

# Wearing the Turban: The 1967–1969 Sikh Bus Drivers' Dispute in Wolverhampton

*Roger Seifert and Andrew Hambler*

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Visual evidence of a multicultural society is evident in many workplaces in the United Kingdom today. In particular some of the workforce will be wearing items of clothing or jewellery that depict an allegiance to a particular religion, ethnic origin or culture. In recent years there have been legal cases, employment disputes, and widespread public debate about items such as the Indian saree, the Muslim hijab, and the Sikh turban.<sup>1</sup> Of these the turban is the most protected and accepted. This is neither an accident of history nor a special tolerance towards this symbol of cultural faith, but a result of specific struggles and disputes.

This article examines a key moment in this story: when a Sikh bus driver working for Wolverhampton Borough Council in 1967 wore a turban to work for the first time. It is about how he was sent home for breaching the existing collectively agreed dress code, and how the dispute that raged as a result involved political and religious leaders, as well the bus driver's union and employer. The Sikh workers pursued their demands through pressure group politics after being ignored and marginalized by their unionized workmates and the union itself. It ended with a change in the employer and the employment regulations, and subsequent changes to the law. This can be interpreted as an exceptional case that became the norm, and illustrates how a religious and cultural issue, originating from outside the workplace, led to challenges to the making and enforcement of workplace rules. It indicates the nature of struggle with, in this case, the relevant trade union failing to support its Sikh members, the local Labour council failing to confront its own racial prejudices, and how immigration, then

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<sup>1</sup> Thompsons Solicitors, *Summary of the Law on Religion or Belief (2010 Equality Act)* (2012), p. 10, on dress code.

as now, divides and weakens communities across the class spectrum. The limitations of treating industrial relations as mainly based on job regulation within the organization, to the neglect of external, often political, factors, are discussed later in the article.

The most recent advice on dress code, by the Advisory, Conciliation and Arbitration Service (ACAS), suggests:

Dress codes are often used in the workplace and there are many reasons why an employer may have one, for example workers may be asked to wear a uniform to communicate a corporate image ... Employers may have a policy that sets out a reasonable standard of dress and appearance for their organisation ... When setting out a policy employers should take into account employees who may dress in a certain way for religious reasons ...

Some employers may wish to cover issues around religious dress within their policies; however, employers are advised to tread cautiously in this area as they should allow groups or individual employees to wear articles of clothing etc. that manifest their religious faith. Employers will need to justify the reasons for banning such items and should ensure they are not indirectly discriminating against these employees ... Some recent legal decisions ... suggest that people should be allowed to demonstrate their religious faith through their dress.<sup>2</sup>

This clear view from the institution created by the 1975 Employment Protection Act and the pluralist tradition of collective bargaining is that the dress code is a matter for the employer, with or without union agreement or employees' consent. Nonetheless, this is mediated through legal considerations and the 'needs of the business' argument. The special case of the turban has caused significant tensions within employment law as well as providing a perplexing mix of cultural identity, religious rights, and the norms of 'good' business practices. Indeed a government television advertisement on pension reform in 2015 includes a scene with turban-wearing Sikhs as part of normal UK workplace life – a clear and common exception to prevailing views on special religious attire.

In the years since the Sikh bus drivers' dispute of the late 1960s the desire of employees to 'manifest' their religion at work has become apparent in various ways, with differential effects on others in the workplace. The imperative to express, or manifest, religion through the wearing of symbols, dress and grooming (as in the Sikh bus dispute) is perhaps the most common example.<sup>3</sup> But employees may also seek time off from work at particular times for collective worship (for example, Christians

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2 ACAS, *Dress Code and Appearance in the Workplace* (2014), p. 1.

3 Wearing the Christian Cross: *Eweida v. British Airways* [2010] EWCA Civ. 80; [2010] ICR 890.

on Sundays),<sup>4</sup> or exemptions from aspects of their jobs on the grounds of conscience (for example, registrars who object to same-sex marriages or civil partnerships),<sup>5</sup> or they may wish to share their religious convictions with others in various ways (for example, by offering Bibles to customers).<sup>6</sup> Such manifestations may create conflict with employers for various reasons, such as operational requirements, health and safety imperatives (including hygiene concerns), and organizational policies on equality and diversity.<sup>7</sup>

The acceptance or rejection of existing 'terms and conditions of employment' was, in the late 1960s, seen as a test of Britishness and a willingness by ethnic minorities to assimilate into British life. A request, therefore, to wear a beard and turban at work by a Sikh bus driver employed by Wolverhampton Council in 1967 was a not only a challenge to the rules prevailing within the employment relationship, but also an affront to the dominant culture. This was a breach of existing council policy, and the relevant council committee refused to allow any changes to the dress code. As a result there was a significant dispute, widely reported in the local press, that took on national and international importance as various parties tried to capture this 'right' to wear the turban at work for their own cause. It also had a significant impact on subsequent laws on race and religion at work.<sup>8</sup>

This article's focus is on the notion of exceptionalism in the case of Sikhs, and how in fighting for specific rights at work, all manner of other issues become involved in a cycle of power and pressure. By the late 1960s social change was threatening both the stability of civil society and the ideological underpinning of British post-colonial capitalism. The role and functions of the state were under renewed pressure. The Labour government, unsure of its purpose and direction, started tentative moves to use state regulation and enforcement, via legislation, in these areas. The difficulties and divisiveness of such moves were shown by the response

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4 *Mba v. London Borough of Merton* [2013] EWCA Civ. 1562; [2013] WLR (D) 474 (CA).

5 *Ladele v. Islington Borough Council* [2009] EWCA Civ. 1357 (CA); [2010] IRLR 211.

6 *Chondol v. Liverpool City Council* [2009] EAT/0298/08.

7 L. Vickers, *Religious Freedom, Religious Discrimination and the Workplace* (Hart, Oxford: 2008); A. Hambler, *Religious Expression in the Workplace and the Contested Role of Law* (Routledge, Abingdon: 2015).

8 This account is based on the Wolverhampton local newspaper, the *Express and Star*, and D. Beetham, *Transport and Turbans: A Comparative Study in Local Politics* (Institute for Race Relations, Oxford University Press: 1970), pp. 37–65. See also C. Davison and P. Finch, *What Happened at Woolf's: The Story of the Southall Strike* (London Industrial Shop Stewards Defence Committee: 1966); and the Manchester turban dispute by Beetham, *Transport and Turbans*, pp. 18–36.

to the findings of the Donovan Commission in 1968 and the proposals of *In Place of Strife* in 1969;<sup>9</sup> the Race Relations Act and Commonwealth Immigration Act of 1968;<sup>10</sup> and how the British government dealt with national-liberation movements abroad at the peak of the Vietnam war in 1968, and the increasing pressures for Sikh nationalism centred around the Khalistan movement in the Punjab.<sup>11</sup>

At the time there was widespread concern about immigration and the rise of racism. On 20 April 1968 at a meeting of the West Midlands Conservative Party in Birmingham, Enoch Powell MP<sup>12</sup> gave his so-called ‘rivers of blood’ speech.<sup>13</sup> It became a totem for British cultural and religious intolerance within the Conservative tradition, and included this relevant passage:

The words I am about to use, verbatim as they appeared in the local press of 17th February [1968], are not mine, but those of a Labour Member of Parliament who is a Minister in the Government. ‘The Sikh community’s campaign to maintain customs inappropriate in Britain is much to be regretted. Working in Britain, particularly in the public services, they should be prepared to accept the terms and conditions of their employment. To claim special communal rights (or should one say rites?) leads to a dangerous fragmentation within society. This communalism is a canker; whether practised by one colour or another it is to be strongly condemned.’ All credit to John Stonehouse [the minister referred to above] for having had the insight to perceive that, and the courage to say it.<sup>14</sup>

These words, near the end of the speech, were quickly followed by his dire message: ‘like the Roman, I seem to see “the River Tiber foaming with much blood”’.<sup>15</sup>

This reflected Powell’s position as MP for Wolverhampton South West, and in 1969 a Gallup poll indicated he was the most popular politician in the

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9 Royal Commission on Trade Unions and Employers’ Associations, 1965–68 (Donovan), *Report*, Cmnd 3623 (1968); Department of Employment and Productivity, *In Place of Strife: A Policy for Industrial Relations*, Cmnd 3888 (1969).

10 K. Monaghan, *Challenging Race Discrimination at Work* (Institute of Employment Rights: 2000).

11 H. Deol, *Religion and Nationalism in India: The Case of the Punjab* (Routledge: 2000).

12 John Enoch Powell, MBE (1912–98) served as a Conservative MP (1950–74) for Wolverhampton South West, and later as an Ulster Unionist Party MP for South Down (1974–87).

