The application of Tudor sumptuary laws to academic dress: Doctors in scarlet?

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Abstract

Sumptuary legislation played an important social role in Tudor society, as it did in earlier generations. It applied to ordinary attire, but also, where appropriate, to what we might call uniforms. Specifically, it applied to clerical and academical dress. An Act of 1533 (24 Henry VIII c 13) was the most comprehensive on this point. It includes provisions that have since commonly been read to allow holders of a doctors degree to wear scarlet gowns, whatever their universities might otherwise provide. The purpose of this paper is to analyse the relevant sections of this Act and one of 1509, in order to discover whether doctors may indeed have had a right to wear scarlet under these statutes.

Introduction

In the United Kingdom, as in other modern liberal democracies, there are now few, if any, restrictions upon one’s choice of habiliment. There have in the past, however, been repeated attempts in most countries and civilisations – from the Romans (and indeed earlier civilisations) onwards – to strictly control aspects of apparel, by legislation. They were motivated

1 Note, however, recent debate in the (nominally) Christian West over the wearing of religious and cultural clothing that masks the identity or marks the wearer as belonging to a particular religious or cultural group – especially with respect to the veil worn by many Muslim women. There has also been consideration given to banning the wearing of “hoodies” (hooded jackets) – which disguise facial features – and statutes prohibiting wearing of masks by night remain extant in some jurisdictions.

2 Generally, see Alan Hunt, Governance of the consuming passions: a history of sumptuary law (Basingstoke: Macmillan Press, 1996); Catherine Killerby, Sumptuary law in Italy, 1200-1500 (Oxford: Clarendon Press, 2002); Frances Baldwin, Sumptuary legislation and personal regulation in England (Baltimore: The Johns Hopkins Press, 1926). See also Wilfrid
by political, moral or economic considerations. However, these sumptuary laws, as they were known, were generally a failure, for many reasons. Those who wished to ignore them could often do so with impunity. The frequency of such legislation is a sign both of the perceived importance of such measures, and of their failure. Yet the authorities persisted, despite their inability to suppress extravagance, or control expenditure.

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

There are no general sumptuary laws now in effect in the United Kingdom. None ever applied specifically to academical dress, but some


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

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

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

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

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

8 Though not, strictly, sumptuary law, Dress worn at Court still regulates dress worn to court – to the extent that this is still worn – as well as
did include provisions which expressly applied to graduates and undergraduates, especially clerical. Franklyn cited one such Act, 24 Henry VIII c 13 (1533), as authorising all doctors to wear scarlet, as well as claiming that the MA and BD are thereby entitled to a black chimere, or tabard. The time of King Henry VIII is particularly important with respect to the development of sumptuary laws – as it was also for the evolution of academical dress.

While Franklyn’s interpretation of this particular Act may be disputed, hitherto a study of this aspect of academical dress has been inhibited by the general unavailability of accurate and complete copies of the statute. Sumptuary laws in general, and the ideological justifications for such laws, are beyond the scope of this paper, the purpose of which is two-fold. First, it is intended to offer the relevant parts of the text of the 1533 statute, with a critical commentary. For the purposes of contextualisation and comparison, an earlier sumptuary law is also transcribed in part, also with describing official uniforms, and many occupations and professions regulate their own attire. George A. Titman (ed.), Dress and Insignia worn at His Majesty’s Court ... illustrated by colour and photographic plates ...

In three parts (London: Lord Chamberlains Office, 1937).

9 The chimere is a sleeveless gown usually of red, but sometimes of black material of quality and derived from the Spanish Zammarvia, a twelfth-century riding cloak. It is perhaps an alternative form of the *cappa clausa*, but more probably a distinct garment; Rev’d T.A. Lacey, “The Ecclesiastical Habit in England” (1900) 4 Transactions of the St Paul’s Ecclesiological Society 126, 128; Rev’d. N.F. Robinson, “The Black Chimere of Anglican Prelates: A plea for its retention and proper use” (1900) 4 Transactions of the St Paul’s Ecclesiological Society 181, 189


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

13 Both texts are taken from the Statutes of the Realm (London: HMSO, 1817), vol. III, located in the Maitland Legal History Room, Squire Law Library, University of Cambridge. The author wishes to thank the Deputy Librarian, Peter Zawada, for his assistance.
a commentary. Second, it will address the contentious question of whether the Act of 1533 does in fact allow doctors to wear scarlet. The repeal of the Act must also be taken to leave the matter as one now regulated by the common law, and the regulations and statutes of the universities.

