

# ON THE ORIGIN OF 'FORENSIC FRIPPERY': THE EVOLUTION OF COMMON LAW LEGAL ATTIRE

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## Introduction

Although now a creature of the oceans, the whale retains some vestiges of limbs that once were used to walk on land. Like the vestigial limbs of the whale, the legal profession has retained some relics of its past, illustrated by the white horsehair wig and the long black gown worn by lawyers and judges throughout the common law world. Over time, wigs and gowns have become so intrinsically linked with lawyers and judges, that they have almost become synonymous with the legal profession itself.<sup>1</sup>

Yet, although we take it for granted today that judges and lawyers will wear wigs and gowns, this was not a conscious decision taken by some inventive legal mind back in history. Instead, in order to produce the garb that we today associate with law and justice, legal attire has had to undergo a process of evolution.

The process of *sartorial evolution* has not occurred in the way that Darwin would have predicted; by exhibiting gradual, almost undetectable, change. Instead, the 'punctuated equilibrium' theory of evolution (as is advocated by neo-Darwinians) is more applicable. This theory posits that organisms have a tendency to stay the same, unless they are compelled to adapt by some outside force.<sup>2</sup> Since the development of legal attire has been categorised by periods of stasis, disrupted by dramatic change, the process of legal sartorial evolution appears to fit nicely within the model of 'punctuated equilibrium'.

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<sup>1</sup> For example, Shakespeare writes in *King Lear* of, "the robed man of Justice," and in 1673, Kirkman observed that "instead of the *Gownsmen* pleading at the Bar, they found Swordmen fighting at the Barriers." "In Wig and Gown" (1932) vol. VIII, no. 14, NZLJ 206.

<sup>2</sup> Stephen Jay Gould *The Panda's Thumb* (W.W. Norton & Company Inc, New York, 1980) p. 184.

Below, I will guide the reader through the evolutionary process, by undertaking a survey of the development of common law legal attire. The story will then move across the other side of the world to New Zealand, where, after a period of sartorial stasis, the process of evolution has begun to make itself felt once again. Finally, I will evaluate what we can learn from a study of legal attire; what relevance a study of legal attire has to legal history, and what it can tell us about the law and the legal profession.

## **A: The 'Sartorial Evolution'**

### **1. The foundations of legal attire**

The evolutionary story begins in England, with the ecclesiastical predecessors of the modern lawyer. Clergymen initially became involved in the legal process through their ability to read and write.<sup>3</sup> As the King travelled around England dispensing justice, clergymen would accompany him, recording the judgments to ensure that justice was 'common' to the whole country (the origins of the common law).<sup>4</sup> Consequently, because they could predict how the King might decide a case, the legal knowledge and experience of the clergymen made them a sought after commodity. Thus, the clergy expanded its habitat, taking on an advisory and advocacy role.

Soon, however, the clergy faced an environmental pressure that put a great strain on its legal niche. An ecclesiastical order had been given, forbidding the clergy from involving itself in secular matters.<sup>5</sup> This order would have precluded any clerical participation in lay courts.<sup>6</sup> However, many clergymen were determined to continue practising law since it had become so lucrative. So, in much the same way that the

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<sup>3</sup> As J.H. Baker observes, "The first learned justiciarii were clergy: it was natural that they should be appointed from the only literate profession."

J.H. Baker *An Introduction to English Legal History* (2<sup>nd</sup> ed, Butterworths, London, 1979), p. 133.

<sup>4</sup> *Court Tradition*, The Courts Service of Ireland, <http://www.courts.ie/Courts.ie/library3.nsf/0/00B1B713EAB1BB2180256DF80049B0B5?opendocument>.

<sup>5</sup> "Wigs Through the Ages" (1955) vol. XXXI, no. 11, NZLJ (courtesy of *Law Times*, London) p. 171.

<sup>6</sup> Baker, *supra* n. 3.

