RESPECTABLE DISCRIMINATION: 
DISCIPLINARY RESPECTABILITY AS ACCEPTABLE PREJUDICE

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ABSTRACT

Tamar Malloy: Respectable Discrimination: Disciplinary Respectability as Acceptable Prejudice
(Under the direction of Jeff Spinner-Halev)

Marginalized groups’ adoption of the politics of respectability has been intended as an assertion of humanity, dignity, and a right to self-determination. With disciplinary respectability, dominant groups have flipped that script, using non-compliance with respectability norms as a justification for misrecognition and exclusion. This project explores the ways in which disciplinary respectability is enshrined in laws, institutional policies, and social norms. It argues that excluding expressions of identity from anti-discrimination law, and providing protection only for those aspects of identity that are considered immutable, means that these laws fail to offer meaningful protections. It further contends that disciplinary respectability masks and reproduces prejudice, harms marginalized groups and group members, facilitates ongoing discrimination and inequalities, and conceals systemic oppression.

This study proceeds in three parts. First, it explores the ways in which United States antidiscrimination law, most notably Title VII of the Civil Rights Act of 1964, permits for respectability-based employment discrimination. It argues that the structure and interpretation of the law—particularly the standards of disparate treatment, disparate impact, bona fide occupational qualifications, community norms, and immutability—allows employers and judges to discriminate on the basis of identity by masking those prejudices in rhetorics of respectability. Second, it explores schools’ use of respectability requirements—policies whose purpose is to
require compliance with white middle-class behavioral norms of respectability. It argues that these policies teach a narrow concept of respectability, normalize the idea that people who deviate from respectability are deserving of punishment and exclusion, and are counterproductive to a multicultural, democratic state’s interest in developing citizens with an understanding of and ability to navigate difference. Lastly, it turns to the National Basketball Association’s 2005 implementation of a racially coded player dress code. It describes how the NBA drew on rhetorics of respectability to justify the implementation and enforcement of the code, and uses the cases of Allen Iverson, LeBron James, and Russell Westbrook to explore the ways in which individuals navigate respectability requirements in the face of powerful institutional demands.
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INTRODUCTION

Respect takes many forms—recognition, esteem, dignity, honor, credibility, self-worth, and so on—and its presence or absence does much to organize our world. Respect in all its forms is inherently interpersonal. We experience respect, or the lack thereof, through interactions with the people and institutions around us. Those who generally do experience respect will have better life chances than those who do not. Conversely, people who are denied respect (or at least denied respect from the right people) will find themselves coming up against social and institutional barriers that affect their educational and economic opportunities, their standing with the law, their autonomy, and their sense of well-being. Given the consequences, judgments about who is deserving of respect is a high-stakes matter.

The theoretical literature suggests that some types of respect are due to everyone and that some types are earned on the basis of our values and behavior.¹ In practice, respect is also given

or denied on the basis of our identities. Members of some groups will be met with a presumption of respect, while members of others will be met with skepticism or a presumption of disrespect.² Group distinctions are further parsed through judgments about how people perform their identities, whether they appear to embrace or reject their belonging to marginalized groups. Enter respectability.

Iris Marion Young defines respectability as “consist[ing] in conforming to norms that repress sexuality, bodily functions, and emotional expression.”³ These basic tenets are made manifest in a number of behavioral edicts: “the respectable person is chaste, modest, does not express lustful desires, passion, spontaneity, or exuberance, is frugal, clean, gently spoken, and well mannered.”⁴ All of these terms are subjective; what it means to be chaste, passionate, spontaneous, well-mannered, and so on depends on the circles within which one moves. Yet in any given nation, dominant groups’ standards of behavior will take precedence, acting as a standard of judgment that is derived from, and therefore favors, men over women, the bourgeois or middle classes over the working class, dominant racial and ethnic groups over marginalized racial and ethnic groups, dominant religious groups over marginalized religious groups, heterosexuality over queerness, able bodies and minds over disabled bodies and minds, and so

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⁴ Ibid. 136.
on.\textsuperscript{5} To suppress bodily and emotional urges and be respectable, George Mosse writes, is to be civilized, decent, and moral by these dominant standards, and therefore to be affiliated with the group that is considered most deserving of authority, power, emulation, and respect.\textsuperscript{6} In the United States, this has meant that respectability comes from and is most familiar to, according to Young, “White Anglo heterosexual middle-class men.”\textsuperscript{7}

Yet respectability is not just about group membership \textit{qua} group membership. It is about the behaviors associated with a particular group and the rewards attached to those behaviors. Though white Anglo heterosexual middle-class men will find it easiest to perform respectability, it is possible (though relatively difficult) for them to reject or fail to perform respectability, and to lose the presumption of respect that comes with it. Conversely, it is possible for at least some members of other groups to perform respectability by adopting respectable norms. By taking on respectable modes of dress, speech, comportment, and interaction—dropping an accent, adopting Western-style business dress, trading hugs for handshakes, and so on—members of marginalized groups can, conceivably, become respectable, and gain the privileges associated with respectability.

But respectability is neither desirable nor possible for every member of a marginalized group. Some group members will find it impossible or prohibitively difficult to perform. Accents, large bodies, and “wild” or “untamed” hair are not respectable, but vocal training to change one’s accent or intonation is not a simple or inexpensive prospect, nor is changing the shape and size of one’s body, nor is the time, pain, and expense that goes into hair-straightening

\textsuperscript{5} George L. Mosse, \textit{Nationalism and Sexuality: Respectability and Abnormal Sexuality in Modern Europe} (New York: Howard Fertig, Inc., 1985); Young.

\textsuperscript{6} Mosse.

\textsuperscript{7} Young. 140.
for black women. Some other group members will be unwilling to perform respectability, either because they do not believe they should have to, because the modes of presentation they would give up are too important to them, or because they want to make a political statement about identity. Still others may not perceive or may not understand respectability demands.

What the use of respectability does, then, is to shift the focus from group identity to individual behavior. It provides standards and tools through which members of a marginalized group might assimilate into dominant groups, at least enough to improve their life chances. It supports white supremacy, patriarchy, homophobia, ableism, and other forms of discrimination by creating a system wherein, as Kenji Yoshino writes, “individuals no longer needed to be white, male, straight, Protestant, and able-bodied; they needed only to act white, male, straight, Protestant, and able-bodied.”

The implications of this shift are significant. While overt discrimination has become increasingly taboo in the United States, adherence to dominant norms of respectability undermines the possibility of meaningful legal, social, and economic equality. Where overt discrimination is illegal or inadvisable, similar ends can be accomplished by policies that favor dominant respectability norms and those willing and able to perform them. I call these policies “respectability requirements.” Even when such policies have discriminatory effects, they can be concealed with references to ostensibly neutral terms like “professional,” “well-mannered,” or “a good fit.” I call these strategies “rhetorics of respectability.” The use of respectability requirements and rhetorics of respectability create socially and legally acceptable structures through which systems of oppressive discrimination are maintained and reinforced. The core

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9 Ibid.; Young.
project of this dissertation is to describe and critique the ways in which respectability functions to deny rights, limit opportunities, discipline the performance of identity, and provide cover for and perpetuate ongoing inequality and discrimination.

**Respectability: From Politics to Discipline**

While this dissertation focuses on respectability as a discriminatory tool, it has a substantial political history as well. The terms “respectability politics” and “the politics of respectability” reference this history. However, respectability politics have usually referred to intragroup use of respectability norms as a political strategy for marginalized groups, rather than as an intergroup method of discipline wielded against those same groups.

Evelyn Brooks Higginbotham first coined the term “politics of respectability” in her work on women’s activism in Reconstruction-era black Baptist churches. Higginbotham describes “a deliberate, highly self-conscious concession to hegemonic values,” an “adherence to temperance, cleanliness of person and property, thrift, polite manners, and sexual purity [that] served to refute the logic behind their social subordination.”\(^{10}\) These performances of respectability were intended as “explicit rejections of Social Darwinist explanations of blacks’ biological inferiority to whites. Respectability was perceived as a weapon against such assumptions, since it was used to expose race relations as socially constructed rather than derived by evolutionary law or divine judgment.”\(^{11}\) Similar strategies continued throughout the 20\(^{th}\) century: the distribution of pamphlets by the Detroit Urban League during the Great Migration urging respectable appearance as a step toward maintaining a tenuous peace with white neighbors; the organization

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\(^{11}\) Ibid. 192.
of schools for domestic workers in the hopes that teaching domestic workers to perform respectability would undermine the stereotypes of hypersexual black women, protect them from sexual assault, and position them to serve as positive representatives of their race in elite homes; and the creation of housing improvement programs that were focused on demonstrating the potential of black communities to be respectable as part of a larger program of racial uplift.\textsuperscript{12}

The politics of respectability have appeared in other identity-based social movements as well. Michael Warner writes critically about the mainstream gay rights movement’s adoption of a politics of respectability that erases queer radicalism in favor of centering marriage and emphasizing assimilation. This movement, led predominantly by white men who could and did use respectability to organize political rhetoric and strategy, has largely left behind less-respectable goals and community members. Warner cautions, “the problem, always, is that embracing this standard merely throws shame on those who stand farther down the ladder of respectability.”\textsuperscript{13}

Even as the politics of respectability have yielded a certain kind of success, wherein some members of marginalized groups have gained seats at the elite table, it comes with substantial costs: intragroup divisions, respect that is contingent on adherence to dominant respectability norms, and an implicit understanding that failure or inability to perform respectability is grounds for disrespect and its attendant consequences. Within the gay rights and civil rights movements, the politics of respectability have come to be derided by some as hypocritical, a form of victim-


blaming, a source of historical revisionism, and an acquiescence to dominant power structures that undermines the potential for meaningful change.¹⁴

The politics of respectability have also substantiated the idea that there are “good” group members and “bad” group members—those who are respectable, and those who are not. The use of these strategies has placed group members along Warner’s “ladder of respectability,” and those classifications have travelled beyond the groups themselves. Respectability, and the related division of marginalized group members into the good or the bad, the deserving or undeserving, has been taken up by dominant groups who use it to engage in intergroup policing.

In talking about respectability, I use it in this latter sense—as a disciplinary tool on the Foucaultian model, one which is intended “to supervise the individual, to neutralize his dangerous state of mind” and to create punishments that have “a justifiable hold not only on offences, but on individuals; not only on what they do, but also on what they are, will be, may be.”¹⁵ As with Foucault’s description of embodied discipline, respectability ensures that “the body is also directly involved in a political field; power relations have an immediate hold upon it; they invest it, mark it, train it, torture it, force it to carry out tasks, to perform ceremonies, to emit signs.”¹⁶ In so doing, “power is not exercised simply as an obligation or a prohibition on


¹⁶ Ibid. 25.
those who ‘do not have it’; it invests them, is transmitted by them and through them; it exerts pressure upon them, just as they themselves, in their struggle against it, resist the grip it has on them,” and therefore “these relations go right down into the depths of society,” encompassing law, public and private institutions, interpersonal relations, and an internalized sense of how the world works. In this form, respectability is often not, as Higginbotham described with regard to the politics of respectability, “deliberate” or “highly self-conscious.” Those who make use of respectability may do so unknowingly. Rhetorics of respectability and respectability requirements are powerful in part because those who create, use, and support them may be—often are—unaware of the relationship between respectability and oppressive structures, even as they replicate and enforce disciplinary respectability.

Four Facets of Respectability

The following are four facets of respectability that make it especially subtle and powerful as a disciplinary tool. I reference or implicate these more and less explicitly throughout the chapters that follow; all are present when respectability is at work. They are outlined below for clarity.

- Respectability is individualistic. Many, if not all, successful fights for equality have been organized around shared social, historical, and political identities that motivate group members to pool resources toward shared goals. However, respectability is, supposedly, distinct from group identity, a matter of individual choice and grounds for individualized judgment. Respectability is more available to those who do not dress in ways, engage in

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17 Ibid. 27.
grooming practices, or demonstrate behaviors that mark them as part of a marginalized group. It therefore produces intragroup hierarchies and creates incentives for group members to reject group norms in favor of assimilating to dominant respectability norms. Both of these outcomes encourage group members to reject or minimize their attachment to the group. Such divisions undermine group cohesion, which in turn undercuts the possibility of effective and inclusive political mobilization.

- **Respectability pretends to universality.** While behavioral norms of respectability are rooted in historically and culturally specific contexts, they are nominally detached from identity categories. Respectability is rarely identified as coming from white people, men, Protestants, heterosexuals, and the able-bodied. Rather, it is associated with being “professional,” “well-mannered,” “proper,” and other terms that connote an ostensibly identity-neutral judgment of worth. Adhering to and enforcing respectability is not, therefore, explicitly a matter of privileging dominant groups’ norms over marginalized groups’ norms. Instead, it trades on the idea that respectability is available to anyone who chooses it.

- **Respectability is rewarded.** Performing respectability is not an end unto itself. To be respectable is to gain access to social, political, and economic resources. Even—perhaps especially—when extended to people with marginalized identities, respectability can produce a sense of stability and security. Conversely, failing or refusing to adhere to dominant standards of respectability minimizes one’s chances of finding stable and remunerative work, of being treated well by others, and of being presumed worthy of respect in interactions with the police and legal institutions. Learning and conforming to dominant respectability norms is therefore heavily incentivized.
• *Respectability is self-reproducing.* Respectability acts as a gatekeeping mechanism. Those who do not support and successfully perform respectability do not gain the social, institutional, or legal power to change standards of respectability or the use of respectability as a basis for judgments. Those who do support and successfully perform respectability are more likely to end up in positions of power that allow them to set, teach, and enforce norms. They are also incentivized to require it of those they oversee, look for it in those they associate with, teach it to successive generations, and evince rhetorics of respectability that suggest individual choices, rather than systemic oppression and institutionalized discrimination, are responsible for individual outcomes. This support for and propagation of respectability norms is itself part of performing respectability—a proclamation of one’s understanding that the performance of dominant respectability norms is an accurate heuristic for judging worthiness, and an agreement to continue using respectability to reproduce and enforce respectability-based discrimination.

**Rights and Institutions**

Respectability is transmitted and enforced on every level. I think of it, again, on the Foucaultian model – as “not univocal” but “defin[ing] innumerable points of confrontation.”\(^{18}\) The experience of respectability on internal and interpersonal levels is an undoubtedly important part of this, but it is not the focus of this dissertation. I focus here on how respectability is transmitted through laws and institutional policies. I argue that respectability is empowered by

\(^{18}\) Ibid. 27.
legal structures, and that formal rights are an appropriate and essential tool in combatting discriminatory practices that substitute respectability for more overt identity-based distinctions.

This is not an uncontroversial stance. Theorists have argued that fighting for rights, and especially making rights the focus of social movements, can be counterproductive and dangerous on a number of counts. While Wendy Brown does believe that rights can be useful in articulating and taking a pragmatic approach to ameliorating injustice, she is nevertheless concerned that “the state achieves a good deal of its power through its devious claims to resolve the very inequalities that it actually entrenches.” Similarly, Nancy Fraser is critical of the ways in which laws can inscribe and justify inequalities when they “mark the disadvantaged as inherently deficient and insatiable,” a point that critical race theorists have also remarked on with regard to the law’s ability to define categories and use them for exclusion, including in support of derogatory stereotypes. Dean Spade argues that focusing on rights reifies the centrality of respectability, both because one needs to be respectable to make claims within respectable institutions and because those institutions are friendliest to goals that prioritize the needs of respectable groups over those of the most marginalized. Many critics, most notably Kimberlé Crenshaw, point out


that the law has often been inadequate to the task of accounting for the intersections between multiple marginalized identities, and has foreclosed rather than facilitated claim-making by those who do not fit neatly into a single legally-determined identity category.\textsuperscript{22} Others have noted that while the construction of identity groups can encourage political mobilization, it can also redirect political energies and disadvantage some members of marginalized groups.\textsuperscript{23} These are all incisive and valuable critiques.

Nevertheless, I maintain that formal rights are an important focus, both theoretically and practically. I contend that there is much to be gained by restructuring rights rather than foreclosing the possibility of pursuing them. Indeed, one of the advantages of considering respectability as a lens of analysis is that it is necessarily intersectional and multiple, that it resists an approach to rights that is predicated solely on group belonging, and that it therefore has the potential to complicate and build on many of these criticisms.

Furthermore, I maintain that the practical advantages of formal rights outweigh the liabilities. First, rights can be made enforceable and they therefore give groups a basis for claim-making. Second, rights carry discursive weight, and changes in the law suggest what is or is not acceptable in institutional policy-making and interpersonal interactions. Third, rights provide a measure of legal, economic, and psychic security that is not otherwise obtainable except, perhaps, through the sort of extreme wealth not usually available to members of marginalized


groups. For the vast majority of people who need to work and cannot buy property outright, it is much easier to live openly and honestly, as an individual and as a member of marginalized groups, if one is protected against being evicted, fired, or denied a job because of it.

Rights can empower, and the lack of them, or the lack of meaningful ones, can disempower. They can contribute to security or precarity. That they are imperfect is not reason enough to abandon them. Instead, I argue here that considering how respectability works is an important part of ongoing quests to make formal rights more inclusive, meaningful, and effective.

The Disciplinary Power of Respectability

Disciplinary respectability has changed the way discrimination works in the United States. While overt prejudice is no longer widely acceptable, respectability requirements and the rhetorics of respectability keep discriminatory systems and attitudes in place. This undermines strides toward legal, social, and economic equality that marginalized groups have fought for over decades, sometimes centuries. The following chapters explore the ways in which respectability requirements and rhetorics of respectability conceal, produce, and authorize discriminatory attitudes at the expense of marginalized group members’ well-being and life chances.

In the first chapter, I explore the ways in which antidiscrimination law, particularly Title VII of the Civil Rights Act of 1964, permits for respectability-based discrimination (i.e., the use of respectability requirements). I examine how the structure and interpretation of the law—particularly the standards of disparate treatment, disparate impact, bona fide occupational qualifications, and community norms—allow judges to differentiate between respectable and non-respectable employees, and contend that judges are effectively able to extend protections to
respectable employees while denying them to employees who do not correctly perform respectability. I also look to the court’s use of immutability as a standard in determining who gets protections, the court’s lack of context for determining whether and how dress and grooming are tied to group identity, and the gatekeeping effects of respectability requirements. Lastly, I turn to proposals for minimizing the effects of disciplinary respectability in the case of employment discrimination.

In the second chapter, I turn to the use of respectability requirements in schools. I discuss the ways in which respectability requirements diminish children’s opportunities for expression and shape the process of identity formation. Though schoolchildren, as minors, do not have a legal right to expression or legal protection from respectability requirements, I contend that their explorations of identity should nevertheless be protected. I argue against the creation and enforcement of respectability requirements in schools on two grounds. First, as an abdication of adults’ responsibility to nurture children as they are growing into adult citizens. Second, because of the potentially chilling future effects on liberal, pluralistic, democratic societies that respectability requirements may have as a result of teaching children that differences in appearance and expression are grounds for disapprobation and exclusion.

In the final chapter, I look to the National Basketball Association’s 2005 implementation of a racially coded player dress code. I take as a starting point that the creation and enforcement of institutional respectability requirements is a consequence of the limited purview of identity-based legal protections described in chapter one. I describe how the NBA drew on rhetorics of respectability to justify the implementation and enforcement of respectability requirements in a primarily black league, and the ways in which the dress code reproduced disciplinary respectability through the messages the dress code sent to different types of viewers. Then I draw
on coverage of and interviews with three players to consider how they navigate the harms and incentives of respectability. I conclude with a consideration of the larger discursive implications of this process of regulation and resistance. I contend that even when individual players have been able to navigate respectability demands, the NBA’s largely unrestrained institutional power allows the league to regulate black bodies literally and symbolically, such that millions of viewers are continually reminded that respectability should be a legitimate precondition of respect.

Together, these chapters demonstrate the ways in which respectability requirements and rhetorics of respectability are used to mask and reproduce discriminatory attitudes and outcomes. They provide studies of how disciplinary respectability operates in different contexts, even as the core mechanisms remain largely the same. Though each case complicates the question of how respectability operates, all contribute to the same overarching conclusions: the disciplinary use of respectability harms marginalized groups and group members, facilitates ongoing discrimination and inequalities, and conceals systemic oppression.
1. RESPECTABILITY AT WORK: THE LIMITS OF ANTI-DISCRIMINATION LAW

In the United States, anti-discrimination law is designed to safeguard employees from being disadvantaged on account of their race, color, sex, religion, national origin, age, disability, marital status, political affiliation, genetic information, or if they are pregnant. Employees who have been discriminated against on these counts can sue their employers for civil damages.¹ Winning an employment discrimination suit is another matter, however. In order to prove that they have been discriminated against, employees have to prove that they were negatively affected on account of belonging to a protected class. Rhetorics of respectability and the structure of antidiscrimination law make this difficult to do. Employers can effectively circumvent antidiscrimination claims by framing workplace respectability requirements as neutral policies that apply to everyone equally, even when they affect members of some groups more than others. Courts can and do support this approach, using similar logic in conjunction with parts of the law that create broad latitude for judicial interpretation. Both of these dynamics were at play in the case of Jespersen v. Harrah’s.

Over the course of a twenty-year career at Harrah’s Casino in Reno, Darlene Jespersen was known as an “outstanding employee” whose “supervisors commented that she was ‘highly effective,’ that her attitude was ‘very positive,’ and that she made a ‘positive impression’ on Harrah’s guests.” Customers “repeatedly praised” her, saying that her “excellent service and

good attitude enhanced their experience at the sports bar and encouraged them to come back.”

Even though, her lawyer later wrote, it “is rare indeed in employment discrimination cases that
an employer never suggests even once that the plaintiff was less than stellar in job performance;”

Jespersen had “an exemplary employment record” with “positive annual reviews by her
supervisors and copious unsolicited ‘guest comments’ over the years [which] showed that
Harrah’s Sports Bar patrons were more than pleased to buy their drinks from her and enjoy the
warm, friendly atmosphere she inspired at the bar.”

Living in Reno, “essentially a company
town,” Jespersen—who had started as a bar back and stayed with Harrah’s through her
promotion to bartender and for many years since—liked her workplace, felt respected by her
customers and colleagues, and showed every intention of staying in the position indefinitely.

That changed when Harrah’s instituted a new “Personal Best” program at twenty of its
hotels and casinos, including the one where Jespersen worked. The program required that “All
Beverage Service Personnel, in addition to being friendly, polite, courteous and responsive to our
customer’s needs…. must be well groomed, appealing to the eye, be firm and body toned, and be
comfortable with maintaining this look while wearing the specified uniform,” which, in
Jespersen’s case, required a white shirt with black vest and pants and black shoes with skid-proof
soles. Male bartenders were required to keep their hair cut above the top of their shirt collars and
to keep their hands and fingernails clean and neatly trimmed, and they were not allowed to wear
nail polish or makeup. Women were required to keep their hair “teased, curled, or styled every

2 Jespersen V. Harrah's Operating Company, 392 F.3d 1076 (9th Cir. 2004), Federal Reporter, 3d Series (United States Court of Appeals, Ninth Circuit, 2004).


4 Ibid.
day” and it had to be “worn down at all times, no exceptions.” They also had to wear blush, powder, lipstick, and mascara, and were restricted in their choice of jewelry, stockings, and nail polish.5 Both men and women were given mandatory professional makeovers, where they were shown how to groom themselves in order to look their “Personal Best.” At the end of the makeover, employees were photographed—one photograph from the shoulders up, and one full-body shot—for the purposes of comparison, as supervisors checked employees’ appearances daily against the photographs to ensure that they were performing to their “Personal Best.”6

The “Personal Best” program is a prime, and especially overt, example of a respectability requirement—a policy that does not serve a necessary functional purpose, but is instead primarily intended to compel the performance of respectability norms. Requiring construction workers to wear hard hats or requiring dentists to wear gloves (or, for that matter, a policy that only required bartenders to wear skid-proof shoes) would not qualify as a respectability requirement. A policy requiring construction workers to wear khakis and button downs, dentists to wear high heels, and bartenders to wear a full face of makeup every day would qualify as a respectability requirement because these aspects of presentation are incidental to the substance of the job. While employers often maintain that respectability requirements do serve a business purpose, they are generally referring to a business motive that is itself produced by and meaningful in relation to respectability, such as attracting a particular kind of clientele, a motive of which courts are generally skeptical when it comes to antidiscrimination suits. Regardless of


6 Selmi; Pizer; Christensen; Mary Anne Case, "Legal Protections for the "Personal Best" of Each Employee: Title VII's Prohibition on Sex Discrimination, the Legacy of Price Waterhouse V. Hopkins, and the Propsect of Enda," Stanford Law Review 66 (June 2014) 1333-1380.
whether these are legally, economically, or philosophically supportable motives, they underscore the importance and centrality of respectability in the workplace, and therefore within the public sphere.

Though she initially complied with her employers’ new respectability requirements, they made Darlene Jespersen deeply uncomfortable. In an op-ed in the Reno Gazette-Journal she wrote that, due to the new policy, “I had to fit into rigid stereotypes that felt demeaning and humiliating to me. I felt I was no longer a respected, skilled, employee. Instead, I had to become a sex object.” Jespersen also suggested that the policy made her job more difficult because the makeup requirement reduced her credibility with patrons, including the drunk men who, as a bartender, she had to cut off, some of whom later wrote to Harrah’s to say “that Jespersen had done the right thing, tactfully but firmly,” which Jespersen felt was possible in part because of she looked and felt on the job before the “Persona Best” policy. She stopped wearing makeup to work and was fired. Though losing her job was financially and mentally costly, Jespersen “felt that it would have been a higher price to pay if I had stayed there and let them humiliate me.” She maintained that this was the case even though leaving Harrah’s meant a switch from one full-time, long-term, stable job to two or three part-time, lower-paid, less stable jobs, and a reduction in her security and comfort.

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9 "Jespersen V. Harrah's Operating Company."; Pizer; Christensen.

10 Christensen.

11 Pizer.
for her, and made her feel so much less respected, genuine, and competent, that she was ultimately willing to accept those costs.

