

UNCONSTITUTIONALITY OF COMPULSORY DRESS CODES IN NIGERIA'S HIGHER INSTITUTIONS*

Abstract

On Friday, June 17, 2022, the Supreme Court affirmed that Muslim female students in Lagos State public secondary schools had a constitutional right to wear hijab to school. This decision, coming within the perspective of the hotly-contested authority of Nigerian universities to impose dress codes on students, gives context to this paper. Nigeria's university system may be the only one in the world, where by a system-wide protocol, undergraduates are compelled to wear uniforms. Most universities in Nigeria have regulations requiring students to comply with institutional dress codes (read uniforms). These dress codes have no proximate connection with either impartation of knowledge or formation of a well-rounded moral character. This paper undertook interrogation of the constitutionality of these dress codes. The Supreme Court's recent hijab decision is used in this paper only to the extent that it supports the proposition that dressing implicates a constitutional issue. Whether the Court's holding of a right to wear hijab in secondary schools is correct is beyond the scope of this paper.

Keywords: Dress codes; freedom of expression; gender discrimination; hijab; non-verbal expression; school uniforms.

1. Introduction

As a law teacher, I regularly teach legal abstractions, rules and concepts, which form the foundation for the judicial and legal system. A good number of these rules, principles and concepts, regardless of their early provenance, accord with common-sense, and are useful, even in modern times. Some others, useful though they were in the past, are currently, only of historical interest. Some others, possess doubtful, or no utility, and sometimes, do not make much sense. Justification of a dress code requirement in universities creates a challenge to logic and common sense, both to the teacher and the students. The precursor to the current system-wide dress codes in tertiary institutions was the requirement by the Council for Legal Education that law graduates attending its Nigerian Law School, and law students in universities be attired in a similitude of the dressing of lawyers in professional practice. Subsequently, and for no clear reasons, most tertiary education institutions adopted mandatory dress codes. Some of these codes prohibit students from wearing certain clothing, but leave them with a choice of what to wear outside the prohibited items. Some other codes prescribe uniforms to be worn and deprive the students of any discretion or choice of clothing outside of the prescribed uniforms. This paper postulates that dress code requirements in Nigerian universities are an unconstitutional limitation on students' constitutional rights of expression.

2. Institution of Mandatory Dress Codes in Nigeria's Tertiary Education System

Most Nigerian institutions of tertiary education introduced a dress code for students. The codes prescribe acceptable mode of dressing for students within the precincts of their respective institutions. In accordance with directives from the Council for Legal Education, law students in all universities are required to wear white on black. Dress codes for other Faculties vary amongst the universities. Some universities simply itemize prohibited items of dressing and leave the students free to dress according to their taste within the permitted items. Some other universities, impose a uniform dress, and do not only prohibit what should not be worn, but also prescribe what must be worn.¹ The dress code at Lagos State University prohibits the wearing of transparent dresses, mini and skimpy skirts/dresses, and other clothes revealing sensitive parts of the body; tattered, dirty jeans with holes or obscene subliminal messages; 'baggy', 'saggy', 'yansh', 'ass level' and over length trousers; tight fitting apparels that reveal body shape and contours of the body; T-Shirts and Tops with obscene, obnoxious or seductive inscription; loose tie, folding, holding and pocketing of ties; shirts without buttons, improperly buttoned, rolling of sleeves or flying collar; face caps or complete covering of face; nose ring, very big dropping ear rings and necklaces by female students; distracting knocking shoes like stiletto heels to lecture rooms and the Library; plaiting weaving, bonding of hair by male students; knickers, tight shorts and slacks are allowed only for sports; slippers is not allowed; lousy, unkempt, extremely bogus (sic) hair or artificial hair are not allowed; piercing of body and tattooing; ear rings by male students is prohibited.² In Abia State University, students are barred from wearing skin-tight clothes, sagging trousers, dresses with plunging cleavage and the so-called 'spaghetti' sleeveless top. Similarly, leggings and other fitted trousers are not allowed on campus, as well as skirts that do not reach down the knees.³ At Bayero University, Kano, the dress code categorises and forbids as indecent, dressing such as - short, bare back and clinging dress; shorts and three quarter trousers (except for sporting purpose); tattered jeans and those with holes; transparent dresses; tight fitting dresses e.g. jeans and skirts that reveal body curves; this is also applicable to locally sewn dresses such as skirts and blouses; wearing only under clothing such as singlet in public places; wearing 'swagger' and/or sagging trousers; dresses, such as skirts, which have long slits that reveal sensitive body parts; dresses and vests with obscene and indecent inscriptions and/or pictures; dress without buttons, or not properly buttoned, revealing bare chest; wearing jackboots, bathroom slippers and any other shoes with indecent inscription; sunglasses in lecture rooms and theatres except on medical grounds; plaiting/weaving, perming of hair and use

*By Chike B. OKOSA, PhD, Lecturer, Faculty of Law, Chukwuemeka Odumegwu Ojukwu University, Igbariam, Anambra State. Phone: 08033237126. Email: jboazlaw@yahoo.com

¹ By way of contrast, in the US, according to statistics, across the nation 46% of primary schools, 70 % of middle schools and 55 % of high schools follow strict dress codes. See Michael Barbella, 'School Dress Codes Present Double Standard,' <<https://njsbf.org/>> Accessed May 6, 2022. There is no university in this list. Prescription of dress codes and uniforms for undergraduates is for unfathomable reasons, peculiar to Nigerian universities. Attempts to explain this curious phenomenon attribute it to a carryover of constitutional deprivations and a command-based society created by a long period of military rule. This argument is specious because other post-colonial societies with similar experience of military rule did not follow this particular trajectory.

² <<https://www.ngschoolz.net/lasu-dress-code/>> Accessed on June 13, 2023

³Iyabo Lawal 'In Search of Dress Code for Nigerian Undergraduates' *The Guardian*, 23 December 2021 <<https://guardian.ng/category/features/education/>> Accessed on June 13, 2022

of earrings and chain and bracelets by male students; use of military and para-military camouflage by students on campus; any other dressing that contravenes, decency, decorum and good taste of the community.⁴ At Bowen University the rules and regulations prohibit female students from wearing - coloured hair/wigs other than black colour; short and high slit skirts - the length of skirt permitted is knee length skirt with little or no slit at the back. Skirts with slit at the front are not allowed. High slit skirts are not allowed. Sleeveless tops, off shoulder and net/transparent tops/dresses are not allowed. Trousers are not allowed on campus for females. Hair beads are not allowed. Slippers and palms are not allowed to classes. Casual clothes such as bubo/maxi gowns, tops and skirts may be worn only from 6 pm. Male students are not permitted to wear trousers that run above the ankle. Jeans are permitted to be worn only from 6pm. Foot-wears such as bathroom slippers, slide slippers, palms and leather slippers are not allowed during official hours. Face-caps can only be worn after the official hours. Male students are not allowed to keep full afro hair and barb funky (sic) hairstyle.⁵ Some of these dress codes may be excused on the basis that they do not close off every avenue for expression of individual taste. However, of these dress impositions, the most eye-watering in its degree of egregiousness is that of the University of Nigeria. It goes beyond a dress code and constitutes a set of school uniforms imposed by the institution on the students. Medical Laboratory Science: males – white shirt on black trouser with a red tie, female – white clinical gown; Pharmacy: male – white shirt on ash trouser, female – white shirt on ash skirt; Banking and Finance: male – blue shirt on black trouser, female – blue shirt on a black skirt; Mass Communication: male – blue shirt on black trouser, female – blue shirt on black trouser; Political Science: male – white shirt on black shirt, female – white shirt on a black skirt; English and Literary Studies: male – lemon green shirt on black trouser, female – lemon green shirt on a black skirt; Medical Rehabilitation: male – white shirt on black trouser with a red tie, female – white clinical gown; Civil Engineering: male – maroon red shirt on black trouser, female – maroon red shirt on a black skirt; Radiography: male – white shirt on black trouser with a red tie, female – white clinical gown; Business Administration: male – blue shirt on black trouser, female – blue shirt on a black skirt; Nutrition and Dietetics: male – white on navy blue, female – white clinical gown; Psychology: male – blue shirt on a black skirt, female – blue shirt on a black skirt; Law: male – white shirt on black trouser with black tie, female – white shirt on a black skirt; Nursing Science: male – white shirt on black trouser, female – white clinical gown; Marketing: male – blue shirt on black trouser, female – blue shirt on a black skirt; Management: male – blue shirt on black trouser, female – blue shirt on a black skirt; Medicine and Surgery: Male – white shirt on black trouser, female – white shirt on a black skirt; Accountancy: male – blue shirt on black trouser, female – blue shirt on a black skirt; Dentistry: male – white shirt on black trouser, female – white shirt on a black skirt; Human Anatomy: male – white shirt on ash trouser, female – white shirt on ash skirt; Molecular Biology: male – white shirt on ash trouser, female – white shirt on ash skirt; Human Physiology: male – white shirt on ash trouser, female – white shirt on ash skirt.⁶ The dress code of Chukwuemeka Odumegwu Ojukwu University follows the University of Nigeria tradition of single-colour uniforms. All males are required to wear black trousers, and female black skirts. Department coloured shirts required to be worn on top to accompany the black are as follows: - History and International Studies – red; Psychology – Orange; Agricultural Economics and Extension – green; Sociology – navy blue, peach or red; Economics – khaki coloured/light brown; Mass communications – Orange tinged with blue; Political Science – dark blue; Philosophy – Pink; Animal Science – Green; Business Administration – Blue; Entrepreneurial Studies – sky blue and dark blue; Public Administration – sky blue; Banking and Finance – dark blue; English – milk colour; Pharmacy – white; Criminology and Security Studies – dark blue[theatre Arts – sky blue; Accountancy – sky blue; Igbo and Linguistics – red or black; Marketing – sky blue.⁷

