Watt, Gary. "Dress is Law." *Dress, Law and Naked Truth: A Cultural Study of Fashion and Form*. London: Bloomsbury, 2013. 1–12. The WISH List. *Bloomsbury Collections*. Web. 26 Apr. 2023. <<http://dx.doi.org/10.5040/9781472544438.ch-001>>.

Downloaded from Bloomsbury Collections, www.bloomsburycollections.com, 26 April 2023, 08:25 UTC.

Copyright © Gary Watt 2013. You may share this work for non-commercial purposes only, provided you give attribution to the copyright holder and the publisher, and provide a link to the Creative Commons licence.

CHAPTER ONE

Dress is Law

[A]ll Forms whereby Spirit manifests itself to sense, whether outwardly or in the imagination, are Clothes . . . the Pomp and Authority of Law . . . are properly a Vesture and Raiment.¹

A principal form ‘whereby Spirit manifests itself to sense’ is the form of words. In one of his *Letters to His Son*, Philip Stanhope, the 4th Earl of Chesterfield, called words ‘the dress of thoughts’.² We might readily accept that law goes dressed in the form of words, but will we also accept that law goes dressed in dress? Moreover, can we accept that dress is law and that law is dress? The image of a thing is usually contrasted with the thing itself; the image of a thing is said to be reflective, representative, reproductive or mimetic of the thing, rather than identical to it. And yet the image of a thing can sometimes be the most reliable knowledge we have of a thing. Sometimes we lack capacity to see the thing itself because the thing itself is too profound or too abstract or too remote. In such cases we might have to settle for a flame-cast shadow on the wall of a cave³ or an image reflected in a mirror.⁴ The idea of law in human society is so primal and pervasive, so innate and inescapable, that we struggle in vain to perceive what law is apart from the cultural forms in which it is expressed. Lawrence Rosen was surely right when he observed that ‘law is so deeply embedded in the particularities of each culture that carving it out as a separate domain and only later making note of its cultural connections distorts the nature of both law and culture’.⁵ Can we imagine a society without law? Perhaps. Can we imagine a society without dress? Perhaps. Can we imagine a society with law which does not have dress, or a society which has dress but has not law? It is almost certain

1 Thomas Carlyle, *Sartor Resartus: The Life and Opinions of Herr Teufelsdröckh* (1833–4) (Boston: James Munroe and Co., 1836), Book III, chapter 9.

2 London, 20 November 1753.

3 Plato, *The Republic*, Book VII.

4 1 Cor. 13.12. Biblical references are to the New International Version unless otherwise stated.

5 Lawrence Rosen, *Law as Culture: An Invitation* (Princeton, NJ: Princeton University Press, 2006), p.xii.

that no such society has ever existed, or will ever exist; for the same social and cultural forces which compel us to dress, compel us also to make and obey laws. If dress and law are essentially the same cultural phenomenon, as I contend, it will follow that when we better understand the nature of dress, we will better understand the nature of law. Clothing is an image of law, certainly, but it is one of those species of image that is not merely a reflection of the thing but as close as one can get to an expression of the identity of the thing. I will argue that the nature of law as a social and cultural idea is expressed as well in clothing as in any written text, so that clothing is a material substantiation of law's nature as social and cultural fact. Of course, I do not claim that dress codes and conventions are 'laws' as judges and jurists define them – they are not in that sense 'laws properly-so-called' – but I do contend that they operate in many cultures as rules with a normative force equivalent to the force of laws properly-so-called. Ask yourself when was the last time you felt compelled to alter your behaviour so as to comply with a law laid down by the legislature or by a judge. Ask yourself when was the last time you felt compelled to alter your behaviour to comply with a custom or convention of dress. An extraterrestrial visiting most human cultures on earth would be hard-pressed to know which normative body of rules – the juridical or the sartorial – should carry the label 'law'.