13 J. Bourne, ‘The Beatification of Enoch Powell’, *Race and Class* 49:4 (2008), pp. 82–7.

14 Enoch Powell, ‘Rivers of Blood’, Speech (April 1968).

15 Virgil, *Aeneid* VI, 87, spoken by the prophetess, the Sibyl of Cumae.

UK. His links with Wolverhampton extended to a close friendship with the long-standing editor of the local newspaper, the *Express and Star*, Clement Jones. The latter's obituary in 2002 noted that 'as editor, his resolve to ensure fairer reporting of race relations was put to the test during the 1968 controversy over what became known as the "rivers of blood" speech'. Furthermore,

Jones believed that Powell had begun exploiting false and anonymous complaints being promoted by the [fascist] National Front. The *Express and Star* was overwhelmed by the scale of local support for the MP. Each evening the paper carried two pages of letters, ninety-five per cent of which were pro-Enoch, and Jones had to struggle to find a few balancing letters, for which he was roundly abused.<sup>16</sup>

This was part of a real historical shift. As Kenneth Morgan summed up: 'the main issues of the [Labour Prime Minister, Harold] Wilson years were those that concerned most post-war administrations: managing and modernising the economy; redefining Britain's international role; and adapting to social, ethnic, and generational change.'<sup>17</sup> These were indeed days that at the time appeared to be a herald of profound social change, industrial unrest, and a Labour government seeking social reform while modernizing British capital within a framework of demands for increased democracy.

Part of this change was in the field of industrial relations. A wave of strikes, official and unofficial, alongside the unseating of some Cold War reactionary union leaders, the re-emergence of varieties of Marxism, and the need to rapidly improve productivity meant a keen political focus on the entire labour 'system'.<sup>18</sup> The practical outcome was the setting up of the Donovan Commission by Wilson to try to solve the long-standing labour problem, and head off mounting unrest from within the trade-union movement. This was set within the complex muddle of the Cold War, an immediate balance of payments crisis that threatened the Labour government's entire economic programme, and the need to reassert a non-Marxist liberal analysis of the causes of inequality of income, rights, and opportunity.

By the late 1960s, generational change was starting to refocus attitudes and sentiments across the board in British social and political life. The

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16 *Daily Telegraph*, 11 November 2002.

17 K. Morgan, 'The Wilson Years 1964–1970', in N. Tiratsoo (ed.), *From Blitz to Blair* (Phoenix: 1998), pp. 132–62, at p. 136.

18 R. Seifert, 'Big Bangs and Cold Wars: The British Industrial Relations Tradition after Donovan (1965–2015)', *Employee Relations* 37:6 (2015), pp. 746–60.

re-establishment of rights to free expression, whether in pop music, youth culture, for women, for members of ethnic minorities, for workers, for those in colonial servitude, and for the homeless, became centre stage as Cold War rhetoric retreated and new norms of democracy took hold in workplaces, communities, and colleges across the country. This dispute in a Wolverhampton bus depot started when one man sought to express his cultural heritage by wearing a beard and turban at work. It became a true *cause célèbre*, and in so doing illustrated the wider and deeper concerns of power at work and beyond the workplace.

### The Wolverhampton turban dispute

Whether or not the wearing of the turban can be described as a mandatory aspect of Sikhism is a matter of debate.<sup>19</sup> That it is considered to be an important aspect of Sikh identity is beyond dispute. As a result, as Gurharpal Singh observes: '[w]herever Sikhs have settled in large numbers, sooner or later one demand has always come to the fore: the right to wear a turban'.<sup>20</sup> As Carwyn Jones and Scott Fleming put it, 'as a carrier of cultural identity, the turban is a head covering worn by many Sikh men. Made of cloth wrapped around the head, it has been an integral part of the Sikh tradition'.<sup>21</sup>

One commentator has suggested:

Somehow, the impression was formed that finding work with turbans was hard, especially in the UK and Canada ... The Sikh turban was a sign of difference; it posed an irresolvable challenge to industrial and public establishments which had devised conventions and rules of uniforms for their staff.<sup>22</sup>

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- 19 Under the *Khalsa* (a ritual instigated by the tenth Sikh guru), the requirement relating to hair is simply not to cut it. The turban originally evolved as a practical means of accommodating this obligation but, over time, has gained a religious significance of its own: W. McLeod, 'The Turban: Symbol of Sikh Identity', in P. Singh and N. Barrier (eds), *Sikh Identity: Continuity and Change* (Manohar, New Delhi: 1999), pp. 57–68, at p. 61.
  - 20 G. Singh, 'British Multiculturalism and Sikhs', *Sikh Formations* 1:2 (2005), pp. 157–73, at p. 158.
  - 21 C. Jones and S. Fleming, "'I'd rather wear a turban than a rose": A Case Study of the Ethics of Chanting', *Race, Ethnicity and Education* 10:4 (2007), pp. 401–14, at pp. 405–6.
  - 22 D. Tatla, 'The Unbearable Lightness of Diasporic Sikh Nationalism! From Anguished Cries of "Khalistan" to Pleas for "Recognition"', *Sikh Formations* 8:1 (2012), pp. 59–85, at p. 69; see also L. Sossin, 'God at Work: Religion in the Workplace and the Limits of Pluralism in Canada', *Comparative Labor Law and Policy Journal* 30 (2009), pp. 485–506.

And David Beetham, who wrote an account of the turban disputes on the buses in Manchester and Wolverhampton, has argued:

To the Sikhs, of course, the turban is a symbol of deep religious and traditional significance, and the refusal to let them wear it was taken by some as an act of religious persecution and an affront to the dignity of their race. Hence the extraordinary persistence they showed in attempting to get the initial decision reversed.<sup>23</sup>

This conflation of tradition, race, and religion was common in the late 1960s at the high tide of Powellism. But it has persisted down the years and is reflected in both the legislation (and sometimes its lack) in these fields, especially at work.<sup>24</sup> And, furthermore,

In the earlier phases of migration Sikh men often found it easier to get employed if they took off their turbans, but in 1959 when a Sikh was banned from wearing his turban in the workplace the issue became political as the Sikh community launched a number of campaigns and protests to gain the right to wear turbans at work.<sup>25</sup>

The dispute over turbans is frequently seen as a major part of the wider struggle for identity and recognition:

In a similar case in August 1967 [to that in Manchester], Tarsem Singh Sandhu, a bus driver with Wolverhampton Council who had secured employment while clean shaven, returned to work wearing a turban following a period of sick leave. On resuming his duties he was sacked for violating the company dress code ... Sandhu, like Sagar [in Manchester], launched a campaign which soon became embroiled in local, national and transnational politics that were vertically divided between supporters of Enoch Powell and Labour on the one hand, and the Indian Workers' Associations ... and the emerging Shiromani Akalis Dals ... on the other ... The Wolverhampton case was the first significant example of the transnational mobilisation by British Sikhs and, rather ominously, was to provide the genesis of the Khalistani movement.<sup>26</sup>

A shorter version of these events was reproduced in another essay on Sikhs and multiculturalism, with the implication that this was an example of

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23 Beetham, *Transport and Turbans*, p. 3.

24 Monaghan, *Challenging Race Discrimination at Work*.

25 K. Sian, 'Losing My Religion: Sikhs in the UK', *Sikh Formations* 9:1 (2013), pp. 39–50, at p. 40, citing A. Brah, 'The "Asian" in Britain', in N. Ali, V. Kalra and S. Sayyid (eds), *A Postcolonial People: South Asians in Britain* (Hurst: 2006), pp. 35–61.

26 Singh, 'British Multiculturalism and Sikhs', *Sikh Formations*, pp. 159–60.

the wider issues of 'ethnic demands and state responses'. In particular the argument admits that:

a rather unusual demand by overseas Sikhs has been to recognise the right to carry the *kirpan* [ceremonial sword] and men's right to wear a turban as part of their dress in professions which require a specific type of clothing. Although these issues have arisen in various contexts in different countries among Sikh bus drivers, soldiers, school pupils, taxi drivers, factory workers, rail guards and others, they have a commonality in terms of the Sikh self-definition of a community with specific religious practices.<sup>27</sup>

This provides some sense of the views about Sikh exceptionalism based on wider political and cultural pressures. The main external pressure to change the dress code for Wolverhampton bus staff came from the Sikh community and not from their trade-union representatives or political allies in the labour movement.

The dispute, and its resolution, provides one example of how an industrial dispute motivated by the desire to 'manifest' religion in the workplace can be addressed.<sup>28</sup> Seen in these terms, the reason that there was a dispute was because, on the one hand, the employer considered that the display of the turban by bus drivers caused a conflict with other interests in the workplace; for example, that employees should display a consistent image to the public. The employer apparently believed that making accommodations for different religions would lead to organizational disharmony. Only by remaining studiously neutral could the employer hope to maintain good industrial relations.<sup>29</sup> On the other hand, a significant group of employees was determined to assert its religious and cultural identity, in the face of existing works rules, initially through the wearing of facial hair and, soon after, through the wearing of the turban.