British pepper moth significantly changed its appearance after the industrial revolution,<sup>7</sup> the clerical lawyer also underwent a process of evolution for disguise. While the pepper moth selected for darker colours, to blend in to the soot covered trees, those clergy wishing to keep acting as legal advocates adopted the coif (a simple white cap) to cover their tonsures (the tell-tale shaven patch on the top of their heads) and covered their ecclesiastical dress with long gowns, in order to escape detection.<sup>8</sup>

Combining the roles of clergyman and lawyer required some further adaptations on the part of the clerical lawyer. For example, due to vows of poverty taken as part of their religious calling, clerical lawyers were unable to legitimately charge for their services.<sup>9</sup> Thus, the “fee bag” came into use.<sup>10</sup> The fee bag, consisted of a bag sewn into the back of the gown, attached to a cord hanging down the front of the gown. Unable to lower himself to ask for payment, the clerical lawyer could pull the cord and jingle the bag to remind the client that payment was due. Since the client slipped the money into the hidden bag in the gown while the lawyer’s back was turned, the clerical lawyer could keep up the pretence that he did not know he had been paid.<sup>11</sup> As a reminder of its previous life as a hair covered land mammal, the whale retains a small amount of hair on its otherwise streamlined skin. In a similar way, modern forensic gowns retain the vestiges of the fee bag in the form of a thin strip of material trailing down the front of the gown and the residue of a ‘pocket’ on the back. This is reminder to us today of the ecclesiastical origins of our profession and the sartorial evolution of legal attire.

Nevertheless, despite its cunning survival tactics of the fee bag and coif, the clerical lawyer eventually became extinct. In the meantime, however, the clerical lawyer had given rise to several new legal species:

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<sup>7</sup> Stephen Jay Gould, “Evolution as Fact and Theory,” *Hen’s Teeth and Horse’s Toes*, (W.W. Norton & Company Inc, New York, 1994), pp. 253-262.

<sup>8</sup> “Wigs Through the Ages”, supra n.5; *Court Tradition*, supra n. 4.

<sup>9</sup> *Court Tradition*, supra n. 4.

<sup>10</sup> *Court Tradition*, supra n. 4; Claire Muir, *Wigs and Gowns: A Lasting Tradition* (2005) Victoria Law Foundation [http://www.victorialaw.org.au/books/Wigs\\_and\\_Gowns.htm](http://www.victorialaw.org.au/books/Wigs_and_Gowns.htm)

<sup>11</sup> Ede and Ravenscroft, creators and sellers of court dress since the seventeenth century, argue that the ‘fee bag’ is actually the remnants of an early monastic hood, or a traditional hood worn during a period of mourning. I choose, however, to believe the much more interesting and romantic legend that I present in this essay. Muir, supra n. 10.

the pleaders, the attorneys and the serjeants-at-law.<sup>12</sup> Many features of appearance evolved by the clerical lawyer were passed on to its descendants. Thus, by the time the clerical lawyer disappeared in favour of its legitimate successors, the coif and gown had become part of the standard garb worn by those appearing in court.<sup>13</sup>

## 2. The Further Evolution of Forensic Headwear

Although the successors of the clerical lawyer had inherited the foundations of legal attire from their predecessor, the process of sartorial evolution continued. By the late sixteenth century, lawyers and judges had taken to wearing round black skullcaps to court, with the white edges of the coif sticking out underneath.<sup>14</sup> However, during the reign of King Charles II., the appearance of the legal profession underwent a process of more significant change, through the introduction of the wig.<sup>15</sup>

When wigs first began to be worn by lawyers and judges, they had a smaller version of the previous legal headgear, the coif and skullcap, sewn into them.<sup>16</sup> Gradually over time, the coif and skullcap got smaller and smaller, until finally in their original form, they disappeared altogether.<sup>17</sup> Nevertheless, the process of sartorial evolution remains visible today, since modern judges' wigs bear a relic of the coif and

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<sup>12</sup> The pleader does not represent the litigant, but will "stand by the litigant's side and speak in his favour". The attorney does represent the litigant, standing "in his principal's stead". The serjeants-at-law are pleaders within the employment of the King.

Sir Frederick Pollock & Frederic William Maitland *History of English Law Before the Time of Edward I* (Cambridge At the University Press, Vol. 1, 1895), pp. 191, 194.

<sup>13</sup> "Wigs Through the Ages", supra n. 5.