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

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

The text (with modernised spelling, numbers converted from Roman to Arabic form, notes where an explanation is required, and square brackets to mark any interlineations added for clarity\(^\text{14}\)) is as follows:

Forasmuch as the great and costly array and apparel used within this Realm contrary the good statutes thereof made hath be the occasion of great impoverishing of divers of the King’s Subjects and provoked many of them to rob and to do extortion and other unlawful deeds to maintain thereby their costly array: In eschewing whereof,

…

And that no man under the degree\(^\text{15}\) of a Gentleman except Graduates of the Universities and except Yeomen Grooms and Pages of the King’s Chamber and of our Sovereign Lady the Queen, and except such men as have lands tenements\(^\text{16}\) or fees or annuities to the yearly

\(^{14}\) The paragraph structure, phraseology, punctuation, capitalisation, and so on, are otherwise as they appear in the Act.

\(^{15}\) Not the University degree, but their social.

\(^{16}\) Held in tenure, by a “tenant”.
value of £11 for term of life\textsuperscript{17} or an hundred pound\textsuperscript{18} in Goods use or wear any furs, whereof there is no such kind growing in this land of England Ireland Wales or in any land under the King’s obeisance,\textsuperscript{19} upon pain to forfeit\textsuperscript{20} 40 shillings. The value of their goods to be tried by their own oaths.\textsuperscript{21}

Critically, this allows graduates to wear alien furs, as if they were gentlemen. It is most likely that this dispensation was justified on the grounds that it was already customary at this time to distinguish academic degrees by the use of various furs (with bachelors restricted to cheap fur or lambs wool), silks and cloths. But it was also possibly an acknowledgement that graduates, like students and barristers of the Inns of Court,\textsuperscript{22} were ipso facto, gentlemen.

And that no man under the degree of a Knight except spiritual men\textsuperscript{23} and Serjeants at the Law\textsuperscript{24} or Graduates of Universities use any more

\textsuperscript{17} Showing the development of the law to recognise trusts.
\textsuperscript{18} It is very difficult to give an accurate assessment of the present day value of money. “Measuring Worth – Purchasing Power of British Pound Calculator” (http://www.measuringworth.com/calculators/ppoweruk/) is one of many attempts to produce a tool capable of calculating approximate values. Using this, £100 in 1509 was estimated to be worth £46,500 in 2005; Lawrence H. Officer, “Purchasing Power of British Pounds from 1264 to 2005.” MeasuringWorth.com, 2006.
\textsuperscript{19} Deference, homage, probably closest to allegiance of suzerainty.
\textsuperscript{20} To forfeit something is to automatically lose ownership of it, without formal process being required, as a consequence of the commission of some specified act (or possibly, its omission).
\textsuperscript{21} That is, by providing affidavits or sworn testimony.
\textsuperscript{23} Probably meaning those who were ordained by the sacrament of Holy Orders, confined to deacons priests and bishops, and not including minor orders (or University undergraduates, although they had received the tonsure, at least in the earlier years).
cloth in any long gown than four broad\textsuperscript{25} yards, and in a riding gown or coat above three yards upon pain of forfeiture of the same.

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

And that in any wise of all the said Actions the Defendant shall not wage his law\textsuperscript{26} nor be by protection\textsuperscript{27} nor essoyn\textsuperscript{28} nor the party to be

\textsuperscript{24} Serjeants-at-Law (\textit{servientes ad legem}), or Sergeants Counters, were the highest order of counsel in England and Ireland. The Judicature Act 1875 (38 & 39 Vict c 77) removed the necessity for judges to have taken the coif – the distinctive feature of the serjeants’ attire – and no more were created after that year. The order was dissolved after 1877, after selling their Inn in Chancery Lane, though the dignity was never formally abolished. The last surviving English serjeant, Lord Lindley, who was also the last appointed, died in 1921; the last practising serjeant having died in 1899. The Irish Bar retained serjeants slightly longer than the English, the last serjeant being appointed in 1922, and dying in 1959; Daniel Duman, \textit{The English and Colonial Bars in the Nineteenth Century} (London: Croom Helm, 1983); Wilfred Prest (ed.), \textit{Lawyers in Early Modern Europe and America} (London: Croom Helm, 1981); \textit{In the matter of the Serjeants at Law} (1840) 4 Bing (NC) 235.