The dispute began when T. S. Sandhu, a 23-year-old bus driver, employed by the Wolverhampton Transport Department, had been off sick for three weeks in July 1967. He returned to work with a full beard, explaining that he had become more religious and wanted that to be reflected in his adherence to traditional Sikh conventions. On 9 and 10 August 1967 he was sent home from work and ordered to shave. The Indian Workers' Association (IWA)<sup>30</sup>

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27 D. Tatla, 'Sikhs in Multicultural Societies', *International Journal on Multicultural Societies* 5:2 (2003), pp. 177–92, at p. 184.

28 'Manifestation' is the term used under Article 9(ii) of the European Convention on Human Rights and Fundamental Freedoms (ECHR) (freedom of religion and belief); see discussion below.

29 Beetham, *Transport and Turbans*, p. 45.

30 The IWA was founded in Coventry in 1937 as part of a campaign for Indian independence. It re-emerged in the late 1950s, mainly in Wolverhampton,

was strong in Wolverhampton and backed his case.<sup>31</sup> By late (23/24) August he was sacked on the grounds that he had dismissed himself. This was greeted with dismay: 'will Sikh immigrants in Britain have to fight in every single industrial town and city for the right to wear turbans at work?'<sup>32</sup>

In early September the bus drivers' union, the Transport and General Workers' Union (TGWU), was asked to seek a renegotiation of the rules relating to staff appearance in the Transport Department. The local union branch leadership was reluctant and only agreed under pressure from its 150 Sikh members. After a vote of union members, the TGWU agreed to ask for the rule change on beards as well as turbans.<sup>33</sup> This was in contrast to its original position: 'Branch union officials said yesterday that the union was not involved, and did not want to take sides'.<sup>34</sup> It has been argued that many British trade unions in the late 1960s were beset with policy dilemmas with regard to the treatment of immigrant workers. They faced three issues: the extent to which they should try to influence state policy on immigration *per se* (most unions had backed the 1968 Commonwealth Immigration Act); once immigrant labour was at work, unions faced hostility from many white workers to recruiting them; and once inside the union there was the suggestion that immigrant members should be treated differently (as a special case) by the official union.<sup>35</sup>

Despite this show of support for the Sikhs, the employing body and the general manager decided against the wearing of beards and turbans at a meeting in November 1967. A key argument was the nature of fairness and the slippery slope as others might also request specific cultural or religious

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Birmingham and Southall, as a campaigning group focusing on civic and work rights. It had close links with the British trade-union movement and, for a time, with the Communist Party of Great Britain. See S. Josephides, *Towards a History of the Indian Workers' Association*, Research Paper in Ethnic Relations 18 (Centre for Research in Ethnic Relations, University of Warwick, Coventry: 1991).

31 There was a programme broadcast by Midlands News (ATV) covering the story: Story number 67-894. As reported: 'The dispute was due to Wolverhampton Corporation not allowing its Sikh bus crews to have beards or wear turbans and the suspension of driver Tarsem Sandhu who defied the ban. The local TGWU [Transport and General Workers' Union] branch did not support their Sikh members as they argued that the restrictions were clearly laid down in the terms and conditions of the job.'

32 *Times of India*, 16 August 1967.

33 Beetham, *Transport and Turbans*, p. 42.

34 *The Times*, 11 August 1967.

35 J. Wrench, 'British Unions and Racism: Organisational Dilemmas in an Unsympathetic Climate', in R. Penninx and J. Roosblad (eds), *Trade Unions, Immigration, and Immigrants in Europe, 1960–1993: A Comparative Study of the Attitudes and Actions of Trade Unions in Seven West European Countries* (Berghahn, Oxford: 2002), pp. 133–56.

dispensations from the employer. This position held into 1968 but the TGWU gave up on the case when Sandhu's membership lapsed in January and soon after he moved to London.<sup>36</sup>

Sandu's father worked at the Goodyear tyre factory in Wolverhampton, and earlier in 1967 he and others had also complained about the ban on wearing turbans (*dastaar*) there. They turned to C. S. Panchhi for help as he was president of the British arm of Shiromani Akali Dal, the largest Sikh political party.<sup>37</sup> In May 1967 he threatened to call a strike of his members in Goodyear factories in the Punjab. Most local employers in Wolverhampton had no problems with turbans as long as they were in accordance with health and safety regulations. So the Wolverhampton dispute, before it had really started, was already suggestive of external political and religious pressures, backed up when possible by international industrial action, and well beyond the experience and competence of a local TGWU branch as well as the wit of the council transport committee. That said, there was little sympathy or understanding inside the committee for the issues at stake, and not much interest from the unions.<sup>38</sup> Sikh leaders nationally sought to explain why they felt it was a case of racial and religious persecution in a meeting with the Mayor of Wolverhampton, Councillor Edward Fullwood, national and local TGWU officers, and David Ennals, the Home Office minister with special responsibility for immigrant affairs.<sup>39</sup> This failure of both understanding and support was a widespread phenomenon among the wider labour movement and trade unions in particular at this time.<sup>40</sup> This is well summarized by John Wrench:

Once in the union, black workers often had to fight to secure equal treatment and their membership rights. For example, in the 1965 dispute at Courtauld's

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36 TGWU Region 5 committee minutes, UNITE Region 5 office, West Bromwich. The only relevant report was by Harry Urwin (regional secretary) on employment opportunities for the children of immigrants (18 October 1967).

37 The Shiromani Akali Dal is a political party in India and the most influential Sikh political party worldwide; its object is to give political voice to Sikh issues.

38 L. Dickens, 'Gender, Race and Employment Equality in Britain: Inadequate Strategies and the Role of Industrial Relations Actors', *Industrial Relations Journal* 28:4 (1997), pp. 282–91; W. Daniel, *Racial Discrimination in England: Based on the PEP Report* (Penguin, Harmondsworth: 1968); P. McGovern, 'Immigration, Labour Markets and Employment Relations: Problems and Prospects', *British Journal of Industrial Relations (BJIR)* 45:2 (2007), pp. 217–35.

39 *The Times*, 13 November 1967.

40 A. Sivanandan, *A Different Hunger* (Pluto Press: 1982).

Red Scar Mill, Preston, white workers and the union had collaborated with management in an attempt to force Asian workers to work more machines for proportionally less pay, and later that year a strike by Asian workers at the Woolf Rubber Company [at Southall, west London] was lost through lack of official union backing. Partly as a result of such experiences, minority ethnic workers tended to organise themselves outside the factory walls, making such organisations more 'community-based' than 'work-based', and in subsequent industrial disputes they would draw upon such groups. In the late 1960s and early 1970s there occurred a number of strikes characterised by strong support of Asian workers by local community associations and an equally noticeable lack of support by a local trade union. In particular, three notorious disputes were those at Coneycgre Foundry in Tipton in 1967–8, Mansfield Hosiery in Loughborough in 1972, and Imperial Typewriters in Leicester in 1974.<sup>41</sup>

Community organizations took up the Wolverhampton ban and in early February 1968 there was a march through Wolverhampton of about 5,000 Sikhs from all over the country called by the Sikh Central Committee, led by Mr Sagar (chair of the turban sub-committee), and backed by the local council of churches. They handed in a letter of protest at the Town Hall, and 'Although a deputation of seven Sikhs was received by a representative of the mayor, the silent marchers were otherwise ignored by members of Wolverhampton Town Council, not a single councillor being present'.<sup>42</sup> The Wolverhampton transport committee remained unmoved, despite the issue now receiving national attention, including in Parliament. Here, in response to a question from Dame Joan Vickers as to what action would be taken to prevent Sikhs who wished to wear turbans and beards from being discriminated against in employment, Roy Hattersley, parliamentary secretary in the Ministry of Labour, replied that:

Very few cases of such discrimination have been brought to my notice. I would expect employers to look sympathetically on the outward observances of the Sikh religion and not to use these observances as grounds for refusing employment without clear justification. I am keeping the position under review.<sup>43</sup>

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41 J. Wrench, 'British Unions and Racism: Organisational Dilemmas in an Unsympathetic Climate', in Penninx and Roosblad, *Trade Unions, Immigration, and Immigrants in Europe*, pp. 133–56, at p. 137. For the Imperial Typewriters strike at Leicester, see A. Tuckman and H. Knudsen, 'The Success and Failings of Work-Ins and Sit-Ins in the UK in the 1970s: Briant Colour Printing and Imperial Typewriters', *Historical Studies in Industrial Relations (HSIR)* 37 (2016), pp. 113–39.

42 *The Times*, 5 February 1968.

43 *Parliamentary Debates (Hansard)* (HC), 5th Ser., vol. 758, 15 February 1968, col. 409W.

