contribution to this whole area of study, and is highly recommended for both graduate-level and upper-level undergraduate courses covering National Security, Intelligence, and Privacy Law.

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A few years ago, I submitted a paper on appearance-based discrimination to a conference on employment law. An organizer explained they rejected the proposal because they wondered whether yet another scholarly discussion of appearance was really needed. Like legal scholars, judges also convey a view that legal protection of appearance practices is marginal and not at the core of antidiscrimination law and free speech law (at 7). Ruthann Robson recognizes this trivialization of legal aspects related to dress, grooming, and hairstyle, and by dedicating her book to the interconnections between dress and the Constitution, rejects it. Dressing Constitutionally: Hierarchy, Sexuality, and Democracy from Our Hair to Our Shoes, provides a fascinating survey of the various and often unnoticed ways in which constitutional law is intertwined with our dressing options and practices. Robson’s convincing argument is that “while we may casually assume that the Constitution affords us freedom to dress as we please, the Constitution cabins, channels, and constrains these choices” (at 7).

The book explores an impressively wide array of perspectives to understand the connections between bodily appearance practices and the Constitution. It reviews the scope of protection granted to dressing freedom by the constitutional free speech doctrine (can a school student wear a black armband to protest the Vietnam war?) and religious freedom (can Costco prohibit a retail employee from wearing body piercing, despite the employee’s claim that piercing is, for her, a religious practice?). Each chapter offers an in-depth analysis, meticulously researched and comprehensively argued, of the critical junctions at which the Constitution and its judicial interpretations played a role in designing dress options and dress freedom. Judges delineate, as Robson shows, the scope of constitutional protection (or lack thereof) of nudity and public exposure (Chapter 2); of non-conformist gender and sexuality appearance (Chapter 3); of employers’ requirements that their employees dress professionally (Chapter 4); and of attire mandated or made customary by religion (Chapter 6).

The book surveys the repeated judicial attempts to strike the correct balance between institutional prerogatives to control the appearance of students, employees, or prison inmates, and the individual rights of those students, employees, or inmates. As Robson shows, the judicial reasoning for seeing institutional appearance interests as more weighty than personal interests is often unconvincing (at 135). Judges, employers, or school principals who maintain that dress-rights are not located at the heart of individual freedom often argue: “It is only dress, and the employee or student or prisoner should not raise too much fuss about it.” But the employee, student, or prisoner can of course reply with the same coin: “If it is only dress, then why not let me wear what I want and avoid the dispute?”

The evocative rhetoric employed by judges in appearance cases demonstrates that dress and other appearance practices are far from trivial or insignificant. For example, in arguing against the right of school students to wear anti-Vietnam war bands, Justice Black,
in his dissent in *Tinker v. Des Moines Independent Community School District*, warns that "students all over the land are already running loose," objecting, as Robson points out, to a "new revolutionary era of permissiveness in this country fostered by the judiciary" (at 104). In contrast, Justice Fortas writes for the majority that "state-operated schools may not be enclaves of totalitarianism" (at 104). Robson’s examples prove that dress policies are far from trivial, but rather heavily loaded with particular ideologies and visions of society.

Robson dedicates a great deal of space and time to analyzing the social functions of dress regulation. Chapter 3 discusses the ways in which appearance regulation both reflects and sustains stability of gender rules. Schoolboys should have short hair, “promiscuously dressed” women are considered culpable of their own rape, and female employees should look feminine. Chapter 2 discusses another kind of dress regulation—that of public exposure, nudity, strip-dancing, and obscenity-rules. The chapter makes a compelling argument that such rules, and their judicial interpretation, have disparate impacts on women and sexual minorities. It is worth noting that dress codes are often unequally oppressive, and tend to limit the freedom of disempowered racial and socio-economic groups more than of dominant groups. Low-wage and unskilled employees are required to wear uniforms and are subjected to stricter dress codes than professionals or high-ranking employees (although, admittedly, the self-policing and overlap between professional and personal identity is higher the more senior the employee—this seemingly natural self restraint of appearance and behavior is what Bourdieu referred to by “habitus”). In the corporate world, people of color are required to do more work to camouflage their racial identity and look “professional” than whites (Kenji Yoshino has dubbed this implicit yet persistent requirement to play down one’s race or sexual orientation “covering”).

Robson takes great care in making the book accessible even to readers not well versed in American constitutional law. For example, because Robson is interested not only in the cultural symbolism of dress but also in the material conditions that define what materials we wear, how much they cost, and who produces them, she dedicates an analysis to the ways in which constitutional law served to support the cotton industry. She prefaces this analysis with a concise survey of the constitutional articles that legitimized slavery and slave trade. Similarly, she does not take for granted that her readers are familiar with First Amendment doctrine, and spends time in explaining how it has been understood in American constitutional doctrine (128–130).

