

on the moral decadence in the American society, Harold Martin, a commentator on the ACBS News (2004) said:

The last step in the degradation of a nation is immodesty. The wearing of suggestive dress leads to the ruin of a people (in the past ten years). The decade when the hemlines went up and the morals went down. Those who expose much of their bodies (both men and women) are debauching the nation, damning manhood, polluting society and breaking up the foundations of the home.

He submitted further that certain countries have recognized that proper dressing is necessary for the moral health of the nation and have made some forms of improper dress strictly forbidden in their territories, which is to be published in the *International travel guide*. Campuses of higher institutions have fostered a climate for the display of seductive wears especially by the female.

To this end, the rest of this paper shall be presented using three significant lenses through which we shall attempt to explain the nature and legal implication of campus dress code in educational institutions. Our discussion shall take the nature of campus dress code as a starting point, then consider the rationale for campus dress code and some argument against campus dress code before finally looking at the legal implications.

2. Nature of campus dress code

Dress code, according to Pauly (2008), is a set of rules, as in a school, indicating the approved manner of dress. However, campuses of higher institutions today have fostered a climate for the display of seductive wears especially by the female. For instance, those who had visited the campuses of institutions of higher learning in recent times had wondered whether they were in an academic community or an enclave of harlots, owing to the provocative and seductive ways in which most of the students, particularly the female clothed themselves to the lecture rooms.

Anecdotal observation of the hallways of many higher institutions today reveals that students have pushed dress code to the limit. There are halter-tops and bare midriff, thigh underwear peeking above ultra low-cut jeans, and bright-coloured bras shining through sheer shirts. "It's getting out of control", said Wareham High School Principal - John Amaral. "We have a dress code set by Hollywood" or by Britney Spears. Ever since the pop princess danced seductively in a modified school uniform for a 1999 music video, fashion for teenage girls means increasing revealing clothing. Add that to the barrage of magazine, movie and television images of scantily clad women and get what some local school officials in England, Nigeria, Kenya and Uganda call a battle over bellybuttons, which has caused a lot of distractions and disaffections in these countries. Teachers and administrators have become increasingly concerned each year, especially when the weather is warm. While every generation has its share of school dress code battles, school officials say the difference now is the large numbers of students pushing the boundaries of new fashion trends beyond acceptable limits. In many middle and high schools today, teachers and school authorities are now reduced to being the clothes police; a lot of time and energy that could have been spent on teaching is spent monitoring whether or not students keep to the order of the dress code battles. This problem is observed to be greater among girls.

A worse development is the phenomenon of TV Reality Shows (e.g. Big Brother Africa), which is sweeping through developed and developing societies thus destroying further still the efforts to control immorality among the youthful population (*Daily Monitor*, p. 16, April 7, 2008... Has Uganda Gone Reality Crazy?).

Consequent upon this, it is pertinent to note that certain countries have made some forms of improper dress strictly forbidden in their territories, which is to be published in the *International travel guide* because they have recognized that "proper dressing is necessary for the moral health of the nation".

Moreover, in Nigeria and Uganda, the authorities of some universities" (University of Ibadan, UI; University of Lagos, UNILAG; Obafemi Awolowo University, OAU; Lagos State University, LASU; Makerere University, Kampala, MUK and Islamic University in Uganda, IUIU) have prescribed dress codes for their students. For instance, in a special release to all students titled *Dress code in the university*, the Governing Council of Obafemi Awolowo University in Nigeria approved the following guidelines for strict compliance by students:

(1) Dress which is sexually provocative and exposes vital parts of the body that are supposed to be hidden (such as the chest, navel and thighs) are prohibited;

(2) The identity of all students must, at all times, be visible, i.e. their faces must be fully visible. The form of dressing that obscures identification poses serious security problems;

(3) Individual faculties are required to draw up additional guidelines that are relevant to their academic activities.

The penalty for flouting the rules was spelt out, inter-alia, individuals who turn up for academic activities in dresses that do not meet these requirements should be requested to leave. Each member of staff is allowed to use his or her discretion in dealing with situations as they arise, in a manner that ensures discipline is enforced. Disciplinary procedure was to be immediately instituted to prosecute recalcitrant students.

Also in the University of Lagos, Nigeria, authorities came out frankly and took a stand when it was observed that some female and male students were dressing indecently on campus, even to lectures. These dresses were either too tight, too short, or expose sensitive parts of the body. The institution felt that indecent models of dressing do not reflect the seriousness, dignity and character moulding nature of the academic enterprise. Moreover the instruction was convinced that loose dressing could result in general lowering of moral and academic standards in the university.

