

Sharyn Leonard



From: Charles Mabbett on behalf of Media
Sent: Tuesday, 17 April 2018 1:35 PM
To: 'Don Rowe'
Subject: RE: Spinoff Ray-Ban scam story

<https://help.instagram.com/368191326593075>

Charles Mabbett
Senior Communications Adviser

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From: Don Rowe [<mailto:don@thespinoff.co.nz>]
Sent: Tuesday, 17 April 2018 1:13 p.m.
To: Media
Subject: Spinoff Ray-Ban scam story

Hey there, just following up on our conversation from this afternoon.

The scam involves personal instagram accounts, eg mine, posting fake Ray-Ban ads up to four times without permission, implying a third party has access to mine and others accounts.

Is this a privacy violation?

What responsibility does Instagram have to protect user privacy, both in terms of data collection and access to the account and control over what it posts?

What advice would you have for users concerned affected? What advice for users who feel their privacy has been violated by a third party?

What dangers do fraudulent posts from authentic users pose?

My deadline has moved out to 3pm.

Cheers!



From: Charles Mabbett **On Behalf Of** Media
Sent: Tuesday, 17 April 2018 1:33 p.m.
To: 'Don Rowe'
Subject: RE: Spinoff Ray-Ban scam story

Hi Don,

Just a quick question, is this a scam where hackers take control of an individual's Instagram account and then uses it to post ads on their feed? Is that the scam?



If that's the case, it is similar to many previous reported cases where someone takes control of a person's FB, email or any other online account. And in those cases, the thing to do is to report the violation to the service provider and to change their password.

Charles

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THE SPINOFF

Don Rowe

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Sharyn Leonard

From: Vanessa Blackwood
Sent: Monday, 11 February 2019 9:38 AM
To: John Edwards
Subject: GenderIdentity
Attachments: GenderIdentity.docx

Hi John,

My comments attached. I think it's a really great paper and stance to take. ***applause emoji***

Identity, politics, identity politics and dignity

The term "identity politics" has come to be a slur, a shorthand encapsulating what is seen as the natural conclusion of another lazy and imprecise term, the much maligned 'political correctness'. In that context, identity politics is seen as the domain of an increasingly fractured left, obsessed with smaller and smaller subgroupings of society, defined by some characteristic of race, gender, sexuality, disability or similar.

But that is only one side of what has become to be known as identity politics. Francis Fukuyama, in his 2018 book "Identity – Contemporary Identity Politics and the Struggle for Recognition" finds in the epithet also an explanation for the wave of right wing Nationalism sweeping the world, from Hungary to Brazil, from the 2016 Brexit vote to the US presidential election of the same year.

The link is dignity, and the perception of the overlooked and disenfranchised, who, whether left or right, feel that their sense of identity is threatened. The cover of Fukuyama's book is titled as above, but the title page records a second and more revealing subtitle "The Demand For Dignity and the Politics of Resentment". Thus the aspirations of marginalised gender or ethnic groupings are placed on equal footing with the overlooked and taken for granted Rust Belt Trump voters whose communities have been impoverished by economic decline, and ravaged by pain pills. Behind each is a cry for recognition and an equality of opportunity.

What I admired about Fukuyama's analysis is his linking of identity and dignity and his deep dive into the nature, origins and functions of both.

Dignity is a concept central to a human rights based approach to organising society. The inherent dignity of the individual is the fundamental concept underpinning international instruments such as the Universal Declaration of Human Rights, and a number of constitutional instruments which underpin western liberal democracies.

Fukuyama cites Germany, Italy, Ireland, Japan, Israel and South Africa whose foundational constitutional documents include some variation on the injunction that "The dignity of man is inviolable. To respect and protect it shall be the duty of all public authority".¹

Understanding the concept of dignity is not just an academic or philosophical pursuit for those of us practising in one corner or other of the human rights field. Dignity is a core concept of the Privacy Act. One of the losses that an individual can claim as evidence that an action constitutes an "interference with privacy" is "significant loss of dignity".²

If an individual cannot produce receipts or accounts showing the economic loss a privacy breach has caused, or some evidence of the mental injury, or a compelling narration of the subjective experience of humiliation, distress or injury to feelings, we might still be able to recognise their experience as one involving an affront to, or an assault on their dignity.

An attack on dignity is the diminution of an elemental human value, capable of being assessed objectively by any reasonable observer. It may present in a variety of forms, but will inevitably represent a ~~diminution~~ diminution or denial of the autonomy of the individual, of their essential humanity.

¹ Ibid p.51

² Privacy Act 1993

For example we had one case when a complaint was made on behalf of a severely disabled child being filmed in a state of distress. That person could not give any account of their experience of humiliation, hurt feelings, or distress at the collection or subsequent use of that information, but we were able to make an objective assessment of the extent to which those actions offended the child's dignity.

But recognising indignity when we see it, and providing those illustrative examples is not the same as offering a definition of dignity. Dictionaries can help. My New Shorter Oxford offers:

"1. The quality of being worthy or honorable; True worth, excellence. 2. Honorable or high estate, degree of estimation, rank.

The second offering suggests dignity is something earned and accompanied by societal elevation, an outmoded concept eclipsed by the acceptance of universality of human rights which began with the Enlightenment, gathered pace with the abolition of slavery and the acceptance of the universal franchise, and became the cornerstone for the legitimacy of liberal democracies and international law after the excesses of the Second World War. Every human has worth, is worthy, and has inherent, not granted, dignity.

Fukuyama takes us further back through western philosophical thinking to reference his earlier work *The End of History and The Last Man* in which he isolates and highlights the Greek concept of Thymos. Documented by Homer and Plato Thymos denotes emotions, desire or an essential urge. It is described as a spiritual longing for recognition "*Thymos is that part of the soul that craves recognition of dignity*"³.

Wikipedia tells us that the terms isothymia, and megalothymia which Fukuyama drops into his most recent work, were actually coined by him in his earlier essay. They mean 'the demand to be respected on an equal basis with other people', and 'the desire to be recognised as superior', respectively.

The same root human need for recognition can thereby manifest as an assertion of and demand for equality, or to dominate, and exclude. It is in this way that Fukuyama presents identity politics both as fracturing some communities and political movements with increasingly splintered cries for recognition and stoking extremists though claims of race or religious based supremacy. The same competing phenomena are repeated from Hungary to the Rust Belt US to ~~Bra~~Brazil, Brexit UK, India and beyond. It would be folly to think New Zealand is immune.

Identity politics is a term that has been used to minimise the struggle for equal recognition of marginalised groups, and at the same time is at the core of the backlash against those groups. It can manifest as an ad hominem denial of argument ("as a straight white man, you can't say that") or in ultra-nationalism and white supremacy as groups demand that their identity is recognised as the one deserving, entitled and under threat.

Perhaps it's actually not that useful in the discussion of how society meets its obligation to respect and protect the dignity of all its members?

One issue of identity, politics and dignity is gaining prominence in New Zealand. In its wake there is potential to see resentment, ignorance and fear rise to eclipse the fundamental decency on which we hope we base our society, or at least aspire to.

Commented [VB1]: I understand the thrust of this, but I think to a certain extent it elides over the shorthand of what that sentence means -- aka, "as a straight white man, you don't have the lived experience of the situation you're critiquing or commenting on -- pay equity, Maori rights, queer rights - but your privilege leads you to believe that your opinion is valued on everything regardless of your expertise or lack thereof on these issues". But that's much less pithy :P
I think the other point I have here is that this, as a contrast to ultra-nationalism, could imply that those two things are the equal but opposite ends of the spectrum? Whereas obviously hurting a white man's feelings by telling him his straight white opinion isn't necessary or needed, is not the same as arguing that the white race is superior...

