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The Construction of "Professionalism": The Illusion of Formal Equality in Workplace Dress Code Regulations

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Abstract. Professional dress codes, ostensibly impartial standards of professional appearance, often function as instruments for reproducing class and identity discipline. This paper takes three judicial cases as its starting point: Chastity Jones's braided hair case and Jespersen's makeup case in the United States, and the disputes surrounding the BFOQ defense and religious headscarf regulation. By comparing relevant judicial precedents in the United States and Europe, it examines how these developments bear on the construction of China's domestic anti-discrimination framework. Methodologically, the paper combines case analysis and comparative research with contextual analysis, drawing on Ford's research on the history of dress codes and Bourdieu's theory of cultural capital. Existing research indicates that uniform dress requirements, while seemingly neutral, can in fact compel marginalized groups to abandon their inherent identity in order to secure access to the workplace. In China, this area has largely fallen into a legal vacuum, where compliance has been elevated to the status of professional ethical norms. Establishing a robust anti-discrimination framework in China requires drawing on the essence of the U.S. substantive equality review paradigm, while remaining vigilant against the risk of equating professional dress codes with Western business attire, and critically examining the underlying logic of domestic customs and compliance practices.

Keywords: Workplace dress code, formal equality, cultural capital, anti-discrimination law, comparative study

1. Introduction

The approach of this study is grounded in the works of Professor Richard Thompson Ford and his TED talk, as well as specialized research and interview reports conducted by the Law School of Stanford University in his honor [1, 2]. Additionally, supplementary insights were provided by the teaching assistant, Mr. Kirkpatrick, following class sessions. In the earlier review of the Chastity Jones braided hair case, a striking fact was noted: a candidate for a telephone customer service position--whose role did not require direct client interaction--was rejected solely due to differences in hairstyle.

This leads to a core thesis: dress and attire are by no means mere superficial embellishments; their underlying logic actually involves issues related to the realm of power. In ancient times, social hierarchies were delineated through clothing via regulations prohibiting extravagance. Today, this

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practice has been replaced by workplace dress codes within enterprises and public institutions. This paper aims to compare judicial precedents in Europe and America with the actual circumstances in China, exploring: who ultimately defines what constitutes professionalism, and who decides what people may wear?

2. The illusion of formal equality: from the dreadlock case to the makeup case

Having asked who defines "professionalism", this section tests that question against U.S. precedents on workplace dress codes. Formal equality promises identical rules for everyone; but when the "professional" standard itself encodes the dominant culture, a neutral rule still yields unequal outcomes. Having started with the dreadlock case, EEOC v. Catastrophe Management Solutions, this analysis moves to the makeup case, Jespersen v. Harrah's, and closes with the Bona Fide Occupational Qualification (BFOQ) defense. Together, the three cases locate the illusion of formal equality: not in the rules themselves, but in the cultural baseline they presuppose.

2.1. Relevant case law on Chastity Jones: the dilemma facing biological essentialism

The holding in the Chastity Jones case is very clear what the limitations of the formal equality are in itself. Judicial authorities treat race as an unchangeable physiological caracter, but they do not include the real cultural practices in the domain of protection under Title VII of the Civil Rights Act [3]. By doing so, such an approach kills the political identity of culture communities by the essence in the domain of the biological. If aprofessional hair would be straight and short, such a classificatian is cultural bias--these assumptions are that the aesthetic preference of the mainstream white middle class have an inborn professionalism, so the aproaches of other cultures has no professional domain.

With the theory of the cultural capital of Pierre Bourdieu, professional dress codes do not arise on their own. Rather, they are the result of the institutionalized result of the cultural habitus of concrete social strata [4]. The reason that suits and ties are seen as symbols of professionalism is that they have their origin in the daily dress practice of the upper-middle class among White Europeans. If market operators refer to the notion of "professional identity" to refuse dreadlocks, headscarves, or even traditional ethnic clothes, this in the core already means the use of the stratified aesthetic criterion in setting up entry thresholds for the profession; that is to say, here the uneven distribution of the cultural capital is turned into a mechanism of talent selection in a standard way. Bourdieu clearly explains that the cultural capital is a form of birthright capital which is passed on intergenerationally by education, family and social environment; here the dress code are the institutionalized means of turning such an implicit advantage of the cultural capital into an explicit, institutionalized entry barrier in professional environments.

