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Tudor sumptuary laws and academical dress: An Act against wearing of costly Apparel 1509 and An Act for Reformation of Excess in Apparel 1533

by Noel Cox

In the United Kingdom, as in other modern liberal democracies, there are few, if any, restrictions upon one's choice of habiliment.[1] There have in the past, however, been repeated attempts in most countries and civilisations – from the Romans (and indeed earlier civilisations) onwards – to strictly control aspects of apparel, by legislation.[2] They were motivated by political, moral or economic considerations. However, these sumptuary laws, as they were known,[3] were generally a failure, for many reasons. Those who wished to ignore them often could do so with impunity.[4] The frequency of such legislation is a sign both of the

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[1] Note, however, recent debate in the (nominally) Christian West over the wearing of religious and cultural clothing that masks the identity or marks the wearer as belonging to a particular religious or cultural group – especially with respect to the veil worn by many Muslim women.

There has also been consideration given to banning the wearing of "hoodies" (hooded jackets) – which disguise facial features – and statutes prohibiting wearing of masks by night remain extant in some jurisdictions.

[2] Generally, see Alan Hunt, *Governance of the consuming passions: a history of sumptuary law* (Basingstoke: Macmillan Press, 1996); Catherine Killerby, *Sumptuary law in Italy, 1200-1500* (Oxford: Clarendon Press, 2002); Frances Baldwin, *Sumptuary legislation and personal regulation in England* (Baltimore: The Johns Hopkins Press, 1926). See also Wilfrid Hooper, "The Tudor Sumptuary Laws" (1915) 30 English Historical Review 422-449; Claire Sponsler, "Narrating the Social Order: Medieval Clothing Laws" (1992) 21.3 Clio: An Interdisciplinary Journal of Literature, History, and the Philosophy of History 265-282.

[3] Strictly, sumptuary legislation might restrict any aspect of private expenditure or activity, such as the consumption of food, but this paper is restricted to those regulating attire.

[4] Possibly through the judicious use of the money that they would otherwise invest in apparel.

perceived importance of such measures, and of their failure.[5] Yet the authorities persisted, despite their inability to suppress extravagance, or control expenditure.

These sumptuary laws were generally intended to combat the ills wrought by extravagance. These ranged from financially ruining many families – clothing constituted a substantial portion of one's expenditure in the middle ages and later – to encouraging thievery and violence.[6] Extravagance led to the loss of business by domestic wool merchants, because of the importation of costly foreign fabrics – which also cost the country much-needed foreign currency. The attire of men might cause disquiet, and bring upon themselves some adverse comment, by assuming the dress of their "betters". The Church was also keen to encourage less ostentatious clothing, though its focus was usually upon the dress of ministers,[7] which were (and remain) regulated by canon law.

There are no general sumptuary laws now in effect in the United Kingdom.[8] None ever applied specifically to academical dress, but some did include provisions which expressly applied to graduates and undergraduates. Franklyn cited one such Act, 24 Henry VIII c 13 (1533) as authorising all doctors to wear scarlet, as well as claiming that the MA and BD are thereby entitled to a black chimere, or tabard.[9] The time of King Henry VIII is particularly important with respect to the development of sumptuary laws[10] – as it was also for the evolution of academical dress.[11]

While Franklyn's interpretation of this particular Act may be disputed, hitherto a study of this aspect of academical dress has been inhibited by the general unavailability of copies of the complete statute. Sumptuary laws in general and the ideological justifications for such laws are beyond the scope of this paper, the purpose of which is two-fold. First, it is intended to offer, for the first time, the full text of the 1533 statute, with a short commentary. For the purposes of

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[5] The Act of 1533 (24 Henry VIII c 13) was repealed by the Continuation of Acts Act 1603 (1 Jac I c 25) s 7.

[6] In the words of the Act of 1509 (1 Henry VIII c 14), "provoked many of them to rob and to do extortion and other unlawful deeds".

[7] The Synod of Oseney of 1222, for instance, required clergymen to wear the *cappa clausa*, and the canons of 1604 explicitly required men of the cloth to cut their cloth accordingly, lest they be mistaken for men of lay character.

[8] Though not, strictly, sumptuary law, *Dress worn at Court* still regulates dress worn to court – to the extent that this is still worn – as well as describing official uniforms, and many occupations and professions regulate their own attire. George A. Titman (ed.), *Dress and Insignia worn at His Majesty's Court ... illustrated by colour and photographic plates ... In three parts* (London: Lord Chamberlains Office, 1937).

[9] Charles Franklyn, *Academical Dress from the Middle Ages to the Present Day including Lambeth Degrees* (Lewes: privately printed by W.E. Baxter Ltd, 1970), p. 112.

[10] See Baldwin, ibid. pp. 140, 144, 145 and Hooper, ibid. pp. 433-435.

[11] Sumptuary legislation was also found in Scotland, as under King James II in 1457. The last sumptuary law in the now United Kingdom was passed in Scotland in 1621.

contextualisation and comparison, an earlier sumptuary law is also transcribed in full,[12] also with commentary. Second, it will address the contentious question of whether the Act of 1533 does in fact allow doctors to wear scarlet.

It is the author's intention – over time – to collect and publish the texts of all sumptuary laws of the United Kingdom.

1 Henry VIII c 14 (An Act against wearing of costly Apparel 1509)

This statute dates from the very beginning of the reign of King Henry VIII. We cannot readily say whether this should be seen as an indication of the importance with which the subject was held. Nevertheless, the specific provisions are instructive, as the commentary will discuss.

The full text (with modernised spelling, numbers converted from Roman to Arabic form, notes where an explanation is required, and square brackets to mark any interlineations added for clarity[13]) is as follows:

> Forasmuch as the great and costly array and apparel used within this Realm contrary the good statutes thereof made hath be the occasion of great impoverishing of divers of the King's Subjects and provoked many of them to rob and to do extortion and other unlawful deeds to maintain thereby their costly array: In eschewing whereof,
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> Be it ordained by the Authority of this present Parliament that no person of what estate[14] condition or degree[15] that he be use in his apparel any cloth of gold[16] of Purpure[17] colour or silk of Purpure colour but only the King the Queen the King's Mother the King's children the King's brothers and sisters upon pain to forfeit[18] the

[12] Both texts are taken from the *Statutes of the Realm* (London: HMSO, 1817), vol. III, located in the Maitland Legal History Room, Squire Law Library, University of Cambridge. The author wishes to thank the Deputy Librarian, Peter Zawada, for his assistance.

[13] The paragraph structure, phraseology, punctuation, capitalisation, and so on, are otherwise as they appear in the Act.

[14] In the social sense, or their rank or status.

[15] Not the University degree, but their social.

[16] "Cloth of gold" is wool woven with strips of silver-gilt (gold-plated silver) or silver-gilt wound around a silk thread. Unless otherwise qualified, "cloth", in the sixteenth century, almost always refers to wool.

[17] The heraldic term for purple.

[18] To forfeit something is to automatically lose ownership of it, without formal process being required, as a consequence of the commission of some specified act (or possibly, its omission).

said apparel wherewith so ever it be mixed, and for using the same to forfeit 20 pound:[19]

And that no man under the estate of a Duke use in any apparel of his body or upon his Horses any cloth of gold of tissue[20] upon pain to forfeit the same apparel wherewith so ever it be mixed and for using the same to forfeit 20 mark;[21] and that no man under the degree of an Earl wear in his apparel any Sables[22] upon pain to forfeit the same apparel. And that no man under the degree of a Baron use in his apparel of his body or of his Horses any cloth of gold[23] or cloth of silver[24] of tinselled[25] satin[26] nor no other silk or cloth mixed or embroidered with gold or silver upon pain of forfeiture of the same apparel, albeit that it be mixed with any other silk or cloth, and for using of the same to forfeit 10 mark.

And that no man under the degree of a Lord or a Knight of the Garter wear any woollen cloth made out of this Realm of England Ireland Wales Calais[27] or the Marches[28] of the same or Berwick,[29] upon pain to forfeit the said cloth and for using the same to forfeit 10 pound.

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[19] It is very difficult to give an accurate assessment of the present day value of money. "Measuring Worth – Purchasing Power of British Pound Calculator" (http://www.measuringworth.com/calculators/ppoweruk/) is one of many attempts to produce a tool capable of calculating approximate values. Using this, £20 in 1509 was estimated to be worth £9,300 in 2005; Lawrence H. Officer, "Purchasing Power of British Pounds from 1264 to 2005." MeasuringWorth.com, 2006.

[20] Tissue is tinsel with the metal threads forming a looped pile. Tinsel is a silk woven with strips of silver or silver-gilt, or threads covered with silver/silver-gilt. "Tinsel" in the modern sense seems to date from the early seventeenth century, but existed as an embellishment rather earlier. It was a silk woven with strips of silver or silver-gilt, or threads covered with silver/silver-gilt.

[21] The value of a mark was two thirds of a pound, or thirteen shillings and four pence.

[22] In a specific sense, the fur of the Sable (*Martes zibellina*). This has been described as the "rarest and most sought-after fur used for adornment". For the definitions of textile and dress types generally see Janet Arnold, *Queen Elizabeth's Wardrobe Unlock'd* (Leeds: Maney, 1988); and Cecil W. and Phillis Cunnington, *Handbook of English Costume in the 16th Century* (London: Faber & Faber, 1954/1970).