<sup>14</sup> Law students, who were not yet allowed to wear wigs, continued to wear the black skullcap for some time after wigs were introduced. However, by the early eighteenth century, the practice of wearing the legal skullcap had disappeared completely, Charles M. Yablon, *Wigs, Coifs, and Other Idiosyncrasies of English Judicial Attire* (1999) Benjamin N. Cardozo School of Law, <http://www.cardozo.net/life/spring1999/wigs>.

<sup>15</sup> Wigs actually have a very long history prior to their adoption in England and Europe. Ancient mummies have been found wearing wigs, and legend has it that when Hannibal doubted his allies in northern Italy, he went among them disguised in a wig in order to determine their loyalty. "Wigs Through the Ages", supra n. 5.

<sup>16</sup> Yablon, supra n. 14.

<sup>17</sup> Although abandoned by judges and lawyers, the coif was retained by the sergeants-at-law. According to Fortescue, the coif was, "the chief insignment and habit wherewith sergeants-at-law are decked." (De Laudibus Legum Anglia) "In Wig and Gown", supra n. 1, p. 205.

skullcap. Although the ‘fontanelle’ (the indentation on the top of modern judicial wigs), is sometimes said to represent the markings on the head of the infant Jesus Christ,<sup>18</sup> it is more likely that it is actually the last vestiges of the original form of legal headwear, the coif and skullcap.<sup>19</sup>

Known as ‘periwigs’ or ‘perriwigs’ (derived from ‘perruque’, the French word for wig), wigs became very common within genteel English society during the Restoration after King Charles II came back with the fashion from the French court of King Louis XIV.<sup>20</sup> After taking some time to catch on to the idea, the legal profession adopted the wig-wearing custom after the 1680s.<sup>21</sup>

Although lawyers and judges today may complain of the discomfort involved in wearing a wig,<sup>22</sup> this is nothing compared to what wearers of the original periwigs must have endured. The original wigs were extremely heavy; had to be constantly applied with pomade (a scented ointment) and powder (both of which were extraordinarily damaging to one’s clothing<sup>23</sup>); and the elaborate curls and ringlets had to be

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<sup>18</sup> Muir, *supra* n. 10.

<sup>19</sup> *History of Legal Dress*, Ede and Ravenscroft, <http://www.edeandravenscroft.co.uk/Legal/HistoryOfLegalDress>; “In Wig and Gown”, *supra* n. 1, pp. 205-206.

<sup>20</sup> There is some debate over why King Louis XIV wore wigs. It is commonly proposed that he began to wear wigs in order to hide his baldness. Another legend tells that because Louis’ hair growth was so prolific, his courtiers began to wear wigs to keep up with their hairy King. The Public Issues Committee of the Auckland District Law Society, “Lawyers’ Wigs and Gowns” (1979) 18 NZLJ 386.

<sup>21</sup> As observed by Lord Lester of Herne Hill (in a 1998 debate in the House of Lords over legal dress), “One can still see judicial portraits which were painted before the 1680s showing judges without wigs.” Lords Hansard Page, United Kingdom Parliament, Debate 16 November 1998 <http://www.publications.parliament.uk/pa/ld199798/ldhansrd/vo981116/text/81116-04.htm>.

<sup>22</sup> Today’s wigs are still not entirely comfortable. They are hot in the summer and can be itchy if the wearer has not got a good head of hair, *Wigs and fashion*, Bournemouth and Poole College [http://www.sixthform.info/law/01\\_modules/mod2/11\\_3\\_legal\\_profession/4\\_barristers\\_wigs.htm](http://www.sixthform.info/law/01_modules/mod2/11_3_legal_profession/4_barristers_wigs.htm); *History of Legal Dress*, *supra* n. 19.

<sup>23</sup> Both of these substances were extraordinarily damaging to one’s clothing. Due to the damage to clothing caused by the powder and the ointment, the tails of the short wig were often tied into a black bag to protect the wearer’s clothing. This is how the ‘dress coat bag’, or ‘rosette’ originated. Judges and Queen’s Counsel in England wear this feature as part of their ceremonial dress.

reshaped by the periwig maker at least weekly.<sup>24</sup> In addition to the discomfort, wigs were also a significant financial investment.<sup>25</sup> Originally, the wigs were made of human hair and although people would sell their hair to the wigmaker in order to get money to repay their debts and there was a macabre trade in the hair of corpses, the demand for human hair much outweighed the supply. Consequently, wigs were exorbitantly expensive, costing up to fifty guineas in the 18<sup>th</sup> century.