The theory of disparate impact could have given to Jones an entirely new legal path: even if the employer did not have intention of discrimination, if the corresponding policy put on a protected group a greater burden then the employer may be liable to have violated the law. However, this doctrine has suffered systemic difficulties in the field of dress rules. Jin Tao has argued that the prohibition of the indirect discrimination have been many times challenged in the judicial practice; the reason is that it is very difficult to establish the guilt of such discrimination and the evidential threshold of proving the disparate impact needed to establish the indirect discrimination, that in turn make the practical application of this rule [5]. The judicial authorities require that the plaintiff first show that the challenged measure is in the scope of protected categories and only then they may see its effect. In the cases of Jones, the applications have been rejected in the pretrial stage--because that

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the braids are not in the realm of race, and so the doctrine of the disparate impact is entirely inapplicable. This hierarchical doctrinal framework is favorable for the employers so that the culturally targeted exclusion may be be facilitated with superficially equitable aesthetic criteria that further escape the judicial scrutiny.

The corresponding study by Ford et al. raises the question of a more profound theoretical bottleneck: if discursive practices of discrimination are no longer performed, in the sense of excluding people on the basis of identity, but are simply culturally encoded in the entry by means of some kind of aesthetic threshold, do the current legal framework still have enough power? He warns that if it wants to obtain as much as possible of a substantive justice it has to take into account the forms of discrimination that are institutionalized and systemic and that, at the first sight, appear not at all related to a race or a gender [1]. The dress and the way it has the grooming standards are exactly such a form of regulation: they do not say that Black people must not be hired, but on the passing of some specific channels, they can delimit professional domains, in such a way that the very manifestation of the Black cultural identity becomes a non professionalized referential symbol.

2.2. Jespersen-related precedent: the physical burden-bearing gender characteristics

If the Jones precedent shows that formal equality in the context of race has its limits, the case of Jespersen v. Haprahs, 473 U.S. 1007 shows the same sort of dilemma about gender. In gambling establishments, female employees are given the affirmative order to apply makeup and have neat hair, whereas the male employees are only given the negative order do not have no minimum grooming [6]. The majority opinion of the U.S. Court of Appeals for the Ninth Circuit is that both genders are subject to the dress codes, and that the policy in question treats all the employees equally. Judge Pregerson, dissenting, invokes the theory of unequal burden, that women have more time expenditures, and financial costs, and the level of bodily discipline of than men.

The present article is inclined to support the position of the dissenting judges, but of course it is necessary to admit that the evaluation of unequal burdens is a very controversial field of research. Should it be done on the ground of time costs? On monetary costs? Or could a psychological pressure be used for an assessment criterion? In the event that some female employees think that their make-up is an expression of their state of mind, and others think that it is an expression of gender roles of a kind having a certain coercive character, what should the law do with these two very different subjective feelings?

In his famous work, Ford gives very deep historical reasons [1]. He examines in a systematic way the Great Masculine Renunciation of men between the 18 and 19 century: men give up luxuriant and disproportionate clothes for simple, rational and practical clothes of business, a visual expression of the modernity and the rationality in public, while the clothes of the women have kept the characteristics of decorative, constraining and emotional. This visual construction of the gender gap correctly exclude women of the domain of the modernity and the rational discourse in public. The contemporary need of women in work place (makeup, high heels) is a contemporary continuation of this coding. If the employer asks to a woman to have a professional image, he is often in fact guiding her to have the tradition gender. In a way it is the standardization of some gender.

In the Price Waterhouse case, it is explicitly held that employment practices based on gender bias is gender discrimination [7]. Could such the measure (making women wear makeup) be the embodiment of the stereotype that women should focus on her outer appearance being incorporated in the corporate policy frameworks? In the Bostock case, the "but-for" causal test is extended to the fields of sexual orientation and gender identity, it is showed that the measure of requiring the transgender employee to dress according to its birth sex may be gender discrimination [8]. For the

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non-binary people, the traditional gender biased dress code is already structural excluding. Many research results show that the current legal framework in China still confines the definition of the discriminatory conduct in the gender binary framework, and can not cover the gender identity and gender expression [9]. The question is more fundamental: in the era of increasing social acceptance for the non-binary identity, does the existing male/female gender biased dress code already constitute the systemic exclusion of gender diversity?