The dress of words cannot be ignored. It is in the layer of words that we find one of the most compelling proofs for my thesis that dress is culturally identical to law, for the etymological connection between law and dress is intimate, ancient and profound.⁶ The very word 'dress' ultimately derives from **reg-*, which is precisely the same Proto-Indo-European (PIE) root that gives modern European languages and legal systems their most basic word-set for legal order (the set which includes 'rule', 'right', 'director', 'rex', 'regulation' and so forth).⁷ To dress is therefore to 'regulate' or to 'order'.⁸ Leading scholars of PIE language and culture have observed that in the reconstructed PIE lexicon, 'much of the concept of "law" derives from that of "order" or "what is fitting"'.⁹ The same is true of a great deal of our modern

6 Unless otherwise stated, etymologies are taken from R. K. Barnhart (ed.), *Chambers Dictionary of Etymology* (London: The H Wilson Company, 1988).

7 '*Costume de rigueur*', a French term for a strict dress code, makes the etymological point.

8 In Tudor England, the language of 'ordering' was synonymous with that of 'tailoring'. See Jane Ashelford, *The Art of Dress: Clothes and Society, 1500–1914* (London: National Trust, 1999), p.51.

9 James Patrick Mallory and Douglas Quentin Adams, *The Oxford Introduction to Proto-Indo-European and the Proto-Indo-European World* (Oxford: OUP, 2006), p.276.

language for clothing and dress. ‘Raiment’, for example, is the etymological twin of ‘arrangement’.

The word ‘vesture’ (derived from the PIE root **wes-*)¹⁰ is obviously of significance to the notion that legal power is something that may be ‘invested’. We see the ongoing significance of that notion in, for example, the investiture ceremony by which appointments are made to the Supreme Court of the United States of America. The legal notion of acquiring a ‘vested’ interest in an asset, such as land, might also be directly related to clothing. The historians Pollock and Maitland suggested an origin in the ancient ceremony of land transfer known as ‘livery of seisin’ which frequently required, among other things, that the donee should wear a war glove or gauntlet transferred to him by the donor. This glove, they record, is the ‘*vestita manus* that will fight in defence of this land against all comers’.¹¹ Even the word ‘investment’ can be understood to indicate a fund or asset that is clothed in care. This is supported by the fact that a trust fund which trustees are required to give up on demand, and which they are therefore under no duty to ‘invest’ (prudent investment being incompatible with short-term planning), is said to be held under a ‘bare’ trust.¹²

The PIE lexicon was probably formed around the period 4500–4000 BC, and had already undergone major dispersal by around 2300–1600 BC, which is approximately when the speakers of Greek are thought to have first arrived in the territory of Greece.¹³ The origin of the word ‘costume’ may not be as old as that, but it is another word that is intimately associated with law, for ‘costume’ and ‘custom’ are etymologically the same word. Law is something which it is our custom to follow and to which we become accustomed. Long-standing systems of law such as that which prevails in the jurisdiction of England and Wales invariably have their origins in (and still bear the vestige of) practices that are properly described as ‘customary’.¹⁴ A name frequently associated with the local laws of France, before the

10 Ibid., p.231.

11 Frederick Pollock and Frederic William Maitland, *The History of English Law before the Time of Edward I: Volume II*, 2nd edn (Cambridge: Cambridge University Press, 1898), p.85.

12 Gary Watt, *Trusts and Equity*, 5th edn (Oxford: OUP, 2012), p.403.

13 Martin E. Huld, ‘Indo-Europeans’, in Michael Gagarin and Elaine Fantham (eds), *The Oxford Encyclopedia of Ancient Greece & Rome*, Vol. 4 (Oxford: OUP, 2010), pp.63–5.

14 See, generally, Amanda Perreau-Saussine and James Bernard Murphy (eds), *The Nature of Customary Law* (Cambridge: Cambridge University Press, 2007).

introduction of the Napoleonic *Code Civil*, was ‘coutumes’.¹⁵ The word ‘habit’ is also suggestive of law and dress. The word derives from the Latin *habitus*, and in turn from *habere* (‘to have’ and ‘to hold’), and this is derived from the PIE root **ghēbh-* (‘to take’). It might be assumed, therefore, that a habit is something we take hold of, but far more accurate, surely, is the sense that a habit is something that takes hold of us. Law and dress are connected by habit in that sense. As Michael de Certeau has written: ‘There is no law that is not inscribed on bodies. Every law has a hold on the body’.¹⁶ (Habit in the sense of something that takes hold of us and something to which we become accustomed, also calls to mind Bourdieu’s sociological concept of *habitus*.¹⁷) Finally, even the word ‘law’ itself denotes a layer (from the PIE root **leg-* ‘to lie’).¹⁸ A Swedish word for law is ‘lag’. The same word in English means to clad. Lawyers have sometimes been portrayed as liars who pull the wool over our eyes or as loquacious advocates who ‘lay it on thick’. There is at least an etymological truth in the caricature.