However, wig wearing became significantly easier in 1822, when Humphrey Ravenscroft developed the 'forensic' wig, a wig made from white horsehair that had fixed curls that did not require frizzing, curling or pomade.<sup>26</sup> This less inconvenient and cumbersome wig was eagerly taken up by legal practitioners and is still worn by lawyers and judges today.<sup>27</sup>

Yet, ironically, by the time a more manageable wig had been invented, lawyers and judges were virtually the only people in England still sporting them. Although wigs had been worn by well-to-do people until the later 18<sup>th</sup> century, during King George III's reign, they fell from favour and people reverted to displaying their natural hair.<sup>28</sup> However, even after they had gone out of fashion, the professions (legal, medical, military and clergy) continued to wear wigs as an 'official badge' denoting their position.<sup>29</sup>

Nevertheless, over time, even the other professions gave up their wigs, and adopted more modern attire.<sup>30</sup> In contrast, once members of the

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*History of Legal Dress*, supra n. 19.

<sup>24</sup> "Wigs Through the Ages", supra n. 5.

<sup>25</sup> *Wigs and fashion*, supra n. 22.

<sup>26</sup> *History of Legal Dress*, supra n. 19.

<sup>27</sup> Ede and Ravenscroft, creators and sellers of court dress since the seventeenth century still retain a monopoly on the production of forensic wigs and other legal attire.

*History of Legal Dress*, supra n. 19.

<sup>28</sup> The Public Issues Committee of the Auckland District Law Society, supra n. 20; "Wigs Through the Ages", supra n. 5.

<sup>29</sup> For example, at Queen Victoria's coronation in 1837, the Archbishop of Canterbury wore a wig as a symbol of his archiepiscopal dignity.

"In Wig and Gown", supra n. 1, p. 206.

<sup>30</sup> For example, the bishops were permitted by William IV to abandon their wigs in 1832. Donald Dugdale "Barristers' Dress" (1976) 1 NZLJ 23.

legal profession began to wear wigs, they just never gave up the practice.<sup>31</sup> Consequently, the white horsehair wig has come to be symbolic of the legal profession today.

### 3. The Further Evolution of Forensic Gowns

While the gown, the other symbolic garment of the legal profession, made a fairly early appearance in the evolution of legal attire, it had to undergo a significant change in order to reach us in the form it is today. In early medieval times, judges wore a number of different coloured robes and were not confined to particular materials.<sup>32</sup> However, the attire of judges was restricted by a Royal Decree passed in 1635 by Commission of Westminster. The Decree was designed to regulate existing judicial dress and stipulated that judges were to wear black or dark violet gowns for everyday occasions, and red gowns for criminal cases<sup>33</sup> and for special ceremonial events.<sup>34</sup>

Although the bar was not subject to these formal rules of attire, lawyers also began to dress more soberly around this time.<sup>35</sup> It seems that the black colour of barristers' gowns dates back to when the bar went into mourning after the death of a certain English monarch. Exactly which monarch this actually was is subject to quite some debate.<sup>36</sup> Nonetheless, whether it is Queen Mary II (1694), Queen Anne (1714), or King Charles II (1685) that is being remembered, the evolutionary feature inspired by their death has been retained - to this day, most common law lawyers and judges wear black gowns when appearing in court. As Pollock once put it, tongue in cheek, the legal profession went into mourning and has never come out!<sup>37</sup>

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<sup>31</sup> "In Wig and Gown", supra n. 1, p. 206.

<sup>32</sup> Although by 1400, violet had become the most used colour for winter robes, green was generally used for summer robes, and scarlet was used for full dress occasions: *History of Legal Dress*, supra n. 19.