[23] See note 16.

[24] The equivalent made from silver thread.

[25] See note 20.

[26] Satin is next in importance to taffeta as the basic plain weave, with an even, smooth and glossy surface which uses much more thread than taffeta (plain weave), so was more expensive. In this case the Act is referring to silk satin, but any fibre – wool, linen, cotton – can be woven in a satin weave.

[27] Calais remained a part of the King's Realm until the mid-sixteenth century (1558).

[28] The Welsh Marches and the Scottish Marches.

[29] Between 1147 and 1482 the town changed hands between England and Scotland more than a dozen times.

And that no man under the degree of a Knight of the Garter wear in his gown or coat or any other his apparel any velvet of the colour of crimson or blue upon pain to forfeit the same gown or coat or other apparel and for using the same to forfeit 40 shillings.

And that any of the Ushers of the King's Chamber[30] for the time being that first suith his Action[31] for Detinue[32] for the same apparel have the said forfeiture of the said apparel, and if none of the said Ushers commence their Action thereof 15 days in the term next after the said forfeiture,[33] then the King's Chamberlain[34] for the time being to have thereof his like Action. And the King our Sovereign Lord and his heirs to have the one half of the said forfeiture of the said money so forfeited, and the said Chamberlain of the King for the time being to have the said other half of the money.

Provided that if there be any like forfeiture committed or done by any of the Queen's servants being in her Exchequer roll[35] that then any of the Ushers of her Chamber, and in their default the Queen's Chamberlain for the time being have like Action for the said forfeitures as is aforesaid for the King's Ushers and his Chamberlain.

And that no man under the degree of a Knight, except Esquires for the King's Body[36] his cup bearers carvers and sewers[37] having the ordinary fee for the same[38] and all other Esquires for the Body having possession of lands and tenements[39] or other hereditaments[40] in their hands or other to their use to the yearly value of 300 mark and Lords' sons and heirs, Justices of the one Bench or the other,[41] the Master of the Rolls, and Barons of the King's Exchequer and all other of the King's

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[30] Gentlemen Ushers.

[31] Suit, or proceeding.

[32] Detinue is an action (now abolished in England – Torts (Interference with Goods) Act 1977 – and obsolete or obsolescent elsewhere) for the wrongful detention of goods – in this case wrongful because the goods were forfeit, and therefore belonged to the Crown.

[33] That is, the terms of the Assize courts.

[34] Lord Chamberlain.

[35] One of the Pipe Roll series, preserving financial records, in this instance concerning officers, members and servants of the Royal Household.

[36] The now obsolete office of Esquire of the King's Body was once of considerable importance, due to their regular attendance upon the Sovereign.

[37] That is, servers, at table.

[38] In receipt of payment for regular services, rather than an extraordinary or honorific post.

[39] Held in tenure, by a "tenant".

[40] Corporeal and incorporeal hereditaments are forms of property that descend upon death to the heir general or heir at law. Corporeal hereditaments includes freehold title in land, incorporeal hereditaments include annuities, rents, and franchises.

[41] King's Bench or Common Pleas.

Council[42] and Mayors of the City of London for the time being, use or wear any velvet in their gowns or riding coats or furs of Martron[43] in their apparel upon pain to forfeit the same fur and apparel wherewith so ever it be mixed and for using the same to forfeit 40 shillings.

Nor no person other than be above named wear velvet in their doublets[44] nor satin nor damask[45] in their gowns nor coats, except he be a Lord's son or a Gentleman having in his possession or other to his use lands or tenements or annuities at the least for term of life the yearly value of an hundred pound above all reprises[46] upon pain to forfeit the same apparel wherewith so ever it be mixed and for using of the same to forfeit 40 shillings. Nor no person use or wear satin or damask in their doublet nor silk or camlet[47] in their gowns or coats not having lands or tenements in his possession or other to his use office or fee for term of life or lives to the yearly value of 20 pounds, except he be a Yeoman of the Crown[48] or of the King's Guard[49] or Groom of the King's Chamber or of the Queen's having therefore the King's fee or the Queen's upon pain to forfeit the same apparel wherewith soever it be mixed, and for using of the same to forfeit 40 shillings.

And that no man under the degree of a Gentleman except Graduates of the Universities and except Yeomen Grooms and Pages of the King's Chamber and of our Sovereign Lady the Queen, and except such men as have lands tenements or fees or annuities to the yearly value of £11 for term of life or an hundred pound in Goods use or wear any furs, whereof there is no such kind growing in this land of England Ireland Wales or in any land under the King's obeisance, upon pain to forfeit 40 shillings. The value of their goods to be tried by their own oaths.[50]

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[42] Privy Council.

[43] Another name for Marten.

[44] A close-fitting body garment, with or without sleeves, worn by men from the fourteenth to the late seventeenth centuries.

[45] Rich silk fabric, woven with elaborate designs and figures. It originated in Damascus, but later made in both Sicily and France (and in the early to mid-sixteenth century imported from Italy, France or Spain). Strictly speaking, brocade and damask are two different types of weave structure, but these were both referred to as "damask" in the sixteenth century, along with some other complicated patterning methods. Velvet is the most elaborate of the weaves traditionally made from silk, has a short plush pile surface

[46] Ongoing charges.

[47] Camlet, or Chamlett, also known as Camelot, or Camblet, is a woven fabric originally made from woven silk and goat (or camel) hair, now more usually wool and cotton, or goat and silk. In the sixteenth century it would usually be a mixture of wool and silk.

[48] Superior servants, recruited from a similar class of men to those who formed the Yeomen of the Guard.

[49] The Yeomen of the Guard.

[50] That is, by providing affidavits or sworn testimony.

Critically, this allows graduates to wear alien furs, as if they were gentlemen. It is most likely that this dispensation was justified on the grounds that it was already customary at this time to distinguish academic degrees by the use of various furs (with bachelors restricted to cheap fur or lambs wool), silks and cloths. But it was also possibly an acknowledgement that graduates, like students and barristers of the Inns of Court, were ipso facto gentlemen.

> And that no man under the degree of a Knight except spiritual men[51] and Serjeants at the Law[52] or Graduates of Universities use any more cloth in any long gown than four broad[53] yards, and in a riding gown or coat above three yards upon pain of forfeiture of the same.

This appears to be designed to allow graduates (and men of equivalent status) to wear longer or fuller gowns than they might otherwise be permitted. This could be because, as with the use of fur, the longer gown had become distinctive of the graduate. It is worth noting whose company the graduates were to keep. Knights, Serjeants-at-Law, and clergy wore distinctive gowns; the knight his long cloak or mantle, the Serjeant-at-Law his famous parti-coloured gown, and clergy traditionally the *cappa clausa*. This provision seems to envisage the graduate as a sober and grave individual, habited in a slightly old-fashioned manner, as a badge of status. It does not, however, give him any special privilege with respect to fabric or colour.

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[51] Probably meaning those who were ordained by the sacrament of Holy Orders, confined to deacons priests and bishops, and not including minor orders (or University undergraduates, although they had received the tonsure, at least in the earlier years).

[52] Serjeants-at-Law (*servientes ad legem*), or Sergeants Counters, were the highest order of counsel in England and Ireland. The Judicature Act 1875 (38 & 39 Vict c 77) removed the necessity for judges to have taken the coif – the distinctive feature of the serjeants' attire – and no more were created after that year. The order was dissolved after 1877, after selling their Inn in Chancery Lane, though the dignity was never formally abolished. The last surviving English serjeant, Lord Lindley, who was also the last appointed, died in 1921; the last practising serjeant having died in 1899.

The Irish Bar retained serjeants slightly longer than the English, the last serjeant being appointed in 1922, and dying in 1959; Daniel Duman, *The English and Colonial Bars in the Nineteenth Century* (London: Croom Helm, 1983); Wilfred Prest (ed.), *Lawyers in Early Modern Europe and America* (London: Croom Helm, 1981); *In the matter of the Serjeants at Law* (1840) 4 Bing (NC) 235.

[53] Broadcloth, wool woven two yards wide.

And that no serving man under the degree of a Gentleman use or wear any gown or coat or such like apparel of more cloth than two broad yards and a half in a short gown and three broad yards in a long gown, and that in the said gown or coat they wear no manner of fur, upon pain of forfeiture of the said apparel or the value thereof.

And that no serving man waiting upon his master under the degree of a Gentleman use or wear any guarded[54] Hose[55] or any cloth above the price of 20 pence the yard in his Hose except it be of his masters wearing Hose upon pain of forfeiture of 3 shillings 4 pence.

And that no man under the degree of a Knight wear any guarded or pinched[56] shirt or pinched partlet[57] of linen cloth upon pain of forfeiture of the same shirt of partlet and for using of the same to forfeiture 10 shillings.