³ Ibid preface xiii

The struggle for recognition and equality for a diversity of gender expressions might be considered the latest "front line" in identity politics. The New Zealand Human Rights Commission was one of the first human rights institutions in the world to inquire into trans people's experience with health care access, everyday interactions and community participation culminating in a 112 page report entitled To Be Who I Am, in 2008⁴.

The first sentence, in the foreword of that report is:

'Trans people strive to live lives of dignity in communities throughout New Zealand.'

There's that word again. And another familiar word, also within the opening lines of the report:

"Trans people came to the inquiry seeking no special treatment but simply the recognition of the rights that other New Zealanders take for granted."

The report made a number of recommendations, including:

Simplification of the requirements for change of sex on a birth certificate, a passport and other official documents to better align them with the Human Rights Act.

The Births Deaths Marriages and Relationships Registration Act 1995⁵ made provision for transgender people to change the sex recorded on their birth certificate. It was progressive at the time, but required a considerable administrative burden to achieve. An applicant ~~has~~ **must** obtain a declaration from the Family Court, and present expert medical evidence showing that they have undertaken medical treatment "to enable persons of the genetic and physical conformation of the applicant at birth to acquire a physical conformation that accords with the gender identity of a person of the nominated sex".

A Births Deaths Marriages and Relationships Registration Bill to update the Act was introduced in August 2017. The introduction version maintained the 1995 procedure for effecting change of sex on birth certificates.

After hearing ~~submissions~~ **submissions**, the Government Administration Committee reported back to the House text which dropped the 1995 procedure in favour of a much simpler 'self identification by statutory declaration' procedure. This measure would bring New Zealand into line with international human rights standards, according to the Human Rights Commission Submission which noted:

The International Covenant for Civil and Political Rights and the International Covenant for Economic, Social and Cultural Rights, to which New Zealand is a party, provide:

All people have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

The European Court of Human Rights has ruled that the freedom to determine one's gender is essential to the right of self-determination, and the right to personal development, physical and moral security, and personal autonomy. The Covenants also provide for equality before the law and freedom from discrimination, including on the grounds of sex or any other status.

⁴ Human Rights Commission To Be Who I Am 2008 <https://www.hrc.co.nz/our-work/sexual-orientation-and-gender-identity/inquiry-discrimination-experienced-transgender-people/>

⁵ 1995 No.16 s.28

Making such a change in its report back means that there was no opportunity for the public to submit on the proposal, and this has angered some commentators who have made their views known in letters to the editor, opinion pieces, and even mail drops and poster campaigns⁶.

An organisation called Speak Up For Women has set itself the task of opposing the reform, demanding further consultation and analysis of the potential effects of self identification on data gathering and discrimination against women.

A columnist has summarised what seems to be the core objection, that the measure will allow men to intrude into their spaces;

Under the proposed new law, a man can call himself a woman without ever medically transitioning (most never do) and insert himself in female-only spaces such as changing rooms, women's refuges, and prisons. Women would have absolutely no legal recourse to challenge such a move.

I don't know about you, but I wouldn't want to be locked up alone in a cell all night with a hairy, muscly, sex-starved inmate of either gender – but particularly one with his full kit and caboodle intact.

Neither would I want my six-year-old niece to see a grown male stranger naked in the changing rooms at her local swimming centre. Why shouldn't she be able to have a male-free space? And me too?⁷

The spectre of men charging into women's changing rooms after having completed and filed a statutory declaration to change their declared gender on official documents might well provoke anxiety amongst some. But how real is that fear?

The extension of the franchise to women in 1893, the decriminalisation of homosexuality in 1986, allowing first, civil unions, and then full marriage rights to gay people were all measures accompanied by predictions of societal moral dissipation and turpitude. Those fears have not been realised.

Clubs and services that for decades or centuries denied access to women, Jewish people, Asians, black people were told they could not discriminate, and had to admit others. They coped, were enriched at little or no cost to their own dignity, rights or traditions.

That is not to say the sentiment described above is not real, and deserving of discussion. Generations of feminists have advocated for women's rights including the right to have their own spaces. But is that really at risk from a proposal that simply allows those whose assigned gender is at odds with their own sense of self, a simple mechanism to align the two?

In discussing public policy, an important concept is "the counter-factual". There is nothing in law which currently prevents the predicted harm occurring. But as far as I am aware trans-gender women in the process of transition (who meet the criteria for changing their birth

⁶ <https://twitter.com/SpeakUp4WomenNZ/status/1089982395430760448>

⁷ Rachel Stewart TERF a derogatory term to shut down debate
28 Nov, 2018 https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=12166957

Commented [VB2]: I don't know whether the emphasis should be on the fact that those who discriminated against minority groups were then 'enriched' by having to accept those groups into their clubs – perhaps more that they were not negatively affected other than by challenging their own prejudice?

There's a range of articles online from minority writers who speak about how being able to enter traditionally-exclusive-white clubs/services (like desegregated schools etc) is still a double-edged sword because of the ongoing racism they've faced by the old-guard members of the club.

Commented [VB3]: I think it's really important to spend some space drawing out that while they certainly claim to be 'feminists for women', these groups absolutely do not speak for all feminists. That in fact while these groups claim that TERF is a slur, it only means "trans exclusionary radical feminism" as a way to differentiate that particular subset of feminist thought from other feminists (particularly those who strive for intersectional analysis of various overlapping systemic issues, as described by Kimberle Crenshaw). There are a wide range of feminists who agree that part of feminism is accepting and protecting all women, including trans women, and that a feminism which excludes those women who tend to be more marginalized than the average cis woman is not a fully realized feminism.

It's also worth noting that a lot of these groups (particularly in the US) have links to, including funding by, conservative right-wing groups – which indicates, to me, that they don't actually support feminist praxis. Moral conservatives tend to be extremely anti-feminist, and this convenient alliance seems to me to throw a lot of feminist thought and values under the bus simply for the cause of denying trans women their identity.

certificate gender) are not invading changing rooms, women's refuges and the like with their "full kit and caboodle" intact.

And who, in these spaces, takes on the role of genital (or even birth certificate) inspection, as part of the entry criteria to these spaces?

There might be issues that the law reform presents, that we have yet to identify or confront. We might need to rethink some of our approaches to public spaces, but in doing so it will be important to differentiate between the basic human right of individuals to self identify, rather than have the state dictate and control how and who they present to the world, and behaviours that might intrude on the rights of others.

The discussion about conduct and respectful use of such spaces, in which people of all genders and sensibilities have different expectations and vulnerabilities need not depend on use by transgendered people alone. In my gym I see men whose sense of modesty (presumably) precludes them from nudity in the presence of other men. I have known straight women who don't like sharing such spaces with lesbians. These are challenges of design, etiquette, and conduct. Those are the responsibility of the owners of those spaces in discussion with their members.

Anyone suggesting (as implied in the column above) that strict adherence to biological gender rules should govern prison placement, in order to maintain inmates' sense of safety and security, has not met a vulnerable young man on his first lag, or an inmate who (like many) has experienced abuse and violence on the outside, let alone a transgender woman incarcerated with men.

And what would the genital determinists advice a trans man to do? He has known since childhood that his biology does not match his sense of identity. At puberty he actively suppresses outward signs of femininity, and presents to the world as male. As an adult he looks, and presents an identity conforming to his subjective experience. Those opposing this law reform would have him use only the women's facilities, but as he enters, those same women would presumably shriek in horror and demand the exclusion of someone "apparently male" in "their" space.