<sup>33</sup> The colour red symbolises the fact that in criminal cases the judge represents the King, and is upholding the King's peace. In contrast, in the Nisi Prius Courts, the judge sat merely to adjust the law between civilians and so appeared in his judicial undress, or violet gown. Leopold Wagner, *Manners, Customs, and Observances: Their Origin and Significance* (1894) <http://www.sacred-texts.com/etc/mco/ml05.htm>.

<sup>34</sup> Muir, supra n. 10.

<sup>35</sup> Ibid.

<sup>36</sup> See K Grant "Robes" (1994) NZLJ 460; Muir, supra n. 10.

<sup>37</sup> "In Wig and Gown", supra n. 1, p. 206.

#### 4. A Modern Evolution of Legal Attire: The New Zealand Story

The story of *New Zealand's* legal attire begins in the 19<sup>th</sup> century, with the arrival of the British settlers. In the same way that British settlers brought new plants and livestock such as wheat and pigs to New Zealand,<sup>38</sup> so too did they bring their common law traditions.<sup>39</sup> By the time the settlers arrived, the evolution of common law legal attire had entered a period of sartorial stasis. Thus, the legal attire that was introduced into New Zealand courts consisted of the white horse hair wigs and black gowns that had already been worn in combination by English lawyers for nearly a hundred and fifty years.

Over the years there have been intermittent rumbles of discontent regarding legal attire and, from time to time, there have been investigations into whether wigs and gowns should be retained or abolished.<sup>40</sup> Yet, despite the sporadic debate, no changes in the manner of dress worn in court by judges and counsel were ever introduced. Thus, for a hundred and fifty years following British settlement of New Zealand, the period of sartorial stasis continued.

However, in the last decade, New Zealand's legal attire has begun a process of development and change, independent of its founding population. In the mid 1990s, Chief Justice Eichelbaum conducted surveys to determine public opinion on the matter.<sup>41</sup> In 1996, as a result of overwhelming support for a change in the direction of legal

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<sup>38</sup> Alan Ward *An Unsettled History: Treaty Claims in New Zealand Today* (Bridget Williams Books, 1999) "The Treaty as a Political Compact", p. 8.

<sup>39</sup> As a New Zealand lawyer bemoaned in 1931, "We talk glibly at times about the traditions of our profession; but we have few of local manufacture. What traditions we venerate, we have imported from the British Isles." "Our Lack of Contemporary History" (1931) Vol. VII. No. 19 NZLJ.

<sup>40</sup> For example, in 1978, the Royal Commission on the Courts considered the future of court dress. The Commission decided that wigs and gowns should continue to be worn in court by judges and counsel: The Public Issues Committee of the Auckland District Law Society, *supra* n. 20.

<sup>41</sup> The Chief Justice canvassed a wide range of sources: the Judges of all New Zealand courts, the Masters, the New Zealand Bar Association, the New Zealand Criminal Bar Association, the New Zealand Law Society, Women Lawyers' Associations, all Crown Solicitors, Maori interests, University Law Faculties, some senior politicians, Registrars of the High Courts, community law centres, Polytechnics, newspaper editors, and many New Zealand lawyers through a survey published in Law Talk. T. Eichelbaum "Court Dress in New Zealand" (1996) 70 ALJ 342.



attire,<sup>42</sup> the Chief Justice issued a new dress code simplifying court dress for the higher courts.<sup>43</sup> Consequently, although gowns (worn over tidy, dark coloured dress) have been retained by judges and counsel in the Court of Appeal and the High Court, wigs (and bands<sup>44</sup>) are now no longer worn, except on ceremonial occasions.<sup>45</sup>

This shift away from the traditions of the founding population is consistent with the theory of punctuated equilibrium, since that theory (unlike Darwin's) recognises the critical importance of "peripheral isolates" in creating evolutionary change.<sup>46</sup> According to the theory of punctuated equilibrium, while change is difficult to accomplish in large and well-established populations because 'new and favorable mutations are diluted by the sheer bulk of the population through which they must spread', smaller populations, separated from the original population are often the source of change.

Thus, although there are also those in the founding common law population of England that call for a change in legal attire,<sup>47</sup> the

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<sup>42</sup> Survey results indicated that there was a three to one majority of those favouring some sort of change over retaining the status quo. As regards the wearing of forensic wigs, two to one favoured their abolition. On the other hand, virtually two thirds of respondents advocated the retention of some sort of uniform for judges and counsel. Eichelbaum, *supra* n. 41.