Jespersen sued, unsuccessfully, on the basis of gender discrimination under Title VII, which prohibits discrimination on the basis of sex, race, religion, and national origin when employees can prove that they were qualified for the job in question and experienced adverse treatment in employment because of their belonging to one of those protected classes.\(^\text{12}\) She pointed out that “The men who worked by my side did not have to conceal their faces. Harrah’s considers them professional when they look like themselves” and said that the case was “about Harrah's judgment that women cannot be professional and presentable unless they alter their faces to create a particular, ultra-feminine look.”\(^\text{13}\) The District Court ruled in favor of Harrah’s, granting their motion for summary judgment on the grounds that the policy did not discriminate on the basis of an immutable characteristic of Jespersen’s sex, that it imposed equal burdens on men and women, and because precedent prohibiting discrimination on the basis of “sex stereotyping” did not apply to grooming standards. The Ninth Circuit affirmed the decision, rejecting the District Court’s ruling that grooming policies could not be discriminatory under Title VII but holding that Jespersen had not adequately demonstrated that the policy was more burdensome for women. The Circuit Court reviewed the decision en banc and reaffirmed that, while grooming standards could be discriminatory, Jespersen had failed to demonstrate that Harrah’s “Personal Best” program imposed an unequal burden on women on the basis of sex or that their appearance standards were motivated by sex-stereotyping. In short, Jespersen failed to demonstrate that the policy imposed undue burdens on women as such, and therefore failed to


\(^{13}\) Jespersen.
demonstrate that it violated Title VII.\textsuperscript{14}

This mode of claim-making, and decision-making, is not unusual. In order to make claims of workplace discrimination, employees must tie their grievance to one of the categories of identity protected by Title VII, the Age Discrimination in Employment Act, or the Americans with Disabilities Act, or sometimes to state or local statutes. The question of what constitutes a protected identity is complicated, and judicial decisions vary substantially as to whether matters of appearance and affect—the way that people dress, groom, speak, walk, and otherwise express themselves—are part of the immutable identities protected under United States antidiscrimination law.\textsuperscript{15} Legally, Jespersen could not have made a claim based on her feelings of humiliation, alienation from her sense of self, or the idea that the policy’s daily inspections were an intrusion into her privacy and autonomy.\textsuperscript{16}

Jespersen—and the court, and Harrah’s—also could not explicitly broach questions of respectability, even though allusions to respectability appear repeatedly in Jespersen’s comments on the situation. She says that her case has to do with what Harrah’s deems “professional and presentable,” and with the provision of “efficient, friendly service from neat, clean, competent


staff.”  

This language is reflected in briefs from Jespersen’s legal team, which stress her exemplary work performance, and in the Ninth Circuit’s discussion in the case, wherein they describe the policy as being “aimed at creating a professional and very similar look” for bartenders and considered the “reasonableness” of Harrah’s policy.  

This language, used throughout the course of Jespersen v. Harrah’s, is consistent with Iris Marion Young’s definition of respectability as the expected “virtues and behavior of the ‘professional,’” who shall be “clean and ‘clean-cut,’” “without undue expression” but with “an affable cheer.”  

The meanings of these terms may be different for men and other dominant groups—white people, straight people, Christian people, middle- and upper-class people—than for marginalized groups—women, non-white people, queer people, religious minorities, working-class and poor people, and so on. Young writes that:

Despite the claim that professional comportment is neutral, it is in fact the product of socialization into a particular culture. White Anglo heterosexual middle-class men are most socialized into this culture, whereas women, Blacks, Latinos, poor and working-class people, gay men and lesbians, tend to exhibit cultural habits that deviate from or conflict with professional culture….These groups promote a positive culture among themselves that has more “colorful” or expressive styles than are deemed appropriate in straight professional culture.

In the western business world it is the narrow, dominant iteration of respectability that is reflected in language and policies about “professionalism,” and that is required in many workplaces, as “dominant cultural imagery continues to identify them [White Anglo heterosexual

17 Jespersen.
19 Young. 139-140.
20 Ibid. 140.
middle-class men] as the paradigm professionals.”

In creating the “Personal Best” program, Harrah’s was engaged in the not-uncommon practice of instituting a policy that seeks to bring a group of people into line with those dominant white, straight, middle-class, male-oriented standards of respectability. As Karl Klare writes about gendered dress codes,

To a degree beyond any plausible productivity justification, the rules enforce conformity to dominant social norms, attitudes, and images of beauty. Appearance law is in large part a mechanism of social control in the service of dominant groups—men, heterosexuals, whites, mainstream religious denominations. This body of law serves to homogenize social life and to inhibit cultural pluralism.

In order to do so, respectability policies often treat different groups differently, creating de facto discriminatory impacts. Even though the policies are facially neutral, they will be harder for some people to conform to than others, based both on identity and individual preference and experience. For example, policies about hair styles may apply in the same manner to all employees, but are often more constraining, painful, difficult, and expensive for black women than for white women. Similarly, policies that require or reward “unaccented” speech, which in practice call for a standard American accent, may be difficult or impossible for people who have immigrated, for people who grew up in immigrant communities, or people whose experience of racial identity involves non-standard accents. In contesting Harrah’s “Personal Best” program, Jespersen was not only asserting a personal preference or objecting to a gender-based policy, but refuting Harrah’s implicit definition of respectability.

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21 Ibid. 139-140.

22 Klare. 1431.

I disagree with the Ninth Circuit’s decision that the “Personal Best” program did not create an undue burden for women on the basis of their status as women. I am with dissenting judge Alex Kozinski in believing that, based on the evidence Jespersen provided, it was “perfectly clear that Harrah’s overall grooming policy is substantially more burdensome for women than for men. Every requirement that forces men to spend time or money on their appearance has a corresponding requirement that is as, or more, burdensome for women” and that there cannot be “any rational doubt that application of makeup is an intricate and painstaking process that requires considerable time and care” as well as a costly one, since “Harrah’s policy requires women to apply face powder, blush, mascara and lipstick. You don’t need an expert witness to figure out that such items don’t grow on trees.”

I argue, though, that there is more at work in the Jespersen case than mere gender discrimination. The court’s defense of Harrah’s policy was made possible by the construction of anti-discrimination laws that allow for subjective judgments about which aspects of identity are and are not deserving of protection—judgments that are justified by and reproduce notions of respectability. Harrah’s was able to disproportionately burden female employees by requiring behavior that is gendered, even as it does not explicitly name gender as its motivation. Instead, rhetorics of respectability fueled Harrah’s defense and the court’s support of it. Even though the effects are ultimately discriminatory, the rhetoric of respectability—tidiness, professionalism, affability, and so on—conceals the extent to which employment policies are discriminatory on the basis of protected identities. The implicit but unmistakable implication of gender, race, nationality, sexuality, and other forms of identity in the idea of respectability creates a loophole of sorts through which employers can maintain the supremacy of middle-class white masculine

24 "Jespersen V. Harrah's Operating Company." 4140-4141.
ideals, thereby disadvantaging potential or actual employees who do not comport, without risking legal sanction.

Respectability-based discrimination therefore allows employers to circumvent existing anti-discrimination law by creating a standard of ostensibly neutral behavior that nevertheless hinders the life chances, autonomy, and well-being of employees and potential employees who find it impossible or unbearably costly to perform middle-class white respectability. Below, I explore four aspects of Title VII, one of the main anti-discrimination laws in the United States, that create the substance of this legal loophole: disparate impact, disparate treatment, bona fide occupational qualifications, and community norms. I then look to the logical and rhetorical mechanisms that sustain respectability-based discrimination in law and in everyday life. Lastly, I consider proposals for ameliorating respectability-based discrimination.

The Legality of Discrimination: Key Aspects of Title VII

Title VII of the Civil Rights Act of 1964 prohibits discrimination against public and most private employees in hiring, firing, and classification, because of race, color, religion, sex, or national origin. In parsing Congress’s intentions, courts have since said that Title VII is meant to have “made the simple but momentous announcement that sex, race, religion, and national origin are not relevant to the selection, evaluation, or compensation of employees” and to “assure equality of employment opportunities and to eliminate those discriminatory practices and devices which have fostered racially stratified job environments to the disadvantage of minority citizens” so that “people would be judged by their intrinsic worth.” Since 1964, Congress has

25 "Title VII of the Civil Rights Act of 1964."

26 Post, in Prejudicial Appearances: The Logic of American Antidiscrimination Law. (citing Price Waterhouse v. Hopkins, 490 U.S. 228 at 239 and Donohue v. Shoe Corporation of
extended some additional protections, including protection for age and disability through the Age Discrimination in Employment Act and the Americans with Disabilities Act, while ignoring others—like sexual orientation, gender identity, and appearance—or leaving them to the states.27

Judicial interpretation has played a significant role in determining what, in practice, is protected by Title VII. It is especially important with this particular law, which does not give a statutory definition of discrimination. Additionally, the last fifty years of significant social and political changes have shifted common understandings of what constitutes discrimination.28 This ambiguity both creates and limits Title VII’s flexibility, and its ability (and judges’ willingness) to account for things like affect, dress, and grooming, which constitute respectability.

Scholars have addressed the gaps in legal protection that this system creates under various headings, including appearance discrimination, trait discrimination, and covering.29 These analyses accurately and incisively describe the problem of discrimination that is masked

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by concerns about appearance and affect wherein, for instance, “an employer may be perfectly willing, perhaps even eager to hire blacks who dress, talk, and act in a particular way, but unwilling to hire blacks who deviate from the employer’s cultural norm,” and where the same problem may exist for women, queer people, and other marginalized groups. I contend that these forms of discrimination tend to operate within a rhetoric of respectability that provides justification for the implicit claim that it is appropriate and ethical to discriminate based on whether or not someone looks, speaks, or dresses a certain way, and that respectability is an especially useful analytical lens for considering intersectional claims wherein someone experiences discrimination on multiple axes.

Four aspects of the law and its interpretation are particularly effective in creating a legal framework that bars explicit discrimination while leaving room for discrimination that is ostensibly identity-neutral but that uses the rhetoric of respectability—including both the sorts of criteria at play in Jespersen v. Harrah and references to things like “corporate culture” or “good fit”—to provide cover for those who would, whether consciously or not, use respectability as a stand-in for overt identity-based discrimination. These are the standards of disparate treatment, disparate impact, bona fide occupational qualifications, and community norms, with the latter two having an especially strong effect on producing respectability and disciplining deviations from it. Below, I discuss each of these and explain how they lend themselves to respectability-based discrimination.

Disparate Treatment

Disparate treatment occurs under Title VII when an employer treats an employee or applicant unfavorably because of her race, color, religion, sex, or national origin. The Supreme

30 Yuracko. 366.
Court has called it “the most easily understood type of discrimination” and “the most obvious evil Congress had in mind when it enacted Title VII” because it applies in cases where an employer has intentionally discriminated based on membership in a protected class. 31

In order to prove a claim of disparate treatment in court, a plaintiff must show that her employer intended to discriminate, and did so because of her race, color, religion, sex, or national origin. They may use either direct or circumstantial evidence to support this claim. Direct evidence consists of “evidence that decision-makers placed substantial negative reliance on an illegitimate criterion in reaching their decision.” 32 This usually requires “direct evidence usually consist[ing] of comments directed at the employee or written documents prepared by the employer, that provide a direct connection between the employer’s discriminatory intent and the refusal to hire or retain the employee.” 33 Circumstantial evidence must meet high standards. For instance, in hiring, the court may use a four-prong test wherein the employee must show that “(i) he belongs to a racial minority; (ii) that he applied and was qualified for a job for which the employer was seeking applicants; (iii) that, despite his qualifications, he was rejected; and (iv) that, after his rejection, the position remained open and the employer continued to seek applicants from persons of complainant's qualifications.” 34

Proving disparate treatment can be especially difficult on a number of counts. For one,

31 Teamsters V. United States, vol. 431, 431 U.S. 324, 52 L.Ed.2d 396, Supreme Court Reporter (Supreme Court of the United States, 1977); Mahajan; Lacy and Ray.

32 Lacy and Ray. (citing Price Waterhouse v. Hopkins, 490 U.S. 228 at 278, Justice O’Connor, concurring)

33 Ibid. 45.

courts may disagree with plaintiffs about what constitutes disparate treatment, as was the case in
*Jespersen v. Harrah’s*, where the majority ruled that women were not faced with a heavier
burden than men because both men and women had their appearance regulated, even though
regulations on female employees were more time-intensive, costly, and extensive.\(^3^5\) Even if
employees can prove disparate treatment, their employer can respond by making the burden
uniformly heavy rather than by lightening it. Had the court ruled that Jespersen was unduly
burdened because of her sex, Harrah’s could have responded with stricter regulations for male
employees. In this way, a legal victory would not necessarily translate to improved plaintiff
experience—rather than being required to reassess their beliefs about the substance and necessity
of respectability, employers need only make respectability requirements burdensome for all
employees.\(^3^6\) For another, most employers are savvy enough to avoid leaving a spoken or written
record of discriminatory intent, and decision-making in many workplaces is so diffuse that it
may be difficult to pinpoint a particular source of discriminatory intent. For a third, employers
can respond to discrimination claims by establishing that there was a legitimate business purpose
behind their decisions, and employees are unlikely to have ready access to such records if they
do exist.\(^3^7\) Because discriminatory intent is central to winning employment discrimination
claims, the relative ease with which employers can offer post-hoc rationales for discriminatory

\(^3^5\) "Jespersen V. Harrah's Operating Company."; "Jespersen V. Harrah's Operating Company."; Pizer; Selmi.

\(^3^6\) Selmi.

employment practices makes such cases difficult to win.\textsuperscript{38}

Furthermore, courts generally accept employers’ claims that their decisions were motivated by maintaining a particular work culture, and those justifications are generally accepted as legitimate.\textsuperscript{39} While there are some limits on what employers can claim—courts are generally not receptive to the argument that customer preference is, on its own, a legitimate reason to discriminate—employers are likely to prevail in instituting and enforcing respectability requirements.

They can do so by taking recourse to a rhetoric of respectability that encodes discriminatory ideas in the ostensibly neutral language of professionalism, tidiness, mannerliness, propriety, and so on. It may well be the case that perceptions of untidiness or unmannerliness have to do with differences in group norms, as when employers regard all dreadlocks as messy or see stereotypically feminine aspects of vocal or physical affect as too exuberant or flamboyant in the context of a “professional” workplace that generally conforms with relatively staid norms of middle-class white respectability.\textsuperscript{40} As Kwame Anthony Appiah writes, “People and legislators can easily cover gender bias by pretending that it is really something else—long hair, earrings, the risk of motherhood—that they are worried about.”\textsuperscript{41} Rhetorics of respectability offer language that can reference behaviors that are associated with membership in a protected class without naming specific characteristics that are undeniably

\textsuperscript{38} Spade; Lacy and Ray; Appiah, "Stereotypes and the Shaping of Identity," in Prejudicial Appearances: The Logic of American Antidiscrimination Law; Adamitis; Bandsuch; Fisk.

\textsuperscript{39} Mahajan; Rachel F. Moran, "The Elusive Nature of Discrimination," Stanford Law Review 55, no. 6 (June 2003).

\textsuperscript{40} Warner; Young.

associated with gender, race, nationality, and so on. Employers who use the rhetoric of respectability may act based on animus or discriminatory intent, whether consciously or unconsciously. However, because respectability relies on coded language, they may do so without ever having to name the groups or group-associated traits in question. This obfuscation makes it impossible for applicants or employees to articulate, let alone provide the evidence necessary to defend or win, a claim about disparate treatment. The rhetoric of respectability allows employers and courts to argue that the treatment in question isn’t disparate at all, because the respectability requirements in question, and the idea of respectability more broadly, are applied equally to everyone—even if that standard will be harder for members of some groups to meet, and even if that is the subterranean intention of such policies.

Disparate Impact

Disparate impact is a type of prohibited discrimination that occurs when applicants or employees of a particular group are disproportionally harmed by an employer, including by an employer’s ostensibly neutral policies, without evidence of animus or discriminatory intent. As with disparate treatment claims, plaintiffs bringing disparate impact claims must prove that members of a particular group, as such, were particularly affected. While post-hoc rationalizations are not as readily available to employers in disparate impact cases compared with disparate treatment cases, employment practices are still considered legitimate if they are a "business necessity," which may include the “necessity” of restricting modes of dress and other

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forms of self-expression associated with a particular group.\textsuperscript{43}

As with disparate treatment, disparate impact can be hard for employees to prove. As Ritu Mahajan writes, “it is difficult for a plaintiff to prove that a specific practice has a disparate impact on members of a protected group if there are not many other employees that are members of the group in question, if other employees who are members of the group choose to abide by the employer's appearance policy, or if the plaintiff can comply with the employer's requirement.”\textsuperscript{44} Discrimination may become self-perpetuating; when a discrimination claim’s success requires the presence of a certain number of employees belonging to a protected group, their absence is itself a defense against the possibility of the critical mass required to prove disparate impact.

Differences between members of a group may also be used to undermine disparate impact claims; if some black employees already straighten their hair it will be difficult for those who are harmed by a hair-straightening requirement to tie their claim to race, or, as in the case of Darlene Jespersen, when a policy includes gender-specific requirements that are possible for employees to comply with and that some members of the group may already comply with. In short, if some group members are able and willing to perform respectability, other group members will have a harder time proving that their presentation is related to identity rather than preference.

Furthermore, burdensome respectability requirements may nevertheless be justified if the employee is unable to identify a particular policy or set of policies that create disparate impacts, or, even if a specific policy is at stake, if the employer is able to prove that the policy is a

\textsuperscript{43} Ramachandran.

\textsuperscript{44} Mahajan. 178.
“business necessity.”

While disparate impact is meant to create stronger protections by holding employers responsible even for those negative effects that may not be intentional, it creates some of the same respectability-related obstacles plaintiffs face under disparate treatment. Policies may be neutral on face while regulating behaviors that are tied to group identity but that are not expressed by all members of the group. Employers’ use of rhetorics of respectability to argue that policies requiring “professional appearance” or “businesslike comportment” are a business necessity are likely to be treated as legitimate. Employers’ use of subjective evaluative criteria that account for things like “good fit” or “getting along with coworkers” may further mask the relationship between respectability requirements and their impacts on the members of different groups. And because respectability is so closely linked to notions of goodness, correctness, and propriety, employees who articulate claims that explicitly or implicitly challenge respectability will face an uphill climb, whereas employers who argue, in essence, that their policies produce respectability and penalize only those group members who object to it may find courts amenable to their rebuttals.

_Bona Fide Occupational Qualifications_

While Title VII prohibits discrimination against protected groups, it makes an exception for “those certain instances where religion, sex, or national origin is a bona fide occupational

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45 Ramachandran; Lacy and Ray; Green.


47 Yoshino; Young.
qualification reasonably necessary to the normal operation of that particular business or enterprise." In order to qualify as a bona fide occupational qualification (BFOQ), a job requirement must be tied to “to the ‘essence’ . . . or to the ‘central mission of the employer’s business.’” In order to respect the anti-discriminatory intentions of Title VII, the courts have interpreted what qualifies as a BFOQ strictly and narrowly. The Equal Employment Opportunity Commission has specified that a policy does not qualify as a BFOQ if it relies on stereotypes, for instance “that women are less capable of aggressive salesmanship,” or if it is in response to “the preferences of coworkers, the employer, clients or customers.” Similar policies apply to regulations that touch on race and religion.

Nevertheless, what constitutes the “central mission” of a business is, and has been, subject to debate. The EEOC explicitly permits exceptions “Where it is necessary for the purpose of authenticity or genuineness,” and gives the example of casting actors or actresses into stage or screen roles that specify a character’s sex. Courts have struggled to interpret what constitutes a BFOQ with regard to sex when an employer argues the “central mission” of a business relies on hiring conventionally attractive women. In the cases of Diaz v. Pan American World Airways, Inc., the court held that hiring only women because passengers would feel better cared for by women did not qualify, and in Wilson v. Southwest Airlines the court held that hiring, and

48 "Title VII of the Civil Rights Act of 1964."


50 Bartlett; Equal Employment Opportunity Commission, Sex as a Bona Fide Occupational Qualification, 29 CFR 1604.2 (1993); Ramachandran.

advertising, flight attendants who would project “feminine spirit, fun, and sex appeal,” in part by wearing high boots and hot pants, in order to improve sales was not a BFOQ. However, in *Playboy Clubs Intl., Inc. v. Hotel & Restaurant Employees & Bartenders Intl.*, the court held that sex appeal was a BFOQ, “female sexuality being reasonably necessary to perform the dominant purpose of the job which is forthrightly to titillate and entice male customers.” As Katherine Bartlett observes, “Under even a strict interpretation of the BFOQ exception, the closer a business defines itself in terms of sexual services and display, as contrasted with using sex to attract customers to buy an unrelated product or service, the more clearly it is sheltered by the Act.”

There is also room for ambiguity. For Harrah’s the “Personal Best” program was part of an effort to improve its brand. Darlene Jespersen felt that, in addition to making and serving drinks, having positive interactions with customers was one of the most important parts of her job and that the requirements of the “Personal Best” program made guests see her so differently, by placing her in a more feminine social role, that it interfered with her ability to do her job well. Presumably, having bartenders who are able to do the job well (and who perceive themselves as being able to do the job well) is also essential to Harrah’s business. Though Harrah’s did not pursue an argument that its policy was a BFOQ, neither did Jespersen prevail on other grounds. The weight of Harrah’s institutional policy and internal policy-making authority, even without the argument that it was strictly necessary to business, outweighed Jespersen’s claim about the


53 Ibid. 2576.
circumstances necessary for her to do a good job; their idea of respectability was more important than hers.  

More broadly still, as Gowri Ramchandan argues, “Requirements to ‘do one’s job’ might also be characterized as requirements to conform. For instance, the requirement to speak in standard English can also be understood as the requirement to cover one’s national origin or race,” and indeed, “many demands will have salience along some suspect axis, like race, and while this may inform our judgment of the value of the demand, some will feel that this salience should not give rise to condemning or prohibiting the demand, either legally or socially.”  

There are many cases where it may be difficult to discern which characteristics or skills are salient to employment, and where the decision may depend on the sensitivity of the presiding judge to the experiences of marginalized people. Notions of respectability may also affect subjective decision-making about what is and is not essential to a job—or indeed, what is and is not an impermissible imposition on marginalized group members—as the concept of respectability is deeply entwined with views on what constitutes professionalism and propriety. This is perhaps most evident in the court’s use of community norms to determine the legitimacy of Title VII claims.

**Community Norms**

In determining whether respectability requirements are discriminatory, and particularly in


55 Ramachandran. 308.

56 Bartlett.
determining what is essential for business and therefore constitutes a BFOQ, courts rely heavily on the idea of community norms. In the context of Title VII, community norms have been treated as though they are neutral or objective criteria against which to assess the burdensomeness of a given policy or practice. Generally, policies that adhere to community norms are considered acceptable. Courts tend to consider appearance standards that fall within community norms to be reasonable. By this logic, courts may dismiss claims they find “trivial,” even when the employee may be deeply affected by a given policy, and even when the community norms in question are themselves produced by discriminatory community attitudes.

Much analysis of community norms revolves around gender norms. Legal scholars argue, as Katherine Bartlett writes, that “reliance on community norms constitutes an acceptance or legitimation of the very gender stereotypes that Title VII was established to eliminate.” For instance, if community norms dictate that it is normal for women to wear makeup, high heels, and skirt suits, a dress code may legitimately require that its female employees meet those standards, whereas male employees who are subject to different community norms would not be required to wear makeup, skirts, or high heels. Even though the difference in policies may give men considerable advantages—male employees may be better rested because they can sleep more instead of getting up early to put on makeup, they will have more mobility and an easier


58 Bartlett; Fisk; Post, in Prejudicial Appearances: The Logic of American Antidiscrimination Law.

59 Bartlett. 2544.
time finding comfortable and non-distracting positions to sit in if they are wearing pants instead of a pencil skirt, they will experience less foot and back pain and having an easier time standing on a sales floor or getting to meetings quickly in flat shoes—the presence of differently gendered community norms creates a legal justification for policies that disproportionately burden women.\(^{60}\)

More broadly, when community norms subordinate some groups, the subordination of those groups may be legally supportable under Title VII. Courts may support policies that, in line with rhetorics of respectability, are vaguely accountable to “generally accepted community standards of dress and appearance” and that require employees “to be neatly dressed and groomed in accordance with the standards customarily accepted in the business community.”\(^{61}\) They may do so without respect to the ways in which community norms subordinate based not only on gender, but also on the basis of race, ethnicity, sexuality, religion, and so on. Respectability works on at least two levels here: in establishing which communities’ norms are to be observed, and in providing an overly abstract standard of what constitutes “community norms.”

In endorsing “community norms” the court takes for granted a geographically bound, majority-rules concept of community. This is not unreasonable; most businesses have geographically bound clienteles and are trying to attract as many customers as possible, so have strong incentives to appeal to the majority. But community norms are subjective and can be inconsistent; as Karl Klare points out, “although it is ‘common sense’—an article of faith of our

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\(^{60}\) Ibid.; Klare; Post, in *Prejudicial Appearances: The Logic of American Antidiscrimination Law*.

culture—that some dress is sexually provocative or inviting, curiously there is no consensus on exactly what kind of dress is provocative (for example, some employers regard women wearing pants at work as provocative and therefore require skirts or dresses, whereas some employers regard skirts as too provocative and require women employees to wear pants.”

In their subjectivity, inconsistency, and boundedness, the use of community norms can also be harmful. Focusing on the majority norms of a local community can devalue and disregard the norms and needs of members of marginalized groups. While many marginalized groups are likely to constitute a local minority, they may nevertheless have strong norms that transcend geographic boundaries. The performance of those norms may be especially important to geographically isolated members of marginalized groups because they are in the minority. Consider, for instance, an accounting firm in a predominantly white town that bans afros and cornrows as part of a policy that docks employees’ wages if they do not look “neat and tidy in accordance with business community norms that will make our clients feel at home here.” A black employee with an afro sues, arguing that the policy has a disparate impact on her, as she is the only employee with an afro, and that it cannot be a BFOQ because her hair does not affect her work as an accountant. Furthermore, she feels particularly targeted because, as one of only a few black people in her community, having an afro helps her feel connected to black people in other parts of the country and to the black power movement’s rejection of white norms. Because she is in such a small majority where she lives, her hairstyle helps her feel less alone and more confident. The accounting firm’s policy may be upheld because in her geographically bound, predominantly white community afros are outside of the norm, even though there is a larger national and international black community that recognizes afros as normal. The existence of this

62 Klare. 1399-1400.
larger community is inconsistent with the courts’ view of community norms, which is specifically local. The deference to specifically local community norms means that neither employers nor judges have to consider minority group norms, including what constitutes respectability within minority groups and what group members might understand as respectable comportment, unless that group reaches a critical mass locally.

Furthermore, respectability—its norms and their conceptual weight—makes it easier still for employers and judges to disregard the norms and needs of minority communities. White middle-class respectability is frequently and easily taken for granted as the normal, correct standard by which to measure behavior, such that a preference for white faces, bodies, hairstyles, and traditionally white modes of dress is likely to be a community norm. Courts and employers may then disregard minority plaintiffs’ claims as trivial matters that have little to do with their identities or, more damningly, as trouble-making from minorities who want protection for behaviors that present a challenge to what is right, good, and normal. When community norms not only hold legal weight, but hold legal weight that is both produced by and deferent to respectability, marginalized group members who seek protection for behaviors that do not fit easily with middle-class white respectability norms have little chance of success.

These effects are especially serious when we consider the ways in which legal doctrine reifies community norms. If it is normal for women to wear heels, and then the court rules that it is legal to require women to wear heels, it will become more difficult for women to change the very norm that is used to justify a requirement they would otherwise resist. If a business wants to ban particular hairstyles, like afros or cornrows, because within the context of their community

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63 Bartlett; Crenshaw; Carbado and Gulati, "Working Identity."; Carbado and Gulati, "The Fifth Black Woman."; Klare; Ramachandran.

