Twitter Thread by Tim O'Connor

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Since it is a lovely peaceful Saturday morning, I clearly have to rectify that. Therefore: the World Rugby Transgender Policy and Nye Bevan.

Thread.

This is the WR policy, and explanation by Ross Tucker, who was part of the Working Group. I presented to the Workshop in February on liability, but wasn't part of the Working Group itself. It's worth reading this before going further. https://t.co/8JFNztvC9V

> The World Rugby Transgender guideline is now out, and fully available here: https://t.co/RUZ7QrlodQ You\u2019ll also find a document called FAQs which tries to answer some common questions. We firmly believe it is the right thing in an emotive issue, for many reasons.
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> — Ross Tucker (@Scienceofsport) October 9, 2020

And this is the statue of Nye Bevan in Cardiff. Anyone who goes to matches in Cardiff knows it. It's right by the Castle; more importantly, it's right by the Rummer. Please God, we'll get back to see it on a match day soon.

However, what I'm talking about here isn't his comment that he learnt everything he needed to know about politics by dealing with rugby committees, but the one that made the title of the last decent Manic Street Preachers album:

"This is my truth, tell me yours."

What has struck me in the debate/flame-war over the proposed policy is that a large part of this is conflicting truths.

I know that sounds impossible. The truth is the truth is the truth, right? There can only be one truth, not truths, right?

Wrong. Here's why.

It is something lawyers in practice get to see from the off that two people can swear to tell the truth, the whole truth, and nothing but the truth, and clearly be absolutely telling the truth, but give very different accounts. Both are telling the truth, but *their* truth.

That's the first truth. Subjective truth, the truth as you see it, as you live it.

"Lived experience" is this form of truth. It is your individual truth. It is entirely true for you because it is your experience of what happened.

The problem with this is that there is no hierarchy of subjective truths. Each is entirely true for that person. If lived experiences clash, then you have two differing truths. The problem is, sometimes you have to prefer a truth to come to a decision or policy.

It is, I would suggest, a weakness in putting "lived experience" as central in policy-making that it cannot provide a basis for making policy when it cannot provide a means for preferring one over the other.

Two such means are other truths: legal and scientific.

Scientific truth is - and this is the view of a non-scientist - best described as "objective truth", not in the sense that it *is* necessarily objectively true but that it prioritises objective measurements and data. A thing is true (or at least, non-falsifiable) if data exists.

To decide what is or is not so for the purposes of scientific truth, you need data and to extrapolate from data. Sometime the data is limited, but it is what it is and is there in the open to be critiqued within the framework of the scientific process.

Subjective and objective truth don't really get on very well in the human condition. That your lived truth is just anecdote or an outlier in terms of data measurement and science doesn't mean your lived truth isn't true for you; but lived truth doesn't displace the data, either.

Then you get legal truth, or, at least, the manner in which law prefers accounts or decides what it will treat as true.

In the Common Law world, the key word here is "reasonable". Decisions must be reasonable; "beyond reasonable doubt"; "reasonably foreseeable".

Thus, a judge deciding a civil claim such as a PI action will look at two people giving their account of their lived truth and will decide which is more likely that not and ascribe liability if the the law says it is reasonable to do so.

It's not that one is entirely true or not, in terms of objective truth or that one person is not telling their subjective truth; indeed, judges frequently state that everyone is doing their best to tell the truth. It's about what's more likely that not and then what's reasonable.

Policy-making in a framework of potential liability has to take account of what the law says. It is, I am afraid, inescapable, especially in a collision sport which exists within the implied consent to battery and only so long as it can remain insurable at reasonable cost.

Thus, a policy set in accordance with legal requirements need not be absolutely in accordance with data to be reasonable; and it is, inevitably, not going to accord with everyone's lived truth because lived truths always clash. Like Nye Fawr said: this is my truth, tell me yours.

I would note, however, that if you think insurers are going to prioritise subjective lived truth over actuarial tables and avoiding liability, then all I can say is you've never seen a claims manager's response to plaintiff medical reports. Let's just say they tend to scepticism.

Thus, the driver of policy is probably going to be the legal truth: what is reasonable in terms of the evidence available.

It does have the advantage that lawyers are used to being blamed. For centuries, we have been the Millwall of professions: nobody likes us, we don't care.

In truth, I feel a driver of what will happen in practice is insurance costs. Insurers will price for anything. That doesn't mean the price will be affordable. If they feel they don't want to insure a given risk, it'll be priced out pretty rapidly. We will see what happens there.

However, a policy must still be set, once you become aware of data and risks, and it must be reasonable.

As noted, going by "reasonable" doesn't mean people will be happy. When a subjective truth isn't preferred, people feel hurt. There is no way around that to make policy.

I would, however, note that while Nye made no mean fist of invective himself, he didn't say: "This is my truth, yours is wrong."

It was: "This is my truth, tell me yours."

Whether you agree or not with the outcome, the policy-making process by World Rugby was an exercise in trying to hear those different truths. That's to be commended. Not getting the outcome you wanted doesn't mean the process was wrong or rigged, any more that a court is.

And it is fair to note that if you want to persuade people of your truth, you need to understand it may not be the only one Likening African-Canadian chairs to the KKK isn't going to do that. Invective may proclaim your truth louder but won't engage with the other truths.

As with Nye himself - the manic street preacher - "This is my truth, tell me yours" does mean you might occasionally have to listen to that other truth. Even lawyers might have to, come to that.