When the anti-reform lobby group's mail drop was reported in the press last week, one trans person close to me messaged saying "This makes me feel afraid and invalidated".

Trans rights are human rights. If you want to call this identity politics in extremis, go ahead. I'd prefer to call it dignity politics.

Commented [VB4]: I think this is probably a side-step – a lot of trans women do wind up never having surgery because of the steep cost of it, and the major lack of access – see for example that NZ has no surgeon offering it, and that until recently the high-cost-treatment pool meant the waitlist was something like 50 years. But the conflation of "women = no penis" is pretty dangerous rhetoric and I don't think it's worth giving airtime too even to deny that it's the fact – what it really comes down to is that for trans women, it's an incredibly fraught situation and many avoid any public areas like swimming/changing rooms, etc, because of the safety issues inherent.

Perhaps you might instead want to challenge the statement "a man can call himself a woman without ever medically transitioning (most never do) and insert himself in female-only spaces such as changing rooms, women's refuges, and prisons" and unpack

a) How likely it is that a man will really go through the effort of socially presenting as female, changing his gender identity on official documents, taking hormones, and face the incredible level of prejudice and potential violence levelled against trans women ... [1]

Commented [VB5]: You might wish to refer to various articles where trans-exclusionary policies e.g. about denying trans women bathroom access have created significant issues for any women who present in a non-traditionally-feminine way, e.g. <https://montrealgazette.com/life/bathroom-insanity-butch-women-beware>

In my opinion, this winds up hurting all women – trans women absolutely, but also everyone else who prefers to present in a less than femme way, and it's a really retrograde way to enforce femininity. Which is also ... [2]

Commented [VB6]: Just a quick note that the preferred term is 'trans' (with or without an asterisk at the end) or 'transgender' rather than 'transgendered'

Commented [VB7]: You might like to refer to various evidence about the sexual violence faced by trans women placed in men's prisons:

<http://blog.papa.org.nz/post/142936168960/the-overcrowding-crisis-and-the-rape-of-trans>

"Of the 20 transgender women that Corrections can account for in its custody, 3 of them are currently in double-bunked cells. The reason this is important is because overcrowding leads to a more dangerous prison environment for all incarcerated people, ... [3]

Commented [VB8]: A lot of critique about the anti-trans bathroom bills being introduced in the US is that it is essentially a shorthand for erasing or invalidating the existence of trans people more generally. The claim that people want to 'protect women' is a smokescreen for the underlying cause: that by denying trans people space like bathroom access will deny them a space in society more generally. If you can't access a loo, etc, you can't feel safe in public – it's a way to erase your identity very quickly. Trans people are very aware that there is no satisfactory option for them, because in these people's minds, they should just not exist.

I think this is probably a side-step – a lot of trans women do wind up never having surgery because of the steep cost of it, and the major lack of access – see for example that NZ has no surgeon offering it, and that until recently the high-cost-treatment pool meant the waitlist was something like 50 years. But the conflation of “women = no penis” is pretty dangerous rhetoric and I don't think it's worth giving airtime too even to deny that it's the fact – what it really comes down to is that for trans women, it's an incredibly fraught situation and many avoid any public areas like swimming/changing rooms, etc, because of the safety issues inherent.

Perhaps you might instead want to challenge the statement “a man can call himself a woman without ever medically transitioning (most never do) and insert himself in female-only spaces such as changing rooms, women's refuges, and prisons” and unpack

- a) How likely it is that a man will really go through the effort of socially presenting as female, changing his gender identity on official documents, taking hormones, and face the incredible level of prejudice and potential violence levelled against trans women, simply to access ‘women's spaces’ for nefarious purposes (and PRISONS, especially??)
- b) That the claim that most trans women never ‘medically transition’ is incredibly disingenuous because it implies that surgical transition is the only ‘real’ transition, whereas most if not all trans women do in fact medically transition in terms of hormone treatment, which is far more accessible and less of a cost barrier.

You might wish to refer to various articles where trans-exclusionary policies e.g. about denying trans women bathroom access have created significant issues for any women who present in a non-traditionally-feminine way, e.g. <https://montrealgazette.com/life/bathroom-insanity-butch-women-beware>

In my opinion, this winds up hurting all women – trans women absolutely, but also everyone else who prefers to present in a less than femme way, and it's a really retrograde way to enforce femininity. Which is also engaged in Rachel Stewart's words above – “hairy, muscly, sex-starved inmate” doesn't just discriminate against trans women, it heavily enforces a gender binary and the idea that there is a ‘correct’ way to be a woman. Which is pretty antithetical to feminist thought and practice.

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“Of the 20 transgender women that Corrections can account for in its custody, 3 of them are currently in double-bunked cells. The reason this is important is because overcrowding leads to a more dangerous prison environment for all incarcerated people, especially those incarcerated people who are already vulnerable. We know from international studies that trans women, in particular, are far more likely to experience abuse of all kinds than the general prison population. A 2007 study found that trans

women are thirteen times more likely to be sexually assaulted in a men's prison than other prisoners."

From:
Sent: Monday, 11 February 2019 1:25 PM
To: John Edwards <John.Edwards@privacy.org.nz>
Subject: here

withheld under
S9(2)(a) OIA 1982

Identity, politics, identity politics and dignity

The term "identity politics" has come to be a slur, a shorthand encapsulating what is seen as the natural conclusion of another lazy and imprecise term, the much maligned 'political correctness'. In that context, identity politics is seen as the domain of an increasingly fractured left, obsessed with smaller and smaller subgroupings of society, defined by some characteristic of race, gender, sexuality, disability or similar.

But that is only one side of what has become to be known as identity politics. Francis Fukuyama, in his 2018 book "Identity – Contemporary Identity Politics and the Struggle for Recognition" finds in the epithet also an explanation for the wave of right wing Nationalism sweeping the world, from Hungary to Brazil, from the 2016 Brexit vote to the US presidential election of the same year.

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Fukuyama cites Germany, Italy, Ireland, Japan, Israel and South Africa whose foundational constitutional documents include some variation on the injunction that "The dignity of man is inviolable. To respect and protect it shall be the duty of all public authority" ¹

Understanding the concept of dignity is not just an academic or philosophical pursuit for those of us practising in one corner or other of the human rights field. Dignity is a core concept of the Privacy Act. One of the losses that an individual can claim as evidence that an action constitutes an "interference with privacy" is "significant loss of dignity"².

If an individual cannot produce receipts or accounts showing the economic loss a privacy breach has caused, or some evidence of the mental injury, or a compelling narration of the subjective experience of humiliation, distress or injury to feelings, we might still be able to recognise their experience as one involving an affront to, or an assault on their dignity.

An attack on dignity is the diminution of an elemental human value, capable of being assessed objectively by any reasonable observer. It may present in a variety of forms, but will inevitably represent a diminution or denial of the autonomy of the individual, of their essential humanity.

¹ Ibid p.51

² Privacy Act 1993

You could break up some sentences

The child (?)

For example we had one case when a complaint was made on behalf of a severely disabled child being filmed in a state of distress. That person could not give any account of their experience of humiliation, hurt feelings, or distress at the collection or subsequent use of that information, but we were able to make an objective assessment of the extent to which those actions offended the child's dignity.

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"1. The quality of being worthy or honorable; True worth, excellence. 2. Honorable or high estate, degree of estimation, rank."

is necessary? Bit of a tangent

The second offering suggests dignity is something earned and accompanied by societal elevation, an outmoded concept eclipsed by the acceptance of universality of human rights which began with the Enlightenment, gathered pace with the abolition of slavery and the acceptance of the universal franchise, and became the cornerstone for the legitimacy of liberal democracies and international law after the excesses of the Second World War. Every human has worth, is worthy, and has inherent, not granted, dignity.

maybe cut?