The editor of *The Times* saw it differently:

The Sikhs who have been marching in protest against the banning of beards and turbans for Wolverhampton bus crews will have the support of a great many people in Britain who dislike racial prejudice and clumsy bureaucracy. Of course it will be said that Wolverhampton transport committee are guilty of neither of these failings ... that the Sikhs are demanding preferential treatment, and that if an exception is made in their case there will be a rush of further claimants ... [but] for Sikhs the wearing of a turban and a beard is not a quirk of personal fancy or a whim of fashion but a religious observance ... The second point is that the Sikhs' demands would not in any way affect their efficiency or their availability for work. The convenience and safety of passengers ... would not suffer at all. Other municipalities have modified their rules on turbans and beards ... It is hard to see why Wolverhampton bus service must place such a very rigid emphasis upon the insignia of office. This is not racial prejudice in the strict sense of the word. Sikhs are already employed on Wolverhampton buses so long as they conform to the rules. But this case does indicate a lack of that understanding and enlightened local administration on which good race relations depend so much.<sup>44</sup>

A few days later *The Times* reported, with a touch of irony, that the Labour council in nearby West Bromwich had decided to allow turbans to be worn by its bus staff; this was done without any consultation with Wolverhampton transport committee despite West Bromwich buses travelling through Wolverhampton.<sup>45</sup> The issue continued to touch a nerve and in March *The Times* devoted nearly half a page to detailing the answers to questions on the turban issue put to eight members (four Conservative, four Labour) of the ten-man transport committee, accompanied by photographs of each of the eight.<sup>46</sup> In May, in answer to another parliamentary question, Home Office minister Ennals wrote: 'An increasing number of transport undertakings allow Sikh employees to wear beards, and turbans of a specified colour with the regulation badge. I welcome this sensible attitude.'<sup>47</sup> Nonetheless,

Following his suspension, his union, the T&GWU which he has found 'evasive and non-committal' on the issue, took a ballot among local operating crews. Members voted 336 in favour of Sandhu being allowed to wear beard and turban, and 204 against. But then Sandhu was told that the 13 weeks he had been away from employment at the corporation automatically disqualified him from union membership.<sup>48</sup>

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44 *The Times*, 5 February 1968.

45 *Ibid.*, 9 February 1968.

46 *Ibid.*, 9 March 1968.

47 *Hansard* (HC), vol. 764, 16 May 1968, col. 270W.

48 *The Times*, 17 June 1968.

None of this placated Indian public opinion: 'the resolution [adopted by the International Sikh brotherhood] deplored that the Wolverhampton transport authority ... did not permit Sikhs to wear turbans'.<sup>49</sup>

The dispute rumbled on through the rest of 1968. The government introduced a Race Relations Bill and Powellism was growing in popularity as anti-immigration sentiment gained momentum.<sup>50</sup> The Labour government hinted that the new law would cover the dispute and did suggest that wearing a beard or turban was not something for which anyone should be sacked. In the event the new laws did not cover the Sikhs in the bus department at Wolverhampton.<sup>51</sup>

In January 1969 the *Express and Star* reported that:

A 66 year old Sikh leader, who has promised to burn himself alive in three months' time unless Wolverhampton's transport committee employ Sikhs who wear beards and turbans was warned today that his action would not be worthwhile ... Mr Sohan Singh Jolly, the leader of the Sikh community in Britain, announced his threatened martyrdom at a Press conference in his Hounslow home yesterday ... this repeated his threat made in the *Punjab Times* in May 1968. Local Sikhs involved in the dispute distanced themselves from him. This came after a failed bid to the Race Relations Board to intervene ... they said it was not a matter of race.<sup>52</sup>

Jolly, 'president of an organisation representing many of Britain's 140,000 Sikhs', said 'he had tried every other means of fighting for equal rights of Sikhs in Wolverhampton'.<sup>53</sup> At this time immigrant groups in the midlands were increasingly vocal in their criticism of town councils and local politicians in their handling of race relations issues, and this deep split in the community was reflected in ever more robust letters published in the local press. A rare letter of support for the Sikhs suggested that 'they should be allowed to wear beards and turbans particularly if it is part of their religion'. An opponent wrote: 'what's special about Sikhs when you can opt out just by having a haircut? ... While Wilson is advocating majority rule in coloured countries it must work in white countries as well as long as they remain white, that is'.<sup>54</sup>

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49 *Times of India*, 10 May 1968.

50 R. Jenkins and J. Solomos, *Racism and Equal Opportunity Policies in the 1980s* (Cambridge University Press: 1989).

51 At the 1968 Labour Party Conference there was an attack on Powellism by Frank Cousins: Conference Report 1968, pp. 285–6. At the Trades Union Congress conference in 1968 there was a confused and heated debate about the need for immigrants to integrate into employment: Conference Report 1968, pp. 297–8.

52 *Express and Star*, 7 January 1969.

53 *Ibid.*, 8 January 1969.

54 *Ibid.*, 15 January 1969.

Over the next few weeks the local Sikh community along with a left-wing local Labour MP, Renée Short,<sup>55</sup> and the town's community relations council sought to persuade Jolly to drop his threat of suicide. At the time, the country was in the grip of widespread industrial action; strikes were a commonplace of everyday life as well as bitter rows over race and immigration. Some of the disputes involving Asian workers took place outside the mainstream of militant action, but, nonetheless, there was a clear copycat factor in all of the unrest.<sup>56</sup> Powell fuelled the flames as the Labour government really did labour to find solutions to the perfect storm of discontent unleashed by its policies and the shifting sands of economic and social life.<sup>57</sup> In Wolverhampton, as elsewhere in the west midlands, there were strikes over pay and conditions throughout the passenger transport sector.<sup>58</sup>

Short met Jolly in the House of Commons and later warned him that his actions were harming race relations.<sup>59</sup> The Mayor of Wolverhampton, Alderman Bob Campbell, accused him of blackmail; but the transport committee agreed to re-examine the issue. Meanwhile, a local lecturer representing the Association of West Indian and Afro-Asian Minorities told Jolly: 'you admit that 90% of the Sikh community of this country have strayed from the faith by being clean shaven and giving up the turban'.<sup>60</sup> To add personal confusion and a touch of farce to the situation:

the uncle of the young Sikh bus driver who first started the turban row in Wolverhampton today claimed that the issue, which two men have said they are willing to die over, began with a personal grievance between himself and his brother ... he said 'it had nothing whatsoever to do with religion in the first place and still has not'.<sup>61</sup>

This intervention cast doubt on how far the wearing of the turban might be characterized as a matter of religious obligation for Sikhs. Others in the Sikh community strongly disagreed, such as Mr Gill, general secretary of the Sikh temple in Wolverhampton, who was reported to have said that 'we do not

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55 Renée Short (1919–2003) was Labour MP for Wolverhampton North East (1964–87).

56 S. Virdee, 'A Marxist Critique of Black Radical Theories of Trade-Union Racism', *Sociology* 34:3 (2000), pp. 545–65.

57 R. Hyman, 'Industrial Conflict and the Political Economy: Trends of the Sixties and Prospects for the Seventies', *Socialist Register* (1973), pp. 101–53; C. Leys, *Politics in Britain from Labour to Thatcherism* (Verso: 1989).

58 TGWU Region 5 committee minutes, 23 June and 16 October 1968, give detailed reports on the action.

59 *Express and Star*, 22, 23 January 1969.

60 *Ibid.*, 24 January 1969.

61 *Ibid.*, 27 January 1969.

think that Sikhs should be barred from jobs here just because they wish to wear beards and turbans. We wear them because of our religious conviction'.<sup>62</sup>

This mix of culture and the meaning of religion with rights at work was again raised in the House of Commons when, in response to a question from Joan Vickers, a Conservative MP, as to discrimination against Sikhs, Merlyn Rees, an Under-Secretary in the Home Office, gave the following written reply:

difficulties in the employment of Sikhs have not been related to religious discrimination but to an insistence by employers that all their employees should conform to rules about hygiene or dress. Strict enforcement of rules of this kind may not always be fully justified by the conditions of a particular job and when the Race Relations Board, as a result of an investigation under the Race Relations Act, 1968, considers that an employer's action, while not unlawful, is based merely on an objection to the wearing of a beard or turban, it will, where appropriate, be prepared to use its good offices to see if the difficulties can be overcome.<sup>63</sup>

Throughout February 1969 the turban dispute was surrounded by widespread industrial unrest, with strikes over pay led by the TGWU in Wolverhampton; and there were strikes over redundancies at the General Electric Company, and national pay disputes by teachers and Ford workers, as well as a dispute over pay by the bus staff.<sup>64</sup> Powell was not slow to attack the unions in a similar vein to his attacks on immigrants: 'firms would not be free of trade union "terrorism" until unions were no longer free to use industrial action to enforce a closed shop.'<sup>65</sup>

As industrial unrest spread, so did the bitterness within the ethnic communities, let down, as they saw it, by employers and fellow workers alike.<sup>66</sup> From unemployment to 'colour bars', the crisis was deepening. 'Unemployed fears for young coloureds ... many immigrant children at school are about to enter the local labour market. Local employers say the market is already saturated and so will not employ any more of them.'<sup>67</sup> And a local schools action committee barred 'coloured' parents from attending a meeting on the future of schools.<sup>68</sup> Such sentiments were seized upon as the voice of the unheard majority by Powell and his close ally, Sir

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62 *Ibid.*, 29 January 1969.

