

# Research impact: making a difference

## Ensuring appropriate balance between individual and institutional rights

LSE legal argument influenced a critical Law Lords' decision adjudicating between an individual's human rights and a school's uniform policy

### What was the problem?

While human rights law guarantees an individual the absolute right to hold a particular religious belief, a more contested issue is whether the right to manifest that belief can be qualified or limited, for instance if it interferes with the rights of others.

In the UK, the case of *R (Begum) v Headteacher and Governors of Denbigh School* produced one of the most important decisions on how to apply the law in circumstances where an individual's right to act in accordance with his or her beliefs is in direct conflict with institutional policies or practices. It was finally settled by the House of Lords in 2006.

The case revolved around the challenge to a Luton school's uniform policy by Shabina Begum, a 16-year old pupil of Bangladeshi origin, her brother and another young male. Shabina Begum sought to wear a stricter form of Islamic dress than that allowed by the school. The school argued that allowing Begum her choice of dress might put unwelcome and irresistible pressure on other girls at the school to adopt a more extreme form of dress.

### What did we do?

Since the early 2000s, research by LSE Associate Professor of Law Thomas Poole has explored the way in which the language of human rights has infiltrated the courts and how this development might be changing the nature of the common law and the relationship between Parliament, the courts and public authorities.

In Poole's view, the *Begum* case was pertinent to his research because it involved the proportionality principle, which states that justice should be proportional to the issue under review.

Although the High Court had ruled against Begum, the Court of Appeal subsequently overturned the verdict. Poole felt that this was wrong.

In an article for *Public Law* published in 2005, he criticised the Court of Appeal's ruling in the *Begum* case, regarding it as a particularly troubling example of judicial decision-making that detached questions of rights from the administrative context in which those questions had arisen. He argued that applying the proportionality principle in an overly rigid way would lead to chaos in public administration, that it was impractical to expect all decision-makers in public authorities to be capable of adopting and applying a judicial approach.

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The *Begum* case subsequently went to judicial review by the House of Lords, which overturned the decision of the Court of Appeal and ruled in favour of the school. Poole's argument was a core feature of the Law Lords' decision. Indeed, it was one of the few points on which all members of the House of Lords agreed.

In his leading speech outlining his opinion on the case, the then Senior Law Lord, Lord Bingham, explicitly endorsed the view expressed by Poole in his article. 'As argued by Poole,' said Lord Bingham, '... I consider that the Court of Appeal's approach would introduce "a new formalism" and would be "a recipe for judicialisation on an unprecedented scale". The Court of Appeal's decision-making prescription would be admirable guidance to a lower court of legal tribunal, but cannot be required of a head teacher and governors, even with a solicitor to help them.'

Poole's argument helped to influence the opinion of the Law Lords in the most important decision on the proportionality principle, which has guided the development of public law jurisprudence since the enactment of the Human Rights Act.

The other judges in the case all agreed. Their general sentiment was captured by Lord Hoffmann, who wanted to avoid creating a situation in which teachers would have to take decisions at all times 'with textbooks on human rights at their elbows'.

## What happened?

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The *Begum* case received a great deal of media attention. It was considered highly significant for two reasons. First, it was important politically and socially because it dealt with one of the most contentious topics of the age: the right to manifest one's religion, particularly as that right pertained to the education of young women. It also concerned the ability of schools – and, by extension, public bodies generally – to set reasonable policies free from overly rigid human rights constraints.

Second, it was important legally. Although the *Belmarsh* case was more significant in terms of constitutional law (this was a case brought by foreign nationals held indefinitely at Belmarsh Prison, known more formally as *A v Secretary of State for the Home Department*), *Begum* is the most significant decision the courts have made about the impact of the Human Rights Act on administrative law.

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The decision was – and remains – the most important statement by the UK’s highest court on the principle of proportionality, the dominant legal test for applying rights set out in the European Convention. It constitutes binding authority for lower courts applying the proportionality principle, and has set the tone for the way in which the courts have subsequently engaged with the Human Rights Act.

The case has been subject to considerable academic commentary. The Law Lords' decision in *Begum* has also received attention from other common law jurisdictions, notably in Australia and New Zealand, where Poole's research has been cited with approval by senior courts.

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**Thomas Poole** studied at University College London, Oxford University and Manchester University. Before coming to LSE in 2006, he taught at Nottingham University. He has held visiting positions at the University of New South Wales (2003-4 & 2005-6), the European University Institute (2007), Melbourne University (2008), the University of Toronto (2008), Princeton University (2008) and Université Paris II Panthéon-Assas (2013-14). Tom works mainly in the field of public law and constitutional theory.

Email: [T.M.Poole@lse.ac.uk](mailto:T.M.Poole@lse.ac.uk)

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