64 Adamitis; Bartlett; Klare.
those hairstyles are associated with non-respectable attributes that make customers suspicious, and a court upholds that policy because it is consistent with community norms, black employees will not find relief or protection. Instead, they will be forced to choose between leaving their job (potentially then reinforcing negative stereotypes of afro-wearing black people as confrontational, reactive, and unemployable) or changing their hairstyle to something their white employer and customers consider respectable (potentially thereby reinforcing the stereotype that “nice-looking, well-behaved” black people can get ahead, while the afro-wearing troublemakers create their own obstacles). While a policy should not qualify as a BFOQ if it is based on “the preferences of coworkers, the employer, clients, or customers,” the combination of community norms, which implicitly honor those same preferences, and arguments that give weight to BFOQs when they affect a company’s bottom line makes those protections against preference more precarious.65 When these considerations come into conflict, Ritu Mahajan writes, “acting under the presumptions that employer regulations promote efficiency and that policies based on community norms are not discriminatory, courts give substantial deference to employers’ managerial interests and prioritize workplace efficiency over diversity and personal autonomy.”66

This was the case for Darlene Jespersen. Harrah’s respectability requirements were not outside the bounds of the community norms the court deemed relevant, which generally assumed that it is normal for women to style their hair and wear makeup. Even when gender norms were explicitly at stake, judges did not question—did not have to question—whether those norms

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65 Bartlett; Equal Employment Opportunity Commission; Ramachandran; Klare.

66 Mahajan. 177.
ought to be in place.\textsuperscript{67} Particularly when combined with the presumption toward justifying policies that are meant to improve business, the centrality of community norms meant that judges could use generalized standards and could, to some extent, choose which standards constituted community norms. As Jennifer Pizer, one of Jespersen’s lawyers, wrote:

Some people like wearing makeup and very gender-specific clothing. Others find such appearance expectations extremely oppressive. Often, one’s reaction will be determined by one’s gender identity and usual gender expression. A very feminine cocktail server may delight in daily access to a makeup trainer, while an androgynous person like Darlene Jespersen may despise the idea. How should courts select the “reasonable person” for a particular comparison?\textsuperscript{68}

In considering what a “reasonable person” would do, the court is likely to imagine a respectable person—someone who is non-controversial, and therefore assimilated to white middle-class respectability norms. In practice, it is likely that there were many women in Jespersen’s community who did not wear makeup in the course of daily life, and it is unlikely that there were many women who wore the exact same makeup, applied to professional standards, every day. Indeed, in the course of protests held in support of Jespersen, protesters pointed out that the requirements at Harrah’s were stricter than those at the nearby Moonlite Bunny Ranch brothel (a comparison by which, a Harrah’s spokeswoman said, they were “deeply offended”), where women explicitly sold sex. Protesters also suggested that wearing lipstick was much closer to a respectability requirement than a bona fide occupational qualification as, a local organizer said, “I don’t know of a person who has ever said ‘don’t give me that drink unless you’re wearing red lipstick.’”\textsuperscript{69} Additionally, many other workers were opposed to the policy, such that even when Harrah’s offered to re-hire Jespersen with an exemption to the policy, she declined in part

\textsuperscript{67} Pizer. 310.

\textsuperscript{68} Ibid.

\textsuperscript{69} Guidos.
because “Harrah’s management has never acknowledged how much other women despised the
makeup rule, or why Jespersen feared being resented by her peers.”70 In Jespersen’s case, there
were several communities, including workers at Harrah’s and elsewhere, who felt that Harrah’s
policy overstepped what was normal for the local community. Nevertheless, the court is not
accountable to a specific community or the real lived experiences of people within the
community, nor does it have to consider which communities’ norms it privileges or ignores.
Without having to think deeply about what standards ought to apply, or which communities
ought to be considered, judges have little incentive to consider whether a policy in question is
harmful—only whether it is normal, reasonable, respectable.

Undue Burdens: Mechanisms of Respectability

The structure of antidiscrimination law creates room for respectability-based
discrimination. In this section I explicate three specific mechanisms by which respectability-
based discrimination is enshrined in and enforced through law. These mechanisms include the
court’s reliance on and interpretation of immutability as a standard for which identities are
protected and to what extent; a tendency toward treating non-respectable choices as matters of
individual preference rather than group identity, which both neglects the social context of group
identities and contributes to intragroup hierarchies; and the way in which respectability is used to
distinguish between “good” and “bad” group members and to create a self-perpetuating
gatekeeping mechanism wherein non-respectable group members are unable to gain the social
and institutional capital that could be used to change respectability requirements.

February 17; Pizer. 317.
Reliance on Immutability

Darlene Jespersen lost her case in part because the court ruled that Harrah’s policy “could not run afoul of Title VII because it did not discriminate against Jespersen on the basis of the ‘immutable characteristics’ of her sex.” Even though substantial portions of Harrah’s respectability requirement applied only to women, even though it was supported in part by community norms that applied only to women, and even though the court does prohibit sex stereotyping as a form of discrimination in some cases, the protections of Title VII do not necessarily apply to characteristics that are related, but not inherent, to a particular identity. This is not true only of gender, but with respect to every protected class. As a result, employers have relatively free reign to regulate their employees’ appearance, including making demands for respectability that require employees to downplay or eliminate ways of expressing their identities that conflict with white middle-class respectability norms.

Dress, grooming, and other aspects of appearance are usually considered, in the courts and in general, to be matters of choice. As such, they are mutable, and do not need legal protection; employees who want to present themselves a certain way can either choose to change their appearance to comply with employers’ rules or find other employment. Since it is theoretically possible for employees to avoid discrimination that targets aspects of appearance, those traits do not merit protection, unlike sex or race, which employees cannot generally

71 "Jespersen V. Harrah's Operating Company."; "Jespersen V. Harrah's Operating Company."

72 Adamitis; Bandsuch; Bartlett; Peter Brandon Bayer, "Mutable Characteristics and the Definition of Discrimination under Title VII," University of California, Davis Law Review 20 (1987); Klare; Mahajan; Post, in Prejudicial Appearances: The Logic of American Antidiscrimination Law; Ramachandran; Yoshino.
change.⁷³ This is often held to be the case even when some aspect of appearance is closely tied to identity, as expectations that someone will or won’t wear makeup are closely tied to gender, certain hairstyles are closely tied to race, and some grooming practices are closely tied to religion.⁷⁴

In practice, immutability is a tricky standard to apply. Respectability appears here in at least two ways: as a factor in determining which identities are considered immutable, and in determining which behaviors are considered part of an immutable identity.

On the first count, the idea of immutability as a standard is immediately confounded by the presence of protected statuses that are not immutable. Neither marital status nor religion is immutable and both are subject to change; in the United States as many as half of marriages end in divorce and at least a third of adults experience a change in religious faith.⁷⁵ Yet religion and marital status are both considered fundamental rights, and therefore receive many of the same protections as immutable identities.⁷⁶ Both marriage and religion are generally considered to be highly respectable institutions, and they serve social purposes that create the sort of orderliness and predictability that are in line with expectations of respectability. People who take part in social institutions that are not considered respectable or seen as contributing to the maintenance

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⁷³ Adamitis; Bandsuch; Bartlett; Bayer; Fisk; Carbado and Gulati, "The Fifth Black Woman."; Klare; Mahajan; Post, in Prejudicial Appearances: The Logic of American Antidiscrimination Law; Ramachandran; Yoshino.

⁷⁴ Adamitis; Bartlett; Carbado and Gulati, "Working Identity."; Carbado and Gulati, "The Fifth Black Woman."; Klare; Yoshino.


⁷⁶ Adamitis; Fisk.
of respectability norms—being in a long-term non-marital partnership, being a lifelong devoted Star Trek fan, or Trekkie, even if these are major organizing forces in their lives—do not receive the same protections.

Sexual orientation and gender identity provide another illustrative case. Both remain contested categories in federal law and in most states; Title VII protects sex but not sexual orientation or gender identity, and courts do not reliably interpret protections on the basis of sex as extending to either. While there has been significant debate about the potential harms and benefits of classifying sexual orientation as an immutable trait, the law’s treatment of marriage and religion suggest that the determination of whether these aspects of identity should be protected as though they are immutable may have less to do with whether sexuality and gender are biological or otherwise innate, and more to do with respectability. In debates about sexuality and gender, rhetoric is often focused on whether non-heterosexual and non-cisgender people are respectable and therefore deserving of rights and social and economic inclusion, or whether they pose a threat to social order and public safety. Opponents of rights for non-heterosexual and gender-nonconforming people do reference gender and sexuality as a choice, but have been much more vocal about the specter of human-animal marriage or bathroom assaults perpetrated by transgender people—in short, they have focused on painting these groups as non-respectable and as a threat to respectability norms. The attention paid to respectability in these debates, both with respect to how to characterize people with marginalized gender and sexual identities and how their inclusion might affect social norms and institutions, is hardly coincidental. It is telling that these identities, which many people do consider immutable and unlikely to change in

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adulthood, but which are associated with a lack of respectability or contested respectability, are not attached to the same protections granted to religious and marital status.\(^78\)

On the second count, what is held to be a part of immutable identity is subject to judicial interpretation. It is legal for employers to make decisions based on appearance, which can include aspects of appearance that are salient to a protected identity, and which conflict with appearance policies that are meant to impose an employers’ vision of respectability.\(^79\) Exceptions to this exist only when employees’ claims are related to their belonging to a protected class, as with religious men whose faith requires wearing a beard, or when an employee can prove that the nature of a policy has a disparate impact on members of a particular group, as Darlene Jespersen tried to do. Because this type of interpretation is subject to both the subjective standard of community norms and the opinions and experiences of particular judges, there is a great deal of inconsistency as to what does and does not count as an immutable trait. Sometimes policies must apply only to group members in order for a claim to be taken seriously, such that a black employee who claimed that being forbidden to wear dreadlocks was a matter of racial discrimination might lose on the grounds that sometimes white people wear dreadlocks, even though white people who do so are imitating a hairstyle that is historically, politically, and culturally tied to black identity. Sometimes a policy must apply to all group members to be considered immutable and therefore protected, such that a policy that banned afros or required


\(^79\) Adamitis; Bandsuch; Bartlett; Bayer; Case; Fisk; Carbado and Gulati, "Working Identity."; Carbado and Gulati, "The Fifth Black Woman."; Klare; Mahajan.
makeup could be acceptable because not all black people have afros and not all women wear
makeup, even though both modes of grooming are strongly associated with a protected class.\textsuperscript{80}

Redefining immutability to be more or less inclusive of identity-related behaviors has the
effect of giving judges broad latitude to decide, through determinations about what is immutable
and what is a matter of preference, which traits, or which individual plaintiffs, will be protected.
Especially in combination with community norms, the court’s flexibility in determining which
salient traits are or are not immutable creates a means to privilege claims and plaintiffs that
uphold middle-class white respectability norms while dismissing claims and plaintiffs who seek
to challenge them. See, for instance, the court’s different treatment of two black women in New
York who faced employment barriers because they had blond hair. Dulazia Burchette resisted
dying her hair to a dark color after her employer told her that blond hair was “unnatural” on
black women and thereby forbidden by the company’s dress code, and the court ruled against
her, while it ruled in favor of Shirley Bryant, a black woman who was harassed by a black
supervisor for wearing business suits instead of dashikis and having blond hair because those
made it seem like she “want[ed] to be white.”\textsuperscript{81} Or, in light of Darlene Jespersen’s claim,
consider the case of Marsha Wilsocki-Goin, who lost an employment discrimination suit after
she was fired from a teaching position at a juvenile detention center for wearing “excessive
makeup and wearing her hair down, in violation of requirements that she achieve ‘the Brooks

\textsuperscript{80} Adamitis; M. Bahati Kuumba and Femi Ajanaku, "Dreadlocks: The Hair Aesthetics of
3, no. 2 (1998); Bayer; Fisk; Siegal, in Prejudicial Appearances: The Logic of American
Antidiscrimination Law.

\textsuperscript{81} Burchette v. Abercrombie & Fitch Stores, Inc., No. 08 Civ. 8786 (S.D.N.Y. May 10, 2010);
Brothers Look.” In both of these pairs of cases the law is inconsistent as to whether the same criteria is or is not a protected part of identity. It is consistent, however, in its responsiveness to implicit claims about respectability, failing to protect plaintiffs who resisted appearance policies that were meant to make the employees and brand more respectable, while extending protection to plaintiffs who replicated middle-class white respectability norms and resisted employers who were neither in line with nor advocating for standards of white middle-class respectability.

In the application of anti-discrimination law, the court shows a tendency toward treating those behaviors that should be “improved” to come into line with middle-class white respectability norms as mutable and not race-salient, with a seeming awareness that the performance of identity can be manipulated in order reify respectability norms. As Mitu Gulati and Devon Carbado write, by policing or failing to police affect, dress, and grooming, “a good black can (easily) become a bad black and a bad black can (after much identity work sometimes) become a good black.” The transformation from “bad” to “good” is a journey toward respectability, and one that antidiscrimination law encourages by demonstrating that “good” members of marginalized groups will have legitimacy that their “bad” counterparts do not.

While immutability has the potential to be a straightforward (if not unproblematic) standard, it can in practice confer a stamp of approval on some behaviors while giving employers tacit permission to discriminate on the basis of others. This is troubling in no small part because

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it redirects discrimination rather than stamping it out. With respectability mediating immutability, distinctions between protected and unprotected behaviors are not about whether someone deserves to be protected on account of their marginalized identity, but whether someone has the type of marginalized identity that is respectable enough to deserve protection.

*Group Identities, Individual Judgments*

Distinctions between types of behavior that will or will not be considered part of immutable identity, and therefore worthy of protection, create intra-group divisions that undermine the idea of group protections. Instead of protections being tied to, and granted on the basis of belonging to, a marginalized group, protection is, in practice, based on an individual employee’s behavior, with respectable employees—those who meet or exceed employers’ respectability standards or who perform respectability without being told—having both less chance of facing discrimination and a greater chance of being protected if they do. Those who are less respectable are both more likely to face discrimination and less likely to be protected from it, because their behavior can be characterized as a matter of non-immutable personal choice out of line with community norms and therefore subject to whatever consequences an employer may have in place. Conceptually, politically, and practically, this undermines group cohesiveness, sorting “model minorities” from those who do not take on middle-class white respectability norms, and using the former to justify the treatment of the latter.

These divisions are further supported by the structure of litigation, which removes individuals from the group contexts in which their identity-salient behaviors and choices are most clearly linked to identity.\(^{85}\) When plaintiffs appear in court, they do so on behalf of their

\(^{85}\) Spade.
own claim, outside of the context in which group-salient behavior is most meaningful. Judges and defendants, who are likely to be respectable, are unlikely to be able to intuit the importance of a behavior or mode of presentation that is meaningful within a social context that is unfamiliar and invisible to them.

The false or exaggerated sense that group-salient behaviors are a simple matter of individual preference is furthered by the use of model plaintiffs—selected because the facts of their cases and their personal images make for especially clear cut and sympathetic legal and public storytelling—in test cases. In cases about employment this leads to a focus on “deserving workers,” otherwise known as people whose other characteristics would have entitled them to a good chance in the workforce were it not for the illegitimate exclusion that happened.86 Darlene Jespersen offers one example of this. The focus in discussions of her story is on her respectability—her exemplary employment record, her long tenure and loyalty to her employer, her interest in a result that would let her abide by the same general standard of neatness and professionalism that her male colleagues were held to, a response to the dress code that was motivated by wanting to fit in rather than stand out and by wanting to do her job well, and her willingness to comply with other aspects of Harrah’s employment policies, including wearing a uniform, in deference to her employers’ interest in a certain kind of appearance. Aspects of her story that may have been less respectable—particularly that she was sometimes reported to be a lesbian and was “butch” and “could be seen as presenting a stereotypical image of a middle-aged gay woman,” which would not have had legal relevance but might have a great deal to do with understanding why her presentation was an important part of signaling who she was and why she

86 Ibid. 44.
was distressed by an employment requirement that she felt was meant to make her look as though she was trying to be attractive to men—were concealed.  

As a result of the paradigm of using model plaintiffs, group members who are not respectable are unlikely to see themselves reflected in legal fights for rights protections for their group. Instead, it is only respectable group members who are allowed to be the public face of the groups, indicating to non-respectable members that they are differently situated than their respectable counterparts. Even though the litigation is ostensibly about group rights, the practice of using model plaintiffs attaches the right to an assessment of the individual, and therefore to a standard of respectability that not all group members will be able or willing to perform. Even if the group is protected, it is immediately clear that those protections are contingent, and will in practice be more available to some individuals than others, and that the experience of protection under the law will depend on how one is assessed as an individual.

The individualized experience of legal systems is striking in comparison to the deeply social experience of identity. The performative aspects of identity are relatively meaningless without an audience to receive and interpret the messages sent through dress, grooming, affect, and so on. And some behaviors have significantly different meanings depending on how they are contextualized in relation to larger groups. Catherine Fisk writes that:

appearances identify us as members of a group, and they are meaningful only in the context of particular cultures. A headscarf can be religious (on a nun or a Muslim woman), ethnic (on a person expressing Caribbean identity or heritage), or glamorous (on a Hollywood movie star riding in a convertible in the 1950s). Lots of gold jewelry can be "ghetto fabulous" on a black person, or a traditional display of wealth and status in India, or glamorous on the wife of a Texas oil magnate shopping in Beverly Hills, or trashy


88 Becker; Pizer.
among certain New England old money sorts who disdain conspicuous displays of wealth. The importance of appearance as an expression of self is meaningful only in the context in which appearance says something about you (or at least you think it does), and that has necessarily something to do with group identity.\textsuperscript{89}

For members of marginalized groups, these shared signals can be a source of strength and comfort. They can be a reminder of where one comes from and of the existence of communities in which one feels a sense of belonging. The performance of group identity can also be a way of finding people with similar identities and, perhaps, similar experiences and values, to act as a support system within unfamiliar terrain. Conversely, it can be a way of holding oneself apart – or of being held apart by those who are not part of the group.

There are a number of aspects of performative identity that may serve the purpose of demonstrating the centrality or unimportance of identity to an individual within the workplace. Carbado and Gulati list appearance (wearing dreadlocks, having a “butch” haircut); institutional identity (joining workplace committees or initiatives related to identity); professional affiliation (joining professional associations that signal the importance of belonging to an identity group, as with the Women’s Legal Caucus or National Association of Black Accountants, or that signal that identity is not important in a professional context, as with belonging to the American Political Science Association but not to any sections related to identity); social identity (socializing with a range of coworkers versus socializing primarily with similar coworkers or with similarly identified people outside of work); educational affiliation (coming from an educational background that signals a particular social position); marital status (including the race, gender, affect, educational background, professional status, and so on of one’s spouse); and residence (living in a neighborhood that does or does not signal the centrality of an identity, e.g.

\footnotesize{\textsuperscript{89} Fisk. 1144.}
“the hood” or “the gayborhood”). Many of these fall into Kenji Yoshino’s framework of aspects of identity that may highlight or downplay (cover) identity: “Appearance concerns how an individual physically presents herself to the world. Affiliation concerns her cultural identifications. Activism concerns how much she politicizes her identity. Association concerns her choice of fellow travelers—lovers, friends, colleagues.” Both focus on mediating the relationship between group-based identities, individuality, and identity within a professional context and recognize, correctly, that those mediations are part of life in a diverse society.

The emphasis on individualism in the context of anti-discrimination law means that those employees whose group-salient behaviors align with respectability norms will have to do less work to mediate their identities in different contexts and will be more likely to succeed. Those whose identities are not an easy fit with respectability norms will have to do more. In addressing appearance discrimination, Elizabeth Adamitis remarks on the significant costs of failure to conform to dominant expectations:

A substantial number of otherwise qualified individuals are less likely, or even unable, to find employment and less likely to advance and earn equitable pay when they do secure employment. Given the clear extension of this practice beyond employment, these same individuals may be less likely to marry, continue their education, or generally improve their lives. Discrimination in employment, therefore, compounds the social implications of an unattractive appearance. Because many appearance attributes will be passed on to future generations, this cycle of discrimination and its effect will likely continue in perpetuity.

While Adamitis comments on appearance in the sense of thinness and conventional attractiveness, when combined with data on the systematic, intergenerational effects of racism and other forms of identity-based discrimination, the breadth and depth of the problem is clear.

91 Yoshino. 79.
92 Adamitis. 214.
And while these costs accrue because of group identity, they must be borne—or fought—by the individual. Whether an individual will do that—whether they have the financial and social capital to file suit against an employer, and whether they believe they will be successful in court—will depend substantially on whether or not they are, or have made themselves, respectable.

At many junctures, the construction of respectability as an assessment of an individual, separate from the groups that shape her, works as a divisive force. Those who are respectable have reason to distance themselves from those who are not. Those who are not respectable cannot reliably depend on emotional, professional, or political support from those who are. While identities are forged and find meaning in groups, respectability is most powerful in situations that remove the individual from the group context in which the systematic, shared aspects of their experience would be most discoverable. Respectability requirements and the legal systems that support them also create inviting incentives for those individuals who would distance themselves from, reject, and, in the words of Michael Warner, “throw shame” upon fellow group members who do not, or cannot, successfully perform respectability. In predicking personal success on respectability, and therefore on compelling the respectable individual to distance from the disrespectable group, respectability comes from, compels, and produces individualism that undermines the cohesiveness of group identities.

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93 Carbado and Gulati, "The Fifth Black Woman."
94 Warner. 181.
Gatekeeping

In separating individuals from the group and determining what characteristics are and are not deserving of employment protection, respectability is used as a legally sanctioned gatekeeping mechanism. Only those members of marginalized groups who are able and willing to perform respectability will be able to access employment opportunities. These employment opportunities, in turn, put them in a position to determine whether and how middle-class white respectability norms continue to be used as a criterion in employment decisions. As a result, respectability becomes self-perpetuating and coercive.

There is ample evidence that the performance of identity affects an individual’s odds of being hired or promoted at work, as well as their salary. More specifically, employees who downplay their marginalized identities and meet white middle-class standards of respectability are more likely to succeed than those employees who “flaunt” their identities. Whether an employer has a formal dress code or informal expectations that are implicit or transmitted by word of mouth (a system of information-sharing that marginalized employees may be excluded from), success or failure at “fitting in” is generally considered to be a reasonable basis for making employment decisions, even when “fitting in” requires an understanding of and compliance with specific, raced, classed, and gendered norms. As a result, Tristan Green


96 Bartlett; Fisk; Carbado and Gulati, "The Fifth Black Woman."; Klare; Yoshino.
writes, “groups of individuals become the gatekeepers to opportunity through decisions that are made on a social, interactive, day-to-day basis…. [which] raises new concerns about the law’s ability to combat the kinds of discrimination that build more subtly at the group and institutional level.” Because appearance is not routinely protected, and because employees cannot be sure which aspects of their identity will be considered immutable and therefore worthy of protection, they must perform the psychic and emotional work of conforming, or risk their jobs.

In order to succeed, marginalized people may experience pressure to perform what Carbado and Gulati call “comfort strategies” and what Yoshino calls “covering,” both of which require the employee to perform respectability by concealing performative aspects of their identity, including accents, types of dress and grooming, and modes of expressing emotion. Respectability norms will not generally be experienced as deeply alienating or burdensome by those for whom they are “native”—who may be annoyed at having to wear slacks and a dress shirt, but are unlikely to feel as though they are hiding some core part of themselves by doing so—but may pose a significant burden for employees who find the performance of respectability psychically and emotionally taxing and oppressive. Literature on the topic uses terms like self-loathing, self-doubt, suffering, humiliation, embarrassment, ridicule, fear, and shame to describe this state of covering. Those whose experience of work is associated with those emotions are logically less likely to stay in or succeed at jobs that require an unpalatable, unsustainable performance of respectability. Whether they are fired, find themselves unable to advance, or

97 Green. 105.
99 Fisk; Ford, in Left Legalism/Left Critique; Klare; Mahajan; Yoshino.
leave in search of work that allows for a more harmonious coexistence of public and private self, employees who find the burdens of respectability unsustainable are less likely to succeed.

Conversely, those who are willing and able to embrace respectability, whether sincerely or strategically, are more likely to be hired and promoted, less likely to be fired, and less likely to feel pressure to leave. As they advance, they will be able to establish and enforce the norms of workplace culture. Respectability requirements, including informal ones, eliminate challenges to respectability before they can create meaningful change. That is not to say that workplace norms don’t or haven’t changed, but that they change in tandem with fashion trends that are taken up by respectable people—the radical black power movement, with its “black is beautiful” slogan and championing of natural hair, did not make afros acceptable in professional workplaces, but Mark Zuckerberg, a white, Harvard-educated man from an upper-middle-class background, did make t-shirts, hoodies, jeans, and sneakers more acceptable in many workplaces. To take another example, consider Darlene Jespersen. With an exemplary twenty-year record at Harrah’s and a history of promotion within the company, she might have been the kind of employee who could be considered for management and who, as a manager, would not have supported the types of respectability requirements she found so oppressive as an employee. The existence and enforcement of respectability requirements removed her from the company, let alone from the possibility of having a more influential role within it, and foreclosed the possibility of expanding the group of institutional gatekeepers to include someone who objected to respectability requirements.

Respectability requirements produce gatekeepers who are respectable. They therefore preclude gatekeepers who fully understand the particularity or costs of respectability, or who are internally motivated to move away from respectability. Respectability requirements, especially
when they are tacit, may not even be visible to supervisors who use and think in terms of rhetorics of respectability, and conflate white middle-class respectability norms with “looking nice” and “being professional,” without an awareness of the discriminatory outcomes of their attitudes. Those outcomes, however, continue to make it more difficult for people who do not or cannot perform respectability to reach positions where they have power to act as gatekeepers, and to challenge organizational gatekeeping practices because, as Judith Butler writes, “for this challenge to take place, it must be possible for a person whose appearance calls the category of the person into question to enter into the field of appearance…the power the astereotypical has to rewrite the stereotype, the power that the asystematic and unstable in gender and race have to unsettle the epistemological conditions of human intelligibility…is ‘had’ to the extent that such a person is not first defeated by the powers of discrimination.”

Because gatekeeping on the basis of the performance of respectability is tied to economic rewards or disadvantages, it is also coercive. People may make the strategic choice to perform respectability because they need the financial and professional stability that comes with it, even when they would not otherwise choose to dress or behave in accordance with white middle-class respectability norms. People may attempt to persist even in the face of experiences of self-loathing, shame, fear, and humiliation because they cannot afford to quit. A choice between economic security or survival, on the one hand, and autonomy and a sense of dignity, on the other, is not a freely made choice—but it is the choice respectability requirements necessitate for those who do not take easily to gendered, raced, and class respectability norms. Because those norms are from and of particular groups—white, Anglo, heterosexual, middle-class, male—they

100 Butler, in Prejudicial Appearances: The Logic of American Antidiscrimination Law. 83.

101 Fisk; Klare; Yoshino; Young.
are most likely to be burdensome for those who come from other, more marginalized groups, and it is members of those groups who will be faced with the coercive demands of respectability. Together, the distinction between identity-salient traits that are or are not immutable, the separation of individuals from group contexts, and the use of respectability as a gatekeeping tool, create an unmistakably discriminatory effect. The use of respectability requirements makes it harder for people who cannot or will not cover marginalized identities to get, keep, and succeed at work. Respectability requirements may not be consciously fueled by animus, but they are a form of disparate treatment and create disparate impacts, and rhetorics of respectability make this discrimination possible without requiring employers to name or become aware of the effects of their policies.