\textsuperscript{25} Broadcloth, wool woven two yards wide.

\textsuperscript{26} A defence by way of compurgation; finding men, usually twelve, who could swear to his innocence.
barred by the King’s pardon nor be delayed by any plea to the disablement of his person.\textsuperscript{29}

Wager of law,\textsuperscript{30} protection,\textsuperscript{31} essoyn\textsuperscript{32} and pardon would all have the effect of permanently staying any legal action, or at least of delaying it. The statutory provision was clearly designed to encourage suits being taken. The rationale here is that the enforcement of the law depended upon free enterprise, since the Crown did not have the resources to do so directly. Private individuals might instigate a prosecution, and if successful, would get half the proceeds, the rest going to the Crown. The tradition of private prosecutions only declined with the development of a professional police force in the nineteenth century, and is not entirely extinct even now.

Provided always that this Act be not prejudicial nor hurtful to any spiritual or temporal man in wearing any ornaments of the church\textsuperscript{33} in executing divine service nor to any merchants strangers.\textsuperscript{34}

\begin{flushright}
\textsuperscript{27} A privilege granted by the king to a party to an action, by which he is protected from a judgment which would otherwise be rendered against him.
\textsuperscript{28} The allegation of an excuse for non-appearance in court at an appointed time; the excuse itself.
\textsuperscript{29} Their inability to plead.
\textsuperscript{30} A defence by way of compurgation; finding men, usually twelve, who could swear to his innocence.
\textsuperscript{31} A privilege granted by the king to a party to an action, by which he is protected from a judgment which would otherwise be rendered against him.
\textsuperscript{32} The allegation of an excuse for non-appearance in court at an appointed time; the excuse itself.
\textsuperscript{33} Meaning vestments, not ornaments of the building or of the altar.
\textsuperscript{34} The law relating to merchants from abroad, of the \textit{Lex Mercatoria}, is quite distinct from the common law; Leon Trakman, \textit{The Law Merchant – The Evolution of Commercial Law} (Littleton: F.B. Rothman, 1983).
\end{flushright}
This would have little effect upon academical dress, per se, though it could be used to justify the use of silk tippets, stoles, scarves or hoods in Eucharistic services, though not necessarily in preaching.

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

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

We have seen that the sumptuary Act of 1509 had little direct application to academical dress, other than allowing alien furs, and permitted more

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

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

voluminous, or lengthy, gowns. By 1533, however, significantly more
details were provided, though the new Act was very much a logical
successor to the 1509 Act. Exceptions are systematised – though the exact
relationship between this Act and the statutes of the Universities and of
their colleges remains unclear. The passage of this statute may reflect the
inability of the authorities to successfully enforce the earlier Act – or
indeed any earlier or subsequent sumptuary law, or increasing concern at
the economic or social consequences of extravagance, after the
comparatively austere years under King Henry VII.\textsuperscript{38}

The relevant sections of the text of the 1533 Act are as follows:

Where before this time divers laws ordinances and statutes have been
with great deliberation and advice provided established and devised, for
the necessary repressing avoiding and expelling of the inordinate excess
daily more and more used in the sumptuous and costly array and apparel
accustomedly worn in this Realm, whereof hath ensued and daily do
chance such sundry high and notable inconveniences as be to the great
manifest and notorious detriment of the common weal, the subversion of
good and politic order in knowledge and distinction of people according
to their estates\textsuperscript{39} pre-eminences dignities and degrees, and to the utter
impoverishment and undoing of many inexpert and light persons
inclined to pride mother of all vices;\textsuperscript{40} which good laws notwithstanding,
the outrageous excess therein is rather from time to time increased than
diminished, either by the occasion of the perverse and froward\textsuperscript{41}
manners and usage of people, or for that errors and abuses rooted and

\textsuperscript{38} Henry VIII has only succeeded in 1509, so the Act of that year was
probably too early in his reign to provide a good indication of the direction
of his thoughts.

\textsuperscript{39} In the social sense, or their rank or status.