And that no servant of husbandry[58] nor shepherd nor common labourer nor servant unto any Artificer out of city or borough[59] nor husbandman having no Goods of his own above the value of 10 pound use or wear any cloth whereof the broad yard passeth in price two shillings nor that any of the said servants of husbandry shepherds nor labourers wear any Hose above the price of 10 pence in the yard upon pain of imprisonment in the stocks by three days.[60]

And that he that will sue for any of the said forfeitures of the said apparel forfeited by any person under the degree of a Lord or a Knight of the Garter have the said apparel so forfeited by Action of the Detinue. And the King our Sovereign Lord to have the one half of the forfeiture of the said money so forfeited, or the Lord of the franchise[61] if it be recovered or presented within a franchise or leet,[62] and the party that will sue have the other half; And the suit to be by Action of debt:[63]

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[54] The guard or trim, being the reinforcing on the edge of a material, later used primarily for ornamental purposes. To "guard" is to edge with woven or embroidered braid.

[55] Tubes of fabric, usually of expensive lightweight material, cut on the bias, and sewn to fit the foot and lower leg. Sixteenth century hose consisted of two parts; upper or 'trunk' hose; and lower, which could refer to 'canons', long hose, or nether stocks (stockings). Upper stocks were usually called breeches.

[56] Gathered.

[57] A covering for the chest, between the gown and the neck.

[58] The farm worker responsible for the breeding and raising of livestock.

[59] Those within a city or borough would be regulated by their own magistrates and trade guilds.

[60] The fine levied on their 'betters' being less practical, given the limited ability of such men to pay a fine, stocks were preferred. These also served to make an example of the men so imprisoned.

[61] A franchise of this sort is a form of administrative and judicial delegation by the Crown to individuals. The most famous were and are the counties and duchies palatine of

> And that in any wise of all the said Actions the Defendant shall not wage his law[64] nor be by protection[65] nor essoyn[66] nor the party to be barred by the King's pardon nor be delayed by any plea to the disablement of his person.[67]

Wager of law, protection, essoyn and pardon would all have the effect of permanently staying any legal action, or at least of delaying it. The statutory provision was clearly designed to encourage suits being taken. The rationale here is that the enforcement of the law depended upon free enterprise, since the Crown did not have the resources to do so directly. Private individuals might instigate a prosecution, and if successful, would get half the proceeds, the rest going to the Crown. The tradition of private prosecutions only declined with the development of a professional police force in the nineteenth century, and is not entirely extinct even now.

> And that the Lord Steward of the King's House for the time being within the Verge[68] and Justices of Assize[69] and Justices of the Peace, Stewards in Leets or Law days[70] and every of them have also power to inquire and hold plea of every default of the promises[71] as well by examination of the party as after the course of the common law, and to determine the same as well at the King's suit as at the suit of the party.
>
> Provided always that this Act be not prejudicial nor hurtful to any spiritual or temporal man in wearing any ornaments of the church[72] in executing divine service nor to any merchants strangers.[73]

Durham, Cornwall and Lancaster, but there were many others, mostly with much less wide-ranging jurisdiction than these enjoyed.

[62] That is, a court leet.

[63] Debt recovery, a simpler process than detinue.

[64] A defence by way of compurgation; finding men, usually twelve, who could swear to his innocence.

[65] A privilege granted by the king to a party to an action, by which he is protected from a judgment which would otherwise be rendered against him.

[66] The allegation of an excuse for non-appearance in court at an appointed time; the excuse itself.

[67] Their inability to plead.

[68] The Verge being that area, twelve miles across, around the residence of the Sovereign.

[69] Itinerant Justices of King's Bench, on circuit around the country.

[70] These were responsible for the view of frankpledge, a mediæval form of neighbourhood collective responsibility.

[71] By the people in Parliament assembled.

[72] Meaning vestments, not ornaments of the building or of the altar.

This would have little effect upon academical dress, per se, though it could be used to justify the use of silk tippets, stoles, scarves or hoods in Eucharistic services, though not necessarily in preaching.

> Provided also that it shall be lawful to all Mayors Recorders[74] Aldermen[75] Sheriffs and Baillies[76] and all other head Officers of cities or boroughs or towns corporate that now be or hereafter shall be to use and wear like apparel in their gowns, doublets, cloaks, and other apparel as their predecessors have done in times past, this Act in any wise notwithstanding.
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> Provided also that this Act be not prejudicial to any woman or to any ambassador henchman[77] Heralds of Arms minstrels players in interludes,[78] nor to any man wearing any apparel of the King's livery given him by the King, for the King being of his Attendance about the King's Grace.[79]
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> Also be it enacted by authority aforesaid that all other statutes of array made afore the making of this present statute, and all penalties or forfeitures to be levied or demanded by reason of them or any of them be utterly void repelled and of none effect and discharged.
>
> And that this Act of array made at the present Parliament beginning to take his effect at the feast of Saint Michael the Archangel[80] next coming and not before, and to endure unto the next Parliament.

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[73] The law relating to merchants from abroad, of the *Lex Mercatoria*, is quite distinct from the common law; Leon Trakman, *The Law Merchant – The Evolution of Commercial Law* (Littleton: F.B. Rothman, 1983).

[74] Then, as now, judges.

[75] An ancient municipal council office, now obsolescent in England and Wales, and abolished in Ireland, but still surviving in parts of Australia, Canada, and the United States of America.

[76] Bailiffs, rather than Baillies in the Scottish sense (where they were similar to Aldermen).

[77] Usually meaning dismounted personal attendants upon a mounted person of dignity.

[78] A short farcical entertainment performed between the acts of a mediæval mystery or morality play, and also a sixteenth century genre of comedy derived from this.

[79] "Grace", the style now reserved for Dukes (and Archbishops) was still used alternately with "Highness" in the sixteenth century. "Majesty" was a somewhat late arrival.

[80] 29th September.

> Provided also that this Act extend not to any person or persons using any manner of apparel as well upon himself as upon his horse, being in the King's service in time of war.
>
> Provided always that the King's Grace by this present Act be not letted nor restrained of his liberty but that his Highness at his pleasure by his placard or his letter or his bill assigned with his most gracious hand may grant and give licence and authority to such of his Subjects as his Grace shall think convenient to wear all and such singular apparel on his body or his horses as shall stand with the pleasure of the King's Grace, without damage or forfeiture to him or them so doeth of any apparel or other pain contained in this statute.

The 1509 Act has comparatively little provision specific to University graduates and undergraduates, and therefore, in most respects they were regulated in common with the rest of the population. The only specific dispensations allowed graduates to wear furs that came from animals bred abroad, and to wear longer or fuller gowns than they might otherwise be permitted. The first could well, at this comparatively late stage, be a sign that furs were recognised to be a sign of degree status;[81] and the second that long gowns were customary attire for graduates long past their abandonment by other men in favour of shorter and more closely tailored clothes.[82] Doctors were already wearing scarlet, but this statute had no direct application to them, and their attire could be seen therefore as regulated by the Universities rather than by parliamentary statute.

24 Henry VIII c 13 (An Act for Reformation of Excess in Apparel 1533)

We have seen that the sumptuary Act of 1509 had little direct application to academical dress, other than allowing alien furs, and permitted more voluminous, or lengthy, gowns. By 1533, however, significantly more details were provided, though the new Act was very much a logical successor to the 1509 Act. Exceptions are systematised – though the exact relationship between this Act and

[81] By the fifteenth century the hood came to be seen, in England at least, as a token of graduation and was given distinctive colours and lining. Undergraduate hoods were black and unlined (except scholars in law), while those of graduates were furred or lined with fur or other material, such as stuff (woollen fabrics) – or silk since 1432 at Oxford, though not at Cambridge until 1560.

[82] Tailoring, where the dress is cut with some approximation to the actual shape of the body, arose towards the end of the thirteenth century. Long gowns continued to be worn by men and women as informal fashionable dress until the 1620s, with tailored garments underneath.

the statutes of the Universities and of their colleges remains unclear. The passage of this statute may reflect the inability of the authorities to successfully enforce the earlier Act – or indeed any earlier or subsequent sumptuary law, or increasing concern at the economic or social consequences of extravagance, after the comparatively austere years under King Henry VII.[83]

The text of the 1533 Act is as follows:

> Where before this time divers laws ordinances and statutes have been with great deliberation and advice provided established and devised, for the necessary repressing avoiding and expelling of the inordinate excess daily more and more used in the sumptuous and costly array and apparel accustomably worn in this Realm, whereof hath ensued and daily do chance such sundry high and notable inconveniences as be to the great manifest and notorious detriment of the common weal, the subversion of good and politic order in knowledge and distinction of people according to their estates pre-eminences dignities and degrees, and to the utter impoverishment and undoing of many inexpert and light persons inclined to pride mother of all vices;[84] which good laws notwithstanding, the outrageous excess therein is rather from time to time increased than diminished, either by the occasion of the perverse and froward[85] manners and usage of people, or for that errors and abuses rooted and taken into long custom be not facile and at once without some moderation for a time relinquished and returned:
>
> In consideration whereof and for a reasonable order and remedy like to be observed performed and continually kept,
>
> It is by the King's Highness the Lords Spiritual and Temporal and the Commons in this present Parliament assembled and by authority of the same enacted established and ordained in manner and form following;
>
> First that no person or persons of whatever estate dignity degree or condition soever they be, from the feast of the purification of Our Lady[86] which shall be in the year of

[83] Henry VIII has only succeeded in 1509, so the Act of that year was probably too early in his reign to provide a good indication of the direction of his thoughts.

