

The Problem of Binary Bathrooms: Making the Case for Gender Neutral Bathrooms

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Abstract

This essay is a narrative argument referencing 11 different journals and 1 periodical. It explains how the concept behind dividing bathrooms between men's and woman's bathrooms (binary) inevitably creates discrimination against transgender people. The term "trans people" and "transgender" are used interchangeably, unless the trans person specifically designated gender identity. Four sections are allocated to discussing the discrimination problem. Part I details the discrimination of forcing people to use bathrooms that present a danger to them and impact the quality of their life. Part II explores how anti-discrimination laws fail to protect trans people. Part III explains why the binary system bathroom system is harmful to everyone. Part IV proposes gender neutral bathrooms as a solution and addresses concerns about cost, safety, and privacy.

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Access to bathrooms is necessary to be able to function in public spaces. Not being able to use a bathroom or having a bathroom available nearby severely impacts how long you can stay in public and the quality of life experienced in public spaces. Now, imagine experiencing intense fear and anxiety every time you need to use the bathroom. Imagine trying to use the bathroom, but being told that you can't, because you don't belong. Imagine being relegated to a bathroom separate from everybody else, that may or may not be as accessible. Imagined being attacked either verbally or physically for trying to use the bathroom. This isn't an exercise of imagination. This is a daily reality for some people. In the case of a teenager for Missouri, this reality struck harshly. A *New York Times* article by Workman (2015) tells how a 17-year-old transgender girl, Lila Perry, was denied access to the girl's bathrooms and locker rooms. Over 100 fellow students walked out of school and for two hours protested her request to use the women's bathroom. Perry, fearing for her personal safety, hid in the guidance counselor's office.

Transgender does not simply mean a female transitioning into a male or a male transitioning into a female. According to Elkind (2007), the term encompasses a wide variety of psychological states that determine a person's gender identity. "According to most sexuality experts a person's gender identity is the private experience of a gender role and gender identity is the public expression" (Elkind, 2007, p.898). Perdue (2015) defines transgender as an "umbrella term for people whose gender identity or gender expression differ from those typically associated with their assigned sex at birth" (p. 46).

This essay explains how binary bathrooms inevitably create discrimination against transgender people. Four sections are allocated to discussing this problem. Part I details the discrimination of forcing people to use bathrooms that present a danger to them and impact the

quality of their life. Part II explores how anti-discrimination laws fail to protect trans people. Part III explains why the binary system bathroom system is harmful to everyone. Part IV proposes gender neutral bathrooms as a solution and addresses concerns about cost, safety, and privacy.

I. Discrimination

The lives of transgender people are fraught with harassment, discrimination, and danger. Public bathrooms provide no sanctuary for this group. According to a survey done by The San Francisco Human Rights Commission in 2002, “nearly 50% of transgender respondents reported harassment or assault in a public bathroom, not withstanding California’s transgender-inclusive legal protection.” (Levi & Redman, 2010, p.136). However, the prevalence of discrimination is not confined to San Francisco. The National Transgender Discrimination Survey found that “a notable proportion of transgender people who attended higher education weren’t allowed access to bathrooms and other public facilities (Seelman, 2014, p. 198). However, Seelman (2014) point out that this number only encompasses transgender people denied entry and estimates that the proportion of those who were allowed access but “faced questioning, harassment, and violence is likely even higher” (p. 198). Ingrey (2012) supports this in asserting that the “public washroom is a site of contention, danger, and potential violence for the gender nonconforming” (p. 799).

Avoidance of public bathrooms due to a valid fear is not merely an inconvenience. This directly lowers the quality of life for transgender people. Levi & Redman (2010) cite a 2005 report by the Transgender Law Center which stated that “Many Transgender people avoid public bathrooms altogether and can develop health problems as a result” (p. 136).

II. Law Limitations

It must be noted that transgendered people are protected from discrimination by law. The Supreme Court has interpreted the Fourteenth Amendment to the United States Constitution to

mean that all citizens must be provided equal treatment under law (Elkind, 2007). In addition, Title VII of the civil rights act of 1964 prohibits sex discrimination (Perdue, 2015). According to Coolhart & MacKnight (2015), the Equal Protection Clause Constitution Title IX of the Federal Education Acts of 1972 provides trans students the right to protection from harassment. However, in practice these laws often fail to be upheld and to protect trans individuals from discrimination. Interpretation of these laws favor the maintenance of social norms.

This is evident in one notable case, *Goins v West Publishing*. Julie Goins was told by her employer, West Publishing, that she could not use the woman's restroom and that she had to use the one corresponding to her biological gender (Levi & Redman, 2010). According to Levi & Redman (2010), Minnesota has a "prohibition against discrimination on the basis of having or being perceived having a self-image or identity not traditionally associated with with one's biological maleness or femaleness" (p. 148). Ms. Goins claimed that this was the exactly the type of discrimination prohibited by law by relegating her to a different bathroom and the Minnesota Court of Appeals agreed with her (Levi & Redman, 2010). However, the Minnesota Supreme Court disregarded this in favor of upholding "the traditional and accepted practice" of "restroom designation based on biological gender" (Levi & Redman, 2010, p.148). This means although transgendered individuals may be protected by laws, the interpretation by courts can negate these protections.

The title VII of the civil rights act of 1964 failed to protect trans individual from discrimination in another case. According to More (2008), in *Etsitty v Utah Transit Authority*, the court decided that Etsitty (a trans woman) was appropriately fired for using public women's restroom with intact male genitals, even though Etsitty could not afford a full sex change procedure. The court decided that Title VII only applies to a "common and traditional

interpretation” of sex (More, 2008, p. 307). The court decided that sex is strictly defined by genitals (More, 2008). The courts decision upheld discrimination by expecting a person to behave and act a certain way because of their genitals. This is another example of where the interpretation of law favors traditional concepts of normality over the rights of trans people.