As a general predicate, it is within the power of school authorities to create and sustain an environment conducive to education.⁸ However, beyond the rules and regulations inevitable to tuition in an academic institution, students are entitled to an environment, uncluttered by unnecessary rules and demands, in which they may excel. They do not appreciate being micromanaged in terms of what to do, what to think, and how to act.⁹ Schools are not purposed to become enclaves of totalitarianism. By a necessary corollary, school officials do not possess absolute authority over their students. Students are persons under the Constitution, and are possessed of fundamental rights which must be respected, just as they themselves must respect their obligations to the state.¹⁰ Theoretically, a case for dress codes may be made on the basis that students would pay greater attention to their studies if the necessity of impressing their peers with their dressing is eliminated. It may be further argued that disparate economic class stigmas may be obliterated by dress codes, so that poorer students are less distinguishable from wealthier ones.¹¹ The problem with this argument is that the use of expence as the basis for formulation of institutional policy may someday suggest that if students are prohibited from internet access, they may give more time to their studies; and if students are prohibited from owning or driving cars on campus, manifestations of socio-economic class differences would not be easily visible. The argument is as specious as it is untenable. No clear justification exists for the creation and imposition of these dress codes. For law students, the attempt at rationalisation is limited to the hollow justification that it is necessary to acquaint them with the preferred mode of dressing in their chosen future

⁴ <<http://buk.edu.ng/oldbuk/>> Accessed on June 13, 2022

⁵ <<https://bowen.edu.ng/>> Accessed on June 13, 2022

⁶ <<https://studentship.com.ng/>> Accessed on June 13, 2022

⁷ Much gratitude is owed Stephen Ezeme, the President of COOU Law Students Association, 2021/2022, and Excel Ezeano the COOU final year law 2021/2022 class captain for their tremendous help and field work in assembling the details of the dress code of their institution.

⁸ Amy Mitchell Wilson, 'Public School Dress Codes: The Constitutional Debate,' (1998)1998 *Brigham Young University Education & Law Journal* [147-171] 148

⁹ Melissa G. Cohen, 'They Appear to be the Same, but They are not the Same... A Student Profiling Technique Will Not Effectively Deter Juvenile Violence in our Schools,' (2000) 17:1 *NYLS Journal of Human Rights*, 316

¹⁰ *Tinker v Des Moines Comm. Sch. Dist.*, 393 US 503 (1969); see 68 *American Jurisprudence* 2d. 578

¹¹ Melissa G. Cohen (n 9)

profession. There is no suggestion that these dress codes improve the quality of tuition, or are necessary to discipline, or represent the only method of achieving decency in dressing, or assist in the keeping down the costs of students' wardrobes. At its very best, imposition of these dress codes is an arbitrary exercise of unconstitutional power. In both content and stated purpose, regulations concerning the mandatory institution dress codes do not have or pretend to have anything to do with the quality of academic instructions or any form of academic excellence. The rules do not pretend to contribute anything to the ultimate diploma students would receive upon conclusion of their course work. The understood purpose of the regulations is to impose official and formal conformism and obliterate sartorial individualism. It might, for purposes of argument be conceded that these institutions have a role to play in moulding the moral character of the students under their wardship. In achieving this purpose, they must however, adopt, not only means that are lawful, but bear a direct relationship between the ends sought to be achieved and the means used in achieving these ends. There must also be a rational relationship between the ordinances pertaining to dressing and goal of moulding the moral character of the students. It is the position of this paper that current regulations concerning officially prescribed mode of students' dressing are in default of both. These dress codes violate students' rights to control their external forms, looks, countenance, communication and expression. They represent an attempt by school authorities to impose and enforce unconstitutional conditions upon attendance of institutions of learning.

3. Constitutional Right to Freedom of Expression

All persons within the jurisdiction of Nigerian courts and operation of Nigeria's Constitution are entitled to enjoy a freedom of expression, including the freedom to hold opinions and receive and impart ideas and information without interference.¹² The word 'expression' within the context of this freedom may be defined as the 'the act of saying what you think or showing how you feel using words or actions.'¹³ 'Expression' is also 'the act of making your thoughts, feelings, etc., known by speech, writing, or some other method', and within this context, freedom of expression is the 'freedom to say and show what you feel and believe.'¹⁴ Certainly, in popular usage and application, the word 'expression' is not limited to verbal communication, but extends to and includes non-verbal modes and methods of giving manifestation to thoughts, feelings and beliefs. As a general principle, in interpreting the Constitution and giving effect to the intention of the its makers, a narrow meaning should not be given to it unless it is necessary to do so. Rather, a wide and liberal interpretation must be applied unless there is express provision to the contrary.¹⁵ Where the question arises as to whether the Constitution has used an expression in the wider or narrower sense, the court should, where possible, and in response to the demands of justice, lean to the broader interpretation, unless there is something in the text or in the rest of the Constitution to indicate that the narrower interpretation will best carry out the objects and purposes of the Constitution.¹⁶ It is clear that nothing in the text or context of the Constitution requires the freedom of expression to be interpreted restrictively or narrowly. Consequently, 'expression' within the perspective of the protected freedom should extend to and incriminate every form, mode and type of expression both verbal and non-verbal. Thus, freedom of speech within the context of the constitutional rule prohibiting abridgment of freedom of speech does not apply only to the spoken word but comprehends various methods of expression, including clothing.¹⁷ In this regard, a large diversity of behaviour, purposed to communicate ideas are comprehended within the framework of the freedom of expression. Flowing from this, one's public appearance and presentation of himself within a school environment is intrinsically and deeply communicative.¹⁸ Certainly, non-verbal conduct that has a communicative impact falls within the protection of free expression. In this regard, the argument of compelled school dress codes and uniforms implicates constitutional protection of speech and expression.¹⁹ It must therefore be accepted that schools may not be enclaves of totalitarianism. School officials do not possess absolute authority over their students. Students in school, as well as out of school, are 'persons' under the Constitution. They are possessed of fundamental rights which the State must respect, just as they themselves must respect their obligations to the State. Students may not be regarded as closed-circuit recipients of only that which the State chooses to communicate. They may not be confined to the expression of those sentiments that are officially approved. In the absence of a specific showing of constitutionally valid reasons to regulate their speech, students are entitled to freedom of expression of their views.²⁰ As a consequence, where a constitutionally protected right to expression exists, school officials cannot suppress 'expressions of feelings with which they do not wish to contend.'²¹

¹² s. 39(1) of Constitution of the Federal Republic of Nigeria, 1999 (CFRN). This provision is however, subject to s. 45(1) of CFRN which validates any law infringing of this freedom if the law is reasonably justifiable in a democratic society (a) in the interest of defence, public safety, public order, public morality or public health; or for the purpose of protecting the rights and freedoms of other persons

¹³ <<https://dictionary.cambridge.org/search/english/?q=expression>> Accessed on June 13, 2022

¹⁴ <<https://www.britannica.com/dictionary>> Accessed on June 13, 2022

¹⁵ *A-G, Lagos State v A-G, Federation* [2003] 12 NWLR Part 833, 1

¹⁶ *Rabiu v State* (1981) 2 NCLR 293; see also *Ulegede v Military Administrator, Benue State* [1996] 6 NWLR Part 457, 693 [Contrariwise, a statute that seeks to take away vested rights of a citizen without the citizen having recourse to the law court must be construed narrowly and strictly. If there should be any gap, duplicity or ambiguity as to the meaning of the words used in the enactment, it should be resolved in favour of the person who should be liable to the penalty or a deprivation of his right]