63 *Hansard* (HC), vol. 776, 23 January 1969, col. 161W.

64 For local reports, see *Express and Star*, 4, 11, 17, 21 and 25 February 1969.

65 *Ibid.*, 22 February 1969.

66 S. Virdee and K. Grint, 'Black Self-Organization in Trade Unions', *Sociological Review* 42:2 (1994), pp. 202–26.

67 *Express and Star*, 6 February 1969.

68 *Ibid.*, 8 February 1969.

Gerald Nabarro, ‘a booming-voiced, handlebar-moustachioed, hard-right celebrity MP’.<sup>69</sup> They made a series of well-publicized speeches locally and nationally grabbing press headlines with their anti-immigration and anti-immigrant rhetoric.

The turban dispute was now reaching its climax. The Wolverhampton transport committee was out of its depth and under great pressure to end the ban, but it remained unwilling to reverse its position on what the majority of its members saw as a matter of managerial principle: the right, albeit with union agreement, to decide and enforce the dress code on the buses. It was being pushed and pulled between the official Labour Party policy on allowing the Sikh exception, the fact that most neighbouring transport committees had allowed turbans to be worn, and much local sentiment supporting Powell and the offence to ‘Britishness’ that ceding ground to minorities on religious and cultural tradition meant. In addition, it had already been decided nationally that local council transport committees were inadequate for planning purposes and were to be replaced. As the *Express and Star* reported: ‘Wolverhampton transport committee is to be asked ... to reconsider its ban on Sikh bus conductors and drivers wearing beard and turbans on duty’.<sup>70</sup> But, as this was the committee’s last meeting before being taken over by the West Midlands Passenger Transport Authority (WMPTA),<sup>71</sup> little could be decided.

Pressure built up on all those involved. ‘The Wolverhampton transport beards and turbans row is likely to be brought up when the Commons select committee on immigration and race relations visits the town tomorrow’.<sup>72</sup> This further persuaded the local committee, in March 1969, to seek rapprochement:

Transport committee agree to meet Jolly and local Sikh leader Mr Gill ... The Transport Committee chairman, Alderman Ron Gough, said ‘we feel that these men have a point of view and out of courtesy to them, we must hear them. I cannot say what the committee will decide about the ban after the hearing. It is anybody’s guess.’<sup>73</sup>

The next day, it was reported that:

A mass meeting of Indians in Wolverhampton on Sunday will be told of a ‘plan of action’ drawn up in protest at the town’s transport committee ban on Sikh

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<sup>69</sup> *Economist*, 23 May 2011; Sir Gerald Nabarro (1913–1973) was Conservative MP for Kidderminster (1950–64), then South Worcestershire (1966–73).

<sup>70</sup> *Express and Star*, 3 March 1969.

<sup>71</sup> Set up under the 1968 Transport Act and active from April 1969.

<sup>72</sup> *Express and Star*, 4 March 1969.

<sup>73</sup> *Ibid.*, 6 March 1969.

bus conductors and drivers wearing beards and turbans on duty. The national secretary of the IWA (Mr Joshi) warned of a protest march through the town by Sikhs ... [H]e linked this with other issues such as housing, education and jobs.<sup>74</sup>

An organized protest gathered momentum as the end came into view: 'more than 600 members of the Wolverhampton Indian Workers' Association backed a call for the setting up of a "united action committee" to co-ordinate and plan the fight against racial discrimination ... one of the first targets will be the transport committee ... students are also to be called in together with "friendly" white organisation'.<sup>75</sup>

In April 1969 the ban ended with the change of employer and a final push from the Sikhs with support from the official Labour Party position. The TGWU remained silent. The *Express and Star* noted the international dimensions of the dispute: 'Turban row: big protest in New Delhi'.<sup>76</sup>

Jubilant cries of 'Sat Sri Akal' and 'Wahe Guru ki Fateh' greeted the decision of the Wolverhampton Transport Committee last night to lift its two-year ban on Sikh bus crew wearing turbans and beards ... [T]he decision followed pressure from the British government and 'a general expression of anxiety' by the Indian High Commission.<sup>77</sup>

And *The Times* commented:

Mr Sohan Singh Jolly, the Sikh leader, could have been a burning pyre yesterday. Instead he stood smiling on the stage of Ealing Town Hall as he received the highest award of the Sikh religion in recognition of the part he played in forcing Wolverhampton Transport Committee to drop its ban on busmen wearing beards and turbans ... The decision by the transport committee in the face of government and other pressures came four days before Mr Jolly was to have carried out his threat.<sup>78</sup>

In Wolverhampton, the local paper could report that:

Alderman Frank Griffin, the newly appointed chairman of the WMPTA ... explained 'my personal opinion is that this ban is a silly restriction which could be lifted. What surely matters is whether a Sikh is a good driver or conductor – not whether he wears a beard or what kind of headgear he wears. In this

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74 *Ibid.*, 7 March 1969.

75 *Ibid.*, 10 March 1969.

76 *Ibid.*, 8 April 1969.

77 *Times of India*, 11 April 1969.

78 *The Times*, 14 April 1969.

country we believe in religious tolerance and if it is accepted that the beard and turban is part of a religious belief, then I would have thought it would have been respected.<sup>79</sup>

On the next day the paper covered reaction to the end of the ban: Griffin, WMPTA chair, welcomed the decision, but

former Wolverhampton councillor and official of the Wolverhampton South West Labour Party, Mr Arthur Maray, branded the decision as ‘anarchy for the few’. ‘This is not the meaning of freedom and democracy’, he said, ‘The other religious organisations besides the Sikhs subordinate themselves to the conditions of employment of this country. The Sikhs think they can impose their beliefs on this society by threatening to indulge in self-sacrifice.’<sup>80</sup>

The *Express and Star* editorial argued that ‘the great turban dispute ... is hardly a victory for anyone ... There seems little doubt but that the ban was used by a highly organised and skilfully vocal minority in order to make political capital.’ The paper also reported: ‘Wolverhampton transport committee was pressured, cajoled and virtually forced into reluctant capitulation, last night, as its local squabble over beards and turbans took on the gravity of an international incident.’<sup>81</sup>

Local opinion, as reported in the *Express and Star*, remained largely hostile: ‘many attack lifting of the turbans ban’. Alderman Gough of the transport committee said, ‘the ordinary man in the street feels that this is an encroachment on his way of life and a lot of people have been telling me off about it’.<sup>82</sup> Various letters reflected this sentiment: ‘I consider the [transport committee] chairman and members should now resign *en bloc* ... let them take a lesson from Mr Enoch Powell’, commented one. Another letter complained: ‘what a pitiful climb down by the transport committee. How the coloured folk must be laughing at the way the whites give way’. Yet another came out with the refrain, ‘How long is Britain to give way to minority groups?’<sup>83</sup> A week later, letters were still coming in:

we wish to place on record our utter disgust at the way pressure has been brought to bear on Wolverhampton transport committee to make them discriminate against other nationals in favour of a tiny minority of Sikh bus conductors ... Will the Sikhs having won their first battle be encouraged to demand that they

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79 *Express and Star*, 8 April 1969.

80 *Ibid.*, 9 April 1969.

81 *Ibid.*, 10 April 1969.

82 *Ibid.*, 11 April 1969.

83 *Ibid.*, 12 April 1969.

be allowed also to carry their dagger [*kirpan*], which is just as much part of their traditional dress as the turban?<sup>84</sup>

Nationally, the *Guardian* reported:

After a two-hour meeting the committee called in Mr Sohan Singh Jolly ... A few minutes later the beaming Sikh leader entered the foyer of the town hall to be greeted with shouts in Punjabi of 'truth is victorious,' and 'victory to God.' A statement said the committee had decided 'to instruct the transport manager to submit for their consideration after consultation with the trade union, a suitable form of regulation permitting the wearing of turbans.' Beards would also be permitted.