In cold countries, and also for the conduct of certain perilous activities, clothing performs the practical function of conferring physical protection,¹⁹ but when clothing is not required for protection, why do we wear it? An English barrister once claimed that the tax-deductable expenses of her professional self-employment should include the cost of purchasing her court attire. There is no doubt that a barrister, as a courtroom advocate, has to be appropriately dressed; indeed it has been said that ‘[w]ithout gown and bands, the barrister is officially ‘invisible’ to the judge in court’.²⁰ The House of Lords nevertheless rejected her claim because, in addition to satisfying her professional needs, her clothes were considered to confer ‘warmth and decency’.²¹

The notion of ‘decency’, which informs such criminal offences as ‘indecent exposure’ and ‘public indecency’,²² is not merely a matter of law; it is

15 For example, David Hôiard, *Traité Sur Les Coutumes Anglo-Normandes* (Rouen: Le Boucher, 1776).

16 Michel de Certeau, *The Practice of Everyday Life* (trans. Steven F. Rendall) (Berkeley: University of California Press, 2002), p.139.

17 Pierre Bourdieu, *Outline of a Theory of Practice* (*Esquisse d’une théorie de la pratique*, 1972) (Cambridge: CUP, 1977).

18 Mallory and Adams, *The Oxford Introduction*, p.277.

19 The Yaghan people of Tierra del Fuego, who used to live naked despite very cold temperatures, are often cited as an exception.

20 James Parkyns Derriman, *Pageantry of the Law* (London: Eyre & Spottiswoode, 1955), p.38.

21 *Mallalieu v. Drummond* [1983] 2 AC 861, 875 (House of Lords).

22 Modern legislation in the jurisdiction of England and Wales has abandoned the language of decency (Sexual Offences Act 2003 s.66), but it still survives in some other jurisdictions.

something made by law and culture. It is an almost universal feature of human societies to have a code or convention for the dressing or adornment of bare human flesh. This, if one reflects upon it, is a remarkable thing. Few animals adorn themselves artificially, and arguably none does so for reasons of dress, but adult humans invariably do. In his book *Social Conventions*, Andrei Marmor reminds us that the social convention of dress does not always take the form of clothing:

Suppose that the reasons, or needs, functions, etc., for having dress code norms in our society are P. . . . Now, it shouldn't be difficult to imagine a different society where P is instantiated by a different kind of social practice, for instance, that people paint their faces in various colors in comparable circumstances.²³

Clothing is obviously a major component of dress, but so too is artificial bodily modification ranging from shaving to scarification. When we accept that dress is not limited to cloth cladding of the sort that is usual in human societies in cold climates, we can proceed to observe that dress and adornment are as pervasive as laws. Not only do law and dress distinguish human civil society from animal modes of life, but also, within civil society, dress and adornment mediate between the bare human individual and the social group in a way that parallels law's function as a mediator between the individual and society. It is therefore plausible to argue that dress is not merely an image of law's functions of social communication and social regulation, but that it might occupy a cultural locus identical with law, so that dress becomes not merely correspondent with law but potentially cooperative and competitive with law.

The letter of the law requires us to dress in public places, but quite regardless of the letter of the law, the vast majority of adults go dressed in public because they acknowledge a strong social convention that compels them to dress. Indeed, it may be supposed that most people would more readily cross the line of a written law of the land (such as the prohibition against parking a car in a restricted zone) than to contravene an unwritten customary prohibition against public nudity. A few years ago, I gave a public lecture on law and dress. The formal invitation card contained the advice 'Dress Code: None',

23 Andrei Marmor, *Social Conventions* (Princeton, NJ: Princeton University Press, 2009), p.75.

but nobody turned up naked. Let us suppose that 'to dress' is culturally as fundamental as 'to obey law'. Let us conjecture that the cultural forces that compel us to dress are the same as those which compel us to make and obey laws. In such a world, might it be that the evident efforts of legislators and other officers of law to dominate the barrier of dress that exists between the ordered and the unordered, is not so much an effort to exert a power that they possess as an effort to harness a power that resides in the barrier itself?