Fukuyama takes us further back through western philosophical thinking to reference his earlier work *The End of History and The Last Man* in which he isolates and highlights the Greek concept of Thymos. Documented by Homer and Plato Thymos denotes emotions, desire or an essential urge. It is described as a spiritual longing for recognition "Thymos is that part of the soul that craves recognition of dignity"³.

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- you have already said this - condense

Identity politics is a term that has been used to minimise the struggle for equal recognition of marginalised groups, and at the same time is at the core of the backlash against those groups. It can manifest as an ad hominem denial of argument ("as a straight white man, you can't say that") or in ultra-nationalism and white supremacy as groups demand that their identity is recognised as the one deserving, entitled and under threat.

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One issue of identity, politics and dignity is gaining prominence in New Zealand. In its wake there is potential to see resentment, ignorance and fear rise to eclipse the fundamental decency on which we hope we base our society, or at least aspire to.

The struggle for recognition and equality for a diversity of gender expressions might be considered the latest "front line" in identity politics. The New Zealand Human Rights

³ Ibid preface xiii

Bring this up earlier - people may not read this far

Commission was one of the first human rights institutions in the world to inquire into trans people's experience with health care access, everyday interactions and community participation culminating in a 112 page report entitled To Be Who I Am, in 2008⁴.

The first sentence, in the forward of that report is:

'Trans people strive to live lives of dignity in communities throughout New Zealand'

There's that word again. And another familiar word, also within the opening lines of the report:

"Trans people came to the inquiry seeking no special treatment but simply the **recognition** of the rights that other New Zealanders take for granted"

The report made a number of recommendations, including:

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The Births Deaths Marriages and Relationships Registration Act 1995⁵ made provision for transgender people to change the sex recorded on their birth certificate. It was progressive at the time, but required a considerable administrative burden to achieve. An applicant has to obtain a declaration from the Family Court, and present expert medical evidence showing that they have undertaken medical treatment "to enable persons of the genetic and physical conformation of the applicant at birth to acquire a physical conformation that accords with the gender identity of a person of the nominated sex".

A Births Deaths Marriages and Relationships Registration Bill to update the Act was introduced in August 2017. The introduction version maintained the 1995 procedure for effecting change of sex on birth certificates.

After hearing submissions the Government Administration Committee reported back to the House text which dropped the 1995 procedure in favour of a much simpler 'self identification by statutory declaration' procedure. This measure would bring New Zealand into line with international human rights standards, according to the Human Rights Commission Submission which noted:

The International Covenant for Civil and Political Rights and the International Covenant for Economic, Social and Cultural Rights, to which New Zealand is a party, provide:

All people have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

The European Court of Human Rights has ruled that the freedom to determine one's gender is essential to the right of self-determination, and the right to personal development, physical and moral security, and personal autonomy. The Covenants also provide for equality before the law and freedom from discrimination, including on the grounds of sex or any other status.

Making such a change in its report back means that there was no opportunity for the public to submit on the proposal, and this has angered some commentators who have made their

⁴ Human Rights Commission To Be Who I Am 2008 <https://www.hrc.co.nz/our-work/sexual-orientation-and-gender-identity/inquiry-discrimination-experienced-transgender-people/>

⁵ 1995 No.16 s.28

Mention that this is inconsistent w/ actual medical transition & v. open to misinterpretation by uneducated judges (eg genital sex). Also many people don't want or have access to 'traditional' medical transition but still require documentation of identity

views known in letters to the editor, opinion pieces, and even mail drops and poster campaigns⁶.

An organisation called Speak Up For Women has set itself the task of opposing the reform, demanding further consultation and analysis of the potential effects of self identification on data gathering and discrimination against women.

A columnist has summarised what seems to be the core objection, that the measure will allow men to intrude into their spaces; *can't make this claim: there is no truly comprehensive data on trans health + majority of trans people worldwide*

Under the proposed new law, a man can call himself a woman without ever medically transitioning (most never do) and insert himself in female-only spaces such as changing rooms, women's refuges, and prisons. Women would have absolutely no legal recourse to challenge such a move. *DO NOT HAVE ACCESS*

I don't know about you, but I wouldn't want to be locked up alone in a cell all night with a hairy, muscly, sex-starved inmate of either gender – but particularly one with his full kit and caboodle intact.

Neither would I want my six-year-old niece to see a grown male stranger naked in the changing rooms at her local swimming centre. Why shouldn't she be able to have a male-free space? And me too?⁷ *what the actual fuck call this out more*

The spectre of men charging into women's changing rooms after having completed and filed a statutory declaration to change their declared gender on official documents might well provoke anxiety amongst some. But how real is that fear?

The extension of the franchise to women in 1893, the decriminalisation of homosexuality in 1986, allowing first, civil unions, and then full marriage rights to gay people were all measures accompanied by predictions of societal moral dissipation and turpitude. Those fears have not been realised. *NICE*

Clubs and services that for decades or centuries denied access to women, Jews, Asians, black people were told they could not discriminate, and had to admit others. They coped, were enriched at little or no cost to their own dignity, rights or traditions.

That is not to say the sentiment described above is not real, and deserving of discussion. Generations of feminists have advocated for women's rights including the right to have their own spaces. But is that really at risk from a proposal that simply allows those whose assigned gender is at odds with their own sense of self, a simple mechanism to align the two?

In discussing public policy, an important concept is "the counter-factual". There is nothing in law which currently prevents the predicted harm occurring. But as far as I am aware transgender women in the process of transition (who meet the criteria for changing their birth certificate gender) are not invading changing rooms, women's refuges and the like with their "full kit and caboodle" intact. *Thing is: trans women are women. No one would be trans w/ an ulterior motive. There are much easier ways to be a perv*

⁶ <https://twitter.com/SpeakUp4WomenNZ/status/1089982395430760448>

⁷ Rachel Stewart TERF a derogatory term to shut down debate

28 Nov, 2018 https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=12166957

Objectifying + discriminatory / hateful language - imagine sim. racial caricature

Maybe discuss how trans women are at high risk of domestic abuse etc. - women's issue

YOU CANT PREDICT ANYTHING ABOUT A PERSON BASED ON SEX, GENDER OR HORMONES - BIOLOGICAL CORRELATIONS ARE TOO SMALL
if possible read Cordelia Fine's Testosterone Rex or a summary about the fallacy of testosterone & aggression & ruling over all

Another thing I've thought about is how weird/arbitrary it is to exclude trans women from female feminist spaces on the basis of genitalia when women who might harm people are subject to no such scrutiny

And who, in these spaces, takes on the role of genital (or even birth certificate) inspection, as part of the entry criteria to these spaces?

There might be issues that the law reform presents, that we have yet to identify or confront. We might need to rethink some of our approaches to public spaces, but in doing so it will be important to differentiate between the basic human right of individuals to self identify, rather than have the state dictate and control how and who they present to the world, and behaviours that might intrude on the rights of others.

The discussion about ^{Transgender} conduct and respectful use of such spaces, in which people of all genders and sensibilities have different expectations and vulnerabilities need not depend on use by transgendered people alone. In my gym I see men whose sense of modesty (presumably) precludes them from nudity in the presence of other men. I have known straight women who don't like sharing such spaces with lesbians. These are challenges of design, etiquette, and conduct. Those are the responsibility of the owners of those spaces in discussion with their members.

Anyone suggesting (as implied in the column above) that strict adherence to biological gender rules should govern prison placement, in order to maintain inmates sense of safety and security has not met a vulnerable young man on his first lag, or an inmate who (like many) has experienced abuse and violence on the outside, let alone a transgender woman incarcerated with men.