<sup>43</sup> This dress code came into force on the 25<sup>th</sup> of March 1996, Eichelbaum, *supra* n. 41, p. 344.

<sup>44</sup> Bands are the white flaps worn like a collar around the neck of the legal profession. Legend has it that the two white tabs hanging down the front of the gown represent the tablets of Moses. However, it is more likely that they are simply a remnant of the 'falling collar' worn in the earlier part of the seventeenth century: Dugdale, *supra* n. 30.

<sup>45</sup> Ceremonial occasions on which full court regalia can be worn include: admissions to the bar and calls to the inner bar, the taking of oaths of office by High Court or Court of Appeal Judges, a special sitting to mark the retirement or death of a High Court or Court of Appeal judge, other non-recurring special occasions such as the celebration of a notable anniversary. "Court Dress: Chief Justice clarifies ceremonial occasions" (1996) 456 Law Talk 1.

<sup>46</sup> For example, according to Gould, one of the key proponents of punctuated equilibrium, "Large, widespread, and well established species, on the other hand, are not expected to change very much. We believe that the inertia of large populations explains the stasis of most fossil species over millions of years.", Gould, "Evolution as Fact and Theory," *supra* n. 7.

<sup>47</sup> Lords Hansard Page, United Kingdom Parliament, Debate 16 November 1998, Available: <http://www.publications.parliament.uk/pa/ld199798/ldhansrd/vo981116/text/81116-04.htm>.

homogenizing effect of the larger population means that the period of sartorial stasis continues in England, and most lawyers and judges there are still saddled with wigs and gowns. On the other hand, in the smaller and more isolated former colonies, the modernising voice has been heard and the period of sartorial stasis has ended. Thus, places such as Barbados and New Zealand have diverted from the founding population, and the process of legal evolution has once again begun.<sup>48</sup>

### **B: The conclusions we can draw from the process of sartorial evolution**

At first, a study of the clothes worn by lawyers and judges may seem somewhat flippant and frivolous. In this light, what I have outlined above could be viewed as simply a nice story, even if it is perhaps quite interesting and a little bit amusing at times. Yet legal attire is actually of additional relevance to the study of legal history, and can further our understanding of the legal profession and of the law itself.

A study of the clothing of lawyers is *more* than just a study of fashion. Instead, it is really an insight into the legal profession itself. In surveying the *origins* of legal attire, we discover the origins of the legal profession - we are reminded of our ecclesiastical heritage and are made to remember that the relics of today (such as the fee bag and the fontanelle), once had a useful purpose. Similarly, in examining the *development* of legal attire, we are really getting an overview of the development of the legal profession itself: we see the progression from the clerical lawyer, to his successors, and to the barristers and solicitors of today.

This insight into the legal profession is inherently interesting, but is also relevant to legal history. Since one of the meanings of 'legal' is "*related to law*",<sup>49</sup> then '*legal history*' could include any history that is in some way related to law. Using this definition of legal history, an investigation that sheds light onto the origins and development of those

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<sup>48</sup> Rosalea Hamilton, "Why are we still trading legal wigs and gowns?", *Jamaica Observer*, Sunday October 19 2003, [http://www.jamaicaobserver.com/news/html/20031019T0100000500\\_50418\\_OBS\\_WHY\\_ARE\\_WE\\_STILL\\_TRADING\\_LEGAL\\_WIGS\\_AND\\_GOWNS\\_.asp](http://www.jamaicaobserver.com/news/html/20031019T0100000500_50418_OBS_WHY_ARE_WE_STILL_TRADING_LEGAL_WIGS_AND_GOWNS_.asp).

<sup>49</sup> P. Spiller *Butterworths New Zealand Law Dictionary* (5<sup>th</sup> ed., LexisNexis, 2002) p. 166.

people who made and practised law could certainly be considered to be *related* to law, and thus pertinent to a study of legal history.