At this point, it will be useful to elucidate some of the key terms that are used throughout this book (and which appear in its title). Namely, 'dress', 'law', 'naked', 'truth', 'culture' and 'fashion'. Each of these terms is thought-provoking and contestable. I cannot define what they mean, but I can begin to explain what I mean by them.

A number of authors agree on the following working definition of the 'dress' of an individual: 'the assemblage of body modifications . . . and body supplements . . . displayed by a person and worn at a particular moment in time'.²⁴ No definition is ever perfect, and on a strict reading of this definition the requirement that dress be 'worn' would seem to exclude the clean-shaven face from the category of dress, which would surely be an error. One can perhaps be said to wear a trimmed moustache or a groomed beard, but one cannot be said to wear facial hair that is not there at all (without prejudice to the possibility that all faces are, in a sense, 'put on'). Despite that pedantic reservation, the preceding definition of individual dress serves as a useful working definition of what dress *is*. What it does not profess to tell us is what dress *does*, and why it does it. In answer to the question 'what does dress do?', I would respond that it 'orders' or 'arranges us'. By this I mean that the process of dress creates an arrangement or 'raiment' out of our bodies and other material. It follows that dressing is a deliberate activity and one that has an intrinsic order to it. We might joke that we sometimes just 'throw stuff on', but that is never really true when we are talking about dress. Pure accidents happen, of course, and some of them (including, reputedly, the accident of setting a tailcoat on fire) have been the inspiration for modes of dress,²⁵ but until we deliberately exercise the will to adopt an accident

24 Joanne B. Eicher, Sandra L. Evenson and Hazel A. Lutz (eds), *The Visible Self: Global Perspectives of Dress, Culture, and Society*, 2nd edn (New York: Fairchild, 2000), p.4; Mary Ellen Roach-Higgins and Joanne B. Eicher, 'Dress and Identity' *Clothing and Textiles Research Journal* 10.4 (1992), pp.1–8.

25 Quentin Bell, *On Human Finery* (1947) (London: The Hogarth Press, 1976), p.96.

as a mode of dress, it remains an accident pure and simple. In answer to the question ‘for what purpose does dress arrange us?’, I would respond that we dress in order to project ourselves and to protect ourselves. The projective aspect (which has been observed in dress since at least as far back as Tertullian)²⁶ might be said to be outward-looking in the main and the protective aspect might be said to be inward-looking in the main, but there are surely times when we dress in order to project a sense of ourselves inwards to be appreciated by our own inner eye and other times (perhaps especially when we dress in uniform) when the protective aspect of dress is not directed inwardly to self-protection but outwardly to the protection of others. The practical purposes of dress are always directed towards one or more of decency, decoration and defence, and each of these purposes falls within one or other of the paradigm purposes of projection or protection. Decoration is perhaps mostly projection. Defence is mostly protection. Decency is both, inasmuch as it projects a sense of respect for civil order and it protects us from the accusation that we are disrespectful, uncivil or impolite. To summarize, I proceed on the understanding that dress is the ordering of bodily appearance for purposes of protection and projection.

One feature of our physical accoutrement which does not fit easily within the category of protection or projection (or within the subcategories of decency, decoration and defence) is the feature of bearing a load. Dress no doubt includes trousers with pockets and overtly decorative handbags, but not all cargo-carrying accoutrement is a form of dress. When we go shopping, it is a rare plastic carrier bag that will qualify as dress (a carrier bearing the name of a high-status store might just qualify). It is likewise a rare rucksack that will qualify as dress. I stated earlier that dress has a deliberate aspect. In the case of a commonplace carrier bag or rucksack, our deliberation is wholly directed towards the cargo-carrying function of the rucksack, and that thought leaves little or no room for deliberation of dress. It is no doubt for this reason that Stephen Gough, the so-called naked rambler, does not consider that his principles are in any way compromised by the expediency of carrying a backpack. More intriguing is the fact that he is willing to wear shoes, since footwear is undoubtedly an item of dress and a very significant one.²⁷ If we regard Mr Gough as undressed despite the fact that he wears

26 De pallio 3.7.1.

27 Giorgio Riello and Peter McNeil, *Shoes: A History from Sandals to Sneakers* (Oxford and New York: Berg, 2006).

shoes this might indicate that in dress, as in law, the *de minimis* principle applies; which is to say that in a cloth-based dress culture an individual is still deemed to be unclothed even if he or she sports a peripheral item of dress. Either that, or the conundrum of an unclothed man wearing shoes might simply be an illustration of the fact that strict definition is always inaccurate oversimplification.