And what would the genital determinists advice a trans man to do? He has known since childhood that his biology does not match his sense of identity. At puberty he actively suppresses outward signs of femininity, and presents to the world as male. As an adult he looks, and presents an identity conforming to his subjective experience. Those opposing this law reform would have him use only the women's facilities, but as he enters, those same women would presumably shriek in horror and demand the exclusion of someone "apparently male" in "their" space.

IT'S TRUE!! men are sometimes weird about it too

When the anti-reform lobby group's mail drop was reported in the press last week, one trans person close to me messaged saying "This makes me feel afraid and invalidated".

→ trans rights
Trans-rights are human rights. If you want to call this identity politics in extremis, go ahead, I'd prefer to call it dignity politics.

→ you can specify



Voda NZ

4:40 PM

14%

Hi Toby - I've got 2300 words on trans rights to self identify - would you be interested in putting it on the Spinoff?

11/02/19, 6:17 PM ✓



yep, ping it over!

11/02/19, 8:44 PM

Hi from Viking filled Dannevirke- what do you reckon about the article? Got some edits?

12/02/19, 10:37 AM ✓

thanks yes it landed - looking forward to reading! Big Dannevirke fan: gateway to Herbertville

12/02/19, 10:55 AM



Sharyn Leonard

From: John Edwards
Sent: Monday, 11 February 2019 6:24 PM
To: Charles Mabbett
Subject: Trans Rights Article
Attachments: GenderIdentity2.docx

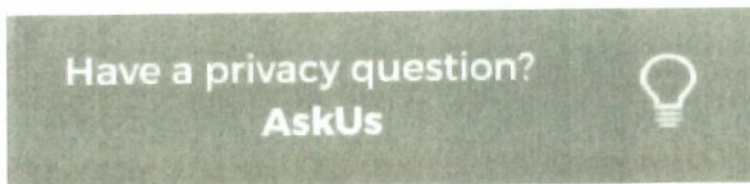
Charles – Here's the piece – I've messaged Toby to see if he's interested but haven't given him the text yet. I'll let you know what he says.



Cheers

John Edwards

Privacy Commissioner

Office of the Privacy Commissioner Te Mana Matapono Matatapu
PO Box 10094, The Terrace, Wellington 6143
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Identity, politics, identity politics and dignity

Should trans gender people have the right to change official documents to record their sense of identity? This question is attaining increasing prominence, and some of the discussion is getting ugly and hateful in the same way as we've seen when rectifying historic wrongs in previous generations.

The term "identity politics" has come to be a slur, a shorthand encapsulating what is seen as the natural conclusion of another lazy and imprecise term, the much maligned 'political correctness'. In that context, identity politics is seen as a symptom of the decline of an increasingly fractured left, obsessed with smaller and smaller subgroupings of society, defined by some characteristic of race, gender, sexuality, disability or similar.

But that is only one side of what has become to be known as identity politics. Francis Fukuyama, in his 2018 book "Identity – Contemporary Identity Politics and the Struggle for Recognition" finds in the epithet also an explanation for the wave of right wing Nationalism sweeping the world, from Hungary to Brazil, from the 2016 Brexit vote to the US presidential election of the same year.

The link is dignity, and the perception of the overlooked and disenfranchised, who, whether left or right, feel that their sense of identity is threatened. The cover of Fukuyama's book is titled as above, but the title page records a second and more revealing subtitle "The Demand For Dignity and the Politics of Resentment". Thus the aspirations of marginalised gender or ethnic groupings are placed on equal footing with the overlooked and taken for granted Rust Belt Trump voters whose communities have been impoverished by economic decline, and ravaged by pain pills. Behind each is a cry for recognition and an equality of opportunity.

What I admired about Fukuyama's analysis is his linking of identity and dignity and his deep dive into the nature, origins and functions of both.

Dignity is a concept central to a human rights based approach to organising society. The inherent dignity of the individual is the fundamental concept underpinning international instruments such as the Universal Declaration of Human Rights, and a number of constitutional instruments which underpin western liberal democracies.

Fukuyama cites Germany, Italy, Ireland, Japan, Israel and South Africa whose foundational constitutional documents include some variation on the injunction that "The dignity of man is inviolable. To respect and protect it shall be the duty of all public authority"¹

Understanding the concept of dignity is not just an academic or philosophical pursuit for those of us practising in one corner or other of the human rights field. Dignity is a core concept of the Privacy Act. One of the losses that an individual can claim as evidence that an action constitutes an "interference with privacy" is "significant loss of dignity"².

If an individual cannot produce receipts or accounts showing the economic loss a privacy breach has caused, or some evidence of the mental injury, or a compelling narration of the subjective experience of humiliation, distress or injury to feelings, we might still be able to recognise their experience as one involving an affront to, or an assault on their dignity.

¹ Ibid p.51

² Privacy Act 1993

An attack on dignity is the diminution of an elemental human value, capable of being assessed objectively by any reasonable observer. It may present in a variety of forms, but will inevitably represent a diminution or denial of the autonomy of the individual, of their essential humanity.

For example we had one case when a complaint was made on behalf of a severely disabled child being filmed in a state of distress. The child could not give any account of their experience of humiliation, hurt feelings, or distress at the collection or subsequent use of that information, but we were able to make an objective assessment of the extent to which those actions offended the child's dignity.

But recognising indignity when we see it, and providing those illustrative examples is not the same as offering a definition of dignity. Dictionaries can help. My New Shorter Oxford offers:

"1. The quality of being worthy or honorable; True worth, excellence. 2. Honorable or high estate, degree of estimation, rank.

The second offering suggests dignity is something earned and accompanied by societal elevation, an outmoded concept eclipsed by the acceptance of universality of human rights which began with the Enlightenment, gathered pace with the abolition of slavery and the acceptance of the universal franchise, and became the cornerstone for the legitimacy of liberal democracies and international law after the excesses of the Second World War. Every human has worth, is worthy, and has inherent, not granted, dignity.

Fukuyama takes us further back through western philosophical thinking to the Greek concept of *Thymos*. Documented by Homer and Plato, *Thymos* denotes emotions, desire or an essential urge. It is described as a spiritual longing for recognition "*Thymos is that part of the soul that craves recognition of dignity*"³.

Identity politics is a term that has been used to minimise the struggle for equal recognition of marginalised groups, and at the same time is at the core of the backlash against those groups. It can manifest as an *ad hominem* denial of argument ("as a straight white man, you can't say that") or in ultra-nationalism and white supremacy as groups demand that their identity is recognised as the one deserving, entitled and under threat.

Perhaps the term actually not that useful in the discussion of how society meets its obligation to respect and protect the dignity of all its members?

The recognition of trans rights, which some might see as the "front-line" of identity politics certainly engages identity, politics and dignity. There are signs that resentment, ignorance and fear might rise to eclipse the fundamental decency on which we tell ourselves we base our society, or that we at least aspire to.

The New Zealand Human Rights Commission was one of the first human rights institutions in the world to inquire into trans people's experience with health care access, everyday interactions and community participation culminating in a 112 page report entitled *To Be Who I Am*, in 2008⁴.

