



Jailed for Defending Marriage

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Marriage License



Kim Davis, the now-famous Clerk in Rowan County, Kentucky, who became known for her refusal to issue marriage licenses, was arrested and incarcerated in September of 2015. She had refused to affix her signature to licenses being sought by two people of the same sex, even after the Supreme Court had legalized gay marriage, noting that this would force her to act against her conscience and her deeply-held religious convictions. Her resolve to stop issuing licenses under these circumstances needs to be grasped for what it really is, namely, a morally coherent course of action that respects the authentic nature of marriage and recognizes the duties of an informed conscience.

Jonathan Adler, a law professor at Case Western University noted that Kim Davis “asked to be the person who issues marriage licenses. And the state defines who is eligible to marry,” and sometimes “the eligibility changes.”

In point of fact, however, he only begs the question under dispute. Opponents of the Supreme Court’s Obergefell decision stress that the state does not determine the nature of marriage; instead, it is nature that makes that determination through the radical complementarity of man and woman, a

reality entirely outside the purview of the state to redefine or negate. The unique and exclusive eligibility of one man and one woman to marry each other cannot be changed by court order any more than gravity can be overturned by court decree.

Commenting on the Supreme Court decision on gay marriage, Ed Peters, a canonist in Detroit, explains it this way:

“Five justices imposed on marriage (true marriage, natural marriage, traditional marriage, whatever pleonastic phrase one wishes to use) the lie that marriage includes the union of two persons of the same sex.... The Court has published a naked, gross falsehood that tears simultaneously at the fabric of law, language, family, and society. The word marriage has, and will always have, an objectively true meaning—no matter how many times it has been degraded.”

Ms. Davis resolutely declined to lend her signature, and the authority of her office, to affirm this falsehood.

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Making Sense of Bioethics

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Davis was elected to serve as a government official, and should carry out the provisions of the law even if she might not agree with them. But this argument is flawed on at least four counts.

First, the claim that public servants have a stringent duty to uphold the law tends to be selectively applied by those who make the claim. Nearly 18 months before Ms. Davis was jailed, and 15 months before the Supreme Court decision on gay marriage, another public servant in Kentucky named Jack Conway, the state Attorney General, failed to carry out his duty of defending the Kentucky Constitution that affirmed marriage to be between one man and one woman. He publicly refused to defend the law of the Commonwealth before the Supreme Court; and Mr. Conway was praised and celebrated for his decision by numerous voices in the national media and in the legal establishment. Mr. Conway's refusal to perform this duty clearly contravened Kentucky law KRS 522.020; nevertheless, he was neither punished nor incarcerated for his failure to uphold the fundamental marriage laws of the state.

Second, it would be wrong to suppose that workers and employees

are mere cogs in the machinery of governments or corporations, mindlessly following orders. Many German government officials and workers seemed to make this assumption during the last World War. Officials and employees are rather called to assist their employers in an attentive and collaborative way, so that the work of the institution or corporation they represent is marked by integrity and sound ethics. Ms. Davis sought to conscientiously protect the integrity of marriage and the work carried out in the Clerk's Office by declining to issue licenses to two people of the same sex.

Third, when Ms. Davis was elected to the office of Clerk in Rowan County, gay marriage was still illegal, so she was elected to a position where, some time later, the ground beneath her feet abruptly shifted, and a new job description requiring her to violate her conscience was suddenly thrust upon her. Simply put, she hadn't signed up for this.

Fourth, legality does not automatically equate to morality. If workers or officials are asked to perform a gravely immoral activity, even one sanctioned by a legislature, a parliament, or a Supreme Court, they must

instead advert to a higher law, and individual conscience rights must be safeguarded to assure that they are not forced to comply with serious wrongdoing.

In sum, Kim Davis' measured actions at the Clerk's Office in Kentucky offer a coherent and courageous response to chaotic attempts to undermine marriage and the rule of law. Our society needs more of her coherence and courage, not less.

Rev. Tadeusz Pacholczyk, Ph.D. earned his doctorate in neuroscience from Yale and did post-doctoral work at Harvard. He is a priest of the diocese of Fall River, MA, and serves as the Director of Education at The National Catholic Bioethics Center in Philadelphia. Father Tad writes a monthly column on timely life issues. From stem cell research to organ donation, abortion to euthanasia, he offers a clear and compelling analysis of modern bioethical questions, addressing issues we may confront at one time or another in our daily living. His column, entitled "Making Sense of Bioethics" is nationally syndicated in the U.S. to numerous diocesan newspapers, and has been reprinted by newspapers in England, Canada, Poland and Australia.