**Conclusion: Possibilities For and Beyond the Law**

Law serves a disciplinary purpose formally and informally, as a mechanism for disincentivizing or punishing behavior and as a way to communicate normative ideas about what behavior is or is not appropriate. This is certainly the case for antidiscrimination law, which not only bans certain types of discrimination, but communicates ideas about what criteria should or should not be used in employment decisions, and even what criteria should be used in interpersonal judgments.\(^{102}\) The same can be said about legal loopholes and enforcement practices, which signal that the letter of the law can be distinct from its meaning—that it is not really wrong to drive 60 miles per hour in a 55-mile-per-hour zone or for a college sophomore to have a beer. And as with other types of law, so with antidiscrimination law; where respectability is, in practice, a legally sanctioned form of discrimination, it is also socially sanctioned. This has

the potential to be an infinitely recursive loop: community norms determine what identity-salient behaviors can be forbidden by respectability requirements without being considered discriminatory; people who do not or cannot adhere to those respectability requirements are not hired or fail to advance; immutability standards and the lack of similarly situated plaintiffs within a company that uses respectability to discriminate make it impossible to prove disparate impact; rhetorics of respectability make it impossible to prove disparate treatment; companies can continue to institute and enforce de facto discriminatory respectability requirements; people who would challenge respectability requirements from the inside don’t advance to positions of authority; and community norms don’t change in ways that would more fully accommodate expressions of identity.

How, then, to interrupt the cycle? Legal change is necessary to disrupt respectability-based discrimination. While rights protections have many critics, changes to the law come with the distinct advantage of being formal and enforceable. In employment discrimination cases they give employees the possibility of recourse and create material disincentives for employers to discriminate, which are likely to be more persuasive than normative calls to inclusivity. They also motivate employers and colleagues to consider the discriminatory content of policies and to develop new frameworks for understanding and preventing discriminatory behavior. These might include creating new types of protections, rethinking antidiscrimination law in terms of privacy rights, and shifting the burden of proof within anti-discrimination cases. However, legal change is not sufficient. I conclude with reflections on the limits of the law, and discussion of non-legal approaches to ameliorating respectability-based discrimination.
Appearance Protections

Respectability-based loopholes are possible in part because antidiscrimination protections are only available on the basis of immutable identity. Appearance protections would uncouple appearance and identity, instead offering broad-based protection for discrimination on the basis of aspects of appearance, including those that are chosen and mutable. This would include traits that are not necessarily identity-salient, like weight and attractiveness, but would also include aspects of dress and grooming that are related to the expression of identity. Critics have expressed concern that such protections might be overbroad to the point of preventing employers from being at all discerning about employment decisions, including those concerning people who they feel would undermine their business through choices their customers found off-putting.\footnote{Adamitis; Carbado and Gulati, "The Fifth Black Woman."; Klare; Mahajan; Post, in Prejudicial Appearances: The Logic of American Antidiscrimination Law.}

Conceding to this concern, however, runs the risk of replicating pre-existing issues with using community norms as a standard. It could be that employers would only find things that are not identity-salient off-putting, that they are only concerned about having to hire people with green hair, tattoo sleeves, or piercings. But it is just as, if not more, likely that employers would demonstrate an aversion toward identity-salient aspects of appearance and, if permitted, continue using rhetorics of respectability to avoid hiring employees whose hair or dress doesn’t fit with middle-class white respectability norms. This may be fueled by implicit bias, wherein employers may think they just don’t like the look of dreadlocks or men with pierced ears without consciously realizing that they are averse to these styles because of an association of them with blackness and queerness. Furthermore, the line between identity and the performance of identity is often blurry, even for the person who is making choices about their appearance. Someone may not be sure of whether they want purple hair for purely aesthetic purposes or because it identifies
them with the LGBTQ community and helps them acclimate to the process of perpetual coming out. Someone may want to stop relaxing her hair precisely because she is unsure of how it will change her relationship to her racial identity. Someone may want a tattoo that isn’t precisely about their belonging to a protected class, but that is related to the ways in which their identities have shaped their lives; I think here of a colleague who had what he called his black power sleeve, inspired by moments in which he felt isolated in academia on account of his race; of a friend whose Harry Potter tattoo marked her decision to seek treatment for severe depression related to chronic illness; of friends and acquaintances who have gotten tattoos ranging from the obviously political to the seemingly trivial in order to mark religious conversions or the survival of illness or sexual assault. All of these are chosen and mutable, and while they are borne of experiences that have to do with belonging to a protected class, they are not inextricable from those identities. Refusing to hire or promote these people on the basis of their tattoos—or hair color, or hair style—would not be racist or homophobic or sexist or ableist per se, but it would be a disapproving judgment that penalizes them for how they have chosen to navigate oppressive systems that they have had to navigate largely or entirely because of their memberships in marginalized groups. Not all tattoos (or hair colors, or hair styles, or piercings) have this sort of significance. However, applying a litmus test requiring employees to justify the relationship between aspects of their appearance and identity would be unduly invasive, would require them to publicly articulate shifts in identity that may not yet be articulable, and/or that require the sort of personal disclosures to which employers ought not have a right. Appearance protections would render such tests unnecessary, focusing on giving adults the latitude to shape and display their identities without having to meet identity-based legal standards.
Another approach to providing broader and less contingent protections comes in the reframing of workplace regulation as an issue of privacy and autonomy, delimiting boundaries beyond which an employer cannot regulate employee’s experience of self, including but not limited to embodied expressions of identity. Rather than focusing on group identity, this approach would focus on personal liberty and rights to free speech and expression to preserve a sphere for self-definition.104

This approach would have the benefit of including aspects of self that are not tied to identity, but that are nevertheless deeply important to one’s sense of dignity and self-determination. Catherine Fisk gives the example of an electrician who worked for a school that instituted a dress code requiring male employees to wear khaki slacks. He often worked in hot conditions, and had a condition that caused him to sweat a great deal, such that, Fisk relays, he said that “If I have to wear khaki pants, inside of an hour I'll look like I wet myself. The students will laugh, and I'm just not willing to be humiliated.” The electrician was unable to get medical documentation sufficient to convince his employer than his condition was a medically protected disability, and wound up leaving his job.105 Fisk also addresses Darlene Jespersen’s case, with a particular focus on the invasiveness of the invasive daily monitoring that was required by the “Personal Best” program.106 In both of these cases, reserving some amount of autonomy and self-determination to the employee would have saved them humiliation and the loss of employment without requiring them to make claims based on membership within a protected class. While

104 Fisk; Klare.
105 Fisk. 1114.
106 Ibid. 116-1117.
employers would have significantly less control over their employees’ appearance, I am with Fisk in asking whether this is a bad thing, and whether it is or should be more important to protect employers’ interest in their employees’ appearance than it is to protect employees’ interest in their own bodies and expressions of self, and in thinking it is reasonable to have a framework that first asks employers whether a less invasive policy might accomplish similar goals, before asking employees to alter their interest in self-expression and non-humiliation.  

Shifting Burdens

Currently, it is the responsibility of the plaintiff in an anti-discrimination suit to provide proof of discrimination. If the plaintiff does so, the defendant can present a justification as to why the policy in question was legitimate, and then the burden returns to the plaintiff to prove that the employer’s rationale is insufficient. This places a heavy burden on employees who have experienced discrimination, and one that is sometimes insurmountable given employees’ generally limited access to employers’ records and motives and the general difficulty of convincingly articulating why and how a policy that may align with community norms is discriminatory. Burdens were one key issue in Darlene Jespersen’s case; since the court felt she had never given sufficient proof that the policy was discriminatory in the first place, Harrah’s was not compelled to explain why its “Personal Best” program was not discriminatory, including why a program that required women to wear makeup didn’t constitute sex-based stereotyping.

Shifting the burden of proof would make it harder for employers to use post-hoc

\[107\] Ibid.

\[108\] Mahajan; Pizer; Lacy and Ray.

\[109\] Pizer.
justifications to avoid antidiscrimination claims and, by the lowering the bar to a successful suit, make employers more meaningfully accountable to considering the potentially discriminatory impacts of their appearance policies before implementing them. Catherine Fisk proposes a model of divided burdens wherein the employee is initially responsible for articulating the harms caused and the employer is initially responsible for explaining why a particular policy was necessary and why alternative policies or exceptions to the policy were not viable. Building on a model already in place in the United Kingdom, David Lacy and Alexandra Ray suggest an assignment of burdens wherein it falls primarily to the employer to disprove the claim, rather than falling to the plaintiff to prove it. In this system, an employee “has an opportunity to send the respondent a pre-tribunal race discrimination questionnaire…presenting his or her claim alleging discrimination and requesting the employer to provide an explanation for its adverse action,” after which “Failure of the employer to issue a response within eight weeks, or issuing a disingenuous response, allows the Employment Tribunal to draw an inference of discrimination.” In other words, if the employer is not willing or able to provide timely evidence disproving the claim, the claim of discrimination stands. Though this assignment of burdens is not consistent with other areas of law in the United Kingdom, where the burden of proof generally lies with the plaintiff, Lacy and Ray write that the shift in burdens with regard to antidiscrimination law in employment “was implemented in recognition of the fact that the difficulty of proving a racial discrimination claim against one’s employer increases where the employee bears the burden of proving discrimination by reason of race at all stages,” and cite the court’s ruling that shifting burdens places “emphasis on effective protection for those who are

110 Fisk.

111 Lacy and Ray. 53.
the victims of discrimination, and the need for the principle of equal treatment to be applied effectively.”

In the U.S. context, they “find that this extra burden on the employer is warranted in light of the fact that discriminatory motive is harder to find today because of its subtle nature,” which is consistent with the use of respectability requirements and rhetorics that conceal the extent to which ostensibly neutral policies nevertheless impact, and sometimes are targeted toward, marginalized groups.

It is easy to imagine criticism of this approach on the grounds that lowered burdens might encourage litigiousness, including frivolous lawsuits. It is hard to say, though, what constitutes a frivolous lawsuit when identity and expression are at stake. There is of course some chance that avaricious plaintiffs would attempt to abuse the law, but that is the case with every sort of law, and part of the reason judicial procedures and standards—which, in this paradigm, would still allow employers to disprove spurious claims—are in place. The possibility of limited abuse is not reason enough to foreclose the possibility of bringing more accessible relief to employees who have experienced discrimination, or of giving employers stronger incentives to consider and avoid the possibility of discriminatory behavior in the first place.

**Beyond the Law**

Law is powerful, but it cannot singlehandedly transform patterns of discrimination. At the end of Kenji Yoshino’s impassioned critique of discriminatory legal practices in *Covering*, he nevertheless concludes, I think rightly, that demands on our identities “are often made by actors the law does not—and in my view should not—hold accountable, such as friends, family,

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112 Ibid. 63.

113 Ibid. 63.
neighbors, or people themselves” and that while law plays a meaningful role it cannot offer the sorts of interpersonal, psychic, emotional remedies or advances that would create more holistic transformation. Instead he contends that the “real solution lies in all of us as citizens” who can begin or demand “reason-forcing conversations [that] should happen outside courtrooms—in workplaces and restaurants, schools and playgrounds, chat rooms and living rooms, public squares and bars.” Irving Marion Young reaches a similar conclusion; formal justice is meaningful, in part because it answers the “call to bring these phenomena of practical consciousness and unconsciousness under discussion” by “providing institutional means for fostering politicized cultural discussion,” but “most cultural change cannot occur, however, by edict.”

Instead of relying wholly on legal protection, shifts in law must be accompanied by (and responsive to) social, interpersonal challenges to behavioral expectations. The act of challenging the discriminatory nature of respectability rhetorics and requirements is often best and most efficiently accomplished through interactions between thoughtful employers, employees, and colleagues who are responsive to one another’s interests and willing to consider new perspectives and find middle ground.

Still, in practice, the burden of these conversations will fall to members of marginalized groups, who are able to see discriminatory subtext that is invisible to those who live comfortably within the bounds of respectability and have never had to learn to articulate why, or examine the possibly that, the norms that work for them do not work for everyone. People who are comfortable in respectability, and with the dominance of respectability norms that order the

114 Yoshino. 192, 194.

115 Young. 152.
world neatly for them, may well resist these challenges. The law can play an important role there by, as Young suggests, providing a venue in which politicized conversation must be had. So, too, can respectable people who are sensitive to the limitations of respectability demands, and who have the social status and access to institutional power to help lower the gates and change the rules. Respectability is a resource as much as it is a status or identity marker. Those without it will face an uphill battle as they try to change it; those who do have it can use it to support those who do not. In the case of respectability, this may be an unusually self-serving form of ally-ship, as the consequences of diminishing the disciplinary power of respectability do not only benefit marginalized groups. While marginalized group members have the most to lose or gain, the ability to be oneself more fully and freely stands to benefit even those who are entirely, or at least relatively, comfortable within the respectable status quo.

Reaching beyond formal legal proceedings creates opportunities to intervene in situations where the influence of law is complex and diffuse. Law continues to lend powerful discursive weight to respectability requirements in situations where those who are disciplined by respectability are effectively unable to take legal action. I turn now to two such cases.
2. THE THREE R’S: RECOGNITION, RIGHTS, AND RESPECTABILITY

Before students can enter Great Oaks Academy in Newark, NJ they have to pass the dean of students’ sharp-eyed inspection. The dean, Ms. Williams, greets each student with a firm handshake. As students rattle off the school’s slogan (“Rise Up!”) and the qualities it stands for (Respect, Integrity, Self-Discipline, Excellence, Understanding, Professionalism) Ms. Williams gives them a once-over. Their charcoal grey slacks have to be worn at the waist. Their belts, socks, and dress shoes must be black. They have the option of an oxford or polo, both light blue and embossed with the school’s logo. Boys must pair it with a properly knotted tie. Their hair, jewelry, and makeup (or lack thereof) must be in line with school regulations. Students who have opted to add a navy cardigan or sweater vest must make sure that their shirts are tucked in so that only one hem is visible. When a student’s uniform is somehow out of order Ms. Williams uses the handshake to hold them in place until they promise to correct the issue. None of them are allowed to enter until they have demonstrated a commitment to respectability.

A line of teenagers stretches down the block. Many of them rush to engage in a daily ritual of code-switching. They stuff hoodies into their backpacks, rush to button uniform shirts over whatever they wore for the morning commute, unbuckle belts so they can re-settle their waistbands and arrange their shirttails. Some of the students forget (or “forget”) to finish this ritual, and even when they appear to chafe under Ms. Williams’ gaze, almost all of them comply. It is, after all, a condition of entrance. Their parents or guardians had to sign contracts agreeing to these rules before they were enrolled. If they don’t obey they will be sent out of class or
suspended, and if they accumulate enough disciplinary infractions they can be expelled. The stakes are high.

Still, some of them resist, perhaps none as tenaciously as Shenice. She is a tall, heavyset black 10th grader whose posture and walk are reminiscent of stud subculture in black lesbian communities and who is, at some risk, increasingly out to her peers. She arrives at the door with her slacks low around her hips and her blue oxford hanging open over a brightly patterned t-shirt. She approaches Ms. Williams with a bright smile. It’s immediately clear that this isn’t their first conversation about the dress code, and though Shenice is eventually allowed to enter the building their back and forth continues over a series of interactions in the lead up to homeroom; a correction in the hallway, a summons to the main office, a discussion with her homeroom teacher. By the time Shenice is settled into homeroom, Ms. Williams has signaled one of Great Oaks’ AmeriCorps-funded tutors to watch her. The tutor, who is, like Ms. Williams, a slender young white woman, trains her eyes on Shenice’s back and waist. Shenice twists uncomfortably in her seat. She tries sitting up straight and folding her hands on the desk, but her shirt strains across her chest and broad shoulders. She pulls at the buttons and barely stops herself from tugging at her waistband. As many of her classmates crowd the front of the room to join in an enthusiastic cheer, unaware of or unconcerned with Shenice’s discomfort, Shenice silently buries her face in her elbow and stays there, moving only to tense her shoulders as the tutor steps closer to correct her posture.

Respectability requirements, as they exist in schools, are rules and policies that govern students’ dress, comportment, and affect beyond what is required to create and maintain a safe and productive learning environment. This does not include restrictions that fall within a school’s broader mandate to keep students safe and facilitate their learning. Gang insignia, bare arms in a
chemistry lab, and high heels in gym class can all be reasonably banned because permitting them endangers students. Respectability requirements go further. Their purpose is not strictly utilitarian. Instead, respectability requirements constrain students to a narrow range of acceptable behaviors that are in line with the professional norms of middle-class, white, white-collar professional workplaces. They include policies that forbid certain hairstyles and types of bodily decoration, delimit physical movement, and prohibit ways of speaking or expressing emotion. They might require students to wear particular items of clothing and to sit and speak in particular ways. While utilitarian policies aimed at protecting students might ban students from making verbal threats or coming to school naked, respectability requirements restrict students from saying that they’d like to “ax a question” instead of “ask a question,” or from entering a classroom with untucked shirttails. Their purpose is not to maintain safety, but to create a very specific type of order.

They also require a very specific type of discipline. Schools with respectability requirements must engage in practices of surveillance and punishment that wouldn’t otherwise be necessary. Students’ bodies must be watched carefully throughout the day. Sometimes this is enacted through a series of routines like Great Oaks’ morning ritual, which is derived largely from Doug Lemov’s popular and widely-used manual *Teach Like a Champion*. Elements of these routines can be found at many schools, including the “Threshold” technique, wherein a school’s principal, deans, and teachers inspect students at the beginning of each day or each class, looking each student up and down to ensure that their clothing is in line with school policy and requiring students to fix low or high waistbands, unbuttoned collars, loosened ties, and often asking students to repeat a catch phrase or shake the adult’s hand, before they are allowed to enter the
Sometimes enforcement is more arbitrary or invasive. Teachers or administrators who decide that a student’s clothing is too revealing or too messy may require students to kneel, bend over, or lift their arms in a hallway or at the front of the class, potentially exposing their backs, cleavage, stomachs, and thighs to their teachers and peers in order to demonstrate whether or not they are within the letter of the law. School staff can, where respectability requirements require it, instruct (or sometimes physically move) students to make sure that they are sitting straight-backed with their hands folded on their desks, or take demerits if their eyes wander, if they become too effusive, or if they slip into a dialect that has been deemed improper within the classroom or school. Stricter penalties may follow when students do not, or cannot, comply. Some schools practice a sort of formal ostracism, were a student will be sent to a particular seat reserved for troublemakers, forbidden from speaking or being spoken to, or given a particular colored t-shirt to wear over their uniform until they issue an apology to their peers and their classmates vote to re-admit them to the class. In other cases, or in addition to

ostracism, schools use more conventional types of exclusion: in-school and out-of-school suspension and sometimes, especially for repeat violators, expulsion. 2

Proponents of school dress codes and behavioral requirements argue that they promote student safety and success. 3 I challenge this claim directly, but focus on a broader argument. I do not contend that uniforms or white middle-class respectability are inherently wrong or bad; there is no great evil or oppression inherent in a pair of khakis. But I do argue that respectability

2 Private and charter schools can more easily expel students by sending them back to their zoned traditional public schools, whereas traditional public schools need more cause. Whether this has, or has the potential to be, a reason for respectability infractions to be used to funnel students into the criminal justice system under the guise of “insubordination” or “disorderly conduct” or “willful defiance” or automatic penalties for repeat infractions of minor rules is outside the purview of this discussion, but is worthy of further exploration.

3 Proponents of respectability requirements include a broad array of educators, school administrators, teacher trainers, researchers, pundits, politicians, bureaucrats, philanthropists, journalists, and off- and online commentators. There is not any person or group who speaks loudest on the issue, and arguments are remarkably similar regardless of the specific source. In general, proponents argue that respectability requirements make students safer, more focused, more moral, more cohesive as a group, and better prepared to leave school; that they are good for schools’ reputations; and that they are cost effective and easy for families. To take a particularly noteworthy example, statements are often along the lines of those from President Bill Clinton’s 1996 State of the Union Address and subsequent radio address, where Clinton said that “if it means that teenagers will stop killing each other over designer jackets, then our public schools should be able to require their students to wear school uniforms” and that “If it means that the schoolrooms will be more orderly, more disciplined…and that our young people will learn to evaluate themselves by what they are on the inside instead of what they're wearing on the outside, then our public schools should be able to require their students to wear school uniforms.” In a similar vein, when then-Chancellor of Washington, D.C. schools Michelle Rhee instituted an emergency rule repealing a section of D.C. Municipal regulation that gave students “personal determination of appearance, including styles of hair and dress” it was “to promote safe and secure schools” and “ensure preservation of the public welfare in general.” These themes—safety, order, discipline, and character—recur, alongside other themes mentioned above, so frequently that it would be impossible to comprehensively cite those who make them. (Alison Mitchell, "Clinton Will Advise Schools on Uniforms," The New York Times, February 25, 1996, 1996, http://www.nytimes.com/1996/02/25/us/clinton-will-advise-schools-on-uniforms.html; William Jefferson Clinton, State of the Union Address (Washington, D.C.: 1996); Jim Iovino, "Rhee Enacts Tougher Student Dress Code," NBC4 Washington, March 30, http://www.nbcwashington.com/news/local/Rhee-Enacts-New-Student-Dress-Code.html; Bill Turque, "Dcps Toughens Dress Policies," D.C. Wire, March 27, http://voices.washingtonpost.com/dc/2009/03/dcps_toughens_dress_policies.html.)
requirements privilege one way of being—one type of identity—over others, and that that has serious consequences.

Respectability requirements teach students that those who do not correctly perform white middle-class respectability can justly be denied entrance to the classroom or school or subjected to public correction and exclusion. They provide students with a lens through which a coded form of discrimination comes to seem familiar and acceptable. Furthermore, by teaching students that success is only possible if they learn to perform and monitor their compliance with dominant norms, instead of expecting or demanding that they be valued and supported on their own terms, schools shift the burden of understanding complex systems of cultural hegemony, code-switching, and implicit discrimination to those who, by virtue of their age and cognitive development, are less able to understand the political and personal stakes in what they’re being asked to do. Instead of demanding student compliance with white, middle-class norms of respectability, I contend that school decision-makers have an obligation, as adults and as agents of the state, to take on the work of learning and interpreting students’ norms and expectations and supporting their development as whole people, rather than only as test-takers or future workers, which includes supporting their exploration and expression of identity.

I begin by arguing in favor of children’s expression, not as a right but as an important protection from harm that they are due from the adults charged with caring for them. I contend that this protection is especially important in schools, both because they are a central social sphere in children’s lives and because they are usually acting with the endorsement of the state, which should remain neutral to non-harmful differences in identity. I further argue that respectability requirements are an abdication of adults’ responsibility to protect, and that the justifications that school decision-makers offer do not hold up either ethically or empirically.
Instead, they are based on empty, and sometimes racist and sexist, rationales that serve to benefit adult rule enforcers rather than students. I end by returning to the larger question of how respectability is reproduced and the ways in which respectability requirements perpetuate legal, socially acceptable forms of discrimination and ensure that one way of being is more likely than others to live on as part of the next generations’ conception of what is good and what is just.

Rights and Protections

Children do not generally have expressive rights. Within the liberal tradition this is generally ascribed to the cognitive limitations of childhood, which keep children from developing stable life plans and conceptions of the good. Young children are not able to assert preferences about how they want their adult lives to be, and teenagers often struggle to do so stably and realistically. Children, younger and older, are generally ill-equipped to judge risk accurately or make good tradeoffs between instant gratification and long-term goals. They therefore benefit from their parents’ (hopefully benevolent) paternalism while they develop their vision of the good life and decide how they want to pursue it. Until they reach the age of

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4 The United Nations’ 1989 Convention on the Rights of the Child, to which the U.S. is a signatory, does guarantee children a limited freedom of expression that includes “freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child’s choice” and “freedom of thought, conscience and religion,” and that is meant to guarantee that “a child belonging to [an ethnic, religious, or linguistic] minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.” These protections apply to the form and content of ideas as they are discussed verbally or in writing. They do not extend to embodied forms of expression. Furthermore, the convention, and the United States’ agreement to it, is also not generally reflected in the practical experiences of or legal protections available to children in the U.S. (The United Nations, Convention on the Rights of the Child (1989), accessed February 2016, http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx.)
maturity, at which point we assume they can be trusted to act in their own interests, they are not broadly eligible for civil rights and liberties.  

Where rights are extended to children, they are limited in multiple ways. Legal institutions require that they be exercised through an adult who supports a child’s rights claim. This means that children are not usually able to autonomously claim their rights even when they nominally exist. Instead, children’s rights are closer to what Joel Feinberg calls “rights in trust” and what Robert Noggle calls a “fiduciary relationship” with parents. These are oriented toward the child’s future, rather than serving as an actually executable basis for claim-making. The content of the rights reserved to minors is also limited. Where minors’ rights exist they focus on children’s basic welfare and preparing children for adulthood rather than guaranteeing them the privileges extended to adults. Barbara Arneil makes a useful distinction in pointing out that

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children in liberal societies generally have rights to provision and protection—food, shelter, physical safety, education—but do not generally have rights to much more, and those basic welfare rights are only involved when they are abridged to the point of causing such acute harm that state intervention into the family is considered necessary and justifiable.\(^8\)

I maintain that children’s rights should not be eroded and that there is value in the precedents that protect children beyond their basic welfare, but I do not argue that expanding children’s rights is the best remedy for the harms of respectability requirements.\(^9\) It would be difficult, if not impossible, to pin down how and where to draw the line between rights that should and should not be due to children. Expression can’t be grouped with welfare rights, both because children can survive without it and because establishing uniform standards for when state intervention would be warranted to ensure the exercise of children’s expressive rights

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\(^9\) There are arguments for expanding children’s rights, or departing from them altogether: that children have more capacity than a liberal model assumes and should be less constrained and freer to exercise autonomy at much earlier ages, that the rights framework puts the family into a conflictual relationship with the state rather than maintaining a supportive harmony between them, that a rights framework can’t encompass qualities like kindness and caring that are important to children’s flourishing. None of these are satisfactory for my purposes. (O'Neill; Arneil, in *The Moral and Political Status of Children*; John Caldwell Holt, *Escape from Childhood: The Needs and Rights of Children* (New York: E.P. Dutton, 1974); Richard Farson, *Birthrights* (New York: Penguin Books, 1978); Joan Tronto, *Moral Boundaries: A Political Argument for an Ethic of Care* (New York: Routledge, 1993).
would be near-impossible, particularly if such rights were understood to protect children’s expression from their parents’ rules. Michael Wald rightly points out that granting children broad autonomy is tricky, and perhaps foolhardy, when there is so much variation in temperament and maturity between children of the same age, let alone within the broad category of “children.”

Expanding rights would not solve the problem of how children could meaningfully exercise them when adult intervention is needed to facilitate claim-making. And, perhaps most importantly, the cognitive differences between children and adults are real and compelling. Per Barbara Arneil, school-age children exist not as “beings” but “becomings” – humans who are in the process of developing their adult selves, who have seeds of rationality but are not yet fully capable of decision-making. Giving children expressive rights would not give them the capacity to use them judiciously or to benefit from them until they are able to understand the ramifications of their speech and actions.

