 31–52.
  9. Joel Feinberg, "Limits to the Free Expression of Opinion," in *Philosophy of Law* (5th ed.), eds. Joel Feinberg and Hyman Gross (Belmont, Calif.: Wadsworth Publishing, 1995), 262–281.
  10. David van Mill, "Freedom of Speech", *The Stanford Encyclopedia of Philosophy*, ed. Edward N. Zalta (2002), <http://plato.stanford.edu/archives/win2002/entries/freedom-speech/>.
  11. Robin Barrow "On the Duty of Not Taking Offence," *Journal of Moral Education* 24, no. 3 (2005): 265–275.
  12. *Ibid.*, 268.
  13. *Ibid.*, 274.



14. The debate of what is considered offensive cannot be resolved in this article, and one in which I will not try to further illuminate. For an understanding into the subtleties and complexities surrounding ‘offence’, please see Barrow, “On the Duty of not Taking Offense,” and response by Grayham Haydon, “On the Duty of Educating Respect: a Response to Robin Barrow,” *Journal of Moral Education* 25, no. 1 (2006): 19–32.
15. Meira Levinson, *The Demands of a Liberal Education* (Oxford: Oxford University Press, 1999), 110–116.
16. Gereluk, “Should Muslim Headscarves be Banned in French Schools?” 267–269.
17. *Ibid.*, 268–269.
18. The difficulties of balancing the rights of parents and the obligations of the state have been thoroughly debated. For an insightful perspective on this issue, see Rob Reich, *Bridging Liberalism and Multiculturalism in American Education* (Chicago: Chicago University Press, 2002).