\textsuperscript{40} St Thomas Aquinas, \textit{Summa theologiae}, ed. John A. Oesterle (Englewood
Cliffs: Prentice-Hall, 1964), 2\textsuperscript{nd} part of the 2\textsuperscript{nd} part, question 153: “pride is
accounted the common mother of all sins, so that even the capital vices
originate therefrom”.

\textsuperscript{41} Turning back to one’s own ways; difficult to deal with; stubbornly
disobedient or contrary; going in one’s own wilful ways.
taken into long custom be not facile and at once without some moderation for a time relinquished and returned:

...

II

Be it further enacted that after the said Feast, none of the Clergy, under the dignity of a Bishop Abbot or Prior being a Lord of the Parliament, wear in any part of his or their apparel of their bodies or on their horses, any manner of stuff wrought or made out of this Realm of England Ireland Wales Calais Berwick or the Marches of the same; except that it shall be lawful to all Archdeacons, Deans, Provosts, Masters and Wardens of Cathedral and Collegiate Churches, Prebendaries, Doctors, or Bachelors in Divinity, Doctors of the one law or the other, and also Doctors of other sciences, which have taken that degree or be admitted in any University, to wear sarcenet in the lining of their gowns, black satin, or black camlet in their doublets and sleeveless coats, and

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

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

44 Calais remained a part of the King’s Realm until the mid-sixteenth century (1558).

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

46 The Welsh Marches and the Scottish Marches.

47 A fine plain-weave silk, primarily used for linings.

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

49 Camlet, or Chamlett, also known as Camelot, or Camblet, is a woven fabric originally made from woven silk and goat (or camel) hair, now more
black velvet or black sarckenet or black satin in their tippets\textsuperscript{52} and riding hoods or girdles, and also cloth of the colours of scarlet\textsuperscript{53} murrey\textsuperscript{54} or violet and furs called gray\textsuperscript{55} black budge\textsuperscript{56} foins shanks\textsuperscript{57} or miniver\textsuperscript{58} in their gowns and sleeveless coats, anything before mentioned to the contrary notwithstanding:

usually wool and cotton, or goat and silk. In the sixteenth century it would usually be a mixture of wool and silk.\textsuperscript{50} A close-fitting body garment, with or without sleeves, worn by men from the fourteenth to the late seventeenth centuries.\textsuperscript{51} In this context, “sleeveless coats” means a jerkin with the “skirt” extending to the knee.\textsuperscript{52} The tippet, possibly derived from the mediæval hood, replaced the almuce by the sixteenth century.\textsuperscript{53} Wool ingrained red is always scarlet and silk ingrained red is always crimson. To dye or stain into the fibre, dyed with either kermes or cochineal (and therefore very expensive). The kermes was a louse from the Mediterranean oak (\textit{Quercus ilex}), and cochineal (\textit{Dactylopius coccus}) was made from the bodies of insects living on the prickly pear (\textit{Opuntia littoralis}). These appeared granular once harvested and dried – hence the expression “ingrained”. Both gave a much richer colour than was possible from madder (\textit{Rubia tinctorum}), the vegetable source of the red dye. Ingrained dye was usually red but sometimes mixed to produce other hues (such as by combining with woad [\textit{Gastum}, or \textit{Isatis tinctoria}] or indigo [usually from the \textit{Indigofera tinctoria}], resulting in violet).\textsuperscript{54} Murrey, an heraldic tincture, supposedly the colour of mulberries, between red (Gules) and purple (Purpure). It this context it is most likely being used for the popular colour of purplish red, also known as mulberry. Despite the absence of punctuation between scarlet and murrey, these are distinct colours.\textsuperscript{55} Marten.\textsuperscript{56} Absence of punctuation makes this unclear, but presumably this means black budge – black lambskin – rather than suggesting that “black” is a distinct fur.\textsuperscript{57} Shanks (not foins shanks – original version of statute omitted the coma) is the fur of the leg of the kid or sheep.\textsuperscript{58} Miniver, or minever, is a white or light grey fur, originally mixed or variegated, used for lining and trimming. In 1533 it is the fur from the belly of the European grey squirrel.
This section is central to Franklyn’s contentions. It is, however, apparently a limitation or dispensation for the clergy, not for the laity.\(^{59}\) It is not clear exactly what is meant by “clergy” in this context, for university men were, in some degree, in the clerical state rather than simply laymen. They were not necessarily ordained, thus they were not “spiritual men”, or “spiritual persons”, which terms were used in the 1509 and 1533 Acts respectively to describe, presumably, those who had received the sacrament of (major) holy orders and religious (monks). Generally speaking, however, the mediæval university scholar was a cleric, that is a man in holy orders, or at least one who had received the tonsure.\(^{60}\) But many, if not most, did not

\(^{59}\) The rationale for such a dispensation for the clergy is unclear from the Act.