If dress is difficult to define conclusively, it is no more possible to be definitive about the nature of law.²⁸ By 'law' I mean civil order on very many levels, from the most general level that distinguishes anarchic human association from ordered civil society to the very particular level of a judicial decree that is binding on the parties to a case. A species of law need not be a juridical law properly-so-called for it to operate and feel like law, and therefore to be meaningfully spoken of as law. A rule of dress can be of this sort. As Professor Hart wrote: 'there is a rule that a man must bare his head in church.'²⁹ The rule that we must go dressed in public is also a customary law in society regardless of whatever, for the time being, the judges or the statutes lay down as juridical law properly-so-called. It has been said that we are 'such creatures of fashion that we tend to accept its influence almost as a law of nature'.³⁰ It is even more true to say that as civil creatures, we are creatures of dress and obedient to the dress code. Laws that lay down rules for the regulation of behaviour are generally of two types, either they are prescriptive laws that require certain conduct or they are proscriptive laws that prohibit certain conduct. It has been observed that commentary on dress frequently employs the same dichotomy.³¹ For example, the title of the popular television series *What Not to Wear* is in the proscriptive mode, whereas the title to John T. Molloy's famous book *Dress for Success* is in the prescriptive mode. Legal prescriptions and proscriptions have the capacity to be internalized over time, and the same is true of dress codes. This capacity of law and dress to convert the 'obligatory' into the 'desirable' accords with the function of ritual as Victor Turner describes it.³²

'Naked' I take to mean an absence of dress. This might seem too trite to state, but ask yourself whether a dog or a bird is 'naked' and one instinctively

28 Herbert L. A. Hart, 'Definition and Theory in Jurisprudence' *LQR* 70 (1954), p.37.

29 Herbert L. A. Hart, *The Concept of Law* (Oxford: Clarendon Press, 1961), p.10.

30 Bell, *On Human Finery*, p.57.

31 Eicher, *Visible Self*, p.77.

32 Victor W. Turner, *The Forest of Symbols: Aspects of Ndembu Ritual* (Ithaca: Cornell University Press, 1967), p.30. (Turner applies Émile Durkheim's observations on the internalization of social norms.)

senses that such words are inappropriate to bare animal life because the presence of nakedness implies an absence of dress and it is not in the nature of animals to 'dress'. It cannot be denied that some animals modify their bodies, but appreciated from the perspective of the human cultural tradition of using dress as artistic and aspirational expression there is apparently nothing resembling artificial art in what animals do. The animal instinct to modify appearance, to the extent that it exists, never involves the sort of deliberation that would qualify it as 'dress'. This psychological and philosophical distinction between humans and other animals might be hard to establish as a biochemical fact, but it is readily recognizable as a cultural fact. Of course, the 'fact' of human distinction from the rest of zoological nature may be a creation of human linguistic constructs and of other anthropocentric aspects of the culture of human civil society, but as a culturally recognized fact it is self-evident and meaningful even if it can be accused of being self-defining and self-serving. Instead of describing animals as naked, it might be better to describe them as 'bare';³³ it might be even better to describe animal life as merely 'zoologically natural'. The cultural distinction between human nature and zoological nature in the matter of dress finds some support in the distinction that Kenneth Clark drew between the 'naked' and the 'nude' human form.³⁴ According to Clark's theory, the naked is merely the human form undressed, whereas the nude is the human form idealized in art. There is no equivalent to this distinction between 'nude' and 'naked' anywhere else in the animal kingdom. It should be noted that there is a curious connection between the numerous illustrations that accompany Clark's classic study *The Nude*. Namely that the vast majority of the so-called nude figures are actually in contact with material forms, for example fabricated metal or cloth. Where a figure is free of any material trappings, it will usually be associated with a tangible sense of architectural order – for example by means of a rigorously ordered hairstyle. One example from Clark's book – the famous 'Vitruvian Man' by Leonardo Da Vinci – is the epitome of the nude figure dressed or ordered in an architectural frame. In the Western tradition, the artistic ideal of human civilization is not the nude figure in splendid isolation but the nude in association with artificial frames or fabricated material.