III. Binary System

Bathroom division by biological sex represents a false dichotomy of presenting mutually exclusive gender choices. It “serves to to reinforce existing sex stereotypes and ideas of difference” and “on a daily basis people, including transgender people, who do not fit into clear gender boxes are pressured to conform to sex stereotypes.” (Archibald, 2014, p. 66).

These stereotypes serve as markers to help people with the impossible task of determining what sex organs a person has by looking at them. According to Ronner (2013), the inability to assign sex to a person is unsettling to many” (p. 861). This need to define others to satisfy personal comfort is evident by the reinforcing of sex division and stereotypes associated with them. The Transgender Law Center surveyed San Francisco in 2001 and found that “butch women and femme men are frequently subjected to the same types of harassment and discrimination as transgender people” (Levi & Redman, 2010, p. 166). “On a daily basis people must clearly show which sex they are, so that others know which bathroom the person belongs in” (Archibald, 2014, p. 66). According to Browne (2004), “individuals are challenged in toilet spaces and and their gender questioned”. Rather than an actual method to confirm biological sexual identity all entrants to bathrooms, its through the expression of stereotypical visual cues that allow an individual access to one bathroom or the other. According to Ingrey (2012) the doors of public washrooms (bathrooms) themselves are identification tests for gender identity. The images associated with bathroom signs support this. The universal women’s bathroom sign

generally includes a stick figure wearing a dress to represent a woman's bathroom and the image of a plain stick figure (presumably wearing pants and a shirt) represents the men's bathrooms. This implies a dress code. In this dress code lies the foundation for stereotypes about each gender.

The binary division is unnatural and according to Ingrey (2012), leaves no physical or conceptual space for people who don't fit stereotypical gender norms. The binary system is unnatural, because scholars such as "Julie Greenberg have pointed out that such a binary sex paradigm does not reflect reality, sex is a spectrum, and the brain may have a male or female brain predisposition (Ronner 2013, p.863-864). Stereotypes about each division of the binary system are particularly harmful to this wide array of people who don't fit in. Furthermore, these binary bathroom images are harmful in that they confuse male and female biological sex with gender. More (2015) in summary, supports this notion and further asserts that these images confirm harmful stereotypes about gender and biological sex.

IV. Gender Neutral Bathrooms

Gender Neutral Bathrooms, bathrooms that allow everyone, would solve discrimination and harm caused by binary bathrooms. Gender neutral bathrooms are an excellent way to preemptively ensure that everyone, including transgendered people, have access to a safe means of using the bathroom (Perdue, 2015).

One objection to the institution of these bathrooms is cost but, the cost of wouldn't necessarily be too great. In many cases there won't even be a need for renovation. Archibald (2014) suggest that stalls currently exist in both men's and women s restrooms for both sexes to use and that the only change necessary would be the installation of a more appropriate gender neutral bathroom sign. A picture of a seated toilet would serve well in this capacity. Purdue

(2015) states that such actions may prevent costly litigation for all involved, when the the law is currently and in the future will be, in contention.

Another concern to address with the institution of gender neutral bathrooms is safety. Jeffreys (2014) supports the binary division of bathrooms, because women need protection from men. There is “plentiful evident that women and girls do face considerable danger from male-bodied persons who entered a sex segregated toilet” (Jeffreys, p. 48). However, this is a gross mischaracterization of transgender people, particularly transgender women.

The idea that transgender people’s access to bathrooms presents a danger to women and girls in the same room is unfounded for the following reasons. Firstly, “there is no evidence to support that transgender individuals are more likely to be sexual predators than the general population, and such criminal activity can be accomplished without permissive bathroom-access laws.” (Elkind, 2007, p.924). Therefore, an entire group of innocent people (transgender people) are being punished or discriminated against to prevent a separate group (predatory men) from committing a crime with no association to the innocent group. If laws need to be passed to help prevent criminals and sexual predators from accessing bathrooms, then specific laws tailored to this effect would be more appropriate. Levi and Redman (2010) point out that “Even, In San Francisco (the U.S city most likely with the highest percentage of transgender women per capita) there has never been a single police report of a transgender woman harassing another woman in the bathroom” (p. 160).

According to Jeffreys (2014), “research suggests that bystanders very rarely intervene in instances of sexual harassment and assault. (p. 48) Taking into account that Elkin (2007) said that “criminal activity can be accomplished without bathroom access laws” (p.924). Both authors are actually in agreement that there is a mutually inclusive safety problem in segregating

bathrooms by sex. Jeffreys (2014) completely dismisses the idea that other presences may deter or regulate the behavior of potential security or safety risks. However, the idea of hiring security specifically trained to prevent and intervene in instances of sexual assault would address safety concerns raised by Jeffreys (2014). Also, figuring a way to put types of panic buttons or send distress calls in bathrooms would benefit everyone who believes their health and safety is at risk.

Conclusion

Public bathrooms are not private spaces. Purdue (2015), in conclusion, recommends gender neutral restrooms as a proactive and accommodating approach. Jeffrey's (2014) suggests that bathrooms are completely individualized in a way that would offer dignity safety and respect to all users and wouldn't need to be labeled as anything other than bathroom (p.49) Purdue (2015) also recommends the use gender neutral restrooms. Shared mirror and sink space would prevent transgendered people from being singled out and relegated to bathrooms that may not be as accessible. This shared space would be uncomfortable at first but would safer for all because it would eventually remove the stereotypes that we use to define gender. Work by Levi & Redman (2010), serves as reminder that "butch women and femme men are frequently subjected to the same types of harassment and discrimination as transgender people" (p. 166).

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