2.3. Defense based on genuine professional qualifications in the relevant field

The Bona Fide Occupational Qualification (BFOQ) defense is also available in limited, gender-differentiated situations that are necessary to the running of a particular business. Regarding the dress code of the workplace, the BFOQ related precedent cases show that: the marketing strategy of the Southwest Airlines with sexy flight attendants was not approved by the court; the dress code of the "Bunny Girl" club was accepted; and Hooters was not exposed to judicial proceedings by settling the problem out of court.

There are then numerous judicial precdents that stress this core contradiction: can the image of a brand and the aesthetic preferences of customers be a compliant basis for differentiated dress codes? When a catering brand says that the profitability of the business requires that the women of the servers will look sexily styled, she is not simply saying something about the model of her business but she is using the gender society rules to make a commercial profit. It is what Ford has always made clear: that the dress code has been for the long history of uniforms that says which is a group and today, a corporate brand image is a marketized version of this same function. The question is this one: if the consumer gets a kind of preference for the services related to the women, presented through the sexily styled means, of if such a kind of preference has enough of a legal basis that it constitutes a basis for legitimate, then the anti discrimination legal framework will be just an appendix of the market logic. How to put clear lines between the requirements of the commercial promotion and the regulations of the anti discrimination? What can the enterprises do to shape the external image of the employees? This is a part of this law that is still in a regulatory gap, without specific provisions in the statues.

3. The paradox of religious headscarves: restricting freedom in the name of equality

How the matters concerning religious dress in the workplace are handled is an indication of the divergences of the institutions in the Atlantic. In the United States the framework of Title VII uses the paradigm of reasonable accommodation: the employer has to accommodate the religious practice of the employee (including the way he dresses), as such accommodations are allowed when they would cause an "undue hardship" [10]. France always stays to the strict principle of the secular, by not allowing conspicuous religious symbols in public places. The European Court of Justice takes a middle way: it holds that a general policy of religious neutrality cannot be considered as direct discrimination, as long as one does not target the particular manifestations of any particular religion [11].

The problem with the U.S. approach is that, even if the suitable and available communication mechanisms are in place, they do not result in substance in the labor-management relationships with power imbalances. For example, a female employee of Muslim origin may not like to be called a troublemaker and not want to apply for the religious accommodation about wearing a hijab. When the employee applies, she is actually shifting the power to the employer's managerial power; this power imbalance causes a superficial communication of the result.

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In the French paradigm, it is prohibited to wear headscarves in the name of the gender equality and of the separation of church and state. It has been criticized by using the guise of the equality to attack the right of women to religious self-determination: in the fact that by means of the state ban, it presumes in advance that all the women that wear the headscarf are under the oppression, while the state ban is at the same time a means to free them [12]. This line of reasoning is very close to the past practices of regulating forcibly the dress of the groups that are in the margins with the pretext of to advance the civilization. Ford says that many of the previous policies makers of the dress regulations had in conscience they really believed that they defended the social order or the moral standards, but in the end they suppressed the expression of autonomy of groups that were in the margins [1].

There is, however, a deep contradiction at the basis of this situation: if the state puts down the religious headscarves under the mask of the protection of the women's rights, is it not therefore reproducing in a more surreptitious way a patriarchal power? What is the principle by which the anti-discrimination laws should stand for, the negative freedom, i.e. the protection against the coercion of the outside forces, or the positive freedom, i.e. the possibility of living according to one's own being? From the point of view of the international human rights law, the problem of protecting women and of respecting the autonomy have always been the central synesthesia of the international norms on the right to work [13]. Should these two forms of freedom conflict for instance when some women see in the headscarf a symbol of oppression, and others see in it an assert of autonomy, how should the law decide?