[84] St Thomas Aquinas, *Summa theologiæ*, ed. John A. Oesterle (Englewood Cliffs: Prentice-Hall, 1964), 2nd part of the 2nd part, question 153: "pride is accounted the common mother of all sins, so that even the capital vices originate therefrom".

[85] Turning back to one's own ways; difficult to deal with; stubbornly disobedient or contrary; going in one's own wilful ways.

[86] "Candlemas". Since the liturgical reforms of the Second Vatican Council, this title of the feast has been suppressed in the Roman Catholic Church in favor of the Presentation of the Lord with references to candles and the purification of Mary de-emphasized in favour of the Prophecy of Simeon. In the Church of England the Feast is now generally known as the Presentation of Christ in the Temple.

our Lord 1534 use or wear in any manner their apparel or upon their Horse Mule or other beast[87] any silk of the colour purple,[88] nor any cloth of gold of tissue, but only the King, the Queen, the King's Mother, the King's children, the King's brethren, and sisters and the King's uncles and aunts; Except that it shall be lawful to all Dukes and Marquesses[89] to wear and use in their doublets and sleeveless coats,[90] cloth of gold of tissue and in none other their garments, so that the same to be worn by such Dukes and Marquesses exceed not the price of £5[91] the yard.

Provided that this word, Purpure,[92] extend not to any mantle of the Order of the Garter:[93]

And that no man under the state of an Earl from the said Feast use or wear in his apparel of his body or upon his Horse Mule or other Beast or Harness of the same beast, any cloth of gold or of silver or tinsel[94] satin, or any other silk or cloth mixed or embroidered, with gold or silver, nor also any furs of Sable; except that it shall be lawful for Viscounts,[95] the Prior of Saint John of Jerusalem within this Realm[96] and Barons to wear in their doublets or sleeveless coats, cloth of gold silver or tinsel.

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[87] The maxim of statutory interpretation ejusdem generis ("things of the same kind") requires that, where general words follow a specific list of words, the general words mean the same general type as those listed. Thus, in "Horse Mule or other beast", "other beast" does not mean sheep and cows, but rather domestic beasts of burden, such as asses.

[88] Here rendered in the lay term rather than the heraldic term "Purpure".

[89] Although the first English marquess was created 1385 (Robert de Vere, Marques of Dublin), and John Beaufort Earl of Somerset was Marquess of Dorset 1397, both these early creations were of very short duration, and there were no marquesses at the time of the 1509 Act. By 1533, however, three marquisates were in existence, Henry Grey Marquess of Dorset, Henry Courtenay Marquess of Exeter, and Queen Anne Boleyn Marchioness of Pembroke, were in existence, and so specific provision was made for this rank of the peerage.

[90] In this context, "sleeveless coats" means a jerkin with the "skirt" extending to the knee.

[91] Again using "Measuring Worth – Purchasing Power of British Pound Calculator" (http://www.measuringworth.com/calculators/ppoweruk/), £5 in 1533 was estimated to be worth £1,900 in 2005.

[92] There is no apparent reason why Purpure is used here, rather than purple as earlier.

[93] From King Edward VI to King Charles I the mantle was purple, but a "rich celestial blue" was adopted c.1637. In the seventeenth and eighteenth centuries the colour varied, from ultramarine, pale greenish-blue, royal blue, sky-colour, dark blue, and (at least in a written description) violet. In Henry VIII's time the colour was purple.

[94] See note 20.

[95] As with marquesses, although the first viscountcy dates from 1440 (Henry Beaumont, Viscount Beaumont), by 1509 there were none in existence. Although the title Viscount Bourchier was extant (created 1446, extinct 1540), from 1461 it had been subsumed under the higher title of Earl of Essex. While the situation in 1533 was no

Also it is enacted That no man under the estate of a Duke Marquess Earl and their children, or under the degree of a Baron, unless he be a Knight that is Companion of the Garter, from the said Feast, wear in any part of his apparel any woollen cloth made out of this Realm of England Ireland Wales Calais Berwick or the Marches of the same, Excepting Baronets[97] only. Nor also wear in any manner apparel of his body or on his Horse Mule or other Beast or Harness of the same beast, any velvet of the colours of crimson scarlet[98] or blue nor any furs of black genets[99] or Lucernes,[100] nor any manner of embroidery:

And that no man unless he be a Knight, after the said Feast wear any collar of gold named a collar of S. [101]

And that no man under the degree of a Baron's son or of a Knight, except he may dispend[102] yearly in lands or tenements, rents fees or annuities to his own use for term

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different to that in 1509, it is possible that the advent of specific provision for marquesses was used to justify an express provision for viscounts also.

[96] The Priory ceased to function after the death of the prior in 1540, and the subsequent confiscation of the property of the Order in England, but the Priory was never formally suppressed. This was used to justify the restoration of the Order in England in the early nineteenth century; Gregory O'Malley, *The Knights Hospitaller of the English langue 1460-1565* (Oxford: Oxford University Press, 2005).

[97] Although baronets in the modern sense date from 1611, the title is much more ancient, dating from the early fourteenth century at the latest. The term baronet was later also applied to those noblemen who lost the right of individual summons to Parliament; Sir Martin Lindsay of Dowhill, Bt, *The Baronetage* (2nd ed., Woking: Sir Martin Lindsay of Dowhill, 1979).

[98] Wool ingrained red (see note 119) is always scarlet and silk ingrained red is always crimson.

[99] The Civet. Catlike in appearance and habit, the genet is not a cat but a member of the family *Viverridae*, which also includes civets and mongooses.

[100] The Bobcat (*lynx rufus* or commonly, *felis rufus*), or more commonly, the Lynx.

[101] The collar of SS (or "esses"), a livery collar, was possibly introduced by King Henry IV, and is now used by the Lord Chief Justice, Kings of Arms, Heralds, Serjeants at Arms, and the Lord Mayor of London (and formerly the Lord Chief Baron of the Exchequer, and Sergeant Trumpeter). This comprises the letter "S" in gold, linked by Tudor roses, with a joining clasp in the form of a portcullis. This collar was revived by King Henry VII to replace the Yorkist "Roses and the Sun" collar, and is believed to symbolise the House of Lancaster. It is though that the "S" may stand for "*Seneschallus*" (steward, after that office held by the Lancastrian Kings). However, it may stand for "*Sanctus Spiritus*" (Holy Spirit), and debate rages over the exact origins and meaning of the collar; Very Rev'd Arthur P. Purey-Cust, *The Collar of SS: a history and a conjecture* (Leeds: Richard Jackson, 1910).

[102] To expend.

of his life or for term of another man's life[103] or in the right of his wife[104] two hundred pounds over all charges, shall after the said Feast, use or wear any chain of gold bracelet ouche[105] or other ornament of gold in any part of his or their apparel or the apparel of his or their Horse Mule or other Beast, Except every such chain jewel ouche or ornament be in weight one ounce of fine gold or above and except Rings of gold to be worn on their fingers with stones or without; Nor also shall wear any manner of velvet in their gowns, coats with sleeves or other outermost garments, nor any furs of lizards[106] nor also shall wear any manner of embroidery pricking[107] or printing with gold, silver or silk in any part of their apparel or on their Horses Mules or other Beasts:

And that no man under the said Estates and Degrees other than such as may dispend in lands or tenements rents fees or annuities as is aforesaid a hundred pounds by year above all charges, shall after the said Feast wear any satin damask silk camlet or taffeta in his gown coat with sleeves or other outermost apparel or garment, nor any manner of velvet otherwise than in sleeveless jackets[108] doublets coifs[109] partlets or purses, nor also shall wear any fur whereof the like kind growth not within this Realm of England Ireland Wales Calais Berwick or the Marches of the same, except foins[110] genets called Grey genets[111] and budge.[112]

And that no man under the said degrees other than the son and heir apparent of a Knight, or the son and heir apparent of a man of three hundred mark by year over all charges, and such other men as may dispend in lands and tenements rents fees annuities or other yearly profits as is aforesaid forty pounds by year over all charges, from the said Feast wear in their gowns or any other of their outermost apparel any camlet or silk, nor also wear in any other part of their apparel any silk other than satin

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[103] Showing the development of the law to recognise trusts.

[104] The wife's property being at the disposal of the husband, subject to certain safeguards.

[105] An Old English word denoting cavities or sockets in which gems were set, in this time, a brooch.

[106] "Lizards" here means the Lynx, not reptiles. Since this term is used in contradistinction to "Luserns" it is likely that it is meant to encompass more than simply the Bobcat, but to include also the Eurasian Lynx (*Lynx Lynx*) and the Iberian Lynx (*Lynx pardinus*).

[107] Pinking, a form of embroidery using individual decorative holes, marks or pricks.

[108] An outer garment for the upper body. Originally the same as, or a shorter form of, a Jack (a short and close fitting upper garment).

[109] A close-fitting cap that covers the top, back and sides of the head; the distinctive headdress of the serjeants-at-law, but also worn by mature men of sober habit.

[110] "Foins" probably meant the fur of the beech marten (*mustela foina*). This Eurasian marten has a brown coat with pale breast and throat. Alternatively it can also mean a fur from the ferret or weasel that is black at the top on a whitish ground.

[111] Presumably grey as distinct from black genet.