¹⁷ Kimberly Yates, 'Are Student Dress Codes a Violation of Civil Rights?' <<https://education.seattlepi.com/>> Accessed on May 6, 2022

¹⁸ Deborah Ahrens and Andrew Siegel, 'Of Dress and Redress: Student Dress Restrictions in Constitutional Law and Culture,' (2019) 54 *Harvard Civil Rights-Civil Liberties Law Review*, [49-106] 102

¹⁹ Paul D. Murphy, 'Restricting Gang Clothing in Public School: Does a Dress Code Violate a Student's Right of Free Expression?' (1991) 64 *Southern California Law Review*, 1333; Amy Mitchell Wilson, (n 8) 150

²⁰ *Tinker v Des Moines Sch. Dist.*, (n 10) 511

²¹ *Burnside v Byars*, 363 F.2d 744, 749 (1966) per Judge Gewin

4. Permissible Constitutional Basis for Restriction of Students' Freedom of Expression

The constitutional freedoms, rights and liberties pertaining to freedom of expression, amongst other freedoms may be circumscribed and restricted by any law that is reasonably justifiable in a democratic society - in the interest of defence, public safety, public order, public morality or public health; or, for the purpose of protecting the right and freedom of other persons.²² In this regard, a governmental regulation invading the right to free expression is sufficiently justified if it is within the constitutional power of government; if it furthers an important or substantial governmental interest; if the governmental interest is unrelated to the suppression of free expression; and if the incidental restriction on freedom of expression is no greater than is essential to the furtherance of that interest.²³ Courts, recognizing existence of disciplinary problems and safety considerations in a school environment have justified the need to impose more stringent regulations on students.²⁴ Thus, it is permitted for school officials to implement wide-ranging procedures to produce an environment that is favourable to learning. Consequently, schools may proscribe students' vulgar or disruptive expressive conduct.²⁵ Schools may restrict a student's speech if - the school expects the speech to substantially disrupt the educational process or setting;²⁶ it is plainly lewd or vulgar;²⁷ it promotes illegal activity, including drug use.²⁸ In *Wallace v Ford*,²⁹ the Court upheld parts of the dress code which it determined to be actually related to a legitimate goal necessary to carry out the mission of the school. For example, the court found the prohibition of immodest or suggestive clothing to be a legitimate objective, while it held invalid those prohibiting modest forms of dress such as 'knicker suits' and 'jumpsuits.' School officials are however required to keep in mind that students have constitutional rights and strike a balance between students' rights and the administration's interest in preserving discipline and a safe scholarship environment.³⁰ Thus, proscription of a specific expression or its format is provisional on school officials being able to show that either the conduct 'materially and substantially interfere[s]' with applicable discipline in the school's operation or intrudes on the rights of other students.³¹ Flowing from the foregoing, students' freedom of expression may not be restricted due to an 'undifferentiated fear or apprehension of disturbance' of the educational process.³² In order for students' freedom of expression to be limited, the speech must materially and substantially interfere with the school's operation or infringe on the rights of other students.³³ Furthermore, in order for school officials to justify prohibition of a particular expression of opinion, it must be able to show that its action was caused by something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint. Certainly, where there is no finding and no showing that engaging in the forbidden conduct would 'materially and substantially interfere with the requirements of appropriate discipline in the operation of the school,' the prohibition cannot be sustained.³⁴ In essence, the constitutional right to freedom of expression protects the speech and expressive conduct of students in schools. Thus, any policy restricting speech would need to be justified on constitutional grounds. Though a school authority will receive some deference from courts, it must be able to cite something more than discomfort, awkwardness, or inconvenience as a basis for restricting speech. A concern that the speech or expressive conduct would interfere with school discipline is an example of a justification that probably would persuade a court to uphold a policy rationally connected to that concern. A prohibition against expression of opinion, without any evidence that the rule is necessary to avoid substantial interference with school discipline or the rights of others, is not permissible under the relevant constitutional provisions.³⁵ As a result, in the absence of detrimental effects on the classroom environment, students' free speech rights prevail.³⁶

²² s. 45(1) of CFRN 1999

²³ *US v O'Brien* 391 US 367, 377 (1968)

²⁴ *Montalvo v Madera Unified Sch. Dist. Bd. of Educ.*, 21 Cal. App. 3d 323, 330, 98 Cal. Rptr. 593,597 (1971); Alison M. Barbarosh, 'Undressing the First Amendment in Public Schools: Do Uniform Dress Codes Violate Students' First Amendment Rights,' (1995) 28 *Loyola of Los Angeles Law Review* [1415-1452] 1428; *Ginsberg v New York*, 390 US 629, 638 (1968) (quoting *Prince v Massachusetts*, 321 US 158, 170 (1944) the US Supreme Court recognized that 'the power of the state to control the conduct of children reaches beyond the scope of its authority over adults,' even where protected freedoms are invaded.

²⁵ Wendy Mahling, 'Secondhand Codes: An Analysis of the Constitutionality of Dress Code in the Public Schools,' (1996) 80 *Minnesota Law Review* [715-742] 734

²⁶ *Tinker v Des Moines Independent Community School District*, (n 10)

²⁷ *Bethel School District v Fraser*, 478 US 675 (1986)

²⁸ *Morse v Frederick*, 551 US 393 (2007)

²⁹ 346 F. Supp. 156 (E.D. Ark. 1972)

³⁰ See *New Jersey v T.L.O.*, 469 US 325, 349 (1985) (Powell, J., concurring); *Jeglin v San Jacinto Unified Sch. Dist.*, 827 F. Supp. 1459, 1461 (C.D. Cal. 1993).; Alison M. Barbarosh, (n 24) 1428

³¹ *Tinker v Des Moines Sch. Dist.*, (n 10) 509; Alison M. Barbarosh, (ibid.) 1428-9

³² *Tinker v Des Moines Sch. Dist.*, (ibid.) at 508; Alison M. Barbarosh, (ibid.) 1429

³³ *Tinker v Des Moines Sch. Dist.*, (ibid.) at 509; Alison M. Barbarosh, (ibid.) 1429

³⁴ *Burnside v Byars*, (n 21) at 749; in *Tinker v Des Moines Sch. Dist.*, (ibid.) the school officials banned and sought to punish petitioners for a silent, passive expression of opinion, unaccompanied by any disorder or disturbance on the part of petitioners. There is here no evidence whatever of petitioners' interference, actual or nascent, with the schools' work or of collision with the rights of other students to be secure and to be let alone. The US Supreme Court held that the case does not concern speech or action that intrudes upon the work of the schools or the rights of other students.

³⁵ *Tinker v Des Moines School District*, (n 10), to protest the Vietnam War and support a proposal for a Christmas truce, five children chose to wear black armbands to their schools. Two wore them to a high school, one to a junior high school, and two to elementary school. In an attempt to pre-empt this action, the principals of the schools implemented a policy that would require children in school to remove armbands. If they refused to comply, they would be suspended and sent home until they did. The two children who wore the armbands to elementary school received no penalty, but the other three were suspended on the basis of their armbands for the duration of the protest. In an action challenging the action of the school

5. Dressing as an Expression of Personality and a Form of Non-verbal Expression

The natural human experience is to stand apart from others, and the concept of individuality encourages this. One way to call attention to oneself is through dressing, and a form of communication over which we are able to exert plenty of control is clothing. Our detailed planning of what to wear is an expression of our creativity, purposed towards communicating certain aspects of ourselves.³⁷ Thus, the self is communicated through use of symbols, and of these symbols, dress is the primary method of communicating and expressing the private and secret aspects of one's self.³⁸ Largely, courts and scholars accept a nonverbal act as symbolic speech if it has communicative value. In this regard, as early as 1931, the US Supreme Court recognized that freedom of expression provisions of the Constitution protects not only verbal speech, but symbolic speech as well. It is thus accepted that not only words, but also conduct, can communicate self-expression.³⁹ Unmistakably, people deliberately dress in a certain manner in order to convey a specific image to others. As a result, to the extent that clothing projects a message about the wearer's personality, then personal identity must, in part, be defined by choice of dress.⁴⁰ In many areas, including notably dress and appearance, individuals seek to express a message, to identify themselves to others, and to assist the creation of both individual relationships and affinity groups. Clothing and appearance are crucial factors because of their critical role in assisting the communication of ideas, emotions, and affinities.⁴¹ Thus simply put, dress is a 'systematic means of transmission of information about the wearer.' It expresses a range of meanings concurrently, including creativity, 'attitude, identity, value, and mood.' Clothing, whether consciously or subconsciously chosen, is nonverbal conduct which conveys a 'particularized message' about the self. While the effect of nonverbal conduct may not be intentionally anticipated, the intent may nevertheless be very real. Accordingly, personal choice of clothing is conduct worthy of consideration as symbolic speech.⁴² Students invest time and energy and a lot of expressive content in their personal appearance. To them, clothes do not just mirror fashion, but express and promote social allegiances and also serve as means of identifying and categorizing one another.⁴³ As a key component of a student's individual style, clothing is a format for expression. One of the objections to uniforms is their constraint of student individuality.⁴⁴ Due to the fact that dress expresses a person's individuality and personality, school uniforms constrain the means for students to express themselves visually and inhibit free expression among students.⁴⁵ Student control over appearance is more than a transitory cultural norm. It points in the direction of student freedom from arbitrary impositions of official correctness in thought and dress.⁴⁶ From these perspectives, a school's regulation of clothing is neither innocuous nor trivial. The importance of dressing in a certain manner is indicated to the students who make the choice to dress in that manner. It is also important to the school administrators who consider such modes of dressing as deviant and a threat.⁴⁷ Furthermore, to the extent that a student's dress can be a statement of one's personal or political views, it comprises a form of expression. For the reason that