In addition, the study of legal attire is also relevant when focusing on the ‘history of *the law*’. The legal profession has an enormous impact on the shape of the law: through judgment, through settlement and dispute resolution, and through the way cases are run.<sup>50</sup> Moreover, the character of the legal profession goes a long way in determining the way in which judges and lawyers carry out these important tasks. By understanding the character of the legal profession, we can better come to understand how and why the law has come to have the shape it does. Thus, through the study of legal attire we can gain a better understanding of the history of the law and of the law itself.<sup>51</sup>

However, perhaps the most important aspect of a study of legal attire is that it can be used to alert us as to *where we are going* as a profession. As Profession Amos observed in 1831 (and it is just as relevant today), “a law student in the present day, should be like the ancient God Janus. He should have two faces, looking forwards and backwards on his profession.”<sup>52</sup> The development of common law legal attire demonstrates that throughout history various sartorial innovations have been implemented *when the environment has changed to such an extent that adaptation is required*. For example: after orders preventing him from practising law, the clerical lawyer had to disguise himself in order to continue doing so; and in order to retain their rank and standing in society, lawyers during the reign of King Charles II. had to adopt the cumbersome and inconvenient wig.

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<sup>50</sup> Legal attire has also had a less subtle effect on the substantive creation of the law. Over the years, robing rooms, in which counsel change in and out of court dress, have provided lawyers a forum to meet in less formal circumstances. Consequently, countless legal disputes have been settled in robing rooms over a change of attire. Through avoiding the court process, these settlements will by their absence have had an influence on the shape of the law., “Wigs and fashion”, *supra* n. 22.

<sup>51</sup> As Windeyer observed, “The history of English law cannot be fully appreciated without some knowledge of the traditions, professional organisation and training of the men who hammered it into shape in their daily practice in the King’s courts.”

W. J. V. Windeyer *Lectures on Legal History* (2<sup>nd</sup> ed. revised, Marchant & Co. Pty. Ltd, Sydney, 1957) p. 137.

<sup>52</sup> J.H. Baker *The Common Law Tradition: Lawyers, Books and the Law* (The Hambledon Press, London, 2000) preface, p. vii.

So, if history is anything to go by, then it is logical to conclude that the changes in New Zealand's legal attire are likely to be in response to some perceived environmental pressure. When we examine the motivations behind implementing a change of dress, it turns out that the legal profession is responding to the pressure to 'keep up with the times'. Essentially, those in favour of abandoning traditional legal attire advocated the change on the basis of traditional legal garb (in particular the wig) being, "out of harmony with the times."<sup>53</sup>

However, the change in legal attire is merely a symptom of something much bigger. Leaving aside the pros and cons of the wig and gown (since this is a massive topic just on its own), let us take a *wider* view and examine what the change in attire really represents. When we go behind the changes to legal attire, we discover that not only are the clothes changing, but the *legal profession itself* is also changing direction in an attempt to adapt to the modern, business oriented environment (where it is imperative to attract and retain clients).<sup>54</sup> Thus, firms now view themselves as simply another business;<sup>55</sup> firms have eased dress standards,<sup>56</sup> and have begun advertising for clients.<sup>57</sup>

In itself, there is nothing wrong with some informality and change coming into the legal profession. After all, we cannot close our eyes to the fact that the environment within which we now work has changed, whether we like it or not. If we did not move with the times, we would run the risk of turning the legal profession into something of a farce and an anachronism - in our ardent protection of history, we might well

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<sup>53</sup> Eichelbaum, *supra* n. 41.

<sup>54</sup> As Deborah Hollings puts it in her 2000 article, "the basic rule for the new millennium – it's the clients...Clients will dictate that we change our look. The desirable clients are young and cannot relate to old fashioned or outdated lawyers."

Deborah Hollings "Of blue suits and pink tracksuits – legal dressing" (2000) 542 Law Talk 16.

<sup>55</sup> Firms like Kensington Swan have decided that, "a legal firm was just like any commercial business - it had a business to run and needed to do this in a commercial manner.", Denham Shale "Legal Practice Shake the Tree: Kensington Swan, Auckland talks about the decision to become KPMG Legal" (2000) NJLJ 139.

<sup>56</sup> Many firms have implemented casual dress on Fridays, and some firms (like Simpson Grierson) have even adopted a "relaxed corporate look" full time, Hollings, *supra* n. 54.