4. The void in China: when "obedience" becomes the only option

The preceding analysis of U.S. and European precedents shows that anti-discrimination law can, at least in principle, subject dress codes to substantive scrutiny. The picture which China shows is sharply different: neither a mature anti-discrimination case law, nor a rights-based culture willing to fight employer grooming rules has taken root. In this section, it first looks at the situation of the institutional void and at the isolated breakthrough of the Mr. C case, then at how "obedience" has been internalized as a professional virtue, and finally, it warns the risks of the cultural-transplantation which is hidden in the very fact that some standards of "professional attire" circulate globally.

4.1. Current institutional landscape and case-based breakthroughs

In comparison to the well established body of anti-discrimination jurisprudence in United States, the regulatory framework governing the workplace dress code in China is still, by and large, poor of legal provision. While the Labor Law of the People's Republic of China and the Employment Promotion Law of the People's Republic of China has the principled clause prohibiting employment discrimination, they do not give clear, specific rules to determine what should be the dress code of the regulation [14, 15]. Therefore, most of the courts treat the corporate dress code policy as just a legitimate exercise of corporate autonomy and apply very lenient standard of review. As of now, the view in academia is that the anti-employment discrimination legislation in China is of a fragment character: there is not specialized, unified standalone legislation, and the implementing mechanisms and allocation of the legal liability accompanying the legislation also could not set up enough and effective deterrent effects [16].

Around 2016, the Mr. C case in Guizhou becomes a representative example in the domestic field of anti-discrimination regarding workplace attire [17]. Mr. C is a transgender male, and he was

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dismissed by his employer on the ground that he was wearing men's clothes, which violates the dress code of his company. The court of the final instance held that the conduct of the employer was that of for an unlawful termination of the employment contract; but it did not find that such conduct was the conduct of employment discrimination of the individual because of the reason that he was transgender. The reason of the judgement was that it was the general prohibitory provisions of the Labor Contract Law of the People's Republic of China on the unlawful dismissals, not the legal principles applied in the case of anti-discrimination. In 2017, Mr. C sued another lawsuit on the general personality rights, also he won. The court held that the conduct of the employer was the discriminative treatment. This judgment is regarded as the first judicial recognition in China of the right of equal employment for transgender. However, the judicial authority has not given the detailed reasoning throughout the process of the proceedings to whether the dress requirement was the discrimination of gender or identity. It also has not established the binding judicial standard of general application. Such victory tends to get the justice of individual level rather than the reforms in the institution. Some preliminary research of Liu Xiaonan and Yang Yifan has reported that in China, the disputes concerning the right of equal employment still have difficulties in the judicial practice, that is, the evidential threshold is high and the compensation standard is relatively low, so it is difficult to create the strong deterrent effect against the employer [18]. Furthermore, the available judicial remedies for the right of equal employment has very large defects in the substantive and the procedure aspect [19].

4.2. The politics of cultural norms and obedience

There are few divergences within the domain of workplace attire in domestic contexts; this phenomenon stems not only from a lack of legal provisions but, more fundamentally, from differences in cultural contexts. Traditional Confucian core values emphasize the intrinsic link between Li (propriety) and social harmony; in contrast, under contemporary commercial organizational frameworks, dress codes are generally framed within the discourse of professional competence and team cohesion, where members' exclusionary behaviors are defined as violations of established norms and a lack of professional self-awareness.In this cultural framework, the compliance has also been shaped as a kind of professional competence.

This is the approach of the cultural regulation which is very different from the rights-based approach in the United States. The workers in United States can appeal to the basic principles of the Constitution, statutory anti-discrimination protection, and the whole network of labor legal counsel to challenge the way of the employer to make the dress code; but if the way of the dress requirement in China is not complied with, the common way is either to comply or to resign. Zhou Yuan says that the remedies for the right to equal employment in China is based on the remedy of private law; it has the system limitation of the private law. As the anti-employment discrimination law, it belongs to the social law, which should use the social law to remedy the private law [20]. The teaching materials have raised the question: Is the purpose of the anti-discrimination law precisely to remedy this kind of power imbalance, i.e. the workers have to choose the way between the compliance and the resignation? In the context of China, this question become more serious: If the law itself does not give enough remedies, the market exit ways may become the only way, but in principle it is not the true trade-off.