Robson’s analysis extends beyond exploring the impact of constitutional protections on dress freedom and its social function, and provides historical and economic contexts. The first chapter of the book takes a historical perspective, by studying English dress codes since the fourteenth century. The review of laws pertaining to modesty, fur-wearing, head covers, and even forced tattooing of people considered loiters, powerfully demonstrates the myriad state interests in marking social class and sexual deviance. To give an illustration, Robson discusses a fifteenth-century Scottish law that forbade a woman to come to church “with her face hidden or muffled so that she may not be known,” and such face-cover would be confiscated by the king as penalty (at 13). Another statute, from a century later, asserted that “it be lawful for no woman to wear above their estate [i.e. dress above her social class] except whores” (at 13).

These examples demonstrate how the state uses its power to regulate dress to mark and sustain social identity. But Robson shows that the state also uses its authority to regulate trade and manufacturing in ways that shape our clothing options. The book ends with a

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fascinating discussion of material production and market aspects of clothes. Robson highlights the ways in which the Constitution shaped slavery structure, patent law, labor law, health and safety laws, and interstate commerce—all of which were central to industrializing cotton, cloth, and garment production and related services, such as laundry. The discussion would have been more complete had it also touched on the ways in which contemporary constitutional law shapes international garment trade, the limits it sets for labor standards in this industry, which often violates human rights, and employee safety. Advertisement regulation and limits on commercial speech also play a role in constituting the “citizen-consumer,” whose purchasing activities are understood as a central form of public participation and expression. Arguably, the fashion industry takes part in constituting subjects that are constantly dissatisfied with their appearance and their body, and feel unfit and in need of pressing self-improvement.

Robson powerfully establishes how the production conditions of clothes, America’s dressing practices, and legal rules governing freedom of dress, are all intertwined in minute and complex ways with constitutional governance. She shows that regulation of dress practices has been central to nation-building (“the notion that attire is capable of disruption presupposes...a normative community that is capable of being disturbed merely by a person’s attire or grooming” (at 103)), and played a role in shaping racial identity (e.g., courts examine whether a goatee or a mustache are an essential part of African-American identity (at 60)) and gendered power relations (e.g., in cases that legitimize institutional requirements that men look masculine and women look feminine (at 69)).

The book’s structure, gathering many, often unexpected, meeting points between constitutional law and dress practices, implies a larger conceptual argument, which emerges from the text, but is never made explicit. Namely, that American adjudication still lacks a comprehensive theory of the function and importance of symbolic aspects of personhood, such as dress, hair-style, or makeup. Robson points to the judicial condescension and impatience towards anyone raising claims about the importance of physical appearance, and rightfully criticizes such impulses. She notes that judicial treatment of dress suffers from “doctrinal incoherence, isolationism, and blurring” (at 3), as well as “uneven” (at 6) rules. But readers may still need a clear articulation of why it is essential that, as the book does, we juxtapose discussions that are seldom offered under one umbrella. Why is it worthwhile to discuss gender-based regulation of dress alongside the history of dress codes or the constitutional debates about cotton trade? What might be the reasons for the uneasy and trivialized relations between dress and law?

The book’s original analytical move—encompassing discussions of dress and the Constitution that usually occur under different and seemingly unrelated legal fields such as employment discrimination, religious rights, or labor standards—merits more direct justification. For example, the historical first chapter calls for a comparison between middle ages sumptuary laws, which openly required that class distinctions will be visible and clear through people’s appearance, and law’s legitimation of dress regulation by private actors such as employers. It would have been interesting to show how contemporary law sustains social hierarchy covertly, while denying


its socially stratifying effects, and their underlying ideology. According to current doctrine, every employee who does not agree to the employer’s grooming requirements is allegedly free to negotiate the employment contract or refrain from entering into it. This, of course, is a fictional depiction of the contractual freedom of employees, but the legal discourse on employee dress ignores this critique and denies the ways in which it sustains class, race, and sex distinctions. Readers may well identify the connections between past and present on their own, and the very placing of the two discussions in the same book invites them to do so, but an explicit exploration of the book’s premise that appearance has been manipulated to sustain conservative ideologies, would have tightened its thesis.

To give another example for the need to articulate the theory behind Robson’s analysis, by theorizing both symbolic and material aspects of dress, Robson seems to suggest that dress functions both semiotically—as signifier—and materially. But this suggestion is not made explicit. The book’s analysis neatly demonstrates that despite judicial rhetorical gestures about the marginal role of appearance vis-à-vis basic rights, it is impossible to relate to clothes as merely appearance—they are almost never pure speech, but also have material or instrumental functions. Indeed, appearance practices fulfill both instrumental (or material) and symbolic functions. Clothes keep us warm or protected from the sun, but at the same time convey our identity. Braiding cornrows in one’s hair does not only signify racial pride but is also a comfortable and practical way to manage curly hair.² In this regard too there would have been room for a more accentuated discussion of the ways in which the blurred line between material and symbolic aspects of dress challenges legal reasoning.