3. Rationale for campus dress code

The principle of dress code in many universities is apparently to promote and embrace important values cleanliness, neatness modesty, decency and appropriateness in dressing which reflect initial dignity and sobriety through which students as well as staff and faculty represent the professional status of their respective disciplines.

Thus, many universities have gone ahead to pronounce a well circulated "dress code" guidelines, which state that "students should maintain a clear and well cared for appearance in all settings on campus". Wearing of tight, strapless and revealing clothes, or clothes whose lengths are above the knees are considered to be unsuitable in many of these campuses. Some universities like Unilag, UI, OAU and MUK have further published in their manuals, specifically, the types of dresses that their male and female students are not allowed to wear are, such as:

(1) All tight-fitting clothes including skirts, trousers and blouses.

(2) All clothes which reveal sensitive parts of the body such as the breasts, chest, belly, upper arms and the buttocks.

(3) Outfits such as knickers and mini-skirts and dresses which are not, at least, knee length.

(4) Outfits like party wear, beach wear and bathroom slippers should not be worn to lectures.

(5) Outfits such as t-shirts, skirts and jeans which carry obscene and sub messages.

(6) Trousers such as hip- riders and low waste jeans.

To be able to implement this directive, some institutions such as Unilag and OAU have prescribed two points sanctions, namely:

(7) Exclusion of students from lectures and services whereby lecturers and administrators are empowered to

Among these are; University of Ibadan (UI). University of Lagos (Unilag). Obafemi Awolowo University (OAU), Lagos State University (LASU), Islamic University in Uganda (IUIU). Uganda Christian University (UCU), Makerere University, Kampala (MUK).

correct/exclude students from lectures and official businesses when they are not properly dressed.

(8) Counselling and endorsement of records by which these violators (depending on the specific circumstances) would be counselled, tailing which they will face the students' disciplinary committee and have their records endorsed accordingly.

This release was backed up with the information to students that the university had the full support of the generality of parents in ensuring that the students dress decently at all times.

Thus, the contention that in the absence of a prescribed school uniform or regulation on mode of dressing in public schools will lead to resultant chaos can best be imagined. As a matter of fact, it has been found that the dress regulation stabilizes the school classroom atmosphere, promotes decorum and has a real and reasonable connection with the successful operation of the educational system and with the maintenance of school discipline.

However, it is the strangeness of the above assumption in a university setting which belies the adoption of a campus dress code. The rationale for the adoption of the dress code in universities has to be founded on more cogent and tenable reasoning such as:

- (1) Upholding of academic standards;
- (2) Promotion of decorum and discipline in academic atmosphere;
- (3) Enforcement of morality and decency;
- (4) Security awareness.

It is notable that in adopting a faculty dress code some of local faculties have taken a cue from their foreign counterparts. For instance, the Faculty of Pharmacy, Obafemi Awolowo University has adopted the same dress code in force in the Kuwait University. *The Student Handbook* of the Faculty of Pharmacy, Kuwait University prescribes general and laboratory dress code for its students as follows.

3.1 Female students

- (1) Dressing should be neat and decent;
- (2) Jewellery should be kept to the minimum, ankle chains are not allowed;
- (3) Indecent clothing that are too short, clinging or that exposes some parts of the body, veils that do not meet the professional dress code of the faculty's requirement for safety in the laboratories.

3.2 Male students

- (1) Dressing should consist of trousers, shirt and tie or simple native wear;
- (2) Students should not come to school in slippers;
- (3) Jewellery should be limited to cuff links, tie clips and wristwatches.

In the laboratories, male and female students are required to wear a clean, white, front-buttoned laboratory coat overall garments of suitable length with the students name tag worn on the laboratory coat. Happily, in the dress code prescribed by the Faculty of Science of the same university for its students is found this useful addendum:

Wearing a flowing dress is prohibited in the laboratory because it has been found to cause dispensed of corrosive chemicals to pour on another student or pour on the wood bench. Such spill over usually eats up the laboratory benches and often skin. In the case of concentrated sulphuric acid, the burn it causes leaves a wound that takes a long time to heal with a permanent scar.

In its code of conduct for Law students, the Council of Legal Education in Nigeria stipulates that:

The dress regulation for male students is dark suits, white shirts, black ties (not bow tie), black socks and black shoes with white breast pocket handkerchiefs. Stripped black trousers may be worn under dark jackets while white blouse, dark jacket and black skirts covering the knees (dark suit) or dark ladies dress and black shoes are the dress code for female students. There should be no embroidery and trimmings of any type and only moderate jewellery (ear - rings, and

watches) are allowed to be worn.