board, the federal district court upheld the policy. At the Supreme Court, it was held that in wearing armbands, the petitioners were quiet and passive. They were not disruptive, and did not impinge upon the rights of others. In these circumstances, their conduct was within the protection of the Free Speech Clause of the First Amendment and the Due Process Clause of the Fourteenth. pp. 505-506.

³⁶ Ibid. 509

³⁷ Susan B. Kaiser, 'The Social Psychology of Clothing and Personal Adornment' (1985), 314

³⁸ Kimberly A. Miller, 'Dress: Private and Secret Self-Expression,' (1997) 15(4) *Clothing and Textiles Research Journal*, [223-234] 223

³⁹ Alyson Ray, 'A Nation of Robots - The Unconstitutionality of Public School Uniform Codes,' (1995) 28 *John Marshall Law Review* [645-685] 658, [Courts protect certain forms of conduct as expressive symbolic speech. For example, courts have recognized hair styles, wearing expressive t-shirts, wearing buttons, and wearing arm bands in protest as forms of symbolic speech requiring constitutional protection.] In *Stromberg v California*, 283 US 359, 370 (1931) the US Supreme Court invalidated on freedom of expression grounds, a statute prohibiting display of 'any flag, badge, banner or device..., as a sign, symbol or emblem of opposition to organized government.'

⁴⁰ Alyson Ray, (n 39) 663; see Susan B. Kaiser, (n 37) 5

⁴¹ Deborah Ahrens and Andrew Siegel, (n 18) 96

⁴² Alyson Ray, (n 39) 661 [Dress provides information about social and cultural backgrounds of the person, and activities in which they were or might be involved. We make a choice in what to wear, and by this choice, we voluntarily and deliberately send messages about ourselves. In this regard, clothing resembles a language. Thus, dress choice of clothing primarily transmits messages about personality traits and is a powerful means of self-expression. 662]

⁴³ Jonathan Pyle 'Speech in Public Schools: Different Context or Different Rights?' [2002] 4(3) *Journal of Constitutional Law* [586-636] 593; Kimberly Yates, (n 17) [Human beings, and more so, young people use clothing as a foremost method to communicate their personalities to the world without having to speak.]

⁴⁴ Kimberly Yates, (ibid.); see Henry F. Carey, 'Dress Codes' *The First Amendment Encyclopedia*, Middle Tennessee State University <<http://www.mtsu.edu/first-amendment/article/1208/dress-codes>> Accessed May 06, 2022

⁴⁵ Kimberly Yates, (ibid.) [Courts have ruled that these codes do not violate students' civil rights, as long as they are consistent and fair. Schools are also allowed to prohibit clothes that are too provocative or political or that advocate drug or alcohol use. Any clothing that could take other students' focus away from education can be restricted. In addition, clothing that causes discipline issues that keep teachers from actually teaching can also be prohibited.]

⁴⁶ Deborah Ahrens and Andrew Siegel, (n 18) 51; see, e.g., *Wallace v Ford*, (n 29) (Holding that school district must establish 'necessity' before imposing broad dress restrictions, and invalidating numerous dress code provisions for failing to meet that standard.) *Bannister v Paradis*, 316 F. Supp. 185, 189 (DNH 1970) (Invalidating school rule prohibiting wearing blue jeans); *Crossen v Fatsi*, 309 F. Supp. 114, 118 (D. Conn. 1970) (Striking down dress code on vagueness and invasion of privacy grounds); *Johnson v Joint Sch. Dist.* 95 508 P.2d 547, 549 (Idaho 1973) (Invalidating rule prohibiting women from wearing trousers); *Scott v Bd. Of Educ.*, 61 305 N.Y.S.2d 601, 605-06 (N.Y. Sup. Ct. 1969)

⁴⁷ Jonathan Pyle (n 43) 594

dress may express a message, the constitutional right to freedom of expression becomes pertinent in defining the extent a school may go in regulating what students wear.⁴⁸

6. Constitutionality of Dress Codes in Nigeria's Tertiary Institutions

In many aspects of life, clothing is perceived as a form of expression.⁴⁹ From a sociological, practical and application perspective, our dressing, style and appearance are symptomatic of our beliefs, orientation and affiliation, and other facets of our identity. Thus, we utilise appearance and clothing to present a personalised statement to the world.⁵⁰ Clothing preferences is nonverbal conduct purposed to send a message, and the message thus sent is understood by viewers. Once a court finds conduct to have an expressive function, the conduct merits freedom of expression protection.⁵¹ Compelling students to dress in a prescribed uniform divests students of the facility to express themselves through their choice of dress.⁵² For that reason, when the constitutionality of a school speech regulation comes up for consideration, the first question to ask is, 'As a matter of constitutional law, would the expression be protected if it was made by an adult in an analogous situation?' If the answer to the question is yes, the next question would be, 'Is the school context different in relevant ways so that the same protections ought not apply?' This approach respects the status of students as constitutional persons.⁵³ The fundamental human rights provisions of Nigeria's Constitution are enjoyable by all Nigerian citizens. In order to avoid or prevent a mischaracterization of the cardinal question from that of denial of constitutional freedoms to that of the right to wear good clothes, it is necessary to succinctly state the issue as simply as possible, and it is, whether school administration have any authority or sufficient reason to impose and enforce wide-ranging limitations on everyday freedoms of tertiary education students? In answering this question, we will proceed from the predicate that as a general principle, preserving an environment favourable to education is within the power of school authorities.⁵⁴ Accordingly, teachers, educators and schools at all levels of the school system have a right to craft and implement policies that create a safe and stable academic environment. However, this right is not at large. It is subject to law and the Constitution.⁵⁵ Stipulation for uniforms does not present much of a challenge in primary and secondary schools. This is because, due to the tender age of the students at these stages, their teachers are to a great extent in *loco parentis* and are permitted to exercise substantial rights of control over the. However, students in tertiary institutions are adults. Legally, morally and socially, they have attained autonomy. Institutional restraint on them and diminution of their legal rights is only to the extent that it is indicated and absolutely necessary for attainment of academic goals of their institutions. Thus, the questions presented by dress codes in primary and secondary schools are different from the questions presented by impositions of similar codes in universities.

The right to attend school and claim the benefits afforded by the school system - whether public or private - is a right to attend subject to all lawful rules and regulations prescribed for the government thereof.⁵⁶ Establishment of an educational programme requires formulation of rules and regulations necessary for the maintenance of an orderly programme of classroom learning. In formulating regulations, school officials have wide latitude of discretion, but the school is always

⁴⁸ Julie Underwood, 'School Uniforms, Dress Codes, and Free Expression: What's the Balance?' *Under The Law*, February 26, 2018 <<https://kappanonline.org/>> Accessed on May 6, 2022; see also David L. Hudson Jr., and Mahad Ghani, 'Clothing, Dress Codes & Uniforms,' <<https://www.freedomforuminstitute.org/>> Accessed on May 6, 2022 [Mandatory school uniforms and dress codes suppress student individuality and personal freedom, and close off one of their few avenues of self-identification and expression.]

⁴⁹ Alison M. Barbarosh, (n 24) 1423 [For example, 'dressing for success,' as the saying goes, is an exemplification of the perception that other people form their opinion of a person from the clothing he wears, or in any event, from a first impression.] See *East Hartford Educ. Ass'n v Board of Educ.*, 562 F.2d 838, 858 (1977) ('It may well be, in an age increasingly conscious of fashion, that a significant portion of the population seeks to make a statement of some kind through its clothes.')