Nevertheless, children do benefit from self-expression. Having the chance to test and understand what it means to embrace a racial, ethnic, gender, or sexual identity, or to ally oneself with particular, often culturally-rooted or –specific forms of expression, is central to developing a sense of self and conception of the good. Preventing children from engaging these kinds of explorations limits their ability to find and embrace harmonious expressions of identity.

10 In practice, where autonomy rights for children exist in the U.S. they are a patchwork, differing widely by state and area of law, precisely because there is no clear and consistent standard for when children are ready for particular rights. (Michael S. Wald, "Children's Rights: A Framework for Analysis," University of California, Davis Law Review 255 (1979).)

11 Arneil, in The Moral and Political Status of Children.
**Becoming at School**

School is a central part of children’s lives. It is a focus of their energy and attention and a place where they spend much of their time. Prohibiting the expression of children’s evolving identities at school deprives them of one of the major venues in which they can test and discover their possible selves. That testing is necessary. Identities don’t develop or have meaning in a vacuum; they are necessarily social, a way of signaling affiliations and beliefs and commitments.\(^{12}\)

Without being deployed in a social context, explorations of identity have little value. A student who wears a rainbow bracelet in the privacy of his own bedroom isn’t learning what it means to live as a gay person. A student who would like to have an afro but knows that her school will classify it as messy, disorderly, or (ironically) unnatural and send her home to cut or treat her hair will not be able to pursue an image of black beauty that might resonate with her and let her affiliate with other black students who are interested in black power movements. And so on.

Some students may have other venues for socializing, but none will be as central, or take up as much time, as school, especially if we consider the extracurricular activities and informal socializing that go along with it, and extend the dynamics created during the formal school day.

To reconcile the need for guidance with the need for expression, adult direction should be given with an eye toward helping children become. This includes helping them develop a sense of the good life and a sense of self, which in turn means giving children space to experiment with who they are and how they want to structure their relationships and lives. Adult guidance should

not be confused with discipline in this process. As Harry Brighouse and Adam Swift argue, loving discipline may be one piece of it; good adult guidance would not include letting children harm themselves or each other and would include helping children develop a sense for how their actions affect others, and restricting or redirecting their behavior may be necessary. ¹³ But in establishing a fiduciary relationship with children, adults should do more than discipline. ¹⁴ They should provide spaces where children’s explorations can occur without causing harm or restricting their prospects. That certainly includes avoiding policies and practices that will leave students with lengthy disciplinary records, or shaming or excluding children for choices in personal presentation that do not cause others harm. More broadly, adults should be cautious of disciplining primarily for the sake of their own comfort or ease. They should be restrained in exercising power over children for the same reason we restrict children’s rights: children do not have adults’ ability to contextualize or compartmentalize the experience of discipline.

**Disciplining Identities**

Children’s limited ability to contextualize or compartmentalize adult correction – and adults’ related responsibility to limit their disciplining – is especially urgent when it comes to the sort of disciplining that respectability requirements create. In exploring what is at stake in respectability requirements, I ask four questions: What do respectability requirements do? What purposes do they serve? Who should shoulder the costs of them? How does the role of the state

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¹⁴ Robert Noggle notes that the relationship between parent and child differs from a traditional fiduciary relationship in that the child does not act as a principal to the parent’s agent, and that the parent is the agent of the larger community as well as the child. Still, he maintains that it is a fiduciary relationship, albeit one in which the agent has an unusual amount of power. (Noggle, in *The Moral and Political Status of Children*.)
matter? Along those lines, I argue that respectability requirements affect children’s identities in unique ways; that they more clearly serves adults’ interests than children’s; that where adults’ and children’s interests might be differently served adults, with their greater capacity for understanding and safely separating their public and private selves, have an obligation to do that work instead of requiring it of children; and that school decision makers who are acting on behalf of the state should remain neutral to children’s differences in background and expression and should uphold their right to freedom of expression.

What do respectability requirements do?

Respectability requirements differ from most other types of school rules because they go beyond what is strictly necessary to maintain a safe and productive environment – and because, in so doing, they touch on different aspects of students’ embodied and internal lives than rules about handing in homework or raising hands. They require students to dress and groom themselves in ways that affect how they are seen in school and their presentation outside of the school building; a student who is not allowed to have an afro in school will not be able to have one in the evenings, a student who is required to show up to school in a uniform will generally need to travel to and from school in that uniform.¹⁵

The effects of that breadth are significant, particularly when paired with the disciplinary consequences and rhetoric that are most frequently attached to them. Respectability is presented as a necessary precondition of intellectual engagement, academic success, and professional

¹⁵ Many students do alter uniforms when they’re able, and so experience that particular restriction to varying degrees. However, I contend that students’ frequent inclination toward modifying their outfits points to a dissonance between how they are required to present themselves to their teachers and peers and how they would choose to do so, and suggests a certain amount of psychological work involved in the code-switching that respectability requirements necessitate.
possibilities. It is also a requirement for entry to the school and classroom. Students and their families may be asked to sign contracts in which they agree to adhere to respectability requirements. Students who do not properly embody those rules may be corrected, excluded from the classroom, or temporarily or permanently excluded from the school, either before or after enrolling. Children learn that respectability must foreground inclusion, opportunity, and the ability to influence. The message is powerful, clear, and clearly demonstrated: people who are not respectable are not able to engage on the same level as those who are and can justly be excluded. Those who are not respectable will not be included, will not have opportunities, and will not become influential.

Of course, respectability does not come naturally to most children. Childhood is a messy time, literally and figuratively. Respectability requirements complicate that messiness for children whose behavior would be considered disrespectful in ways that extend beyond runny noses and untied shoelaces or adolescent moodiness. The content and enforcement of respectability requirements relies on nebulous terms like “neat,” “professional,” “not unkempt,” “tidy,” and so on. The interpretation of those terms owes a great deal to beauty standards and the norms that are a part of them, and affect the children whose lives they rule accordingly. Respectability requirements that require “tidy” or “neatly groomed” hair will be easier and less intrusive for children with straight hair. Requirements that forbid scented products will be easier and less intrusive for children with light skin who are not worried about looking ashy if they don’t use lotion throughout the day. Requirements about the fit of clothing will be easier and less intrusive for children who are thin and for girls with smaller and later-developing breasts and hips. In short, children whose identities jibe with respectability requirements will find them

easier to adhere to, and that ease will correlate with race, gender, sexuality, and other forms of identity that we necessarily come into, and come to understand and enact, during the school-aged years.

Students whose identities don’t flow into easy compliance with respectability requirements will be reminded of it often. They will face the penalties discussed above if they are unable to find ways to comply, but many of the repercussions will come from a subtler sort of discipline. Schools with respectability requirements rarely present them as such. Instead, children are taught that respectability is a prerequisite for goodness and inclusion, and that a lack of respectability is destructive to one’s self and one’s peers. The student who fails to perform respectability correctly will have already been taught that he or she presents a danger to others. The many students who navigate between in-school respectability and other performances of identity in other parts of their lives will learn that their goodness is precarious; if they come to school as they are at home or in their communities, they will no longer be good and worthy of inclusion. The message is clear: who they are at home is not good or worthy.

By extension, neither are the groups they identify with or draw aspects of their identities from. When schools malign certain manifestations of identity, they malign the groups that those manifestations come from. To teach students that an afro is unkempt, sloppy, dangerous, and fair grounds for rendering someone ineligible for instruction is not just to indict the individual hairstyle or rulebreaking student, but to malign the racial and political origins of the hairstyle and the groups who fought for its acceptance. To teach students that women’s bodies must be disciplined because they distract boys and incite objectification, harassment, and sexual assault is not just to correct individual students’ behavior, but to perpetuate a victim-blaming logic that holds women accountable for their sexualization by peers (and the teachers and administrators
who ask them to drop to their knees or bend over to demonstrate how much of their thighs or cleavage can be seen from particular vantage points). To teach students that signs of gay pride, like wearing rainbow buttons or bracelets in schools or adopting stereotypically queer modes of speaking and moving, are inappropriate in the public sphere is not just to suggest that individual students should leave particular pieces of jewelry at home, but to suggest that there is something shameful about same-sex attraction, and that any visible signs of it should be left, quite literally, in the closet.

These aren’t messages that students can easily leave at the door. If, for (at least) eight hours a day, five days a week, 36 or 40 weeks a year, students learn to view these identities, in themselves and others, as signs of dangerousness or disrespect, how can they be expected to reclaim those identities outside of school? How can they be expected to view the identity groups these behaviors come from positively, even when they map on to students’ heritage and home community, or would provide much-needed social support? How will it change their views of family members and friends who hew closely to out-and-proud queerness, or black power, or feminist rejection of beauty norms? At a minimum, these requirements compel sophisticated code-switching as students continuously gauge and alternate between distinctive sets of social rules, which is itself a drain on cognitive energies. Beyond that, living under and having the very nuances of their bodies governed by respectability requirements will almost invariably have some effect on the ways students view parts of their lives – their interests, communities, families, and so on – that don’t pass muster as respectable. It is unlikely to be a positive one.

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What purposes do they serve?

If many children are harmed by them, what purposes do respectability requirements serve? Schools most frequently take recourse to explanations that draw on the idea of orderliness, which is a key component of respectability. In reading hundreds of primary, middle, and high school handbooks, several themes emerge: uniforms decrease distraction, division, competition, and the need for discipline; they increase order, safety, and equality; they improve learning. But there are many ways to address levels of distraction or disorderliness that would affect learning without governing the minutiae of students’ embodied experience, and respectability requirements alone cannot address these problems. Students who can hear gunshots outside, or who drink brown water out of the school fountains, or who were taking care of siblings instead of sleeping, or who haven’t eaten since the previous days’ school lunch will be distracted and feel unsafe even if their cuffs and collars are immaculately pressed. So will students who are grappling with their identities and trying to make sense of social feedback that has left them questioning how or where they fit in the world. In consideration of the tenuous relationship between respectability and students’ safety or ability to focus, I question whether these requirements primarily serve children, as opposed to adults who are themselves incentivized to adhere to and enforce respectability requirements.

Proponents of respectability requirements argue that these rules and the orderliness they create serves students’ interests, but they don’t acknowledge the costs to children who live with these policies. I argue that those costs are potentially quite high. I further contend that the costs are lower for, and more reasonably borne by, adults working in schools.
Unlike children, adults generally have the ability to conceptually separate their public and private selves, and to understand that how they behave at work doesn’t need to reflect who they are at home in every way and at every time. Adults are better prepared to understand that wearing business casual attire in the classroom or office doesn’t negate their desire to wear sweatpants (or miniskirts, or superhero costumes, or bondage gear) in the evenings or on the weekends. They are also better equipped to understand the extent to which they are acting out of a genuine inclination toward mainstream respectability norms or in response to incentives that connect respectability to job security and opportunity, and to decide whether or not participating in the enforcement of respectability is worthwhile. Adults who do not feel as though dominant respectability norms are a natural and easy fit must still engage in a certain amount of code-switching, but adults are better equipped than children to switch between norms without experiencing them as a reproach of the whole self.

In addition to experiencing the costs of respectability differently, teachers and administrators have clearer incentives to enforce respectability. The orderliness it aims to create makes their jobs easier. Respectability requirements come with clear disciplinary codes and consequences for students. They therefore remove the interpretive work that teachers and administrators would otherwise have to do to understand the motives behind student behavior. Instead of learning to understand and consider their students’ intentions or enlarging their repertoire of signifiers, school staff can check items off a list. Furthermore, outside stakeholders and assessors who are invested in the idea of respectability – corporate and philanthropic donors, politicians, community leaders – may be more approving of and willing to support schools whose students appear as though they are part of an orderly, disciplined system. Regardless of whether school staff genuinely believe that respectability requirements are best for students, they
will have ample reason to believe that it is strategically in their, their students’, and the school’s best interest to support such policies. It is, for them and their students, simply a matter of compliance or the lack thereof.

*Who should shoulder costs?*

There is reason to expect that misunderstandings stemming from different social expectations will arise in schools. Most obviously, there are generation gaps between students and adult rulemakers and enforcers. Behaviors that may seem overly, disrespectfully casual or familiar to adults may not seem at all disrespectful to students who are used to signaling the tone of their written communication through emojis or using stylized abbreviations and slang to create nuance. Demographic differences between students and teachers also point to potential sources of conflict. As of 2012, 51% of U.S. public school students were white, compared to 80% of public school principals and 82% of teachers. While white students are overrepresented among school authorities, black and Hispanic students were underrepresented; 16% of students in 2012 were black compared to 10% of principals and 7% of teachers, and while 24% of students were Hispanic, the same was true for only 7% of principals and 8% of teachers.\(^{18}\) Additionally, according to the 2014 American Community Survey, 3.5% of children are foreign born, and according to the 2010 census, nearly a quarter of U.S. residents under 18 have at least one non-

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native parent. There are also differences in gender. 76% of teachers and 52% of principals are female overall, but those numbers decrease in high school; 58% of high school teachers and only 30% of high school principals are female. In short, there are many more Black and Hispanic students than there are teachers and administrators, and many more adolescent women than there are female administrators making the rules that govern their bodies. Data on class and sexual identity is harder to come by, especially for teachers specifically rather than for the general population of adults or children. Still, the data suggests many potential situations where even well-intentioned students, teachers, and administrators may misunderstand each other because they have different understandings of and expectations about what constitutes respectful and disrespectful behavior.

Teachers and administrators are faced with a choice when confronted with students whose unfamiliar norms seem unruly or disrespectful. They can make a point of learning about the norms students bring to school and creating policies that accommodate students’ backgrounds and identities, or at least meet them partway. Or they can require that students adapt to their norms. For adults set in their ways (and perpetually overburdened school staff, at that) the latter is far more attractive, particularly when, in making school rules, they are responding to a larger set of institutions that create incentives and limits. After all, why go to the trouble of learning to communicate with students who are more familiar with African-American Vernacular

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20 Bitterman, Goldring, and Gray; Goldring, Gray, and Bitterman.

English than Standard American English when part of the job is to prepare them for tests that will be given in the latter form? 22 Why not discourage students from enacting norms that will seem foreign – and potentially off-putting, threatening, or unprofessional – to the many white, straight, Christian, native-born men who will hold power over them in many situations? These questions are important ones. I do not wish to suggest that they are simply facile justifications for enforcing respectability. They do, however, serve that purpose regardless. Instead of doing the work of meeting students on their own terms, instead of working to teach material in contexts and with methods that will make it most meaningful to students as they already are, adults in the educational system make children comply with respectability norms.

Even if it is understandable, and even when teachers and administrators make the decision to impose respectability requirements as a response to external pressures rather than solely for their own comfort, I contend that this is the wrong choice. Forced compliance to respectability norms is costly for students. Their ideas of self and their judgments about their communities are invariably shaped by hearing, day in and day out and in more and less explicit ways, that respectability is akin to a moral virtue, that it makes someone deserving and worthwhile. 23 Adults are better equipped to parse the differences between their public and private selves, and to transition between different sets of norms. Even if it is costly for adults to adapt to students’ norms, the costs, and the harms of those costs, are less than they are for children. In the contemporary U.S. or, indeed, in any multicultural community or state, we

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22 African American Vernacular English is also known as AAVE, Black English Vernacular, and Ebonics.

23 Of course some students will reject them or rebel against them, but that does not make respectability requirements any less of a powerful force in their lives. The obligations of these requirements still shape the way they situate themselves in and respond to the world and force them to engage with and learn one specific set of norms, even if they use that knowledge to reject instead of embrace it.
cannot expect to avoid misunderstandings that stem from differences in social norms and expectations. Either conflict will arise or someone will have to do the work of becoming fluent in new norms. Costs are unavoidable unless people abstain from expression altogether, which, even if it were possible, would so profoundly abridge the human experience as to be more problem than solution. The question then, is not whether the costs of understanding each other across norms can be avoided, but who should shoulder them.

We do not extend expressive rights to children because they do not have adults’ cognitive abilities. For the same reason, we should not expect children to carry the burden of solving conflicts with adults, including conferences that are based in different social norms. That does not mean that learning to navigate different norms is easy for adults. They may find the actions of their students confusing or upsetting, and learning to sympathize and understand their students’ perspectives does take work. But it is work worth doing. When teachers and administrators institute respectability requirements, they shift the burden of adapting to difference away from themselves, and instead ask children to carry the burden of resolving misunderstandings borne of differences in identity and social norms.

We should not expect those who have the fewest resources to pay the highest costs. Instead, those burdens should fall to the adults in these situations who, by virtue of their position as “beings” rather than “becomings,” and as a product of the legal and ethical mantle they take up by becoming educators, have a responsibility to protect the children in their care. That protection ought not be contingent on children’s willingness and ability to conceal their identities, and those acts of concealment are not something adults should ask of children, particularly when adults themselves are better situated, in profound and personal ways, to take on and navigate those costs.
How does the role of the state matter?

Teachers, principals, deans, and other school staff do not just bear responsibility as adults who care for children, but as agents of the state. They are constrained or empowered by public policy set at the local, state, and federal levels, and they make use of state resources. The content of their lessons are often determined by bureaucrats or elected representatives, at least in the broad strokes and sometimes down to the details. Their students’ attendance is required by government mandate. They are not acting as private individuals who can exercise personal preferences, but as representatives of the state and enactors of public policy. Their position in relation to the state heightens their obligation to protect students’ expression and exploration of their identity.

There is some legal precedent to support the primacy of student expression in U.S. schools, but I do not wish to focus on it. It has been thoroughly discussed and the details debated elsewhere and, as discussed above, I am cautious about rights as a framework for protecting children’s expression. There is also some ambiguity about how far the protections established by the U.S. Supreme Court extend. As a whole, the decisions maintain that schools can limit behavior that might incite arguments or create disturbances, but opinions and their interpreters vary on where that line can and should be drawn. Nevertheless, it is worth noting this precedent

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24 Those who work in private schools are still beholden to rules set by the federal, state, and local government, whether because of safety standards, state laws, school board policies, conditions attached to federal funds, or some combination thereof.

25 *Burnside V. Byars*, 363 F.2d 744 (United States Court of Appeals for the Fifth Circuit, 1966); *Blackwell V. Issaquena County Board of Education*, 363 F.2d 749 (United States Court of Appeals for the Fifth Circuit, 1966); *Hazelwood School District V. Kuhlmeier*, 484 US 260 (Supreme Court of the United States, 1988); *Bethel School District V. Fraser*, 478 US 675 (Supreme Court of the United States, 1986); *Tinker V. Des Moines Independent Community School District*, 399 US 503 (Supreme Court of the United States, 1969); *Guiles V. Marineau*,
because it has applied first amendment protections to students, which implicitly confirms that schools’ attempts to censor student expression are undertaken by the government, not private bodies, and therefore that schools are acting as part of the government.

As state agents, adults who run schools have a particular responsibility to remain neutral in their treatment of students’ identities. They should not be favorable to white students over students of color, to men over women, and so on. To show such partiality violates principles of equality and antidiscrimination. While adults may (and inevitably do) have and act on opinions about others’ behavior and comportment in their private lives, they should not let those views color their conduct while acting on behalf of the state, lest they suggest that the state supports their beliefs. Whether they are issuing drivers licenses, collecting taxes, taking care of veterans, or educating children, they have an obligation to set aside personal judgments and offer the same service to all citizens.

Respectability requirements run afoul of that obligation. While they do not explicitly disadvantage students whose identities are marginalized or otherwise non-mainstream, they effectively work to make school, and the development of the self, harder for those students. Respectability requirements will generally be less disadvantageous for students who are not trying to find fellow members of marginalized groups, who have the relative privilege of inhabiting bodies and identities that do not mark them as different and of not needing to mark themselves as different in order to find understanding and support from like-minded people. Students who are taught that particular ways of moving, speaking, and dressing make some people better and more deserving than others will have to find ways to square that external judgment with their own experience of themselves and their communities. Students who do not

461 F.3d 320 (United States Court of Appeals for the Second Circuit, 2006); Morse V. Frederick, 551 US 393 (Supreme Court of the United States, 2007).
take to respectability requirements will face punishment, isolation, and correction, if not because of their identities, because they are unwilling to hide them. In instituting and perpetuating systems where behavior that is closely aligned with racial, ethnic, gender, and sexual identity, among other forms of identity, is forbidden or demeaned, members of school staff disadvantage students who perform those identities in visible or audible ways. Because schools and school staff are agents of the state, they further suggest that a tiered system based on respectability is acceptable to the state, and that indictments of marginalized identities carry the weight of state backing and are what students can expect from the state.

Legally, putting limits on certain groups or activities is acceptable if the government has a compelling interest in doing so. Proponents of respectability requirements argue, though not in so many words, that they have that compelling interest: the welfare of their students. They argue that students are safer; that they feel safer, more respected, and more unified; that they perform better academically; and that they are better prepared for life after school. I argue, to the contrary, that respectability requirements are not better for students in school or afterwards.

Claims that respectability requirements improve student experience and performance can be disputed by looking at students’ test scores and reported experience at similar schools with and without strict respectability requirements. For instance, in comparing two “peer schools” in New York City – schools with demographically similar student populations – students at a school with a “culturally responsive” teaching model that encourages students to embrace their identities and backgrounds were more likely to feel that it was important to come to school, do their homework, and pay attention in class than their counterparts at a school with strict respectability requirements. They also reported less bullying, less harassment based on identity, less drug and alcohol abuse, and less fighting, and more students said that they felt respected by
their peers.\textsuperscript{26} Where standardized test scores were available, the schools performed comparably.\textsuperscript{27} Respectability requirements – in this case uniforms and behavioral requirements – did not improve students’ academic performance. If improving student learning or keeping students safe are compelling interests, respectability requirements do not get the job done.

When it comes to preparing students for life after school, the assumption implicit in arguments for respectability requirements is that life after school is entirely about work, preferably of the white-collar variety. Respectability requirements, the argument goes, are about making students comfortable in office settings, teaching them to “dress for success,” where success is defined by performing particular types of labor. But surely preparing children to do one particular type of work, or teaching them that they must hide or downplay important parts of their identity to be eligible for the type of work that will make them successful, cannot be a compelling interest. Training children to be workers is one part of an education, but only one part. If states have a compelling interest in how students are prepared for the larger world, it should be at least as interested in their ability to participate as citizens and community members, or their ability to innovate, or their ability to cooperate with and understand one another. Teaching children to value one type of working life above others is especially curious when it precludes many professions that are vitally necessary to the country’s continued functioning, and


when messages about professionalism are prioritized above messages about citizenship or engagement.

In prioritizing the enforcement of respectability, school leaders miss an important opportunity to train students for life beyond school writ large. Students would be better served—as individuals, as part of their school communities, as future workers, and as future citizens—by learning to work and co-exist peaceably across differences than by entering a paradigm where identity is a basis for disadvantage and exclusion. So would their country. Students who learn that difference is just cause for exclusion will not be well-equipped to sustain a deliberative democratic system in a diverse liberal democratic state. Nor, for that matter, will they be well-equipped to keep jobs in industries where they are working with people in or from different countries or different backgrounds. By requiring conformity instead of teaching students to demonstrate and experience respect in diverse communities and across difference, schools abdicate their responsibility to train students to be citizens, workers, and community members in an increasingly diverse and interconnected country. Respectability requirements best serve state interests, and perhaps only qualify as a compelling interest, if the state is interested in conformity. But to prize conformity over individuality, expression, and exploration is not only to harm the individual students who suffer under respectability regimes, but to discourage the development of interpersonal skills that are increasingly essential as the country evolves.

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Conclusion: What Respectability Requirements Teach

Respectability requirements privilege some identities over others by penalizing students who act or present themselves in certain ways that are associated with those identities. They do not explicitly penalize a particular group, but they do so implicitly, by excluding or punishing children who wish to claim group affiliations through behaviors that schools deem disorderly or unbecoming, even when those behaviors do not harm fellow students. In so doing, they imply to children, many of whom are not yet able to understand the context around what they are being told, that it is acceptable to ostracize and disadvantage people who are not respectable. On its own, that would be a questionable lesson. But education does not, and is not meant to, stay in the classroom.

Students who learn that a lack of respectability is a reasonable basis for treating some people as less-than take that idea with them when they leave the classroom. It can be used to perpetuate intragroup divisions (“sure, I’m a woman, but not that kind of woman”) or explain away discrimination (“the manager isn’t racist, he just didn’t want to promote someone with dreadlocks”) or justify or distance from some group members’ exposure to violence (“she shouldn’t have gone to a club until she could really pass as a woman” “serves him right for going out at night in a hoodie”). Respectability requirements also provide explanations for students’ own successes and failures. If they succeed, at least in the white-collar ways that some schools promote, it will be because of their respectability. If they fail, it will not be because of discrimination based on their race, gender, sexual orientation, and so on, but because they nebulously just weren’t the kind of person who gets ahead, or, more directly, because they didn’t succeed at school.
In explaining, and especially in determining, which students succeed and fail, respectability requirements become a self-fulfilling prophecy. In schools that have respectability requirements, students who do not conform to them will be viewed less favorably by staff, which can in turn affect the amount of support they receive from the adults around them. They will be marked as problem students who the “good kids” should stay away from, thereby removing another potential source of social and academic support. They will miss instructional time when they are sent out of class for a change of clothes or to serve a suspension, thereby missing material that they need to meet standards. Even those who perform respectability well will find it harder to locate and ally with peers who may share similar ideas, affiliations, preferences, and goals. But it is their disrespectful peers who will face the harder and longer-term consequences. It is those students who are in some way outside of the white, middle-class mainstream who are labeled troublemakers, who accumulate disciplinary records that affect college admissions or turn into criminal records, who develop reputations as insubordinate or difficult that may affect their ability to get jobs in their communities after school. Respectability requirements may not overtly penalize the bearers of certain identities, but they do penalize anyone who wants to proclaim those identities, especially in ways that fit neatly within predetermined boundaries. It is those children who will not be able to succeed. Which means, down the road, that students who did not meet respectability requirements will not be in a position to change them. They will have a harder road to navigate if they want to become teachers or principals, or employers, or managers, or judges. Meanwhile, those who were best at performing respectability will move forward with the positive opinion of their teachers and peers, and will have a better launching pad from which to assume positions of influence—a step which they have then already been taught to ascribe, however subtly, at least in part, to their ability to perform respectability, to
have become the right kind of person, and to having learned what the right kind of person is. They will have every reason to perpetuate those requirements, and may not think twice about it. It will feel natural and obvious to do what the adults who taught them did and, rather than stretching to meet those who are different from them, require the people they have power over to conform to the norms they learned.