4. Argument against campus dress code

While the adoption of a dress code in elementary and high school or equivalent educational institution may be easily understandable, it may be difficult to find justification for the same phenomenon in tertiary institutions. Some of the strong reasons advanced against the sustainability of the campus dress code are that:

(1) The university is a citadel of learning for various categories of matured persons with their enshrined fundamental rights.

(2) The university is an international institution of repute subject to international standards.

(3) The university contains people of different beliefs and backgrounds and in such a community, the social practices will obviously differ, and this calls for much tolerance.

(4) Some peculiar regulations adopted in a tertiary institution like a College of Education may be unsuitable for a university setting.

It is in the light of the above and such similar arguments that more cogent reasons have to be advanced to substantiate the legal implications of campus dress code. Some of these are discussed below.

4.1 Legality and the enforcement of morals

Law according to Fayokun (2005) quoting from Austin's *Lectures on jurisprudence* (1885) has been defined as a rule or command proceeding from the sovereign or prescribed by a political superior to a political inferior . In a simpler way, "Law" is recognized as a body of rules of human conduct and it includes a moral code or prescribed pattern of behavior with a sanction . The purpose of the sanction is to protect the society against persons of deviant behavior. Without law, the continued existence of society would be in danger and the society would ultimately disintegrate.

Law in this way includes the rules and regulations implemented in educational institutions as part of public law. Public law in particular is a branch of the law concerned with the control of human behavior through the allocation of rights and responsibilities among individuals, groups and organizations. The rules, instructions and regulations some of which are contained in circulars and notices in public schools and subject to the legal process qualify as law. Education law, in Nigeria for instance, is part of corpus Juris. The legal instruments affecting the educational institutions have their source in the constitution, Federal and State statutes, executive orders, administrative regulations and a volume of case law.

The procedures by which a statute is legislated into law or a school board regulation becomes law are examples of the formal processes for promulgating a law. When the principal of a public school orally announces a new dress code to students in the assembly, the principal is promulgating law, even though the procedures d a

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authority perceived as legitimate, out of fear of the sanctions which may be forthcoming as a result of non-compliance, or a combination of the two. The sanctions may be explicit or inexplicit, as in our example above wherein the students understand that non-compliance with the new dress code will cause the principal to pursue appropriate procedures within the school to secure compliance. By imposing obligations of obedience, a law necessarily allocates power and distribute rights and responsibilities among affected individuals and groups. By defining the behavior expected of certain individuals in certain circumstances, the law also defines roles.

4.2 Hierarchy of law

We owe to Hans Kelsen, the idea that law is a hierarchy of norms . Having identified the main sources of our law as the constitution, statutes, judicial decisions executive orders and administrative regulations, it is imperative to understand that they operate in hierarchy. It has been observed that each type of law has general characteristics which is distinguished as: the process by which it is made, the specificity with which it commands, and its breadth of application to individuals, groups and institutions within society .

The process of constitution making is elaborate and formal. As one moves up in the hierarchy, the process of law making becomes less complex, less formal and the specificity of the law and its narrowness of application become correspondingly greater. There is a reason for this hierarchical arrangement and relationship. The very broad statements to a constitution establish basic allocations of rights and responsibilities within a society and contain those commands, which are perceived as the most fundamental to the nature of the society, which the constitution governs. In his words, Richard L. Mandel submitted that:

Constitutions have correspondingly broad application, affecting every individual and entity within the society in important ways. The procedure for amending a constitution is appropriately complex and highly formal in order to assure that the society's basic structure is not altered without extensive deliberations and widespread consensus. The commands of a constitution, however, are typically incapable of clear application to a situation without formal refinement through the processes of legislation, adjudication and administrative regulation¹.

In this hierarchical arrangement, subordinate kinds of law have to be consistent with the parameters established by the superior kinds of law. Most familiar in this regard is the notion of Constitutionality by which the constitution is supreme law of the land and all other laws are required to conform to its requirements. A Vice-Chancellor's dress code must therefore conform to the order of the University's Governing Council, which in turn must be consistent with the University's Statutes, which must not conflict with the provisions of the Constitution of the country.

In contemporary Nigeria, public education is largely a state function. The establishment, management and control of public schools are an ultimate responsibility of the state. Government creates funds and regulates educational institutions by direct, intermediate and local agencies. Through the Ministry of Education, management structures in accordance with relevant enabling legislation are put in place for the management and administrative procedures of public schools.