⁵⁰ Deborah Ahrens and Andrew Siegel, (n 18) 96

⁵¹ Alyson Ray, (n 39) 666; In *Kelley v Johnson*, 425 US 238 (1976) it was the opinion of Justice Thurgood Marshal that personal appearance is an aspect of constitutionally protected liberty, that an individual's appearance may reflect, sustain, and nourish his personality and may well be used as a means of expressing his attitude and lifestyle, and that in taking control over a citizen's personal appearance, the authorities force him to sacrifice substantial elements of his integrity and identity as well.

⁵² Alison M. Barbarosh, (n 24) 1424

⁵³ Jonathan Pyle (n 43) 590

⁵⁴ Wendy Mahling, (n 25) 715

⁵⁵ In *Jeglin v San Jacinto Unified School District*, (n 30) elementary and middle school students challenged the constitutionality of a dress code that prohibited clothing identifying any professional sports team or college. The school district adopted the code because it was concerned that sports-oriented clothing expressed association with gangs. The district court applied the standard originally established in *Tinker v Des Moines Independent School District*, (n 10) The school district must demonstrate that the wearing of the particular clothing would reasonably have caused substantial disruption of, or material interference with, school activities. As for the elementary schools, the court concluded that the school district failed to provide evidence of any gang presence and, consequently, there was no threatened disruption or interference of school activities. Therefore, the school district could not impose a dress code in the elementary schools without violating the students' First Amendment rights. Regarding the middle schools, the district was able to prove the presence of gangs, but the court found that their presence was 'negligible.' Because the district failed to provide evidence that the presence threatened to disrupt school activities, the court held that the district could not impose dress code restrictions in these schools.

⁵⁶ *Leonard v School Committee of Attleboro*, 14 ALR 3d 1192

bound by the requirement that the rules and regulations must be reasonable.⁵⁷ In accord with the general principles that school authorities may make reasonable rules and regulations governing the conduct of pupils under their control, it may be stated generally that school authorities may prescribe the kind of dresses to be worn by students or make reasonable regulations as to their personal appearance.⁵⁸ A reasonable school regulation is one which is essential in maintaining order and discipline on school property and reasonably contributes to maintenance of order and decorum within the educational system.⁵⁹ These powers to regulate students dressing do not however exist at large. They exist subject to other constitutional freedoms and liberties so that their exercise must necessarily be circumscribed by the contents and provisions of other sections of the constitution. Dress code regulations are justified solely by functionality and possession of utilitarian value. If the dress code serves empirically provable functions within the school environment, it would certainly be upheld and vindicated.⁶⁰ Where the exercise of the right to regulate students dressing and general appearance is in pursuance of a functional and utilitarian purpose related to either creating a conducive academic environment or upholding decency in conduct and dressing or in any other rational, logical and discernible manner is relational to the purpose and essence of studentship, it will be upheld. In *Stromberg v French*⁶¹ it was held that school authorities were justified in enacting a regulation forbidding wearing of metal heel plates on students' shoes, the court noticing that the wearing of metal heel plates caused excessive noise in the halls and classrooms and also tended to deteriorate the hardwood floors of the school at an inordinate rate. Where the ban is however a blanket and general ban that either bears no relationship to the object sought to be attained, or is so overbroad as to go beyond the object so to be attained, it is not likely to be sustained. In *Miller v Gillis*⁶² it was held that a school dress code that presented severe and unduly restrictive limits of dress and personal appearance did not bear a rational relationship to the orderly conduct of the educative process. In accordance with the rule that a person has a right to wear clothes of his own choosing, provided in the case of a schoolboy, they are neat and clean, it was held in *Bannister v Paradis*⁶³ that where there was no showing that wearing of blue dungarees inhibited the educational process, a school dress code prohibiting wearing of blue dungarees was unconstitutional, and in *Scott v Board of Education*⁶⁴ where slacks were proscribed for female students, the court held that the failure to make a differentiation as to the kind of slacks made it evident that what was being enforced was style or taste and not safety, order or discipline.

In essence, the fundamental right to non-verbal expression may, upon a showing of substantial interest by the state, be subject to legitimate limitations. Though, important governmental concerns may permit derogation from the constitutional right to non-verbal expression, the means must differ from the ends. In the current system-wide dress code directives in Nigeria's tertiary institutions, we find a unity between the means and ends. The dress codes are improperly imposed for the mere objective of uniformity of appearance, and not because of any important academic or societal purpose. As set out previously, the constitutional freedom of expression may be circumscribed by any law reasonably justifiable in the interest of defence, public safety, public order, public morality or public health; or for the purpose of protecting the right and freedom of other persons. This reservation renders the constitutional freedoms subject to other laws duly and properly enacted. Thus, derogation of constitutional freedoms must be only via duly enacted laws and not as in present case, upon *ad hoc* school regulations. Moreover, since governmental circumscription of constitutionally protected right to free expression must, promote a significant government interest, it is clear that university administrations' desire for uniformity of students' appearance is not a vital governmental purpose sufficient to permit derogation from constitutional rights.⁶⁵ According to its protagonists, school uniforms and dress codes may yield many advantages. These embrace lessening of 'economic class' competitiveness between students, reducing clothing-instigated distraction, and a better appearance to the school environment. Notwithstanding these advantages, uniform dress codes suffer the significant shortcoming of intrusion on rights of free expression. This interference with constitutional rights is so severe that these dress code directives and regulations cannot survive constitutional enquiry.⁶⁶ Fundamentally, the opposition to school uniforms and strict student dress

⁵⁷ *Baker v Board of Education*, 307 Federal Supplement 517

⁵⁸ *Pugsley v Sellmeyer*, 30 ALR 1212; 68 *American Jurisprudence* 2d. 574

⁵⁹ *Blackwell v Issaquena County Board of Education*, 363 F.2d 749 (5th Cir.1966); 68 *American Jurisprudence* 2d. 568

⁶⁰ Please see *Olesen v Board of Education of School District No. 228*, 676 F. Supp. 821 (N.D. Ill. 1987). This case involved violation of a dress code that prohibited male students from wearing earrings. School officials had determined that many of the male students were wearing earrings to show their gang affiliation. The school board had adopted a general policy that banned wearing or displaying any gang symbols. The court upheld the dress code and rejected plaintiff's arguments based on First Amendment rights of expression, and an equal protection violation because the restriction applied only to male students. The court did not find any particularized message worthy of protection, and further found there was no gender based discrimination because the policy was based on discouraging gang membership and girls did not wear earrings to indicate gang membership.

⁶¹ 60 ND 750; see also 68 *American Jurisprudence* 2d. 574

⁶² 315 Federal Supplement 94

⁶³ (n 46)

⁶⁴ (n 46); 68 *American Jurisprudence* 2d. 574

⁶⁵ Whichever way it is viewed, school uniform policies are unlawful for either comprising suppression of expression, or involving coercion of expression, both of which implicate constitutional rights. While there are authorities that support school uniforms, they are all limited to primary and high schools. See *Littlefield v Forney Ind. Sch. Dist.*, 268 F.3d 275 (2001) (holding that uniform policy violated no due process rights of students or their parents); *Long v Bd. of Educ.*, 121 F. Supp. 2d 621 (W.D. Ky. 2000) (upholding uniform dress code on the ground it was content neutral); *Phoenix Elementary Sch. Dist. v Green*, 943 P.2d 836, 839 (Ariz. Ct App. 1997) (approving a dress code that prescribed white tops and blue bottoms). There is no case law that holds or even suggests or implies that a school uniform policy may be adopted in universities.

⁶⁶ Alyson Ray, (n 39) 656-7

codes is its intrusion into the basic human right to define oneself and develop one's own identity at the period in human development where the need to create and assert self-identity is most critical and essential.⁶⁷ Additional to prohibiting students from wearing fashionable clothing, these directives also prohibit students from wearing clothing that carries a message or articulates a student's thoughts on any topic.⁶⁸ Students are deprived of the opportunity, of any opportunity to communicate their thoughts and ideas vide their choice of clothing when schools dictate to them the exact apparel they must wear to school.⁶⁹ What places dress code imposition in Nigerian universities high on the scale of egregiousness is that no effort is made to justify it by reference to any purposes sought to be achieved. It is founded basically on a bare exercise of naked power. In conclusion, rules imposing uniforms in schools are an unconstitutional limitation on students' constitutional rights of self-expression.⁷⁰