[112] Budge, or bogye, was sheared lambskin – imported and therefore not merely expensive, but also a drain on the national economy.

damask taffeta or sarcenet,[113] in their doublets, and sarcenet camlet or taffeta in lining of their gowns and the same or velvet in their sleeveless coats jackets jerkins[114] coifs caps purses or partlets, the colours of scarlet crimson and blue always excepted; nor shall wear any fur of foins or genets called grey genets nor any other furs whereof the like is not grown within this Realm of England Ireland Wales Calais Berwick and Marches of the same, except before except; nor shall wear any manner of Aiguillettes[115] Buttons Brooches of gold or silver gilt or counterfeit gilt or made with any other devise of any weight, nor shall wear any chain of gold of less weight and value than ten ounces of troy weight of fine gold:

And that no man under the said degrees other than such Gentlemen that may dispend in lands or tenements rents fees or annuities as is aforesaid £20, by year over all charges from and after the said Feast wear any manner of silk in any apparel of his body or of his Horse Mule or other Beast, except it be satin, taffeta, sarcenet or damask in his doublet or coif and camlet in his sleeveless jacket and a lace of silk for his bonnet or points[116] laces girdles[117] or garters made or wrought in England or Wales; nor shall wear any furs of black coney[118] or budge.

And that no man under the said degrees other than such as may dispend in lands and tenements, rents fees annuities as is aforesaid five pounds by year over all charges, from and after the said Feast wear any manner of cloth of the colour of scarlet crimson or violet engrained,[119] nor any silk in their doublets or jackets nor any other cloth in any garment above the price of six shillings eight pence the broad yard nor any other thing made out of this Realm except camlet in their doublets and jackets.

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[113] A fine plain-weave silk, primarily used for linings.

[114] A sleeveless doublet or coat.

[115] Not the ornamental braided cord as the term indicates today, but rather the pencil-shaped appendages attached to these. They seem to have started as a way to make it easier to fasten garments by threading ties or laces through eyelet-holes.

[116] In the sixteenth century the distinction between aiguillettes and points was uncertain, with points being the earlier term, referring to the metal-ended laces used to attach upper hose to doublet.

[117] A belt worn round the waist to secure or confine the garments; also employed as a means of carrying light articles, especially a weapon or purse.

[118] Hare (*Lepus europaeus*) or Rabbit (*Oryctolagus cuniculus*).

[119] To dye or stain into the fibre, dyed with either kermes or cochineal (and therefore very expensive). The kermes was a louse from the Mediterranean oak (*Quercus ilex*), and cochineal (*Dactylopius coccus*) was made from the bodies of insects living on the prickly pear (*Opuntia littoralis*). These appeared granular once harvested and dried – hence the expression "ingrained". Both gave a much richer colour than was possible from madder (*Rubia tinctorum*), the vegetable source of the red dye. Ingrained dye was usually red but sometimes mixed to produce other hues (such as by combining with woad [Gastum, or *Isatis tinctoria*] or indigo [usually from the *Indigofera tinctoria*], resulting in violet).

And that no serving man nor other yeoman taking wages or such other as he may not dispend of freehold forty shillings by year after the said Feast shall wear any cloth in his hose above the price of two shillings the yard;

And that none of their hose be guarded or mixed with any other thing that may be seen on or through the outer part of their hose but with the self same cloth only, nor in his gown, coat or jacket or other garment any cloth above the price of three shillings four pence the broad yard, except it be his master's livery, nor any manner fur except coney called grey coney, black lamb or white lamb of English Welsh or Irish growing: Nor shall wear any shirt or shirt band[120] under or upper cape, coif, bonnet or hat garnished[121] mixed, made or wrought with silk gold or silver; Nor shall wear any bonnet or shirt band made or wrought out of this Realm of England or Wales. Nevertheless it shall be lawful for him to wear a silk riband for his bonnet, and also the cognisance[122] or badge of his Lord or master, and a horn tipped or flued[123] with silver gilt or ungilt; And they and all other persons to wear on their bonnets all such gains[124] of silver gilt or ungilt as they or any of them may win by wrestling shooting running leaping or casting the bar,[125] and also masters of the ships or other vessels and mariners to wear whistles of silver, with the chain of silver to hang the same upon; any former clause in this Act heretofore mentioned to the contrary notwithstanding.

And that no husbandman from the said Feast wear in his hose any cloth above the price of the yard, two shillings, or any cloth in his gown above the price of four shillings the broad yard, or in his coat or jacket above the price of 2 shillings 4 pence the broad yard; nor in his doublet any other thing than is wrought within this Realm, fustian[126] and canvas[127] only excepted, nor any manner of fur in any his apparel.

And that no serving man in husbandry or journeyman[128] in handicrafts taking wages, after and from the Feast aforesaid, wear in his hose any cloth above the price of sixteen pence the yard, nor shall wear any cloth in his gown, jacket or coat above the price of 2

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[120] Band or collar, the development of the shirt by this time making collar the more likely meaning.

[121] Embellished or decorated.

[122] An emblem, badge or device, used as a distinguishing mark by the body of retainers.

[123] In the sense of piped.

[124] Prizes or trophies.

[125] A sport that has declined in England, although caber tossing survived (or was revived) in Scotland, and now has spread around the world.

[126] A word then used to describe a course cloth made of woven wool and linen, or more commonly linen and cotton.

[127] Always a heavy duty fabric, originally of either linen or hemp, although there is not much evidence of hemp in clothing in England.

[128] A tradesman or craftsman who has completed his apprenticeship but not yet established an independent business.

shillings 4 pence the broad yard, nor in his doublet any other thing than fustian, canvas or leather or woollen cloth nor any manner of fur in any of his apparel.

Provided always that all such officers and servants waiting or attending upon the King, the Queen,[129] the Prince[130] or Princess[131] daily yearly or quarterly in their households or being in their Exchequer Roll, as shall be admitted assigned and licenced by his Grace to use or wear any manner of apparel on their bodies horses mules or other beasts otherwise than is aforesaid expressed, shall more lawfully do the same according to the licence which shall be given upon them in that behalf: The same licence to be declared in writing by the King's Highness, or the Lord Steward of the Most Honourable Household, or the Lord Chamberlain knowing the King's most gracious pleasure in the same.

Provided also that the Vice Chamberlain Steward Treasurer and Comptroller of the French Queen's[132] Honourable Household any every of them for the time being, after and from the said Feast, may wear in their gowns coats jackets doublets and other apparel velvet satin and damask being of the colours of black, tawny,[133] or russet, and also chains and brooches of gold of such value as they will at their liberty, this present Act or any other thing therein mentioned to the contrary notwithstanding:

Provided also that the Lord Chancellor and the Lord Treasurer of England, the President of the King's Council and the Lord Privy Seal for the time being, of what estate or degree soever they be besides those rooms,[134] may wear in their apparel velvet satin and other silks of any colours, except Purpure, and any manner of furs, except black genets, anything in this Act mentioned to the contrary notwithstanding.

II

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[129] Anne Boleyn from 1533.

[130] This seems to have been an overly hopeful anticipation of the sex of Anne Boleyn's child, there being no male line descendants alive in 1533. In the event their child was a girl, Princess, later Queen, Elizabeth.

[131] This would appear to describe Catherine of Aragon, in 1533 recognised only as Dowager Princess of Wales.

[132] The "French Queen" being Mary Tudor, King Henry VIII's younger sister, who was to die later in 1533. She had married King Louis XII of France, and after his death, Charles Brandon, Duke of Suffolk, and was therefore arguably technically merely Duchess of Suffolk rather than Dowager Queen Consort of France.

[133] In heraldry, tenné or tawny, is a stain, a rarely used tincture or colour. It may be an orange-brown colour, or orange. It was one of the colours forming part of the arms of the Royal House of Stuart. It was more popular as a colour for fabrics, where (as probably is intended here), it was golden brown or orange-brown. It is unclear whether the word tawny is being used in this technical sense or in the more popular meaning of tan; the end result is probably the same either way.

[134] Offices.

> Be it further enacted that after the said Feast, none of the Clergy, under the dignity of a Bishop Abbot or Prior being a Lord of the Parliament,[135] wear in any part of his or their apparel of their bodies or on their horses, any manner of stuff[136] wrought or made out of this Realm of England Ireland Wales Calais Berwick or the Marches of the same; except that it shall be lawful to all Archdeacons, Deans, Provosts, Masters and Wardens of Cathedral and Collegiate Churches, Prebendaries, Doctors, or Bachelors in Divinity, Doctors of the one law or the other, and also Doctors of other sciences, which have taken that degree or be admitted in any University, to wear sarcenet in the lining of their gowns, black satin, or black camlet in their doublets and sleeveless coats, and black velvet or black sarcenet or black satin in their tippets[137] and riding hoods or girdles, and also cloth of the colours of scarlet murrey[138] or violet and furs called gray[139] black budge[140] foins shanks[141] or miniver[142] in their gowns and sleeveless coats, anything before mentioned to the contrary notwithstanding:

This section is central to Franklyn's contentions. It is, however, apparently a limitation or dispensation for the clergy, not for the laity.[143] It is not clear exactly what is meant by "clergy" in this context, for university men were, in some degree, in the clerical state rather than simply laymen. They were not necessarily ordained, thus they were not "spiritual men", or "spiritual persons", which terms were used in the 1509 and 1533 Acts respectively to describe, presumably, those who had received the sacrament of (major) holy orders and religious (monks). Generally speaking, however, the mediæval university scholar was a cleric, that is

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[135] Prior to the Dissolution of the Monasteries there were 26 Mitred Abbeys whose abbots were Lords of Parliament, and some Priors were also in the House of Lords. After 1539 only archbishops and bishops attended the House of Lords, and the last remaining mitred abbots were excluded from Parliament.