\(^{60}\) In mediæval times he then enjoyed the civil benefits of clerics. Tonsure was a prerequisite for receiving the minor and major orders, and in later years the benefit of clergy was extended to any who could claim to be a cleric and so under the jurisdiction of ecclesiastical rather than lay courts. This was a means of avoiding punishment by temporal courts. Originally this was achieved by appearing tonsured or habited as a religious (monk or priest), but later merely by a literacy test (formalised by statute in 1351). Traditionally this required the reading of Psalm 51 – 50 in the Vulgate and Septuagint – which became known as the neck verse): *Miserere mei, Deus, secundum misericordiam tuam.* (“O God, have mercy upon me, according to thine heartfelt mercifulness”).

advance beyond deacon and forsook the religious vocation for a secular career, and many never received even minor orders.\textsuperscript{61} The critical question here is this: Are graduates clergy, even if not ordained? Some clergy are “Doctors, or Bachelors in Divinity,” but not all of these graduates are necessarily clergy – or are they? Does it say that only those in holy orders, whether as deacon, priest or bishop, or in minor orders, are entitled to these privileges? Or does it say that all graduates are so entitled – because all are clergy?

The key questions to ask are how were university graduates – for we are not here concerned with undergraduates – regarded in the early sixteenth century, and what the contemporary meaning of “clergy” was. The latter question may be answered fairly readily, though perhaps not with certainty; clergy included those in minor and major holy orders, but not the laity – and university men were generally the latter. In 1529, for instance, Sir Thomas More wrote, in a reply to critics of the behaviour of the monks and priests and priests of the contemporary Church, “To put every man to silence that would ... speake of the fautes of the clargye”.\textsuperscript{62} It is probably that graduates were not regarded as clergy unless they received the holy orders of deacon or priest. Whilst an undergraduate they might have been in some manner a cleric, but once they received their Master of Arts or Bachelor of Divinity – and the latter would often follow the former by several years at least – they would, unless remaining at the Universities to teach, or received ordination to become ministers of the Church, re-enter society as laymen.

The Advertisements of 1566\textsuperscript{63} are consistent with this limited definition. These provide for the attire of “persons ecclesiastical”, and have similar

\textsuperscript{61} Minor orders were abolished by the Roman Catholic Church after Vatican II; see, Pope Paul VI, Apostolic Letter given Motu Proprio, Ministeria quædam, 15 August 1972 (On first tonsure, minor orders, and the subdiaconate) (the Latin text was published in (1972) 64 Acta Apostolicae Sedis 529-534. The English translation is from Documents on the Liturgy 1963-1979 (Liturgical Press, Minnesota, 1982), pp 908-911.


\textsuperscript{63} Henry Gee and William Hardy (eds.), Documents Illustrative of English Church History (New York: Macmillan, 1896), pp. 467-475. Doctors of Medicine are excluded for no obvious reason.
provisions to those of the Act, except that it is specifically stated to be for deans, archdeacons and others, and “doctors, bachelors of divinity and law, having any ecclesiastical living”.

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

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

However, the meaning of “sleeveless coat” is less clear. Stokes seems to suggest the gown is the *roba*, in which case the *cappa clausa* isn’t even covered by this law – and possibly the “sleeveless coat” is the

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

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

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

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

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

The provision therefore specifies that bachelors of divinity and doctors – all being clergy – could use sarcenet in the lining of their roba or supertunica, and black satin or camlet in their subtunica or cassock and in

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their doublet. In modern terms this provision would allow the use of black satin or camlet in the suit or cassock. It does not allow the wearing of any additional item of dress, however.