7. General Obnoxiousness of the Dress Code Requirement

Under the doctrine of *in loco parentis*, the state in the absence of a parent, asserts some of a parent's authority over a child. Frequently, schools' power over children has been justified by this doctrine.⁷¹ On the other hand, cognitive competence of children is advanced by the time they become adolescents. At that time, they have developed self-control. If high school [or university] is not to be a military academy, as students become young adults, their psychological training must reduce.⁷² In this regard, teachers of primary and secondary school children have broader powers of control and discretion over their wards than teachers of university age adults.⁷³ Thus, '*the power of the state to control the conduct of children reaches beyond the scope of its authority over adults.*'⁷⁴ Even at that, the legitimate interest of the State in maintaining the well-being of youth does not make children second-class rights holders.⁷⁵ After some time, a point is reached when mainstream communal concern in social norms duplication must yield to individual freedom.⁷⁶ When students reach this point, they are required to be treated as autonomous individuals. In the absence of a convincing excuse for restraining their autonomy they possess a basic human right to control their appearance and a significant interest in using their dress and appearance to communicate essential information about their identities. Schooling and school administration is a public duty and may not be habituated to capricious limitations of student liberties.⁷⁷ In the context of the US, in the 1960s and early 1970s, as

⁶⁷ Deborah Ahrens and Andrew Siegel, (n 18) 95 [Attire and appearance are arenas in which young people have historically had significant space to work through complicated questions about who they are, what they value, and what messages about themselves and the world they want to present, and to do so on a canvas free of significant long-term consequences. School uniforms and strict student dress codes short circuit this development, with both immediate and long-term consequences to students' autonomy and to society's democratic health. 96] See generally *Obergefell v Hodges*, 135 S Ct 2584, 2593 (2015) ('*The Constitution promises liberty to all within its reach, a liberty that includes certain specific rights that allow persons, within a lawful realm, to define and express their identity.*') *Paris Adult Theater I v Slaton*, 413 US 49, 73 (1973) (Douglas, J., dissenting) ('*But our society—unlike most in the world—presupposes that freedom and liberty are in a frame of reference that makes the individual, not government, the keeper of his tastes, beliefs, and ideas.*') *Keyishian v Board of Regents*, 385 US 589, 603 (1967) ('*The vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools. The classroom is peculiarly the marketplace of ideas. The Nation's future depends upon leaders trained through wide exposure to that robust exchange of ideas which discovers truth out of a multitude of tongues, [rather] than through any kind of authoritative selection.*') *Planned Parenthood v Casey*, 505 US 833, 851 (1992) per Kennedy, J ('*These matters, involving the most intimate and personal choices a person may make in a lifetime, choices central to personal dignity and autonomy, are central to the liberty protected by the Fourteenth Amendment. At the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life. Beliefs about these matters could not define the attributes of personhood were they formed under compulsion of the State.*')

⁶⁸ Alison M. Barbarosh, (n 24) 1441

⁶⁹ *Ibid.* 1448

⁷⁰ Alyson Ray, (n 39) 645

⁷¹ Jonathan Pyle, (n 43) 601-2 [However, the Courts prefer protection of the freedom of expression of adults over the need to prevent harm to children. Consequently, when the liberty of adults is also affected by speech proscriptions directed at children, the Courts invariably apply the prohibition narrowly.]

⁷² *Ibid.* 608; in *Ferrell v Dallas Ind. Sch. Dist.*, 393 US 856, 856 (Douglas, J., dissenting), ('*I suppose that a nation bent on turning out robots might insist that every male have a crew cut and every female wear pigtails. But the ideas of 'life, liberty, and the pursuit of happiness,' expressed in the Declaration of Independence, later found specific definition in the Constitution itself, including of course freedom of expression ... I had supposed those guarantees permitted idiosyncrasies to flourish, especially when they concern the image of one's personality and his philosophy to his government and his fellow men.*')

⁷³ In *Ginsberg v New York*, (n 24) the Supreme Court recognized that the state has power to control the conduct of children that reaches beyond its scope of authority over adults.

⁷⁴ *Prince v Massachusetts*, (n 24) (allowing a state to prohibit children from proselytizing)

⁷⁵ *Wisconsin v Yoder*, 406 US 205, 244-46 (1972) (Douglas, J., dissenting) (arguing that children possess fundamental constitutional rights, and that the Court was wrong to allow Amish parents to forbid their children from attending high school) In *re Winship*, 397 US 358 (1970) (holding that juvenile delinquents are entitled to due process) In *re Gault*, 387 US 1, 13 (1967) ('*Whatever may be their precise impact, neither the Fourteenth Amendment nor the Bill of Rights is for adults alone.*') *Haley v Ohio*, 332 US 596, 601 (1948) ('*Neither man nor child can be allowed to stand condemned by methods which flout constitutional requirements of due process of law.*') Jonathan Pyle (n 43) 592 [Accordingly, constitutional protection of student speech is based on the same values that motivate the protections for adults.] Alyson Ray, (n 39) 659 [Courts consider students, as well as adults, beneficiaries of the symbolic speech doctrine.]

⁷⁶ Jonathan Pyle (n 43) 607

⁷⁷ Deborah Ahrens and Andrew Siegel, (n 18) 106

students adopted clothing styles chosen in part to intentionally differentiate themselves from older generations and established cultural norms, representatives of those generations and norms pushed back, adopting increasingly formal and specific guidelines for student dress.⁷⁸ In the Nigerian context, imposition of unattractive single colour uniforms and prohibition of modish, trendy dressing on campus fits perfectly into a pattern of arbitrary deployment of authority to compel a younger generation to dress in a manner satisfactory to the older generation of university administrators. Thus, implementation of student dress constraints is part of a larger tendency in which schools have retrogressively remodelled themselves as locations for monitoring and controlling young people. The obverse of this re-purposing is that other educational objectives, such as cultivating emotional and social development or encouraging independent academic creativity and critical thinking are de-emphasised.⁷⁹

Certainly, it is possible to belittle or mis-describe the demand for individual autonomy over dressing as attempting to justify a right to wear clothes that 'look nice,' or that one 'feels good in,' or that expresses ones 'sense of individuality' or a right to wear 'jeans,' or 'dungarees'.⁸⁰ These responses however are insufficient generalized explanations of the fact that expressive rights are implicated in clothing choices.⁸¹ Furthermore, there is no empirical evidence that rules mandating compulsory dress codes improve student performance, increase school safety, or create more inclusive communities.⁸² Contrariwise, among the primary functions of uniforms as identified by Sociologists are suppression of individuality and promotion of group identification. Uniforms eradicate the liberty to present part of one's personality to others. These, clearly are the objectives of schools that impose uniform codes.⁸³ The Council for Legal Education's prescribed dress code for law students and law graduates attending tuition at the Nigerian Law is black suit or trousers and white shirt for males, and white shirt or blouse and black skirt or suit for females. Decked out in this sombre paraphernalia, the students look less like trainee lawyers and more like undertakers attending an annual convention. Advocates for the Council do not for a single moment argue that this peculiar attire has anything to do with discipline or scholarship or decorum. The explanation is that it will assist them get used to the ways and manner lawyers dress. This explanation suffers a detachment from logic and common-sense. In the first place lawyers do not wear white on black as a matter of regulation, form, good taste or sartorial elegance. Certainly, while attending court, either in the open court room or in the Judge's chambers, lawyers wear dark colours. This could be any shade of dark from grey to navy or stripped and any other shade in between including of course the ubiquitous black. However, outside this formal setting for adjudication, lawyers conduct every other aspect of their legal business in any and all shades of colours including pink suits for those who have the courage and the taste (or lack of it). It is therefore untrue to suggest that legal business is normally conducted in black suits. The next reason given, which is to get them used to the idea of dressing formally in preparation for the professional life of attorneys, is not only ambitious but proceeds from a dangerous disconnection with reality. It is arguable that it would be good for the profession if every lawyer earns a living from law practice in one form or the other. The reality however puts paid to that argument. For reasons that are uncountable, lawyers earn their living from activities that range the entire spectrum of economic activity - including undertakings south of legality. Some of these are already settled in their decision of what to do with their lives at the time they are attending university or law school. For some others, nirvana comes much later. But for all, the entire rigmarole of black suits and white shirts in preparation for a hackneyed professional practice is wasted. The third reason why this regulation does not make sense is basic economics. The day for the average student involves at least six hours of tuition, some more time out for research, assignments etc. Each white shirt can only be worn once before it goes for laundry. This produces a tally of at least five white shirts in a week, with a fall back of an extra five. This elaborate wardrobe does not of course dispense of the need to acquire the other coloured shirts, jeans, T-shirts and club jerseys that make student life worth living. The cost of acquiring this officially prescribed wardrobe of white shirts and the related dry-cleaning costs is an undue and unnecessary burden on parents and sponsors. The final reason is common-sense. Lawyers in practice can afford to wear suits all day round. The lawyer probably owns an air-conditioned car, works in an air-conditioned office, or at least has the discretion or permission to hang up his jacket. Blessedly, in our geographical location, we receive the undiminished vigour of the Phoebus driving his chariot across the sky. Requiring a student, in the sense-numbing heat of January to May to wear a black suit every day to attend tuition for the sole purpose of acclimatizing him to a possible mode of dressing in the future lacks intelligible justification.