Even in a liberal, multicultural society and in a moment with potential for great social change, respectability requirements hold up ideals of the past and, by incentivizing children to adhere to them, ensure that they will live into the future. Their formal adoption in schools—which children are required to attend, where they have little to no power to object to how they are governed and disciplined, and which has the weight of state authority behind it—means that children learn from an early age that some ways of being are not acceptable and are in need of correction or deserving of punishment, even if they are not harmful. The penalties that accompany them, in the forms of explicit disciplinary consequences and social reproach, gives those who take to respectability advantages over those who don’t, which can translate into different outcomes down the road. In essence, respectability requirements teach that a certain way of being is a prerequisite of success, and the system in which respectability requirements are taught makes sure that that is the case.
3. DON’T HATE THE PLAYER: RESPECTABILITY AND RESISTANCE IN THE NBA

On November 19, 2004 a game between the Detroit Pistons and Indiana Pacers erupted into a fight that would become known as “The Malice at the Palace.” The Pacers’ Ron Artest fouled the Pistons’ Ben Wallace, and a scuffle ensued. Once separated, and as Wallace’s teammates tried to calm him, Artest, in an unusual move, lay down on the scorers’ table to cool down. Fans began to yell obscenities at him, and one fan, John Green, threw a full cup at him. Artest recalled that it was “ice and glass on my chest and face. After that, it was self-defense.”¹ He rushed into the stands in search of the fan who had hit him. His teammates followed him to try to break up the fight and wound up defending themselves from fans. Pacers forward Jermaine O’Neal described an atmosphere in which “people are spitting. Objects are being thrown from the stands—brooms, the pan things that sweep the trash up, chairs.”² As fans continued to rage, the players, some of them nursing injuries, made it back to the locker room and on to their bus, fully aware that serious league consequences were in the offing for their violent engagement with fans.³


² Ibid.

While fighting is de rigueur and rarely leads to so much as a raised eyebrow in the predominantly white National Hockey League, the National Basketball Association’s response was swift and unequivocal. League Commissioner David Stern called the fight “shocking, repulsive, and inexcusable—a humiliation for everyone associated with the NBA.”⁴ Ten players were suspended, nine without pay, for a collective loss of almost $10 million. Artest’s suspension, for 73 regular and 13 postseason games, remains the longest on record for a non-drug-related issue.⁵ Stern also instituted a number of policy changes, among them a reconsideration of the league’s alcohol policy and an age policy that prohibited players from joining the league straight out of high school, which Stern had previously been unable to pass.⁶

Then there was the dress code.

Introduced the following season, the dress code was widely considered to be a response to the Malice at the Palace. It also spoke to a larger sense that fans “regarded NBA players as ‘thugs,’” and that this perception was responsible for declining viewership and lost revenue opportunities. These attitudes were evident in post-brawl coverage that depicted players as “thugged-up” participants in “hip-hop culture on parade.” To confirm the relationship between viewership and a perception of the players as “thuggish,” the NBA hired Republican political

⁴ Abrams.

⁵ Ibid.

strategist and Karl Rove aide Matthew Dowd to conduct a series of focus groups, which further endorsed the idea that player image was a liability for the league.  

The dress code banned a number of items that were associated with “hip-hop culture” including chains, medallions, sunglasses indoors, headphones, headgear including hats and dorags, work boots, sneakers, sandals, sleeveless shirts, and throwback jerseys. The league’s new respectability requirement required players to “wear Business Casual attire,” including “dress slacks, khaki pants, or dress jeans,” “appropriate shoes and socks, including dress shoes, dress boots, or other presentable shoes,” a dress shirt or sweater, and, when in attendance at games, a sport coat. Players were subject to the requirements when traveling to and from games, attending games, conducting interviews, participating in team or league events, making promotional appearances and, broadly, “all activity conducted on behalf of the team or the league in which the player is seen by, or interacts with, fans, business partners, members of the public, the media, or other third parties.” The purpose of the code, per the NBA’s official statement, was to ensure

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“that NBA players be appreciated not only for their extraordinary talent and hard work, but also for their accessibility to fans, their community service, and their professionalism” and “to demonstrate the seriousness with which…players take the representation of their teams, their cities, and our league.”

The dress code wrought a great deal of change across the NBA. Many players who were already in the league had to devote considerable energy, time, and money to reformulating their public images. Their re-vamping was—and had to be—extensive, since the code did not apply only to games, but to any public appearance where they might be seen as representatives of the league. Players found tailors and invested in stylists, in part to help parse distinctions like those between jeans and dress jeans, and in part because it posed a considerable challenge for NBA players, with their unusually large bodies, to find appropriate clothes on their own.

Their acquiescence did not mean that all players supported the rules change. Many players, along with a number of reporters, suggested that the rules were racist.

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9 Staff, "NBA Dress Code." "NBA Dress Code."


Pistons’ Stephen Jackson, who had been involved in the Malice at the Palace, wore chains to an exhibition game in protest, saying that “as far as chains, I definitely feel that’s a racial statement. Almost 100 percent of the guys in the league who are young and black wear big chains. So I definitely don’t agree with that at all.”\(^\text{12}\) The Philadelphia 76ers’ Allen Iverson said “They’re targeting my generation—the hip-hop generation.”\(^\text{13}\) The Golden State Warriors’ Jason Richardson described the ban on chains as “kind of racist” and said “I don’t understand what that has to do with being business approachable. You wear a suit, you still could be a crook. You see all what happened with Enron and Martha Stewart.”\(^\text{14}\) However, many players who objected to the dress code found it hard to gain traction for their argument. This was due in part to the league’s and some reporters’ use of rhetorics of respectability to suggest that players chosen modes of presentation were symptomatic of disorderliness, arrogance, and “the embodiment of all that is wrong with sports.”\(^\text{15}\)

Players’ objections were further muted by Commissioner Stern’s framing of the dress code, as well as his institutional power. Stern described the new policy as “quite liberal and easygoing” and joked about players’ complaints about the cost of compliance, intimating that

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\(^\text{12}\) Elsworth.

\(^\text{13}\) Wilson.

\(^\text{14}\) Arria.

\(^\text{15}\) McCallum.
their objections were the result of spoiled entitlement.\textsuperscript{16} When asked about players’ objections, Stern suggested that they were the work of a vocal minority: “the majority of [players say], ‘What's the big deal? That’s the way I dress already, and that sounds fair enough. We’re all in this together.”\textsuperscript{17} When asked about the accusations of racism, Stern replied, “well, things involve race. Whenever you have a league in which some significant percentage is black, then things involve race….But there’s a difference between involving race and having actions interpreted as racist.”\textsuperscript{18} As far as player expression, he suggested that “they can feel free to express themselves the same way that corporate America expresses itself, putting on shorts and sandals and a ratty old T-shirt and doing what you do.”\textsuperscript{19} In short, he consistently undercut players’ complaints by using rhetorics of respectability to dismiss their substance and underplay the impact the policy would have.

Stern’s framing of the league’s respectability requirement was paired with institutional control and the ability to create consequences. Stern said that he would levy fines and possible suspensions against players who did not comply, and that “if they are really going to have a problem, they will have to make a decision about how they want to spend their adult life in terms


\textsuperscript{18} Ibid.

\textsuperscript{19} Ibid.
of playing in the NBA or not.”

Between Stern’s power to frame the story and to create financial and professional consequences for players, players were compelled to obey.

Over time, the dress code has become part of institutional policy such that players joining the league now are not only subject to it, but experience it as part of the fabric of their NBA experience. The NBA’s Rookie Transition Program has integrated a sort of fashion and etiquette boot camp. Alongside advice on managing their safety and finances, players are taught how to shake hands, which fork to use, that “every gentleman should have a peacoat, a raincoat, a varsity jacket and an overcoat,” as well as “a blue suit, a gray suit and a black suit,” and that, when leaving the house, they should “throw on a classic watch and your signature fragrance.”

It has become common for management companies to assign players a stylist and a publicist for ongoing help in managing their image. In a similar vein, the NBA sets up meetings with clothing companies for rookies who may be in search of guidance as they try to figure out their images as NBA players. From day one, new players learn that being part of the NBA requires the performance of respectability.

All of this—the policy, its enforcement, the use of rhetorics of respectability in framing both, the NBA’s ability to direct players’ lives down to the details, the institutionalization of respectability requirements—is legal. First, because players do not have any sort of right to play in the NBA. Second, because players do not have any right to individual self-expression and would likely struggle to prove that disciplinary consequences to do with a respectability requirement were tied to race. Third, because the NBA’s recourse to rhetorics of respectability

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made it possible to frame the issue as colorblind, thereby skirting much of the possibility for legal and public reproach.

On the first count, I do not argue that there should be a right to employment as an NBA player, or to employment in similar jobs. For one thing, that is far too narrow and specific to be constructed as a universal right. Additionally, the NBA requires athletic performance at the most elite level, and it would be nonsensical to suggest that any person off the street should be guaranteed a job that requires such highly specialized ability, or even to suggest that elite athletes who did not fit teams’ needs should be guaranteed employment in the NBA when their skills are not a match for those needs.

On the second and third counts, however, I contend that players should be able to express their identities even when those expressions do not fit with white middle-class respectability norms. In the following chapter I argue that this is the case because of the effect these regulations have on players and audiences, because of the clear racial subtext of the dress code, and because of the message sent by these regulations and the lack of legal protections that made them possible. I further contend that restricting players’ dress creates real harms for black players and black audiences, particularly given black people’s long history in the United States of asserting agency, autonomy, and political will through their clothing, hair, and affect. I then turn to exploring ways in which players have resisted or adapted to the dress code. But first, I explore the lack of legal protections that allowed the NBA’s dress code to take root, and the environment and message it created.
Permissible by, and on, the Court

Title VII of The Civil Rights Act of 1964 prohibits a number of different types of discrimination, including discrimination in employment on the basis of “race, color, religion, sex, or national origin.” While Title VII protects workers from discrimination on the basis of those listed categories, its application relies on the idea of immutability, which is to say that traits are only protected if they are considered to be an inherent part of one of those types of identity. They are not protected if they are traits that, while associated with those identities, can be changed. Dress codes are not generally considered to violate Title VII because they target mutable characteristics—things like clothes, jewelry, and hairstyles which can be changed far more easily than skin color or sex. Employees might be able to make some claim if a dress code is shown to have discriminatory intentions or to create a disparate impact on members of some protected class, and some analyses suggested that NBA players might have had grounds for doing so. However, those claims are hard to make and are rarely successful, not least of all because they require complainants to show race-based disparate impact and/or discriminatory intent. Commissioner Stern’s construction of the dress code undermined this approach from the start.

First, Stern framed it as a business decision. He repeated the claim, in interviews and press statements, and with evidence from league-funded public relations studies, that the NBA

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22 "Title VII of the Civil Rights Act of 1964."

was suffering financially because of its “image problem.”

Even though the institution of the dress code did not have an immediately positive effect on ratings or other sources of income, Stern could, and did, argue that the NBA had a legitimate long-term interest in making sure that they were appealing to the fans who were the source of their revenue. By framing the decision as primarily about business, Stern created a legally legitimate rationale for the dress code.

Second, Stern framed the dress code as colorblind. Even when he acknowledged responses that called the dress code racist for its focus on clothing associated with hip-hop style, he refuted the idea that it was racially discriminatory, saying that “if the dress code affects black players more than others it is more because of circumstance than design” and maintaining that “we like to think that we [basketball people] are the ultimate egalitarians.”

Much coverage of the dress code took a similar tone, noting that “the rule covers all players – black, white, mixed-race, Asian, European, South American, Caribbean, Canadian and Cuban,” or omitting mentions of race altogether, including in the NBA’s official statements and the NBA’s collection of articles about the code. The league’s official compilation of coverage, which excerpts articles

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26 Sheridan.

27 National Basketball Association; Sheridan; Staff, "NBA Dress Code."; National Basketball Association, "Analysis and Player Reaction to Dress Code."
selectively, also included quotes wherein black players supported the code, for instance Ricky Davis’s “it’s not real harsh. It just changes the image a little. Guys just got to grow up”; Charles Oakley’s “why not look professional instead of looking like you belong on a street corner?”; Charles Barkley’s “young black kids dress like NBA players….when they go out in the real world, what they wear is held against them.” They also included articles in which white players opposed the code, as with Dirk Nowitzki’s comment, “I have to change my wardrobe here pretty quick.”  

The composition of the league helped this narrative, too. As Patricia Hill Collins notes, there is particular strategic power in maintaining the presence and visibility of black players because their “total absence…would signal the failure of color blindness” even as “at the same time that Blackness must be visible, it also must be contained and/or denuded of all meaning that threatens elites.” While the racial subtext was clear to many, the erasure and minimization of race in the NBA’s official narrative, and the strategic deployment of both black and white players, helped to conceal and minimize the racialized nature of the dress code.

As a result of the league’s strategies, the policy was read as being devoid of the kind of violent or obviously malicious behavior associated with “traditional” racism. Even though the dress code obviously called for a ban on items associated with a form of black culture and their replacement by items which, as Rachel Alicia Griffin and Bernadette Calafell write, “are aligned with a white, upper-class style of fashion,” the league’s narrative strategy relied on rhetorics of


28 National Basketball Association, "Analysis and Player Reaction to Dress Code."

29 Collins. 178.
In addition to being successful with NBA audiences, this strategy would likely have helped the NBA sidestep legal claims, had any been made. By focusing on a legitimate business interest and lessening the connection between the dress code and blackness, the NBA created a potential defense against any Title VII employment claims. This would not have been so easily accomplished if Title VII’s protections accounted for individual appearance choices or for mutable traits associated with protected classes. If players could have appealed on the basis that expressions of their identities were meaningful parts of those protected identities, it would have been considerably easier for players to make a claim, and the potential success of such a claim might have deterred the NBA from instituting the policy in the first place. Furthermore, since laws have social and moral, as well as legal, force, a rights paradigm that included the expression of identity might also have changed the public’s reception of the dress code and Stern’s explanations of it, and the ease with which the NBA was able to deny that an attack on traditionally black forms of expression was not associated with race.

That was not the case, however. Instead of having recourse to the law, players were subject to the almost unrestrained financial, discursive, and regulatory power of the NBA.

More Money, More Power: The NBA as a Disciplinary Power

As the only major basketball league in the United States, and the largest worldwide, the NBA is the sole venue where players can hope to make the high salaries and earn the sorts of endorsement deals available to NBA players. Players can choose to play in other countries, but

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that comes with less prestige and lower salaries. Where the option exists, players are substantially advantaged by playing in the NBA, to the point that the NBA has a functional near-monopoly on recruiting and retaining players, and players would incur substantial financial losses for refusing to comply with league policies.

In addition to economic leverage, the NBA has a great deal of power to control narratives about the league and its players. Sports are a part of many people’s everyday lives, and sports fans take in a great deal of information about the meaning of racial and other identities through the storylines—rivalries, friendships, victories, defeats—that make stories about sports cohesive and emotionally resonant to viewers. Through its relationships with broadcasters and other press outlets, the NBA is able to consolidate its control over popular narratives, with the league’s assertion of its own, largely unchallenged, authority providing credibility for the stories that most benefit the league and its predominantly white team owners and team and league managers and coaches. As Glyn Huges notes, “the NBA itself—the company and also the brand—emerges as a character in the morality play that it also stages. The NBA, in other words, is not simply a showcase for Black celebrity athletes; it is itself a set of conventions that, in sometimes subtle and yet always present ways, calls attention to itself as a hero in relation to an ‘other.’” Even when players might seek to control their own image, they are limited by the league’s ability to


32 Griffin and Calafell, in Critical Rhetorics of Race; Ferber; Mary Jo Kane, "Media Coverage of the Post Title IX Female Athlete: A Feminist Analysis of Sport, Gender, and Power," Duke Journal of Gender Law & Policy 3, no. 95 (1996).

33 McCann., 859; Griffin.

frame their stories for public consumption, and by the degree to which their public meaning is made through the context of the NBA. Without the NBA, players’ stories have less of an audience. With the NBA, players have less control over what the public understands their stories to be.

As Clarissa Hayward notes in discussing the creation of racial stereotypes and identities through narrative, the sort of discursive power that the NBA holds is most powerful and most likely to reproduce negative stereotypes when paired with institutional power and instantiated through policies.35 The combination of the NBA’s discursive and economic control over players—and players’ lack of legal recourse, given the constraints discussed previously—puts it in prime position to create and enforce the sorts of respectability requirements that reify pre-existing racial dynamics. The dress code is a prime example of this sort of power: it addresses racial stereotypes, it dictates a particular narrative about “good” (compliant, respectable) and “bad” (resistant, “thuggish”) players, and it institutionalizes those ideas about race through formal policies that are backed by a level of discursive and financial control that is difficult, if not impossible, for players to resist, and which viewers consume without even being necessarily aware of exposure to racially coded messages or of how that exposure might affect them.

The NBA also retains the right and ability to change the literal and figurative rules of the game when predominantly white owners and managers suspect that their control over the league and its players might be slipping. William Rhoden refers to this as “Jockey Syndrome,” which is “distinguished by a changing of the rules of the game when competition begins to gain ground….to facilitate racist outcomes, including the taking away of previously granted rights and the diluting of access through coercive power and force.” Rhoden writes that Jockey Syndrome

“has been the primary mechanism in American sports for tilting the ostensibly level playing field of sports away from equal opportunity and toward white supremacy.”

The lack of legal or regulatory protection, as well as the league’s need to maintain and increase profitability, has created an environment in which the league has little to no incentive to prioritize normative ethical values such as robust diversity, inclusivity, players’ expression, or the possibility that its internal institutional rules create larger harm for marginalized communities. The mandate to profit above all else means that players are the league’s product as much as they are its employees, and that the league’s first priority is responsiveness to fans’ and sponsors’ demands.

Given the disparities in influence and wealth between white and black communities, and their corresponding effect on consumption and profit, the NBA’s attentiveness to sponsors and fans also meant that they were primarily attuned to the desires of white people, and were heavily incentivized to create a space that felt safe and welcoming for white fans. While the NBA continued to make positive claims about its diversity, it did so by emphasizing and demanding a nominal, statistical diversity that took the presence of black bodies as sufficient to support those claims. But in order for black players’ bodies to be safe for white consumption, they had to be


37 Griffin and Calafell, in Critical Rhetorics of Race; Hughes.

38 Griffin and Calafell, in Critical Rhetorics of Race; Griffin; Leonard; Rhoden.

made compliant with white norms. This had important effects for players, as discussed later in the chapter. First, I focus on three other groups: white power brokers, white audiences, and non-white audiences.

**White Power Brokers: Disciplining and Controlling**

In the discourse surrounding post-brawl changes in NBA policies—and in the years before it—popular press often framed NBA players as spoiled, entitled, wealthy, and powerful. While black players did and do earn significantly more than most people, that income did not translate to power. While a vast majority of players were and are black, team owners and league administrators – those with institutional power – were predominantly white. When the dress code

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40 Bandsuch, "NBA Dress Code and Other Fashion Faux Pas under Title VII."; Bonilla-Silva; Todd Boyd, "The Day the Niggaz Took Over: Basketball, Commodity Culture, and Black Masculinity," in *Out of Bounds: Sports, Media, and the Politics of Identity*, ed. Aaron Baker and Todd Boyd (Indianapolis, IN: Indiana University Press, 1997); Collins; Leonard; McDonald and Toglia; Rhoden.

went into effect in the 2005-2006 season 73% of players were black and only 22% were white.\textsuperscript{42} On the administrative side, by contrast, 98% of majority team owners were white, as were 88% of CEOs and Presidents, 87% of Vice Presidents, 80% of Senior Administrators, 77% of General Managers, 76% of Head Trainers, 63% of Head Coaches, and 74% of Radio and TV Announcers.\textsuperscript{43} While players were unionized, the NBA’s ability and established willingness to lock them out, thereby cutting their salaries entirely, undermined the potential for collective resistance.\textsuperscript{44} In short, the ability to wield economic, institutional, and discursive power lay almost entirely in the hands of white executives and administrators.

Even before the dress code, the league had established power structures that made it difficult for players to make claims about racism. Todd Boyd notes that even though players’ salaries are only a small portion of owners’ expenses, the size of salaries has made it “quite difficult to talk about a financially oppressive relationship” in part because “there are those who consider these multi-million dollar athletes equal participants in the same economic system as team owners, thus nullifying any reason to engage this elite practice critically.”\textsuperscript{45} William Rhoden tracks the development of “the Conveyor Belt,” which uses the promise of play at the NBA level to shape high school and college basketball programs such that “young athletes

\textsuperscript{42} Additionally, 3\% of players were Latino, 1\% were listed as “other,” less than 1\% were Asian, and 19\% were international. Richard Lapchick, \textit{The 2005-06 Season Racial and Gender Report Card: National Basketball Association} (The Institute for Diversity and Ethics in Sport, 2006), http://nebula.wsimg.com/cdc44f900ec5fea920de0a0cae8bf44e?AccessKeyId=DAC3A56D8FB782449D2A&disposition=0&alloworigin=1.

\textsuperscript{43} In these categories, 2\% of majority team owners, 13\% of CEOs and Presidents, 8\% of Vice Presidents, 13\% of Senior Administrators, 23\% of General Managers, 20\% of Head Trainers, 37\% of Head Coaches, and 18\% of Radio and TV Announcers were African-American. (ibid.)

\textsuperscript{44} McCann; Schneider-Mayerson, ""Too Black": Race in the "Dark Ages" of the National Basketball Association."

quickly learn that easy passage though a white-controlled system is contingent upon not ‘rocking the boat,’ not being a ‘troublemaker,’ and making those in positions of power feel comfortable with the athletes’ blackness." These institutional arrangements decrease the likelihood that players will do anything so potentially controversial as moving conversations to race, and suggest to both players and the public that players are complicit in and agreeable to institutional decisions, including those that implicitly and explicitly police the expression of racial identity. Nevertheless, in the years before the institution of the dress code players had embraced a type of affective presentation that ‘rocked the boat’ even when players did not talk about race. Players who adopted hip-hop style while appearing in the league asserted their racial identity, their belonging in the public sphere, and the idea that they were deserving of wealth and admiration.

Respectability and the rhetorical strategies associated with it allowed white power brokers to reign in the appearance of blackness while continuing to profit from successful black players. As Glyn Hughes writes, following interviews with ten NBA corporate employees involved with marketing, the league “settled on an approach that includes an internal orientation to the players in order to help them ‘grow’ as people, as well as a public amplification of the league’s managerial efforts. The brand/company is gentle, a supportive framework for moving and celebrating the perpetual transition of unproductive, unruly subjects to productive citizens.” While league administrators and owners would have faced backlash if they had explicitly attacked players’ blackness, they were able, through respectability requirements and rhetorics of respectability, to make the performance of respectability a condition of employment.

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46 Rhoden. 178.
47 Hughes. 175.
White Audiences: Watching and Learning

In addition to solidifying the position of white power brokers in relation to players, the dress code sent several important messages to white fans. Principally, it encourages the appropriation of black culture while using the language and logic of respectability to affirm the idea that it is appropriate and necessary to police certain types of blackness. In transmitting the language and logic of respectability to fans, the policy also gives its broad audience a tool with which to express and justify racist sentiments and actions.

Becoming a majority-white league was not a logistically or commercially feasible course of action for the NBA to take in response to fans’ sense that the league had become “too thuggish.” In addition to potential legal consequences, they relied too heavily on black players and on “black style,” the stylized mode of play that made the game more dynamic and exciting for fans, and which had been a hallmark of the Harlem Globetrotters’ commercial success before the formation and integration of the NBA. Instead, the league responded to white fans’ concerns by distinguishing between the “bad boys” and the “good” black players who could serve as role models for white youth, and by using the dress code to force “bad” black players to become “good.”

The league was able to keep the aspects of black style that were attractive to white consumers by limiting them to the court and transferring them to white or virtual bodies—as when the post-dress code NBA hired the white British comedian Sacha Baron Cohen in his persona as “Ali G” (a chain-and-skullcap-wearing, dress-code violating, hip-hop loving, affable


fool) to star in NBA television commercials, or through the release of the video game “NBA Ballers,” “the exclusive one-on-one basketball videogame highlighting the bling-bling lifestyle of NBA superstars.”

Reconfiguring hip-hop culture as something that white audiences could be encouraged to consume distinct from the black people who originated and identified with it gave white audiences implicit permission to disregard its origins, and to appropriate certain parts of it without recognition of its distinctly black origins.

In engaging in such a profound redirection of hip-hop culture—banning black players from performing it while rendering parts of it accessible for white consumption—the NBA communicated to white viewers that their needs were of primary importance, and that the correct response to white discomfort was accommodation and reorganization of black lives and bodies. While the league could have responded admirably to white fans’ concerns by asserting players’ moral worth and focusing on their skill, thereby challenging the equation of hip-hop blackness with violence and danger, they instead sent the message that racial stereotypes and the white discomfort that came of them was reason enough to police adult black male bodies. When the comfort of black players and white fans became incompatible, the NBA’s dress code made clear, and communicated to millions of fans, that the appropriate response was to make black people change, rather than encouraging or requiring white fans to confront and challenge racist stereotypes.

The league’s use of rhetorics of respectability gave fans a socially acceptable language and logic through which to express their discomfort with blackness and their expectation of accommodation. The continued presence of black players allows fans to reassure themselves that they are not racist, but rather that they prefer “good guys,” an ostensibly colorblind framing that

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50 McCann; McDonald and Toglia.
nevertheless communicates deep discomfort and moral disapproval, and makes tolerance contingent on the performance of “good,” i.e. white, norms. Statements like those from ESPN’s Ric Bucher were telling. Bucher called the dress code “one more step in the direction of making the players look a little bit more like the people who actually buy the tickets” and said that “it becomes difficult to maintain an audience when your audience feels that it in no way can identify with the people that they are watching.” Messages like this one further communicated—and modeled a way of communicating—that white fans could and should expect players to conform their bodies to white audiences’ notions of respectability. Fans could frame that demand in terms of their role as an audience of consumers without having to confront the role their whiteness played in seeing that their demands were met.

Without rhetorics of respectability, fans might have found themselves harder-pressed to communicate their discomfort or to demand change. The NBA’s use of this language gave them permission to express those sentiments, a language with which to make the demand, and presented a logic through which they could purport to support black players while (and because) those players were required to suppress aspects of their racial identities. The size of the NBA’s audience meant that this message was communicated to millions who could use this rhetoric both within and beyond discourse around the NBA.

51 Ferber; Leonard.


53 Bandsuch, "NBA Dress Code and Other Fashion Faux Pas under Title VII." Griffin.
White audiences would not have been the only recipients of the NBA’s powerful, subtle message about the comparative importance of black bodies and white comfort. In communicating that white audiences’ comfort mattered most, the NBA also communicated that black and other marginalized audiences’ comfort, experiences, and modes of expression mattered less.

The reproduction of institutional racism in the NBA could hardly have been a surprise to those who have experienced racism throughout their lives. It could, however, have been especially stark in that context. NBA players must consistently demonstrate almost superhuman athleticism, teamwork, determination, resilience, and work ethic. In spite of demonstrating these traits, in spite of reaching the most elite level of play, and in spite of their resulting wealth, the NBA’s institution of the dress code made clear that none of that was enough to prevent the surveillance and disciplining of black bodies. It did not matter much, if at all, whether black players or black audiences found the presence of hip-hop style resonant or comforting, or if they experienced it as a form of recognition. None of that held as much weight as the opinions and financial power (which was itself supported by institutional racism) of white fans and sponsors. In addition to functioning as a clear signal that black experience and opinion was comparatively unimportant, the unfolding of events constituted a story that communicated to all audiences that they could and should continue to expect white and non-white identities to be organized along a hierarchy that would reproduce racist power dynamics.  