[136] A material which does not contain any silk or silk-like fibres in its composition. Stuff refers especially to woollen fabrics.

[137] The tippet, possibly derived from the mediæval hood, replaced the almuce by the sixteenth century.

[138] Murrey, an heraldic tincture, supposedly the colour of mulberries, between red (Gules) and purple (Purpure). It this context it is most likely being used for the popular colour of purplish red, also known as mulberry. Despite the absence of punctuation between scarlet and murrey, these are distinct colours.

[139] Marten.

[140] Absence of punctuation makes this unclear, but presumably this means black budge – black lambskin – rather than suggesting that "black" is a distinct fur.

[141] Shanks (not foins shanks – original version of statute omitted the coma) is the fur of the leg of the kid or sheep.

[142] Miniver, or minever, is a white or light grey fur, originally mixed or variegated, used for lining and trimming. In 1533 it is the fur from the belly of the European grey squirrel.

[143] The rationale for such a dispensation for the clergy is unclear from the Act.

a man in holy orders, or at least one who had received the tonsure.[144] But many, if not most, did not advance beyond deacon and forsook the religious vocation for a secular career, and many never received even minor orders.[145]

The critical question here is this: Are graduates clergy, even if not ordained? Some clergy are "Doctors, or Bachelors in Divinity," but not all of these graduates are necessarily clergy – or are they? Does it say that only those in holy orders, whether as deacon, priest or bishop, or in minor orders, are entitled to these privileges? Or does it say that all graduates are so entitled – because all are clergy?

The key questions to ask are how were university graduates – for we are not here concerned with undergraduates – regarded in the early sixteenth century, and what the contemporary meaning of "clergy" was. The latter question may be answered fairly readily, though perhaps not with certainty; clergy included those in minor and major holy orders, but not the laity – and university men were generally the latter. In 1529, for instance, Sir Thomas More wrote, in a reply to critics of the behaviour of the monks nuns, priests and priests of the contemporary Church, "To put euery man to silence that woulde ... speake of the fautes of the clargye".[146] It is probably that graduates were not regarded as clergy unless they

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[144] In mediæval times he then enjoyed the civil benefits of clerics. Tonsure was a prerequisite for receiving the minor and major orders, and in later years the benefit of clergy was extended to any who could claim to be a cleric and so under the jurisdiction of ecclesiastical rather than lay courts. This was a means of avoiding punishment by temporal courts. Originally this was achieved by appearing tonsured or habited as a religious (monk or priest), but later merely by a literacy test (formalised by statute in 1351). Traditionally this required the reading of Psalm 51 – 50 in the Vulgate and Septuagint – which became known as the neck verse): *Miserere mei, Deus, secundum misericordiam tuam.* ("O God, have mercy upon me, according to thine heartfelt mercifulness").

Generally, for the status of university men, see Very Rev'd Rashdall Hastings, *The Universities of Europe in the Middle Ages* (first published 1895, new ed. F.M. Powicke & A.B. Emden (Oxford: Clarendon Press, 1936)); also Rev'd T.A. Lacey, "The Ecclesiastical Habit in England" (1900) 4 Transactions of the St Paul's Ecclesiological Society 126, 129-30.

Today one becomes a cleric only when ordained a deacon (cf. for the Roman Catholic Church, canon 266 of the Code of Canon Law; *The Code of Canon Law: in English Translation* prepared by the Canon Law Society of Great Britain and Ireland (London: Collins Liturgical Publications, 1983)).

[145] Minor orders were abolished by the Roman Catholic Church after Vatican II; see, Pope Paul VI, *Apostolic Letter given Motu Proprio, Ministeria quædam, 15 August 1972* (On first tonsure, minor orders, and the subdiaconate) (the Latin text was published in (1972) 64 *Acta Apostolicae Sedis* 529-534. The English translation is from *Documents on the Liturgy 1963-1979* (Liturgical Press, Minnesota, 1982), pp 908-911.

[146] *Heresies* I. Wks. 108/2, in *The complete works of St. Thomas More* ed. Thomas Lawler (New Haven: Yale University Press, 1981), Vol. 6, "A dialogue concerning heresies".

received the holy orders of deacon or priest. Whilst an undergraduate they might have been in some manner a cleric, but once they received their Master of Arts or Bachelor of Divinity – and the latter would often follow the latter by several years at least – they would, unless remaining at the Universities to teach, or received ordination to become ministers of the Church, re-enter society as laymen.

The Advertisements of 1566[147] are consistent with this limited definition. These provide for the attire of "persons ecclesiastical", and have similar provisions to those of the Act, except that it is specifically stated to be for deans, archdeacons and others, and "doctors, bachelors of divinity and law, having any ecclesiastical living".

The 1533 statute also provides that no clergy are to wear anything of foreign manufacture or purchase, except for certain identified categories of clergy. Thus (excluding church dignitaries as being outside the scope of this paper) bachelors of divinity, and all doctors – of canon law, civil law, divinity, and the other sciences[148] – could use sarcenet in their gown lining, black satin or camlet in their doublet and sleeveless coat, and black velvet, sarcenet or satin in their tippet, riding hoods or girdles. It would seem likely that this was intended to allow these men to continue to wear the distinctions that had become customary to their respective degrees, rather than to allow them some new distinction. The use of silk – in a sober black – was recognised as the particular symbol of the doctor, and the bachelor of divinity.

The meaning of doublet is relatively clear. This was a close-fitting body garment, with or without sleeves, worn by men from the fourteenth to the late seventeenth centuries. In the early sixteenth century it had become a formal garment, made of expensive fabrics and visible under a short loose gown. By the mid-sixteenth century it was worn on its own with trunk hose and cloak. It was not specifically an item of academical dress.

However, the meaning of "sleeveless coat" is less clear. Stokes seems to suggest the gown is the *roba*,[149] in which case the *cappa clausa* isn't even covered

[147] Henry Gee and William Hardy (eds.), *Documents Illustrative of English Church History* (New York: Macmillan, 1896), pp. 467-475. Doctors of Medicine are excluded for no obvious reason.

[148] Historically only medicine was numbered among the "other sciences", but by 1533 these also included Music (introduced at Cambridge in 1504 and Oxford in 1511). See Rev'd. Fr. Benedict Hackett, *The Original Statutes of Cambridge University: The Text and its History* (Cambridge: Cambridge University Press, 1970).

[149] Rev'd H.P. Stokes, *Ceremonies of the University of Cambridge* (Cambridge: Cambridge University Press, 1927), pp. 43-48.

by this law – and possibly the "sleeveless coat" is the contemporary cassock.[150] This might appear to be improbable, because this presupposes the abandonment of the *clausa* – or at least its insignificance – and a coloured (rather than black) cassock. But the distinction at this time between the cassock of the cleric and the *subtunica* or undertunic of the laymen of high degree, such as earls, who were also described as wearing sleeveless coats, was not as great as we might initially suspect. The sleeveless coat was, by this time, a fashionable garment, and it might be in colour, even for a clergyman.

In the early and mid-sixteenth centuries academical dress (and for the moment we are mainly concerned with the clothes of the body, not the headdress, or hoods) would probably have comprised *roba*, derived from the *supertunica*, worn over a cassock or *subtunica*. A *cappa clausa* or pallium would be worn over the *roba*, though this was increasingly being omitted, with the *roba* being worn alone.[151] In the case of doctors, from the thirteenth or fourteenth century the *cappa* was generally scarlet, red, or purple, though lawyers were tending to adopt blue by 1500. Since the statute only refers to the gown, the sleeveless coat, and the doublet, and makes little allowance for academical dress to be distinct structurally, it may well be that the first is the *supertunica* or *roba*, and the second, the "sleeveless coat" is the *subtunica* or cassock. The doublet is what the name suggests, and would be worn under the cassock, or in place of it.

For a layman – and a graduate who was not a cleric (and therefore apparently not covered by these regulations) – the "sleeveless coat" seems to be used as though it were interchangeable with the doublet, as an inner jacket.

The provision therefore specifies that bachelors of divinity and doctors – all being clergy – could use sarcenet in the lining of their *roba* or *supertunica*, and black satin or camlet in their *subtunica* or cassock and in their doublet. In modern terms this provision would allow the use of black satin or camlet in the suit or cassock. It does not allow the wearing of any additional item of dress, however.

Central to Franklyn's argument is the next provision. This states that these men might lawfully wear gowns and sleeveless coats of scarlet, murrey or violet cloth. This is a notable privilege, given the tenacity with which the Crown protected its near monopoly of these colours. Secondly, they might have, in their gowns and

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[150] This is consistent with the developments outlined in Alex Kerr, "Layer upon Layer: The Evolution of Cassock, Gown, Habit and Hood as Academic Dress" (2005) 5 Transactions of the Burgon Society 42-58.

