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The Habit of a Judge: A History of Court Dress in England & Wales, and Australia Book Reviews

Paul M. Pruitt Jr.

University of Alabama School of Law, ppruitt@law.ua.edu

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Daniel Yazdani, *The Habit of a Judge: A History of Court Dress in England & Wales, and Australia* (Clark, NJ: Talbot Publishing, 2019). Pp. XVIII, 303. ISBN 978-1-61619-585-4. \$95.

Mr. Yazdani's book is a colorful, beautifully produced historical catalog of judicial garb in England, Wales, and Australia. One need look no farther than the book's cover, which reproduces a sitting portrait of the English Judge Robert Chambers (1737-1803). That jurist and Oxford Vinerian Professor can be seen wearing scarlet robes and hood, both trimmed with miniver (ermine), linen bands, and a "full-bottomed" wig. Below the hood may be seen the ends of one or more black appurtenances, one of which is likely to be the end of a "cincture," or rope-like belt. One can only hope that the weather was cool when Judge Chambers sat for the artist Robert Home.

Early on, Yazdani tells us (p. 4) that "The present ceremonial dress of a Judge of the High Court of England and Wales . . . was essentially settled during the reign of King Edward III" (i.e., 1327-1377). Yazdani soon touches upon the astonishingly detailed dress code prescribed by the "Judges Rules of 1635" (pp. 7 ff.), first assuring his readers that these "regulations by no means created new forms of dress; rather it [sic] formalized in writing what hitherto had been the norm, in the interests of uniformity of practice" (p. 4). Clearly, England's bench was content to dress itself in medieval garb. So much so that in 1875, when Parliament created a new High Court of Justice to replace "the old Common Law Courts of Exchequer, Common Pleas, and King's Bench," the judges decided "that the 1635 Judges' Rules would apply to all justices of the High Court" (p. 16).

Following his discussion of the 1635 Rules, Yazdani proceeds to catalog English judicial garb in detail, not omitting the layers of ornamentation that have accumulated since the reign of Charles I. He begins with the robe, frequently scarlet, but also—depending on the term of court or nature of the occasion—green, particolored, black, or violet, all of them faced, often, with taffeta (pp. 35, 37-40, 52-62). Over the robe, judges wore a mantle, which was a form of lined cloak. The mantle was "viewed," says Yazdani, "as a symbol of magisterial and regal authority" (p. 64). Thirdly, judges wore the hood, a complex garment consisting of a "shoulder piece" worn under the mantle and a "cowl piece" which fell behind the wearer's head, "looking like a big bag of miniver" (p. 76). An adjunct to these features was the "casting hood," worn over the judge's right shoulder, with its "liripipe" (not unlike a tail) hanging down in front (pp.

81-85).¹ Tying the whole costume together was the “cincture and girdle,” a “rope-like vestment” which was “said to be a symbol of priestly or royal dignity and chastity” (p. 94).

Having cataloged the principal garments of Common Law judges, Mr. Yazdani is not nearly through. Next he describes the black and gold robes of Chancery Judges, the black gowns (silk) worn by Queen’s Counselors, the black gowns (not silk) worn by junior barristers, the court coats and waistcoats worn beneath these gowns, the neckwear (bands or jabots) worn by judges and lawyers, the gloves worn (or carried in hand) on certain occasions, and finally the profession’s headwear—coifs, caps, and wigs. Concerning the latter, Yazdani provides an interesting discussion (pp. 136-156) of the introduction and strange persistence of legal wigs.

Introduced by the “Restoration” monarch Charles II—who for extremes of fashionable pretension was the equal of his contemporary, Louis XIV of France—judicial wig-wearing carried on far, far beyond the wig’s demise in ordinary aristocratic life. Why? Yazdani’s explanation relies upon the scholar J.G. McLaren, who wrote that by cherishing the wig, “the profession assiduously created exclusivity and distinctiveness,” thereby allowing its members to “proclaim a special social status” for themselves (p. 137).² This peculiar survival took separate forms for the bench and the bar—the barristers wearing a short wig, confusingly called a “bench” wig, and the judges typically wearing the conspicuous “full-bottomed” wig or “peruke.” The latter underwent certain changes but arrived by the middle of the nineteenth century at the “modern ‘doormat effect’” (p. 149).

Over the last century or so there have been several proposals to alter judicial dress so as to make it simpler, more modern, or more comfortable. Yazdani covers two such initiatives (pp. 160-162) in some detail. These date respectively to 1970 (concerning which “It was eventually agreed . . . that there should be virtually no change”) and 1985 (whereupon “no changes took place and . . . it was decided that the matter . . . would not be pursued any further”). He makes no effort to explain such deep-rooted reaction, but leaves his readers to conclude that an outspoken, influential core of

¹ Sometimes a judge wore a black scarf in conjunction with the casting hood; see Yazdani, pp. 86-93.

² Citing to McLaren, “A Brief History of Wigs in the Legal Profession,” 6 *International Journal of the Legal Profession* 241 (1999).

judges and lawyers were genuinely attached to their “habits,” sincerely believing that their garments evoked a spectrum of responses—respect, awe, fear—appropriate to any judicial moment.

In 2007, however, the Lord Chief Justice (Lord Phillips of Worth Maltravers) announced changes that were to take place the following year. He observed that “At present High Court judges have no less than five different sets of working dress, depending on the Jurisdiction in which they are sitting and the season of the year” (p. 173). The chief change was the introduction of a simple black robe created by a noted designer; the new robes included colored tabs at the neck, keyed to an elaborate scheme by which the judge’s rank and court assignment could be identified. The new robes were to be worn by judges in the “civil and family divisions in open court.” These judges were also to “cease wearing wigs, wing collars, and bands.”³ Judges in the criminal division underwent fewer changes of costume, and those consisted mainly of greater flexibility as to which seasonal robes they could wear (pp. 173-174).

Mr. Yazdani traces many of the same progressions of costume in the several jurisdictions of Australia, where he is a barrister (pp. 183-290). There the debates over judicial working dress are likely to pit traditionalists who identify with the long line of English customs against Australian nationalists who are seeking to move, symbolically at least, toward a more post-colonial regime.

As indicated above, Mr. Yazdani has put together a visually beautiful book, a chronological catalog of great potential usefulness to anyone who wishes to know the details of English judicial costume over the centuries. He makes little effort to provide anything like a complete context (social, political, economic) for his tales of judicial habit—but in his defense he is simply accepting, like almost all lawyers, the rules and customs of the courts in which he practices. In such cases familiarity breeds not contempt but acceptance; and long acceptance amounts, we can infer, to approval.

It may be appropriate to mention that about thirty years ago, this reviewer was driving his mother-in-law to lunch in Tuscaloosa. Classes were letting out, and we passed many faculty members also in quest of lunch. Taking in the blue blazers, oxford cloth shirts, striped ties and khaki trousers of the male faculty, my mother-in-law remarked: “It really is a uniform, isn’t it?” Startled

³ Even so, judges in the “Criminal Division of the Court of Appeal” and District Court judges continued to wear bench wigs; see Yazdani, pp. 174, 175 (illustration).

(and clad in the identical get-up), I had to agree with her. Mr. Yazdani might say that I was wearing a male academic's habit.

Paul M. Pruitt, Jr.
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