The internal dress and grooming regulations for domestic enterprises also have the gender binary characteristics: men are not allowed to grow long hair or long beard; women are not allowed to put on heavy make up or to wear miniskirt; women in the production role are not allowed to wear high heels or skirts [21]. The above regulatory provisions, on the one hand, have the constraints for the

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man and the woman, in order to achieve formal equality in the look of the appearance; on the other hand, though it is not considered, the cost of the bodily discipline and the society expecting in the body of such gender specific regulations are imbalance. As the jurisprudence of Jespersen in the United States has shown, such restrictions are not at all equal as the restrictions for equality [7]. After systematic study of the anti-gender based employment discrimintion regime in China, Yang Haonan found that in the judicial practice, the burden of proof of the employees is heavy, while the legal liability of the employer is light; combined with the too narrow definition of the concept of the gender discrimination, these factors all are the core causes of the failure of the regime. Hu Xiaoli pointed out that the traditional gender based employment discrimintion usually in the form of the direct different treatment by the employer in the base of the gender, a form of the discrimination that is obviously shown; the gender based employment discrimintion concealed by the algorithm is the form of autonomy, concealment, continuity, and structural nature. The algorithmic system uses the apparently neutral data and the metrics to carry on the screening process; and the stereotype once trained through the such data, is embedded in the such model. Thus the discriminative results is coming in the disguise of the technical neutrality, that is hard for the job seeking to find such discrimination, or to find the causal relation [22]. As some scholars pointed out, the deep root cause of the employment discrimintion is in the sociocultures conceptions; the approaches to solve this problem can not be relying merely on the legal intervention, but on a combination of the legal regulation, institution refinement and the evolution of the attitude of the society [23].

4.3. Risks of cultural transplantation

When domestic enterprises go global, they often take a Western professional dress code--suits, ties, and no extravagant hair d0--without having the dialectical point of view to see which cultural logics these norms embed. This is fully in the world of aesthetic imperialism: the dress code of the white professional of the upper-middle class of the West have become a core criterion for measuring the global competence. The analysis of Ford of the contemporary abandonment of the great man ideal is still relevant: the contemporary business formal is far from being culturally neutral, on the contrary, it is the result of the self-construction of the European men during specific periods of history. The possible and actual use of this globally same professional uniform is to repeat in the international context the same form of stratification of the cultural capital exposed in the Chastity Jones case in the United States.

5. Echoes of history: from the prohibition of extravagance laws to corporate policies

Ford's historical monograph is a core perspective of the present scholarly contretemps [1]. In early modern Europe, sumptuary laws imposed very strict limitations on the choice of clothes in function of the social hierarchy: for example, colours such as deep purple were only allowed to the aristocracy, and common people were forbidden to wear them. In 1565, a retainer of name Richard Walweyn was arrested (not for having an intention of rebellion, but) because of his way too exaggerated pants, so that the visual distinction related to his social rank was spoiled. The legal penalty was not based on a notion of subjective malice, but on the social consequences of the sartorial transgression: if ordinary people wore clothes of aristocratic style, the limits between the strata of the society will be gradually lost.

China suffered a long history. In successive dynasties, the emperors regulated the color, the texture and the pattern of official dressing by the regulations: in Tang, any one of the third rank and above wore purple dress, any one of the fourth and fifth rank wore crimson dress, any one of the

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sixth and seventh rank wore green dress; in Ming, the common man was not allowed to wear boots, shoes with any kind pattern; he was not allowed to wear his hat with golden, silver, or precious jade. In his book of Chinese Law and Chinese Society, Qu Tongzu said that this sort of hierarchic dress code comes out of the logic of regulation of Confucian ritual governance. Its core mind is to know noble or common, high or low. This system makes the abstract hierarchical social order concrete in the daily behavior. It realizes the ideal of society of each person wearing his appropriate attire.

It is quite impressive how fitting the contemporary codes of what to wear in the workplace are with the times: What used to be a code of the legal hierarchy, is now invoked by the employers in terms of professionalism, a kind of flexible social coding between class and culture: If a company decides that it does not want to employ applicants with braids, that it wants to penalize the employees wearing a headscarf, or that it wants the transgender to wear the clothes of their biological sex, it is not necessarily because of some malice; it is a set of visual norms. Some certain physical look is called professional, whereas the other is left to the other. The logic that was a kind of legal one now is a logic of the corporate policy of regulations, but its function is the same, to draw the lines of the social group of belonging by regulating the look.