But the statement went on, 'the committee remains strongly of the view that its original decision was right and its rule both reasonable, and clearly nondiscriminatory'.<sup>85</sup>

The first Sikh busman to take advantage of this change in policy in Wolverhampton, A. S. Azad, drove out on 30 June 1969, watched by a small crowd of Sikhs and the British president of Shiromani Akali Dal.<sup>86</sup> But the Sikhs' beard and turban were still not accepted in many parts of the country. It had taken seven years (1959–66) to win this right in Manchester, though the *Guardian* had reported in 1960 that there were six Sikh bus conductors in Newcastle-upon-Tyne. Birmingham had revoked its ban in 1962 and there were turbaned Sikhs reported on Glasgow buses in 1966.<sup>87</sup>

In the wake of the victory in Wolverhampton, the *Guardian* claimed that 'Similar, though less dramatic, conflicts have already been won by Sikh busmen in many other parts of the country. But few, if any, transport authorities have found that more than a small minority of Sikh employees actually wear turbans.' It reported that Bradford, with possibly the largest Sikh community in the north, had agreed to a request to wear a turban in 1968. In Leeds, transport managers had apparently allowed turbans since the mid-1960s, though there had been no requests to date.<sup>88</sup> This changed in 1974 when two Sikh drivers decided to wear the turban; the transport authority first refused, then agreed; the union objected, and the two drivers were suspended on full pay for four months while the union held ballots on the issue, culminating in a two-day stoppage.<sup>89</sup> When a Darlington bus driver was refused permission to wear a turban in 1971, the transport

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84 *Ibid.*, 18 April 1969.

85 *Guardian*, 10 April 1969.

86 *Ibid.*, 1 July 1969.

87 *Ibid.*, 11 August 1960; 21 November 1962; 7 October 1966.

88 *Ibid.*, 12 April 1969.

89 *Ibid.*, 19 September; 26, 28 October 1974.

manager came out with a familiar refrain: 'If I allowed this, it would be difficult to refuse similar requests ... The West Indians could ask for consent to wear coloured straw hats, and, for that matter, anyone else could ask to wear a bowler or trilby.'<sup>90</sup> Such prevalent attitudes make the victory in the Wolverhampton dispute, at the high tide of Powellism and in Powell's own constituency, even more remarkable.

### **Job regulation and legal exceptionalism: lessons from the dispute**

In 1969, in the absence of any legislative framework in the United Kingdom, the resolution of an employer's dilemma over the manifestation of religion at work was essentially a matter for internal policy decisions, albeit influenced by local, and to some extent, national, politics. Broadly it was for the employer alone (or in agreement with a trade union), unfettered by legal constraints, to determine whether to make exceptions to works rules, to allow religious manifestation. However, there is an alternative approach: the state may choose to legislate to protect in some way religious expression by individuals at work. To oblige employers by law to create exceptions for religious practices in the workplace is likely to create precedents for others. Whether this can be justified tends to polarize opinion, and yet the principles involved have had a discernible impact on how the law has developed.<sup>91</sup>

It is a commonplace of industrial relations that 'job regulation' is a key component of the academic field of study and its analytical usefulness when studying specific events.<sup>92</sup> It was also part of what needed to be reformed locally to achieve root-and-branch reform nationally. In this, job regulation is seen to be the mainspring of collective bargaining, as well as capturing the daily workplace conflicts vividly depicted by Carter Goodrich as a 'frontier of control'.<sup>93</sup>

Job regulation is broken down into procedural and substantive rules, and the distinction between formal and informal rules and activities also features in the analysis that underpinned the Donovan Report and subsequent debates.<sup>94</sup> Internal and external job regulation are also distinguished. The

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90 *Ibid.*, 25 February 1971.

91 R. Miliband, *The State in Capitalist Society* (Quartet: 1973); Lord Wedderburn, *The Worker and the Law* (3rd edn; Penguin, Harmondsworth: 1986), pp. 458–82.

92 A. Flanders, *Industrial Relations: What is Wrong with the System?* (Faber: 1965).

93 C. Goodrich, *The Frontier of Control: A Study in British Workshop Politics* (Harcourt, Brace and Howe, New York: 1920).

94 J. Goldthorpe, 'Industrial Relations in Great Britain: A Critique of Reformism', *Politics and Society* 4:4 (1974), pp. 419–52; H. A. Turner, 'The Donovan

latter covers features of the 'industrial relations system' such as labour laws, trade-union rules, and dispute-resolution institutions, and the former relates to activities at the level of the enterprise, such as grievances and the settlement of local conditions of service.

The Sikh challenge became an argument with the employer about the application of a jointly agreed set of internal formal rules about the dress code for bus drivers in Wolverhampton. The representatives of management remained firm throughout that the decision remained within their prerogative, and the TGWU representatives failed to challenge this. The Wolverhampton turban case shows that this type of internal job regulation is not just about what happens inside the enterprise as a closed system, but about the realities of external pressures and susceptibilities that impinge upon the internal decision-making of managers. In other words, those trade-unionists and academics who favoured keeping 'politics' outside the workplace also favoured an analysis that fitted with this support for the status quo and overstated the importance of internal job regulation.

Furthermore, job regulation is seen as a mechanism of control over work and therefore worker performance in the battle against relative low productivity (solving the 'labour problem'). This can be perceived as a limited pluralist account of the issues facing workers at the workplace that, *inter alia*, involves some solution through trade-union representation and collective bargaining.<sup>95</sup> In this way it filled a vacuum created by the failed exploration of power at work, and the subsequent debates over the reaction to exploitation.<sup>96</sup> Thus any deviation from the control by management over aspects of the workforce's public-facing appearance (the dress code of bus drivers in this case) was deemed by all parties involved inside the employment unit as both disruptive and a challenge to the dominant ethos of union–management agreements over spheres of influence.

This feeds into the view that religious expression at work is *per se* disruptive to good industrial relations and for that reason alone should not be protected in law.<sup>97</sup> Other commentators, while agreeing that religious expression can impose costs on employers and co-workers, would not

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Report', *Economic Journal* 79:313 (1969), pp. 1–10; W. Brown, 'The High Tide of Consensus: *The System of Industrial Relations in Great Britain* (1954) Revisited', *HSIR* 4 (1997), pp. 135–49; J. Crossley, 'The Donovan Report: A Case Study in the Poverty of Historicism', *BJIR* 6:3 (1968), pp. 296–302.

95 R. Hyman, *Industrial Relations: A Marxist Introduction* (Macmillan: 1975); J. Kelly, *Rethinking Industrial Relations: Mobilization, Collectivism and Long Waves* (Routledge: 1998).

96 B. Kaufman, 'Paradigms in Industrial Relations: Original, Modern and Versions In-between', *BJIR* 46:2 (2008), pp. 314–39; D. Lyddon and P. Smith, 'Editorial: Industrial Relations and History', *HSIR* 1 (1996), pp. 1–10.

97 T. Sanderson, 'Paying to Be Discriminated Against', *Guardian*, 11 July 2008.

necessarily adopt such a hard-line position but might nevertheless raise objections to legal exceptionalism.

The first objection is based on the notion that people are capable of exercising choice over the way they express their religion. One source of objection to the Sikh bus drivers' religious claims was that not all Sikhs wanted to wear the turban; this suggested that choice was being exercised. If religious manifestation is a matter of choice, then religious employees can choose to restrain themselves in the workplace. An alternative way of framing the issue would be to see religious manifestation as a 'burden' with which employees feel obliged to engage – it is the level of felt obligation which differs according to the individual and the type of manifestation in question.<sup>98</sup> Nevertheless, the notion of choice has certainly affected judicial interpretation in relation to religious claims, in a way which is arguably negative when the claims of religious employees are balanced against other imperatives.<sup>99</sup>

The second objection is based on the notion that people are capable of exercising choice over where they work. A person can choose a job where the employer does not object to manifestation of religion in the workplace. For example, the Sikh bus drivers might have chosen to work for a different employer that imposed no rule preventing the wearing of a turban. If an existing employer hardens its attitude to religious manifestation, then a current employee is free to resign and seek employment elsewhere (as indeed were the Sikh bus drivers).

This perspective is reflected in the historic interpretation of Article 9 of the European Convention on Human Rights and Fundamental Freedoms (ECHR) concerning freedom of religion and belief.<sup>100</sup> This is divided into two categories: the absolute right to hold a belief (Article 9(i));<sup>101</sup> and the conditional right to manifest it (Article 9(ii)).<sup>102</sup> Traditionally this latter right, to manifest religion, has been held, by both the European Court of Human Rights (ECtHR) and in the domestic courts of England and Wales,

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98 S. Leader, 'Freedom and Futures: Personal Priorities, Institutional Demands and Freedom of Religion', *Modern Law Review* 70:5 (2007), pp. 713–30.

99 *Eweida v. British Airways*; Lord Justice Stephen Sedley pointedly noted that '[T]he same definition is used for all the listed forms of indirect discrimination, relating to age, disability, gender reassignment, marriage and civil partnership, race, religion or belief, sex and sexual orientation. One cannot help observing that all of these apart from religion or belief are objective characteristics of individuals; religion and belief alone are matters of choice', para. 40, p. 109.