Public universities are set up as centres of academic excellence, for learning and to promote teaching and research. The curriculum of studies, the staffing, management policies and administrative procedures adopted are designed primarily to meet the needs of the society and to inculcate in the generation of students the cherished societal values. Law regulates operational decisions, admission of candidates, appointment and promotion of staff, academic discipline and determination of career and even practically every detail of school administration. Sweeping powers are often delegated or conferred on management to enact, implement and review the rules under

¹ Hans Kelsen. *The pure theory of laws*. Vols. 50 and 51 L.Q.R., 447-485.

Richard L. Mandel. (1975). The law and education: A brief overview. *Journal of School Psychology*, 13(4), 287.

⁵ Richard L. Mandel. op. cit at pp. 288-289.

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which the schools operate and by which they may be called upon to give an account. Most universities have prescribed code of conduct for their students who are required to swear the oath of obedience and compliance along with their matriculation and these regulations are accompanied with sanctions.

4.3 Judicial review

Judicial review of education in Nigeria through the regular courts is less pronounced. Unlike what obtains in the United Kingdom or United States of America, where school laws have become the subjects of judicial interpretation, litigations are fewer in Nigeria and school regulations are mostly untested in the courts.

In those advanced countries, the courts have assumed the role curbing the excesses of the administration. However the court will intervene only when the matter is "ripe" for judicial review and usually after a dissatisfied litigation has exhausted the domestic procedure for pursuing his grievance. It is pertinent to observe that where the court is called upon to intervene, it will carefully refrain from legislating school policies or recasting school legislation. Where complaints arise, for example, from Governing Council's discretion in making rules, policies and procedures for students, the court looks to the reasonableness of the action and rarely substitutes its wisdom for that of management. Courts are most reluctant to overturn school management's decisions unless they clearly breach the manifest intent of the law or the bound of reason. The test of "reason" however, has no application where the case clearly involves the denial of interference with a constitutional right. The court will insist on the constitutionality of the school regulation or action, compliance with laid down procedure, due process and the rules of natural justice.

Schools disciplinary measures are open to judicial scrutiny on both substantive and procedural grounds of law. Some of the legal principles employed to test the validity of disciplinary measures are:

- (1) Constitutional appropriateness (e.g. whether it infringes on fundamental rights or any other enshrined provisions of the constitution).
- (2) The doctrine of Ultra Vires (e.g. whether it conflicts with an overriding legislative enactment or can be struck down on the ground of "ambiguity", "vagueness" or "unreasonableness").
- (3) Compliance with the twin principles of Natural Justice i.e. *nemo iudex in causa sua* and *audi alteram partem* (the requirements that no man should be a judge in his own cause and that the other side must be heard).

For instance, in *S. J. Bamigbade and 9 others vs. Vice-Chancellor, Obafemi Awolowo University (OAU) and 2 others*, where concerned undergraduate students challenged the "Dress Code" prescribed by the authorities of their universities on the grounds of a violation of provisions of the constitution of the Federal Republic of Nigeria and inhibition of their freedom and right to privacy. In granting an order of interim injunction restraining the University from implementing the "Dress Code", Awotoye J. declared inter alia that:

The Dress Code issued by the Respondents dated February 21. 2002 with Reference No. R. DCS/PRO/Z is most unwarranted, unfair, discriminatory, oppressive, baseless, a gross violation of the rules of Natural Justice and of the applicant's respective constitutional rights, unlawful, unconstitutional, null and void.

It was similarly declared that any harassment's intimidation, threats and/or insults by any university lecturer or official or any other person (including the Respondents and their agents) against the Applicants is an undue, unwarranted and gross infringement on the Applicants Fundamental rights.

Even though the order of interim injunction "restraining the University, from preventing or excluding any of the students from their respective lectures, and hostels" consequent upon the Dress Code was eventually discharged and the status quo ante restored, yet the case has opened up a discussion on the propriety or legality of the dress code instrument in many universities campuses.

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Another case in point is Jackson vs. Dorrier . The Metropolitan Board of Education of Nashville and Davidson, Tennessee country, USA, adopted a regulation in 1961, which inter alia states as follows:

Pupils shall observe modesty, appropriateness and neatness in clothing and personal appearance. A student is not appropriately dressed if he is a disturbing influence in class or school because of his mode of dress.

Moreover, couples have requested for a child with built in guarantees. Under this regulation, the students at Donelson High School were told as to the type of hair which male students should have, such that the "hair in the front may not come below the eyebrows, ears must show clear of hair, and hair in the back is to be tapered and not be long enough to turn up". Two male students, Michael Jackson and Barry Steven Barnes, who were members of a combo band known as "The Purple Haze", permitted their hair to grow longer than prescribed by school officials, earning moustaches and beard.