Central to Franklyn’s argument is the next provision. This states that these men might lawfully wear gowns and sleeveless coats of scarlet, murrey or violet cloth. This is a notable privilege, given the tenacity with which the Crown protected its near monopoly of these colours. Secondly, they might have, in their gowns and sleeveless coats, furs of gray black sheared lambskin, Marten, rabbit or hare, and grey squirrel or miniver.

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

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

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

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

70 See also Rev’d T.A. Lacey, “The Ecclesiastical Habit in England” (1900) 4 Transactions of the St Paul’s Ecclesiological Society 126, 128-129.

lining) for these. The *subtunica* (sleeveless coat) might also be of scarlet cloth, with sarcenet in the lining, and fur trimming.

And that none of the Clergy, under the degrees aforesaid, wear any manner of furs other than black coney\(^{72}\) budge grey coney shanks calabar\(^{73}\) or grey fitch\(^{74}\) fox lamb otter and beaver;

Lesser clergy, that is, those who were not dignitaries (Archdeacons, Deans, Provosts, Masters and Wardens of Cathedral and Collegiate Churches, Prebendaries), nor bachelors of divinity or doctors, could wear fur, but this could not be anything other than black rabbit, sheared lambskin, grey rabbit, hare, calabar, polecat, fox, lamb, otter and beaver. The use of this fur is not described, so it might be on any item of attire.

And that none of the Clergy under the degrees aforesaid, other than Masters of Arts and Bachelors of the one law or the other admitted in any University or such other of the said Clergy as may dispense\(^{75}\) yearly twenty pound over all charges, shall wear in their tippet any manner of sarcenet or other silk.

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

III

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\(^{72}\) Hare (*Lepus europaeus*) or Rabbit (*Oryctolagus cuniculus*).

\(^{73}\) Squirrel fur, originally from Italy (Calabria).

\(^{74}\) The fur of the Polecat (*mustela putorius*), an animal related to the weasel.

\(^{75}\) To expend.
Provided also that this Act or anything therein contained shall not extend
nor be hurtful or prejudicial to any of the King’s most honourable
Council, 76 nor to Justices of the one Bench or the other, 77 the Barons of
the King’s Exchequer, the Master of the Rolls, Serjeants at Law, the
Masters of the Chancery, 78 nor to any of the Council of the Queen,
Prince or Princess 79 Apprentices of the Law the King’s the Queen’s the
Prince’s and the Princess’s Physicians, Mayors Recorders 80 Aldermen 81
Sheriffs Bailiffs 82 elect, and all other head officers of Cities and
Boroughs 83 corporate, Wardens of Occupations, 84 the Barons of the Five
Ports, 85 that is to say, that all the said officers and persons that now be or
heretofore have been in like room place office or authority or hereafter
for the time shall be, as well in the time as after that they have been in
any such place office room or authority; but that they shall moreover at
all times wear after the said Feast all such apparel is and upon their
bodies horses mules and other beasts, and also Citizens and Burgesses
shall moreover wear such hoods of cloth and of such colours as they
have heretofore used to wear, anything in this Act mentioned to the
contrary notwithstanding; Except that it shall not be lawful to any of

76 Privy Council.
77 King’s Bench or Common Pleas.
78 An obsolete office, the Masters were assistants to the Lord Chancellor,
executed orders of the Court of Chancery, and made inquiries upon the
instructions of the Chancellor.
79 The Prince of Wales Council still exists (for the Duchy of Cornwall), but
the Queen’s Council has long been obsolete.
80 Then, as now, judges.
81 An ancient municipal council office, now obsolescent in England and
Wales, and abolished in Ireland, but still surviving in parts of Australia,
Canada, and the United States of America.
82 A change from Baillie in the 1509 Act.
83 Those within a city or borough would be regulated by their own
magistrates and trade guilds.
84 Probably of the Livery Companies.
85 The Cinque Ports. At the Coronation of Her Majesty Queen Elizabeth II
in 1953 the Barons of the Cinque Ports wore old style velvet court dress
suits, a cloak, cross-hilted sword, large beret-type cap.
them to wear velvet, damask\textsuperscript{86} or satin of the colours of crimson, violet, Purpure\textsuperscript{87} or blue, otherwise than by the continue of this Act in any of the clauses before mentioned is by reason of their lands or otherwise permitted limited or assigned. Nor also this Act or anything therein mentioned shall extend to Ambassadors or other personages sent from outside princes, or to Noble men or other coming into the King’s Realm or other part of his obeisance to visit see or salute his Grace, or to see the country, and not minded to make long or continual demure in the same; nor to any Hench men,\textsuperscript{88} Herald, or Pursuivant at Arms, minstrels, Players in interludes,\textsuperscript{89} sights, revels, jests, tourneys,\textsuperscript{90} barriers\textsuperscript{91} solemnne\textsuperscript{92} watches\textsuperscript{93} or other martial feats or disguises, nor to men of war, being in the King’s wages of war, nor to any man for wearing of any apparel given unto him by the King’s Highness, the Queen, the French Queen,\textsuperscript{94} the Prince or Princesses, nor to any Sword Bearer of the

