

# What the Bathroom Wars Really Mean

It's understandable that some people are impatient, even disgusted, with all the fuss about which public bathrooms transgendered people get to use. Such feelings arise in part from the natural assumption that it shouldn't be anybody's business what people look like in the privacy of the stall.

At least as understandable, however, is the fear of many women and girls about sharing bathrooms with people born male, but who have, or pretend to have, "transitioned" to being female.

And yet it's unlikely that the controversy will be settled either way by emotional appeals, as it's getting rooted in a philosophically more fundamental question whose answer carries broad political implications.

Let's put the question as starkly as possible: Is the dignity of the human person such that we must accept how people choose to define themselves, or is the human person delimited by some fixed "givens" that cannot be ignored and that we can at most pretend to change?

Even raising the first question once seemed absurd to many. "*Of course not,*" they would say. "We are human, not pure spirit. We don't just happen to have bodies; we *are* bodies (whatever else our being might also include, such as souls). Our bodies are male or female. We were born that way and cannot change it, just as with many other inherited capacities and limitations."

If that's how you think, then transgenderism will seem absurd to you: it turns a mere psychological disorder into a premise of personal identity. From that point of view, there can be no such thing as special "rights" for transgendered people that morally require women to share bathrooms with them.

But it's hardly news that many no longer think that way. And there are philosophical antecedents for that change.

For example, decades before same-sex marriage and transgenderism were social issues, the existentialist philosopher Jean-Paul Sartre justified them in "[Existentialism is a Humanism](#)" (1946):

*"Atheistic existentialism, of which I am a representative, declares with greater consistency that if God does not exist there is at least one being whose existence comes before its essence, a being which exists before it can be defined by any conception of it. ... What do we mean by saying that existence precedes essence? We mean that man first of all exists, encounters himself, surges up in the world – and defines himself afterwards. If man as the existentialist sees him is not definable, it is because to begin with he is nothing. He will not be anything until later, and then he will be what he makes of himself. Thus, there is no human nature, because there is no God to have a conception of it. Man simply is. Not that he is simply what he conceives himself to be, but he is what he wills, and as he conceives himself after already existing – as he wills to be after that leap towards existence. Man is nothing else but that which he makes of himself."*

I first read that in college. Some of my classmates agreed with it. It remains influential, and it logically entails an affirmative answer to the first question I raised, i.e., should people be able to choose how to define themselves?

Such a conception of man is not limited to atheists like Sartre, either.

Consider the following well-known sentence from a major Supreme-Court decision: "At the heart of liberty is the right to define one's own concept of existence, of meaning, of the

universe, and of the mystery of human life.” That was written by Justice Anthony Kennedy for the majority decision in *Planned Parenthood of Southeast Texas v. Casey* (1992). It’s the root premise of his support for abortion rights in that case, and for same-sex marriage later in *Obergefell v. Hodges* (2015), for which he also wrote the majority opinion. Although the late Justice Antonin Scalia later referred to it derisively as “the sweet-mystery-of-life passage,” which “eats the rule of law,” it would be no exaggeration to say that, for many Americans, that sentence is the equivalent of a creed. It, too, logically entails an affirmative answer to the first question I raised.

Thus, Justice Kennedy is also [keen](#) on the concept of “dignity” as a reality essential to personhood. Although never clearly defined, such dignity includes and radically depends on his particular conception of liberty. And it is “dignity” so understood that is the premise for affirming and accommodating not only same-sex marriage, but also the “identity” that transgendered people have chosen for themselves.

So what happens to people who don’t agree with what I’ve called the new American creed? Most likely, they will be ostracized and punished with increasing frequency. It’s happening already to North Carolina, whose new bathroom law has caused socially-liberal companies and celebrities to boycott the state, and is eventually going to run afoul of the [Federal courts](#).

Of course the bathroom wars *needn’t* be about the metaphysics of personhood. But [that’s what the culture warriors agitating for change have turned it into.](#)

*Image: Brae Carnes/Instagram*