The first sentence, in the forward of that report is:

³ Ibid preface xiii

⁴ Human Rights Commission *To Be Who I Am* 2008 <https://www.hrc.co.nz/our-work/sexual-orientation-and-gender-identity/inquiry-discrimination-experienced-transgender-people/>

'Trans people strive to live lives of dignity in communities throughout New Zealand'

There's that word again. And another familiar word, also within the opening lines of the report:

"Trans people came to the inquiry seeking no special treatment but simply the **recognition** of the rights that other New Zealanders take for granted"

The report made a number of recommendations, including:

Simplification of the requirements for change of sex on a birth certificate, a passport and other official documents to better align them with the Human Rights Act

The Births Deaths Marriages and Relationships Registration Act 1995⁵ made provision for trans people to change the sex recorded on their birth certificate. It was progressive at the time, but required a considerable administrative burden to achieve. An applicant has to obtain a declaration from the Family Court, and present expert medical evidence showing that they have undertaken medical treatment "to enable persons of the genetic and physical conformation of the applicant at birth to acquire a physical conformation that accords with the gender identity of a person of the nominated sex".

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Making such a change in its report back means that there was no opportunity for the public to submit on the proposal, and this has angered some commentators who have made their views known in letters to the editor, opinion pieces, and even mail drops and poster campaigns⁶.

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An organisation called Speak Up For Women has set itself the task of opposing the reform, demanding further consultation and analysis of the potential effects of self identification on data gathering and discrimination against women.

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Under the proposed new law, a man can call himself a woman without ever medically transitioning (most never do) and insert himself in female-only spaces such as changing rooms, women's refuges, and prisons. Women would have absolutely no legal recourse to challenge such a move.

I don't know about you, but I wouldn't want to be locked up alone in a cell all night with a hairy, muscly, sex-starved inmate of either gender – but particularly one with his full kit and caboodle intact.

Neither would I want my six-year-old niece to see a grown male stranger naked in the changing rooms at her local swimming centre. Why shouldn't she be able to have a male-free space? And me too?⁷

Setting aside the crude caricature (can you imagine an ethnic group being described with terms referring to stereotyped physical characteristics of 'hairy and muscly', not to mention the assumption of 'sex-starved'?), and the assumption of equal access to medical services to assist transition, how real are these fears?

Are men really going to complete and file a statutory declaration to change their declared gender on official documents just so they can sit in a woman's changing room with their genitals on display? Really? I'm informed there are "much easier ways to be a perv."

The extension of the franchise to women in 1893, the decriminalisation of homosexuality in 1986, allowing first civil unions, and then full marriage rights to gay people were all measures accompanied by predictions of societal moral dissipation and turpitude. Those fears have not been realised.

Clubs and services that for decades or centuries denied access to women, Jews, Asians, Black people were told they could not discriminate, and had to admit others. Few would argue for a return to their right to exclude, based on their "traditions".

That is not to say the sentiment described above is not real, and deserving of discussion. Generations of feminists have advocated for womens' rights including the right to have their own spaces. But is that really at risk from a proposal that simply allows those whose assigned gender is at odds with their own sense of self, a simple mechanism to align the two? Trans women are women.

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28 Nov, 2018 https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=12166957

gender) are not invading changing rooms, womens' refuges and the like with their "full kit and caboodle" intact.

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Anyone suggesting (as implied in the column above) that strict adherence to biological gender rules should govern prison placement, in order to maintain inmates sense of safety and security has not met a vulnerable young man on his first lag, or an inmate who (like many) has experienced abuse and violence on the outside, let alone a trans woman incarcerated with men.

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When the anti-reform lobby group's mail drop was reported in the press last week, my trans son messaged saying "This makes me feel afraid and invalidated".

Trans-rights are human rights. If you want to call this identity politics in extremis, go ahead, I'd prefer to call it dignity politics.

Sharyn Leonard

From: Charles Mabbett
Sent: Tuesday, 12 February 2019 8:41 AM
To: John Edwards
Subject: RE: Trans Rights Article

Ok. Thanks. I'll wait until you hear back from Toby before I email Pamela.

Charles

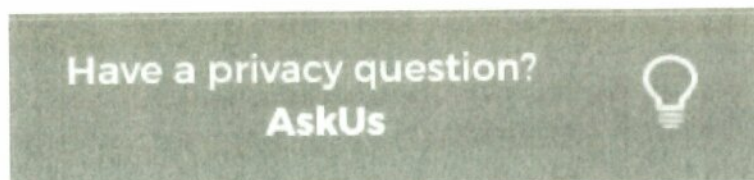
From: John Edwards
Sent: Monday, 11 February 2019 6:24 PM
To: Charles Mabbett <Charles.Mabbett@privacy.org.nz>
Subject: Trans Rights Article



Charles – Here's the piece – I've messaged Toby to see if he's interested but haven't given him the text yet. I'll let you know what he says.

Cheers

John Edwards
Privacy Commissioner

Office of the Privacy Commissioner Te Mana Matapono Matatapu
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E john.edwards@privacy.org.nz
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Sharyn Leonard

From: Charles Mabbett
Sent: Tuesday, 12 February 2019 2:26 PM
To: 'Stirling, Pamela'
Subject: RE: Privacy Commissioner

Thanks Pamela. I'll forward your email to him and let him know that.

Charles

From: Stirling, Pamela <PStirling@bauermedia.co.nz>
Sent: Tuesday, 12 February 2019 2:24 PM
To: Charles Mabbett <Charles.Mabbett@privacy.org.nz>
Subject: RE: Privacy Commissioner

Oh damn, we were thinking of doing a profile of John.
Never mind.
Thanks for letting us know.
Pamela

From: Charles Mabbett [<mailto:Charles.Mabbett@privacy.org.nz>]
Sent: Tuesday, 12 February 2019 11:29 a.m.
To: Stirling, Pamela
Subject: RE: Privacy Commissioner

Hi Pamela,

I'm sorry to mess you about. John Edwards has finished his 2000 word commentary on gender identity but he's made the call to send it to The Spinoff.

I apologise for this. I hope and trust The Listener continues to succeed. We certainly have it in our home.

Best wishes,

Charles

From: Stirling, Pamela <PStirling@bauermedia.co.nz>
Sent: Thursday, 31 January 2019 2:47 PM
To: Charles Mabbett <Charles.Mabbett@privacy.org.nz>
Subject: RE: Privacy Commissioner

Hi Charles
Great to hear from you. And, yes, we're definitely interested in John's piece.
Am racing now but let's catch up sometime you're in Auckland or I'm in Wellington.
Pip pip
Pamela

Pamela Stirling
Editor
New Zealand Listener
Bauer Media Group (NZ) LP

TEL (09) 308 2703 MOB (021) 479 853

From: Charles Mabbett [<mailto:Charles.Mabbett@privacy.org.nz>]
Sent: Thursday, 31 January 2019 2:21 p.m.
To: Stirling, Pamela
Subject: Privacy Commissioner

Dear Pamela,

It's been some years since I've been in contact! I'm now at the Office of the Privacy Commissioner working for John Edwards. He's been working on a piece about gender identity and privacy. It's not finished yet but we are exploring having it published.

When it is finished, would you be interested in having a look at it? I haven't seen it myself. John is actually penning it because it is an issue he cares strongly about. He tells me it covers gender identity as a human right, identity politics and transgender rights, and the new Bill (the Human Rights Gender Identity Amendment Bill).

It would be great to get your feedback on it and whether it would be something that the Listener would be interested in publishing.



All the best,

Charles

Charles Mabbett
Senior Communications Adviser

Office of the Privacy Commissioner Te Mana Matapono Matatapu
PO Box 10094, The Terrace, Wellington 6143
Level 8, 109 Featherston Street, Wellington, New Zealand
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Sharyn Leonard

From: Charles Mabbett
Sent: Tuesday, 12 February 2019 2:27 PM
To: John Edwards
Subject: FW: Privacy Commissioner

FYI.