\textsuperscript{86} Rich silk fabric, woven with elaborate designs and figures. It originated in Damascus, but later made in both Sicily and France (and in the early to mid-sixteenth century imported from Italy, France or Spain). Strictly speaking, brocade and damask are two different types of weave structure, but these were both referred to as “damask” in the sixteenth century, along with some other complicated patterning methods. Velvet is the most elaborate of the weaves traditionally made from silk, has a short plush pile surface

\textsuperscript{87} The heraldic term for purple.

\textsuperscript{88} Usually meaning dismounted personal attendants upon a mounted person of dignity.

\textsuperscript{89} A short farcical entertainment performed between the acts of a mediæval mystery or morality play, and also a sixteenth century genre of comedy derived from this.

\textsuperscript{90} Tournaments.

\textsuperscript{91} A mediæval war game in which combatants fight on foot with a fence or railing between them.

\textsuperscript{92} A stately or solemn occasion.

\textsuperscript{93} A watch is a parade or procession, see, for instance, the surviving Chester Midsummer Watch Parade.

\textsuperscript{94} The “French Queen” being Mary Tudor, King Henry VIII’s younger sister, who was to die later in 1533. She had married King Louis XII of France, and after his death, Charles Brandon, Duke of Suffolk, and was
City of London, or of any City Borough or Town incorporate; Nor also shall extend to any utter Barrister of any of the Inns of Court, for wearing in any of his apparel such silk and fur as is before limited for men that may dispense in lands tenements rents fees or annuities for term of life £20 over all charges; nor to any other Student of the Inns of Court or Chancery, or to any Gentleman being servant to any Lord, Knight, Squire, or Gentleman of this Realm whose master may dispense forty pounds over all charges, for wearing by such Students or Gentlemen being servant of doublet and partlets of satin damask or camlet or jackets of camlet, which doublets partlets or jackets be given unto them by any of their parents, masters or kinsfolks, so always they be not of the colours of crimson Purpure scarlet or blue; or for wearing any furs whereof the like growth within this Realm Wales or Ireland martens and black coney except.

Apprentices of the Law, while not graduates or undergraduates of either of the Universities, were described by Sir Henry Spelman as equivalent to those holding the degree of master, while the utter barristers were therefore arguably technically merely Duchess of Suffolk rather than Dowager Queen Consort of France.

95 Utter-Barristers (or Barristers-at-Law) were officially recognised as being men “learned in the law” by a statute of 1532 (23 Henry VIII c 5); David Lemmings, Gentlemen and Barristers: The Inns of Court and the English Bar 1680-1730 (Oxford: Clarendon Press, 1990) 5.
96 A covering for the chest, between the gown and the neck.
97 Same as Marten.
98 The utter barristers began as Apprenticii ad legem. From 1292 the judges were required to choose 140 apprentices and attorneys to learn their profession by regular attendance at Court. The apprentices worked as advocates or pleaders in the central courts (other than Common Pleas), notably King’s Bench and Exchequer. The attorneys practised in the other common law courts, including provincial ones. The term utter-barrister first occurs in the mid-fifteenth century, merely as student members of the inns of court and chancery with sufficient learning to be entrusted with cases “outside the Bar” of their inn; Richard Abel, The Legal Profession in England and Wales (London: Basil Blackwell, 1989).
equivalent to bachelors and Serjeants-at-Law were equivalent to doctors. The apprentice was senior to the utter barrister, and were, in the seventeenth century regarded as being the same as the readers in the Inns of Court. Perhaps this relative seniority was the reason for their privilege of wearing silk and fur. It may also be that their own attire (both in court and out of it) was already rigorously regulated by the courts in which they practised; the clause does also provide that this attire will be such as could be worn by men with an annual income of £20. Mercifully Students of the Inns of Court or Chancery, and Gentlemen who were servants, were allowed to wear hand-me-downs or gifts that would otherwise infringe the Act.