The trivialization, fetishization, and condensation of appearance to which Robson points, require that we try to explain why appearance cases produce such incoherent and under-developed legal doctrine.³

Dress challenges the law’s basic conceptual toolkit in several ways. For example, appearance practices destabilize the legal dichotomy between status and conduct. Legal status (e.g. citizenship, employment, or marital status) is relatively fixed, definite, and mostly outside one’s control, whereas conduct is fluid, changeable, and chosen. This is why, for instance, American courts have found it difficult to recognize a cross-dresser’s right to asylum.⁹ Cross-dressing has been viewed by the courts as volitional and mutable behavior, whereas asylum entitlement depends on status—membership in a persecuted social group.

The distinction between nature and culture is also destabilized by appearance practices. Thus, in one oft-discussed case, the employer required his black employee to relax her hair and do away with her cornrows. The court rejected her race-discrimination claim, noting that had the hairstyle in dispute been “afro” and not cornrows, it may have ruled for the plaintiff, as afro is natural, because there is no interference in how the hair grows, as opposed to cornrows, which are human-made.¹⁰

In addition, appearance challenges the distinction between body and mind, and between “external” and “internal” aspects of identity. In Goldman v. Weinberger,¹¹ for example, the Supreme Court produced a narrow account of religion, maintaining that yarmulke is not essential to religious freedom, thereby ignoring the embodied aspects of religious convic-

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⁹ Hernandez-Montiel v. INS, 225 F.3d 1084 (9th Cir. 2000) (recognizing a right to asylum of a Mexican applicant who suffered police brutality due to his non-gender conformity of dress, only after it was defined as a matter of identity, not of mere behavior).
¹¹ 475 U.S. 503 (1986). Discussed in Robson at 89–90 and 130.
tion, as well as the extent to which religious identity is partly constituted by signifying one’s religious identity through wearing religious head cover (at 129–130).

Moreover, when it comes to attire and hair, it is difficult to rely on law’s ability to rise beyond the particular and generalize: appearance preferences are often idiosyncratic and hard to articulate and put in a principled language of argument. It is often impossible to rationalize one’s hairstyle choice, or why one does not feel comfortable wearing makeup.12 Rights other than the right to choose one’s appearance do not require their claimers to provide a convincing reason for exercising them. Free speech protection does not depend on the content of the speech. Property rights, for example, trump almost any conflicting interest, without requiring the desirability of the usage sought by the property owner.

One could design an argument in the vein of the Critical Legal Studies approach, that doctrinal incoherence and indeterminacy is typical of law in general, and not specific to dress law. Yet I believe that Robson, although her method is influenced by critical legal studies, would reject this view and maintain that there is indeed something particular to the challenges dress presents to legal thinking.13 While the view that appearance is sui generis is implicit in her choice to dedicate a whole book to dress and law, it is never made explicit. Perhaps it is the impressive scope of this project that, paradoxically, makes it harder to find the common ways in which appearance cases in different legal fields challenge legal thinking in similar ways. The last chapter’s discussion of the commerce clause doctrine and cotton production, while fascinating, raises different questions from those raised by designing the scope of citizens’ freedom of dress.

The book manages to establish the claim that appearance and constitutional law are intertwined in multiple and unexpected ways, which have direct implications on hierarchical structure, sexual identity, and democracy. Yet, the even bolder claim made in the introduction, that “our attire reflects the Constitution, including its text and controversial doctrine” (at 7), is left underdeveloped.

Dressing Constitutionally is an essential read for constitutional lawyers and scholars, as well as for feminist researchers, and sociologists of clothes and bodily practices. Legal historians and labor and trade experts will also find it relevant and innovative. In her acknowledgments, Robson indicates that she left out of the book the personal experiences that shaped her understanding of this topic. I hope that she finds a venue in which to publish these personal accounts, because if they are written nearly as compellingly as this book, we will surely learn much from them. To revisit this book’s theme might also provide a chance to develop an independent theory of dressing. The interrelations between dress and law, as I have suggested above, invite articulating what makes dress such a challenging and fascinating issue for legal thought. There is more to explore here, and Robson is the right person to embark on this exploration and help us further understand the peculiar and central role of dress.

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Constitutional identity is one of the trendy and hot topics of the last decade for consti-

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12 See Jespersen, 392 F.3d 1076 (finding that requiring that female employees wear facial makeup does not place an unequal burden on women).

13 I discuss additional legal dichotomies that appearance practices challenge, such as the difference between chosen and unchosen appearance practices, and between poetic and argumentative language, in Tirosh, supra note 7, at 121–122.