The dress code also did the double work of reinforcing stereotypes to black audiences and reminding them that this was how they were seen in popular media. Through the dress code,

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54 Appiah, The Ethics of Identity; Hayward, How Americans Make Race: Stories, Institutions, Spaces.
black players – and by association, those who shared cultural touchstones with them – were “marked as unintelligent and incapable of making sound decisions in their own best interest”\(^{55}\) and associated with “deviance, immaturity, [and] danger.”\(^{56}\) As Patricia Hill Collins writes:

> Representations of athletes and criminals, bitches and bad mothers refer to the poor and/or working-class African American men and women who allegedly lack the values of hard work, marriage, school performance, religiosity, and clean living attributed to middle-class White Americans. In essence, these representations of Black masculinity and Black femininity assault unassimilated Black people, pointing out the ways in which such poor Black people are “untamed” and in need of strict discipline.”\(^{57}\)

By contrast, “respectable Black people must be denuded of Blackness—they should be seen but not necessarily heard.”\(^{58}\) These stereotypes suggest to black audiences that they must be respectable before they can be respected—even if they are in one of the world’s most elite, hard-working, and highest-paid groups.

These stereotypes are especially significant because they transcend popular media representations and are adopted by its consumers, whose behavior is informed by them. Media stereotypes contribute to explicit and implicit bias, and have the power to shape groups’ and individuals’ political, economic, and daily lives.\(^{59}\) The NBA, as “a primary circulator of images

\(^{55}\) Griffin. 174.


\(^{57}\) Collins. 177-8.

\(^{58}\) Ibid. 177-8.

of African American men for mass audiences” bears particular responsibility in this arena. Instead of using that influence to benefit its black players and fans, the dress code reminded players and fans alike that their blackness could be seen as dangerous and justification for control, unless they forewent certain expressions of their identity in favor of respectability.

Free Styling: Black Fashion and Black Agency

The reproduction of stereotypes is harmful in that it maligns certain types of blackness and restricts the expression of racial identity. The use of respectability as a tool in this cycle is more harmful still, because it presents a socially and legally acceptable justification and suggests that discrimination is the fault of the “bad” individual rather than the larger system. Nevertheless, some—including Commissioner Stern and a number of reporters—would insist that the issue of sartorial presentation was trivial and that players were making mountains out of molehills. That suggestion was dubious on face; if clothes didn’t matter, why bother regulating them? It is even more suspicious in the context of black history in the United States. The dress code was not an isolated event, but part of a legacy wherein both sports and fashion have long histories as sites of control and domination. This history points to the significance of the dress code in the U.S., and the extent of its harms.

Sports as a system of control dates to colonial-era plantations. White owners would enter their slaves in athletic competitions against slaves from other plantations, with accolades and awards accruing to the master. Black slaves were forced to entertain their masters through competitions like races and wrestling, which could require black slaves to do harm to other black

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60 Hughes. 163-164.
people. Bernadette Calafell and Rachel Griffin point to lynching, wherein “the sport was to hunt for the black man whose body at the climax of spectatorship was tormented as a form of entertainment” as an extension of these practices. William Rhoden describes how “sports on the plantation were used as diversions to dull the revolutionary instinct.” This was another form of control that, while less overt than lynching or forced competition, nevertheless was meant to circumscribe black resistance and direct black agency as white masters saw fit. During and after Reconstruction, successful athletes like jockey Isaac Murphy and boxer Jack Johnson were disregarded once their symbolic and financial usefulness waned. Jesse Owens was subject to extensive testing when racial scientists saw his Olympic victories as a potential boon to eugenics movements. Where black athletes performed, and especially where they excelled, whites in power framed and directed that success to the advantage of existing racial orders, not least of all through perpetuation of the idea that black athletes should be grateful for the opportunity to succeed in a white supremacist system, and are disrespectful and ungrateful if they seek more than they are given.

The relationship between clothes and autonomy is still more complicated. Roopali Mukherjee writes that “for a group that had been tradable commodities themselves, a status that

61 Griffin and Calafell, in Critical Rhetorics of Race; Griffin; Rhoden.
62 Griffin and Calafell, in Critical Rhetorics of Race. 119.
63 Rhoden. 47.
64 Ibid.
66 The Difference between Us, directed by Christine Herbes-Sommers (PBS, 2003).
67 Rhoden. 189.
necessitated being stripped of their humanity, personhood, and identity, material goods were one way in which blacks could make their humanity as visible as possible.” 68 Within the realm of oft-limited choices, bodily decoration became a mode of resistance, a venue for the assertion of autonomy and, including through the adoption of (and resistance to) respectability politics, a site for political contestation. 69 Monica Miller recounts the role clothes played in the construction of identity for new slaves: 

Africans arriving in England, America, or the West Indies had to fashion new identities and manipulate what they were given in a style all their own. Whether they were to become house slaves, field hands, or urban blacks used as domestics, apprentices, or managers, their new lives nearly always began with the issuance of new clothes. The clothing was frequently modified and augmented by the enslaved to indicate their ideas about the relationship between slavery, servitude, and subjectivity. 70

Even when circumscribed, opportunities to adorn the body and shape the presentation of oneself as an individual and as a member of an identity group held deep meaning and represented a space of resistance.

Similar re-makings of individual and group identity occurred during the Great Migration. Compliance with and rejection of white norms of respectability united and divided different parts of the black community, but in both cases acted as an assertion of autonomy and agentive desire. 71 The practice of asserting self through clothing took on an additional dimension during the Harlem Renaissance with the practices of strolling and parading, “competitive, defiant

68 Mukherjee, in *Critical Rhetorics of Race*.


70 Miller. 10-11.

performances of freedom, dignity, self-worth, and cultural syncretism” wherein black Harlemites took to the streets, in sometimes casual and sometimes highly organized moments, to display their presence and assert their right to exist and belong in the public sphere as they were, in “actual haute couture, a knockoff of high fashion…a combination of pieces exemplary of white fashion and a more African-based sense of bright colors and varied pattern….militia uniforms, formal dress, simple suits, ball gowns, or any combination of these.”

Attendance at balls, primarily thrown by and for the queer black community and including similar public displays of fashion and affective expansiveness, added another dimension to public parading by asserting queerness and blackness together and claiming public space for multiply marginalized people.

All of these forms of sartorial and affective display resisted attempts to diminish the complexity of black identity and foreclose the inclusion of black communities in the public imagination and public sphere.

The sartorial stakes became even more explicitly political during the civil rights movement. The assertion of visibly black, African styles such as the afro and the dashiki became signs of resistance to white cultural hegemony as part of the Black Power movement. The ascension of black radicals who associated resistance to the political status quo with resistance to white respectability norms built on the precedent set by strolling, parading, and balls. Beyond

72 Miller. 199.


74 Kuumba and Ajanaku. 230.

marking their belonging within the public sphere, black radicals asserted their collective political agency and made their resistance visible.

The 1980s and 1990s represented a hybridization and negotiation of black style. Respectable black icons like the Huxtables of The Cosby Show and the Winslows of Family Matters represented a form of blackness that was compatible with financial and professional success and left room for (heterosexual, monogamous) sexuality. Hip-hop culture, with its resistance to respectability and combination of baggy clothes and “bling” (large pieces of jewelry made of precious stones and metals), became a way for black men in particular to simultaneously assert their visibility in public spaces and their belonging in marginalized communities. These two relatively antipodean presentations of blackness were combined in a number of ways, including in the NBA’s own marketing. The hit movie Space Jam teams Michael Jordan with Bugs Bunny and the other cartoon characters as they play a basketball game against extraterrestrials who are attempting to kidnap the Looney Tunes, set to a soundtrack featuring 90s rap stars Coolio, Busta Rhymes, LL Cool J, and Method Man.78

The variety and hybridity of representations meant that the public was exposed to multiple modes of being black, which presented and combined strains from the political and social history of black fashion, particularly in terms of demonstrating the strength and

76 Collins, Black Sexual Politics: African Americans, Gender, and the New Racism.


complexity of black people and communities. These representations did not always signify black agency—*Space Jam* is a thoroughly sterilized iteration of black culture; *The Fresh Prince of Bel-Air* combined bourgeois and hip-hop cultures in ways that demonstrated the superiority of the former; the entertainment industry was and continues to be controlled by predominantly white producers who were primarily profit-motivated—but they did offer visibility. Hip-hop and rap in particular, with more black-owned and black-produced mediums—Sean “P. Diddy” Combs’ Bad Boy Records; Russell Simmons’ (and white producer Rick Rubin’s) Def Jam Recordings; Sean “Jay Z” Carter and Damon Dash’s Roc-A-Fella Records; Daymond John, J. Alexander Martin, Keith Perrin, and Carlton Brown’s FUBU (an acronym for “For Us, By Us”) clothing line, all of which enjoyed financial success—gave black people invested in hip-hop culture a way to share their art, their stories, and their embodied selves.

The stakes of the NBA’s dress code were not at all trivial. Restricting players’ ability to dress themselves—particularly when it required what “essentially detailed a ‘white man’s uniform’—khaki pants, collared dress shirt, and dress shoes with socks”—spoke to a long history of white attempts to control and discipline black agency and identity. It was a reminder that black men were acceptable as entertainment and commoditized objects, but not as fully equal adults whose autonomous choices deserved respect. It abridged players’ ability to join the long black tradition of shaping, expressing, and showing themselves through their sartorial choices. The dress code, which applied broadly off the court as well as on, denied them the ability to engage in the contemporary analogs of parading and strolling, asserting their belonging in the public sphere and presenting themselves on their own terms for moments of potential recognition. This message was not only for the players, but for their audiences, as well:

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79 Bandsuch, "NBA Dress Code and Other Fashion Faux Pas under Title VII."
reminder to millions of black fans that their bodies were subject to regulation when white power brokers found their modes of expression distasteful, and a warning that choosing “disrespectable” modes of expression would be seen to invite such disciplining. The stakes, then, were not only about baggy pants and ticket sales, but about black identity, autonomy, agency, sovereignty, and expression.

**Playing Defense: Three Cases of Resistance**

The dress code was designed to abrogate players’ agency and discipline their bodies and any expression of identity that evoked hip-hop culture. Just as the history of black fashion points to the historical significance of and depth of harm caused by such restrictions, it sets the stage for sartorial resistance. Returning to the question of how players have responded to the dress code in the years since its institution, I look at three players’ experiences with, respectively, explicit resistance, strategic acceptance, and implicit resistance. Explicit resistance, as typified by Allen Iverson, led to reprisals, while LeBron James and Russell Westbrook have found spaces for strategic modes of resistance that reveal points of tension and reclamation.

“*The Game That I Go Out There and Die For*”: *Allen Iverson and Explicit Resistance*

In 2016, eleven years after the dress code was instituted, Allen Iverson was inducted into the Basketball Hall of Fame. His accomplishments include 11 All-Star Appearances, one of the top ten scoring averages in NBA history, and a handful of titles and accolades: first pick of the 1996 draft, 1997 Rookie of the Year, 2001 league MVP, member of seven All-NBA teams, an

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NBA All-Star eleven times over, NBA All-Star MVP twice, and an Olympic medal.\textsuperscript{81} He was adamantly attached to hip-hop style, before and after the dress code. In the wake of its implementation he resisted explicitly and loudly. Within five years he found himself out of the league. Iverson’s resistance to the dress code was not the only factor in his fall from NBA stardom, but his attachment to hip-hop style and his willingness to speak up against the dress code both played a role in the NBA’s ability to discredit his objections.

Iverson—also known as “A.I” and “The Answer”—came into the NBA at a moment when the convergence of basketball and hip-hop were nearing their peak. He was one of a number of NBA stars—along with Shaquille O’Neal, Ron Artest, Chris Webber, and Kobe Bryant—to record a rap song. He was visible and enthusiastically part of the hip-hop scene and embraced the throwback jerseys and headbands that rap videos at the time often featured, and that the dress code would later ban.\textsuperscript{82} He was known for his crossover dribble and his powerful play, as well as for his cornrows, tattoos, baggy pants, bling, throwback jerseys and his choice to continue socializing largely with friends and in communities that were part of his life before his NBA fame, and with rappers he met during his career as a player.\textsuperscript{83} This choice was itself a result of and contribution to the ethos of hip-hop culture. Iverson had “acquired enough capital to gain some freedom from the dominant culture which enables these individuals to live in middle class comfort, while still presenting an image that retains lower-class signifiers and the mentality of

\begin{footnotesize}

\textsuperscript{82} McDonald and Toglia. 974.

\textsuperscript{83} Collins, \textit{Black Sexual Politics: African Americans, Gender, and the New Racism}; McCallum; McDonald and Toglia.
\end{footnotesize}
the hood,” and he therefore could “invert…middle class values by retaining his lower-class visual aesthetic and defiantly rejecting the accepted decorum of his recently acquired class.”

This placed him among a group of people whom, per Todd Boyd, “having come to prominence through several cultural arenas including rap music, African American cinema, and professional sports, equally defies aspects of mainstream white culture, as well as the at times restrictive dimensions of status quo Black culture.” Consistent with the history of black fashion as a place for the assertion of self and navigation of constraint, Iverson’s public image asserted who he was, where he saw himself belonging, and the extent to which he was willing (or, in Iverson’s case, unwilling) to change in order to meet white expectations.

Iverson did not only have a troubled reputation because of the way he presented his identity. He also a few legal issues and conflicts with coaches, referees, and the media though questions remain about how many of those conflicts were fueled by racism. For instance, when he was arrested for a fight in high school, allegedly after a number of white people directed racial slurs and punches at Iverson and his friends, it was for a charge of “maiming by mob,” which Virginia prosecutors had not used since the 1800s. It later came out that referees, who disliked his swagger and occasionally profane responses to calls, had agreed not to make calls in his favor. Coverage of Iverson’s infamous “practice” press conference, in which he criticized the press for focusing on his absence from team practice following an injury, traded on his “bad

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84 Brown. 69, 80.


86 No Crossover: The Trial of Allen Iverson, directed by Steve James (ESPN, 2010).

boy” image. The media had not given the same attention to other players who had missed
practice due to injury, nor did they contextualize Iverson’s absence. The press also did not widely
cover a revealing moment at the end of the conference when Iverson said he was “upset for one
reason: ‘Cause I’m in here. I lost. I lost my best friend [Rahsaan Langeford, fatally shot earlier in
the season]. I lost him, and I lost this year...My best friend is dead. Dead. And we lost. And this
is what I have to go through for the rest of the summer until the season is all over again.”

But it would be hard to deny that Iverson was a hard-working player. Under 6 feet tall
and about 165 pounds, Iverson’s size was a distinct disadvantage in a league full of much taller,
larger men, and it would have been impossible for him to excel as he did without grueling,
consistent physical, emotional, and strategic work, even as his extraordinary skill was often
chalked up to what Timothy Brown describes as a “racial folklore” which led to a scenario in
which “Iverson, despite his size, is not seen as having worked hard to achieve his athletic
success; he is simply doing what comes natural to him. The belief in racial folklore not only
undermines Iverson’s hard work, but it also implies that intelligence is not needed to perform
what comes naturally, which evokes the stereotype of black men as physically talented but not
bright.”

Importantly, A.I.’s notoriety wasn’t bad for the league financially. He was an anti-hero
with a best-selling jersey and a loyal following, and fans who both loved and loathed him turned
out at games or turned on the TV in part to see him play—which is to say, both his presence and

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88 Matt Walks, "Allen Iverson's Practice Rant: What Has Been Forgotten 14 Years Later,"
ESPN.com, September 9, 2016; James,
89 Brown. 79.
his visibility as a black man who was part of hip-hop culture, were lucrative for the NBA. But that same visibility, and particularly his unapologetic embrace of hip-hop culture, meant that “he soon was, whether he wanted to or not, playing the part of David Stern’s nemesis,” to the point that several recountings of the dress code suggest that while the Malice at the Palace gave Stern a justification for the dress code, his dislike of Iverson’s unapologetic embrace of hip-hop culture first planted the idea, and had led to earlier attempts to control the ways in which Iverson’s body was displayed, such as when the NBA airbrushed Iverson’s tattoos out of game programs.

Iverson did not become any more equivocal after the dress code than he had been before it. He called the dress code “fake.” He said that the league was “targeting my generation – the hip hop generation.” He was adamant that clothes were not a marker of character, saying that “just because you put a guy in a tuxedo, it doesn’t mean he’s a good guy,” “you can put a murderer in a suit and he’s still a murderer,” and “I think it’s wrong. You shouldn’t judge a person by what they wear.” He asserted that “everybody knows that Allen Iverson don’t dress like that when he’s not coming to a basketball game…You’re not making Allen Iverson any


92 Sheridan.

93 Wilson; Wise.

94 Sports Business Daily; Rovell; Wilson; Wise.
different, because they know he’s doing what his employers are telling him to.”\textsuperscript{95} He even considered intentionally violating the code and paying potentially tens of thousands of dollars in fines, consistent with Timothy Brown’s supposition that “for Iverson and other young black men, they are able reject the dominant culture’s norms because they have achieved financial freedom.”\textsuperscript{96} But the NBA’s institutional power was not only financial, and “once they start talking about suspending me, then I don’t have a choice. I don’t want them to take my money, either….But when they start talking about suspending me and hurting what we’re trying to do here as a basketball team, then I don’t have [any] choice but to abide by it.”\textsuperscript{97}

Iverson did begin to comply, but his image as a “bad boy” had been further solidified by his rejection of white behavioral norms of respectability. He declared, loudly and unequivocally, that his embrace of hip-hop was part of his individual and group identity as a black man, and that he did not want to adopt white norms. Neither the league nor the financially lucrative white fan base was supportive of his position. As Michael Kimmel writes, in considering whether fans would have come to Iverson’s defense as they did to Kobe Bryant’s when Bryant was faced with criminal charges for sexual assault:

Iverson and Sprewell are already seen as “thugs”; few, therefore, would rise to their defense. Now, try a different example. Imagine that the accusations were leveled against Tiger Woods or Derek Jeter. Millions of fans – most of them white – would instantly rise to their defense. And it’s not because Woods and Jeter are of multicultural parentage and therefore not “really” black. Rather, it’s because, in the eyes of white fans, they’re not really “black.” They’re not “bad” black men like Vick, Iverson, and Sprewell. They’re “our” blacks, “good” blacks, the kind of blacks that white fans love

\textsuperscript{95} Robbins.

\textsuperscript{96} Brown.

to cheer for. They’re the kind of blacks we can emulate, and then congratulate ourselves that we’re not racist—see, I even wear a Jeter jersey!\textsuperscript{98}

Iverson’s explicit resistance to the dress code furthered the image of him as a “bad” black man—a “bad boy”—who was refusing badly needed paternal supervision, and was therefore unworthy of sympathy. When Iverson was depicted as a selfish player with a bad attitude and undeserving of his wealth and status in the years following the institution of the dress code, the accusations were that much easier to believe because they were built on the image of him as resistant to this particular kind of guidance. The believability of and public and media support of those depictions of his character made it easier for the league to sideline him, eventually contributing to the end of his NBA career and, with it, diminished visibility in the public eye. Iverson’s insistence on appearing as he wished, in the tradition of parading or strolling, contributed to the end of his NBA career and the ultimate loss of the once-large audience that made those public display most meaningful. Still, even a decade after the dress code came into effect, Iverson remained adamant: “I just felt the NBA was just picking on me. That’s all. Other guys in the league at the time dressed like me. Guys is supposed to be able to be original and dress like how they want to dress. The NBA can’t dress no grown man.”\textsuperscript{99}

“I’ve Done Some Things I Never Thought I Would Do”: LeBron James and Contingent Acceptance

Like Allen Iverson, LeBron James came from humble origins and achieved stratospheric success. During his NBA Draft, ESPN described his as “the amazing story of a young man who’s


gone from hard times to great success” after “his mom Gloria… sacrificed a lot, gave birth to LeBron when she was 16, on their own at 19, living on assistance, food stamps, and here they are just a short time later, one hundred million dollars in contract, endorsements, and basketball and LeBron James, it’s a great American story, from tough times to tremendous success.” In addition to being the first round pick of the 2003 draft and having 3 NBA championship rings and 3 Olympic medals, James has been the 2004 Rookie of the Year, a 13-time All Star and 2-time All-Star MVP, a 4-time Season MVP, a 3-time Finals MVP, an All-NBA Team member 17 times over.

LeBron James joined the league two years before the dress code came into effect and he did cultivate hip-hop style in those years, with baggy pants, “football jerseys and really, really long dog tags.” After the Malice at the Palace he defended his suspended fellow players, saying that “it was shocking, and it’s kind of sad, that some of our good players are suspended,” and that “to keep our image up, we kind of need those guys.” However, when the code was announced, he accepted it and publicly embraced its logic, saying in an interview that “it’s a job and we should look like we’re going to work.”

His apparent embrace of the dress code has been consistent since it was implemented. To oversee his makeover, he hired well-known stylist Rachel Johnson, who ascribes the shift to the

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103 McCallum.

104 Sports Business Daily.
dress code: “God’s timing was just right for me to enter the NBA…I came in when commissioner Stern began to enforce the dress code. My fashion-forward efforts happened to align with what the league was looking for.” With his “classic bow ties, bespoke suits, and tailored blazers” and “looks [that] are conservative, clean, and usually finished off with a tie,” James became something of a fashion icon. He was the third man and first black man to appear on the cover of Vogue magazine, featured in GQ, one of Complex Magazine’s 10 Best-Dressed Athletes. He became more visible than ever, with more attention paid to his appearance as part of his success as a player, to the point that, per stylist Khalilah Beavers, playoffs are “almost like a fashion show….when everybody’s watching. You wait all year for the playoffs, because that’s when everybody gets to see what they’ve been wearing.” James has also become a proponent of respectable fashion; after his return to the Cleveland Cavaliers in 2014 James “questioned the culture of the team, leading to internal changes when it came to professionalism and

105 Andrews.


promptness,” including “caus[ing] some players to spruce up their pregame and postgame attire.”

James’ embrace of “conservative,” “classic” fashion has coincided with the construction of an enormous fortune. His style is surely not the only cause; James is considered one of the all-time greats and has attracted tremendous attention for his skill on the court. But it has played a role, as “thanks to Instagram, corporate sponsorships, and league dress codes, athletes are beginning to see the branding potential in becoming bespoke gentlelads.” His sponsorship deals include old standards for athletes—McDonalds, Nike, Coca-Cola—but also distinctly upmarket brands like Audermars Piguet. James is one of Forbes’ 40 Richest Entrepreneurs Under 40 and consistently one of the top-earning athletes, and brands, in the world, with over half a billion dollars earned since the 2003 draft and the potential to earn up to a billion through his Nike sponsorship alone – an amount that is ten times more than the value of his three-year contract with the Cleveland Cavaliers.

James’ resources, including his wealth and public image, have given him a certain amount of discursive control. When he made the move from the Cleveland Cavaliers to the Miami Heat, he was able to announce his decision in an hour-long special that gave him a chance to explain the decision to fans. When some fans and Cavaliers’ team owner Dan Gilbert


109 Evans.


lambasted the decision, and James, prominent black leaders like Spike Lee and Reverend Jesse Jackson came to his defense, comparing “Gilbert’s comments to a patriarchal slave master upset that one his chattel had escaped his plantation.” James has also been able to publicly address explicitly racist comments, including by retweeting racist messages directed at him that included racial slurs and images that employed racial stereotypes. While Iverson was often lambasted for raising issues of race, James, with his respectable persona and his focus on explicit “old-fashioned” racism, is able to do so without becoming perceived as threatening or “thuggish.”

His adherence to respectability norms has also contributed to the discursive construction of James as a role model, something that is often conflated with his respectability. For instance, Cleveland.com reported that:

James has proven to be more than just an athlete, as he’s the most socially conscious athlete of this generation with his willingness to voice his opinion on issues of the day. His personal objective is making a difference, on the court or off of it. This season he trimmed his uniform shorts by a couple inches, and had his jersey made snugger than in years past. He had expressed to those close to him he wants to leave the baggy look behind and place a renewed emphasis on professional appearance when it comes to the size of his uniform as well as his pregame and postgame attire. When he arrives for work at The Q, he typically wears a sportcoat. It’s his way of reaffirming that it's a business atmosphere. Professionalism and conduct were a main focus of the Cavaliers’ pre-regular-season team meeting in late October. As James is the biggest name in the league and arguably in all of sports, he feels an obligation to shift the minds of kids on what is considered fashionable and acceptable. The kids who will play in the NBA in the future look to today’s players as role models…. “I have a calling, man,” James told cleveland.com. “Everything I do is for the people I love. I was just brought up that way.” James can’t force change, but he can force people to think and take notice. It’s pretty cool to dress professionally, and he wants everyone to know that.

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112 Wright.
113 Griffin.
In this construction, James’ respectability is itself a form of “social consciousness” and “making a difference.” His willingness to encourage and institutionalize those norms further solidifies his position as one of the “good guys.” Similar coverage followed James’ return to Cleveland. He wrote a piece for Sports Illustrated in which he publicly forgave Dan Gilbert and said: “I feel like my calling here goes above basketball. I have a responsibility to lead…I want kids in Northeast Ohio to realize that there’s no better place to grow up. Maybe some of them will come home after college and start a family or open a business…Our community, which has struggled so much, needs all the talent it can get.” Again, the construction of James as a “good guy” is contingent upon specific behaviors: embracing the idea of being a role model, using rhetoric of racial uplift, suggesting that his decisions are oriented toward others rather than toward himself, and delivering these messages as a respectable black man.

That is not to say that James has not shown an interest in racial politics. To the contrary, he has been vocal about a number of issues. He has made public statements through Instagram and Twitter about police shootings of unarmed black men including Trayvon Martin and Michael Brown; he was vocal about NBA team owner Donald Sterling’s racist comments; he tweeted in support of Jason Collins, a black player who was the first NBA player to come out as gay. He was also among a group of players who wore t-shirts reading “I Can’t Breathe”—the dying words of Eric Garner, a black man who was strangled by a group of New York City police officers, and a rallying cry of the Black Lives Matter movement—during warm-ups at a Nets game with England’s Prince William and the Duchess of Cambridge in attendance. While this

115 Wright.


117 Wright. 15.
statement had the potential to be controversial—and, notably, may have been in violation of the dress code—the league did not take action against James or his fellow players, and the move earned public praise from President Barack Obama.\footnote{Nolan Feeney, "Lebron James Wears 'I Can't Breathe' Shirt During Warm-Ups," \textit{Time}, December 8; Marissa Payne, "President Obama Endorses Lebron James's 'I Can't Breathe' Shirt," \textit{The Washington Post}, December 19, https://www.washingtonpost.com/news/early-lead/wp/2014/12/19/president-obama-endorses-lebron-jamess-i-cant-breathe-shirt/?utm_term=.93b2c313bddd.}

If James’ respectability has changed the way he is seen by the public, both in comparison to his first years in the league and in comparison to players who do not so actively embrace and propagate the idea of respectability, it has also given him leeway to engage in and confront racial politics in ways that were unavailable to players like Iverson. While Iverson would have been quickly discredited as a troublemaking “bad boy,” James’ respectability also confers credibility, and makes it more difficult for public figures, including team owners and league officials, to castigate him for or abrogate his activism.