100 Britain became a signatory to this convention in 1951.

101 'Everyone has the right to freedom of thought, conscience and religion.'

102 'Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.'

not to apply in certain contexts, most notably the workplace.<sup>103</sup> In *Ahmad v. United Kingdom*,<sup>104</sup> the European Commission of Human Rights<sup>105</sup> rejected an Article 9 application by a Muslim school teacher whose request for time off to attend Friday prayers had been turned down by his employer and who had been unsupported by the domestic courts.<sup>106</sup> In refusing to admit his claim, the Commission ruled that there had been no interference with Ahmad's Article 9 rights because he had accepted his original contract 'of his own free will', and in so doing had voluntarily surrendered the claims on his time of religious obligation. His residual rights under Article 9 were guaranteed by his ability to resign from the post.<sup>107</sup>

It is not difficult to find fault with such arguments given the weight of the burden they place on the 'religious' employee. As Simon Deakin has observed, 'jobs are not always interchangeable, and searching for an alternative can be costly. Labour and skills cannot be stored, so that few employees can afford to be without employment for long.'<sup>108</sup> In its landmark judgment in *Eweida and Ors v. United Kingdom*,<sup>109</sup> the ECtHR had clearly heeded such criticism, as it overturned its previous approach of 'holding that the possibility of changing job would negate any interference with [an Article 9] right' arguing instead that 'the better approach would be to weigh that possibility in the overall balance'.<sup>110</sup> It thus played down the perceived significance of individual 'choice' in when and where to manifest religion and appears to have made what (conditional) protections are offered under ECHR Article 9(ii) more readily accessible to religious claimants.

At an individual workplace level, the rationale for allowing exceptions

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103 *Karaduman v. Turkey* (1993) 74 DR 93; it was also held not to apply in an educational context.

104 (1982) 4 EHRR 126.

105 This body existed until 1998 to filter individual applications under the ECHR; those it considered well founded, it took to the European Court of Human Rights (ECtHR).

106 He failed to establish constructive unfair dismissal; see *Ahmad v. Inner London Education Authority* [1978] 1 QB 36.

107 See, also, adopting the same principle: *Kalac v. Turkey* [1997] 27 EHRR 552; *Stedman v. UK* [1997] 23 EHRR CD (Commission); *Konttinen v. Finland* Appl No. 24949/94 [3 December 1996]; *Pichon and Sajous v. France* Appl No. 49853/99 [2 October 2001].

108 S. Deakin, 'Equality, Non-discrimination, and the Labour Market: A Commentary on Richard Epstein's Critique of Anti-discrimination Laws', in R. Epstein, *Equal Opportunity or More Opportunity? The Good Thing about Discrimination* (Civitas: 2002), pp. 41–56, p. 49. There have also been critics of the inconsistency of the Court in applying a filter of this kind to Article 9 rights only: I. Leigh and A. Hambler, 'Religious Symbols, Conscience and the Rights of Others', *Oxford Journal of Law and Religion* 3:1 (2014), pp. 2–24.

109 Appl Nos 48420/10, 59842/10, 51671/10 and 36516/10 (15 January 2013).

110 *Eweida and Ors*, para. 83.

from agreed work rules for religious manifestation may be a simple one – accommodation may offer the path of least resistance in the face of the pressing demands of one determined group of workers. This appeared to be the main reason the Wolverhampton Sikh bus drivers were eventually successful. The rationale for legislating to create workplace protections for the manifestation of religion and belief is a different thing and allowing external job regulation via the law as a result of the activities of strong pressure groups is likely to result in a measure of ‘privileged treatment’ being offered to certain workers. Whether this can be justified is a matter of public policy and largely depends on the significance accorded by society to the manifestation of religion and culture and in what circumstances this can be allowed to ‘trump’ other rights.

The turban case study reveals the limits of internal formal job regulation, even with trade-union representation, in cases of religious or racial discrimination. It partly stems from the muddle over the rights of minorities at work, the power relations with the employer having the upper hand, and the confusion in the minds of many as between religion and culture. Expressing deeply held personal beliefs is limited in order not to offend others, not to cause disruption at work, and to avoid a chaotic set of claims. The arguments for state intervention through legal redress in the case of religious expression at work, such as wearing the turban, fall into two main categories: a functional collectivism associated with general rights not to be treated less favourably than others; and individuals’ right to adhere to their own religious requirements even at the workplace. Therefore, the two strongest rationales for supporting legal exceptionalism lie in the imperatives to support group rights and, above all, individual moral conscience.

A compelling rationale for legal regulation of religious manifestation at work is based on what ‘religion’ may be thought to represent. Religion may be understood in a functionalist way as a means of expressing the cultural identity of particular groups.<sup>111</sup> The major determinant of group membership is often ethnicity linked with religion.<sup>112</sup> The wearing of a Sikh turban can be seen as a manifestation of both religious and ethnic affiliation. It was noted earlier that, over the centuries, Sikh tradition has imbued the turban with a significance of its own, and many believe it to be ‘necessary’ to be a true Sikh.<sup>113</sup> Attempting to determine whether this tradition is best described as religious or cultural in origin is extremely

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111 G. Pitt, ‘Religion or Belief: Aiming at the Right Target?’, in H. Meenan (ed.), *Equality Law in an Enlarged European Union* (Cambridge University Press: 2007), pp. 202–30, is a proponent of this model.

112 S. Fredman, *Discrimination Law* (2nd edn; Oxford University Press: 2011), pp. 73–5.

113 McLeod, ‘The Turban: Symbol of Sikh Identity’, p. 61.

difficult. In theory the wearing of either the turban or the headscarf could enjoy legal privileges on the basis of either its religious or its ethnic significance, or both. However, in adopting both a functionalist and communitarian basis for the protection of religious expression, the primary basis for supporting group rights is clearly located in a desire to support the expression of collective identity.

Whatever the limitations of the rationale for protecting religious interests at work, it has been undoubtedly highly influential in the development of the relevant law. It was clear at the time of the Wolverhampton Sikh bus drivers' dispute that the issues arising were conceptualized by all concerned as belonging to the domain of 'race relations' and this insight also underlay the contemporary analysis provided by Beetham.<sup>114</sup> At that time discrimination law was in its infancy and racial characteristics, rather than religion, had already been identified for (limited) protection at work through the Race Relations Acts of 1965 and 1968. The Race Relations Act 1976 provided a more comprehensive legal framework which included protections against direct and indirect discrimination.<sup>115</sup> Direct discrimination provides a remedy for people who have suffered less favourable treatment at work<sup>116</sup> because of what is now known as a protected characteristic, such as race.<sup>117</sup> Indirect discrimination provides a further remedy when a works rule ('or a provision, criterion or practice' of the employer)<sup>118</sup> has an adverse impact on a particular group of employees because of their protected characteristic which cannot be justified by the employer as 'a proportionate means of achieving a legitimate aim'.<sup>119</sup>

Whereas a racial group is defined by the Race Relations Act 1976 as 'a group of persons defined by reference to colour, race, nationality or ethnic or national origins'<sup>120</sup> (and notably without reference to religion), nevertheless in *Mandla v. Dowell Lee*<sup>121</sup> the House of Lords ruled that Sikhs fulfilled these criteria for the purposes of the Race Relations Act, *inter alia*, because they could show 'a long shared history', a common 'cultural tradition' and a 'common religion different from that of neighbouring groups'.<sup>122</sup>

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114 Beetham, *Transport and Turbans*, pp. 71–6.

115 These protections are now consolidated into the Equality Act 2010.

116 Race Relations Act 1976, s. 1; Equality Act 2010, s. 13.

117 Equality Act 2010, s. 4.

118 Under the original wording of Race Relations Act 1976, s. 1(1)(b), the terms 'requirement or condition' were used.

119 Equality Act 2010, s. 19(2)(d). The Race Relations Act 1976, s. 1(1)(b)(2), merely used the formula 'which [the employer] cannot show to be justifiable'.

120 Race Relations Act 1976, s. 3(1). This definition was essentially replicated by virtue of the Equality Act 2010, s. 9.

121 [1983] 2AC 548 (HL).

122 *Ibid.*, 4 (Lord Ian Fraser of Tullybelton).

In legal terms, what this has meant for Sikhs is that they have been able to lodge claims with the employment tribunal for indirect discrimination because of the adverse impact they have suffered where an employer has imposed a works rule preventing the wearing of facial hair or turbans. For example, in the respective cases of *Singh v. Rowntree Mackintosh*<sup>123</sup> and *Panesar v. Nestle*,<sup>124</sup> two Sikh men, unwilling to shave their beards, were able to establish *prima facie* indirect race discrimination when they were rejected at interview stage from jobs in chocolate factories where the wearing of facial hair was not permitted. Similarly, in *Singh v. British Rail Engineering*<sup>125</sup> a Sikh employee, dismissed after refusing to wear a hard hat, was also able to establish a claim. In all three cases, however, the employer met the test of justification (on the grounds of hygiene, or health and safety) and the claims failed.