33 Compare Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life* (trans. Daniel Heller-Roazen) (Stanford: Stanford University Press, 1998).

34 Kenneth Clark, *The Nude: A Study in Ideal Form* (London: John Murray, 1956).

‘Truth’ is perhaps the most contestable word in this book. It may be the most contestable word in any book. The philological search for the meaning of the word ‘truth’ is hardly less perplexing than the philosophical search for the meaning of truth. By the end of this book, I hope that we will have acquired a new appreciation of the concept of truth as it is used in legally ordered society, but we cannot hope to render the word less contestable. The problem of speaking ‘truth’ is a function of language. Thomas Hobbes was right when he said that “‘true” and “false” are attributes of speech, not of things’.³⁵ One cannot give meaning to the word ‘truth’ without employing metaphor, and the metaphor one employs determines the meaning of the word. There are many metaphors for truth and falsehood – ‘the copy’ and ‘the reflection’ to name just two – but consider how much of our language for truth and falsehood corresponds to, or coincides with, language for dress: ‘reveal’; ‘discover’; ‘colour’; ‘mask’; ‘disguise’; ‘veil’; ‘put on a front’; ‘spin a yarn’; ‘unravel lies’; ‘under cover’; ‘keep it under your hat’; ‘she has something up her sleeve’; ‘he’s a wolf in sheep’s clothing’. At first sight, ‘insincerity’ depends upon a different material metaphor (it alludes to patching up a cracked ceramic object with wax – from the Latin *sin cerae* [‘without wax’]), but even here the implication is that the person who is trying to pass off broken pottery as having integrity will also dress the surface of the patched-up ceramic by painting or papering over the cracks. The philosopher William James suggested that truth is merely ‘what works’.³⁶ One aspect of my argument is that juridical truth is established by means of artificial fabrication. This is not to say that juridical truth is a lie. It is, by its own terms, the truth, the whole truth and nothing but the truth. But it is not the only truth.

‘Cultural’ is a word that I am happy to leave to its etymological meaning. I take it to indicate something that grows in a society as a plant grows in a garden. It takes the form it does partly on account of conditions over which we have no control and partly on account of human art. Architecture, law, painting. These are all cultures, and part of culture.

So we come at last to the word ‘fashion’. The first task is to distinguish fashion from dress. If dress is the line that distinguishes animal from civil,

35 *Leviathan* (1651) I.iv. On truth construction in legal language, see Michael Freeman and Fiona Smith (eds), *Law and Language*, Current Legal Issues, Vol. 15 (Oxford: OUP, 2013).

36 William James, *Pragmatism: A New Name for Some Old Ways of Thinking* (London: Longmans, Green and Co, 1907). James cites Schiller and Dewey in support of a similar view.

then fashion is variation in the shape of the line. The question ‘why dress at all?’ is of a different order to the question ‘why dress this way?’, although the concerns of both questions inevitably overlap. There is an element of order in the progress of fashion. Certain dress features, such as the rise and fall of skirt length, seem to display a pendulum or cyclical regularity over time.³⁷ The trends are not precise enough to predict what will be worn, say, ten years from now. The most we can say is that a degree of order will be discernable retrospectively. With that thought, we will now look back to the earliest foundations of civil order and civil dress.

37 See ‘Laver’s Law’ on the progress of fashion (James Laver, *Taste and Fashion: from the French Revolution Until Today* [London: George Harrap, 1937]). Georg Simmel expressly compared the order of fashion to the order of law. Fashion, he says, is ‘a social form of marvelous expediency, because, like the law, it affects only the externals of life, only those sides of life which are turned to society’ (*Fashion* *International Quarterly* 10 (1904), pp.130–55, 148).