From: Stirling, Pamela <PStirling@bauermedia.co.nz>
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Sharyn Leonard

From: John Edwards
Sent: Thursday, 14 February 2019 4:50 PM
To: Charles Mabbett
Cc: Annabel Fordham
Subject: RE: Trans Rights Article

Nice one thanks. Next week is good. Let me know when the edits come through.

From: Charles Mabbett
Sent: Thursday, 14 February 2019 2:15 PM
To: John Edwards <John.Edwards@privacy.org.nz>
Cc: Annabel Fordham <Annabel.Fordham@privacy.org.nz>
Subject: FW: Trans Rights Article

Toby likes it (see below). I've asked him to send through an edited version for you to check before publication.

Charles

From: Toby Manhire <toby@thespinoff.co.nz>
Sent: Thursday, 14 February 2019 12:37 PM
To: Charles Mabbett <Charles.Mabbett@privacy.org.nz>
Subject: Re: Trans Rights Article

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Sharyn Leonard

From: Charles Mabbett
Sent: Tuesday, 19 February 2019 8:45 AM
To: John Edwards
Subject: FW: Trans Rights Article
Attachments: gender-id-edwards-v2.docx

This came in late yesterday from Toby.

Charles

From: Toby Manhire <toby@thespinoff.co.nz>
Sent: Monday, 18 February 2019 5:32 PM
To: Charles Mabbett <Charles.Mabbett@privacy.org.nz>
Subject: Re: Trans Rights Article

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Identity, politics, identity politics and dignity

Should trans gender people have the right to change official documents to record their sense of identity? This question is attaining increasing prominence, following the recommendation by a parliamentary committee that a statutory declaration will suffice should someone wish to change their recorded sex on their birth certificate.

The debate, which is not confined to New Zealand, has seen some of the discussion get ugly, at worst offering a chilling echo of responses to previous generations' efforts to rectify historic wrongs. For some critics, the battle for trans people's right to self-identify is the diabolical offshoot of what is seen as an ill cultural wind: identity politics.

*

What is "identity politics"? The term has come to be a slur, a shorthand encapsulating what is seen as the natural conclusion of another lazy and imprecise term, the much maligned 'political correctness'. Identity politics is caricatured as a symptom of the decline of an increasingly fractured left, obsessed with smaller and smaller subgroupings of society, defined by some characteristic of race, gender, sexuality, disability or similar.

But that is only one side of what has become to be known as identity politics. Francis Fukuyama, in his 2018 book "Identity – Contemporary Identity Politics and the Struggle for Recognition" finds in the epithet also an explanation for the wave of right wing Nationalism sweeping the world, from Hungary to Brazil, from the 2016 Brexit vote to the US presidential election of the same year.

The link is dignity, and the perception of the overlooked and disenfranchised, who, whether left or right, feel that their sense of identity is threatened. The subtitle to Fukuyama's book is even more revealing: "The Demand For Dignity and the Politics of Resentment'. The aspirations of marginalised gender or ethnic groupings have something in common with the overlooked and taken for granted Rust Belt Trump voters whose communities have been impoverished by economic decline, and ravaged by pain pills. Behind each is a cry for recognition and an equality of opportunity.

Dignity is a concept central to a human rights based approach to organising society. The inherent dignity of the individual is the fundamental concept underpinning international instruments such as the Universal Declaration of Human Rights, and a number of constitutional instruments which underpin western liberal democracies.

Understanding the concept of dignity is not just an academic or philosophical pursuit for those of us practising in one corner or other of the human rights field. Dignity is a core concept of the Privacy Act. One of the losses that an individual can claim as evidence that an action constitutes an “interference with privacy” is “significant loss of dignity”¹.

An attack on dignity is the diminution of an elemental human value, capable of being assessed objectively by any reasonable observer. It may present in a variety of forms, but will inevitably represent a diminution or denial of the autonomy of the individual, of their essential humanity.

The recognition of trans rights, which some might see as the “front-line” of identity politics certainly engages identity, politics and dignity. There are signs that resentment, ignorance and fear might rise to eclipse the fundamental decency on which we tell ourselves we base our society, or that we at least aspire to.

The New Zealand Human Rights Commission was one of the first human rights institutions in the world to inquire into trans people’s experience with health care access, everyday interactions and community participation culminating in a 112 page report entitled *To Be Who I Am*, in 2008².

The first sentence, in the forward of that report is:

‘Trans people strive to live lives of dignity in communities throughout New Zealand’

There’s that word again. And another familiar word, also within the opening lines of the report:

“Trans people came to the inquiry seeking no special treatment but simply the **recognition** of the rights that other New Zealanders take for granted”

The report made a number of recommendations, including:

Simplification of the requirements for change of sex on a birth certificate, a passport and other official documents to better align them with the Human Rights Act

The Births Deaths Marriages and Relationships Registration Act 1995³ made provision for trans people to change the sex recorded on their birth certificate. It was progressive at the

¹ Privacy Act 1993

² Human Rights Commission *To Be Who I Am* 2008 <https://www.hrc.co.nz/our-work/sexual-orientation-and-gender-identity/inquiry-discrimination-experienced-transgender-people/>

³ 1995 No.16 s.28

time, but required a considerable administrative burden to achieve. An applicant has to obtain a declaration from the Family Court, and present expert medical evidence showing that they have undertaken medical treatment “to enable persons of the genetic and physical conformation of the applicant at birth to acquire a physical conformation that accords with the gender identity of a person of the nominated sex”.

A Births Deaths Marriages and Relationships Registration Bill to update the Act was introduced in August 2017. The introduction version maintained the 1995 procedure for effecting change of sex on birth certificates.

After hearing submissions the Government Administration Committee reported back to the House text which dropped the 1995 procedure in favour of a much simpler “self identification by statutory declaration” procedure. This measure would bring New Zealand into line with international human rights standards, noted the Human Rights Commission.

The select committee’s change in its report back meant there was no opportunity for the public to submit on the proposal, and this has angered some commentators who have made their views known in letters to the editor, opinion pieces, and even mail drops and poster campaigns⁴.

An organisation called Speak Up For Women has set itself the task of opposing the reform, demanding further consultation and analysis of the potential effects of self identification on data gathering and discrimination against women.

A columnist has summarised what seems to be the core objection, that the measure will allow men to intrude into their spaces;

Under the proposed new law, a man can call himself a woman without ever medically transitioning (most never do) and insert himself in female-only spaces such as changing rooms, women's refuges, and prisons. Women would have absolutely no legal recourse to challenge such a move.

I don't know about you, but I wouldn't want to be locked up alone in a cell all night with a hairy, muscly, sex-starved inmate of either gender – but particularly one with his full kit and caboodle intact.

Neither would I want my six-year-old niece to see a grown male stranger naked in the changing rooms at her local swimming centre. Why shouldn't she be able to have a male-free space? And me too?⁵

⁴ <https://twitter.com/SpeakUp4WomenNZ/status/1089982395430760448>

⁵ Rachel Stewart TERF a derogatory term to shut down debate

Setting aside the crude caricature, and the assumption of equal access to medical services to assist transition, how real are these fears?

Are men really going to complete and file a statutory declaration to change their declared gender on official documents just so they can sit in a woman's changing room with their genitals on display? Really? I'm informed there are "much easier ways to be a perv."

The extension of the franchise to women in 1893, the decriminalisation of homosexuality in 1986, allowing first civil unions, and then full marriage rights to gay people were all measures accompanied by predictions of societal moral dissipation and turpitude. Those fears have not been realised.

That is not to say the sentiment described above is not real, and deserving of discussion. Generations of feminists have advocated for women's rights including the right to have their own spaces. But is that really at risk from a proposal that simply allows those whose assigned gender is at odds with their own sense of self, a simple mechanism to align the two? Trans women are women.