For all that he publicly embraces his league-encouraged image, James still appears in clothes that are consistent with hip-hop culture when he’s completely off the clock. He spends time with rappers—the rapper Drake has said that they are so close that “LeBron is basically family to me, like a brother” and he’s been described both as a “hip-hop icon without dropping a beat” and “not just hip hop culture, so much as he is the NBA’s idea of hip hop—the mainstream’s anti-AI.”\footnote{Matthew Glenesk, "Drake's Star Rises with His NBA Friends," \textit{ESPN.com}, August 18, 2010, http://www.espn.com/espn/thelife/music/news/story?id=5469928; Passos,} While he cultivates a fashionable image, that is ascribed to the dress code rather than discussed as something James embraced, or would have chosen to embrace, on his own.\footnote{Ferber; Steve Marsh, "Inside the Nba’s New Style Wars," \textit{GQ}, April 2013, 2013.}
The underlying question—unanswerable by anyone but James himself—is what and how significant the costs of respectability have been. It would be simplistic to suggest that James is not aware of and actively engaged in a semiotic negotiation, balancing his interest in wealth, fame, and career (which require respectability since the dress code curtailed earlier strategies of cultivating those things through the embrace of hip hop culture) with carving out spaces for asserting his identity as a black man who identifies with hip hop culture. It could be that the negotiation goes the other way, that James prefers conservative fashion and takes pain to showcase ongoing ties to hip hop culture because his prominence as a lyrical reference does a fair bit of effective PR for him, equating him with success and wealth, affirming his roots in the hood, and making him a marketably aspirational figure. But the sort of PR it does works more to shore up a hood image than to cultivate a high fashion brand, and while James cannot control whether he is referenced in rap songs, his friendships with rappers who have referenced him repeatedly suggest that he would be able to weigh in if he were bothered. Any guesswork is further complicated by shifts in hip hop culture such that people associated with it, as Jay Z raps, “used to rock a throwback, ballin’ on the corner/Now I rock a teller suit, lookin’ like an owner.”121 It is, in short, impossible to know what feels “authentic” or “right” for James, or how he experiences the code-switching in which he still engages.

None of this is meant to suggest, as critics of recognition have, that recognizing marginalized groups requires that they conform to a particular performance of racial identity, or that some expressions are inauthentic, or that racial identity must be calcified as a particular set

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of stereotypes in order to be recognizable. Nor is to suggest that James is lacking agency; as Roopale Mukherjee writes about hip-hop’s material culture, “to read such consumption simply as black efforts to be just like white society is to interpret these practices only through the lens of deviance and delusion and…to echo traditional presumptions that locate whiteness as the standard measure for taste and respectability.” To the contrary, it is to suggest that James is actively engaged in a process of savvy, self-aware navigation, compromise, code-switching, and perpetual image-making; that his identity is in the process of constant response and construction—as, per Kwame Anthony Appiah, all of our identities are, to varying degrees.

But it is, nevertheless, a particular type of process with which James would not have had to engage so extensively if not for the NBA’s dress code. When he joined the NBA it was acceptable for players, James included, to embrace and display the hip-hop style that had been a part of James’ life before the dress code. The introduction of the dress code required a rapid and intense refiguring of his public persona, and permanently changed the way he is perceived by the public. Regardless of what feels right to Lebron James, the dress code has led to a particular public perception of him that suggests a great deal about who he is, which includes the suggestion of genuinely felt support for respectability. It is also a process that involves ongoing discipline, even with as much fame, wealth, and accomplishment as James has accrued for himself and his teams. When James made headlines for wearing a black mask that some

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123 Mukherjee, in Critical Rhetorics of Race. 183.

124 Appiah, The Ethics of Identity.

125 Sanchez.
described as “to protect his face following an injury he reportedly “liked the style and how it matched the Heat’s black throwback uniforms” and appealed when the league demanded he switch to a clear mask, but ultimately complied, saying “the reasons they told me didn't make sense to me, but I'm just a player. I will abide by the request.”\textsuperscript{126} In the face of the NBA’s institutional power as a policy-maker and gatekeeper, James, despite his tremendous success and popularity, is reduced to “just a player,” subject to white-run power structures that restrict the ways he displays his body, affiliations, and identity.

These disciplinary effects are not felt by James alone. Because he is a public figure, and an exceptionally popular one at that, when the NBA disciplines James it also sends a message to his fans about what forms of blackness are and are not acceptable, which they may then take on. For instance, Mark Anthony Green, an associate editor of \textit{GQ} and coach of a Brooklyn-based sixth grade basketball team recounted a story of a team member, an eleven or twelve year old, showing up to a game in a suit and described it as the child “doing his best LeBron.”\textsuperscript{127} Applying the dress code to players creates a scenario in which black audiences are presented white middle-class respectability norms that are faux-naturalized through the persona of a famous black basketball player who they find trustworthy and admirable. This particular type of policymaking, and the institutional structures involved, allow the NBA to send their players into the world as emissaries of respectability, regardless of how the players themselves feel about it.

It remains the case that James has profited from his respectable style. It has, in some cases, given him more and more credible political voice than was available to figures like

\textsuperscript{126} Samer Kalaf, "NBA Asked Lebron to Change His Badass Black Mask after One Game," \textit{Deadspin}, March 2, 2014; Ozanian.

Iverson. It has helped him amass influence and a vast fortune. That makes him a less sympathetic figure than some, but it does not diminish the injuries that may accrue from being coerced into a mode of presentation that James did not embrace before the NBA’s rules went into place, or from knowing that even success at the most elite levels cannot insulate black bodies from white regulation. As Michael McCann writes, “a person’s annual income has nothing to do with intrusions upon his or her personal sovereignty and sense of being.”

“Why Not?”: Russell Westbrook as Rebellious Trickster

Russell Westbrook was the fourth pick of the first round in the 2008 draft and has racked up an impressive list of accomplishments in the years since: a 6-time member of the All-Star Team and MVP twice over, 5-time member of the All-NBA Team, and an Olympic Medalist. By the time he joined the Oklahoma City Thunder in 2008, the dress code was already established policy. Nevertheless, he found it difficult to navigate, telling ESPN the Magazine that he spent his rookie season “trying to figure out the dress code and not get fined.”

Westbrook has succeeded in his quest to avoid fines—but not by complying with the dress code. Instead, Westbrook is the code’s most frequent and flagrant violator, and perhaps the most strategic. His track record points to the racial subtext of the code and offers insight into why and when respectability is policed and how individuals might resist it.

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128 McCann. 859.


130 Christina Cauterucci, "Russell Westbrook Is Turning the NBA Playoffs into a Personal Runway Show," Slate, May 10, 2016.
By the time Westbrook entered the NBA’s Rookie Training Program, it included lessons in etiquette and fashion. The draft process was similarly appearance-conscious, and it was there that Westbrook was introduced to brand representatives and Johanna Alba, who would become his tailor. This sort of brand-making is distinctly respectability-oriented (Westbrook’s first collaboration with Alba was a gray pinstripe suit) and conflated with the draft, such that becoming a player and becoming respectable are part of the same process.  

Westbrook’s sartorial tastes grew considerably more adventurous as his tenure in the NBA continued, fueled by an interest in haute couture and in guiding his own image (unlike many of his peers, Westbrook prefers to make his own clothing choices and does not work with a stylist). He is a regular attendee at New York Fashion Week and has been photographed in the front row of shows for relatively new, up-and-coming brands like Altuzarra and Rag & Bone, often in the company of fashion luminaries like Vogue’s Anna Wintour and Andre Leon Talley, to whom he also talks about clothes-making, design, and the history of fashion. He professes interest in a variety of high-end brands and has collaborated on his own line with luxury department store Barney’s. His motto – in fashion, as in most things – is “why not?” and he has embodied that spirit with a number of choices that have been hailed as daring and

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133 Deleon and Babcock; Cauterucci; Cunningham; Marsh; Lieber.

innovative. He has developed an eyeglass line after pioneering lensless glasses as part of a “nerd chic” trend in NBA fashion. He is known for bright prints, loud colors, and unusual fits. He has been called “a radical…a punk provocation, a sartorial troll” and “a badass Ziggy Stardust in glammy Neil Barrett silver-leather shirts and Givenchy hoodies.” He has also been called “the Kate Moss of the NBA,” a label that, even in its equation of Westbrook with a female supermodel, he assures reporters he is okay with, turning the comparison into a mark of his independence: “I think it got said because some people are not afraid to do certain things or wear certain stuff. You have to have a certain swagger about you” and hesitating to wear a kilt only temporarily, and then primarily to suggest that he would “be open to it if it were a slimmer fit.” On other occasions he has mentioned his mother as his fashion inspiration and told ESPN that he is inspired by womenswear in constructing his own looks.

While Westbrook has been making a name for himself as a groundbreaking fashion icon, other players have been disciplined for dress code violations. Most recently, in 2013 Chicago Bulls center Joakim Noah was sent off the court for his outfit. Noah, who was unable to play due to an injury, was wearing “a grey sweater, a black blazer and jeans before he was asked to change.” There was some confusion about how Noah had violated the code, with journalists


speculating that his cardigan somehow failed to meet league standards. He was not fined and was able to return to the game after replacing the cardigan with a borrowed, ill-fitting sport coat, because, Noah said, “That’s not really my style….But I want to be out there with my guys.”

Coverage of the incident was consistent in its quizzical tone and surprise that Noah had been told he was in violation. CBS Chicago’s Tim Baffoe speculated that it was not really about Noah, but was “conspicuous on purpose so that it would be news to subsequently serve as a Bradburian/McCarthyistic warning to future clothing criminalia. Test our boundaries and we’ll treat you like children, players.” Noah himself was as perplexed as the commenters; when asked why he had been sent off he answered, “I don’t even know really.”

Westbrook, meanwhile, appeared at a game in 2016 that had fans and commentators spotting at least five simultaneous dress code violations: indoor sunglasses, a bandana, ripped jeans, a sleeveless t-shirt (technically two violations, one for sleevelessness and one for wearing a t-shirt), and sneakers instead of dress shoes. These were neither firsts nor lasts. Westbrook has worn jerseys, ripped jeans, and non-dress shirts on multiple instances without incurring the

138 Ibid.
140 Baffoe, "Stern’s Subjectivity Shows with Noah Dress Code Incident."
141 Friedell.
wrath of NBA officials.\textsuperscript{143} Westbrook has been fined on other counts, like cursing at a fan, which indicates that he is not someone outside of the league’s disciplinary scope nor immune to punishment, but his fashion choices have been beyond official reproach.\textsuperscript{144} I contend that Westbrook’s resistance has been made possible by a reframing that recasts his noncompliance as reminiscent of couture rather than hip-hop, and by embracing the role of sartorial trickster in the tradition of the black dandy.

In 2015, \textit{Complex} magazine called Westbrook “the league’s MMP: Most Marketable Player.”\textsuperscript{145} Not only was Westbrook marketable, but he marketed himself and the products he involved in in ways that were comfortable for white audiences and sponsors. Aligning himself with Barney’s and \textit{Vogue} does not put white audiences in mind of “thuggish” black men, and so there is less visceral and less verbalized discomfort with Westbrook’s disregard for the dress code. Furthermore, Westbrook’s interest in the art and production of high fashion suggests a genuine interest in a traditionally white domain, a genuinely and closely-held interest in joining a predominantly white elite sphere. As blogger Emmanuel Altenor wrote, “no one is complaining about guys like Westbrook’s fashion style even if they do violate the dress code, because it doesn’t scream stereotypical Blackness. Westbrook’s look is more ‘universal’ than ‘Black,’ and profitable for the league, so it’s all good.”\textsuperscript{146}

But Westbrook’s look is not strictly “universal.” Rather, his sartorial choices are consistent with the tradition of black dandyism, which has developed as a strategy among black

\textsuperscript{143} Altenor; Cauterucci; Cacciola and Cohen; Concepcion.

\textsuperscript{144} Altenor.

\textsuperscript{145} Deleon and Babcock.

\textsuperscript{146} Altenor.
men to, per Monica Miller, “at once, subvert and fulfill normative categories of identity at different times and places as a gesture of self-articulation.”

Westbrook’s clothing choices – fashionable, meticulous, colorful, flamboyant, gender-bending, a challenge to conventional categorizations, and closely tied to Westbrook’s agency and depth of specialized knowledge – are consistent with the spirit of the dandy. Even as they challenge more traditional visions of the dandy as a man in a particularly fine suit, Westbrook’s choices embody the spirit of dandyism, the conscious choice to confuse and challenge discursive boundaries in pursuit of an embodied presentation that feels reflective of an authentic self. It therefore constitutes a comment on the relationship between white authority and disciplined back bodies (which links its origins to British slaves, who might be dressed especially well in order to demonstrate their owners’ status) and, in its more contemporary iterations, a declaration of figurative and literal self-possession.

The black dandy also recalls the tradition of the trickster, who reappears in different iterations through black traditions with African and Caribbean roots, always refiguring itself in order to get a certain response from its audience, operating strategically, saying just enough but not too much, able to change form with the circumstances, and still, throughout the process of repeated re-formation, working toward specific, autonomously determined and executed goals. This fits Westbrook’s modus operandi too. He gives interviews, but has said he does not like the media.

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147 Miller. 5.  
and when challenged on the point said only, “If you had to deal with what I do, would you?”

When he is caught relatively unawares, it is often in moments that reveal more friendliness, generosity, and dedication than he has made part of his public image, another iteration of the strategic, self-aware construction of public and private selves.

With this persona in place, Westbrook does not shy away from his blackness or black politics. He has spoken out against ongoing police shootings of unarmed black men in interviews and through social media. Following the shooting of Terrence Crutcher in September 2016, Westbrook took to Instagram with a post that demonstrated his awareness of the significance and danger of being a black man in the United States, saying in part: “his color was the only thing that made him bad… I’m tired man. And I’m scared. Cuz I’m big and my skin is brown. Lord don’t let my car break down, don’t let me be in the wrong place at the wrong time.” He told a reporter from *Complex* magazine that “me, being an African American athlete and having a voice, I think it’s important that it’s important that I make a stand that something has to change.”

Westbrook has managed to create and maintain a delicate balance that gives him space for sartorial as well as more explicitly political expression. Doing so has only been possible because he disregards the dress code and has found ways to frame his unwillingness to comply that jibe with the NBA’s interest in putting white audiences and sponsors at ease and, more broadly, their interest in profitability. He has found ways to meet his own expressive needs.

150 Young.

151 Anderson; Concepcion; Young.

without explicitly evoking racial stereotypes and giving the NBA cause to deploy its racist institutional policies. But the fact remains that institutional disciplinary power rests with the NBA. They could, at any moment and without warning, change their stance on Westbrook’s disregard for the rules. While Westbrook may have found a way forward, it is an inherently precarious one.

**Conclusion: Rules of the Game**

Iverson, James, and Westbrook have navigated the dress code with varying success. The same has been true for their fellow NBA players and, indeed, for members of marginalized groups the world over. The strategic work that these players have to do is not unusual – but its normality does not undo its harms.

The case of the NBA is noteworthy in part because of who it affects: a group of men who are exceptional. To succeed at such an elite level, NBA players must be dedicated, hardworking, and focused from a young age. Those who make it become among the world’s most elite athletes, with salaries and prestige that confer unusual privilege, especially for those 70-80% of players who are black men. Still, in spite of a number of character traits that most would usually classify as virtuous, in spite of their wealth and skill, in spite of their public platforms, it is relatively easy for them to be restrained with a series of racist, racially-coded institutional policies which have served to reify stereotypes, malign a certain expression of blackness and those who embrace it, and reproduce racial hierarchies.  

William Rhoden suggests that in order to overcome the racist history of sports we must recognize that “the terms of liberation have always been defined by the white men who were responsible for their wealth” and that “the ultimate goal must be to create a new and better

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model, not to replace an old form of oppression with a new one.”

The institution of the NBA’s dress code supports the notion that systematic overhaul is badly needed before the whole range of black identities has a chance of becoming publicly respect-worthy, rather than remaining contingent on the performance of respectability.

That deep institutional reform will be hard to accomplish without accompanying legal reform. As long as the NBA, and so many other institutions, remain effectively unaccountable to anti-discrimination laws, they will be motivated by profit and, in turn, by the white audiences, sponsors, employers, philanthropists, and so on who have a vested personal interest in their own comfort, including the maintenance of white hegemony. That accountability is a pipe dream as long as legal rights protections do not include the affective, expressive choices that make identity meaningful. Without those protections, there will always be respectability loopholes, ways to discriminate by naming “cultural differences” or “discomfort,” or by using coded language like “thuggishness” or “professionalism.”

Had those legal protections been in place, things might have unfolded quite differently. The NBA might not have been able to institute its dress code, or black players might have been able to successfully challenge it. It might have been received differently in the press. Players who had spoken out against it would have been harder to infantilize and trivialize. A group of exceptional black men might have been able to continue expressing who they were and might have seen their accomplishments associated with hip hop or “hood” culture, thereby challenging and undoing stereotypes instead of reproducing them. Just as the NBA’s disciplining of black identity has had far-reaching effects for audiences, so might this challenge to pernicious

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154 Rhoden. 265, 195.

155 Bandsuch, ”NBA Dress Code and Other Fashion Faux Pas under Title VII.”; McCann; Panoff.
stereotypes, and in a considerably more favorable form. But until rights protections encompass
the experience of identity instead of being subject to immutability tests, there is little chance that
this more favorable outcome could come to pass. And until then, the places where players have
been able to navigate the restrictions imposed by the dress code are exceptions that prove the
rule. It is not that the dress code prevents resistance or political speech, but rather that it makes
politics, including both explicit activism and the politics inherent in the presentation of embodied
black identity, contingent on compliance with white respectability norms.
CONCLUSION

Following the shooting of Michael Brown in Ferguson, Missouri, Tyler Atkins started the #IfTheyGunnedMeDown Twitter hashtag to highlight how both the police, a state institution, and the media, a private institution, rely on images that suggest that victims of police brutality are not respectable and that the police were therefore justified in assuming that they were dangerous. Atkins, a black student in Texas, posted a picture of himself in a black t-shirt and blue bandana alongside a picture in which he is wearing a suit and bowtie and holding his saxophone. Atkins suggests that if he were to be shot by police, both the police and the media would use the first photo to imply incorrectly that his apparent lack of respectability was also suggestive of criminality, therefore making him a deserving target of state suspicion and violence. Tens of thousands of people followed suit, posting similar sets of pictures to illustrate the ways in which dress and grooming choices are used to suggest either respectability or criminality, and therefore to legitimize or delegitimize individuals and their deservingness of state protection. Atkins and the thousands of others who took part in the #IfTheyGunnedMeDown campaign are implicitly identifying the use and consequences of what I call disciplinary respectability. I argue that as explicit forms of discrimination have become increasingly taboo, both legally and socially, they have been replaced with an implicit form of discrimination: disciplinary respectability. In the absence of legally permissible forms of overt discrimination, disciplinary respectability draws on

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the complexity of discriminatory attitudes and behaviors to justify the marginalization, disenfranchisement, and even killing of non-respectable members of marginalized groups.

I contend that disciplinary respectability operates primarily through two important mechanisms. Firstly, respectability requirements substitute overtly discriminatory policies with policies that police dress, grooming, speech, and affect in order to reward or punish on the basis of compliance with dominant groups’ respectability norms. Respectability requirements—like Harrah’s “Personal Best” policy, school dress and grooming policies, and the NBA’s dress code—are distinct from requirements that ensure safety or that are necessary for performing the substance of the work at hand. Instead, they are primarily intended to make students and workers perform respectability. Secondly, rhetorics of respectability conceal this disciplinary action through the use of ostensibly neutral terms like “professional,” “well-mannered,” and “proper.” By hiding the linguistic connection to overtly discriminatory judgments, terms like these conceal the extent to which determinations of professionalism and mannerliness are steeped in discriminatory attitudes. This terminology also carries moral weight, suggesting that to be respectability is to be proper, good, capable of professional work, and worthy of respect.

Though disciplinary respectability is transmitted and enforced both formally and informally, the use of disciplinary respectability strategies in legal institutions produces especially significant and systematic consequences for marginalized groups. By substituting respectability requirements for more overtly identity-based distinctions, the employment of respectability requirements and rhetorics of respectability by the state creates socially and legally acceptable structures through which systems of oppressive discrimination are maintained and reinforced. The state’s use of these tools also sets a discursive and institutional tone that paves
the way for non-state institutions to adopt similar policies and for citizens to accept respectability as a reasonable prerequisite for safety and opportunity.

The previous chapters describe and critique the ways in which respectability operates to deny rights, limit opportunities, discipline the performance of identity, and provide cover for and perpetuate ongoing inequality and discrimination. In so doing, this project makes two significant contributions with both theoretical and practical implications. First, I expand on existing scholarly discussions of respectability, which primarily treat respectability as an intragroup political strategy intentionally employed to serve marginalized groups. Instead, I focus on the cooptation and use of respectability as a disciplinary tool wielded against members of marginalized groups.

Second, this project contributes to the substantial theoretical scholarship on the efficacy of pursuing formal legal rights as an explicit strategy for ameliorating identity-based discrimination in the United States. Many theorists have argued that centering social movements on formal rights can be counterproductive for members of marginalized groups. I contend here that rights are both theoretically and practically important and must continue to be a focus for marginalized groups. I argue, however, for a restructuring of legal conceptions of rights in order to make them more inclusive of those marginalized group members who do not or cannot meet respectability requirements and are therefore unlikely to be meaningfully protected in the status quo. In exploring how respectability has replaced more overt forms of discrimination, I consider ways in which legal rights and institutions might be made more responsive to theoretical concerns, and to the real needs and experiences of marginalized people who would benefit from legal protections. I further contend that shifts in the law will affect institutional policy and interpersonal judgments, thereby diminishing both formal and informal discrimination.
In concluding, I explore three final points about the potential effects of addressing respectability-based discrimination. I consider first what this would mean on a primarily individual level, second on a primarily institutional level, and finally in terms of political mobilization. All of these have implications and pose questions for further research.

First, disciplinary respectability affects individual choice. In discussing stereotypes and challenges to them, critics frequently suggest that insisting on the right to embrace stereotypical behaviors creates a pressure to conform to stereotypes. As this line of thinking goes, if law and social norms are constructed so that wearing cornrows and sagging pants is formally considered to be a part of being black, or so that having a purple undercut and piercings is formally considered to be a part of being queer, members of marginalized groups will feel as though they have to conform to group-related stereotypes. This pressure could be an albatross for those marginalized group members who feel drawn to things associated with dominant respectability norms.

I agree that pressure to perform stereotypes does restrict one’s ability to express a sense of self and has the potential to reify stereotypes and calcify notions of group identity. However, I contend that addressing disciplinary respectability mitigates these harms rather than exacerbating them. In the status quo, the rewards that are attached to disciplinary respectability color any choice that a member of a marginalized group makes about presentation. Those who are not able or willing to perform to the standards of disciplinary respectability are penalized, as I have discussed at length. But so, too, are those who feel a genuine pull towards markers of mainstream respectability. When members of marginalized groups associate respectability with coercion and rewards they will often, not illogically, assume that those who evince a preference for markers of middle-class white respectability are doing so strategically, that they are selling
out, that they are self-loathing or blinded by false consciousness. That is not necessarily the case, of course; some black people just like shopping at the Gap and listening to Celine Dion, and neither of those proclivities suggests that they do not also feel deep attachment to their blackness. But as long as respectability is attached to rewards, other marginalized group members may assume it is strategic and may resent the relative ease with which their khaki-wearing counterparts access those rewards. Disciplinary respectability does not, then, only constrain the autonomy of those who find themselves unable or unwilling to perform to expectations of respectability. It also constrains the autonomy of those who are drawn to dominant groups’ practices and cultural products.  

Second, understanding and addressing disciplinary respectability might change discriminatory legal and institutional practices. Racism, sexism, homophobia, and other forms of discrimination are entrenched in policies and in the attitudes of those who enforce them; changing that is no small task. I do contend, however, that addressing the mechanisms of discrimination is worthwhile and necessary. It is difficult to oppose discrimination successfully without considering how people justify and use it. There is also some reason to be optimistic about the usefulness of exposing the mechanisms that sustain discrimination. Many people who harbor discriminatory attitudes and participate in discriminatory behavior are unaware of doing so. Making people aware of the discriminatory substance and effects of policies and behaviors can encourage deeper examination of existing practices. This has notably been the case with

2 See Kenji Yoshino’s discussion of “reverse covering.” (Yoshino. 136, 146-147)
discussions around implicit bias—forms of subconscious prejudices that draw from negative stereotypes and inform negative treatment of marginalized groups. In the twenty years since implicit bias was first studied, it has become part of trainings—in settings including courts, police departments, schools, and private companies—in an effort to diminish its negative consequences.3

Addressing disciplinary respectability comes with similar opportunities to encourage people and institutions to address the heuristics they use in making judgments. It also has the potential to complement ongoing challenges to implicit bias. If institutions welcome (and, therefore, more people interact with) those who are deeply different—who have different ways of expressing emotion, thinking through problems, communicating ideas, and presenting themselves—these ways of being will cease to feel as foreign. Moreover, where people who do not meet the expectations of disciplinary respectability are able to demonstrate their competence, they will challenge stereotypes that contribute to implicit bias.

Lastly, disciplinary respectability limits marginalized groups’ political movements. The adoption of the politics of respectability as an intentional strategy used by marginalized groups came with an implicit acceptance of the idea that respectability was a precondition of participation in mainstream political venues.4 This same logic has been used to exclude political actors who do not or cannot successfully perform respectability. These exclusions suggest that


4 Higginbotham, Righteous Discontent: The Women's Movement in the Black Baptist Church, 1880-1920; Reed; Spade; Warner; E. Frances White, Dark Continent of Our Bodies: Black Feminism and the Politics of Respectability (Philadelphia: Temple University Press 2001); Wolcott; Yoshino; Michael Bronski, A Queer History of the United States (Boston: Beacon Press, 2011).
while respectability might be a useful political strategy for some group members, it ultimately limits the aims of social movement organizations working on the group’s behalf. Groups who strive for respectability have incentive to distance themselves from group members who do not perform respectability, and so are unlikely to address issues that primarily affect those non-respectable group members. Further study of how social movements have used respectability, or the lack thereof, to catalyze action may help explain what motivates different types of activism, the relationship between radical and mainstream political movements, and agenda-setting within social movements.

Studying disciplinary respectability has both theoretical and practical consequences. It sheds light on how dominant groups police and constrain marginalized groups members’ choices, autonomy, sense of self, and life chances. It offers insight into under-discussed mechanisms that produce and sustain inequality. It therefore offers opportunities, as well: to better understand sources of ongoing inequalities, to produce strategies for resisting discrimination, and to consider how rights frameworks might accommodate more complex and more realistic conceptions of the self. Revealing these aspects of systemic oppression, and the work disciplinary does to sustain them, is a necessary step towards a more just and equal society.

5 Spade; Strolovitch; Warner.
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