8. Gender Perspectives to the Dress Code Requirement

A citizen of Nigeria of a particular sex, shall not, by reason only that he is such a person, be subjected either expressly by, or in the practical application of any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other sex are not made subject⁸⁴. In considering the meaning,

⁷⁸ Ibid. 56 [School authority regulations prescribing the length of male hair and prohibiting females from wearing trousers was in point of fact, deployment of institutional control of formal school discipline in the service of a larger generational societal conflict.]

⁷⁹ Ibid. 97 [A cardinal excuse presented in validation of dress restrictions is that by eliminating distractions, they permit teachers and students to concentrate on academics. On the contrary, it is clear that dress code implementation has become diversionary of teacher time and effort, requiring teachers to expend time and energy to assessing hem and slit lengths, cleavage exposure, and acceptable shades of blue, thus reducing the time they should devote to teaching.]

⁸⁰ *Blau v Fort Thomas Public School District*, 401 F.3d 381.

⁸¹ Deborah Ahrens and Andrew Siegel, (n 18) 65

⁸² Ibid. 97

⁸³ Alyson Ray, (n 39) 664

⁸⁴ s. 42(1)(a) of CFRN 1999. A major difference between the provisions of s. 42 and s. 39 is that while s. 42 creates a right only for citizens of the Federal Republic of Nigeria, s. 39 does not contain any such limitation. Furthermore, while s. 39 is under s. 45(1) subject to such derogations as may be necessary in the interest of defence, public safety, public order, public

characteristics and application of this provision, use of the word 'shall' emphasises its rigidity. The words and language are not only clear and precise but the prohibition against use of gender as an obstacle to exercise of rights is absolute. The provision not only restricts any law or legal system but also of any executive or the administrative action of government. Its use of 'any law' is encompasses any type of law. It applies to any system of law, whether statute law, customary law, Islamic law and common law applicable in Nigeria which subjects a citizen to discrimination, or disability, or restriction on account of any of the grounds specified in the section.⁸⁵ The non-discrimination provision of the Constitution is equally effective against discrimination both with respect to the content of the laws and in the application and effect of the laws. This equal protection guarantee does not take from the state all power of classification. Most laws classify, and many affect certain groups unevenly, even though the law itself treats them no differently from all other members of the class described by the law. When the basic classification is rationally based, uneven effects upon particular groups within a class are ordinarily of no constitutional concern.⁸⁶ The Constitution recognizes that certain differences in treatment of persons do occur. The law will however insist that such should not be capricious and unreasonable.⁸⁷ This guarantee of non-discrimination is an undertaking that the subjects of laws will be treated equally by those who make and administer the laws. However, a legislative right to classify for the purposes of legislation exists. On the other hand, the idea of classification imports inequality which is a contravention of the concept of equal protection. Therein lies a paradox. In resolving this paradox, Courts accept both the legislative right to classify and the demand for equality. By the doctrine of reasonable classification, the Courts hold that the Constitution does not demand that factually dissimilar things be given the same treatment in law. The Constitution, in its demand for equality, does however compel that alike things be accorded the same treatment. In this regard, a classification's extent of reasonableness is its ability in treating equally those correspondingly positioned.⁸⁸ Certain classifications, however in themselves supply a reason to infer antipathy. Race is a paradigm. Racial classification, regardless of purported motivation, is presumptively invalid and can be upheld only upon an extraordinary justification.⁸⁹ Classifications based upon gender, not unlike those based on race, have traditionally been the touchstone for pervasive and often subtle discrimination, so that if at all, such a classification may be upheld, it must clearly bear a close and substantial relationship to important government objectives.⁹⁰ When a statute, gender-neutral on its face is challenged on the ground that its effects upon women are disproportionately adverse, a two-fold inquiry is thus appropriate. The first question is whether the statutory classification is indeed neutral in the sense that it is not gender-based. If the classification itself, covert or overt, is not based upon gender, the second question is whether the adverse effect reflects invidious gender-based discrimination.⁹¹ One of the primary reasons for striking down dressings regulations is where there are deliberately discriminatory either in content or in application. In *Scott v Board of Education*⁹² it was held that a proscription of slacks is invalid where it applies only to female students.

Where a statute draws classifications based on gender or other ostensible or plausible discriminatory grounds, government or those charged with administering the statute would be required to show [t]hat it is pursuing a compelling or overriding end - one whose value is so great that it justifies the limitation of constitutional values. Even if the government can demonstrate such an end, the Court will not uphold the classification unless the justices have independently reached the conclusion that the classification is necessary to promote that compelling interest.⁹³ Besides, since sex, like race, is an immutable characteristic determined solely by the accident of birth, imposition of special disabilities upon the members of a particular sex because of their sex would violate the basic concept of the constitutional and legal system that legal burden should bear some relationship to individual responsibility.⁹⁴ A great majority of school dress codes regulate female students' appearance much more than male students. Specifically, more rules are focused on, or apply as a practical matter only or mostly to females. This imposition of gender variant restraints and burdens is largely contradictory to constitutional and judicial commitment to gender equality.⁹⁵ Other than the general regulations that apply to all students at faculty level, specific

morality or public health; or for the purpose of protecting the rights and freedom of other person, the provision on the right to freedom from discrimination is only subject to, under s. 42(3) to the provision permitting the imposition of restrictions in respect of the appointment of any person to any office under the state or as a member of the armed forces of the Federation or a member of the Nigerian Police Force or to an office in the service of a body corporate established directly by any law in force in Nigeria.

⁸⁵ *Anzaku v Governor, Nasarawa State*, [2005] 5 NWLR Part 919, 448

⁸⁶ *Massachusetts Bd of Retirement v Murgia*, 427 US 307; *New York City Transit Auth. v Beazer*, 440 US 568

⁸⁷ *Anzaku v Governor, Nasarawa State*, (n 85)

⁸⁸ Joseph Tussman and Jacobus tenBroek, 'The Equal Protection of the Laws,' (1949) 37 *California Law Review* 341, 344

⁸⁹ *Brown v Board of Education*, 347 US 483 (1954)

⁹⁰ *Craig v Boren*, 429 US 190 (1976)

⁹¹ *Arlington Heights v Metropolitan Housing Development Corporation*, 429 U.S. 252 (1977)

⁹² (n 46)

⁹³ John Nowak, Ronald Rotunda and Nelson Young, *Constitutional Law*, (West, 1978) 524

⁹⁴ *Weber v Aetna Casualty and Surety Co.*, 406 US 164 (1972)

⁹⁵ Deborah Ahrens and Andrew Siegel, (n 18) 103-4 [A gender-based critique of student dress codes, focuses attention on the exclusive or disproportionate application of most of the restrictions in school dress codes to female attire. In this regard, young women are subject to more specific limitations on their expression than young men; they are required to spend more time and emotional energy on ensuring compliance with appearance standards than young men; they are required to restrain their self-expression not for their own benefit but for the benefit of young men who are supposedly distracted by sharing public space with women. 99]

regulations apply to female students, and include the following⁹⁶ - wearing of mini-skirts at any time or place within the school premises is prohibited; no student shall wear a short gown or any other short dress at any time or place within the school premises; wearing of skirts or gowns with deep slits is prohibited; wearing of gowns, skirts and other dresses made of such a material or cut or sewed in such a manner or fashion as to display the contours of the body is prohibited; wearing of shirts, blouses and other apparel cut or made in such a manner as to expose the midriff is prohibited; display of navels is prohibited; where shirts are worn, they must be properly buttoned in such a manner that the female breasts or any part thereof are not displayed; failure or refusal to wear bras is prohibited; it is not permitted for females to appear in school at any time or any occasion without wearing panties;⁹⁷ light and see-through fabrics are prohibited; it is prohibited to wear any cloth made of such a material or made in such a style as is calculated to arouse the sexual attention of the opposite gender.⁹⁸