In discussing public policy, an important concept is "the counter-factual". There is nothing in law which currently prevents the predicted harm occurring. But as far as I am aware trans women in the process of transition (who meet the criteria for changing their birth certificate gender) are not invading changing rooms, women's refuges and the like with their "full kit and caboodle" intact.

And who, in these spaces, takes on the role of genital (or even birth certificate) inspection, as part of the entry criteria to these spaces?

There might be issues that the law reform presents, that we have yet to identify or confront. We might need to rethink some of our approaches to public spaces, but in doing so it will be important to differentiate between the basic human right of individuals to self identify, rather than have the state dictate and control how and who they present to the world, and behaviours that might intrude on the rights of others.

The discussion about conduct and respectful use of such spaces, in which people of all genders and sensibilities have different expectations and vulnerabilities need not depend on use by trans people alone. In my gym I see men whose sense of modesty (presumably) precludes them from nudity in the presence of other men. I have known straight women who don't like sharing such spaces with lesbians. These are challenges of design, etiquette, and

conduct. Those are the responsibility of the owners of those spaces in discussion with their members.

Any suggestion that strict adherence to biological gender rules should govern prison placement, in order to maintain inmates sense of safety and security has not met a vulnerable young man on his first lag, or an inmate who (like many) has experienced abuse and violence on the outside, let alone a trans woman incarcerated with men.

And what would the genital determinists advice a trans man to do? He has known since childhood that his biology does not match his sense of identity. At puberty he actively suppresses outward signs of femininity, and presents to the world as male. As an adult he looks, and presents an identity conforming to his subjective experience. Would those opposing this law reform would have him use only the women's facilities?

When the anti-reform lobby group's mail drop was reported earlier this month, my trans son messaged saying, "This makes me feel afraid and invalidated."

Trans-rights are human rights. If you want to call this identity politics in extremis, go ahead, I'd prefer to call it dignity politics.

Sharyn Leonard

From: Charles Mabbett
Sent: Tuesday, 19 February 2019 8:43 AM
To: John Edwards
Subject: RE: Trans article

Ok. Will do.

-----Original Message-----

From: John Edwards
Sent: Tuesday, 19 February 2019 6:49 AM
To: Charles Mabbett <Charles.Mabbett@privacy.org.nz>
Subject: Trans article

Charles - can you please start having a go at an edit of my article in case The Spinoff drags its heels much longer?

Thanks

JE

Sharyn Leonard

From: Charles Mabbett
Sent: Tuesday, 19 February 2019 8:48 AM
To: 'Toby Manhire'
Subject: RE: Trans Rights Article

Thanks Toby. I've sent it on to John. He's in Timaru making speeches today but I'm sure he'll find the time.

Charles

From: Toby Manhire <toby@thespinoff.co.nz>
Sent: Monday, 18 February 2019 5:32 PM
To: Charles Mabbett <Charles.Mabbett@privacy.org.nz>
Subject: Re: Trans Rights Article

Hi Charles - here's an edit for you and John to have a look at - have trimmed out a bit, and attempted to flesh out the opening pars a little bit, though you'll probably want to have a play around with that. Just needs a bit more setup there I think before diving into the identity politics part.

Would also ask that you think about whether you want to explicitly refer to the groups and individuals rebutting - entirely up to you, but it will inevitably be seen as a red rag.

cheers

Toby

On Thu, Feb 14, 2019 at 2:10 PM Charles Mabbett <Charles.Mabbett@privacy.org.nz> wrote:

Brilliant. Thanks. I'll let John know. Feel free to make those edits. Probably good for John to see it after that's been done. Just send me the edited version and I'll run it past him. He isn't generally precious about his writing - and if you can improve it, it can only be a good thing.

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From: Toby Manhire <toby@thespinoff.co.nz>
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To: Charles Mabbett <Charles.Mabbett@privacy.org.nz>
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Sharyn Leonard

From: Charles Mabbett
Sent: Tuesday, 19 February 2019 9:34 AM
To: 'Toby Manhire'
Subject: RE: Trans Rights Article

Nice job! Especially where you've tightened up the first half of the original to get to the nub of the piece sooner.

I'm waiting to hear back from John but he'll be a bit pressed this morning so hopefully he'll be able to respond early avo.

Charles

From: Toby Manhire <toby@thespinoff.co.nz>
Sent: Monday, 18 February 2019 5:32 PM
To: Charles Mabbett <Charles.Mabbett@privacy.org.nz>
Subject: Re: Trans Rights Article

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Sharyn Leonard

From: John Edwards
Sent: Wednesday, 20 February 2019 9:50 AM
To: toby@thespinoff.co.nz
Cc: Charles Mabbett
Subject: Trans Article

Thanks Toby – I'm happy with your edits. My only reservation about naming the group is that it gives them exposure and oxygen. For "Speak Up For Women" you could substitute 'one small but vocal lobby group' or similar? As for Rachel Stewart, I think quoting from the article (which I think is important) effectively identifies her, so I'd prefer to leave that in. You might note in a footnote that the media council has upheld a complaint against that column (although not the quoted part) <http://www.mediacouncil.org.nz/rulings/eddie-clark-against-new-zealand-herald>

You might want to link to the original column in the footnote?
https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=12166957

On reflection I think the last par misuses the term *in extremis*. You might substitute that for "gone mad".

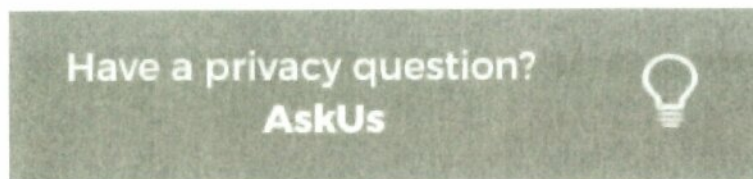
In the third to last paragraph there is an "advice" that should be "advise" (And what would the genital determinists advice a trans man to do?)



Feel free to come up with a snappier title. Maybe we should put Trans Rights up there? How about "Transgender Self Identification - it's a human right."

Let me know when you post, and thanks again for taking it on.

John Edwards
Privacy Commissioner

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From: Annabel Fordham
Sent: Friday, 22 February 2019 12:03 PM
To: PRIVACY <PRIVACY@privacy.org.nz>
Subject: Pointers - Spinoff article

Hi All,

In case it is helpful, I've noted below some general pointers about the recent Spinoff article John wrote on transgender identity. (Thanks to Sam for compiling these.)

There is currently some lively discussion – both positive and negative – on social media. This is nothing to be alarmed about and will die down in a short while. We have also received some OIA requests. Again, that is business as usual.

Please refer queries / emails from journalists or others callers to Charles or Sam.

Some pointers to bear in mind:



- The Privacy Commissioner wrote this opinion piece to comment on a current issue that has human rights and privacy elements.
- The Commissioner and his Office have written many similar pieces over the years, covering a variety of topics.
- Some comments have challenged the idea that this issue is related to privacy. The Privacy Act gives people control over personal information that identifies them – this includes information about sex and gender identity. Agencies must do their best to make sure the information they hold about a person is accurate. People also have a right to ask the agency to correct information it holds about them. There articles on our website have more information about sexuality, gender identity and privacy:
 - [Can an agency collect information about my sexuality or gender identity?](#)
 - [What can an agency do with information about my sexuality or gender identity?](#)
 - [What can I do if an agency has incorrect information about my gender identity?](#)
 - [Can I change my gender information on official documents?](#)
- The Commissioner does not plan on releasing further commentary at this time.
- Contact details for the Communications team:
 - Email media@privacy.org.nz
 - Phone 021 509 735

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