

# FIRST THINGS

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## KIM DAVIS'S CONSCIENTIOUS DECISION

by R. R. Reno

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I'm sympathetic to Kim Davis, the county clerk in Kentucky who has stopped signing marriage licenses. In her position, I'd do the same.

Her decision was straightforward, it seems. After *Obergefell*, the Supreme Court decision mandating a national right to same-sex marriage, Davis decided that she could not affix her signature to documents perpetuating the falsehood that husbands can have husbands and wives have wives. To do so would be to act in a way contrary to her conscience as formed by her Christian faith. With admirable consistency, she decided to stop signing marriage licenses altogether, not wanting to discriminate against gay couples.

One can judge Davis mistaken about the dictates of her conscience. Perhaps she is wrong about what Christianity teaches about marriage, as many liberal Christians argue. Perhaps she is mistaken about the implications of signing a marriage license. There might be a clever Jesuit who can convince us that her signature on same-sex marriage licenses should not have troubled her conscience.

One angle for the casuist: When the Supreme Court issued its decree, American civil law ceased to define marriage and instead became a law of civil unions, with the word "marriage" now having no real meaning. With that sort of reasoning, I might be able to wiggle my way toward signing licenses that say "marriage" but really mean "civil union."

Whatever we might think of the moral or legal substance of the matter, however, we cannot claim

Davis has misunderstood her situation. One of her duties as county clerk now asks Davis to do what her conscience tells her she must not do. The way forward is clear: She must obey her conscience. She must act, as she puts it, “under God’s authority.” That’s exactly right.

**M**any modern people have the wrong impression that conscience is active, impelling us to do things contrary to the law. This is not the tenor of Davis’ stance in Morehead, Kentucky. She is not issuing counter-opinions to refute *Obergefell*. Nor is she campaigning to get other county clerks to join her. There have been no press releases, no assertive shrill spirit of protest on her part. That’s the progressive mentality, which tries to upgrade its political ambitions with appeals to conscience. Instead, Davis simply won’t do what her conscience tells her she cannot do. She’s not acting contrary to the law; She’s not acting at all.

Some might say that her refusal to sign marriage licenses disqualifies her from holding her position as county clerk. She should resign or be removed. People are certainly entitled to that opinion. But Davis does not think she must resign. The county clerks in Kentucky are elected, so she can’t be fired. She could be impeached, but that’s for the legislators of the State of Kentucky to decide. And the citizens of Rowan County can vote against her in the next election. Conscience, properly exercised in civil disobedience that otherwise respects the law, isn’t always easy to dislodge.

I can imagine some harrumphing about the notion that Davis respects the law. After all, isn’t she refusing to act in accord with it?! I find this worry rather rich when expressed by progressives. For decades, elite colleges and universities run by progressives have made arrangements with local police that allow students to use drugs and drink while underage, free from the worry of arrest. These sorts of special arrangements, which are widespread in elite institutions, are not criticized for the obvious ways in which *they* undermine the rule of law.

Under the circumstances, Kim Davis poses little threat to the rule of law. Her actions have done nothing to prevent gay couples from getting marriage licenses throughout Kentucky. The couples

that present themselves for her signature can easily go to the next county, as I'm sure heterosexual couples in Rowan County have done over the last two months. She's not making grand public statements about a supposed right to dissent. She's done nothing in the way of organizing resistance to *Obergefell*. No counter-revolution.

So why the furor? Because her refusal poses a symbolic threat to "marriage equality" and its claim to realize the high ideals of justice. One word of dissent, one act of conscience, disturbs the serene confidence of progressives that they have a monopoly on all that is right and good.

Neither you nor I nor Kim Davis have a "right" to follow our consciences. That's silly. Our consciences do not wait upon the niceties of rights. I would not protest if higher authorities decided to remove Davis from her position. The law has a proper claim on public life, even if it does not have a final authority over our consciences.

Our legal and political system has no final authority over us, because there is a higher one. At times, one ought not to do what one is told to do. Kim Davis finds herself in just that sort of situation. Good for her. She's doing something noble: quietly following the dictates of her conscience.

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