The above-mentioned basic differences of the dress etiquette of China from that of other cultures originate in their basic ideology and cognition. In the foreign societies, the prohibitions of extravagance were invariably promulgated by the aristocratic clan, in order to stop the newly aggrandized merchant's class from using the sign of status, which is one category of the defensive institutional regulation of status; while in the hierarchical principle of the attire of China is not in the category of the defensive institutional regulation of status but in the category of the constructive ritual-legal governance paradigm of the Confucian system of the ritual governance. As for the mechanism of the implementation, the China tends to stress the internalization of the ethical values and the communal self-government. That is, the self-restraint and the obedience to the ritual norm takes the dress code as one part of one's self-discipline ; the West, however, often depends on the codified legal provisions and the religious censure. However, both of them maintain the working of the hierarchical dress regulations by the interacting effects of the legal sanction and the public opinion.

Of course, in the modern society, the rule of the law has put an end to the compulsory dress based hierarchical system that is based on the birth status; the various markets have also been opened to all members of the society. However, that does not mean that the clothes do not at all reflect the distinction in the social hierarchy. As it is described in the core of Pierre Bourdieu's theory of cultural capital, the dominant classes are able to make their own aesthetic preference into the rules of the taste of the everybody [4]. The so-called, low end of luxury aesthetic has always been considered as an innate sense of superior style, which is the form of the consumption which cannot be achieved without specific economic or cultural capital. Such discursive power makes the class boundary from the overt mark into the implicit code; the one who can not decode these codes is not only economically left out, but also culturally left out as a lack of taste. In the contemporary society, the equality is not no longer showed in the explicit legal prohibition, it reflects the tension between the possibility of the procedure of equality and the actual difference in the competence of the individual. Ford has also explained a kind of the convergence: the regulations which look like having no direct connection to the social equality, equal opportunity, or racial justice are, in fact, the constituent of the social hierarchical arrangements [1]. The statutory civil rights legislation is by no means the panacea; in order to achieve the equality, it needs a focused effort to attack the systemic and institutionalized form of the discrimination that is operating through the mundane, the fragmented regulations.

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6. Conclusion

The central thesis of this article is that formalized equality presupposes a seemly fair arena, one in which the regulations are the same for all the members; but as is shown by the case of Chastity Jones, when such homogeneous regulations are made on the ground of the mainstream cultural capital, they simply ask to have the marginalized groups give up their own in order to get access to such kind of opportunities. From the regulations of luxury consumption to the dress code in the work place, the logic of the regulations has changed from that of the most rigid regulations as a legal (the law) constraint to the discourse of the professional domain; but the essence is the same: the maintenance of the borders for the social belonging through the regulation of the look. The various work place dress code are not at all a technical, equitable talk about clothing; they are questions of equity about which people is worth and which people is put to the margins.

The effectiveness of this achievement shows itself in different ways in the above two contexts of China and in the United States: in the US, the anti-discrimination laws do have tools for the scrutiny, e.g., the differential impact, the gender stereotypes, but often do not work across the aesthetic boundaries of the cultural coding; in China, there is almost no law, the tradition of the Confucian rites has internalized the obedience as the professional ethic. When the dress regulation is unreasonable, the workers have to either to obey or leave the post.

The next possible directions are the following: at the stage of the present China, it is in the very important stage of building a law against discrimination. The country might show some signs of the way of the U.S., that is, judging the achieve of substantive equality by the formal neutral norm, to make the specialized anti-discrimination law and to establish a efficient mechanism to protect their rights and interests. It should be careful on the risk of the discrimination of the professionalism of the dress code shown with the Western business suit, that is, the form of the cultural transplantation, and it has to do a lot of reflection of the structure of the etiquette and the deference on its own cultural situation. In fact, what it actually argues is this, not whether the dress code should be made, but, who should participate in the dressing code, whose voice is heard? The careful dwelling on the dress related thing just is exactly the essence of the equality discourse.

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