<sup>57</sup> Monroe Freedman, *The Golden Age of Law That Never Was*, (1991) The Texas Center for Legal Ethics and Professionalism (Reprinted by permission from Texas Lawyer [http://www.txethics.org/resources\\_lawyerprofessional.asp?view=2Freedman](http://www.txethics.org/resources_lawyerprofessional.asp?view=2Freedman)).

run the risk of destroying the value of the very thing we are trying to protect.<sup>58</sup>

However, we may also need to be careful that in the evolution of the legal profession, we do not throw the baby out with the bathwater and lose some of the valuable aspects of “professionalism” as well as the anachronistic ones. While it is often proclaimed that we have left behind some superlative model of professionalism,<sup>59</sup> the ‘golden age’ of professionalism actually appears to be somewhat of a myth.<sup>60</sup> Nonetheless, while we may never actually have lived up to the true standards of professionalism, this does not deplete the value of those standards in promoting better behaviour. To use an analogy based in legal attire, “the person that is gowned, is by the gown put in mind of gravitie.” (Edmund Spenser).<sup>61</sup> In the same way, a profession that is governed by aspirational standards, cannot help but be inspired by those standards.

While I cannot outline in this forum where the balance should lie between moving with the times and maintaining certain standards, this study of legal attire is valuable in that it has highlighted the importance of promoting debate on the issue. As a legal profession, we are fortunate in that unlike organisms (that are hostage to the process of evolution), we *do* have some control over the evolution of our profession and can guide the direction in which legal practise is

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<sup>58</sup> As Lord Haskell said of the English context in a debate over legal dress in the House of Lords, “Of course, there is a place for uniform, pageantry and tradition, but they must not stand in the way of progress and reform. If we do allow pageantry and tradition to stand in the way...we shall be perceived as part of “theme park Britain” instead of part of Parliament.”, Lords Hansard Page, *supra* n. 21.

<sup>59</sup> In times past, it is said, lawyers were true professionals - they were “*legis professus*” (literally, *professors* of the law) and acted “in the spirit of public service”. (“In Wig and Gown”, *supra* n. 1, 205.) It is also said that in the ‘golden age’ of professionalism, the pursuit of profit was not to be countenanced. For example, Roscoe Pound claimed, “The gaining of a livelihood is not a professional consideration. Indeed, the professional spirit, the spirit of a public service, constantly curbs the urge of that instinct.”

<sup>60</sup> For instance: in 1605, Shakespeare expressed the quintessence of “nothing” as “the breath of an unfee’d lawyer,” (King Lear); in 1853, Charles Dickens wrote in Bleak House that “the one great principle of English law is to make business for itself,”; and in 1905, Louis Brandeis complained that lawyers had “become largely a part of the business world.”, Freedman, *supra* n. 57.

<sup>61</sup> “In Wig and Gown”, *supra* n. 1, p. 206.

heading. I suggest we use this opportunity to decide where we want the legal profession to go, before it is too late.

### Conclusion

While today we tend to view legal attire as a fully formed creation, this is merely because we have been deceived by the period of sartorial stasis that the common law has experienced for over 300 years. However, instead of being the invention of some ingenious legal mind, legal attire has actually undergone a process of *evolution*; adapting and changing in fits and bursts, in response to pressures facing the legal profession at the time.

Although a study of legal attire may seem at first superficial, it actually has a lot to tell us. The study of legal attire opens up our *legal* history, reminding us of the origins and development of those who made and practised the law. Furthermore, by studying legal attire, we can gain an insight into the legal profession itself, and consequently into the history of *the law*.

However, probably the most important outcome of the study of legal attire as an evolutionary process is that it reveals the pressures facing the profession today, and alerts us to the direction in which those pressures are guiding the legal profession. The sartorial change actually reflects a change in the nature of the legal profession, away from traditional standards of "professionalism" and towards a business oriented approach.

Thus, there is a wider issue at stake here than just a change in clothes. It is really important that as a profession we evaluate where we are going. We ought to try to consciously decide where the balance should lie between moving with the times and maintaining certain standards of professionalism - or else we may risk losing some important and valuable aspects of the legal profession itself.