[151] Though this usage, without fur, is found as early as 1379; *Statutes of the Colleges of Oxford, printed for the Royal Commission* ed. E.A. Bond (London: Longman, 1853), vol. 1, (R23) 45-46 (Balliol College). See also Herbert Druitt, *A Manual of Costume as illustrated by Monumental Brasses* (London: Alexander Morning Ltd, De la More Press, 1906) 35-6; E.C. Clarke, "English Academic Costume" (1893) 1 Archaeological Journal 202.

sleeveless coats, furs of gray black sheared lambskin, Marten, rabbit or hare, and grey squirrel or miniver.

The last provision was that the gown (*supertunica*) and sleeveless coat (*subtunica*) might be sarcenet lined; now it is specified that it might, in addition, be coloured scarlet,[152] murrey (red-purple) or violet. Since doctors were so dressed from the thirteenth or fourteenth century,[153] this did not appear to constitute an innovation; the whole tenor of the statute is to restrict attire further rather than to extend privileges. While it did preserve the status quo, it does not confer any additional contemporary right to an additional idem of attire. It doesn't provide that such men may wear such attire, contrary to University statutes, but merely that they will not infringe the sumptuary laws if they are so dressed.

The section also allowed bachelors of divinity and doctors to wear *subtunica or* cassocks ("sleeveless coats") of scarlet, murrey (red-purple) or violet. Since the abandonment of the *cappa clausa*, the *supertunica* or *roba* (the gown), constitutes the sole piece of academical dress remaining,[154] the cassock being more properly an item of ecclesiastical attire.

The gowns and sleeveless coats might lawfully include furs, whether grey or black, lambskin, marten, rabbit or hare, or grey squirrel. The gowns of the doctors of canon law before the Reformation were particularly fine, being of scarlet, and trimmed with white fur, and with a hood of scarlet cloth lined with white fur. These *supertunica* were covered by the provisions of the 1533 Act, allowing scarlet cloth, furs (and sarcenet in the lining) for these. The *subtunica* (sleeveless coat) might also be of scarlet cloth, with sarcenet in the lining, and fur trimming.

> And that none of the Clergy, under the degrees aforesaid, wear any manner of furs other than black coney budge grey coney shanks calabar[155] or grey fitch[156] fox lamb otter and beaver;

Lesser clergy, that is, those who were not dignitaries (Archdeacons, Deans, Provosts, Masters and Wardens of Cathedral and Collegiate Churches, Prebendaries), nor bachelors of divinity or doctors, could wear fur, but this could not be anything other than black rabbit, sheared lambskin, grey rabbit, hare,

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[152] This necessitates the exterior fabric being of wool, for it would be coloured crimson if made of silk ingrained.

[153] See also Rev'd T.A. Lacey, "The Ecclesiastical Habit in England" (1900) 4 Transactions of the St Paul's Ecclesiological Society 126, 128-129.

[154] See note 150.

[155] Squirrel fur, originally from Italy (Calabria).

[156] The fur of the Polecat (*mustela putorius*), an animal related to the weasel.

calabar, polecat, fox, lamb, otter and beaver. The use of this fur is not described, so it might be on any item of attire.

> And that none of the Clergy under the degrees aforesaid, other than Masters of Arts and Bachelors of the one law or the other admitted in any University or such other of the said Clergy as may dispend yearly twenty pound over all charges, shall wear in their tippet any manner of sarcenet or other silk.

This provision is relatively straightforward. The lesser clergy might have silk in the tippets, provided they had sufficient money to support the expense – as also might clergy who were Masters of Arts, and Bachelors of Law (canon or civil) – but not Bachelors of Medicine. Again the dispensation is clearly for clergy only, not laymen.

> III
>
> Provided also that this Act or anything therein contained shall not extend nor be hurtful or prejudicial to any of the King's most honourable Council, nor to Justices of the one Bench or the other, the Barons of the King's Exchequer, the Master of the Rolls, Serjeants at Law, the Masters of the Chancery,[157] nor to any of the Council of the Queen, Prince or Princess[158] Apprentices of the Law the King's the Queen's the Prince's and the Princess's Physicians, Mayors Recorders Aldermen Sheriffs Bailiffs[159] elect, and all other head officers of Cities and Boroughs corporate, Wardens of Occupations,[160] the Barons of the Five Ports,[161] that is to say, that all the said officers and persons that now be or heretofore have been in like room place office or authority or hereafter for the time shall be, as well in the time as after that they have been in any such place office room or authority; but that they shall moreover at all times wear after the said Feast all such apparel is and upon their bodies horses mules and other beasts, and also Citizens and Burgesses shall moreover wear such hoods of cloth and of such colours as they have heretofore used to wear, anything in this Act mentioned to the contrary notwithstanding; Except that it shall not be lawful to any of them to wear velvet, damask or satin of the colours of crimson, violet, Purpure or blue, otherwise

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[157] An obsolete office, the Masters were assistants to the Lord Chancellor, executed orders of the Court of Chancery, and made inquiries upon the instructions of the Chancellor.

[158] The Prince of Wales Council still exists (for the Duchy of Cornwall), but the Queen's Council has long been obsolete.

[159] A change from Baillie in the 1509 Act.

[160] Probably of the Livery Companies.

[161] The Cinque Ports. At the Coronation of Her Majesty Queen Elizabeth II in 1953 the Barons of the Cinque Ports wore old style velvet court dress suits, a cloak, cross-hilted sword, large beret-type cap.

than by the continue of this Act in any of the clauses before mentioned is by reason of their lands or otherwise permitted limited or assigned. Nor also this Act or anything therein mentioned shall extend to Ambassadors or other personages sent from outside princes, or to Noble men or other coming into the King's Realm or other part of his obeisance to visit see or salute his Grace, or to see the country, and not minded to make long or continual demure in the same; nor to any Hench men, Herald, or Pursuivant at Arms, minstrels, Players in interludes, sights, revels, jests, tourneys,[162] barriers[163] solempne[164] watches[165] or other martial feats or disguises, nor to men of war, being in the King's wages of war, nor to any man for wearing of any apparel given unto him by the King's Highness, the Queen, the French Queen, the Prince or Princesses, nor to any Sword Bearer of the City of London, or of any City Borough or Town incorporate; Nor also shall extend to any utter Barrister of any of the Inns of Court,[166] for wearing in any of his apparel such silk and fur as is before limited for men that may dispend in lands tenements rents fees or annuities for term of life £20 over all charges; nor to any other Student of the Inns of Court or Chancery, or to any Gentleman being servant to any Lord, Knight, Squire, or Gentleman of this Realm whose master may dispend forty pounds over all charges, for wearing by such Students or Gentlemen being servant of doublet and partlets of satin damask or camlet or jackets of camlet, which doublets partlets or jackets be given unto them by any of their parents, masters or kinsfolks, so always they be not of the colours of crimson Purpure scarlet or blue; or for wearing any furs whereof the like growth within this Realm Wales or Ireland marterns[167] and black coney except.

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[162] Tournaments.

[163] A mediæval war game in which combatants fight on foot with a fence or railing between them.

[164] A stately or solemn occasion.

[165] A watch is a parade or procession, see, for instance, the surviving Chester Midsummer Watch Parade.

[166] Utter-Barristers (or Barristers-at-Law) were officially recognised as being men "learned in the law" by a statute of 1532 (23 Henry VIII c 5); David Lemmings, *Gentlemen and Barristers: The Inns of Court and the English Bar 1680-1730* (Oxford: Clarendon Press, 1990) 5.

[167] Same as Marten.

Apprentices of the Law,[168] while not graduates or undergraduates of either of the Universities, were described by Sir Henry Spelman as equivalent to those holding the degree of master, while the utter barristers were equivalent to bachelors[169] and Serjeants-at-Law were equivalent to doctors.[170] The apprentice was senior to the utter barrister, and were, in the seventeenth century regarded as being the same as the readers in the Inns of Court.[171] Perhaps this relative seniority was the reason for their privilege of wearing silk and fur. It may also be that their own attire (both in court and out of it) was already rigorously regulated by the courts in which they practised; the clause does also provide that this attire will be such as could be worn by men with an annual income of £20. Mercifully Students of the Inns of Court or Chancery,[172] and Gentlemen who were servants, were allowed to wear hand-me-downs or gifts that would otherwise infringe the Act.

These officials – the members of the Privy Council, Barons of the Exchequer – were excluded from the Act because of their royal service, or, in the case of city and borough office, their local status. Citizens and burgesses also benefited from the Act, as they might wear hoods of the cloth and colour to which custom entitled

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[168] The utter barristers began as *Apprenticii ad legem*. From 1292 the judges were required to choose 140 apprentices and attorneys to learn their profession by regular attendance at Court. The apprentices worked as advocates or pleaders in the central courts (other than Common Pleas), notably King's Bench and Exchequer. The attorneys practised in the other common law courts, including provincial ones. The term utter-barrister first occurs in the mid-fifteenth century, merely as student members of the inns of court and chancery with sufficient learning to be entrusted with cases "outside the Bar" of their inn; Richard Abel, *The Legal Profession in England and Wales* (London: Basil Blackwell, 1989); Sir John Baker, "The English Legal Profession 1450-1550", in Wilfred Prest (ed.), *Lawyers in Early Modern Europe and America* (London: Croom Helm, 1981).