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

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


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

102 Attorneys-to-be often obtained admission to the Inns of Chancery as a preparation for entering an inn of court. By the middle of the sixteenth century the inns of court began to exclude attorneys (and solicitors), and refused to call them to the Bar. Thereafter the Inns of Chancery were eventually superseded by the Law Society.
cloth and colour to which custom entitled them. It is to be assumed that these “citizens and burgesses” are the members of the corporate bodies of their respective cities and boroughs, rather than the whole of the population of such places. None however might wear crimson, violet, purple or blue velvet, damask, or satin.

VI

Over this it is enacted by the authority aforesaid that all other Acts made for reformation of excess in apparel or array at any time before this present Parliament, and all and singular articles provisions forfeitures and penalties mentioned in the said former Acts or any of them, be from henceforth utterly repelled extinct and of none effect And all transgressions offences sums of money penalties and forfeitures for anything done contrary to the said former Acts or any of them before this time made for the Reformation of excess in apparel clearly remitted, pardoned and released, and the offenders in that behalf and every of them be thereof discharged and acquitted for ever.

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

VII

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

103 The traditional description of a corporation included reference to the citizens and burgesses.
been accustomed to do; anything in this present Act being to the contrary notwithstanding.

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

VIII

Provided also that this Act nor anything therein contained be prejudicial or hurtful to any person or persons for wearing any linen cloth made or wrought out of this Realm or other parties of the King’s obeisance,¹⁰⁴ nor to any person being of the degree of a Gentleman for wearing of any shirt made wrought or embroidered with thread and silk only, so the same work be made within this Realm of England Wales Calais Berwick of the Marches.

As we have seen, the 1533 Act was directly related to the 1509 Act, but was more elaborate. From our perspective it is much more informative, having specific provisions for graduates. But it must be remembered – Franklyn’s argument notwithstanding, that these Acts are no more. The 1533 Act repealed the 1509 Act, and 24 Henry VIII c 13, 1&2 P & M c 2 and all Acts relating to apparel then in effect were repealed by King James I in 1603.¹⁰⁵ They are therefore a dead letter as far as academical dress today is concerned.

Conclusion

¹⁰⁴ Deference, homage, probably closest to allegiance of suzerainty.
¹⁰⁵ Continuation of Acts Act 1603 (1 Jac I c 25) s 7.
An Act against wearing of costly Apparel 1509 (1 Henry VIII c 14) allowed graduates to wear furs that came from animals bred abroad, and to wear longer or fuller gowns than they might otherwise be permitted. The first could well, at this comparatively late stage, be a sign that furs were recognised to be a sign of degree status;\textsuperscript{106} and the second that long gowns were customary attire for graduates long past their abandonment by other men in favour of shorter and more closely tailored clothes.\textsuperscript{107} There is no indication, however, of whether this has any effect on university academical dress regulations – and it would seem that this was unlikely.

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

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

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

It does not expressly allow Masters of Arts and Bachelors of Divinity to wear black chimeres or tabards. The Act of 1533 has no provision that could be interpreted as suggesting that any additional attire might be worn by Masters of Art – and Bachelors of Divinity are expressly allowed to wear black chimeres or tabards. The Act of 1533 has no provision that could be interpreted as suggesting that any additional attire might be worn by Masters of Art – and Bachelors of Divinity are expressly allowed to wear black chimeres or tabards.

\textsuperscript{106} By the fifteenth century the hood came to be seen, in England at least, as a token of graduation and was given distinctive colours and lining. Undergraduate hoods were black (blue for law) and unlined, while those of graduates were furred or lined with fur or other material, such as stuff.

\textsuperscript{107} Tailoring, where the dress is cut with some approximation to the actual shape of the body, arose towards the end of the thirteenth century.
wear gowns and sleeveless coats of scarlet, murrey or violet, and would therefore have little need for a black tabard or chimere.

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

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

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