Within the context of disparate gender treatment in the application of laws and policies and executive or administrative actions of government, in *Craig v Boren*,⁹⁹ the appellant Craig, a male then between 18 and 21 years old, and appellant Whitener, a licensed vendor of 3.2% beer, brought an action for declaratory and injunctive relief, claiming that a statute prohibiting the sale of 3.2% beer to males under the age of 21 and to females under the age of 18 constituted a gender-based discrimination that denied to males 18-20 years of age equal protection of the laws. The US Supreme Court held that the gender-based differential constituted invidious discrimination against males 18-20 years of age. In *Frontiero v Richardson*,¹⁰⁰ a policy of the US military allowed servicemen to claim wives as dependents for the purposes of obtaining benefits, but servicewomen had a stricter standard to meet. They were required to show that their husbands depended on them for more than half of their financial support. The US Supreme Court held that a law is unconstitutional if it gives benefits to the spouses of only male but not female service members. It is accordingly, a settled position in law that neither federal nor state governments act compatibly with equal protection when a law or official policy denies to females, simply because they are females, equal opportunity to participate in and contribute to society based on their individual talents and capacities.¹⁰¹ The regulations concerning dressing bear a disparate impact on male and female students. As a matter of fact, a careful scrutiny of the prohibitions would indicate that most are directed at female students. Official justification for these evidently discriminatory regulations varies. Unofficial justification is basically, protection of male students from erotic and deliberately seductive ploys of the nubile female Delilahs. However, the official version talks about reducing the incidence of on-campus-rapes by reducing the tendency to stoke the fires of lust rampaging destructively in the loins of the male students. Undoubtedly, all of the dress modes prohibited would be described as modish and trendy. Certain could be described as daring. None could however be described as obscene. Applying contemporary community standards, the average person would not be led irrevocably to the conclusion that the dressing and the dresser, taken as a whole appeal solely to salacious interest. The dresses and dressing could be described as not just attractive, but also attracting. It would however be impossible to describe them as calculated to excite lustful and sensual desires, or calculated to corrupt the morals, or arouse prurience in the innocent. Whichever version of the justification for the disparate gender impact of the dressing rules is accepted, the regulations remain discriminatory. Consequently, where a law or official policy as the one under consideration creates or sustains a divergence of benefits and entitlements upon a sole predicate of gender dissimilarity, it may not be sustained.

9. And the Nigerian Supreme Court Weighs in Heavily

The State has a weighty cultural and legal obligation to provide schooling to its citizens on equal terms. Consequently, rules that subject access to education on observance to strict dress and appearance codes provide a basis to interrogate the constitutional significance of these autonomy principles.¹⁰² Invariably, articles objectionable to some people will be included in a dress code or uniform, while items reasonable or appealing to others will be excluded. From an equality standpoint, school uniforms and strict dress codes are normatively challenging for the reason that they subject access to education on compliance to a state [or other authority] -imposed orthodoxy of taste and aesthetic values, regardless of the extent to which dress and clothing norms mirror religious association, and cultural and ethnic background. School dress policies, especially uniforms, enforce a mainstream prescription on a pluralistic society. In doing so, the state becomes oblivious or intolerant of the import of imposing a particular subculture's perception of appropriate dress on students and families with dissimilar backgrounds and beliefs.¹⁰³ This issue is best exemplified by the proscription of wearing of hijab in public schools in Lagos state. The Lagos state government which has a school uniforms policy in its public schools had banned the wearing of hijab in its public schools on the basis that it did not constitute part of the school uniform approved for students. Some of the affected students filed an action seeking a declaration that the hijab prohibition was a violation of their rights to freedom of thought, religion and education. The high court dismissed the action on the basis that the hijab prohibition was not

⁹⁶ The first line of enforcement of these 'Institutional Decency' regulations lies with the Institutions' gatemen and security men, who are authorized to refuse any '*improperly dressed student*' access into the university premises. The second line of enforcement lies with the lecturers who are authorised to refuse any '*improperly dressed student*' admittance into lectures.

⁹⁷ Smoking out violators of this particular ordinance would require highly developed powers of divination.

⁹⁸ Generally, see (n 2) – (n 7)

⁹⁹ (n 90)

¹⁰⁰ 411 US 677 (1973)

¹⁰¹ *Wengler v Druggists Mutual Ins. Co.*, 446 US 142, 150 (1980) [To meet the burden of justification, a State must show at least that the challenged classification serves important governmental objectives and that the discriminatory means employed are substantially related to the achievement of those objectives.] *Mississippi Univ. for Women v Hogan*, 458 US 718, 724 (1982) [Parties who seek to defend gender-based government action must demonstrate an exceedingly persuasive justification for that action.]

¹⁰² Deborah Ahrens and Andrew Siegel, (n 18) 101

¹⁰³ *Ibid.* 98

discriminatory. The Court of Appeal overturned this decision, and Lagos state appealed to the Supreme Court against the decision of Court of Appeal. On Friday, June 17, 2022, the Supreme Court affirmed the rights of female Muslim students in Lagos state to wear hijab to school, and upheld the students' contention that the prohibition violated their rights to freedom of thought, conscience, religion, dignity of human persons and freedom from discrimination guaranteed by the 1999 Constitution.¹⁰⁴ Undoubtedly, students, whose religion requires or prohibits wearing particular clothing, find school uniform policies and strict dress codes significantly cumbersome. In order to find personal accommodation within such broad policy positions, they are most often required to invoke exceptions and sometimes seek judicial intervention.¹⁰⁵ Within a broader policy application, enjoyment of freedom of religion is not exhausted by wearing of hijabs. The door is left wide open for rosaries and scapulars to be worn. The white soutanes of white garment churches are entitled to come into play. The yellow waistcoat of the Lord's Chosen movement may be accommodated. The ground-sweeping skirts and gowns of the Deeper Life Church are also protected. More important than these however is the implication of the Supreme Court's decision that school uniforms and dress code policies are not sacrosanct, but subject to constitutional liberties. And then, if constitutional liberties of children and young persons in primary and secondary schools are worthy of protection against a school administration's dress code policy, much more worthy of protection, or at the very least, equally worthy of protection, are the same constitutional rights of adults in universities.

10. Conclusion

The concept of school uniforms in tertiary education started with requiring law graduates attending the Nigerian Law School to be attired in formal wears. Gradually, ties were included in the get-up. Subsequently, the attire was standardised to white on black with a black tie. Eventually, this get-up was extended to the law faculties. Gradually, it was accepted as desirable that the entire student population in universities should come under school uniforms. Undergraduates anywhere in the civilized are not required to wear uniforms to attend school. This comparison is necessary to bring proper perspective to the requirement of Nigerian universities that adults, tertiary education students, should wear uniforms to receive tuition. In place of emphasizing sufficient and qualitative education, administrators of Nigeria's tertiary institutions are exercised about sartorial homogeneity of students. A paradox of imposed dress restrictions in Nigerian universities is that university administrators do not for a moment consider the unconstitutionality of imposed dress restrictions. Furthermore, and more troubling, they do not contemplate the conflicts of values created by imposing dull, single colour formal apparel on young adults at the vibrant peak of youth; or if they consider it at all, they are satisfied that both the constitutional and generational issues are answered by unflinching exercise of unconstitutional power. In *Meyer v Nebraska*¹⁰⁶, in repudiation of a suggested principle that a State might so conduct its schools as to 'foster a homogeneous people,' the US Supreme Court said 'In order to submerge the individual and develop ideal citizens, Sparta assembled the males at seven into barracks and intrusted their subsequent education and training to official guardians. Although such measures have been deliberately approved by men of great genius, their ideas touching the relation between individual and State were wholly different from those upon which our institutions rest; and it hardly will be affirmed that any legislature could impose such restrictions upon the people of a State without doing violence to both letter and spirit of the Constitution.'¹⁰⁷ Nigeria's universities, in a bid to produce model graduates, have outdone even Spartan Sparta, in a race to reduce to the barest minimum, fundamental rights and privileges permitted their charges. What Sparta did to their seven year olds about three thousand years ago, - prescribe a dress uniform for their education, is what Nigerian universities are currently doing to their teenagers and adults. The measure of the monstrosity of compelling university students to wear uniforms is indicated by the fact that the argument and controversy in other jurisdictions is in respect of students in primary, high and middle (public) schools wearing uniforms. Even at that, clear reasons given for creation of dress codes include how uniforms may improve self-esteem since it eliminates kids being teased about their clothes, may reduce pressure on students to buy expensive clothing in order to keep up with their peers, make schools safer by eliminating gang-related clothing. What is more, imposition of these dress codes is in most school districts backed by clear regulations. In Nigeria's case, dress codes are imposed on [adult] university students. There is no correlation between these dress codes and any utilitarian purpose. And what is most distressing is that they are imposed without any pretension of legislative support.

¹⁰⁴ Bolanle Olabimtan, 'Supreme court okays use of hijab in Lagos schools' *The Cable*, June 17, 2022 <<https://www.thecable.ng/breaking-supreme-court-okays-use-of-hijab-in-lagos-schools>> Accessed June 17, 2022

¹⁰⁵ Deborah Ahrens and Andrew Siegel, (n 18) 99. See, e.g., *Chalifoux v New Caney Ind. Sch. Dist.*, 976 F. Supp. 659, 671 (S.D. Tex.1997) (granting relief to student denied permission to wear rosaries to school based on strict interpretation of school dress code).

¹⁰⁶ 262 US 390 (1923)

¹⁰⁷ Mr. Justice McReynolds at 402