After conferences with the students and their parents, the students were suspended by the principal and sent home for violation of the regulation. After additional conferences were conducted before the Board of Education, the Board sustained the action of the principal. The students brought this action to ask the court to guarantee their constitutional right. There was evidence by the school faculty that the wearing of excessively long hair by the said students actually disrupted classroom atmosphere and decorum, caused disturbances and distractions among other students and interfered with the educational process. It was held that the school regulation has a real and reasonable connection with the successful operation of the educational system and with the maintenance of school discipline. It was held further that the responsibility of maintaining proper standards of decorum and discipline and a wholesome academic environment at Donaldson High School is not vested in the courts but in the principal and faculty of the school.

Another notable case is Spiers vs. Warrington Corporation. A 13-year-old girl named Eva Spiers was a pupil at a Secondary school in Warrington and turned up at school in clothing, which the headmistress considered as unsuitable. She came in fact in jeans contrary to the rule relating to the suitability of clothing in the school. The mother's excuse was that the girl had two bouts of rheumatic fever. She had been advised by a doctor that the girl's kidney should be kept warm, and believed that jeans keep kidneys warmer than skirts.

The headmistress there upon asked the mother to produce a certificate to this effect. No such certificate was forth coming and the headmistress repeatedly requested for medical examination in the school, but Eva failed to turn up. The headmistress then decided to take a well-charged, but fairly exceptional course. Every time Eva came to school in slacks, the headmistress said to her in effect: "Now run along home, dear and come back properly dressed. As soon as you do, you can come into school". But Eva stayed at home in the morning and arrived at school again in the afternoon. The same conversation would take place and Eva would return the next morning. This went on for some months until the Warrington Borough County decided to prosecute the father for failing to send his child to school, as was his duty. The magistrate found him guilty and fined him. Mr. Spiers appealed maintaining that the magistrates were wrong in law, that he had sent his child to school, and that it was the perversity of the headmistress who was preventing Eva from receiving her education to which she was entitled. After considering a clause in the Articles of Government, which specified, "The headmistress shall control the internal organization, management and discipline of the school". Lord Chief Justice Goddard held inter alia, that:

The headmistress obviously has the right and power to prescribe the discipline for the school... There must be somebody to keep discipline, and of course that person is the headmistress.

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In other words, the school rule relating to dress was part of the law of the land and justifiable before the courts.

5. Conclusion

Despite of the rules moderating student dressing on university campuses across the continent in general and in Africa in particular, certain observable factors have influenced compliance or non-compliance, as the case may be. While some male students are daily tearing down ethical and moral values by wearing plaited or curled hair, ear rings, heavy bangles and weird dresses, some female counterparts go out in flimsy tops and skirts, exposing those parts naturally meant to be covered. It is therefore possible to isolate such precipitating factors like; absence of adequate administrative and legal structures for enforcement of rules; weakness of the home in terms of sound parental control. For instance, some parents see nothing wrong in all these. Family break up can produce children that hold sound morality with levity; lack of seriousness on the part of the authorities by paying a lip service to enforcement and sanctions; influence of foreign cultures causing permissiveness among college students and youths of the modern world. Moreover, the mass media have defeated all the struggles against nudity and moral pollution by airing such debasing programmes like *Big Brother Africa*. Furthermore, the irreligiosity of the campus environment and its dwellers; and the corruption of the campus environment that promotes prostitution, gangsterism, cultism, thuggery, drug addiction, moral decadence and other forms of indiscipline manifesting among campus students all over the world to make the dress code phenomenon a mission impossible.

6. Recommendations

All the above factors and more seem to have continuously frustrated the success enforcement of dress code for university students in Africa and even beyond. If this battle is lost as it seemed of the war against campus cultism and violence, especially in Africa where such is widely reported, then it is feared that the hope of raising a generation of reliable, morally decent, sound and dedicated professionals may have eluded us. We hope this is not true. So, in this spirit, we propose the following recommendations:

- (1) Giving the dress code campaign the widest publicity within and outside the campuses;
- (2) Strong structures for enforcement and prosecution;
- (3) Readiness of the entire society to combat the malaise head long;
- (4) Regular counselling;
- (5) Sound moral and religious instructions at home and in school right from the formative years; and
- (6) Cooperation of all stake-holders (parents, education managers, community leaders, the mass media and other relevant agencies), which, hopefully, can make dress code to take firm roots on campuses, even on the streets.

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