As well as the general protections by virtue of the Race Relations Act 1976, Sikhs have also benefited from the grant by Parliament of a number of specific statutory rights, some of which go beyond the employment sphere. Whether these have always been awarded on a principled basis or as ‘the path of least resistance’ is open to debate; certainly, lobbying and protests appear to have played their part. For example, after the wearing of helmets on motorcycles was made compulsory in 1972,<sup>126</sup> a mass protest was organized under the direction of the Sikh temples which involved civil disobedience in the form of defying the new law and courting arrest.<sup>127</sup> This protest was sufficiently effective for support to be given to a Private Member’s Bill in 1975 to become law, allowing for exemptions for motorcyclists from wearing a hard hat in the following circumstances: ‘A requirement imposed by regulations under this section (whenever made) shall not apply to any follower of the Sikh Religion while he is wearing a turban.’<sup>128</sup> Sikhs also successfully lobbied for exemptions from wearing a hard hat in place of a turban on construction sites (which was granted in the Employment Act 1989).<sup>129</sup>

The second rationale for legislating to protect religious expression may be found in the perceived importance to individuals of their desire to manifest religion.<sup>130</sup> This deeply held belief may mean that to act contrary

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123 [1979] IRLR 199 (EAT Sc).

124 [1980] ICR 60 (EAT); 64 (CA).

125 [1986] ICR 22 (EAT).

126 Road Traffic Act 1972, s. 33.

127 S. Juss, ‘The Constitution and Sikhs in Britain’, *Brigham Young University Law Review* (1995, issue 2), pp. 481–533.

128 Motor-Cycle Crash Helmets (Religious Exemptions) Act 1976, s. 1.

129 Employment Act 1989, s. 11.

130 S. Bedi, ‘Debate: What is So Special about Religion? The Dilemma of the Religious Exemption’, *Journal of Political Philosophy* 15:2 (2007), pp. 235–49.

to the religious obligation 'would result not only in such unpleasant feelings as guilt and/or shame but also in a fundamental loss of integrity, wholeness, and harmony in the self'.<sup>131</sup> Such a consequence might significantly undermine an individual's sense of self-worth and therefore dignity.<sup>132</sup>

At the time of the Sikh bus drivers' dispute there was only one recent and significant legal protection for individual religious conscience at work – the right of clinicians to refuse to participate in abortions<sup>133</sup> (which was extended to embryo research in 1990).<sup>134</sup> There has also been a scattering of further protections in the workplace, such as the right to opt out of union membership because of religious conscience,<sup>135</sup> and the right for shop and betting workers, employed on or before a certain date, not to work on a Sunday.<sup>136</sup>

A potentially more far-reaching instrument for offering protection for the manifestation of religion was introduced in 2003 by virtue of the Employment Equality (Religion and Belief) Regulations,<sup>137</sup> which extended discrimination law to cover religion and belief (now a protected characteristic as defined by the Equality Act 2010).<sup>138</sup> This in turn opened the possibility for a number of claims by employees from various religious backgrounds who felt they had suffered indirect discrimination due to an employer's work rules.

The limitations of the conditional protections under indirect discrimination apply also to religion such that in only a relatively few cases has an employee been successful in such a claim. In general, tribunals and courts have been convinced by an employer's justifications on any restrictions it

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131 J. Childress, 'Appeals to Conscience', *Ethics* 89:4 (1979), pp. 315–55, at p. 318.

132 D. Reaume, 'Discrimination and Dignity', *Louisiana Law Review* 63:3 (2002/03), pp. 645–95.

133 *R v. Salford AHA ex parte Janaway* [1988] 3 All ER 1079 and, more recently, *Greater Glasgow Health Board v. Doogan & Anor* (Scotland) [2014] UKSC 68.

134 Human Fertilisation and Embryology Act 1990, s. 38.

135 Before the removal of all legal protection for 'closed shop' by the Employment Act 1990, as consolidated in the Trade Union and Labour Relations (Consolidation) Act 1992, s. 137, a 'genuine religious objection' was one of the few reasons permitted for refusing to join a trade union: R. Benedictus, 'Closed Shop Exemptions and their Wording', *Industrial Law Journal* 8:1 (1979), pp. 160–71.

136 Employment Rights Act 1996, s. 36. The dates are: 26 August 1994 (shop workers, legislated in the Sunday Trading Act 1994) and 3 January 1995 (betting workers, legislated in the Deregulation and Contracting Out Act 1994).

137 (2003) SI No. 1660.

138 Equality Act 2010, s. 10.

has imposed.<sup>139</sup> In *Mba v. Merton BC*,<sup>140</sup> for example (a recent leading case), the Court of Appeal recognized that cost and disruption arising from the desire of a Christian care-home employee to manifest her religion by not working on a Sunday (even though this had been possible to accommodate for two years) was sufficient to meet the justification test.

The one area where justification is now difficult concerns instances where employers exclude religious symbols simply because they wish to present a uniform image to the public as with the Wolverhampton transport committee in the turban dispute.<sup>141</sup> This is a direct result of the ruling in *Eweida and Ors* in which the ECtHR found that the Article 9 rights of the first applicant, Nadia Eweida, had been infringed when she was required to remove her visible cross merely because her employer, British Airways, wanted to demonstrate a uniform corporate image to the public. This justification was less weighty than the felt religious obligation on behalf of the applicant to wear her religious symbol.<sup>142</sup> Under the Human Rights Act 1998, domestic law in the UK (including discrimination law) must be read where possible in a manner which is compatible with the ECHR,<sup>143</sup> and so a clear marker has been set for employment tribunals and indeed organizational policy-makers as they implement corporate dress codes.

## Conclusion

It is apparent that, left to their own devices, it is unlikely that Sikh workers acting through their trade unions would have been able to negotiate with local employers for the right to wear the turban. The success of such bilateral jointly regulated agreements would have required active union support, sympathetic responses from non-Sikh work colleagues, and the desire by the employer to make concessions to one minority group over others. None of this was going to happen in the case of the Wolverhampton bus drivers in the late 1960s. Whatever the political views of the Labour councillors and the local TGWU branch, the wider community was caught up in the whirlwind of Powellism and not in the mood to compromise on

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139 As amounting to 'a proportionate means of achieving a legitimate aim'.

140 [2013] EWCA Civ. 1562; [2013] WLR (D) 474 (CA).

141 Established in the ECtHR judgment in *Eweida and Ors*.

142 This can be contrasted against another of the four joined applications, brought by Nurse Shirley Chaplin, who had been refused permission to wear a cross on the hospital wards due to the requirements of 'health and safety'; the Court found this justification to be sufficiently weighty to trump the felt religious obligation.

143 Human Rights Act 1998, s. 3(1).

'non-British' demands by 'foreigners' for exemptions from the common core of the bus drivers' uniforms.

Hence the need to bring in external pressures from the wider Sikh community, government ministers, Indian politicians, and some sympathetic figures from the local labour movement. Eventually these pressures from outside the workplace, allied with the fight by those Sikhs directly involved, meant that the newly created employer for bus drivers, the West Midlands Passenger Transport Executive, was able to integrate Sikh turban wearing into the new internally agreed standards of dress code. The struggle itself, with its international repercussions and culturally inherited confusions, forced the hand of British legislators. In order to avoid the conflicts that arose from a bludgeoning set of cases, successive governments sought to legislate for legal exceptionalism for the turban in the workplace. Beginning with statutory exemptions favouring Sikhs, the law has over time evolved (latterly in response also to European Union directives)<sup>144</sup> to encompass the wearing of religious symbols at work through the development of the more general protections of religious discrimination legislation.

The debate about how far to extend the freedom to manifest religion in employment while balancing it against other rights is ongoing.<sup>145</sup> Insofar as religious symbols and dress are concerned, employers' discretion to impose restrictions is now narrowly confined to genuine operational or health and safety reasons – uniform requirements based on 'taste' or corporate image will now need to be adapted to accommodate religious requirements. Taking the long view, this is surely a fitting legacy for the Sikh bus drivers of Wolverhampton and their courageous and determined early stand to manifest their culture and religious beliefs in the face of inflexible employment practices and a hostile employer.

Business School  
University of Wolverhampton  
Wolverhampton WV1 1AD

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144 In particular, EC Directive 2000/34 on equal treatment [2000] OJ L303/16.

145 E.g., through the introduction of a proactive statutory duty on employers to 'reasonably accommodate' religious practices; see P. Edge and L. Vickers, *Review of Equality and Human Rights Law Relating to Religion or Belief*, Equalities and Human Rights Commission Research Report 97 (Equalities and Human Rights Commission: 2015).