[169] Sir Henry Spelman, *Glossarium archaiologicum* ed. Sir William Dugdale (London: Warren, 1664) 37, 334. By the time of Sir William Blackstone (1765-69) the apprentices were obsolete, and although he was relying on Spelman, he referred only to the barristers and serjeants; Sir William Blackstone, *Commentaries on the Laws of England* ed. E. Christian (New York: Garland Publishing, 1978), book 1, pp. 23-24.

The inns' rank of utter barrister was at first only an internal distinction. By the sixteenth century they however had become the primary qualification for audience before the courts in Westminster Hall. Henceforth the inns' rank became a public degree, and rights of audience were extended to utter-barristers. A 1547 proclamation confirmed this; David Lemmings, *Gentlemen and Barristers: The Inns of Court and the English Bar 1680-1730* (Oxford: Clarendon Press, 1990) 5.

[170] Sir John Baker, "The English Legal Profession 1450-1550", ibid. note 168.

[171] A senior master of the bench (bencher), nowadays the incoming Treasurer of his or her Inn of Court.

[172] Attorneys-to-be often obtained admission to the Inns of Chancery as a preparation for entering an inn of court. By the middle of the sixteenth century the inns of court began to exclude attorneys (and solicitors), and refused to call them to the Bar. Thereafter the Inns of Chancery were eventually superseded by the Law Society.

them. It is to be assumed that these "citizens and burgesses" are the members of the corporate bodies of their respective cities and boroughs, rather than the whole of the population of such places.[173] None however might wear crimson, violet, purple or blue velvet, damask, or satin.

IV

It is also further enacted, That if any man use or wear at any time after the said Feast any apparel or other the promises contrary to the tenor and form aforesaid, then he so offending shall forfeit the same apparel and other the promises so by him used or worn upon his person horse mule or other beast, wherewith so over it be garnished embroidered doubled or mixed, or the value thereof and also 3 shillings 5 pence in the name of a fine for every day that he shall so wear the same contrary to the tenor and purport of this Act; and that every man that will, may lawfully sue by action of Detinue to be commenced within 15 days next after the beginning of the term next ensuing after any such time and cause of forfeiture so given, in which action the defendant shall not be suffered to wage his law nor any essoyn or protection shall be to him allowed in that behalf; the one half of the which forfeiture and fine shall be to the King's Highness and the other half to him or them that will sue for the same in form and within the time before limited.

V

And it is further enacted by the authority aforesaid that it shall be lawful to the Justices of the Peace in their sessions the sheriff in his turn,[174] the steward in any leet or law day, the Aldermen in their wards, and to all other persons having authority to enquire of bloodshed and frays,[175] to enquire of every of the said offences and forfeitures and the parties offending against this Statute and so presented shall make time in manner and form and after the rate aforesaid.

VI

Over this it is enacted by the authority aforesaid that all other Acts made for reformation of excess in apparel or array at any time before this present Parliament, and all and singular articles provisions forfeitures and penalties mentioned in the said former Acts or any of them, be from henceforth utterly repelled extinct and of none effect And all transgressions offences sums of money penalties and forfeitures for

[173] The traditional description of a corporation included reference to the citizens and burgesses.

[174] An obsolete court of record (a court that keeps permanent record of its proceedings, and is thus is legally distinct from the judges who preside over it, and also subject to appeal), held by the sheriff twice a year in every hundred within his county.

[175] A curious arrangement, given that extravagant attire would be unlikely to cause "bloodshed and frays" – though one can never be sure.

anything done contrary to the said former Acts or any of them before this time made for the Reformation of excess in apparel clearly remitted, pardoned and released, and the offenders in that behalf and every of them be thereof discharged and acquitted for ever.

This is a general amnesty for offences against the 1533 and other sumptuary Acts, amounting to remission of any penalties yet paid, and preventing any further action being taken for forfeiture.

VII

Provided always that this Act nor anything therein contained be hurtful or prejudicial to any spiritual or temporal person in and for the wearing of any ornaments of the church for executing divine service, nor for wearing their Amices Mantles Habits or Garments of Religion or other things which they be used or bound unto by their rooms or promotions or Religions; nor also to any Graduate Bedells or ministers to the graduates in Universities and schools, for wearing of their habits or hoods with furs linings or otherwise after such forms as heretofore they been accustomed to do; anything in this present Act being to the contrary notwithstanding.

This allows "garments of religion", and "ornaments of the church" to exceed the limits otherwise imposed by the Act, whether worn by laymen or clergyman. Hoods and habits of bedells, or University or school chaplains might contain furs, because custom allowed it. This could reflect the dominant role of fur as a distinguishing feature of graduate hoods by this period.

VIII

Provided also that this Act nor anything therein contained be prejudicial or hurtful to any person or persons for wearing any linen cloth made or wrought out of this Realm or other parties of the King's obeisance;[176] nor to any person being of the degree of a Gentleman for wearing of any shirt made wrought or embroidered with thread and silk only, so the same work be made within this Realm of England Wales Calais Berwick of the Marches.

As we have seen, the 1533 Act was directly related to the 1509 Act, but was more elaborate. From our perspective it is much more informative, having specific

[176] Deference, homage, probably closest to allegiance of suzerainty.

provisions for graduates. But it must be remembered – Franklyn's argument notwithstanding, that these Acts are no more. The 1533 Act repealed the 1509 Act, and 24 Henry VIII c 13, 1&2 P & M c 2 and all Acts relating to apparel then in effect were repealed by King James I in 1603.[177] They are therefore a dead letter as far as academical dress today is concerned.

Conclusion

An Act against wearing of costly Apparel 1509 (1 Henry VIII c 14) allowed graduates to wear furs that came from animals bred abroad, and to wear longer or fuller gowns than they might otherwise be permitted. The first could well, at this comparatively late stage, be a sign that furs were recognised to be a sign of degree status;[178] and the second that long gowns were customary attire for graduates long past their abandonment by other men in favour of shorter and more closely tailored clothes.[179] There is no indication, however, of whether this has any effect on University academical dress regulations – and it would seem that this was unlikely.

An Act for Reformation of Excess in Apparel 1533 (24 Henry VIII c 13) allowed bachelors of divinity and doctors, being clergy, to use sarcenet in their gown (*supertunica*) lining, black satin or camlet in their doublet and sleeveless coat (*subtunica*), and black velvet, sarcenet or satin in their tippet, riding hoods or girdles. The use of silk – in a sober black – was recognised as the particular distinction of the doctor, and the bachelor of divinity.

The gown (*supertunica*) might, in addition, be scarlet, murrey (red-purple) or violet coloured. Since doctors were so dressed from the thirteenth or fourteenth century, this did not constitute an innovation. But the sleeveless coat (*subtunica*) might also be of scarlet, murrey, or violet cloth. Since the *cappa clausa* was being increasingly abandoned, it was the *roba* that constituted the principle piece of academical attire.

This Act would indeed appear to allow all bachelors of divinity and all doctors – provided they were clergymen – to wear scarlet (or violet or murrey), but it does not authorise such attire if contrary to the regulations of the Universities. The Act is permissive; it does not require such attire. In fact, at the time of its passage all

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[177] Continuation of Acts Act 1603 (1 Jac I c 25) s 7.

[178] By the fifteenth century the hood came to be seen, in England at least, as a token of graduation and was given distinctive colours and lining. Undergraduate hoods were black (blue for law) and unlined, while those of graduates were furred or lined with fur or other material, such as stuff.

[179] Tailoring, where the dress is cut with some approximation to the actual shape of the body, arose towards the end of the thirteenth century.

doctors – except indeed the new doctors of music, wore scarlet or similarly brightly coloured gowns.

It does not expressly allow Masters of Arts and Bachelors of Divinity to wear black chimeres or tabards. The Act of 1533 has no provision that could be interpreted as suggesting that any additional attire might be worn by Masters of Art – and Bachelors of Divinity are expressly allowed to wear gowns and sleeveless coats of scarlet, murrey or violet, and would therefore have little need for a black tabard or *chimere*.

Two important questions remain. First, why is no specific provision made for the habit? The *cappa clausa*, and its many variations, and the tabard, are not apparently covered by the 1533 Act. One possible explanation – particularly with respect to the tabard – is that this was increasingly abandoned by this time. The *cappa* however remained. But the *cappa clausa*, rather than being a sign of extravagance in attire, was a solemn and dignified garment, made of wool (and not likely to offend sheep owner, weaver, or treasury), and habits were, in general, regulated by University statutes.

The second question, and one that brings us back to Franklyn's original proposition, is by what authority did doctors wear scarlet in the first place? This had been common for some centuries by 1503, but the basis for this is as yet not determined.[180]

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[180] In a move perhaps inspired by the "doctors wear scarlet" tradition, two universities in New Zealand allow doctors to wear scarlet robes on special occasions (irrespective of whatever they might otherwise be entitled to wear), leaving the pattern, and the question of facing colours, if any, uncertain. This is derived from an identically worded 1938 regulation of the University of New Zealand that "doctors may on special occasions wear a scarlet gown"; *The New Zealand University Calendar 1938* (University of New Zealand, Wellington, 1938) Regulation – Academic Dress, I; The University of Auckland (Conferment of Academic Qualifications and Academic Dress Statute 1992, rule 8); and Victoria University of Wellington (Academic Dress Statute, rule 1).